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Marine Farming Planning Act 1995

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TASMANIA

Marine Farming Planning Act 1995

An Act to provide for the planning of marine waters for marine farming and the allocation of marine farming leases

[Royal Assent 15 September 1995]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the Marine Farming Planning Act 1995 .

2. Commencement

This Act commences on a day or days to be proclaimed.

3. Interpretation

In this Act –

agency means a Government department or State authority within the meaning of the State Service Act 2000 ;

amend, in relation to a marine farming development plan, includes –

- (a) to alter the area covered by the marine farming development plan; and
- (b) to increase the maximum leasable area for marine farming; and
- (c) to alter the species of fish to be permitted to be farmed in any part of a marine farming zone; and
- (d) to add a new marine farming zone; and
- (e) to alter any condition of the marine farming development plan;

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established under the Resource Management and Planning Appeal Tribunal Act 1993 ;

approved form means a form approved by the Minister;

area includes waters;

Board means the Board of Advice and Reference established under Part 4 ;

certificate of preference means a certificate issued under section 54 ;

conservation includes preservation, maintenance, sustainable use and restoration;

council means a council as defined in the Local Government Act 1993 ;

demerit point means a demerit point referred to in Division 8 of Part 5 ;

Director, EPA means the Director, Environment Protection Authority, appointed under section 18 of the Environmental Management and Pollution Control Act 1994 ;

draft amendment means a draft amendment to a plan referred to in Division 2 of Part 3 ;

draft management controls means the management controls referred to in section 24 ;

draft plan means a draft marine farming development plan referred to in section 21 ;

emergency lease means an emergency lease in force under section 63 ;

emergency order means an emergency order in force under Division 3 of Part 3 ;

emergency plan means an emergency plan in force under Division 3 of Part 3 ;

environmental impact statement means a statement referred to in section 23 ;

finfish farming has the same meaning as in the Environmental Management and Pollution Control Act 1994 ;

fisheries officer means a fisheries officer within the meaning of the Living Marine Resources Management Act 1995 ;

infringement notice means an infringement notice referred to in Division 7 of Part 5 ;

licence means a licence in force under the Living Marine Resources Management Act 1995 ;

lease means a lease, special lease or emergency lease in force under Part 4 ;

lease area means the area which is the subject of a lease;

lessee means the holder of a lease;

Marine and Safety Authority means the Marine and Safety Authority established under the Marine and Safety Authority Act 1997 ;

marine farming includes the farming, culturing, ranching, enhancement and breeding of fish or marine life for trade, business or research;

marine farming development plan means a marine farming development plan approved under section 31(3)(a) or section 42(4) ;

marine farming equipment means any of the following whether actively engaged with fish rearing or not:

- (a) any equipment or structure used in connection with marine farming or the operation of a marine farm;
- (b) fish cages, lines and racks;
- (c) moorings, staylines, anchors and predator control devices;
- (d) any other equipment;

marine farming licence means a marine farming licence in force under the Living Marine Resources Management Act 1995 ;

marine farming zone means the zone designated as such in a marine farming development plan;

maximum leasable area means the area referred to in section 21 (2) (b) ;

modify, in relation to a draft marine farming development plan, includes to change any boundary or area to which the plan relates;

National Law has the same meaning as in the Marine and Safety Authority Act 1997 ;

National Regulator has the same meaning as in the National Law;

objectives of resource management means the objectives set out in Schedule 1 ;

Panel means the Marine Farming Planning Review Panel established under Part 2 ;

planning authority means the Secretary;

public notice means a notice published in a daily newspaper circulating generally in the State;

public purpose means a purpose which is for the use or benefit of the public;

raft means a floating platform, pontoon, barge, punt or hulk or any other thing which is –

- (a) not self propelled; and
- (b) moored for the purpose of providing buoyant support for the surface or enclosures on which fish are bred, reared and harvested;

relevant agency means –

- (a) a department or other agency of Government of the State or of the Commonwealth; and
- (b) an authority of the State or of the Commonwealth established for the public benefit; and
- (c) a person undertaking a function for the public benefit;

Secretary means the Secretary of the Department;

State waters means waters within the meaning of the Living Marine Resources Management Act 1995 ;

structure includes a platform, pontoon, jetty, building or any other thing used in connection with marine farming;

sustainable development means sustainable development as defined in clause 2 of Schedule 1 ;

Tasmanian Planning Commission means the Tasmanian Planning Commission established under the Tasmanian Planning Commission Act 1997 ;

use includes proposed use;

vary includes substitute, add or delete;

waters includes –

- (a) the bed and subsoil under any waters; and
- (b) the airspace above any waters.

4. Purpose and objectives

(1) The purpose of this Act is to achieve well-planned sustainable development of marine farming activities having regard to the need to –

- (a) integrate marine farming activities with other marine uses; and
- (b) minimise any adverse impact of marine farming activities; and
- (c) set aside areas for activities other than for marine farming activities; and
- (d) take account of land uses; and
- (e) take account of the community's right to have an interest in those activities.

(2) A person must perform any function or exercise any power under this Act in a manner which furthers the objectives of resource management.

5. Act binds Crown

This Act binds the Crown in right of Tasmania and, in so far as the legislative power of Parliament permits, in all its other capacities.

6. Application of Act

This Act applies to all State waters and any other area declared under section 19 .

7. Delegations

(1) The Minister, in writing, may delegate to any person or body any of the Minister's functions or powers under this Act, other than this power of delegation.

(2) The Panel, in writing, may delegate to any person or body any of its functions or powers, other than this power of delegation.

(3) The Secretary, in writing, may delegate to a person employed in the Department any of the Secretary's functions or powers, other than this power of delegation.

(4) The Board, in writing, may delegate to any person or body any of its functions or powers, other than this power of delegation.

PART 2 - Marine Farming Planning Review Panel

Division 1 - Establishment of Panel

8. Marine Farming Planning Review Panel

- (1) A Marine Farming Planning Review Panel is established.
- (2) The Panel consists of 9 persons appointed by the Governor of whom—
 - (a) one is the chairperson of the Panel; and
 - (b) one is a person nominated by the chairperson of the Tasmanian Planning Commission with ability and experience in planning issues; and
 - (c) one is a person, other than the Director, EPA, with ability and experience in environmental management; and
 - (ca) one is a person, other than the Director, EPA, with ability and expertise in fish health and biosecurity; and
 - (d) one is a person with ability in marine resource management; and
 - (e) one is a person with ability to assess boating, recreational and navigational issues; and
 - (f) one is a person with experience in marine farming; and
 - (fa) one is a person with expertise in local government issues; and
 - (g) one is a person nominated by the Minister.
- (3) Before any appointment is made under subsection (2) (a), (c), (ca), (d), (e) or (f), the Secretary may call for expressions of interest for that appointment.
- (4) The Secretary may establish a selection committee to —
 - (a) review any expression of interest; and
 - (b) recommend a person or persons for appointment as a member of the Panel.
- (5) Schedule 2 has effect with respect to membership of the Panel.
- (6) Schedule 3 has effect with respect to meetings of the Panel.

9. General functions and powers of Panel

- (1) The functions of the Panel are —
 - (a) to consider draft plans, draft amendments to marine farming development plans and draft modifications to marine farming development plans following reviews under section 48 ; and
 - (ab) to consider environmental impact statements; and
 - (b) to consider comments made on draft plans, draft modifications and draft amendments; and
 - (c) to make recommendations to the Minister in respect of draft plans, draft modifications and draft amendments; and
 - (d) to perform any other function imposed on it under this or any other Act; and
 - (e) to undertake any other function or activity the Minister determines.
- (2) The Panel may —
 - (a) conduct hearings to assist it in the performance of its functions; and
 - (b) do anything necessary or convenient to perform its functions.

(3) The Panel must conduct a hearing if a request for the hearing is made under section 27(2)(c) or section 39(2)(c) .

10. Expert advice

- (1) The Panel may seek expert advice from any person or body on –
 - (a) the adequacy or otherwise of proposed environmental controls; and
 - (b) technical aspects in relation to marine farming; and
 - (c) biological and physical requirements of fish species; and
 - (d) any other matter to assist it in performing its functions.
- (2) The remuneration and allowances in respect of giving expert advice are as the Minister determines.

11. Directions of Minister

- (1) The Minister, by notice in writing, may give directions to the Panel.
- (2) The Panel must perform its functions and exercise its powers in accordance with any directions given by the Minister.

Division 2 - Hearings

12. Hearings

- (1) The Panel may –
 - (a) hold a hearing in public; and
 - (b) determine the procedure at a hearing.
- (1A) The Panel may hold one hearing in relation to as many representations as it determines.
- (1B) The Panel is to –
 - (a) give notice in writing to each person who made a request under section 27(2)(c) or section 39(2)(c) of the date, time and place of the hearing not less than 14 days before the date of the hearing; and
 - (b) by public notice, advertise the date, time and place of the hearing.
- (1C) A notice under subsection (1B)(a) is taken to have been given to a person –
 - (a) in the case of hand delivery, when delivered at the person's last known address; or
 - (b) if sent by prepaid post, on the fifth day after the date of posting to the person's last known address; or
 - (c) if sent by facsimile transmission to the person's last known facsimile number and the sending facsimile machine produces a print-out which records the time and date of the transmission –
 - (i) if completion is within ordinary business hours at the place to which the transmission is sent, at that recorded date and time; or
 - (ii) if completion is outside ordinary business hours, at 9.00am on the next ordinary business day in that place.
- (2) At a hearing, the Panel –
 - (a) may inform itself about any matter in any way it considers appropriate; and
 - (b) may require a person to attend the hearing; and
 - (c) may receive oral or written evidence; and
 - (d) may consult with any persons it considers appropriate; and
 - (e) need not act in a formal manner; and
 - (f) is not bound by the rules of evidence.

- (3) The Panel may take evidence on oath or affirmation.
- (4) A person, without reasonable excuse, must not fail to –
 - (a) take an oath or make an affirmation; or
 - (b) answer any question; or
 - (c) attend a hearing.

Penalty: Fine not exceeding 10 penalty units.

- (5) It is a reasonable excuse under this section that any answer required to be given –
 - (a) may tend to incriminate the person or make the person liable to a penalty; or
 - (b) is information of a business, commercial or financial nature that may expose the person to competitive disadvantage.
- (6) Subsection (5) does not apply to information relating to the environmental impact of any matter.

13. Protection of members and witnesses

- (1) A member of the Panel, in exercising any power or performing any functions as such a member, has the same protection and immunity as a judge of the Supreme Court.
- (2) A person required to attend or appearing before the Panel as a witness has the same protection as a witness in a proceeding in the Supreme Court.

14. Allowances

- (1) A person who appears at a hearing is entitled to be paid any allowances and expenses the Minister determines.
- (2) If the Panel considers it appropriate, a person who gives evidence or gives a document may be –
 - (a) paid for work involved in collecting and preparing the evidence or document; and
 - (b) reimbursed any expense, or compensated for any loss, reasonably incurred in collecting and preparing the evidence or document.

PART 3 - Marine Farming Development Plans

Division 1 - Preparation of marine farming development plans

15. Draft plan

- (1) A draft plan may be prepared by –
 - (a) an employee of the Department; or
 - (b) a consultant acting on behalf of the Department.
- (2) A draft plan must not be commenced without the Minister's approval.

16. Approval to prepare draft plan

- (1) The Secretary and a person, other than a person referred to in section 15 (1) , may apply to the Minister for approval to prepare a draft plan.
- (2) An application, by a person other than the Secretary, is to –
 - (a) be in an approved form; and
 - (b) contain any details the Minister requires; and
 - (c) be accompanied by the prescribed fee; and
 - (d) be lodged with the Minister.
- (3) The Minister may –
 - (a) grant the application subject to any requirement not inconsistent with any other provision of this Act; or
 - (b) refuse to grant the approval.

17. Notification of approval to draft plan

The Secretary, not later than 14 days after the Minister approves a person to prepare a draft plan –

- (a) must notify the Panel of that approval; and
- (b) may provide any other information the Secretary considers appropriate.

