

CLAUSE NOTES

Finfish Farming Environmental Regulation Bill 2017

PART 1 – PRELIMINARY

- Clause 1 **Short Title**
- Clause 2 **Commencement**
The Act commences on the day it receives Royal Assent.

PART 2 – ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL ACT 1994 AMENDED

- Clause 3 **Principal Act**
The Act to be amended under Part 2 is the *Environmental Management and Pollution Control Act 1994* (No. 44 of 1994).
- Clause 4 **Section 3 amended (Interpretation)**
- (a) A definition of “EL activity” is inserted, to define an activity that is a finfish farming activity and which requires an environmental licence in accordance with Division 8 of Part 3. (Nonetheless, in these clause notes reference is made to a finfish farming activity or activities, for clarity.)
 - (b) A definition of “environmental licence” is inserted, to support the insertion of Division 8 of Part 3 and consequential amendments to other provisions.
 - (c) Definitions of “finfish” and “finfish farming” are inserted, to support various new provisions that use these terms. Definitions of “fish farm” and “fish farm licence” are inserted, to support various new provisions that make reference to inland finfish farming activities presently regulated under the *Inland Fisheries Act 1995*.
 - (d) A definition of “inland fish farming” is inserted, to support the use of this term in new section 42ZE.
 - (e) Definitions of “marine farming” and “marine farming licence” are inserted, to support various new provisions that make reference to marine finfish farming activities presently regulated under the *Living Marine Resources Management Act 1995*.
 - (f) A definition of “State waters” is inserted, to support various new provisions that use this term.

- Clause 5** **Section 5C inserted**
A new section is inserted to define finfish farming, to support the insertion of finfish farming as a new level 2 activity in Schedule 2. The term includes all marine farming activities involving finfish, and inland fish farming activities involving finfish that are above the specified thresholds. The purpose of the thresholds is to exclude smaller inland activities that will not normally warrant regulation under the Act as 'level 2' activities.
- Clause 6** **Section 22 amended (Registers of environmental management and enforcement instruments)**
A reference to environmental licences is inserted to require that such licences are entered in the register along with other instruments issued under the Act.
- Clause 7** **Section 25 amended (Assessment of permissible level 2 activities)**
- (a) Subsection (1D) is amended so that it does not apply to finfish farming activities, with the effect that any proposal for a new activity must be assessed by the Board, subject to new subsection (1DAA). Subsection (1DAA) is inserted to provide that the EPA Board may summarily refuse to grant or vary an environmental licence for a proposed finfish farming activity in accordance with section 42K(2) (on one or more of the grounds specified in section 42L(1) or (2)), and that otherwise it must conduct an assessment. Subsection (1DAB) is inserted to make provision for the Board to refuse to assess a proposed expansion, intensification or modification of an existing finfish farming activity, either on the grounds that it is not environmentally significant or in accordance with section 42Q(2) (on one or more of the grounds specified in section 42Q(5)). Otherwise it must conduct an assessment. Subsection (1DAC) is inserted consequential to the amendment to subsection (1D), and to provide that subsections (1D), (1DAA) and (1DAB) do not apply to permit applications referred to the Board that are combined with applications for planning scheme amendments (section 25A of the Act provides for assessment of these).
 - (b) Subsection (1DA) is amended so that it includes finfish farming activities that the Board refuses to assess in accordance with subsection (1DAA) or (1DAB).
 - (c) Subsection (1E) is amended so that it applies to both finfish farming and other activities.
 - (d) Subsections (4) and (4A) are inserted to provide that, where the Board has decided to summarily refuse to grant or vary a licence for a finfish farming activity, and has

accordingly issued a notice under section 27AC(2), a planning authority must not advertise the relevant permit application under the relevant provisions of the *Land Use Planning and Approvals Act 1993*.

- (e) Subsection (5) is amended to restrict it to the assessment of activities that are not finfish farming, consequential to the insertion of environmental licence provisions under Division 8.
- (f) Subsection (6) is amended to restrict it to the assessment of activities that are not finfish farming, consequential to the insertion of environmental licence provisions under Division 8.
- (g) Subsection (8) is amended to restrict it to the assessment of activities that are not finfish farming, consequential to the insertion of environmental licence provisions under Division 8.
- (h) Subsection (8D) is amended so that it applies to both finfish farming activities and other activities.

Clause 8

Section 25A amended (Assessment of applications for permits that are combined with applications for planning scheme amendments)

- (a) Subsection (1) is amended so that it does not apply to finfish farming activities, consequential to the other amendments to section 25A.
- (b) Subsection (1A) is amended so that it does not apply to finfish farming activities, consequential to the other amendments to section 25A.
- (c) Subsection (1B) is inserted to provide that subsection (1C) relates to combined permit and planning scheme amendment applications relating to finfish farming activities. Subsection (1C) is inserted to provide that the EPA Board may summarily refuse to grant or vary an environmental licence for a proposed activity in accordance with section 42K(2) or 42Q(2) (on one or more of the grounds specified in section 42L(1) or (2) or 42Q(5) respectively), and that otherwise it must conduct an assessment. Subsection (1C) also provides that the Board may require an applicant to provide additional information for the purposes of an assessment where one is conducted. Subsection (1D) is inserted to require the relevant planning authority, if the EPA Board refuses under subsection (1C) to grant an environmental licence, to notify the applicant and to require the planning authority and the Commission

to take no further action on the combined permit and planning scheme amendment application.

- (d) Subsection (2) is amended so that it applies to both finfish farming and other activities.
- (e) Subsection (3) is amended to remove doubt that an assessment referred to in subsection (3) is for the purposes of the *Land Use Planning and Approvals Act 1993* only, and is complementary to the insertion of subsection (3A).
- (f) Subsection (3) is amended so that it applies to both finfish farming and other activities.
- (g) Subsection (3A) is inserted to clarify that the result of an assessment referred to in subsection (3) is the result prior to the consideration of any public representations. Subsection (3B) is inserted to provide that the EPA Board must, for the purposes of determining whether or not to grant an environmental licence, complete its assessment as soon as practicable after receiving the associated permit application. Subsection (3C) is inserted to provide that the Board is to complete its assessment after considering any public representations. Subsection (3D) is inserted to provide that section 41(4) of the *Land Use Planning and Approvals Act 1993* does not apply to the assessment of finfish farming activities, which is consequential to the insertion of the environmental licence provisions under Division 8 of the Principal Act.
- (h) Subsection (4) is amended so that it applies to both finfish farming and other activities.

Clause 9 Section 27 amended (Assessment of activities which do not require a permit)

Subsection (8) is inserted to provide that section 27 does not apply to activities to which the new section 27AA applies. The latter applies to certain finfish farming activities.

Clause 10 Sections 27AA, 27AB, 27AC and 27AD inserted

27AA. Assessment of EL activities where no planning permit required

This section is inserted to provide for assessment of proposed finfish farming activities which do not require a permit under the *Land Use Planning and Approvals Act 1993*.

Subsection (1) requires a proponent to refer a relevant proposed activity to the Board for assessment.

Subsection (2) provides that subsection (1) does not apply to proposed marine farming activities (nonetheless, the EPA Director may, under section 42I(2) or 42O(1), refer a proposed marine farming activity to the Board for assessment).

Subsection (3) provides that the Board may summarily refuse to grant an environmental licence in accordance with section 42K (on one or more of the grounds specified in section 42L(1) or (2)), and that otherwise it must conduct an assessment in accordance with the Environmental Impact Assessment Principles and Division 1A (the assessment process provisions).

Subsection (4) provides that the Board may summarily refuse to vary an environmental licence in accordance with section 42Q(2) (on one or more of the grounds specified in section 42Q(5)), and that otherwise it must conduct an assessment in accordance with the Environmental Impact Assessment Principles and Division 1A.

27AB. Assessment of EL activity where PORS declared

This section is inserted to modify the EPA's role in the assessment of projects of regional significance under Division 2A, Part 4 of the *Land Use Planning and Approvals Act 1993*, where the proposed activity is finfish farming.

Subsection (1) defines the term "Panel" for the purposes of the section.

Subsection (2) specifies the activities to which the section applies.

Subsection (3) provides that section 60K(3)-(6) of the *Land Use Planning and Approvals Act 1993* does not apply in the case of finfish farming activities, and substitutes requirements to notify the Minister that an environmental licence is required and to refer the proposal to the EPA Board for consideration.

Subsection (4) provides that the EPA Board may summarily refuse to grant or vary an environmental licence for a proposed activity in accordance with section 42K(2) or 42Q(2) (on one or more of the grounds specified in section 42L(1) or (2) or 42Q(5) respectively). It further provides that, where a notice of intent has been lodged under section 27B(1) and the Board has determined (under new section 27B(1A)) to refuse to grant or vary a licence, the Board must not undertake an environmental impact assessment of the proposal.

Subsection (5) provides that the Board, where it does not summarily refuse to grant or vary an environmental licence, must notify the Panel that it will undertake an environmental impact assessment. It further provides that such a notification must be

taken to be a determination under section 60(K(3)) of the *Land Use Planning and Approvals Act 1993*.

