

DRAFT SECOND READING SPEECH

HON. JEREMY ROCKLIFF MP

Finfish Farming Environmental Regulation Bill 2017

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I now move that the Bill be read a second time.

The purpose of the Bill is to improve the environmental regulation of the finfish farming industry in Tasmania and to ensure the long-term sustainability of the industry. It does so by permanently transferring responsibility for environmental regulation and the day-to-day environmental management of the industry from the Minister for Primary Industries and Water, the Secretary of the Department of Primary Industries, Parks, Water and Environment and the Director of Inland Fisheries, to the Environment Protection Authority (EPA).

Finfish farming is important to Tasmania's economy and future prosperity. Industry estimates its contribution includes 5200 direct and indirect jobs, many of which are in rural and regional areas of Tasmania.

The State's salmonid industry is world class, and Tasmania is internationally recognised as a primary producer of premium food products. This is reflected by the growth of the industry to now generate more than \$750 million annually. This growth is expected to continue and reach one billion dollars by 2030.

Fundamental to this growth is ensuring that the expansion of the industry is sustainable over the long term and is compatible with environmental objectives.

Changes to the existing environmental management regime for finfish farming are necessary to ensure that the legislation keeps pace with industry expansion, and so that community and market confidence is maintained.

The objectives of the Bill are to:

- Provide a clearer separation of statutory responsibilities to ensure the efficient and effective environmental regulation of the finfish farming industry;
- Enhance existing regulatory processes to keep pace with industry growth and meet community and market expectations;
- Enable the sustainable development of marine and inland finfish farming activities while maximising the benefits to the Tasmanian community from the State's finfish resources.

In brief, the Bill does five main things:

1. It amends the *Environmental Management and Pollution Control Act 1994*, the *Marine Farming Planning Act 1995*, the *Living Marine Resources Management Act 1995*, the *Inland Fisheries Act 1995* and the *Resource Management and Planning Appeal Tribunal Act 1993* in order to modernise relevant planning, regulatory and management processes associated with finfish farming that occur across a number of associated frameworks without causing duplication or inefficiencies.

2. It establishes an environmental licence as a new regulatory instrument that will apply to the environmental regulation of both marine and freshwater finfish farming activities, including hatcheries.
3. It makes the Environmental Management and Pollution Control Act the primary legislation for managing the environmental regulation of the finfish industry.
4. It provides for the declaration and revocation of finfish marine farming exclusion zones or "No Grow Zones", and a prohibition on the preparation of marine farming development plans for finfish farming in areas where there is a finfish marine farming exclusion zone or "No Grow Zone".
5. It strengthens the role of the Director of the EPA in relation to the planning and development processes associated with finfish farming, while the overall planning and development processes for marine finfish farming will remain substantially unchanged and will continue under existing legislation.

Madam Speaker, the drafting of the Bill itself is necessarily complex, due to the nature of the issues it deals with across several pieces of associated legislation. However, the broad objectives of the Bill are relatively straightforward and the majority of changes made have been to the Environmental Management and Pollution Control Act.

Firstly, the mechanism to establish an environmental licence under the Environmental Management and Pollution Control Act provides the cornerstone of the legislative changes contained in this Bill. It will facilitate environmental regulation by providing powers not presently in the Act, but which largely mirror those in the Living Marine Resources Management Act and the Inland Fisheries Act. It will apply to finfish farming activities only.

This means that in the future, finfish farming operators will be required to hold an environmental licence in addition to a marine farming licence under the Living Marine Resources Management Act or an inland fish farm licence under the Inland Fisheries Act.

In the case of finfish marine farms, environmental licences will not necessarily just coincide with the holding of a marine farming licence – in some circumstances where there is a sub-lease, the lessee may be required to hold a separate environmental licence.

The environmental licence will provide the EPA with the necessary flexibility to impose and vary conditions on the operation of all finfish farming activities. It will provide for the power to:

- Refuse a licence on the basis of an unsatisfactory environmental compliance record and other factors;
- Grant a licence for either a limited period or indefinitely;
- Suspend or cancel a licence; and
- Disqualify a person from holding a licence.

Secondly, finfish farming will become a level 2 activity under Schedule 2 of the Environmental Management and Pollution Control Act. This will apply to existing finfish farming activities as well as proposed new activities. In relation to freshwater activities, thresholds will apply.

Thirdly, it will provide greater clarity and certainty for finfish farming operators regarding environmental regulatory processes and requirements. Equally, it will provide the Tasmanian community with confidence that finfish farming is being regulated and managed by a dedicated environmental authority.