17A. Role of Director, EPA in relation to marine farming development plans in relation to finfish farming

- (1) The Director, EPA, by notice in writing to the Panel, may require –
 - (a) any matter, specified in the notice, that relates to environmental management of finfish farming, to be contained in –
 - (i) a draft plan, or draft amendment, that relates to finfish farming; or
 - (ii) any draft plan, or any draft amendment, that relates to finfish farming; and
 - (b) any matter, specified in the notice, that relates to environmental management of finfish farming, to be addressed in –
 - (i) an environmental impact statement; or
 - (ii) any environmental impact statement –
that is, under section 23 , to accompany a draft plan, or a draft amendment, in relation to finfish farming, or any draft plan, or any draft amendment, in relation to finfish farming; and
 - (c) any environmental management controls, specified in the notice, to be included in draft management controls, to which section 24 relates, that relate to finfish farming; and

- (d) the Panel to consider, under section 29 or section 41 , a matter, specified in the notice, that relates to environmental management of finfish farming; and
- (e) a matter, specified in the notice, that relates to environmental management of finfish farming, to be included in –
 - (i) a draft plan, in relation to finfish farming, to which a recommendation of the Panel under section 31(1) relates; or
 - (ii) a draft amendment, in relation to finfish farming, to which a notification under section 41A(1) relates.
- (2) The Panel must give to a person preparing a draft plan, or an amendment of a draft plan, in relation to finfish farming, a copy of any notice, given to the Panel under subsection (1), that, in the opinion of the Panel, relates to the draft plan, or the amendment of a draft plan, being prepared.
- (3) The Secretary –
 - (a) is to notify the Director, EPA of an application made under section 16 for approval to prepare a draft plan in relation to finfish farming; and
 - (b) is to provide to the Director, EPA a copy of the application under section 16 to which the approval relates and any information that accompanied the application; and
 - (c) is to notify the Director, EPA if an approval under section 17 relates to finfish farming.
- (4) The Panel must provide to the Director, EPA a copy of a report, in relation to finfish farming, forwarded to the Panel under section 28 .
- (5) The Panel –
 - (a) is to notify the Director, EPA of an application under section 33(1) or (2) in relation to finfish farming; and
 - (b) is to provide to the Director, EPA a copy of such an application.
- (6) As soon as practicable after the Minister gives an approval, sought under section 33(5), in relation to finfish farming, the Panel –
 - (a) is to notify the Director, EPA of the approval; and
 - (b) is to provide to him or her a copy of the request to which the approval relates.
- (7) As soon as practicable after the Panel directs a planning authority under section 34 to prepare a draft amendment (other than in response to a request from the Director, EPA) of a marine farming development plan in relation to finfish farming, the Panel –
 - (a) is to notify the Director, EPA of the direction; and
 - (b) is to provide to him or her a copy of the request to which the direction relates.
- (8) The Panel is to notify the Director, EPA of the withdrawal of a draft amendment, in relation to finfish farming, in accordance with section 36.
- (9) The Panel, within 7 days of receiving a report under section 40 in relation to finfish farming, is to forward the report to the Director, EPA.
- (10) A planning authority –
 - (a) before preparing a draft emergency plan under section 45 in relation to finfish farming, is to notify the Director, EPA of the authority's intention to prepare the plan; and
 - (b) as soon as practicable after an emergency plan in relation to finfish farming is approved by the Minister under section 45 , is to notify the Director, EPA of the approval of the emergency plan.

18. Consultation

- (1) In preparing a draft plan, a person must consult with any person or body the Panel determines.

- (2) An agency must submit its comments on the draft plan within 30 days after being consulted or any longer period agreed to by that person or body and the planning authority.
- (3) If the agency fails to submit comments within the period allowed, the planning authority may deal with a draft plan without regard to its comments.

19. Area comprised in draft plan

- (1) A draft plan may be prepared only in respect of –
 - (a) the whole or part of State waters; and
 - (b) any other area referred to in an order made under subsection (2) .
- (1A) A draft plan, in so far as it relates to finfish farming, may not relate to an area of State waters, or an area that adjoins State waters, if all or part of the area to which the draft plan relates is a finfish marine farming exclusion zone under section 19A.
- (2) The Minister, by order, may declare any area which adjoins State waters as an area in respect of which a draft plan may be prepared.
- (3) The Minister may make an order under subsection (2) only if the following agree to the making of the order:
 - (a) the Minister responsible for the administration of the Local Government Act 1993 ;
 - (b) the Minister responsible for the administration of the Land Use Planning and Approvals Act 1993 ;
 - (c) any council that has jurisdiction over the area referred to in the order;
 - (d) the Marine and Safety Authority if that area is under its jurisdiction.

19A. Finfish marine farming exclusion zones

- (1) Each area that is indicated on a map in Schedule 6 to be a finfish marine farming exclusion zone is a finfish marine farming exclusion zone.
- (2) The Governor, by proclamation, may amend Schedule 6 by –
 - (a) adding to Schedule 6 a map indicating an area that is to be a finfish marine farming exclusion zone; or
 - (b) revoking a map that is in Schedule 6 .
- (3) The Governor may only make a proclamation under subsection (2) if a draft of the proclamation has been approved by both Houses of Parliament.
- (4) For the purposes of subsection (3) , a House of Parliament is to be taken to have approved a draft of a proclamation if a copy of it has been laid on the table of the House and –
 - (a) it is approved by the House; or
 - (b) at the expiration of 5 sitting-days after it was laid on the table of the House, no notice has been given of a motion to disallow it or, if such notice has been given, the notice has been withdrawn or the motion has been negatived; or
 - (c) if any notice of a motion to disallow it is given during that period of 5 sitting-days, the notice is, after the expiration of that period, withdrawn or the motion is negatived.
- (5) An amendment of Schedule 6 by a proclamation under subsection (2) takes effect on the day on which notice of the making of the proclamation is published in the *Gazette*.

20. Directions for assistance

- (1) The Panel, with the Minister's approval, may request the Tasmanian Planning Commission to arrange for the inclusion of information in a draft plan in respect of a specified area.
- (2) The area specified in a direction is to be limited to an area declared under section 19 .

(3) The Panel, with the Minister's approval, may request the Minister responsible for administering the Land Use Planning and Approvals Act 1993 to require the Tasmanian Planning Commission to prepare an amendment to a planning scheme under that Act in respect of land which adjoins State waters to reduce the negative impact or likely negative impact of activities or future development on the land upon marine farming or other activities in State waters.

(4) The Tasmanian Planning Commission may give a written direction to the Marine and Safety Authority and a council—

- (a) to assist the planning authority to prepare a draft plan in respect of the specified area; and
- (b) to prepare information for inclusion in a draft plan in respect of that area; and
- (c) to assist in any other way it considers necessary.

(5) The Marine and Safety Authority and a council are jointly and severally liable together with the planning authority for carrying out any direction given under subsection (4) .

21. Draft marine farming development plan

(1) A draft marine farming development plan for an area must –

- (a) further the objectives of resource management within the area covered by the draft plan; and
- (b) designate any area as a marine farming zone within the area covered by the draft plan; and
- (ba) specify the area to which the marine farming development plan relates; and
- (c) be co-ordinated with any marine farming development plan applying to any adjacent area; and
- (ca) if it relates to finfish farming, contain any matter relating to environmental management that is required by the Director, EPA, in a notice under section 17A(1) , to be contained in the marine farming development plan or any marine farming development plan; and
- (d) have regard for the use and development of the region as an entity in environmental, economic, recreational and social terms; and
- (e) seek a co-ordinated approach with respect to any matter affecting adjacent land under the jurisdiction of the Marine and Safety Authority or council; and
- (f) have regard to the biological and physical requirements of fish species to be farmed in that area; and
- (g) provide for any other matter which this Act requires to be included in a marine farming development plan; and
- (ga) be consistent with State Policies made under section 11 of the State Policies and Projects Act 1993 ; and
- (h) contain any matter the Panel requires.

(2) A draft marine farming development plan for an area may –

- (a) make any provision which relates to the use, development, protection or conservation of any thing in the area; and
- (b) provide for the maximum area that at any one time may be a lease area within a marine farming zone; and
- (c) set out policies and specific objectives; and
- (d) require specified things to be done to the satisfaction of the planning authority, Panel or relevant agency; and
- (e) apply, adopt or incorporate any document which relates to the use, development or protection of State waters; and
- (f) provide that any use or development of any State waters is conditional on an agreement being entered into with a relevant agency; and

- (g) require the use of an area to comply with any condition, restriction or code of practice; and
- (h) provide for an application to be made to bring an existing use of land into conformity, or greater conformity, with the marine farming development plan.

22. Restrictions on draft marine farming development plan

- (1) A draft marine farming development plan must not prevent the use of any water within a lease area unless the lessee and the Minister agree –
 - (a) to compensation; or
 - (b) to an alternative lease area.
- (2) Subsection (1) does not apply to a use of water –
 - (a) which has stopped for a continuous period of 2 years; or
 - (b) which has stopped for 2 or more periods which together total 2 years in any period of 3 years; or
 - (c) in the case of a seasonal use, which does not take place for 2 years in succession.
- (3) Subsection (1) does not apply –
 - (a) to the extension or transfer of a use of water from one part of the lease area to another part; or
 - (b) if the use of any water is substantially different to that specified as a condition of the lease.

23. Environmental impact statement

- (1) The planning authority or any other person preparing a draft plan must prepare an environmental impact statement to accompany a draft plan, a modification to a draft plan, a draft amendment to a plan and a modification to a draft amendment to a plan.
- (2) An environmental impact statement must –
 - (a) disclose any available information relating to the environmental impact of the draft plan, except if there is a reason for confidentiality; and
 - (ab) if it relates to finfish farming, address any matter relating to environmental management that is required by the Director, EPA, in a notice under section 17A(1), to be addressed in the environmental impact statement or in any environmental impact statement; and
 - (b) contain information appropriate to the significance of the draft plan, a modification to a draft plan, a draft amendment to a plan and a modification to a draft amendment to a plan to the environment and the likely public interest.
- (3) An environmental impact statement is not required for a modification to a draft plan if the Panel is satisfied that there is not likely to be any significant effect on the environment as a result of the modification.

24. Draft management controls

- (1) A person who prepares a draft plan must prepare draft management controls –
 - (a) as part of the draft plan; or
 - (b) as part of any significant modification to the draft plan which would justify a change in the management controls already in operation.
- (2) Draft management controls must contain any measure which the person considers necessary to satisfactorily manage and mitigate negative effect of the draft plan.
- (2A) Draft management controls must, if they relate to finfish farming, contain any environmental management controls that the Director, EPA, in a notice under section 17A(1), requires to be included in the draft management controls.
- (3) Draft management controls may include provisions relating to any one or more of the following:
 - (a) the activities that may take place in the area covered by the draft plan;

- (b) the specific marine farming activities that may take place in the whole or a part of a marine farming zone;
- (c) the environmental testing that must be carried out by a person who may be granted a lease in a marine farming zone;
- (d) the limits of any water quality in or around a marine farming zone;
- (e) the restrictions on noise, light or presence in a marine farming zone;
- (f) the size of structures in a marine farming zone;
- (g) any other appropriate matter.

25. Approval of draft plan

- (1) Within 12 months after the Minister approves the preparation of a draft plan, or within any longer period the Minister allows, the planning authority must submit a copy of the draft plan to the Panel.
- (2) Within 9 weeks after a draft plan is submitted or within any longer period the Minister allows, the Panel, if it considers that–
 - (a) it is suitable for exhibition, must refer it to the Minister for approval for it to be publicly exhibited; or
 - (b) it is not suitable for exhibition–
 - (i) must alter it and refer it to the Minister for approval for the draft plan, as altered, to be publicly exhibited; or
 - (ii) must require the planning authority to alter it in a specified manner and within a specified period.
- (3) A draft plan is suitable for exhibition if it –
 - (a) complies with section 21 ; and
 - (ab) contains any matter relating to environmental management of finfish farming that the Director, EPA, in a notice under section 17A(1) , requires the Panel to include in the draft plan or any draft plan; and
 - (b) outlines any marine farming zone; and
 - (c) identifies any maximum leasable area; and
 - (d) is accompanied by an environmental impact statement; and
 - (e) contains draft management controls.
- (4) Subsections (2) and (3) apply in relation to an altered draft plan as if it had not previously been submitted to the Panel.

26. Public exhibition of draft plan

- (1) The Minister may –
 - (a) give approval to the public exhibition of a draft plan; or
 - (b) refuse to give approval.
- (2) If the Minister gives approval to the public exhibition of a draft plan, the planning authority must –
 - (a) within 6 weeks or any longer period the Panel allows, publicly exhibit a copy of the draft plan for 2 months; and
 - (b) by public notice advertise –
 - (i) the place at which the draft plan is exhibited; and
 - (ii) the period during which it is to be exhibited; and

- (iii) the place at which a copy of the draft plan may be obtained; and
- (iv) any cost of obtaining a copy of the draft plan; and
- (v) that written representations may be made under section 27 to the planning authority in relation to the draft plan; and
- (vi) the date by which representations are to be lodged; and
- (vii) the place of lodgment of representations; and
- (viii) that a hearing may be requested under section 27 in relation to a representation.

(3) If the Minister refuses to give approval to the public exhibition of a draft plan, the Minister is to refer the draft plan back to the Panel –

- (a) indicating any concerns the Minister has with the draft plan; or
- (b) seeking further information.

27. Representations in respect of draft plan

(1) A person may submit representations in relation to a draft plan exhibited under section 26 .

(2) A representation –

- (a) is to be made in writing; and
- (b) is to state the name of the person making the representation; and
- (c) is to be accompanied by a written request for a hearing if the person wishes a hearing to be conducted in relation to that representation; and
- (d) is to state the address for receipt of any notice in relation to the hearing; and
- (e) is to be lodged by the date referred to in section 26(2)(b)(vi) .

28. Report of representations relating to draft plan

The planning authority, within 3 months after the period specified in a notice under section 26 (2) (b) (ii) or any longer period the Panel allows, must forward to the Panel a report comprising –

- (a) a copy of each representation received in relation to the draft plan or, if no representation has been received, a statement to that effect; and
- (ab) a copy of each request received under section 27(2)(c) or, if no request has been received, a statement to that effect; and
- (b) a statement of the planning authority's opinion as to the merit of each representation; and
- (c) a statement regarding –
 - (i) the need for any modification of the draft plan in the light of any representation; and
 - (ii) the impact of any representation on the draft plan as a whole; and
- (d) any appropriate recommendation in relation to the draft plan.