Subsection (6) provides that, the Board, where it summarily refuses to grant or vary a licence, must notify the Panel that it will not undertake an environmental impact assessment. It further provides that such a notification must be taken to be a determination under section 60(K(3)) of the *Land Use Planning and Approvals Act 1993* for the purposes of section 60L of that Act.

Subsection (7) provides that various provisions of the *Land Use Planning and Approvals Act 1993* do not apply, which is consequential to the insertion of the environmental licence provisions under Division 8 of the Principal Act.

Subsection (8) provides that, where the Board has directed the Panel to refuse to grant a permit, certain relevant provisions of the *Land Use Planning and Approvals Act 1993* do not apply, and that the Panel must proceed to make a determination under section 60T of that Act (to refuse to grant a permit), where the Board has directed the Panel to refuse to grant a permit, and the Panel must take action under section 60T of that Act to refuse to grant a special permit.

27AC. Directions in relation to permits in respect of EL activities
This section is inserted to provide for certain actions by the EPA Board and other authorities following a decision of the Board to grant or refuse to grant an environmental licence.

Subsection (1) defines the terms "Commission", "Panel" and "permit" for the purposes of the section.

Subsection (2) requires the Board, after deciding to refuse to grant or vary an environmental licence, to direct the relevant authority to refuse to grant a permit under the *Land Use Planning and Approvals Act 1993*.

Subsection (3) requires the relevant authority to comply with a direction of the Board not to grant a permit, and to notify the Board after complying.

Subsection (4) requires a relevant authority not to impose a condition or restriction on a permit which is inconsistent with, or extends the operation of, an environmental licence condition or restriction.

Subsection (5) requires a relevant authority to notify the EPA Board when it grants a permit and to provide a copy of the permit.

27AD. Minor variations of planning permit in relation to EL activities

Subsection (1) provides that an existing permit relating to finfish farming may not be amended under section 43 or 56 of the *Land Use Planning and Approvals Act 1993* without the approval of the EPA Board. This is to ensure that permit amendments which may affect environmental regulation are not made without EPA approval.

Subsection (2) provides that a planning authority may apply to the Board for approval to amend a permit.

Subsection (3) provides that the Board may approve or refuse to approve a permit amendment, and must notify the planning authority of its decision.

- Clause 11 **Section 27A amended (Classes of assessment)**
Subsection (1) is amended so that it applies to s.27AA (assessment by the EPA Board of finfish farming activities that do not require a permit under the *Land Use Planning and Approvals Act 1993*).
- Clause 12 **Section 27B amended (Notice of intent)**
Subsection (1A) is inserted to provide that the EPA Board, on receiving a notice of intent, may summarily refuse to grant or vary an environmental licence for the proposed activity in accordance with section 42K(2) or 42Q(2) (on one or more of the grounds specified in section 42L(1) or (2) or 42Q(5) respectively). It further provides that, where the Board refuses to grant or vary a licence, it must not take any further action under Division 1A to assess the proposed activity.
- Clause 13 **Section 27C amended (Board to advise of proposed class of assessment)**
Section 27C is amended so that it applies to section 27AA (assessment by the EPA Board of finfish farming activities that do not require a permit under the *Land Use Planning and Approvals Act 1993*), with the exception that the planning authority does not have to be advised of the class of assessment in that case.
- Clause 14 **Section 27G amended (Periods for advertising of applications and proposals)**
Section 27G(1)(b) is amended so that it applies to section 27AA (assessment by the EPA Board of finfish farming activities that do not require a permit under the *Land Use Planning and Approvals Act 1993*).
- Clause 15 **Section 27H amended (Period for completion of assessment)**
Section 27H(1) is amended so that it applies to section 27AA (assessment by the EPA Board of finfish farming activities that do

not require a permit under the *Land Use Planning and Approvals Act 1993*).

- Clause 16** **Section 29 amended (Effect of environmental agreements)**
Section 29(3) is amended so that an environmental agreement may not require or allow anything to be done that would contravene an environmental licence.
- Clause 17** **Section 35 amended (Financial assurance to secure compliance with Act)**
Section 35(1) is amended so that the EPA Board may require a financial assurance in relation to compliance with the conditions or restrictions of an environmental licence.
- Clause 18** **Part 3, Division 8 inserted**
Division 8 is inserted, which provides for environmental licences.

Subdivision 1 – Interpretation and offences

42B. Interpretation of Division 8

“associate” is defined as a person who has a relevant power, financial interest or position in the business of another person, or who is a relative of that person. This is for the purposes of sections 42L(2) and 42ZD.

“exemption permit” is defined as a permit issued under the relevant provisions of the *Living Marine Resources Management Act 1995* or the *Inland Fisheries Act 1995*.

“existing authorisation” is defined as various instruments which may authorise an existing finfish farming activity – a permit or special permit, an exemption permit, an order under the *State Policies and Projects Act 1993*, a marine farming licence, a fish farm licence or an environment protection notice. This is for the purposes of Subdivision 2.

“holder of an environmental licence” is defined as the person to whom the licence has been issued under section 42ZB.

“land” is defined to include any water situated on land.

“permit” is defined as a permit under the *Land Use Planning and Approvals Act 1993*.

“relative”, “relevant financial interest”, “relevant position” and “relevant power” are defined, to support the definition of “associate”.

“special permit” is defined as a special permit under the *Land Use Planning and Approvals Act 1993*.

“vary”, in relation to varying an environmental licence, is defined as: revoking, varying or adding a condition or restriction of the licence; varying the licence period; adding, altering or restricting the activities carried out under the licence; altering the area of land or water to which the licence relates; or varying the licence so that an expansion, intensification or modification is expressly authorised.

42C. Offences relating to licences

Subsection (1) provides that a person must not carry out a finfish farming activity unless authorised under an environmental licence. The penalty prescribed for a body corporate is 1,000 penalty units, and the penalty for an individual is 500 penalty units or 12 months' imprisonment or both.

Subsection (2) provides that a person does not commit an offence under subsection (1) if the activity is authorised under an environment protection notice (issued under section 44 of the Act).

Subsection (3) provides that a person does not commit an offence under subsection (1) if, immediately before the commencement of the section, the activity is being carried out under an existing authorisation or the activity is an existing one which does not require authorisation. This refers to activities that are the subject of Subdivision 2.

Subsection (4) provides that a person must not contravene a condition or restriction of an environmental licence, or of a notice that may be issued under section 42ZH when a licence is surrendered. The penalty prescribed for a body corporate is 1,000 penalty units, and the penalty for an individual is 500 penalty units or 12 months' imprisonment or both.

Subsection (5) provides that regulations may be made for special penalties in relation to the contravention of a condition or restriction of an environmental licence. The regulations may prescribe the amount of the penalty or a method of calculating the amount.

Subsection (6) provides that a special penalty imposed under subsection (5) is in addition to any fine imposed under subsection (4).

Subsection (7) provides that regulations made under subsection (5) may prescribe differing amounts or methods of calculation according to differing circumstances specified in the regulations.

Subsection (8) provides that the holder of an environmental licence must not expand, intensify or modify the licensed activity unless expressly authorised under the licence or an environment

protection notice. The penalty prescribed for a body corporate is 1,000 penalty units, and the penalty for an individual is 500 penalty units or 12 months' imprisonment or both. An exception is provided for an expansion, etc that the EPA Board has determined under section 25(1AB) not to be environmentally significant.

Subsection (9) provides that a person must not cease to carry out or to resume a finfish farming activity unless that person has notified the EPA Director in advance, or because the relevant licence is suspended, because of the cessation of a suspension or cancellation, or in accordance with an environment protection notice. A penalty of 100 penalty units is prescribed.

Subdivision 2 – Licences in relation to existing lawful activities

42D. Persons to whom licences for existing lawful activities may be granted

Subsection (1) provides that a person who holds an existing authorisation for a finfish farming activity or who is otherwise lawfully conducting an activity is taken to have applied for an environmental licence on the day the section commences.

Subsection (2) provides that the EPA Director may nominate the person who is responsible for an existing activity. The identity of the person may be unclear where the existing authorisation is a permit under the *Land Use Planning and Approvals Act 1993* (such permits are not granted to anyone in particular and are not necessarily issued to the person responsible for an activity), or where there is no existing authorisation applicable to a lawful activity.

Subsection (3) provides that a sub-lessee of a marine farming lease, who is carrying out a finfish farming activity on the sub-lease, is taken to have applied for an environmental licence on the day the section commences (even if that person does not hold the relevant marine farming licence).

42E. Grant of licences in relation to existing lawful activities

Subsection (1) provides that the EPA Director must grant an environmental licence to a person referred to in section 42D (the operator of an existing, lawful finfish farming activity).

Subsection (2) provides that a licence may not be granted to more than one person, unless the persons comprise a trust. Considerable difficulty can be experienced in the regulation of an activity where the authorisation is held jointly by more than one person, except in the case of a trust.

Subsection (3) provides for joint operators of an existing activity to nominate the person who will be the holder of the environmental

licence. This will be necessary in order for the Director to comply with subsection (2).

Subsection (4) provides that activities conducted at more than one location and under more than one existing authorisation may be granted a single licence, subject to the satisfaction of criteria that will be prescribed in regulations.

Subsection (5) provides for a licence to be granted for a fixed period or indefinitely, subject to subsection (6).