Before I discuss the Bill in detail I make mention of the submissions received following the period of public consultation. There were 12 submissions received on the draft Bill and I have considered the points raised in them. Many of the submissions covered similar issues. The key issues raised can be summarised in the following three ways:

- Firstly, *A concern that this Bill provides too much un-fettered power to the EPA Director.* In response, the powers are intended to be broad, and consistent with powers that are currently available to the Secretary and Minister under the Living Marine Resources Management Act, and those already available to the EPA Director for other regulatory functions under the Environmental Management and Pollution Control Act. Hence, no changes have been made to reduce the intended powers of the EPA Director in the transfer of the regulatory function.
- Secondly, *A concern that there is no process for setting environmental standards for the EPA to regulate against.* In response, the Government is committed to setting the future environmental criteria for the regulation of the industry and will work with the EPA using existing legislative mechanisms to develop and implement the environmental criteria once the Bill has passed the Parliament.
- Thirdly, *A concern that there is no need for an additional licence.* In response, the transfer of regulatory authority to the EPA requires a regulatory framework for the Director to operate from. The current provisions of the Environmental Management and Pollution Control Act only provide a very limited framework for the regulation of activities that are not approved under the Land Use Planning and Approvals Act.

I will now explain the fundamental elements of the Bill in more detail.

Madam Speaker, it is vitally important that finfish farming operators have certainty about their rights and requirements when undertaking both existing as well as proposed new finfish farming activities.

It is equally important that the community has confidence that finfish farming activities are being regulated by an authority that has the specific expertise to ensure ongoing sustainable management of the environment and Tasmania's natural resources.

The legislative changes brought together in this Bill will ensure that there is no doubt as to the environmental requirements with which operators must comply.

Fundamental to providing this certainty is the establishment of an environmental licence mechanism. The Bill includes provisions for the granting of environmental licences for both existing finfish farming activities as well as proposed new activities.

In relation to existing finfish farming activities, existing authorisations, including marine and inland fish farm licences, permits and environment protection notices, will continue fully in force until the EPA Director grants and issues an environmental licence. Environmental conditions of existing authorisations will be transferred to the environmental licence and new conditions may also be added.

The powers of the EPA Board to require a person to enter into an Environmental Improvement Program will be extended to included environmental licences, and may be required in the instances where there is significant non-compliance with licence conditions.

In relation to licence conditions, there will be an appeal right for licence holders, but only against any new conditions that are imposed, except a condition requiring an Environmental

Improvement Program. In this and all other cases, appeals are to the Resource Management and Planning Appeal Tribunal.

In relation to proposed new finfish farming activities, the legislation will distinguish between marine and inland fish farms.

Applications for an environmental licence for proposed marine finfish farming activities will normally be considered and either granted or refused by the Director of the EPA. In some instances, the Director will refer an application to the Board of the EPA for assessment and decision. This decision will be made in accordance with criteria that will be prescribed in regulations. Where there is no marine farm lease or special permit granted, the Director must refuse to accept an environmental licence application.

In relation to proposed inland finfish farms that require a permit under the *Land Use Planning and Approvals Act 1993* applications will be assessed by the Board of the EPA in a manner similar to how other level 2 activities are currently assessed under the Environmental Management and Pollution Control Act. This is consistent with the existing the Land Use Planning and Approvals Act and the Environmental Management and Pollution Control Act process established within the broader Resource Management and Planning System framework. Following the assessment, the Board will then either grant or refuse to grant an environmental licence.

Environmental conditions will be included in the environmental licence and not the existing Land Use Planning and Approvals Act permit. However, the Board will still direct the relevant Council to refuse to grant a permit if it decides not to grant an environmental licence.

This will apply to ordinary Land Use Planning and Approvals Act permit applications, combined permit/scheme amendment applications and Project of Regional Significance applications.

For proposed inland fish farms that do not require a Land Use Planning and Approvals Act permit, because the relevant interim planning scheme or Local Provisions Schedule does not require permits for fish farms, the EPA Board will assess the proposal via a process that similar to the one currently existing under the Environmental Management and Pollution Control Act.

In all cases where an environmental licence is granted for a new activity, appropriate conditions may be imposed – this will be set out in a new section of the Environmental Management and Pollution Control Act. There will be appeal rights for applicants and representors that are largely similar to those already existing and provisions will be included to ensure consistency between the conditions of an environmental licence and the conditions of approvals that are issued under other legislation.

Where the EPA Director grants or refuses a licence for a proposed new activity there will be an appeal right for the applicant, and where the EPA Board grants or refuses a licence there will also be an appeal right for representors.

The Bill establishes how changes to environmental licences may occur once a licence is granted. Environmental licences may be varied either on application, on the EPA Director's initiative, or by the EPA Board following an assessment process. The Director, upon receiving a variation application, may decide that an application will not be accepted if there will be a Land Use Planning and Approvals Act permit application and subsequent assessment by the Board. Otherwise, and in the case of inland fish farms, the Director must determine whether the variation is minor or major.

If considered minor, the Director will undertake an internal assessment and either vary or refuse to vary the environmental licence. If considered major, the Director will refer the application to the Board for assessment.

