

TASMANIA

FINFISH FARMING ENVIRONMENTAL REGULATION BILL 2017

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FINFISH FARMING ENVIRONMENTAL REGULATION BILL 2017

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
20 September 2017

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Jeremy Page Rockliff)*

A BILL FOR

An Act to amend the *Environmental Management and Pollution Control Act 1994*, the *Inland Fisheries Act 1995*, the *Living Marine Resources Management Act 1995*, the *Marine Farming Planning Act 1995* and the *Resource Management and Planning Appeal Tribunal Act 1993*, so as to enable the appropriate regulation of the environmental impact of finfish farming, and for related purposes

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

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Finfish Farming Environmental Regulation Act 2017*.

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Part 1 – Preliminary

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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**PART 2 – ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL ACT 1994 AMENDED**

3. Principal Act

In this Part, the *Environmental Management and Pollution Control Act 1994** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *director*:

EL activity means an activity that is a level 2 activity by virtue of paragraph (h) of clause 4 of Schedule 2;

- (b) by inserting the following definition after the definition of *environmental infringement notice*:

environmental licence means an environmental licence granted under Division 8 of Part 3;

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- (c) by inserting the following definitions after the definition of *financial assurance*:

finfish means fish of the class Osteichthyes, other than fish of the order Anguilliformes;

finfish farming – see section 5C;

fish farm has the same meaning as in the *Inland Fisheries Act 1995*;

fish farm licence means a fish farm licence that is in force under the *Inland Fisheries Act 1995*;

- (d) by inserting the following definition after the definition of *general manager*:

inland fish farming means an activity, in relation to finfish farming, that is an activity –

(a) that comprises fish farming, within the meaning of the *Inland Fisheries Act 1995*; or

(b) to which section 64(1)(c) of the *Living Marine Resources Management Act 1995* relates;

- (e) by inserting the following definitions after the definition of *level 3 activity*:

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marine farming has the same meaning as in the *Living Marine Resources Management Act 1995*;

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

- (f) by inserting the following definition after the definition of *State Policy*:

State waters means –

- (a) the waters of the territorial sea adjacent to the State that are within 3 nautical miles of the seaward side of the baseline of the territorial sea, by reference to which the territorial limits of Australia are defined for the purposes of international law; and
- (b) the sea on the landward side of that baseline of the territorial sea adjacent to the State that is not within the limits of the State; and
- (c) waters within the limits of the State;

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5. Section 5C inserted

After section 5B of the Principal Act, the following section is inserted in Part 1:

5C. Finfish farming

- (1) For the purposes of this Act, finfish farming is the activity, in the relevant circumstances, of farming of finfish.
- (2) For the purposes of subsection (1), the activity of farming of finfish is the activity that consists of, or includes, any one or more of the following activities:
 - (a) the farming, culturing, hatching, rearing, ranching, enhancement, or breeding, of finfish;
 - (b) any activities associated with, and for the purposes of, an activity referred to in paragraph (a).
- (3) For the purposes of subsection (1), the relevant circumstances in relation to the farming of finfish are that –
 - (a) the farming of finfish is an activity –
 - (i) to which section 64(1)(a) of the *Living Marine Resources Management Act 1995* relates; or

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- (ii) in relation to which a permit under section 12 or 14 of the *Living Marine Resources Management Act 1995* is in force; or
 - (b) the farming of finfish is conducted on a fish farm and the facilities or area of land, or area of State waters, on or at which the farming of finfish is conducted have the required production or containment characteristics; or
 - (c) the farming of finfish is an activity to which section 64(1)(c) of the *Living Marine Resources Management Act 1995* relates and the facilities or area of land, or area of State waters, on or at which the farming of finfish is conducted have the required production or containment characteristics.
- (4) For the purposes of this section, facilities or an area of land, or an area of State waters, on or at which the farming of finfish is conducted have the required production or containment characteristics if the facilities, area of land, or area of State waters –

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- (a) have, or are intended to have, the capacity to produce, in a year, 5 tonnes or more of finfish; or
 - (b) contain, or are intended to contain, in a year, finfish with a biomass of 2 tonnes or more.
- (5) For the purposes of this Act, an activity may constitute finfish farming whether it occurs –
 - (a) on land; or
 - (b) on inland waters within the meaning of the *Inland Fisheries Act 1995*; or
 - (c) in State waters.

6. Section 22 amended (Registers of environmental management and enforcement instruments)

Section 22(1) of the Principal Act is amended by inserting before paragraph (a) the following paragraph:

- (aa) any licence document, in relation to an environmental licence, that is issued under section 42ZB;

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7. Section 25 amended (Assessment of permissible level 2 activities)

Section 25 of the Principal Act is amended as follows:

- (a) by omitting subsection (1D) and substituting the following subsections:

(1D) If an application in relation to an activity, other than an EL activity, is referred to the Board under subsection (1), the Board is to determine within 14 days whether it needs to assess the activity to which the application relates.