Subsection (6) provides that an environmental licence must be granted for the same period or with the same expiry date as the existing authorisation for the activity.

Subsection (7) provides that subsection (6) does not apply where a single licence is to be granted to replace two or more existing authorisations with differing validity periods or expiry dates (in which case the Director would determine the appropriate period or expiry date in accordance with subsection (5)).

Subsection (8) requires a licence holder to be notified of the grant of a licence, any conditions or restrictions and the reasons for them, and appeal rights.

42F. Conditions of licences in relation to existing lawful activities

Subsection (1) provides for the Director to impose conditions and restrictions on an environmental licence.

Subsection (2) provides that the conditions or restrictions imposed on a licence are to include, but are not limited to, conditions, restrictions or requirements that are substantially the same as those of an environmental nature on the existing authorisation for the activity (if any).

Subsection (3) provides that a new condition or restriction of a licence relating to biomass, product, raw material, water, source of energy or a pollutant may not be of substantially the same effect as a condition, restriction or requirement imposed in accordance with subsection (2). This reinforces subsection (2) by ensuring that a new condition of one of the specified types, even though not substantially the same as an existing one, may not be of the same effect as an existing one of a specified type.

Subsection (4) provides an exception to subsection (3) for a condition in accordance with section 42Z(2)(m) (a requirement to prepare and comply with an environmental improvement program, which relates to one or more of the matters referred to in subsection 3)).

Subsection (5) provides that subsections (2) and (3) do not apply where a licence is granted which replaces more than one existing authorisation and the conditions or restrictions of the existing authorisations are inconsistent. In such a case the Director would determine appropriate conditions or restrictions in accordance with subsection (6).

Subsection (6) provides that, where a licence is granted which replaces more than one existing authorisation and the conditions or restrictions of the existing authorisations are inconsistent, any of the existing conditions or restrictions may be imposed on the licence. It further provides that a new condition or restriction of a licence relating to biomass, product, raw material, water, source of energy or pollutant may not be of substantially the same effect as a condition, restriction or requirement of an existing authorisation (which has similar effect to subsection (2)).

42G. Effect of decision to grant licence in relation to existing authorisations

Section 42G is inserted to prescribe the status of various existing authorisations after an environmental licence is issued for an existing finfish farming activity.

Subsection (1) provides that subsection (2) applies to a finfish farming activity for which an environmental licence is issued and where the activity was previously authorised under a permit or special permit (issued under the *Land Use Planning and Approvals Act 1993*).

Subsection (2) provides that, for an activity specified in subsection (1), any condition or restriction of the permit or special permit that was imposed by the EPA Board becomes void when the environmental licence is issued. It further provides that any condition or restriction of the permit or special permit, or variation of same, that was imposed under an environment protection notice issued under section 44(1)(d) or 44(2)(d), becomes void when the environmental licence is issued. It also provides that any such environment protection notice is taken to be revoked.

Subsection (2) also provides that any other condition or restriction of an environmental nature in the permit or special permit that is inconsistent with an environmental licence condition or restriction becomes void when the licence is issued.

Subsection (3) provides that, where an environmental licence is issued for a finfish farming activity previously authorised under an exemption permit under the *Living Marine Resources Management Act 1995* or the *Inland Fisheries Act 1995*, any condition or restriction of the permit that is inconsistent with an environmental licence condition or restriction becomes void when the licence is issued.

Subsection (4) provides that, where an environmental licence is issued for a finfish farming activity previously authorised under an environment protection notice other than a notice issued under section 44(1)(d) or 44(2)(d), the notice is taken to be revoked when the licence is issued.

Subsection (5) provides that, where an environmental licence is issued for a finfish farming activity previously authorised under a fish farm licence or a marine farming licence, any condition or restriction of the fish farm licence or a marine farming licence that is inconsistent with an environmental licence condition or restriction becomes void when the licence is issued.

42H. Notification that existing authorisation is void or condition inconsistent

Subsection (1) provides that, where an environmental licence is issued for a finfish farming activity, the EPA Director may notify a person that either the existing authorisation for the activity or a condition or restriction of the authorisation (that is inconsistent with an environmental licence condition or restriction) is void.

Subsection (2) provides that, where the Director notifies a person in accordance with subsection (1) that a condition or restriction of an existing authorisation is void, it is void.

Subsection (3) provides that nothing in subsection (2) is to be taken to mean that, where a person has not been notified in accordance with subsection (1), a condition or restriction is not void.

Subdivision 3 – Licences where no existing authority

42I. Applications for environmental licences

Subsection (1) provides that a person may apply to the EPA Director, in an approved form, for an environmental licence in relation to a finfish farming activity.

Subsection (2) provides that, where a licence application relates to a marine farming activity, the Director may refuse to accept the application and instead refer it to the EPA Board for an assessment under section 27AA. The Board would subsequently grant or refuse to grant a licence. The Director may in some circumstances consider that a full assessment by the Board is appropriate.

Subsection (3) provides that the Director must make a decision under subsection (2), on whether or not to refer an application to the Board, in accordance with criteria to be prescribed in regulations.

Subsection (4) provides that subsection (2) applies to an application for an environmental licence for a proposed finfish farming activity

on a marine farming sub-lease, even if the relevant marine farming licence does not relate to the proposed activity on the sub-lease.

Subsection (5) provides that the Director must refuse to accept a licence application in relation to a marine farming activity where neither a marine farming lease has been granted nor an exemption permit issued under the *Living Marine Resources Management Act 1995*.

Subsection (6) requires the Director to refuse to accept a licence application where the application, or the associated activity, has been or will be referred to the Board under section 25(1), 25A or 27AA(1). The assessment of the proposed activity under one of those processes will result in the granting or refusal of a licence, without the need for an application to be accepted under this section.

Subsection (7) provides that the Director may refuse to accept a licence application where the proposed activity has, or is likely to be, declared either a project of regional significance under the *Land Use Planning and Approvals Act 1993* or a project of State significance under the *State Policies and Projects Act 1993*. The assessment of a proposed activity by the Board as a project of regional significance will result in the granting or refusal of a licence, without the need for an application. The assessment of a proposed activity as a project of State significance exempts the activity from the requirement for any other type of approval at the State level.

42J. Grant of licence by Director

Subsection (1) provides that the EPA Director must either grant or refuse to grant a licence in response to an application under section 42I, unless the Director has refused to accept the application under the provisions of the latter.

Subsection (2) provides that the Director may grant a licence to a person if satisfied that it is appropriate to do so. This is to ensure that the Director does not make an arbitrary decision.

Subsection (3) provides that an activity conducted at more than one location may be granted a single licence, subject to the satisfaction of criteria that will be prescribed in regulations.

Subsection (4) provides that a licence may not be granted to more than one person, unless the persons comprise a trust. Considerable difficulty can be experienced in the regulation of an activity where the authorisation is held jointly by more than one person, except in the case of a trust.

Subsection (5) provides for the Director to impose conditions and restrictions on an environmental licence.

Subsection (6) provides for a licence to be granted for a fixed period or indefinitely. It may be desirable to grant a licence for a fixed period where for example there is uncertainty about the likely environmental impacts of the activity, or where it is for the purposes of research. It may obviate the need to suspend or cancel a licence which is granted for an indefinite period.

42K. Grant of licence by Board

Subsection (1) defines terms for the purposes of the section.

Subsection (2) provides that the EPA Board may summarily refuse to grant an environmental licence on one or more of the grounds specified in section 42L(1) or (2), rather than conducting an assessment of a proposed finfish farming activity.

Subsection (3) provides that the Board must, as soon as practicable after it has completed an assessment, either grant or refuse to grant an environmental licence for the proposed finfish farming activity.

Subsection (4) provides that the Board may grant a licence to a person if satisfied that it is appropriate to do so. This is to ensure that the Board does not make an arbitrary decision.

Subsection (5) provides that an activity conducted at more than one location may be granted a single licence, subject to the satisfaction of criteria that will be prescribed in regulations.

Subsection (6) provides that a licence may not be granted to more than one person, unless the persons comprise a trust. Considerable difficulty can be experienced in the regulation of an activity where the authorisation is held jointly by more than one person, except in the case of a trust.

Subsection (7) provides for the Board to impose conditions and restrictions on an environmental licence.

Subsection (8) provides for a licence to be granted for a fixed period or indefinitely. It may be desirable to grant a licence for a fixed period where for example there is uncertainty about the likely environmental impacts of the activity, or where it is for the purposes of research. It may obviate the need to suspend or cancel a licence which is granted for an indefinite period.

42L. Refusal by Director or Board to grant licence

Subsection (1) provides that the EPA Director or Board (as the case may be, under section 42J or 42K) must refuse to grant an environmental licence to a person if at the time of application the person is disqualified under section 42ZF(8) from applying for a licence.

Subsection (2) specifies certain grounds on which the Director or Board may refuse to grant an environmental licence to a person – contravention of the Act, conviction for an offence under the Act or other legislation (on the part of the person or an associate of the person), not being a fit and proper person, not being an adult (where the applicant is a natural person), or not having paid due fees.