29. Consideration of draft plan, management controls and representations

(1) As soon as practicable after receipt of a report under section 28 , the Panel must consider the draft plan, any matter relating to environmental management of finfish farming that the Director, EPA, in a notice under section 17A(1) , requires the Panel to consider, any accompanying environmental impact statement and the report.

(2) After considering the draft plan, matters, if any, report and any accompanying environmental impact statements, the Panel may–

- (a) modify the draft plan; or

- (b) reject the draft plan; or
 - (c) require the planning authority to modify a specified provision of the draft plan; or
 - (d) accept the draft plan without change.
- (3) The Panel may determine that a modification of a draft plan is not of a substantial nature.
- (3A) The Panel, by notice in writing, is to notify the planning authority of –
- (a) any modification it makes and the reasons for the modification; and
 - (b) any modification to the draft plan it requires and the reasons for the modification; and
 - (c) its rejection or acceptance of the draft plan; and
 - (d) any determination made under subsection (3) .
- (4) In requiring a part of a draft plan to be modified, the Panel may give directions as to the explanatory material to be included in the public notification of the modified part and to be made available for public inspection.

30. Modification of draft plan

- (1) If the Panel rejects a draft plan, the planning authority, within any period the Panel allows, must submit to the Panel a modification to the draft plan.
- (2) The provisions of this Division, other than sections 15 (2) , 20 and 25 (1) , apply in relation to the modification of a draft plan.
- (3) If the Panel directs that a specified part of a draft plan be modified–
 - (a) the planning authority, within any period the Panel allows, must submit to the Panel the modification of that part; and
 - (b) the provisions of this Division, other than sections 15 (2) , 17 , 20 and 25 (1) , apply in relation to the modified part.
- (4) If the Panel determines under section 29(3) that a modification of a draft plan is not of a substantial nature, it may direct that the provisions relating to public exhibition, representation and hearings do not apply to that modification.

31. Final approval of draft plan

- (1) The Panel must recommend to the Minister that the draft plan be approved if satisfied that –
 - (a) the draft plan including any modification to the plan is acceptable; and
 - (b) the draft plan contains any matter relating to environmental management of finfish farming that the Director, EPA, in a notice under section 17A(1) , requires the Panel to include in the draft plan or any draft plan.
- (2) The Panel must make its recommendation not later than –
 - (a) 3 months after –
 - (i) receipt of the report under section 28 ; or
 - (ii) if any part of the draft plan is required to be modified, the day on which the report in relation to the modified part was submitted, or if more than one report was submitted, the day on which the last report was submitted; or
 - (b) any later day the Minister approves.
- (3) The Minister, after considering any recommendation, may –
 - (a) give final approval to the draft plan by signing the draft plan; or
 - (b) refuse to give final approval to the draft plan.

- (4) If the Minister gives final approval to a draft plan –
 - (a) the Minister must advise the Panel and the planning authority of the approval; and
 - (b) the planning authority must advertise the approval by public notice.
- (5) If the Minister refuses to give final approval to a draft plan, the Minister is to refer the draft plan back to the Panel –
 - (a) indicating any concerns the Minister has with the draft plan; or
 - (b) seeking further information.

Division 2 - Amendment of marine farming development plans

32. Requirements for preparation of amendment

- (1) An amendment of a marine farming development plan may make any provision which relates to the use, development, protection or conservation of any thing in the area to which the amendment relates.
- (2) An amendment of a marine farming development plan –
 - (a) must comply with sections 21 and 22 ; and
 - (ab) must not extend the area to which the plan applies in relation to finfish farming so as to include an area of State waters, or an area that adjoins State waters, that is within a finfish marine farming exclusion zone under section 19A; and
 - (ac) must contain any matter relating to environmental management of finfish farming that the Director, EPA, in a notice under section 17A(1) , requires the Panel to include in the draft amendment or any draft amendment; and
 - (b) must not delete a marine farming zone from the plan; and
 - (c) must not reduce the maximum leasable area within a marine farming zone; and
 - (d) must not have the effect of making existing marine farming in the area significantly less viable.

33. Request for amendment of marine farming development plan

- (1) Once a marine farming development plan has been in operation for at least 2 years, a person ("applicant") may request that it be amended.
- (2) The request is to be made to the planning authority in a form approved by that authority.
- (3) Within 35 days after receiving the request or any longer period the Panel allows, the planning authority must make a recommendation to the Panel as to whether the amendment should be made.
- (4) After considering the recommendation under subsection (3) , the Panel may –
 - (a) approve the making of the amendment; or
 - (b) refuse to approve the making of the amendment.
- (5) As soon as practicable after making a decision under subsection (4)(a) , the Panel must seek the Minister's approval to direct the planning authority to prepare the draft amendment.
- (6) If subsection (4)(a) applies and the Minister gives the approval sought under subsection (5) , then, as soon as practicable after obtaining that approval, the Panel must –
 - (a) direct the planning authority, in writing, to prepare the draft amendment; and
 - (b) serve notice of the approval and the direction on the applicant.
- (7) If subsection (4)(a) applies but the Minister refuses to give the approval sought under subsection (5) , then, as soon as practicable after being informed of that refusal, the Panel must serve notice of that refusal on the applicant.

(8) If subsection (4)(b) applies, then, as soon as practicable after making its decision, the Panel must serve notice of the refusal and the reasons for the refusal on the applicant.

(9) If –

(a) subsection (4)(b) applies; or

(b) subsection (4)(a) applies but the Minister refuses to give the approval sought under subsection (5) –

the planning authority must not, in the 2-year period immediately following the date of the relevant refusal, consider or action any request for the making of a substantially similar amendment to the same marine farming development plan.

34. Amendment of marine farming development plan

(1) Notwithstanding section 33 , the Panel may at any time decide that an amendment to a marine farming development plan is desirable–

(a) in response to a request from the planning authority; or

(ab) in response to a request from the Director, EPA in relation to finfish farming; or

(b) of its own motion; or

(c) at the request of the Minister.

(2) On making a decision under subsection (1) , the Panel may direct the planning authority, in writing, to prepare the draft amendment.

(3) However, if subsection (1)(a) or (b) applies, the direction may be given only with the Minister's prior approval.

35. Certification of draft amendment

(1) Within 10 weeks after being given a direction under section 33(6)(a) or section 34(2) or any longer period the Panel allows, the planning authority must prepare a draft amendment and, unless it is withdrawn pursuant to section 36 , submit it to the Panel.

(2) Within 28 days after the submission of a draft amendment or any longer period the Minister allows, the Panel, if it considers that –

(a) it is suitable for exhibition, must certify the draft amendment accordingly and refer it to the Minister for approval for it to be publicly exhibited; or

(b) it is not suitable for exhibition –

(i) must alter it as the Panel considers necessary or expedient and then refer it to the Minister for approval for the draft amendment, as so altered, to be publicly exhibited; or

(ii) by notice in writing to the planning authority, must specify the respects in which it is not suitable for exhibition and a period within which a revised draft amendment must be submitted to the Panel.

(3) A draft amendment is suitable for exhibition if it –

(a) complies with sections 21 and 22 ; and

(ab) contains any matter relating to environmental management of finfish farming that the Director, EPA, in a notice under section 17A(1) , requires the Panel to include in the draft amendment or any draft amendment; and

(b) is accompanied by an environmental impact statement; and

(c)

(d) in the opinion of the Panel, complies with any other matter the Panel thinks fit.

(4) Subsections (2) and (3) apply in relation to the revised draft amendment as if it had not previously been submitted to the Panel.

36. Withdrawal of draft amendment

(1) The Panel, with the Minister's approval, may withdraw a draft amendment at any time before the end of the period referred to in section 35 (1) .

(2) If the Panel withdraws a draft amendment, the Panel must –

(a) serve notice of the withdrawal on –

(i) the Minister; and

(ii) if the amendment was requested by the planning authority, on the planning authority; and

(b) give any other notice as it sees fit.

37. Panel may dispense with certain requirements

(1) The Panel may recommend to the Minister that sections 23 , 35(3)(b) , 38 , 39 , 40 and 41 do not apply in relation to a draft amendment if satisfied that the draft amendment –

(a) is to correct an error; or

(b) is not of a substantial nature; or

(c) is to remove any anomaly to clarify or simplify the marine farming development plan.

(2) The Minister, after considering a recommendation from the Panel, may –

(a) agree that sections 38 to 41 do not apply to the draft amendment; and

(b) give final approval to the draft amendment under section 42 .

(3) The Panel may determine that a modification to a draft amendment is not of a substantial nature.

(4) If a Panel makes a determination under subsection (3) –

(a) an environmental impact statement is not required; and

(b) sections 38 , 39 , 40 and 41 do not apply in relation to the modification to a draft amendment.

38. Public exhibition of draft amendment

(1) The Minister may –

(a) give approval to the public exhibition of a draft amendment; or

(b) refuse to give approval.

(2) If the Minister gives approval to the public exhibition of a draft amendment, the planning authority must –

(a) within 3 weeks or any longer period the Panel allows, publicly exhibit a copy of the draft amendment for at least 3 weeks and not more than 2 months; and

(b) by public notice advertise –

(i) the place at which the draft amendment is exhibited; and

(ii) the period during which it is to be exhibited; and

(iii) the place at which a copy of the draft amendment may be obtained; and

(iv) any cost of obtaining a copy of the draft amendment; and

(v) that written representations may be made under section 39 to the planning authority in relation to the draft amendment; and

(vi) the date by which representations are to be lodged; and

(vii) the place of lodgment of representations; and

(viii) that a hearing may be requested under section 39 in relation to a representation.

39. Representations in respect of draft amendment

- (1) A person may submit representations in relation to a draft amendment exhibited under section 38 .
- (2) A representation –
 - (a) is to be made in writing; and
 - (b) is to state the name of the person making the representation; and
 - (c) is to be accompanied by a written request for a hearing if the person wishes a hearing to be conducted in relation to that representation; and
 - (d) is to state the address for receipt of any notice in relation to the hearing; and
 - (e) is to be lodged by the date and at the place specified pursuant to section 38(2)(b)(vi) and (vii) .

40. Report of representations relating to draft amendment

The planning authority, within 35 days after the period specified in a notice under section 38 (2) (b) (ii) or a longer period the Panel allows, must forward to the Panel a report comprising –

- (a) a copy of each representation it received in relation to the draft amendment or, if no representation has been received, a statement to that effect; and
- (ab) a copy of each request received under section 39(2)(c) or, if no request has been received, a statement to that effect; and
- (b) a statement of the planning authority's opinion as to the merit of each representation; and
- (c) a statement regarding –
 - (i) the need for any modification of the draft amendment in the light of any representation; and
 - (ii) the impact of any representation on the draft amendment as a whole; and
- (d) any appropriate recommendation in relation to the draft amendment.

41. Consideration by Panel of draft amendment, &c.

(1) As soon as practicable after it receives a report under section 40 or a referral under section 42(3)(b) in relation to a draft amendment, the Panel must consider any matter, relating to environmental management of finfish farming, that it is required by the Director, EPA, in a notice under section 17A(1) , to consider and must, as the case requires –

- (a) consider the draft amendment and report; or
 - (b) reconsider the referred draft amendment and the concerns indicated by the Minister.
- (2) After complying with subsection (1) , the Panel must make a determination to –
- (a) recommend to the Minister that the draft amendment be accepted without change; or
 - (b) modify the draft amendment; or
 - (c) direct the planning authority to modify the draft amendment; or
 - (d) recommend to the Minister that the draft amendment be rejected.
- (3) If subsection (2)(b) applies, the Panel must –
- (a) modify the draft amendment; and
 - (b) notify the planning authority in writing of its determination and the reasons for making it, and of the modification.
- (4) If subsection (2)(c) applies, the Panel must –

(a) notify the planning authority in writing of its determination and the reasons for making it, and of the required modification; and

(b) by the same notification, direct the planning authority to make the required modification.

(5) The provisions of this Division, other than sections 33 and 34 , apply in relation to the modification of a draft amendment as if it were a draft amendment.

41A. Recommendation of Panel on draft amendment

(1) On making a determination under section 41(2)(a) or (d) , the Panel must notify the Minister in writing of the relevant recommendation.

(2) The Panel must give the notification under subsection (1) not later than –

(a) 3 months after receipt of the relevant report under section 40 ; or

(b) any later day the Minister approves.

42. Final approval or refusal of draft amendment

(1) After considering a notification under section 41A(1) in respect of a draft amendment, the Minister may –

(a) give final approval to the draft amendment; or

(b) give final approval to the draft amendment subject to such alterations as the Minister, on his or her own motion, considers necessary or expedient; or

(c) refuse to give final approval to the draft amendment.

(2) For the purposes of exercising his or her power under subsection (1) , the Minister may at any time seek further information from the Board, Director, EPA, Panel or planning authority.

(3) If the Minister refuses to give final approval to the draft amendment, the Minister may, as the circumstances require –

(a) advise the Panel and the planning authority that he or she has accepted the Panel's recommendation to reject the draft amendment; or

(b) refer the draft amendment back to the Panel, indicating any concerns the Minister has with the draft amendment.

(4) If the Minister gives final approval to the draft amendment –

(a) the Minister must advise the Panel and the planning authority of the final approval and, if subsection (1)(b) applies, the relevant alterations; and

(b) as soon as practicable after receiving the advice under paragraph (a) , the planning authority, by public notice, must advertise the final approval and, if subsection (1)(b) applies, the relevant alterations.

