

CLAUSE NOTES

Living Marine Miscellaneous Amendments (Digital Processes) Bill 2021

PART 1 – PRELIMINARY

Clause 1 Short title

This clause provides that, once passed, the Bill will be cited as the *Living Marine Miscellaneous Amendments (Digital Processes) Act 2021*.

Clause 2 Commencement

This clause provides for the amendments to commence on a day or days to be proclaimed.

PART 2 – LIVING MARINE RESOURCES MANAGEMENT ACT 1995 AMENDED

Clause 3 Principal Act

This clause provides that in Part 2 of the Bill the Principal Act is the *Living Marine Resources Management Act 1995*.

Clause 4 Section 3 amended (Interpretation)

This clause amends section 3 as follows:

- (a) By inserting, after the definition of “approved”, the definition of an “approved electronic record system”, being the electronic record system approved by the Secretary pursuant to section 145A;
- (b) By inserting, after the definition of “species”, the definition of “structure”, which has been moved from beneath “supervisor” but remains unchanged. It also inserts a definition of “suitable person”, directly referring to section 76B.
- (c) By omitting, after the definition of “supervisor”, the defined term “structure”. This is a statutory correction as the definition was in the wrong place.

Clause 5 Section 63 amended (Fishing certificate)

This clause amends section 63 by inserting “in such form (including electronic form) as the Secretary thinks fit” after “the person”. This amendment will allow the Secretary to maintain a certificate or certificates in respect of a fishing licence or licences in an electronic form.

Clause 6 Section 74A inserted

This clause inserts four definitions for the purposes of the interpretation of Division 5 of Part 4 of the Principal Act.

“Category” of licence is defined by reference to section 76A(1).

“Commercial fishing licence” is defined as a licence that authorises the licence holder to carry out fishing for commercial purposes. This definition is qualified by the definition of “fishing” in section 3, which does not include activity authorised under a marine farming licence.

“Eligible person” in respect of a category of licence, is defined as either:

- (a) a person that has been approved as eligible to hold a licence of that category by the Secretary under section 76A; or
- (b) a person that is taken to be approved as eligible to hold a licence of that category under section 76C.

“Recreational fishing licence” is defined as a licence that authorises the licence holder to carry out recreational fishing. This definition is qualified by the definition of “recreational fishing” in section 3, which excludes fishing carried out for a commercial purpose or as part of an Aboriginal activity. Subsection (2) clarifies that, for the purposes of Division 5 of Part 4, a person is eligible to hold a licence if the person is an eligible person in respect of that category of licence.

Clause 7

Sections 77, 78 and 78A substituted

This clause repeals sections 77, 78 and 78A.

This clause inserts section 76A, which establishes five categories of licences and provides that a person may apply to the Secretary to be eligible to hold a licence of a particular category.

Subsection (3) sets out the requirements for an application to the Secretary for eligibility to hold a licence of a particular category.

Subsection (4) provides that the Secretary may grant an application to be eligible to hold a particular licence category if satisfied of the criteria in subsection 5, or refuse to grant the application. The Secretary may impose conditions on the grant of the application.

Subsection (6) provides that, if a person’s application to be eligible to hold a licence of a particular category is refused, then that person cannot make another application for eligibility to hold a licence of that same category for a period of 12 months from the date of refusal.

Subsection (7) provides that the Secretary may require a person to provide further information or a statutory declaration in connection with an application under section 76A. Subsection (8) provides that the Secretary may defer deciding an application until determination or discontinuation of any proceedings against the applicant for an offence.

Clause 7 inserts section 76B, which defines “applicant” for the purposes of the section, and sets out a non-exhaustive list of criteria the Secretary may take into account when determining whether an applicant or an eligible person is a suitable person to hold a licence of a particular category. Section 76B(3) provides that the Secretary may take all steps and make all inquiries that are reasonable and appropriate in order to determine whether an applicant or eligible person is a suitable person to hold a licence of a particular category.

Clause 7 inserts section 76C, which deems people who hold or apply for a recreational fishing licence to be approved as eligible to hold a recreational fishing licence under section 76A. Section 76C contains transitional provisions to ensure that existing licences continue under the amendments introduced by this bill by deeming existing licence holders to have been approved as eligible to hold a licence of that category under section 76A.

Clause 7 inserts section 76D, which provides that the Secretary may investigate an eligible person to determine whether they remain a suitable person to hold a licence of the category for which they are eligible in specified circumstances. The Secretary may determine that an eligible person is no longer suitable to hold the category of licence and the approval as an eligible person may be revoked in the circumstances set out in subsections (4) and (5). If the Secretary determines that a person is not a suitable person to hold a licence of a particular category under this section, that person is precluded from making an application under section 76A with respect to that same licence category for 12 months from the date of the Secretary's determination.