Subsection (3) provides a criterion for determining whether a person is a “fit and proper person” for the purposes of subsection (2)(c). The criterion relates to so-called ‘phoenix’ companies. This is the practice of forming a new company to avoid the consequences of the malpractices of a predecessor company. Subsection (3) provides, in effect, that the Director or Board may refuse to grant an environmental licence to a person if that person was associated with another person or company that has committed an environmental offence, failed to comply with an environmental duty or caused environmental harm but has sought to be declared bankrupt or to be deregistered as a company to avoid liability.

Subsection (4) provides that subsection (3) does not limit the circumstances in which the Director or the Board may determine that a person is not a fit and proper person.

Subsection (5) provides that subsections (1) and (2) do not limit the circumstances in which the Director or Board may refuse to grant an environmental licence. Other circumstances may include unacceptable adverse environmental impacts of the proposed activity, identified during an assessment.

42M. Notifications of grant or refusal of licences or refusal to accept application for licences

Subsection (1) provides that the EPA Director must, as soon as practicable after deciding to grant or refuse to grant an environmental licence, give a relevant notice.

Subsection (2) provides that the EPA Board must, as soon as practicable after deciding to grant or refuse to grant an environmental licence, give a relevant notice to the applicant or proponent and the planning authority or other responsible body. The recipients of the notice will depend upon the particular type of assessment conducted by the Board.

Subsection (3) provides that the Board must, as soon as practicable after deciding to grant or refuse to grant an environmental licence, give a relevant notice to persons who made representations during the public consultation period of an assessment.

Subsection (4) provides that the Director, if he/she refuses to accept an application for a licence under the provisions of section 42I, give a relevant notice.

Subsection (5) defines “relevant notice” and the matters that it must include – the decision, reasons for it and appeal rights.

Subdivision 4 – Variation of licences

42N. Variation of licence by Director at holder’s request

Subsection (1) provides that the holder of an environmental licence may apply to the EPA Director for a variation of the licence.

Subsection (2) provides that the Director must refuse to accept a licence variation application for a proposed expansion, intensification or modification of an activity where the Director is of the opinion that a permit or special permit is required under the *Land Use Planning and Approvals Act 1993*. In such a case the permit application will be referred to the Board, which will conduct an assessment and subsequently vary or refuse to vary the licence, without the need for a licence variation application.

Subsection (3) provides that, unless the Director has refused under subsection (2) to accept an application, the Director must vary or refuse to vary the licence or alternatively refer it to the Board for assessment by the Board under section 27AA (subject to section 42O).

Subsection (4) provides that the Director may vary a licence if satisfied that it is appropriate to do so. This is to ensure that the Director does not make an arbitrary decision.

Subsection (5) specifies certain grounds on which the Director may refuse to vary an environmental licence – contravention of the Act, conviction for an offence under the Act or other legislation, or non-payment of due fees.

Subsection (6) provides that subsection (5) does not limit circumstances in which the Director may refuse to vary an environmental licence. Other circumstances may include unacceptable adverse environmental impacts of the proposed expansion, intensification or modification.

Subsection (7) requires the Director to notify the licence holder of his/her decision on a licence variation application, the reasons for it, and appeal rights.

42O. Referral to Board of certain applications for variation

Subsection (1) provides that, where a licence variation application relates to a marine farming activity, and a variation of the relevant

marine farming licence is also required, the Director may refuse to accept the application and instead refer it to the EPA Board for an assessment under section 27AA. The Board would subsequently vary or refuse to vary the licence.

Subsection (2) provides that the Director must make a decision under subsection (1), on whether or not to refer an application to the Board, in accordance with criteria to be prescribed in regulations.

Subsection (3) provides that, where a licence variation application relates either to a marine farming activity for which a variation of the relevant marine farming licence is not required or to another type of activity for which a land use planning permit is not required, the EPA Director must determine whether the proposed variation is minor or major.

Subsection (4) defines “minor” and “major” for the purposes of subsections (3) and (5), with reference to the characteristics set out in Schedule 5 of the Act.

Subsection (5) provides that, where the Director determines that a proposed variation is major, he/she must instead of accepting the application refer it to the Board for assessment under section 27AA. The Board will subsequently vary or refuse to vary the licence.

42P. Variation of licence on Director's initiative

Subsection (1) provides that the EPA Director may on his/her own initiative vary an environmental licence.

Subsection (2) provides that the Director may only vary a licence if at least 14 days' notice has been given to the licence holder. The notice must specify the proposed variation and the reasons for it and invite the licence holder to make a submission stating reasons for opposing the variation. The Director must consider any reasons submitted before varying the licence.

Subsection (3) provides that a licence holder may make a submission in response to the invitation in subsection (2), within 14 days.

Subsection (4) provides that the Director must notify the licence holder of a licence variation, the details of it and reasons for it, and appeal rights.

42Q. Variation by Board of licence

Subsection (1) defines terms for the purposes of the section.

Subsection (2) provides that the EPA Board may summarily refuse to vary an environmental licence on one or more of the grounds specified in subsection (5), rather than conducting an assessment of

the proposed expansion, intensification or modification of the activity to which the licence relates.

Subsection (3) provides that, as soon as practicable after the Board has completed an assessment, it must vary or refuse to vary a licence.

Subsection (4) provides that the Board may vary a licence if satisfied that it is appropriate to do so. This is to ensure that the Board does not make an arbitrary decision.

Subsection (5) specifies certain grounds on which the Board may refuse to vary an environmental licence – contravention of the Act, conviction for an offence under the Act or other legislation, or non-payment of due fees.

Subsection (6) provides that subsection (5) does not limit the circumstances in which the Board may refuse to vary an environmental licence. Other circumstances may include unacceptable adverse environmental impacts of the proposed expansion, intensification or modification identified by the Board during an assessment.

42R. Notice of decision by Board in relation to variation

Subsection (1) provides that the EPA Board must, as soon as practicable after deciding to vary or refuse to vary an environmental licence, give a relevant notice to the applicant and the planning authority or other responsible body. The recipients of the notice will depend upon the particular type of assessment conducted by the Board.

Subsection (2) provides that the Board must, as soon as practicable after deciding to vary or refuse to vary an environmental licence, give a relevant notice to persons who made representations during the public consultation period of an assessment.

Subsection (3) defines “relevant notice” and the matters that it must include – the decision and reasons for it, details of any variation and reasons for it, and appeal rights.

Subdivision 5 – Renewal of licences

42S. Applications for renewal of licences

Subsection (1) provides that the holder of a fixed-term environmental licence may apply to the EPA Director for renewal of the licence.

Subsection (2) provides that an application for licence renewal is invalid unless it is submitted before a specified number of days prior to the licence expiry date. The specified number of days will be

prescribed in regulations. This is to ensure that sufficient time is available to process the application before the licence expires.

Subsection (3) provides for exceptions to be made to subsection (2), at the Director's discretion.

Subsection (4) provides that, despite section 42ZC(2), a licence remains in force beyond its expiry date where a valid renewal application has been made but the Director has not yet made a decision on the application. This is to allow for exceptional delays in processing an application.

42T. Renewal of licences on application

Subsection (1) provides that the EPA Director, after receiving a valid application for the renewal of a fixed-term environmental licence, must either renew or refuse to renew the licence.

Subsection (2) provides that the Director may renew a licence if satisfied that it is appropriate to do so. This is to ensure that the Director does not make an arbitrary decision.

Subsection (3) provides that the Director must not renew a licence if the licence contains a condition that the licence may not be renewed (this type of condition is provided for under section 42Z(2)(k)). In this situation it would usually be open to the licence holder to apply for a new licence under the provisions of Subdivision 3.

Subsection (4) specifies certain grounds on which the Director or Board may refuse to renew an environmental licence – the applicant's contravention of the licence conditions, conviction for an offence under the Act or other legislation, not being a fit and proper person, or not having paid due fees.

Subsection (5) provides that subsection (4) does not limit the circumstances in which the Director may refuse to grant an environmental licence. Other grounds may include unacceptable environmental impacts of the activity which have emerged or been identified since the licence was first granted.

Subsection (6) provides that, where a licence contains a condition that the licence may only be renewed subject to limitations, the Director must renew the licence in accordance with that condition (this type of condition is provided for under section 42Z(2)(k)).

Subsection (7) provides that the Director may impose conditions or restrictions on a renewed licence, including conditions additional or different to those already on the licence. This may be necessary to, for example, address environmental issues that have emerged since the licence was granted.

Subsection (8) provides for a licence to be renewed for a fixed period or indefinitely. It may be desirable to renew a licence for a fixed period where for example there are issues unresolved from the previous validity period. It may obviate the need to suspend or cancel a licence which is renewed for an indefinite period.

Subsection (9) requires the Director to notify a licence holder of his/her decision on a renewal application, the reasons for it, any conditions or restrictions imposed and the reasons for them, and appeal rights.

42U. Renewal of licence on Director's own initiative

Subsection (1) provides that the EPA Director may renew an environmental licence on his/her own initiative. It may be necessary to do so in exceptional circumstances, on one or more of the grounds specified in subsection (3).

Subsection (2) provides that the Director may renew a licence under subsection (1) whether or not the licence has expired.

Subsection (3) specifies the grounds on which the Director may renew a licence on his/her own initiative.

Subsection (4) provides that the Director may impose conditions or restrictions on a renewed licence, including conditions additional or different to those already on the licence. This may be necessary to, for example, address environmental issues that have emerged since the licence was granted.