(5) The Minister may give final approval to the draft amendment by –

(a) signing the draft amendment (after incorporating any alterations made under subsection (1)(b)) and notating the approval on the relevant marine farming development plan; or

(b) signing a replacement marine farming development plan.

(6) If the Minister gives final approval to the draft amendment –

(a) the amendment as so approved prevails over an existing marine farming development plan to the extent of any inconsistency; and

(b) a marine farming development plan replaced by the amendment as so approved ceases to have effect on the signing, by the Minister, of the replacement marine farming development plan.

42A. Minister to notify Parliament of approval or refusal of draft amendment in certain circumstances

If the Minister –

(a) makes a decision under section 42(1)(a) or (c) that is not in agreement with the relevant recommendation of the Panel; or

(b) makes a decision under section 42(1)(b) and the relevant recommendation of the Panel was that the draft amendment be rejected, or the relevant recommendation of the Panel was that the draft amendment be accepted without change and the Minister's alterations are substantive (not merely formal, clerical or trivial) –

the Minister is to cause a notice of the decision and the reasons for it (by reference to the purpose and objectives of this Act) to be tabled in each House of Parliament within 15 sitting-days after making the decision.

Division 3 - Emergency arrangements

43. Emergency order

(1) A lessee or an employee or agent of a lessee may apply to the planning authority for an emergency order if

–

(a) there is likely to be a substantial deterioration in the quality of the water within the lease area; or

(b) there is pollution which affects or is likely to affect the water imminently; or

(c) pests or diseases affect or are likely to affect the water or fish in the lease area.

(2) An application is to –

(a) be in writing or by telephone; and

(b) give details of the circumstances which necessitate an emergency order; and

(c) be lodged with the planning authority.

(3) The planning authority may issue an emergency order on application or on its own instigation if satisfied that the circumstances warrant it on any conditions it considers appropriate.

(4) An emergency order may provide for any matter –

(a) which is appropriate to the circumstances; and

(b) for which a marine farming development plan may provide.

(5) A person must not apply for an emergency order unless there are reasonable grounds for believing that the matters referred to in subsection (1) exist or are likely to exist.

Penalty: Fine not exceeding 50 penalty units.

(6) A person must comply with an emergency order.

Penalty: Fine not exceeding 50 penalty units.

(7) The planning authority must, as soon as practicable after issuing an emergency order that relates to finfish farming, and in any case within 24 hours, notify the Director, EPA of the issue of the order and provide to him or her a copy of the order.

44. Operation of emergency order

(1) An emergency order is in force for 14 days from the date on which it is issued.

(2) The planning authority may extend an order, on application by the lessee, for a further period not exceeding 14 days on any conditions it considers appropriate.

(3) An emergency order overrides any marine farming development plan to the extent of any inconsistency.

(4) The planning authority must, as soon as practicable after extending an emergency order that relates to finfish farming, notify the Director, EPA of the extension of the order and any conditions imposed on the extension.

45. Emergency plans

- (1) The planning authority may prepare a draft emergency plan in respect of any lease area or other area providing for any matter which a marine farming development plan may provide if satisfied that—
 - (a) there is likely to be a substantial deterioration in the quality of the water within a lease area; or
 - (b) there is pollution which substantially affects or is likely to substantially affect the water or fish in a lease area; or
 - (c) pests or diseases affect or are likely to affect substantially the water or fish in a lease area.
- (1AA) An emergency plan must include any matters relating to environmental management of finfish farming that the Director, EPA requires to be included in such a plan.
- (1A) An emergency plan may include a provision restricting or prohibiting the use of a lease area for a specified period.
- (2) The planning authority must submit the draft emergency plan to the Panel and to the Director, EPA.
- (3) The Panel must —
 - (a) consider the terms of the draft emergency plan and the circumstances requiring the plan; and
 - (b) recommend a course of action to the Minister including any conditions the Panel thinks fit.
- (4) The Minister may approve the emergency plan if satisfied that —
 - (a) the circumstances warrant the plan; and
 - (b) the conditions in the draft emergency plan are appropriate to the circumstances.
- (5) If the Minister approves an emergency plan, the planning authority, by public notice, must advertise —
 - (a) the effect of the emergency plan; and
 - (b) the date on which the emergency plan takes effect.
- (6) A person must comply with the provisions of an emergency plan.

Penalty: Fine not exceeding 50 penalty units.

46. Operation of emergency plan

- (1) Subject to subsection (3) , an emergency plan is in force from 2 years from the date on which it takes effect.
- (2) An emergency plan overrides any marine farming development plan applying to the same area to the extent of any inconsistency.
- (3) An emergency plan ceases to be in force if —
 - (a) the Minister, by notice published in the *Gazette*, revokes it; or
 - (b) each House of Parliament passes a resolution disallowing it; or
 - (c) it is superseded by another emergency plan or a marine farming development plan.
- (4) The planning authority in relation to an emergency plan that relates to finfish farming must notify the Director, EPA as soon as practicable after the emergency plan ceases to be in force.

47. Exemption from emergency plan

- (1) Any person may apply to the Minister to be exempted from any provision of an emergency plan.
- (2) An application is to be —
 - (a) made in writing; and
 - (b) accompanied by the prescribed fee; and
 - (c) lodged with the Minister.

(2A) The Minister must consult with the Director, EPA before determining whether or not to grant an exemption from an emergency plan that relates to finfish farming.

(3) The Minister may –

- (a) grant the exemption with or without any conditions; or
- (b) refuse to grant the exemption.

(4) The Minister, by notice in writing, is to notify the applicant of –

- (a) the decision; and
- (b) the reasons for any refusal.

(5) The Minister must notify the Director, EPA of the grant of an exemption from an emergency plan that relates to finfish farming and provide the Director, EPA with a copy of the exemption.

Division 4 - Review

48. Review of marine farming development plans

(1) The planning authority must review a marine farming development plan when required to do so by the Minister or at least once every 10 years to ensure that the objectives of resource management, having regard to any relevant changing circumstances, are achieved to the maximum extent possible.

(2) If the planning authority considers that a marine farming development plan should be modified as a result of the review, it is to notify the Minister accordingly.

(3) If the Minister is of the opinion that the marine farming development plan requires modification –

- (a) the Minister is to direct the planning authority to prepare a draft modification; and
- (b) the provisions of Division 1 of this Part, other than sections 15(2) , 16 , 17 and 25(1) , apply in relation to a draft modification to the plan as if it were a modification to a draft marine farming development plan; and
- (c) the marine farming development plan ceases to have effect on the date the Minister gives final approval to the plan as modified.

(4) A marine farming development plan approved as a result of a review prevails to the extent of any inconsistency over any other marine farming development plan existing at the date of the approval and continuing in existence after that date.

(5) A lease in respect of an area that is covered by a marine farming development plan approved as a result of a review remains in force for the remainder of the period for which it was granted if a marine farming development plan does not provide for –

- (a) the relocation of the lease area; and
- (b) the continued marine farming under a marine farming licence of the species of fish being farmed within the lease area as at the date of approval of the marine farming development plan.

(6) The Minister may renew a marine farming licence in respect of the area to which a lease referred to in subsection (5) relates during any period during which a lease continues to be in force –

- (a) despite any inconsistency between that licence and the marine farming development plan as approved; and
- (b) only if the licence relates to the marine farming of the species of fish being farmed within the lease area as at the date of approval of the marine farming development plan.

PART 4 - Occupation of Water Areas

Division 1 - Board of Advice and Reference

49. Establishment of Board of Advice and Reference

- (1) The Minister may establish a Board of Advice and Reference.
- (2) The Board consists of 3 persons appointed by the Minister of whom –
 - (a) one is a person who is an Australian legal practitioner; and
 - (b) one is a person with experience and knowledge in marine farming and the seafood industry; and
 - (c) one is a person with experience in business and commerce.
- (3) The Minister is to appoint one of the members as the chairperson of the Board.
- (4) Before making an appointment under subsection (2) , the Minister may call for expressions of interest for that appointment.
- (5) The Secretary may establish a selection committee to –
 - (a) review expressions of interest; and
 - (b) recommend a person or persons for appointment as a member of the Board.
- (6) Schedule 4 has effect with respect to membership of the Board.
- (7) Schedule 5 has effect with respect to meetings of the Board.
- (8) The Minister may abolish the Board if the Minister considers that it is no longer necessary.

50. General functions and powers of Board

- (1) The functions of the Board are –
 - (a) to advise the Minister on any matter the Minister may refer to it; and
 - (b) to perform any other function the Minister directs.
- (2) The Board may –
 - (a) conduct hearings to assist in the performance of its functions; and
 - (b) do anything necessary or convenient to perform its functions.
- (3) A person is not entitled to appeal against any advice given by the Board.

51. Protection of Board members

A member of the Board, in exercising any power or performing any function as such a member, has the same protection and immunity as a judge of the Supreme Court.

Division 2 - Allocation of leases

52. Participation in allocation process

- (1) If a marine farming zone is designated under a privately prepared draft plan or as a result of a privately requested amendment to a marine farming development plan, the Minister may –
 - (a) invite the relevant person to apply for a lease in respect of the marine farming zone; or
 - (b) seek the advice of the Board as to –
 - (i) the persons or class of persons who should participate in the process leading to the allocation of a lease in respect of the marine farming zone; and

(ii) whether the process referred to in subparagraph (i) is one in which a person holding a certificate of preference may participate.

(1A) If a marine farming zone is designated otherwise than –

(a) under a privately prepared draft plan; or

(b) as a result of a privately requested amendment to a marine farming development plan –

the Minister is to seek the advice of the Board as to –

(c) the persons or class of persons who should participate in the process leading to the allocation of a lease in respect of the marine farming zone; and

(d) whether the process referred to in paragraph (c) is one in which a person holding a certificate of preference may participate.

(2)

(3)

(4) The Board is to advise the Minister not later than 30 days or any longer period the Minister allows after the Minister seeks its advice.

(5) After considering the Board's advice, the Minister must decide on who should participate in the process leading to the allocation of a lease.

(6) This section does not apply to –

(a) a lease granted under section 62 , 69(2) or 81(6) ; or

(b) a lease issued under section 84(4)(b) ; or

(c) a lease renewed under section 66 ; or

(d) a lease varied under section 67 .

(7) In this section –

privately prepared, draft plan, means a draft plan prepared pursuant to an approval under section 16 ;

privately requested amendment, of a marine farming development plan, means an amendment of the plan requested under section 33 ;

relevant person means –

(a) for a privately prepared draft plan, the person who prepared the draft plan; and

(b) for a privately requested amendment of a marine farming development plan, the person who requested the amendment.

53. Method for allocation of lease

(1) The Minister may seek the advice of the Board in relation to–

(a) the method to be used to allocate a lease; and

(b) any criteria to be used in selecting a person who is to be allocated a lease.

(2) On receiving advice pursuant to subsection (1) , the Minister may decide –

(a) the method to be used to allocate the relevant lease; and

(b) the criteria to be used in selecting a person who is to be allocated the relevant lease.

(3)

(4) In providing advice to the Minister pursuant to subsection (1) , the Board–

(a) must take into account any financial or other benefits that may become available to the State by allocating a lease to a particular person; and

(b) may take into account–

- (i) any previous experience or knowledge of the person in marine farming or related commercial activity; or
- (ii) the need to foster and encourage employment opportunities in the State; or
- (iii) any contribution made by the person to industry research or site specific research; or
- (iv) any proposal by, or capacity of, the person to address social and environmental matters likely to affect the marine farming zone; or
- (v) any other matter the Board considers appropriate.

(5) This section does not apply to –

- (a) a lease granted under section 62 , 69(2) or 81(6) ; or
- (b) a lease issued under section 84(4)(b) ; or
- (c) a lease renewed under section 66 ; or
- (d) a lease varied under section 67 .

54. Certificate of preference

(1) The following persons may apply to the Minister for a certificate of preference to participate in a process for the allocation of a lease in respect of a marine farming zone:

- (a) a person who holds or has held a permit for scientific research under the Living Marine Resources Management Act 1995 in respect of an area included in the marine farming zone;
- (b) a person who has prepared a draft plan under Part 3 .

(2) An application is to –

- (a) be made in writing in an approved form; and
- (b) contain any detail the Minister requires; and
- (c) be accompanied by the prescribed fee; and
- (d) be lodged with the Minister.

(3) Subject to subsection (4) , the Minister may –

- (a) grant the application; or
- (b) refuse to grant the application.

(4) The Minister must not grant an application to a person referred to in subsection (1) (a) unless the person has made a significant contribution in the area of research of Tasmanian marine farming which has a direct relevance to the activities of the marine farming zone.

(5) If the Minister grants an application, the Minister is to issue a certificate of preference in an approved form.

(6) A certificate of preference entitles the holder to participate in one process for the allocation of a lease.

55.

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Division 3 - Applications and granting of leases

56. Application for lease

(1) The Minister is to invite the following persons to apply for a lease for marine farming:

- (a) any person or class of person the Board has advised under section 52 should participate in the process leading to the allocation of a lease;

(b) any other person the Minister considers should participate in the process leading to the allocation of a lease.

