

MARINE FARMING PLANNING AMENDMENT BILL 2011

CLAUSE NOTES

- Clause 1** The Short Title of the Act is the *Marine Farming Planning Amendment Act 2011*.
- Clause 2** The Act commences on the day on which it receives the Royal Assent.
- Clause 3** Defines the *Marine Farming Planning Act 1995* as the Principal Act where referred to in the Amendment Act.
- Clause 4** This clause corrects a typographical or printing error by removing several incorrectly placed words.
- Clause 5** This clause simplifies the language of several clauses, and provides for:
- The Panel to be able to approve a longer period for the Planning Authority to make a recommendation to the Panel as to whether an amendment should be made;
 - the Panel to seek the Minister's approval prior to directing the planning authority to prepare a draft amendment; and
 - describes the actions that each entity must make in relation to the flow of approvals, including serving notice upon an applicant of any approval or refusal given in relation to the making of a draft amendment.
- Clause 6** This clause includes language clarifications, and provides that any amendment instigated by the Panel or the Planning Authority must receive approval from the Minister for the amendment to be made.
- The clause also prescribes the actions and method that the Panel shall adhere to in directing the Planning Authority.
- Clause 7** This clause provides a link to directions given under section 33 or 34 of the Act that were previously assumed but not written. The clause also provides for the Panel to be able to alter a draft amendment if it considers it is necessary so that it can be referred to the Minister for approval for public exhibition.

- Clause 8** This Clause inserts the requirement that the Panel may only withdraw a draft amendment with the Minister's approval. This clause is important as it may be relied upon in the event that a fatal flaw to a draft amendment is identified during the preparation of the draft, and any further resource allocation to the draft would be wasteful.
- Clause 9** The existing process for lodging representations in respect of draft amendments describes a requirement to adhere to a specified time, but not a place. This clause is amended to provide for a representation to be lodged according to a specified time and place.

Clause 10

This clause sets out the processes to be followed in relation to consideration of a draft amendment by the Panel, notification of any determination by the Panel, and the final approval or refusal of a draft amendment by the Minister.

The clause inserts language to clarify that the Panel may consider a draft amendment that has been modified as a result of a referral from the Minister.

After considering a draft amendment, the Panel may make a determination to recommend approval, modify the draft, direct the Planning Authority to modify the draft, or recommend to the Minister that the draft amendment be rejected. This ensures consistency with section 9 of the Act in relation to recommendations to the Minister on draft amendments.

The clause also provides instruction to the Panel as to how it must proceed in terms of method and timing in relation to notifying of any determination.

The clause then provides the process for the Minister to approve or refuse a draft amendment. The Minister may give final approval, give final approval with alteration, or refuse to give final approval. In relation to these decisions, the Minister may seek further information from the Board of Advice and Reference, the Planning Authority, or the Panel.

The clause provides that the Minister may refuse to give final approval, without directly rejecting the amendment. The Minister may refer it back to the Panel indicating any concerns the Minister has with the draft amendment.

The clause provides instruction to the Minister as to any advice that he must give to the Planning Authority and Panel in relation to the decisions taken, and where the Minister has made any alteration to a draft plan, requires that these be advertised by the Planning Authority.

The clause provides instruction to the Minister as to the action required to approve a draft amendment, and the commencement and effect terms of any amendment in relation to the plan being replaced.

- Clause 11** This clause provides the methods that the Minister may follow in relation to the allocation of a lease. The clause establishes definitions of a privately prepared draft plan, a privately requested draft amendment, and a relevant person.
- If a marine farming zone is designated under a privately prepared draft plan or privately requested draft amendment, the Minister may invite the relevant person to apply for a lease in respect of the zone.
- The clause provides the discretion for the Minister to alternatively seek the advice of the Board of Advice and Reference as to the persons or class of persons who should participate in the process for allocation.
- The clause takes the existing consideration of the Board relating to a Certificate of Preference, and places that process within the new allocation provision where the advice of the Board is sought by the Minister.
- The clause provides that where a marine farming zone is designated by a process that was not private, then the Minister is to seek the advice of the Board as to the person or class of persons that may participate in an allocation process, and whether the process is one in which a person with a certificate of preference may be considered.
- Clause 12** The Minister may seek the advice of the Board of Advice and Reference in relation to the method to be used to allocate a lease. The clause then provides direction as to how the Minister should proceed upon receiving any advice.
- Clause 13** This clause provides appeal provisions for a person in relation to a decision by the Minister not to approve the Panel's direction to the Planning Authority to prepare a draft amendment.
- Clause 14** This clause provides for the repeal of the Amendment Act on the ninetieth day after it commences.