Subsection (5) provides for a licence to be renewed for a fixed period or indefinitely. It may be necessary to renew the licence for an indefinite period where, for example, the duration of rehabilitation works is uncertain.

Subsection (6) requires the Director to notify the licence holder of a licence renewal, any conditions or restrictions imposed and the reasons for them, and appeal rights.

Subdivision 6 – Transfer of licences

42V. Transfer of licence only authorised if approved

This section provides that the holder of an environmental licence must not transfer or purport to transfer a licence, and that transfer of a licence by any person other than the EPA Director is of no effect. This is to remove any doubt about the Director's sole prerogative to transfer a licence.

42W. Transfer of licences

Subsection (1) provides that the holder of an environmental licence may apply to the EPA Director for the transfer of the licence to another person.

Subsection (2) provides that the Director may, in response to an application, either transfer or refuse to transfer a licence.

Subsection (3) provides that the Director may transfer a licence if satisfied that it is appropriate to do so. This is to ensure that the Director does not make an arbitrary decision.

Subsection (4) provides that the Director may impose conditions or restrictions on a transferred licence, including conditions additional or different to those already on the licence. This may be necessary, for example, to address environmental issues that have emerged since the licence was granted or to address issues specific to the transferee.

Subsection (5) provides for a licence to be renewed for a fixed period or indefinitely. It may be desirable to issue a transferred licence for a fixed period where for example there is uncertainty about the capacity of the transferee to properly conduct the activity. It may obviate the need to suspend or cancel a transferred licence which is issued for an indefinite period.

Subsection (6) requires the Director to notify a licence holder of his/her decision on a transfer application, the reasons for refusal if refused, any conditions or restrictions newly imposed and the reasons for them, and appeal rights.

42X. Refusal to transfer licence

Subsection (1) provides that a licence must not be transferred to more than one person, unless the persons comprise a trust. Considerable difficulty can be experienced in the regulation of an activity where the authorisation is held jointly by more than one person, except in the case of a trust.

Subsection (2) provides that the Director must not transfer a licence to a person if that person is disqualified from holding a licence, where a condition of the licence precludes transfer, or where the licence relates to a marine farming activity and the relevant lease has not been transferred or the person does not hold an exemption permit under the *Living Marine Resources Management Act 1995*.

Subsection (3) provides that the Director may refuse to transfer a licence to a person on one or more of the grounds in section 42L(2), in relation to the proposed transferee – contravention of the Act, conviction for an offence under the Act

or other legislation (on the part of the proposed transferee or an associate of the transferee), not being a fit and proper person, not being an adult (where the proposed transferee is a natural person), or not having paid due fees.

Subsection (4) provides that the Director may refuse to transfer a licence where the current licence holder has not paid due fees.

Subsection (5) provides that subsections (1)-(4) do not limit the circumstances in which the Director may refuse to transfer a licence.

42Y. Director may require condition to be satisfied before transfer

Subsection (1) provides that the Director may make an agreement that a licence will be transferred subject to conditions or restrictions specified in the agreement. This may be appropriate where, for example, there is a need to upgrade plant or to rehabilitate environmental damage prior to transfer of the licence.

Subsection (2) provides that failure to comply with a condition or restriction of an agreement is a ground for the Director to refuse to transfer a licence.

Subsection (3) provides that the conditions or restrictions of an agreement may relate to the licence holder, the proposed transferee or another person.

Subdivision 7 – General provisions

42Z. Conditions and restrictions of licences

Subsection (1) provides that the conditions or restrictions imposed on an environmental licence are those that the EPA Director or Board (as the case may be) thinks fit to impose and which will further the objectives of the Act.

Subsection (2) specifies various types of conditions and restrictions that may be imposed on a licence, without limiting the generality of subsection (1). These are as follows.

- (a) A condition or restriction limiting the amount of biomass that may be contained at marine farming activity or inland fish farm. Such a condition will serve to limit environmental impact (all other things being equal).
- (b) A condition or restriction limiting the capacity of an activity to produce finfish or finfish product. Such a condition will also serve to limit environmental impact.
- (c) A condition or restriction limiting the amount of raw materials (including smolt) that may be introduced into an

activity. Such a condition will also serve to limit environmental impact.

- (d) A condition or restriction limiting the amount of water or energy that may be used for an activity. This may serve to limit environmental impact in some circumstances.
- (e) A condition or restriction that limits or prohibits the production or emission of a pollutant at an activity. Such a condition will limit environmental impact.
- (f) A condition or restriction requiring the holder of the environmental licence to prepare and submit an environmental management plan for the activity. This is to ensure that the licence holder is aware of environmental issues and has appropriate procedures for their management.
- (g) A condition or restriction requiring the holder of the environmental licence to undertake monitoring of the environmental effects of the activity and to report the results of the monitoring to the Director. Environmental monitoring data is often essential to the regulation of an activity by the EPA.
- (h) A condition requiring the holder of the environmental licence to decommission or rehabilitate the site of the activity after ceasing the activity. Such a condition will limit residual and ongoing environmental impacts.
- (i) A condition requiring the holder of the environmental licence to take measures to limit the environmental effects of traffic or vessel movements to and from the activity. Such movements may cause environmental nuisance or harm and may need to be controlled and restricted in various ways.
- (j) A condition that gives effect to a State policy or an environment protection policy. The provisions of such policies should be implemented by regulatory authorities through, inter alia, the conditions of approval instruments.
- (k) A condition that prevents or limits the renewal of a licence. It may be necessary to prevent the renewal of a fixed-term licence because it is likely that environmental impacts beyond a certain point of time will be unacceptable, or for other reasons. It may be necessary to put restrictions on the renewal of a fixed-term licence, for example the permissible production level may need to be reduced for environmental reasons in the event that the licence is renewed.

- (l) A condition or restriction to secure compliance with the general environmental duty. This duty is prescribed in section 23A of the Act. Section 23A(3) currently provides that the Director may issue an environment protection notice to secure compliance with the duty, and it is also appropriate that the Director be able to secure compliance through an environmental licence condition for those activities which require a licence.

- (m) A condition or restriction requiring the holder of the environmental licence to prepare a draft environmental improvement programme (in accordance with section 39) and to comply with the programme when approved by the Board. This particularly (but not exclusively) applies to existing activities that will be granted a licence under Subdivision 2 – a mechanism is required to address any non-compliance with the conditions of the existing authorisation.

Subsection (3) provides that Division 7 applies to a draft environmental improvement programme prepared and submitted under a condition of the type in subsection (2)(m). Thus the appeal right and protection from prosecution under Division 7 will be available to the environmental licence holder. Subsection (3) also provides that any requirements of an approved environmental improvement programme are taken to be conditions of the licence. The licence holder will thus contravene section 42C(4) as well as section 42(2) if a condition of the environmental improvement programme is contravened while the programme is in force. Paragraph (c) of subsection (3) provides that any activity undertaken in accordance with an environmental improvement programme is not to be taken to constitute an expansion, intensification or modification of the activity (otherwise, the variation provisions of Subdivision 4 would apply).

Subsection (4) provides that, where a marine farm development plan under the *Marine Farming Planning Act 1995* applies to an activity, when determining the environmental licence conditions and restrictions the Director or Board (as the case may be) is take into account the conditions, restrictions and management controls of the plan. This does not require the conditions, restrictions and management controls of a plan to be imposed on a licence or reflected in a licence, but it makes them a consideration in the determination of conditions.

Subsection (5) provides that the consideration of the conditions, restrictions and management controls of a marine farm development plan does not limit the conditions or restrictions that may be imposed on an environmental licence.

Subsection (6) provides that, where there is an inconsistency between an environmental licence condition or restriction and a condition, restriction or management control of a marine farm development plan, the licence condition or restriction prevails.

Subsection (7) provides that where there is an inconsistency between an environmental licence condition or restriction and a condition or restriction of marine farm licence an inland fish farm licence or an exemption permit, the environmental licence condition prevails.

42ZA. Director may require information to be provided

Subsection (1) provides that the section applies where a person operating an existing finfish farming activity is taken to have applied for an environmental licence, and where a person has otherwise applied for the grant, variation, renewal or transfer of an environmental licence.

Subsection (2) provides that the Director may require an applicant to provide information and to verify by statutory declaration any information provided. Provision of environmental and related information will often be essential to making a sound decision on an application.

Subsection (3) provides that, until a requirement for information in made accordance with the section has been complied with, the Director may refuse to make any related decision under Division 8.

Subsection (4) provides that it is an offence, with a penalty of 100 penalty units, to not comply with a requirement to provide information that relates to subsection (1)(a). This relates to a deemed licence application under section 42D for an existing finfish farming activity. Because the authorisation for an existing activity will remain in force until such time as the Director grants an environmental licence, the responsible person could decline to provide information requested by the Director which is required in order to prepare a licence, and the person could continue to lawfully operate the activity. A sanction is required to deter persons from so declining to provide information. In relation to the matters in subsection (1)(b)-(e), the responsible person will have applied to the Director for the grant of a licence or action in relation to an existing licence and will have an incentive to provide any information required, as failure to do so would delay the processing of the application.