(2) An application is to –

- (a) be in an approved form; and
- (b) contain any details the Minister requires; and
- (c) be accompanied by the prescribed fee; and
- (d) be lodged with the Minister.

(3) The Minister may require the applicant to supply any further information the Minister determines.

57. Refusal to deal with or approve applications

(1) The Minister must not accept any application –

- (a) for a lease for an area which is not the subject of a marine farming development plan; or
- (b) which is not in accordance with section 56 .

(2) The Minister, by notice in writing –

- (a) must notify the applicant that the application is not accepted; and
- (b) may advise the applicant to consult with the Secretary.

(3) In consulting with the applicant, the Secretary must advise the applicant that –

- (a) a draft marine farming development plan is being prepared or is to be prepared; or
- (b) he or she may apply for the Minister's approval to prepare a draft marine farming development plan under section 16 .

58. Applications referred to Board

(1) The Minister may refer an application from any person entitled to participate in the process leading to the allocation of a lease to the Board.

(2) The Board is to assess an application according to any criteria the Minister decides under section 53 .

(3) The Board is to advise the Minister as soon as practicable but not later than 60 days or any longer period the Minister allows after the Minister seeks its advice.

59. Granting of lease

(1) After considering any advice from the Board, the Minister may grant an application for a lease for marine farming for any area designated for that purpose in a marine farming development plan.

(2) A lease confers on the lessee exclusive possession of –

- (a) the area specified in the lease; and
- (b) any specified area of the seabed comprised in the lease.

(3) A lease is subject to any condition the Minister determines.

(4) If the Minister grants an application for a lease, the Minister is to issue a lease in an approved form.

60. Special lease

(1) The Minister may grant an application for a special lease for marine farming for any area designated for that purpose in a marine farming development plan.

(2) A special lease confers on the lessee any right specified in the lease but does not confer right of exclusive occupation of the area covered by the special lease.

61. Application for emergency lease

- (1) The holder of a lease for an area covered by an emergency plan may apply to the Minister for an emergency lease.
- (2) An application is to –
 - (a) be in an approved form; and
 - (b) contain any particulars the Minister requires; and
 - (c) be accompanied by the prescribed fee; and
 - (d) be lodged with the Minister.

62. Granting of emergency lease

- (1) The Minister may only grant an application for an emergency lease if satisfied that –
 - (a) the area specified in the original lease should not be used for a temporary period due to a situation affecting water quality; or
 - (b) the area or the fish within that area are substantially affected, or likely to be substantially affected, by pollution, pests or diseases.
- (2) An emergency lease confers on the holder exclusive possession of –
 - (a) the area specified in the emergency lease; and
 - (b) any specified area of the seabed comprised in the emergency lease.

63. Duration of emergency lease

- (1) An emergency lease is in force for the period, not exceeding one year, specified in the emergency lease.
- (2) An emergency lease ceases to be in force on whichever of the following occurs first:
 - (a) the period specified in the emergency lease expires;
 - (b) the emergency plan to which the emergency lease relates expires;
 - (c) the original lease expires;
 - (d) the Minister terminates the emergency lease.

Division 4 - General provisions relating to leases

64. Conditions and restrictions

- (1) A lease is subject to any condition and restriction the Minister specifies in the lease.
- (2) If a marine farming development plan requires a condition to be inserted in a lease, the Minister must specify that condition in the lease relating to the area which is the subject of the plan.
- (3) The Minister may revoke any condition or restriction of the lease.
- (4) A lessee must not contravene or fail to comply with any condition or restriction of the lease.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a daily fine not exceeding 10 penalty units.

- (5) A lessee must ensure that any employee, agent or sublessee of the lessee or any person acting on behalf of the lessee complies with any condition or restriction of the lease.

65. Duration of lease

A lease is in force for the period, not exceeding 30 years, specified in the lease.

66. Renewal of lease

- (1) A lessee, within 15 years before the lease expires, may apply to the Minister for the renewal of the lease.

- (2) An application is to be –
 - (a) in an approved form; and
 - (b) accompanied by the prescribed fee; and
 - (c) lodged with the Minister.
- (3) The Minister must deal with an application within 3 months after it is lodged or any longer period if the circumstances justify it.
- (4) The Minister may grant an application for renewal if satisfied that –
 - (a) the applicant has complied with the conditions of a lease; and
 - (b) the applicant does not have 200 or more demerit points; and
 - (c) to do so is consistent with the objectives of resource management; and
 - (d) the application is consistent with the appropriate marine farming development plan; and
 - (e) the applicant has not been convicted of an offence under any law of another State or Territory of the Commonwealth relating to marine farming.
- (5) The Minister must refuse to grant an application for renewal if not satisfied as to the matters referred to in subsection (4) .
- (6) If the Minister grants an application before the lease expires, the lease, as renewed, commences –
 - (a) on the date it was due to expire; or
 - (b) on an earlier date by the agreement of the Minister and the lessee.
- (7) If the Minister grants an application after the lease expires –
 - (a) the expired lease is taken to have continued in force from the date it expired until the application was granted; and
 - (b) the lease, as renewed, is taken to have commenced on the date on which the original lease expired.
- (8) A lease, as renewed –
 - (a) is in force for the period, not exceeding 30 years, specified in the lease; and
 - (b) is subject to any condition and restriction the Minister specifies in the lease.
- (9) The Minister, by notice in writing served on the applicant, must notify the applicant of –
 - (a) the granting of the application; or
 - (b) the refusal to grant the application and the reasons for the refusal.
- (10) If the Minister renews a lease, the Minister is to issue a new lease in an approved form.

67. Variation of lease

- (1) The Minister may vary a lease or a lease area–
 - (a) at the request of the Minister responsible for administering the Public Health Act 1997 and with the consent of the holder of the lease; or
 - (b) at the request of the lessee; or
 - (c) if the lessee is convicted of an offence under this Act; or
 - (d) to correct any minor errors in the lease.
- (2) The Minister, if satisfied that a lease area is not being sufficiently or effectively used for marine farming, may reduce that area to an area which, in the opinion of the Minister, is an appropriate area.
- (3) Compensation is not payable in respect of any action by the Minister under subsection (2) .

- (4) The Minister may vary any condition of a lease as a condition of varying the lease at the request of the lessee.
- (5) Before varying any condition of a lease, the Minister must –
- (a) inform the lessee of the intention to vary the condition; and
 - (b) invite the lessee to make any written submission; and
 - (c) consider that submission.
- (6) Before varying a lease area, the Minister must –
- (a) consult with any other lessees who may reasonably be expected to have the water quality in their lease areas affected by the proposed variation; and
 - (b) be satisfied that the proposed variation is not likely to unreasonably affect the quality of the water in any other lease area.
- (7) The Minister, by notice in writing, must notify any lessee referred to in subsection (6) of any variation made to a lease area.

68. Cancellation of lease by Minister

- (1) The Minister may cancel a lease if –
- (a) satisfied that a lease area or part of a lease area is not being sufficiently or effectively farmed; or
 - (b) the lessee fails to obtain a marine farming licence or ceases to hold a marine farming licence in respect of a lease area or part of a lease area.
- (2) Before cancelling a lease under subsection (1) , the Minister must –
- (a) inform the lessee of the intention to cancel the lease; and
 - (b) invite the lessee to make any written submission; and
 - (c) consider that submission.

69. Cancellation of lease by consent

- (1) The Minister, with the consent of the lessee, may cancel the lease if the lease or the lease area is varied to such an extent that a new lease would be more appropriate.
- (2) On cancelling a lease, the Minister may grant a new lease to the lessee whose lease is cancelled.

70. Notice of cancellation or variation

- (1) The Minister, by notice in writing served on a lessee, must inform the lessee of the cancellation or variation of the lease.
- (2) The cancellation or variation of a lease takes effect –
- (a) if an appeal is not lodged under section 75 , 14 days after service of the notice; or
 - (b) if an appeal is lodged under section 75 and the Appeal Tribunal decides to affirm the cancellation or variation, on the date of its decision.

71. Removal of equipment and fish from area

- (1) The Minister, by notice in writing, may require the person who is the holder of a lease or permit under the Living Marine Resources Management Act 1995 immediately before the lease or permit ceases to be in force for any reason –
- (a) in respect of any area, to remove within a specified period from that area or any other area, whether covered by the lease or permit or not, any equipment, debris and fish stock resulting from the occupation of that area by the holder or a sublessee of the holder; or

(b) in respect of a particular area, to remove within a specified period from that area or any other area not currently covered by the lease or permit any equipment, debris and fish stock resulting from the occupation of that area by the holder or a sublessee of the holder.

(2) A person must comply with a notice.

Penalty: Fine not exceeding 500 penalty units and a daily fine not exceeding 10 penalty units.

(3) After the date of service of a notice, a person, within the area previously covered by a lease or permit, must not, without the Minister's approval—

(a) place any marine farming equipment, structure or raft; or

(b) place any fish stock.

Penalty: Fine not exceeding 500 penalty units and a daily fine not exceeding 10 penalty units.

72. Costs of removal of equipment and fish

(1) If a person fails to comply with section 71, the Minister, without notice may —

(a) seize any marine farming equipment, debris or fish stock within the area referred to in section 71(1); and

(b) remove and dispose of anything seized in any manner and on any terms and conditions the Minister considers appropriate.

(2) Any reasonable costs incurred by the Minister in exercising any power under subsection (1) are recoverable from the person who held the lease or permit referred to in section 71(1) in any court of competent jurisdiction as a debt due to the Crown.

(3) A person who was the owner of anything seized under this section is entitled to any proceeds from its disposal after the reasonable costs incurred in exercising any power under subsection (1) are deducted from the proceeds.

73. Transfer of lease

(1) A lessee may apply to the Minister for approval to transfer the lease.

(2) The application is to be—

(a) in an approved form; and

(b) accompanied by the prescribed fee; and

(c) lodged with the Minister.

(3) The Minister may —

(a) approve the transfer of the lease; or

(b) refuse to approve the transfer of the lease.

(4) However, if the lessee holds a marine farming licence authorising the lessee to carry on marine farming in respect of the lease area, the Minister is not to approve the transfer of the lease unless the Minister has already agreed to the transfer of the marine farming licence.

(5) If the Minister approves the transfer of the lease, it is transferred subject to the same conditions and restrictions that it was subject to immediately before the transfer unless the Minister varies them under this Part.

(6) If the Minister approves the transfer of the lease, the Minister, by notice in writing, is to inform the lessee of the approval.

(7) For the avoidance of doubt —

(a) no approval for the transfer of a lease given under subsection (3)(a) before the commencement of the Marine Farming Planning Amendment Act 2007 is to be taken as having been invalid by reason only

that the Minister had not already agreed to the transfer of a marine farming licence authorising the transferor of the lease to carry on marine farming in respect of the lease area; and

(b) no transfer of a lease effected pursuant to this section before the commencement of the Marine Farming Planning Amendment Act 2007 is to be taken as having been invalid by reason only that –

(i) the transfer of the lease was approved by the Minister before he or she had agreed to the transfer of a marine farming licence authorising the transferor of the lease to carry on marine farming in respect of the lease area; and

(ii) the lease was not transferred in conjunction with such a marine farming licence.

74. Sub-leases

(1) A lessee must not sub-lease a lease without the Minister's written approval.

Penalty: Fine not exceeding 100 penalty units.

(2) An application is to –

(a) be in an approved form; and

(b) contain any details the Minister requires; and

(c) be accompanied by the prescribed fee; and

(d) be lodged with the Minister.

(3) The Minister may require the applicant to supply any further information the Minister determines.

(4) The Minister may –

(a) grant the application; or

(b) refuse to grant the application.

(5) The Minister, by notice in writing, must notify the applicant of the grant or refusal.

(6) Any offence committed in respect of a sub-lease or by the person holding the sub-lease is taken to be an offence committed by the lessee and any proceedings for that offence are to be instituted against the lessee.

(7) A sub-lease is subject to any condition or restriction the Minister determines.

75. Appeals in respect of certain aspects of lease

(1) A person may appeal to the Appeal Tribunal against –

(a) the Minister's refusal to grant an application for a lease to that person, contrary to advice of the Board under section 58 ; or

(b) any condition or restriction of a lease, other than any imposed under section 83 (2) ; or

(c) the Minister's refusal to grant an application for the renewal of a lease; or

(d) the period during which a renewed lease is in force; or

(e) the Minister's refusal to transfer a lease; or

(f) the requirement to pay an additional sum under section 89 (3) ; or

(g) the variation or cancellation of a lease.

(2) An appeal is to be –

(a) in writing; and

(b) lodged with the Appeal Tribunal within 14 days after –

(i) the grant of the lease; or

(ii) the service of a notice under section 66 (9) or 70 .

(3) The Appeal Tribunal is to hear and determine an appeal in accordance with the Resource Management and Planning Appeal Tribunal Act 1993 .

76. Delivery of lease

(1) The Minister, by notice in writing served on a lessee, may require the lessee to deliver the lease to the Minister within the period specified in the notice if –

- (a) the lease has been cancelled or varied; or
- (b) the Appeal Tribunal directs the Minister to vary any condition or restriction to which the lease is subject.

(2) The Minister must –

- (a) endorse on a lease delivered under subsection (1) a note of any variation; and
- (b) return the lease to the lessee.

(3) A lessee, without reasonable excuse, must comply with a notice served under subsection (1) .

Penalty: Fine not exceeding 10 penalty units.