Clause 7 inserts section 76E, which provides power for the Secretary to cancel any licence of the category held by a person who has had their approval as an eligible person for that licence category revoked.

Clause 7 inserts section 77, which sets out the circumstances for the making of an application for the grant, renewal, variation or transfer of a licence, or quota, or entitlement under a licence.

Clause 7 inserts section 77A, which provides for licensing agents to be nominated and revoked. Section 77A provides that partnerships, corporations or trustees must nominate a licensing agent for the purposes of a commercial licence, and specified other persons may nominate a licensing agent for the purposes of a licence or a deed of agreement. Section 77A provides that a licensing agent is conferred no rights or interest in a licence by virtue of their role as licensing agent.

Clause 7 inserts s 78 which provides for the grant of licences. The Secretary may grant a licence with or without conditions. The Secretary may refuse to grant a licence in specified circumstances. The Secretary must not grant an application for a licence to replace a surrendered, cancelled or suspended licence.

Clause 8

Sections 81, 82 and 83 substituted

This clause repeals sections 81, 82 and 83.

Clause 8 inserts section 81, which provides for the renewal of a licence on application and payment of the prescribed fee. The Secretary may refuse the renewal application in specified circumstances. If the renewal application is not determined by the Secretary before the licence expires, the licence will continue in force until the renewal application is determined.

Clause 8 inserts section 82, which provides for the transfer of a licence, quota or other entitlement on application and payment of the prescribed fee. The Secretary may refuse to grant an application to transfer in the specified circumstances. The Secretary may defer a decision on an application to transfer pending determination or discontinuation of any proceedings against the

applicant, the transferee or an associate of the transferee for an offence against specified laws.

Clause 8 inserts section 83, which provides for the variation of a licence. The Secretary may vary a licence at any time, by notice to the holder of the licence. Such variation may be on the Secretary's own initiative, or upon application by the holder of the licence. The Secretary must not vary a licence in specified circumstances, and may defer a decision on an application to vary a licence pending determination or discontinuation of proceedings against the applicant for an offence against specified laws.

Clause 9 Section 87 amended (Prohibition on use of licence by other persons)

This clause amends subsection 87(1) by providing that the Secretary may give approval for a person other than the licence holder to use the licence, rather than the Minister. It omits subsection (2) and substitutes a new subsection providing that the Secretary may grant approval under subsection (1) if satisfied that the person for whom approval is sought is both eligible to hold the licence; and not disqualified from holding a licence under this Act. Subsections (2A) and (4) are amended by substituting the Secretary for the Minister.

Clause 10 Section 88 amended (Substitute licensee)

This clause amends subsections (1) and (2) by substituting the Secretary for the Minister. It inserts subsection (3), which provides that, for the purposes of section 88, a substitute licensee is to be deemed to be approved as eligible to hold that category of licence under section 76A. Subsection (4) is inserted, which clarifies that subsection (3) does not mean that a substitute licensee is to be taken to be approved as eligible to hold a category of licence under section 76A for the purpose of applying for or holding any other licence.

Clause 11 Section 89 amended (Supervision of activities)

This clause amends section 89 by omitting paragraph (b) from subsection (2). Paragraph (b) has become obsolete as section 77(2) no longer allows a licence holder to nominate a natural person. The nominated natural person function has been replaced by licensing agents nominated under section 77A. Clause 11 amends section 89 by substituting the Secretary for the Minister in subsection (5). It omits subsection (6) entirely, which provided the now omitted subsection (2) did not apply to the holder of a marine farming licence.

Clause 12 Section 90 substituted

This clause repeals section 90 and substitutes a new section 90, which provides that the Secretary may cancel a licence or suspend a licence for a period of up to 5 years in specified circumstances.

Clause 13 Section 145 amended (Records)

This clause amends section 145 to require the specified persons to both complete and keep records, accounts and other information in a manner and form approved by the Secretary.

Clause 14 Sections 145A and 145B inserted

This clause inserts section 145A, which provides the Secretary with the power to approve an electronic record system for the purpose of completing, submitting, supplying and keeping records, documents, accounts and other information required under the Principal Act. The Secretary may publish instructions for the use of the approved electronic record system.

Clause 14 inserts section 145B, which provides for the submission of documents electronically. It allows a person to complete, submit, supply and keep documents, records, accounts and other information required under the Act (this includes but is not limited to catch records, returns, and dockets) using the approved electronic record system. It creates an offence for a person using the approved electronic record system in a way that is not in accordance with the Secretary's instructions published under section 145A(3).