42ZB. Issue of licence document in relation to licence granted, varied, transferred or renewed

Subsection (1) provides that the EPA Director must issue a licence document to the relevant person when an environmental licence is granted, varied, renewed or transferred.

Subsection (2) provides that a licence document must not be issued where an appeal has been lodged against a relevant decision by the Director or Board, and where section 42ZK provides that the relevant decision is of no effect until the appeal is determined.

Subsection (3) provides an exception to subsection (2) in the case of a licence granted under section 42E. Where an appeal is lodged against the conditions of a licence granted for an existing finfish farming activity, it will be necessary to issue a licence document and have a licence in force while the appeal is proceeding in order that the activity may be regulated by the EPA.

Subsection (4) provides that, where the Board determines under section 42K or 42Q to grant or vary an environmental licence for an activity that also requires a permit or special permit under the *Land Use Planning and Approvals Act 1993*, the Director must not issue a licence document unless and until the planning authority has granted a permit. Issuing a licence document prior to the granting of a permit would serve no purpose, and the document would have to be withdrawn if the planning authority's decision is successfully appealed.

Subsection (5) provides that a licence document must be in an approved form, which may be electronic.

Subsection (6) specifies certain matters that must, as a minimum, be included in a licence document.

Subsection (7) provides that a copy of every licence document issued by the Director must be provided to the relevant planning authority. A planning authority may need to be aware of environmental licence conditions for a finfish farming activity within its municipal area, regardless of whether or not a permit is required under the *Land Use Planning and Approvals Act 1993*.

Subsection (8) provides that a licence document may be issued, reissued or cancelled following a determination of the Appeal Tribunal relating to a decision under Part 3 of the Act.

42ZC. When licences take and cease to have effect

Subsection (1) provides that the section is subject to section 42ZK (the latter specifies the status of environmental licences that are subject to an appeal).

Subsection (2) provides that a licence granted or renewed takes effect on the day that the licence document is served.

Subsection (3) provides that a licence variation takes effect on that day that the licence document for the varied licence is served.

Subsection (4) provides that a transferred licence takes effect on the day that the licence document is served on the transferee.

Subsection (5) specifies the day on which licences cease to have effect in several other situations.

42ZD. Deferral of certain decisions pending outcome of proceedings

Subsection (1) defines the term “relevant person” for the purposes of the section – an applicant, proponent or proposed transferee, or an associate of such a person.

Subsection (2) specifies the provisions of the Act, under which decisions may be made, to which the section applies.

Subsection (3) provides that the EPA Director or Board (as the case may be) may defer making a decision pending the outcome of court proceedings against a relevant person. Conviction of an offence is one of the grounds for refusing to grant, vary, renew or transfer an environmental licence, so it is appropriate to await the outcome of any current proceedings before making a decision.

42ZE. Notices of certain decisions to be given

Subsection (1) defines certain terms for the purposes of the section.

Subsection (2) provides that the EPA Director is to notify the Director of Inland Fisheries of all applications and all major decisions under the Act relating to inland fish farming. This will assist the coordination of regulation, and complements the provisions under clause 26 of the Bill for notification to the EPA Director of applications and decisions under the *Inland Fisheries Act 1995*.

Subsection (3) provides that the EPA Director is to notify the Secretary of the Department of all applications and all major decisions under the Act relating to marine farming. This will assist the coordination of regulation, and complements the provisions under clause 30 of the Bill for notification to the EPA Director of applications and decisions under the *Living Marine Resources Management Act 1995*.

Subdivision 8 – Surrender, suspension and cancellation of licences

42ZF. Suspension, or cancellation, of licences

Subsection (1) provides that the EPA Director may, by notice to the holder of an environmental licence, suspend or cancel the licence. This is subject to the provisions of section 42ZG, which require advance notification to the licence holder.

Subsection (2) specifies the grounds on which a licence may be suspended or cancelled – contravention of a condition or restriction of a licence, conviction for an offence under the Act or other legislation, cancellation or expiry of a related marine farming lease, or non-payment of due fees.

Subsection (3) provides that a licence is not in force while it is suspended.

Subsection (4) specifies the contents of a notice that may be issued under subsection (1) – duration of suspension where the licence is suspended, reasons for suspension or cancellation, and appeal rights.

Subsection (5) specifies certain actions that a notice of suspension may require before the suspension is lifted, without limiting the actions that may be required.

Subsection (6) provides that a person does not commit an offence under section 42C if complying with a requirement of a notice under subsection (1). This provision is particularly necessary to ensure that a person is not taken to have committed the offence of carrying out a finfish farming activity without a licence, when carrying out an action required under a notice of suspension.

Subsection (7) provides that the Director may notify the holder of an environmental licence that a suspension has ceased.

Subsection (8) provides that the Director may, after cancelling a licence, disqualify the former holder of the licence from holding another licence either for a specified period or indefinitely.

Subsection (9) provides that a person may only be disqualified under subsection (8) after the appeal period for licence cancellation ends or, in the event that an appeal is lodged, if the appeal is not upheld.

42ZG. Notice to be given before suspension or cancellation

Subsection (1) provides that the EPA Director must, before suspending or cancelling a licence under section 42ZF(1), provide 14 days' notice to the licence holder of the intention to suspend or cancel the licence. The advance notice must specify the grounds on which the licence is to be suspended or cancelled, and invite the licence holder to provide reasons why the licence should not be suspended or cancelled. The Director must consider any reasons submitted before making a decision on suspension or cancellation.

Subsection (2) provides that, after complying with subsection (1) in relation to a proposed cancellation of a licence, the Director may suspend the licence instead of cancelling it.

Subsection (3) provides that the licence holder may submit reasons that a licence should not be suspended or cancelled, in response to an invitation under subsection (1).

42ZH. Surrender of licence

Subsection (1) provides that a licence holder may apply to the EPA Director for approval to surrender a licence.

Subsection (2) provides that the Director may approve the surrender of a licence with or without conditions or restrictions, or refuse to approve the surrender. It may be necessary to impose conditions or restrictions on surrender that relate to such matters as the rehabilitation of environmental harm.

Subsection (3) requires the Director to notify the licence holder of his/her decision, the reasons for it, and appeal rights.

Subsection (4) provides that, where surrender of a licence is approved, the licence ceases to have effect on the day that notice is given or, where the surrender is subject to conditions or restrictions, the day on which those conditions or restrictions are satisfied.

Subsection (5) provides that a person whose licence is surrendered is not entitled to any compensation or refund. This is necessary to protect the EPA from litigation, for example where a licence holder surrenders a licence because its conditions or restrictions make the relevant activity economically unviable.

Subdivision 9 – Appeals in relation to licences

42ZI. Right of appeal

Subsection (1) provides that a person intending to carry out a finfish farming activity may appeal to the Resource Management and Planning Appeal Tribunal (the Appeal Tribunal) against a decision by the EPA Director or Board to refuse to grant an environmental licence.

Subsection (2) provides that a person to whom an environmental licence has been granted may appeal against conditions or restrictions imposed on the licence. In the case of an existing activity operating under an existing authorisation that is replaced by a licence, an appeal may only be made against a condition or restriction of the licence not substantially the same as one in the existing authorisation.

Subsection (3) provides for appeal by a licence holder against a range of decisions by the Director or Board in relation to an existing licence – variation or refusal to vary a licence, renewal or refusal to renew a licence, the condition or restrictions of a renewed licence, refusal to transfer a licence, conditions or restrictions of a transferred licence, suspension or cancellation of a licence, refusal to approve surrender of a licence, and conditions or restrictions of an approval to surrender a licence.

Subsection (4) provides that subsections (2) and (3) do not apply to a decision to impose a condition of the type specified in section 42Z(2)(m) – a condition requiring a licence holder to submit a draft environmental improvement programme and to comply with an approved program. Division 7 already provides a specific appeal right in relation to environmental improvement programmes.

Subsection (5) provides that an appeal must be lodged within 14 days after notification of the relevant decision under the Act.

42ZJ. Appeals by persons who have made representation under the Land Use Planning and Approvals Act 1993 or section 27G(2)
Subsection (1) defines the term “relevant representation” for the purposes of the section.

Subsection (2) provides that a person who has made a representation during the public consultation period of an assessment may, within 14 days after being notified of a decision by the EPA Board, appeal to the Appeal Tribunal against a decision to grant or refuse to grant an environmental licence, to vary or refuse to vary a licence, or to impose a condition or restriction on a licence.

Subsection (3) provides that subsection (2) does not apply to a decision to impose a condition of the type specified in section 42Z(2)(m) – a condition requiring a licence holder to submit a draft environmental improvement programme and to comply with an approved program. The imposition of such a condition is a regulatory matter that relates to existing activities.

42ZK. Effect of notice of appeal

Subsection (1) provides that, where an appeal is lodged against a decision to grant a licence, the licence has no effect until the appeal is determined (when the appeal is determined the licence will either be issued or not issued, depending on the outcome of the appeal). This is similar to the provisions of the *Land Use Planning and Approvals Act 1993*, under which a permit has no effect where an appeal is lodged against the granting of the permit.

Subsection (2) provides that, where an environmental licence has been granted to replace an authorisation for an existing activity, but an appeal is lodged against a condition or restriction of the licence not substantially the same as one in the existing authorisation, the licence remains in effect but any condition or restriction appealed against has no effect until the determination of the appeal.