(4) In this section –

- (a) a reference to a lease includes a cancelled lease; and
- (b) a reference to a lessee includes a person whose lease was cancelled.

77. Surrender of lease

(1) A lessee may surrender the lease by delivering it to the Minister together with a notice in writing stating that the lease is being surrendered.

(2) The Minister, on receipt of a lease and notice under subsection (1) , must cancel the lease.

78. Death of lessee

(1) If a lessee dies, the personal representative of the lessee may occupy the lease area until whichever of the following occurs first:

- (a) the expiration of 6 months after the date of the death of the lessee;
- (b) the appointment as a personal representative is terminated;
- (c) the distribution of the estate of the lessee is completed.

(2) If the personal representative of a deceased lessee occupies the lease area, the representative is taken to be the lessee.

(3) If the personal representative of a deceased lessee does not occupy the lease area, the lease expires 6 months after the date of the death of the lessee.

(4) If a lease is held by 2 or more lessees and one of them dies, the surviving lessee or lessees hold the lease jointly with the personal representative of the deceased lessee until whichever of the following occurs first:

- (a) the lease expires;
- (b) the lease is cancelled;
- (ba) the lease is transferred;
- (c) the lease is varied.

79. Maintenance of structures

(1) A lessee must –

- (a) maintain any raft or structure used in a lease area in a safe and seaworthy condition to the satisfaction of the Marine and Safety Authority; and
 - (b) mark the raft or structure in a manner approved by the Marine and Safety Authority.
- (2) The Marine and Safety Authority may notify the Secretary if satisfied –
- (a) in its capacity as a delegate of the National Regulator, that the lessee has failed to comply with subsection (1)(a) ; or
 - (b) that the lessee has failed to comply with subsection (1)(b) ; or
 - (c) that the lessee has failed to comply with any request to correct any deficiencies identified by the Marine and Safety Authority in its capacity as delegate of the National Regulator or in any other capacity.
- (3) On receipt of a notification under subsection (2) , the Secretary may cause the raft or structure to be removed to any place the Secretary determines.
- (4) Any reasonable costs incurred by the Secretary in causing a raft or structure to be removed are recoverable from the lessee in any court of competent jurisdiction as a debt due to the Crown.

80. Restraints on lease

The Minister must not grant a lease or approve the transfer of a lease in relation to an area in State waters unless the Minister is satisfied that there is sufficient distance between the lease area and any other lease area having regard to all relevant circumstances.

81. Expansion of area

- (1) A lessee may apply to the Minister for an expansion to the lease area.
- (2) An application may only be made if the proposed expanded area –
 - (a) is within an area covered by a marine farming zone which is designated as being available for leasing; and
 - (b) is contiguous with the lease area; and
 - (c) does not, if added to the lease area, exceed the maximum leasable area established by a marine farming development plan for that marine farming zone.
- (3) An application is to be –
 - (a) in an approved form; and
 - (b) accompanied by the prescribed fee; and
 - (c) lodged with the Minister.
- (4) Before agreeing to expand the lease area, the Minister must consult with any other lessees who may reasonably be expected to have the water quality in their lease areas affected by the proposed expansion.
- (5) The Minister may agree to expand the lease area if the applicant –
 - (a) pays a fee equivalent to the market value of the additional area as assessed by the Valuer-General; or
 - (b) agrees to any charges the Minister considers appropriate for a new lease which would cover the combined area.
- (6) The Minister may grant a new lease for the larger area if –
 - (a) both parties agree to the changes to the conditions of the lease; and
 - (b) the fees and charges referred to in subsection (5) are paid; and
 - (c) the previous lease is returned; and

(d) satisfied that doing so is not likely to unreasonably affect the quality of the water in any other lease area.

(7) The Minister, by notice in writing, must notify any lessee referred to in subsection (4) of the grant of a lease under subsection (6) .

Division 5 - Subdivision of lease area

82. Application for subdivision of lease area

(1) A lessee may apply to the Minister for approval to subdivide a lease area which has not been subdivided in the preceding 12 months.

(2) An application is to –

- (a) be in an approved form; and
- (b) be accompanied by a copy of the lease; and
- (c) contain a plan and full particulars of the subdivision proposal; and
- (d) be accompanied by the prescribed fee; and
- (e) be lodged with the Minister.

(3) An applicant, if required by the Minister, must –

- (a) provide any further particulars in relation to the application the Minister specifies; and
- (b) allow any inspection of the area the Minister specifies.

(4) A person is not entitled to submit an application for approval to subdivide which is the same or substantially the same as an application which has been refused or withdrawn within the preceding 12 months.

83. Consideration of applications for subdivision

(1) The Minister, not later than 3 months after receiving an application and taking into account any matter the Minister considers appropriate, must –

- (a) approve the application as proposed; or
- (b) approve the application subject to any variation, condition or restriction the Minister considers appropriate; or
- (c) refuse to approve the application.

(2) The Minister may impose a variation, condition or restriction that is different from any condition or restriction of the lease to which the application relates.

(3) The Minister, within 30 days of approving or refusing to approve an application, by notice served on the applicant, must notify the applicant of –

- (a) the approval of the application and the particulars of any proposed variation, condition or restriction; or
- (b) the refusal to approve the application and the reasons for the refusal.

84. Acceptance or rejection of Minister's decision

(1) An applicant is to advise the Minister, by notice in writing, within 3 months after service of the notice referred to in section 83 (3) of acceptance or refusal to accept any proposed variation, condition or restriction.

(2) The Minister is not required to take any further action in respect of an application to which section 83 (1) (b) applies until the Minister receives the notice referred to in subsection (1) .

(3) If an applicant refuses to accept any proposed variation, condition or restriction or fails to give a notice –

- (a) the applicant is taken to have elected not to proceed with the application; and

(b) the application is taken to have been withdrawn.

(4) If the Minister approves an application under section 83 (1) (a) or an applicant accepts any proposed variation, condition or restriction, the Minister, as soon as practicable, must –

(a) cancel the lease to which the application relates; and

(b) issue the applicant with a separate lease in respect of each area into which the area comprised in the original lease is being subdivided.

85. Separate lease

(1) A separate lease under section 84 (4) (b) is not to be issued for a term exceeding the balance of the term remaining under the original lease from which it is derived.

(2) Except in a case to which section 83 (1) (b) applies, a separate lease issued under section 84 (4) (b) is subject to the same conditions and restrictions, except for any necessary variations, as the original lease from which it is derived.

(3) The area comprised in a separate lease must not be subdivided into more than 4 parts as a result of a single application for subdivision.

(4) The provisions of this Part apply to a separate lease issued under section 84 (4) (b) in the same manner as if it were a lease granted under Division 3 of this Part.

86. Appeals limited

A person is not entitled to appeal against –

(a) the Minister's decision under section 83 (1) ; or

(b) the issue of a separate lease under section 84 (4) (b) ; or

(c) the conditions or restrictions imposed on a separate lease.

Division 6 - Surveys

87. Undertaking of survey

(1) The Minister may direct a lessee to provide the Minister with a plan of survey of the lease area which is –

(a) suitable for registering on the Central Plan Register; and

(b) prepared by a surveyor to the requirements of the Surveyor-General.

(2) A direction is to –

(a) be in writing; and

(b) specify a reasonable period within which the person is to give the survey.

(3) If a person fails to comply with a direction, the Minister may engage a surveyor recommended by the Surveyor-General to perform the survey.

(4) A person must not interfere with a surveyor acting under subsection (3) .

Penalty: Fine not exceeding 50 penalty units.

(5) Any reasonable costs incurred by the Minister in engaging a surveyor under subsection (3) are recoverable from the lessee in any court of competent jurisdiction as a debt due to the Crown.

(6) Section 302 of the Living Marine Resources Management Act 1995 is incorporated with this section.

(7)

PART 5 - Miscellaneous

Division 1 - General

88. Compliance with plans and certain orders

The planning authority must comply with the provisions of any marine farming development plan, emergency order or emergency plan in respect of any development undertaken within the area to which the plan or order relates.

89. Deposits

(1) A lease may include conditions that –

(a) the lessee or a person acting on behalf of a lessee is to–

(i) deposit with the planning authority a specified sum of money; or

(ii) undertake to pay a specified sum; and

(b) the specified sum is to be returned to the lessee on a specified date; and

(c) the lessee is to provide security for an undertaking made under paragraph (a)(ii) .

(2) Instead of complying with a condition referred to in subsection (1) (a) , (b) or (c) , a lessee or a person acting on behalf of a lessee, with the approval of the Minister, may enter into an arrangement with one or more other lessees to pay a specified sum towards correcting any failure to comply with, or contravention of, any condition of any lease held by those lessees.

(3) The Minister may require a lessee or a person acting on behalf of a lessee to pay a sum in addition to the specified sum if of the opinion that the circumstances have changed sufficiently to justify the additional sum.

(4) The Minister may apply any sum towards correcting any failure to comply with, or contravention of, any condition of the lease.

90. Boundaries of lease area

(1) The Minister, by notice in writing, may determine or modify the boundaries of a lease area if –

(a) the boundaries are not expressed in the lease; or

(b) the boundaries are not expressed in the lease in a form suitable for the Central Plan Register; or

(c) there is a dispute about the definition of the lease area.

(2) The Minister must not determine or modify the boundaries of a lease area in a manner which results in a lesser lease area without the agreement of the lessee.

(3) The Minister may vary the lease to reflect the determination or modification.

(4) An appeal does not lie against a variation made under subsection (3) .

Division 2 - Offences

91. Obstruction of execution of plans

(1) A person must not do anything or use any lease area in a way that –

(a) is contrary to any marine farming development plan, emergency order or emergency plan; or

(b) impedes or obstructs the execution of the marine farming development plan, emergency plan or emergency order; or

(c) contravenes a condition of the marine farming development plan, emergency plan, emergency order or a determination of the Appeal Tribunal; or

(d) contravenes a condition of a lease.

Penalty: Fine not exceeding 200 penalty units and a daily fine not exceeding 20 penalty units.

(2) In addition to any fine imposed under subsection (1), a court may order that the person pay the planning authority the reasonable cost incurred in carrying out any work which would ensure that the use or development of the lease area complies with the relevant marine farming development plan, emergency plan, emergency order or determination of the Appeal Tribunal.

(3) A court must, in relation to an offence under subsection (1), impose a special penalty of an amount –

(a) prescribed by the regulations; or

(b) calculated in accordance with a method prescribed by the regulations.

(4) A special penalty imposed under subsection (3) is in addition to a fine, if any, imposed under subsection (1) or an amount, if any, ordered to be paid under subsection (2).

(5) Regulations for the purposes of subsection (3) in relation to an offence under subsection (1) may prescribe different amounts, or different methods, that are to apply according to –

(a) the paragraph of subsection (1) to which the offence relates; or

(b) circumstances specified in the regulations.

92. Unlawful removal, disturbance and deposit

(1) A person, without lawful authority, must not –

(a) in a lease area, take, remove, disturb or interfere with –

(i) fish being bred or reared, or marine plants being grown or harvested, in that area; or

(ii) a raft, structure or implement used by the holder of a marine farming licence in connection with the breeding or rearing of fish or the growing or harvesting of marine plants in that area; or

(b) in a lease area, dredge, dig or drag that area with any implement; or

(c) do any act within or outside a lease area or an area to which a permit under the Living Marine Resources Management Act 1995 relates that causes or is likely to cause harm or damage to a lease area, an area to which the permit relates or any marine farming equipment or fish stocks within a lease area or an area to which the permit relates; or

(d) hinder or obstruct the operation of marine farming.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) A person, without lawful authority, must not in a lease area –

(a) deposit any stone, ballast, rubbish or deleterious matter; or

(b) use an explosive or toxic gas or a toxic, poisonous or narcotic substance.

Penalty: Fine not exceeding 200 penalty units.

(3) It is a defence in proceedings under this section to establish that the act to which the proceedings relate was caused by a person acting with the sole object of saving his or her life or that of some other person or of saving any ship or vessel.

(4) The common law defence of reasonable action to create a situation of safety on the high seas does not apply to an offence under this section.

93. Unlawful removal of beacons, buoys or marks

A person, without lawful authority, must not remove, destroy, damage or interfere with –

(a) a beacon, buoy or mark which is used to indicate the boundary of a lease area; or

- (b) a light provided in respect of that beacon, buoy or mark; or
- (c) a beacon, signal or light that is attached to a raft or structure used in connection with a marine farm.

Penalty: Fine not exceeding 200 penalty units.

94. Location of marine farming equipment

- (1) A person, unless otherwise authorised, must not have—
 - (a) any rope, cable or other device securing any marine farming equipment outside a marine farming zone; or
 - (b) any marine farming equipment, other than any rope, cable or other device securing any marine equipment, outside the lease area.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a daily penalty of 5 penalty units.

- (2) It is a defence in proceedings against subsection (1) (a) to establish that, at the time of the alleged offence, the person did not know and could not reasonably be expected to have known that any rope, cable or other device securing any marine farming equipment was outside the marine farming zone.
- (3) It is a defence in proceedings under subsection (1) (b) to establish that at the time of the alleged offence the marine farming equipment was being moved, while accompanied by the lessee or an employee of the lessee —
 - (a) to a place of harvesting fish for the purpose of harvesting fish; or
 - (b) to a place approved by the planning authority under an emergency order; or
 - (c) to, from or between lease areas.