In the case of an application to vary an environmental licence for a marine farming activity, the Director may either grant or refuse the licence himself or refer it to the Board for assessment. This decision will be made in accordance with criteria that will be prescribed in regulations.

Where the Director varies a licence there will be an appeal right for the licence holder, and where the Board varies a licence there will also be an appeal right for representors.

Fixed-term environmental licences will be able to be renewed either on application, or under exceptional circumstances, on the Director's initiative.

Additionally, environmental licences will be able to be transferred and may be subject to certain conditions or restrictions.

Licences may also be suspended or cancelled. In such cases, the Director must give notice and invite the licence holder to submit an objection before a final decision is made. There will be appeal rights for the licence holder in relation to these matters.

Madam Speaker, the Bill also includes the insertion of offence provisions in the Environmental Management and Pollution Control Act associated with finfish farming activities. It will be an offence to undertake a finfish farming activity without an environmental licence, to contravene a licence condition, to expand, intensify or modify without approval. Penalties include fines and imprisonment for individuals. It will also be an offence to cease or resume a licenced activity without notifying the EPA.

Provisions have been included to enable regulations to be made under the Environmental Management and Pollution Control Act for special penalties for contravention of particular types of environmental licence conditions. It is likely that special penalties will be applied for exceeding the Total Permissible Dissolved Nitrogen Output (generally referred to as the TPDNO) allowed for a finfish farming operation. These provisions will be similar to those that exist in the Marine Farming Planning Act. Regulations will prescribe the quantum of a special penalty to be imposed on conviction for contravention of a specified environmental licence condition or conditions, and the method of calculating the penalty.

Various existing environmental regulatory powers will apply in relation to finfish farming activities. For example, the Resource Management and Planning Appeal Tribunal will in future be able to make civil enforcement orders in relation to compliance with an environmental licence, as is currently the case with environmental conditions on land use permits.

The Bill also provides for environmental licence fees to be imposed under the Environmental Management General Fees Regulations which will be amended once this Act commences.

Where both a land use planning permit and an environmental licence are required for a new finfish farming activity, the Environmental Management and Pollution Control Act assessment fee will be the same as for the existing assessment process which is what is currently prescribed in the General Fees Regulations.

The Bill also establishes notification mechanisms with the purpose of coordinating processes across relevant authorities responsible for different aspects of finfish farming activities. For example, the EPA Director will be required to notify the Inland Fisheries Service and DPIPW of all significant decisions under the Environmental Management and Pollution Control Act in relation to finfish farming activities. These provisions complement amendments that will be made

to the Inland Fisheries Act, Marine Farming Planning Act and Living Marine Resources Management Act to require the EPA Director to be notified of significant decisions relating to finfish farming under those Acts.

Moving to the changes in the Marine Farming Planning Act, the Director of the EPA will no longer be a member of the Marine Farming Planning Review Panel to ensure this is a clear separation between the environmental decision making powers, and the environmental advice provided to the Minister under the Marine Farming Planning Act. The membership the Panel is to be changed to provide for two new members with one with environmental management expertise and the other with fish health and biosecurity expertise.

The Director will have new powers to require environmental management matters to be addressed in environmental impact statements, marine farming development plans, draft plans and plan amendments.

Provisions have also been included in the Bill to grant powers for the Director in relation to emergency orders and plans relating to finfish farming and for the Minister of Primary Industries and Water to notify the EPA Director of significant decisions in relation to finfish marine farm leases.

Importantly Madam Speaker, the Bill provides for the declaration of finfish marine farming exclusion zones or “No Grow Zones”. Such zones are to be declared or revoked by the Governor with the approval of Parliament. A mechanism is prescribed for the declaration and revocation of zones, and there is a prohibition on the preparation of marine farming development plans for finfish farming in areas where there is an exclusion zone or “No Grow Zone”.

Madam Speaker, development of the Bill has been a challenging and complex task and has involved consultation with industry, local government, the environmental sector and also the community. The Bill aims to balance economic growth, environmental sustainability and community concern.

On the 9 July, the Bill was released for a period of public comment, demonstrating the commitment of this Government to take on board the views and concerns of industry, the environmental sector and the wider Tasmanian community.

Feedback we have received to date from industry has been largely positive, and constructive comments on the proposed legislative changes helped to inform the finalisation of this Bill.

In summary, the Bill:

- Achieves a clearer separation of statutory responsibilities to ensure the efficient and effective environmental regulation of the finfish farming industry into the future;
- Supports, clarifies and defines how finfish farming is environmentally managed in respect to both marine and inland finfish farming activities;
- Enhances existing environmental regulatory processes to keep pace with industry growth, meet market expectations and provide industry and the community with certainty and confidence regarding the ongoing environmental management of finfish farming activities; and
- Provides for the sustainable development of marine and inland finfish farming operations while maximising the benefits to the Tasmanian community from the State's finfish resources.

Madam Speaker, the Government fully supports the introduction of this Bill and I am delighted to commend this Bill to the House.