Subsection (3) provides that, where an appeal is lodged against a condition or restriction of a licence granted for a new activity, the licence has no effect until the appeal is determined.

Subsection (4) provides that, where an appeal is lodged against a decision to vary an existing licence, the variation has no effect until the appeal has been determined.

Subsection (5) provides that, where an appeal is lodged against a decision to refuse to renew an existing licence, the licence has no effect from the date on which it expires, until the appeal has been determined. A licence renewal is unlikely to be refused unless the Director is of the opinion that there are significant grounds for concern about the operation or environmental impact of the associated activity, and so it would be inappropriate for the activity to continue during an appeal.

Subsection (6) provides that, where an appeal is lodged against a decision by the EPA Director to renew a licence on his/her own initiative, the licence remains in effect until the appeal has been determined. The Director may only use the power to renew a licence on his/her own initiative where he/she is of the opinion that there is an environmental imperative, and so it would be inappropriate to suspend the operation of the licence during an appeal.

Subsection (7) provides that, where a licence has been renewed, but an appeal is lodged against a condition or restriction of the renewed licence, the condition or restriction remains in effect until the determination of the appeal. It is unlikely that the Director would impose a condition or restriction unless he/she is of the opinion that there is an environmental or regulatory imperative, and so it would be appropriate for the licence to be in full effect until the determination of the appeal.

Subsection (8) provides that, where a licence has been transferred but an appeal is lodged against a condition or restriction imposed on the licence, the condition or restriction remains in effect until the determination of the appeal. It is unlikely that the Director would impose a condition or restriction unless he/she is of the opinion that there is an environmental or regulatory imperative, and so it would be appropriate for the licence to be in full effect until the determination of the appeal.

Subsection (9) provides that, where an appeal is lodged against the suspension or cancellation of a licence, the suspension or cancellation remains in force until the determination of the appeal. The Director may only suspend or cancel a licence where he/she is satisfied that there is a regulatory or environmental imperative, and only after considering any objection lodged by the licence holder, and so it would be inappropriate for the relevant activity to continue during an appeal.

Subsection (10) provides that, where an appeal is lodged against a refusal to approve the surrender of a licence, the licence remains in effect until the determination of the appeal. It is likely that the Director would refuse to approve the surrender of a licence only in exceptional circumstances, where there is a regulatory or environmental imperative to keep the licence in effect, and so it would be inappropriate for the licence not to be in effect during an appeal.

Subsection (11) provides that, where an appeal is lodged against the imposition of a condition or restriction on the surrender of a licence, the condition or restriction remains in effect until the determination of the appeal. It is unlikely that the Director would impose a condition or restriction on the surrender of a licence except where there is a regulatory or environmental imperative, and so it would be appropriate for the condition or restriction to continue during an appeal.

Subsection (12) provides that a reference in the section to the determination of an appeal includes the withdrawal, abandonment or dismissal of an appeal.

42ZL. Power of Appeal Tribunal in relation to certain appeals

The section provides that, where a relevant appeal has been lodged, the Appeal Tribunal in its determination may direct the EPA Board to conduct an assessment under Division 1A, conduct it in manner directed by the Tribunal, and provide the Tribunal with the results of the assessment. This is to remove doubt that the Tribunal is able to reverse a decision of the Board to not assess a proposed activity, for example under section 25(1DAA)(b).

Clause 19

Section 44 amended (Environment protection notices)

Subsection (7A) is inserted in section 44 of the Act to provide that an environment protection notice prevails over an environmental licence where there is an inconsistency. The environment protection notice is the chief instrument used by the EPA Director to address urgent environmental issues, and it is important to ensure that it takes precedence even where its requirements are inconsistent with the conditions of a licence.

- Clause 20** **Section 48 amended (Civil enforcement proceedings)**
Section 48(5)(d) is amended to provide that the Appeal Tribunal may include in a civil enforcement order a requirement to comply with an environmental licence, in addition or alternatively to one of the instruments already specified.
- Clause 21** **Section 55A amended (General environmental duty defence)**
Paragraph (a) of section 55A(1) is amended to provide that the general environmental duty defence applies in the case of a pollutant emission offence where a person has complied with the relevant pollutant emission condition of an environmental licence. An exception is made in respect of licence conditions which specify limits on biomass, production capacity, raw materials and water or energy input for an activity, to ensure that compliance with these cannot be used as a surrogate for compliance with pollutant emission conditions for the purposes of the general environmental duty defence.
- Paragraph (b) of section 55A(1) is amended to provide that the general environmental duty defence applies in the case of any other type of offence where an environmental licence provides that compliance with specified conditions of the licence will satisfy the general environmental duty.
- Clause 22** **Section 98AA amended (Liability for payment of fees)**
Section 98AA(1) is amended to specify the persons liable to pay certain fees that may be prescribed in regulations in relation to environmental licences – for assessments under sections 27AA or 27AB, applications for licences, applications for licence variation, renewal, transfer and surrender, annual fees and other actions in relation to licences.
- Clause 23** **Section 102 amended (Regulations)**
Subsections (3) and (3A) of section 102 are amended to provide that fees may be prescribed in regulations in relation to environmental licences – for applications for licences, applications for licence variation, renewal, transfer and surrender, determination of licence conditions or restrictions (where an assessment process is not undertaken), annual fees and other actions in relation to licences.
- Clause 24** **Schedule 2 amended (Level 2 Activities)**
Clause 4 of Schedule 2 of the Act is amended to insert paragraph (h) – finfish farming. This has the effect of making finfish farming (as defined in section 5C) a level 2 activity for the purposes of the Act.

PART 3 – INLAND FISHERIES ACT 1995 AMENDED

- Clause 25 **Principal Act**
The Act to be amended under Part 3 is the *Inland Fisheries Act 1995* (No. 110 of 1995).
- Clause 26 **Section 51A inserted**
Subsection (1) defines certain terms for the purposes of the section.
- Subsection (2) provides that the Director of Inland Fisheries is to notify the EPA Director of all applications and all major decisions under the Act relating to finfish farming. This will assist the coordination of regulation, and complements the provisions under clause 18 of the Bill for notification to the Director of Inland Fisheries of applications and decisions under the *Environmental Management and Pollution Control Act 1994*.

PART 4 – LIVING MARINE RESOURCES MANAGEMENT ACT 1995 AMENDED

- Clause 27 **Principal Act**
The Act to be amended under Part 4 is the *Living Marine Resources Management Act 1995* (No. 25 of 1995).
- Clause 28 **Section 3 amended (Interpretation)**
Section 3 is amended to insert a definition of “finfish farming”.
- Clause 29 **Section 11 amended (Exemption from Act)**
Subsection (1A) is inserted in section 11 to preclude the Minister from using the section 11 power to exempt a person from a requirement to hold a marine farming licence under the Act, in relation to a finfish farming activity. The section 12(4) power effectively enables the Minister to do this where appropriate.
- Clause 30 **Section 92A inserted**
92A. Notification of Director, EPA of certain matters
Subsection (1) defines Director, EPA.
Subsection (2) provides that the Secretary is to notify the EPA Director of all applications and all major decisions under the Act relating to finfish farming. This will assist the coordination of regulation, and complements the provisions under clause 18 of the Bill for notification to the Secretary of applications and decisions under the *Environmental Management and Pollution Control Act 1994*.

PART 5 – MARINE FARMING PLANNING ACT 1995 AMENDED

- Clause 31 **Principal Act**
The Act to be amended under Part 5 is the *Marine Farm Planning Act 1995* (No. 31 of 1995).

- Clause 32** **Section 3 amended (Interpretation)**
Section 3 is amended to insert definitions of “Director, EPA” and “finfish farming”.
- Clause 33** **Section 8 amended (Marine Farming Planning Review Panel)**
Section 8 is amended so that the EPA Director is no longer a member of the Marine Farming Planning Review Panel. Instead there will be two new members – one who is a person with ability and experience in environmental management, and another with ability and experience in fish health and biosecurity. The Director will have new powers under the Principal Act to direct the Panel to do certain things (in relation to finfish farming only), and continued membership of the Panel could therefore be viewed as a conflict of interest.
- Clause 34** **Section 17A inserted**
17A. Role of Director, EPA in relation to marine farming development plans
Subsection (1) provides that the EPA Director may by notice require any matter to be contained in a draft marine farming development plan, draft plan amendment, or environmental impact statement for a plan or plan amendment. The Director may similarly require any matter to be contained in any draft plan, plan amendment or environmental impact statement. The latter would amount to a standing requirement for a particular matter to be contained in all draft plans, plan amendments and environmental impact statements or a specified class of these.
- Subsection (2) provides that the Marine Farming Planning Review Panel must give a notice issued by the Director under subsection (1) to a person preparing a draft marine farming development plan or draft plan amendment (as the case may be).
- Subsection (3) requires the Secretary to notify the Director of any application to prepare a draft plan in relation to finfish farming and provide a copy of the application. It also requires the Director to be notified of an approval by the Minister for the preparation of a draft plan. This will alert the Director to the need to consider issuing a notice under subsection (1)(a) or (b), if appropriate.
- Subsection (4) requires the Panel to provide the Director with a copy of any report forwarded to the Panel under section 28 in relation to fish farming. This will alert the Director to the need to consider issuing a notice under subsection (1)(d) or (e)(i), if appropriate.
- Subsection (5) requires the Panel to notify the Director of an application under section 33 for amendment of a plan, and to provide a copy of the application. This will alert the Director to the

need to consider issuing a notice under subsection (1)(a) or (b), if appropriate.