Division 3 - Appeals

95. Appeals against amendments and grants

- (1) A person may appeal to the Appeal Tribunal against —
 - (a) the Panel's decision not to approve the making of an amendment to a marine farming development plan; and
 - (ab) a decision by the Minister not to approve the giving, by the Panel, of a direction to the planning authority to prepare a draft amendment to a marine farming development plan; and
 - (b) an amendment of a marine farming development plan which does not comply with section 32 (2) (d) ; and
 - (c) the grant of a new lease for a larger area on the ground that the quality of the water in another lease area is likely to be unreasonably affected by the granting of that lease; and
 - (d) the variation of a lease area on the ground that the quality of the water in any other lease area is likely to be unreasonably affected by that variation.
- (2) An appeal is to be made in writing within —
 - (a) 14 days after service of a notice under section 33 (6) for an appeal under subsection (1) (a) or (b) ; or
 - (ab) 14 days after service of a notice under section 33(7) for an appeal under subsection (1)(ab) ; or
 - (b) 14 days after receipt of a notice under section 67(7) ; or
 - (c) 14 days after receipt of a notice under section 81 (7) .

96. Appeal against withdrawal of draft amendment plan

- (1) The planning authority, with the consent of the Panel, may appeal to the Appeal Tribunal against the withdrawal of a draft amendment plan.

(2) An appeal is to be made in writing within 14 days after service of a notice under section 36 (2) .

97. Extension of appeal period

The Appeal Tribunal, in exceptional circumstances and on application made to it, may extend the period within which an appeal under this Division may be made.

98. Determination of appeals

(1) The Appeal Tribunal is to hear and determine an appeal under this Division under the Resource Management and Planning Appeal Tribunal Act 1993 .

(2) In addition to its powers under the Resource Management and Planning Appeal Tribunal Act 1993 , the Appeal Tribunal may –

- (a) direct that an amendment to a marine farming development plan be initiated; or
- (b) direct that additional information be supplied; or
- (c) in the case of an appeal against a refusal to renew a lease or renew a lease subject to conditions or restrictions, direct that –
 - (i) the lease be renewed; or
 - (ii) direct that the lease must or must not contain any specified conditions.

(3) If the Appeal Tribunal has determined an appeal, a person is not to make an application relating to a matter which is substantially the same as the matter to which the appeal related within a period of 2 years from the date on which the Appeal Tribunal made its decision unless –

- (a) the Appeal Tribunal determines that the decision appealed against was not made on the merits of the case; or
- (b) the Appeal Tribunal, at the request of the person, grants leave to make an application within that period.

99. Appeal in respect of directions of Appeal Tribunal

(1) A person may appeal to the Supreme Court on a question of law against –

- (a) a direction of the Appeal Tribunal made under section 98 ; or
- (b) a decision by the Appeal Tribunal not to make a direction under that section.

(2) An appeal under this section is to be made within 30 days after the direction or decision is made or within any longer period the Supreme Court allows.

Division 4 - Compensation

100. Compensation entitlement

(1) A lessee may claim compensation for financial loss suffered because –

- (a) the whole or any part of the lease area is set aside for a public purpose under this section or any other Act; or
- (b) access to the lease area is restricted by a marine farming development plan.

(2) Compensation is not payable because –

- (a) there is a deterioration in water quality; or
- (b) there is a change to the lease area arising from environmental causes.

101. Determination of compensation

The provisions of the Land Acquisition Act 1993 apply to –

- (a) the determination of any compensation payable under this Division; and

(b) the claiming and payment of such compensation.

102. Amendment of marine farming development plan as result of compensation

- (1) The planning authority, by notice in writing, may give notice to a claimant for compensation of the intention to withdraw or modify all or any of the provisions of the marine farming development plan which gave rise to a claim for compensation.
- (2) A notice may only be given within one month after compensation has been determined.
- (3) The planning authority, within 3 months after giving notice, must prepare and submit to the Panel an amendment to the marine farming development plan which carries into effect the withdrawal or modification.
- (4) Any entitlement to compensation is discharged when –
 - (a) the amendment of the marine farming development plan comes into operation; and
 - (b) the planning authority pays the claimant's costs incurred in connection with the claim.
- (5) A claimant may make a further claim for compensation in respect of a marine farming development plan which has been amended under this section.

103. Enforcement of compensation

Compensation is not enforceable –

- (a) before the end of one month after compensation is determined; or
- (b) if a notice is issued under section 102, before the end of 3 months after the date of that notice; or
- (c) if the marine farming development plan is amended by modification, before that amendment comes into operation or is not approved by the Panel.

104. Indemnity for compensation

- (1) The planning authority is entitled to be indemnified for any compensation paid because an area is set aside for a public purpose.
- (2) Any indemnity is recoverable in a court of competent jurisdiction as a debt due to the Crown.

105. Double compensation not allowed

A person is not entitled to –

- (a) claim compensation both under this Division and under another enactment in respect of the same matter; and
- (b) receive a greater amount of compensation under this Division than the person would be entitled to receive under another enactment in respect of the same matter.

Division 5 - Fees and charges

106. Fees and charges

- (1) The Minister may impose a fee or charge in respect of the grant or issue of a lease at an amount or rate the Minister determines.
- (2) The Minister, by notice served on the lessee, may vary any fee or charge imposed under subsection (1) before the lease expires.
- (3) A fee or charge imposed under subsection (1) may be determined so as to apply differently according to any matter the Minister considers appropriate.
- (4) The Minister, by notice served on the lessee, may determine a fee or charge payable by the lessee for the occupation of a lease area taking into account any matter specified in the lease.

(5) A lessee may appeal to the Appeal Tribunal against any fee or charge varied under subsection (2) or determined under subsection (4) within 28 days after service of a notice under those subsections.

(6) The Appeal Tribunal is to hear and determine an appeal in accordance with the Resource Management and Planning Appeal Tribunal Act 1993 .

107. Refund of fees

(1) The Minister may refund the whole or any part of a fee paid in respect of –

- (a) an application for a lease which is not granted or is withdrawn; or
- (b) an application for the renewal of a lease which is not granted or is withdrawn; or
- (c) a lease which is surrendered.

(2) The Minister may pay the refund to any person the Minister considers is entitled to receive it.

108. Payment into Consolidated Fund

Any money received or penalties recovered under this Act is to be paid into the Consolidated Fund or any other fund the Minister approves.

109. By-laws to recover fees

A council may make by-laws under the Local Government Act 1993 for the recovery of costs incurred in performing any duties in relation to the development or amendment of a marine farming development plan.

110. Requirement to pay fees

A person or body is not required to take any action under this Act and anything lodged under this Act is not effective unless fees in respect of that action or lodgment have been paid.

Division 6 - Civil enforcement proceedings

111. Contravention of Part 3

(1) The Panel or planning authority may apply to the Appeal Tribunal for an order if of the opinion that a person has contravened, or failed to comply with, Part 3 .

(2) An application is to be –

- (a) made in writing within 12 months after the date of the alleged contravention of, or failure to comply with, Part 3 ; and
- (b) notified in the *Gazette*.

(3) If the Appeal Tribunal is satisfied that there are sufficient grounds to make an order against a person, it must, by notice in writing, require the person to attend a hearing to show cause why the order should not be made.

(4) If the Appeal Tribunal is not satisfied that there are sufficient grounds for making an order, it must refuse to grant the application.

112. Appearance at hearing

Any person with an interest in the area to which an application under this Division relates may appear and be heard in the hearing.

113. Orders

(1) The Appeal Tribunal may make any one or more of the orders specified in subsection (2) if –

- (a) after the hearing, it is satisfied that the person has contravened, or failed to comply with, Part 3 ; or
- (b) the person –
 - (i) did not appear at the hearing; or

(ii) did appear but did not take the opportunity to be heard.

(2) The Appeal Tribunal by order may –

(a) require the person to refrain from doing any act or taking any course of action for a specified or indefinite period; or

(b) preclude the person from carrying out any use or development in relation to any area for a specified period; or

(c) require the person to carry out any work or make good the contravention or failure to comply in a specified manner within a specified period.

(3) If the Appeal Tribunal is not satisfied that a person has contravened, or failed to comply with, Part 3 , it may make an order dismissing the application.

114. Temporary order

(1) The Appeal Tribunal may make any order of a temporary nature if satisfied that it is desirable to do so for any reason.

(2) A temporary order –

(a) may be made before or while a hearing is conducted; and

(b) may be made subject to any condition the Appeal Tribunal considers appropriate; and

(c) ceases on the date on which an order is made under section 113 .

(3) A person must comply with a temporary order.

Penalty: Fine not exceeding 100 penalty units.

115. Adjournment of hearing

The Appeal Tribunal may adjourn a hearing to allow a person to remedy any contravention of, or failure to comply with, Part 3 .

116. Powers in relation to use of State waters

In addition to any orders it may make under section 113 , the Appeal Tribunal, on application to it, may exercise any power conferred on it under section 98 (2) in relation to any use or development of State waters as if the application were an appeal.

117. Costs

The Appeal Tribunal may make any order it considers appropriate in relation to the costs of a hearing under this Division.

118. Work giving effect to order

If a person fails to comply with an order made under section 113 (2) (c) , the Panel or the Secretary, with the approval of the Appeal Tribunal, may –

(a) cause any work to be carried out to give effect to the order; and

(b) recover the reasonable costs of that work in a court of competent jurisdiction as a debt due to the Crown.

Division 7 - Infringement notices

119. Infringement notices

(1) A fisheries officer or a person authorised by the Secretary may serve an infringement notice on a person, other than a person under the age of 16 years, if of the opinion that the person has committed a prescribed offence.

- (2) An infringement notice is not to relate to 4 or more offences.
- (3) An infringement notice is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005 .

120. Payments into Consolidated Fund

Any payments in respect of an infringement notice are payable into the Consolidated Fund.

Division 8 - Demerit points

121. Demerit point by penalty

(1) If a person is convicted by a court of an offence under this Act or regulations or rules made under this Act, one demerit point for each penalty unit imposed by way of a penalty (other than a special penalty imposed under section 91(3)) for that offence is allocated –

- (a) to the person; and
- (b) to the marine farming licence determined under subsection (2) .

(2) The court is to determine to which marine farming licence any demerit point is to be allocated.

122. Demerit point by infringement notice

(1) If a person accepts an infringement notice in respect of an offence under section 91 and the infringement notice is not withdrawn, one demerit point for each penalty unit imposed by way of a penalty for that offence is allocated –

- (a) to the person; and
- (b) to the marine farming licence determined under subsection (2) .

(2) The Secretary is to determine to which marine farming licence any demerit point is to be allocated.

(3) Despite section 20 of the Monetary Penalties Enforcement Act 2005 , a person to whom that section applies in relation to an infringement notice under this Act is not to be taken, for the purposes of section 121 of this Act, to have been convicted by a court of the offence, or offences, to which the infringement notice relates.

123. Period of demerit point

A demerit point allocated under this Division remains in force for a period of 5 years from the date of the conviction that causes the demerit point to be allocated.

124. Disqualification from obtaining lease

(1) The following are disqualified from obtaining or holding a lease:

- (a) a person to whom 200 or more demerit points have been allocated;
- (b) a person who is or has been a partner in a partnership or a major shareholder in a body corporate to which 200 or more demerit points have been allocated;
- (c) a partnership or body corporate which has or had a partner or major shareholder –
 - (i) to whom 200 or more demerit points have been allocated; or
 - (ii) who has been a partner of another partnership or major shareholder in another body corporate to which 200 or more demerit points have been allocated.

(2) A major shareholder is a person who holds more than 10% of the issued shares in a partnership or body corporate.

(3) The Secretary, by notice in writing, must notify a person of –

- (a) any disqualification; and
- (b) the date on which the disqualification takes effect.

- (4) A person must transfer, to a person who is not their associate, a lease to which a disqualification relates—
- (a) within 6 months after receipt of a notice under subsection (3) ; and
 - (b) in accordance with Division 4 of Part 4 .
- (5) The Minister must cancel a lease which is not transferred under subsection (4) .
- (6) In this section –
- allocated* means allocated under this Division on one day;
 - associate* has the same meaning as in section 82 of the Living Marine Resources Management Act 1995 .

Division 9 - Fisheries officers

125. Entry, inspection and search

- (1) For the purposes of this Act, a fisheries officer may at any reasonable time –
- (a) enter and pass through land; and
 - (b) enter into, and pass along by any means any waters or the banks or borders of any State waters; and
 - (c) enter and inspect any land or premises to ascertain if this Act or the conditions of a lease are being complied with; and
 - (d) enter any land or premises where records are required to be kept and inspect those records.
- (2) A fisheries officer may enter and search land or any place which is not appurtenant to any premises if the fisheries officer reasonably believes that –
- (a) an offence under this Act has been, is being, or is about to be, committed on the land; or
 - (b) there is on the land any evidence of the commission of an offence under this Act.
- (3) A fisheries officer may require a person to open or unlock any vehicle, vessel, door, gate, receptacle or other container.
- (4) A fisheries officer may break open and search any vehicle, vessel, door, gate, package, receptacle or other container in searching or inspecting a place.
- (5) A fisheries officer may require a person to produce for inspection any thing in the person's possession if the fisheries officer reasonably believes that it is evidence of the commission of an offence under this Act.