This clause provides that, if a provision of the Act specifies requirements in relation to the completion, submission, supply or keeping of a document, record, account or other information by a person, that person is taken to have complied with those requirements if the document, record, account or other information is completed, submitted, supplied or kept using the approved electronic record system within the required time and in accordance with the Secretary's instructions. This provision has the effect that a person will be deemed to have complied with record keeping and provision requirements under the Act and subordinate regulations and rules (including management plans), if they use the approved electronic record system within the required time and according to the Secretary's instructions.

This clause provides that a fisheries officer may require access to a person's electronic records in the approved electronic record system and creates an offence for a person to fail to comply with this requirement, without reasonable excuse.

Clause 15 Section 191 amended (Production of records and documents)

This clause amends section 191 to allow a person to produce a copy of a record or document required by a fisheries officer under section 191(1)(a) in any form, including digitally. Similarly, Section 191(1)(b) is amended to allow a copy of a document relating to the sale or purchase of fish. These amendments allow section 191 to facilitate provision of digital copies of documents that have been completed and kept under the Act.

Clause 16 Section 215A substituted

This clause repeals section 215A of the Principal Act and substitutes a new section 215A which provides that any document, record or other information authorised or required by or under the Act to be given to, issued to, supplied to or served on a person may be given to, issued, supplied or served to or on that person by any of the means specified, including electronically.

Clause 17 Section 221 amended (Certificates relating to licensing and statistical matters)

This clause amends section 221(1)(j) by omitting "nominated person under section 77" and substituting "licensing agent" to reflect that natural persons are no longer nominated under section 77.

- Clause 18** **Sections 249 and 250 repealed**
- This clause repeals sections 249 and 250 of the Principal Act.
- Clause 19** **Part 10, Division 1A inserted**
- This clause inserts new Division 1A (Electronic decision making) after section 273 of the Principal Act. Division 1A contains four new sections.
- Section 273A defines, for the purposes of Division 1A, “approved computer program” and “electronic decision”.
- Section 273B provides that the Secretary may approve, in writing, a computer program under his or her control, for the purposes of making decisions under sections 78, 81, 82, 83, 87, and any other prescribed section of the Act.
- Section 273C provides the circumstances in which the Secretary may replace an electronic decision.
- Section 273D sets out the components of a “computer function notice”, which is prima facie evidence of the matters that are stated in that notice in any proceedings.
- Clause 20** **Section 298 amended (Register)**
- This clause amends section 298 to include the particulars of any demerit point allocated to a person, licence or fishing certificate to be included in the register of authorisations. The clause provides that the Secretary may keep the register in form that the Secretary approves, including in electronic form. Subsection (2) is omitted and substituted with a new subsection (2), which sets out the circumstances in which the Secretary may allow a person to obtain a copy of, or an extract from, or access in electronic form the register. Subsection (3) is amended by allowing the Secretary to amend an entry in the register if satisfied that it is incorrect, regardless of the reason it is incorrect.
- Clause 21** **Sections 298A inserted**
- This clause inserts new section 298A in Division 5, which contains the provisions in the now-repealed section 250, with respect to demerit points, which are now contained within the register required to be kept by the Secretary by section 298.
- Clause 22** **Section 302 repealed**
- This clause repeals the now-outdated provision setting out that the Geocentric Datum of Australia is to be understood by reference to the superseded “GDA94”.
- Clause 23** **Section 308 inserted**
- This clause contains savings and transitional provisions to ensure that licences in force, and approvals in place under section 88 and section 89 before the commencement of amendment Act will not be affected by its commencement.

Applications under section 77 that have been made but not been determined by the Minister at the time the amendment Act commences are taken to be applications to the Secretary under the relevant section.

PART 3 – FISHING (LICENCE OWNERSHIP AND INTEREST) REGISTRATION ACT 2001 AMENDED

Clause 24 Principal Act

This clause provides that in Part 3 of the Bill the Principal Act is the *Fishing (Licence Ownership and Interest) Registration Act 2001*.

Clause 25 Section 9 amended (Record of original entry)

This clause amends section 9(4) to provide that the extract or the copy of the extract produced by the Registrar may be in electronic form.

Clause 26 Section 13 amended (Record of original entry)

This clause amends section 13 to provide that the Registrar may issue an electronic record of original entry to replace an original record of original entry.

Clause 27 Section 14 amended (Lost or damaged record of original entry)

This clause amends section 14 to provide that the Registrar may issue an electronic or printed replacement for a lost or damaged record of original entry.

Clause 28 Section 18 substituted (Signature of Registrar)

This clause repeals section 18 and substitutes a new section 18 to provide for the electronic signature of the Registrar and judicial notice.

PART 4 – REPEAL OF ACT

Clause 29 Repeal of Act

This clause provides for the automatic repeal of the Amendment Act on the first anniversary of the day on which the last uncommenced provision of the Act commenced.