Subsection (6) requires the Panel to notify the Director of an approval by the Minister under section 33 to prepare a draft plan amendment, and to provide a copy of the request to the Minister. This also will alert the Director to the need to consider issuing a notice under subsection (1)(a) or (b), if appropriate.

Subsection (7) requires the Panel to notify the Director of a direction to a planning authority under section 34 to prepare a draft plan amendment in relation to finfish farming. This will alert the Director to the need to consider issuing a notice under subsection (1)(a) or (b), if appropriate.

Subsection (8) requires the Panel to notify the Director of the withdrawal of a draft plan amendment.

Subsection (9) requires the Panel to provide the Director with a copy of any report received the Panel under section 40 in relation to fish farming. This will alert the Director to the need to consider issuing a notice under subsection (1)(d) or (e)(ii), if appropriate.

Subsection (10) requires a planning authority to notify the Director of its intention to prepare a draft emergency plan under section 45, in relation to finfish farming. This will alert the Director to the need to consider exercising the power under section 45(1AA) in relation to the content of an emergency plan. A planning authority is also required to notify the Director of the approval of an emergency plan – this will assist the Director in his function of environmental regulation under the *Environmental Management and Pollution Control Act 1994*.

Clause 35

Section 19 amended (Area comprised in draft plan)

Section 19 is amended by inserting subsection (1A), which precludes a draft marine farming development plan from being prepared if all or part of the relevant area is a finfish farming exclusion zone made under section 19A. This is essential to giving effect to section 19A and preventing marine farming in exclusion zones.

Clause 36

Section 19A inserted

19A. Finfish marine farming exclusion zones

Subsection (1) provides that an area that is indicated on a map in Schedule 6 to be a finfish marine farming exclusion zone is such a zone.

Subsection (2) provides that the Governor may, by proclamation, amend Schedule 6 by adding or revoking a finfish marine farming exclusion zone map.

Subsection (3) provides that the Governor may only make a proclamation under subsection (2) if a draft of the proclamation has been approved by both Houses of Parliament.

Subsection (4) provides for approval or disallowance of a draft proclamation by each House of Parliament within five sitting days, or after that period if a disallowance motion has been tabled within five sitting days.

Subsection (5) provides that a proclamation takes effect on the day that its making is notified in the *Gazette*.

- Clause 37** **Section 21 amended (Draft marine farming development plan)**
Section 21(1) is amended by inserting paragraph (ca), which provides that a draft marine farming development plan that relates to finfish farming must contain any matter required by the EPA Director in a notice issued under section 17A(1).
- Clause 38** **Section 23 amended (Environmental impact statement)**
Section 23(2) is amended by inserting paragraph (ab), which provides that an environmental impact statement that relates to finfish farming must contain any matter required by the EPA Director in a notice issued under section 17A(1).
- Clause 39** **Section 24 amended (Draft management controls)**
Section 24 is amended by inserting subsection (2A), which provides that draft management controls that relate to finfish farming must contain any environmental management controls required by the EPA Director in a notice issued under section 17A(1).
- Clause 40** **Section 25 amended (Approval of draft plan)**
Section 25(3) is amended by inserting paragraph (ab), which provides that a draft plan is suitable for exhibition if it (inter alia) contains any matter relating to the environmental management of finfish required by the EPA Director in a notice issued under section 17A(1).
- Clause 41** **Section 29 amended (Consideration of draft plan, management controls and representations)**
Section 29(1) is amended to provide that the Panel must consider, in addition to the matters currently specified, any matter relating to environmental management of finfish farming required by the EPA Director in a notice issued under section 17A(1).
- Clause 42** **Section 31 amended (Final approval of draft plan)**
Section 31(1) is amended by inserting paragraph (b), which provides that the Panel must recommend to the Minister that a draft plan be approved if satisfied that the draft plan includes any matter relating to the environmental management of finfish farming

required by the EPA Director in a notice issued under section 17A(1).

- Clause 43** **Section 32 amended (Requirements for preparation of amendment)**
Section 32(2) is amended by inserting new paragraph (ab), which provides that an amendment of a marine farming development plan must not extend the area of the plan such that it includes an area that is within a finfish farming exclusion zone declared under section 19A.
- New paragraph (ac) is also inserted, which provides that a plan amendment must include any matter relating to the environmental management of finfish farming required by the EPA Director in a notice issued under section 17A(1).
- Clause 44** **Section 34 amended (Amendment of marine farming development plan)**
Section 34(1) is amended by inserting paragraph (ab), to provide that the EPA Director may request the Marine Farming Planning Review Panel to amend a marine farming development plan. The Director may consider that a plan amendment is necessary on the basis of scientific evidence, regulation of an activity within the plan area, or other factors.
- Clause 45** **Section 35 amended (Certification of draft amendment)**
Section 35(3) is amended by inserting paragraph (ab), which provides that a draft plan amendment is suitable for exhibition if it (inter alia) contains any matter relating to the environmental management of finfish required by the EPA Director in a notice issued under section 17A(1).
- Clause 46** **Section 41 amended (Consideration by Panel of draft amendment, &c.)**
Section 41(1) is amended to provide that the Panel must consider, in addition to the matters currently specified, any matter relating to environmental management of finfish farming required by the EPA Director in a notice issued under section 17A(1).
- Clause 47** **Section 42 amended (Final approval or refusal of draft amendment)**
Section 42(2) is amended to provide that the Minister, in making a decision on a draft amendment to a marine farming development plan, may seek further information from the EPA Director in addition to the bodies currently specified. This is appropriate given the Director's responsibility for the environmental regulation of finfish farming activities and the Director's new powers under this Act.

- Clause 48** **Section 43 amended (Emergency order)**
Section 43 is amended by inserting subsection (7), which provides that, where the planning authority issues an emergency order that relates to finfish farming, it must notify the EPA Director and provide him/her with a copy of the order within 24 hours. This is necessary because of the Director's responsibility for the environmental regulation of finfish farming activities.
- Clause 49** **Section 44 amended (Operation of emergency order)**
Section 44 is amended by inserting subsection (4), which provides that, where the planning authority extends an emergency order, it must as soon as practicable notify the EPA Director of the extension and any conditions of the extension. This is necessary because of the Director's responsibility for the environmental regulation of finfish farming activities.
- Clause 50** **Section 45 amended (Emergency plans)**
(a) Subsection (1AA) is inserted, which provides that an emergency plan must include any matters relating to the environmental management of finfish farming that the EPA Director requires. This is necessary because of the Director's responsibility for the environmental regulation of finfish farming activities.

(b) Subsection (2) is amended to provide that the planning authority must submit a draft emergency plan to the Director as well as the Panel. This is necessary because of the Director's responsibility for the environmental regulation of finfish farming activities.
- Clause 51** **Section 46 amended (Operation of emergency plan)**
Section 46 is amended by inserting subsection (4), which provides that the planning authority must notify the EPA Director as soon as practicable after an emergency plan ceases to be in force. This is necessary because of the Director's responsibility for the environmental regulation of finfish farming activities.
- Clause 52** **Section 47 amended (Exemption from emergency plan)**
(a) Subsection (2A) is inserted, which provides that the Minister must consult with the EPA Director before determining whether or not to grant an exemption from an emergency plan that relates to finfish farming. This is necessary because of the Director's responsibility for the environmental regulation of finfish farming activities.

(b) Subsection (5) is inserted, which provides that the Minister must notify the Director when the Minister grants an emergency plan exemption that relates to finfish farming, and provide a copy of the exemption. This is necessary

because of the Director's responsibility for the environmental regulation of finfish farming activities.

- Clause 53 **Section 59 amended (Granting of lease)**
Subsection (4) is amended to correct an existing drafting error.
- Clause 54 **Section 60 amended (Special lease)**
Subsection (1) is amended to correct an existing drafting error.
- Clause 55 **Schedule 6 inserted**
Schedule 6 is inserted, for finfish farming exclusion zones that may in future be declared under section 19A, and for the immediate creation of the Mercury Passage Finfish Farming Exclusion Zone by inclusion of a map for that zone.

PART 6 – RESOURCE MANAGEMENT AND PLANNING APPEAL TRIBUNAL ACT 1993 AMENDED

- Clause 56 **Principal Act**
The Act to be amended under Part 6 is the *Resource Management and Planning Appeal Tribunal Act 1993* (No. 66 of 1993).
- Clause 57 **Section 14 amended (Parties to appeal before Appeal Tribunal)**
Subsection (1A)(b) is amended to include directions to refuse to grant a permit issued by the EPA Board under new section 27AC(2)(a) of the *Environmental Management and Pollution Control Act 1994* (in relation to finfish farming activities). This is to ensure that the Board is a party to any relevant appeal.

PART 7 – CONCLUDING PROVISION

- Clause 58 **Repeal of Act**
This clause prescribes that the Act is to be repealed one year after it commences.