126. Search of non-residential premises

A fisheries officer who reasonably believes that an offence under this Act has been, is being, or is about to be, committed in or on premises not used as a residence may enter and search those premises –

- (a) under a warrant issued under section 134 ; or
- (b) with the consent of the owner or occupier of the premises.

127. Search of residential premises

- (1) A fisheries officer who reasonably believes that a person has committed an offence under this Act may enter and search any premises used as a residence –
- (a) under a warrant issued under section 134 ; or
 - (b) with the consent of the occupier of the premises.
- (2) A fisheries officer may only exercise the power under subsection (1) if the officer pursued the person without interruption from the place, or near the place, where the offence was believed to have been committed to the premises being searched.

128. Records and documents

(1) A fisheries officer may require a person to produce any record or document required to be kept by that person under this Act.

(2) A fisheries officer may –

- (a) examine any records or documents referred to in subsection (1) ; and
- (b) remove any of those records or documents for the purpose of paragraph (c) ; and
- (c) take extracts from, or copies of, any of those records or documents.

129. Production of lease

A fisheries officer may –

- (a) require a person to produce for inspection any lease the person holds or should hold; and
- (b) examine, remove and take photographs or copies of, or extracts or notes from, any lease.

130. Photographs, sketches, measurements and recordings

For the purposes of this Act, a fisheries officer may –

- (a) take any photograph; and
- (b) take any measurements; and
- (c) make any sketches or drawing; and
- (d) make any recording by any means.

131. Examination and inquiry

A fisheries officer may carry out any examination and inquiry the fisheries officer considers necessary to ascertain if any provision of this Act or any conditions imposed under this Act have been complied with.

132. Assistance

(1) For the purpose of exercising a power under this Act, a fisheries officer may require a person to assist in any way the fisheries officer considers necessary.

(2) A person is not liable for anything done or omitted to be done by that person in good faith in assisting the fisheries officer as required under subsection (1) .

133. Information requirements

A fisheries officer may require –

(a) a person who the fisheries officer reasonably believes has committed an offence under this Act to give –

- (i) his or her full name and address; and
- (ii) his or her date of birth; and

(b) a person engaged in any marine farming activities to give details of any lease held under this Act.

134. Application and issue of warrant

(1) A fisheries officer may apply to a justice for a warrant to enter and search land, premises or places.

(2) A justice may issue a warrant if satisfied –

- (a) that there are reasonable grounds for believing that there is on the land or on or in any premises or place any evidence of the commission of an offence under this Act; or
- (b) that the issue of a warrant is reasonably required to ascertain if a person has not complied with this Act.

(3) A warrant is to authorise a fisheries officer –

(a) to enter and search the land, premises or place specified in the warrant; and

(b) to do any acts authorised under this Division –

(i) with any assistance, and by any force, reasonably necessary; and

(ii) on the date and during the hours or at any time the warrant specifies.

(4) A warrant is to specify the date on which, and time at which, the warrant ceases to have effect.

135. Offences against fisheries officer

A person must not –

(a) assault, abuse, threaten or insult a fisheries officer exercising a power or performing a function under this Division; or

(b) hinder, mislead, obstruct or delay a fisheries officer exercising a power or performing a function under this Division; or

(c) incite or encourage another person to anything referred to in paragraphs (a) and (b) .

Penalty: Fine not exceeding 200 penalty units.

136. Compliance with requirement, direction or signal

A person, without reasonable excuse, must comply with a requirement or direction made under this Division.

Penalty: Fine not exceeding 50 penalty units.

137. Refusing search

A person, without reasonable excuse, must not refuse to allow a search to be made under this Division.

Penalty: Fine not exceeding 100 penalty units.

138. Impersonation of fisheries officer

A person must not –

(a) impersonate a fisheries officer; or

(b) hold himself or herself out as a fisheries officer.

Penalty: Fine not exceeding 100 penalty units.

Division 10 - Other matters

139. Decision due to error not void

A decision or determination under this Act by a person or body is not void only because of an administrative error in making the decision or determination.

140. Written reason for extension of period

If any person extends the period for doing anything under this Act, the person must give written reason for that extension to any person who requests it.

141. Evidence of certain documents

A court or person acting judicially must –

(a) take judicial notice of a marine farming development plan or emergency order; and

(b) admit as evidence a copy of a marine farming development plan, emergency order or emergency plan if the copy is certified as a true copy by a person authorised to certify it.

142. Surveys

A survey carried out for the purposes of this Act is not an survey within the meaning of the Surveyors Act 2002 .

143. False and misleading statements

A person, in making an application, giving any information or producing a document under this Act must not –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is misleading.

Penalty: Fine not exceeding 50 penalty units.

144. Service of notices

A notice is effectively served if –

- (a) in the case of a natural person, it is –
 - (i) given to the person; or
 - (ii) left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the server of the notice or other document; or
 - (iii) sent by way of facsimile to the person's facsimile number; and
- (b) in the case of any other person, it is –
 - (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
 - (ii) sent by way of facsimile to the person's facsimile number.

144A. Transitional provisions

(1) Anything done under the provisions of Division 2 of Part 2 and Divisions 1 , 2 and 4 of Part 3 before the commencement of the Marine Farming Planning Amendment Act 2001 is, on that day, taken to be done under those provisions as in force on that commencement.

(2) The Minister may give approval under section 31(3)(a) or 42(4) in relation to draft plans and draft amendments in respect of which anything was done before the commencement of the Marine Farming Planning Amendment Act 2001 .

145. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may prescribe fees and charges payable in relation to –
 - (a) any matter under this Act; and
 - (b) any services provided relating to any application; and
 - (c) any matter relating to a lease; and
 - (d) a lease area; and
 - (e) the amount of fish taken from, cultivated in, or grown or farmed in, the area; and
 - (f) any other matter the Minister considers appropriate.
- (3) Regulations may –
 - (a) provide for the remission of, or exemption from payment of, any fee or charge; and
 - (b) prescribe offences in respect of which infringement notices may be served and the penalties applicable to those offences; and

- (c) regulate the removal and disposal of waste matter; and
 - (d) provide for the identification of areas; and
 - (e) prescribe the requirements for establishing or removing structures and rafts; and
 - (f) provide for the making, hearing and determination of civil enforcement proceedings.
- (4) Regulations may be of a savings or transitional nature consequent on the enactment of this Act.
- (5) The regulations may –
- (a) authorise any matter to be determined, applied or regulated by a specified person or body; and
 - (b) confer a power or impose a duty on a specified person or class of person.
- (6) Regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the regulations.
- (7) The regulations may –
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

146. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Primary Industry and Fisheries; and
- (b) the Department responsible to the Minister for Primary Industry and Fisheries in relation to the administration of this Act is the Department of Primary Industry and Fisheries.

SCHEDULE 1 - Objectives of the resource management and planning system of Tasmania

Section 3

1. The objectives of the resource management and planning system of Tasmania are –
 - (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
 - (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
 - (c) to encourage public involvement in resource management and planning; and
 - (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a) , (b) and (c) ; and
 - (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.
2. In clause 1 (a) , *sustainable development* means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –
 - (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
 - (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

SCHEDULE 2 - Membership of Panel

Section 8 (5)

1. Interpretation

In this Schedule, *member* means a member of the Panel.

2. Period of appointment

A member, other than the member referred to in section 8 (2) (c) , is to be appointed for the period, not exceeding 5 years, specified in the instrument of appointment.

3. Holding other office

The holder of an office who is required under any Act to devote the whole of the time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member of the Panel.

4. Remuneration

A member is entitled to be paid any remuneration (including travelling and subsistence allowances) the Minister determines.

5. Deputies of members

- (1) The Minister may appoint a person as a deputy of a member.
- (2) A person appointed as a deputy of a member must be a person with the appropriate ability or experience.
- (3) If a member is unable to perform his or her duties, the member's deputy may perform those duties and in doing so is taken to be a member.
- (4) A deputy member holds office for any term, not exceeding 5 years, and on any conditions, specified in the instrument of appointment.

6. Disclosure of interests

- (1) If a member has or acquires an interest that would conflict with the proper performance of the member's duties in relation to a matter being considered or about to be considered by the Panel, the member must disclose the nature of that interest at a meeting of the Panel.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting of the Panel and the member, unless the Panel otherwise determines, must not –
 - (a) be present during any deliberation of the Panel with respect to that matter; or
 - (b) take part in any decision of the Panel with respect to that matter.
- (3) For the purpose of making a determination by the Panel under subclause (2) , a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not take part in making the determination.

7. Vacation of office

- (1) A member vacates office if the member –
 - (a) dies; or
 - (b) resigns; or
 - (c) is removed from office under subclause (2) or (3) .

(2) The Minister may remove a member from office if the member –

(a) is absent from 3 consecutive meetings of the Panel without the permission of the Panel; or

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any remuneration or estate for their benefit; or

(c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer.

(3) The Minister may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.

(4) This clause does not apply to the member referred to in section 8 (2) (c) .

8. Filling of vacancies

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

SCHEDULE 3 - Meetings of Panel

Section 8 (6)

1. Interpretation

In this Schedule, *member* means a member of the Panel.

2. Convening of meetings of Panel

The chairperson of the Panel or any other 2 members may convene a meeting of the Panel.

3. Procedure at meetings

- (1) The quorum at any duly convened meeting of the Panel is 5 members.
- (2) Any duly convened meeting of the Panel at which a quorum is present is competent to transact any business of the Panel.
- (3) A question arising at a meeting of the Panel is to be determined by a majority of votes of the members present and voting.
- (4) If there is an equality of votes, the question is to be determined in the negative.

4. Chairperson

- (1) The chairperson of the Panel is to preside at all meetings of the Panel.
- (2) If the chairperson is not present at a meeting of the Panel, a member elected by the members present is to preside at that meeting.

5. General procedure

Subject to this Schedule, the procedure for the calling of, and for the conduct of business at, meetings of the Panel is to be determined by the Panel.

6. Validity of proceedings

- (1) An act or proceeding of the Panel or of a person acting under the direction of the Panel is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Panel.
- (2) An act or proceeding of the Panel or of a person acting under the direction of the Panel is valid even if –
 - (a) the appointment of a member was defective; or
 - (b) a person appointed as a member was disqualified from acting as, or incapable of being, such a member.

7. Presumptions

In any proceedings by or against the Panel, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Panel; or
- (b) any resolution of the Panel; or
- (c) the appointment of any member; or
- (d) the presence of a quorum at any meeting of the Panel.

SCHEDULE 4 - Membership of Board

Section 49 (6)

1. Interpretation

In this Schedule, *member* means a member of the Board.

2. Period of appointment

A member is to be appointed for a period, not exceeding 5 years, specified in the member's instrument of appointment.

3. Holding other office

The holder of an office who is required under any Act to devote the whole of the time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

4. Remuneration

A member is entitled to be paid any remuneration (including travelling and subsistence allowances) the Minister determines.

5. Disclosure of interests

- (1) If a member has or acquires an interest that would conflict with the proper performance of the member's functions in relation to a matter being considered or about to be considered by the Board, the member must disclose the nature of that interest at a meeting of the Board.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting of the Board and the member, unless the Board otherwise determines, must not –
 - (a) be present during any deliberation of the Board with respect to that matter; or
 - (b) take part in any decision of the Board with respect to that matter.
- (3) For the purpose of making a determination by the Board under subclause (2), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not take part in making the determination.

6. Vacation of office

- (1) A member vacates office if the member –
 - (a) dies; or
 - (b) resigns; or
 - (c) is removed from office under subclause (2) or (3).
- (2) The Minister may remove a member from office if the member –
 - (a) is absent from 3 consecutive meetings of the Board without the permission of the Board; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any remuneration or estate for their benefit; or
 - (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer.
- (3) The Minister may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.

7. Filling of vacancies

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

SCHEDULE 5 - Meetings of Board

Section 49 (7)

1. Interpretation

In this Schedule, *member* means a member of the Board.

2. Convening of meetings of Board

The chairperson of the Board or any other 2 members may convene a meeting of the Board.

3. Procedure at meetings

- (1) The quorum at any duly convened meeting of the Board is 2 members.
- (2) Any duly convened meeting of the Board at which a quorum is present is competent to transact any business of the Board.
- (3) A question arising at a meeting of the Board is to be determined by a majority of votes of the members present and voting.
- (4) If there is an equality of votes, the question is to be determined in the negative.

4. Chairperson

- (1) The chairperson of the Board is to preside at all meetings of the Board.
- (2) If the chairperson is not present at a meeting of the Board, a member elected by the members present is to preside at that meeting.

5. General procedure

Subject to this Schedule, the procedure for the calling of, and for the conduct of business at, meetings of the Board is to be determined by the Board.

6. Validity of proceedings

- (1) An act or proceeding of the Board or of a person acting under the direction of the Board is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Board.
- (2) An act or proceeding of the Board or of a person acting under the direction of the Board is valid even if –
 - (a) the appointment of a member was defective; or
 - (b) a person appointed as a member was disqualified from acting as, or incapable of being, such a member.

7. Presumptions

In any proceedings by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board; or
- (b) any resolution of the Board; or
- (c) the appointment of any member; or
- (d) the presence of a quorum at any meeting of the Board.

SCHEDULE 6 - Finfish Marine Farming Exclusion Zone

Section 19A