(1DAA) If an application that relates to an EL activity is referred to the Board under subsection (1), the application is not an application to which subsection (1DAB) applies and there is no environmental licence in relation to the activity, the Board, within 42 days –

- (a) is to determine under section 42K(2) whether to refuse to grant an environmental licence in relation to the activity; and

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- (b) if it refuses under section 42K(2) to grant an environmental licence in relation to the activity, is to determine that it does not need to assess the activity; and
 - (c) if it does not refuse under section 42K(2) to grant an environmental licence in relation to the activity, is to determine that it needs to assess the activity.
- (1DAB) If an application that relates to an EL activity is referred to the Board under subsection (1) and the application relates to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence, the Board, within 42 days –
 - (a) is to determine whether or not the proposed expansion, intensification or modification of an activity is environmentally significant; and
 - (b) if it determines that the proposed expansion,

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intensification or
modification of an
activity is
environmentally
significant, is to
determine under
section 42Q(2) whether to
refuse to vary an
environmental licence in
relation to the activity;
and

(c) if the Board –

(i) determines that
the proposed
expansion,
intensification or
modification of an
activity is not
environmentally
significant; or

(ii) refuses under
section 42Q(2) to
vary an
environmental
licence in relation
to the activity –

is to determine that it does
not need to assess the
activity; and

(d) if the Board –

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(i) determines that the proposed expansion, intensification or modification of an activity is environmentally significant; and

(ii) does not refuse under section 42Q(2) to vary an environmental licence in relation to the activity –

is to determine that it needs to assess the activity.

(1DAC) Subsection (1D), subsection (1DAA) and subsection (1DAB) do not apply in relation to –

(a) an application made under Division 2A of Part 3 of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian*

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Planning Scheme) Act
2015; or

- (b) an application made under section 40T of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*.
- (b) by inserting in subsection (1DA) “or, in the case of an application in relation to an EL activity, the 42-day period referred to in subsection (1DAA) or subsection (1DAB),” after “subsection (1D),”;
- (c) by omitting subsection (1E) and substituting the following subsection:
 - (1E) The Board is taken to have determined that it needs to assess the activity to which the application relates under this Act if it has not notified the planning authority to the contrary –
 - (a) where paragraph (b) does not apply, before the end of the 14-day period

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referred to in
subsection (1D); or

(b) if the activity is an EL activity, before the end of the 42-day period referred to in subsection (1DAA) or (1DAB), as the case may be.

(d) by inserting the following subsections after subsection (3):

(4) Subsection (4A) applies in relation to an application if the Board –

(a) in accordance with subsection (1DAA)(b) or (1DAB)(c), determines that it does not need to assess an activity to which an application relates; and

(b) has directed the planning authority, in a notice under section 27AC(2), to refuse to grant a permit in relation to the activity.

(4A) If this subsection applies in relation to an application, the planning authority is to determine the application under section 57(6) of the *Land Use Planning and Approvals Act 1993* in

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accordance with the direction under section 27AC(2), without exhibiting the application in accordance with section 57(3) of the *Land Use Planning and Approvals Act 1993*, and for that purpose –

- (a) section 57(3) of the *Land Use Planning and Approvals Act 1993* does not apply in relation to the application; and
 - (b) the reference in section 57(6) of the *Land Use Planning and Approvals Act 1993* to a notice under subsection (3) is to be taken to be a reference to the notice to the planning authority in accordance with section 27AC(2).
- (e) by inserting in subsection (5) “in relation to an activity, other than an EL activity” after “section”;
- (f) by inserting in subsection (6) “, under subsection (5),” after “which the Board may”;
- (g) by inserting in subsection (8) “, under subsection (5),” after “Board has”;

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(h) by omitting subsection (8D) and substituting the following subsection:

(8D) Subject to any further period agreed under section 57(6A) or 58(2A) of the *Land Use Planning and Approvals Act 1993* and to the receipt by the planning authority of additional information sufficient to satisfy a requirement under section 54 of that Act, the planning authority is to make its decision to grant or refuse to grant the permit –

(a) within 42 days after receiving notification from the Board under subsection (5); or

(b) within 42 days after receiving, under section 42M(2) or section 42R(1), a notice from the Board in relation to the activity.

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

Section 25A of the Principal Act is amended as follows:

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- (a) by inserting in subsection (1) “and the activity to which the application relates is not an EL activity” after “25”;
 - (b) by inserting in subsection (1A) “and the activity to which the application relates is not an EL activity” after “25”;
 - (c) by inserting the following subsections after subsection (1A):

(1B) Subsection (1C) applies to –

- (a) an application for a permit made under Division 2A of Part 3 of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; and
- (b) an application for a permit made under section 40T of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian*

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Planning Scheme) Act
2015 –

if the activity to which the application relates is an EL activity.

(1C) If an application, in relation to an activity, to which this subsection applies is referred to the Board under section 25 –

(a) the Board, if the application –

(i) is not an application to which subparagraph (ii) applies, must, within 42 days, determine under section 42K(2) whether to refuse to grant an environmental licence in relation to the activity; or

(ii) relates to a proposed expansion, intensification or modification of an activity that is

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carried out under
an environmental
licence, must,
within 42 days,
determine under
section 42Q(2)
whether to refuse
to vary an
environmental
licence in relation
to the activity; and

(b) the Board –

- (i) if it refuses under
section 42K(2) or
section 42Q(2) to
grant or vary an
environmental
licence in relation
to the activity,
must determine
that it does not
need to assess the
activity; or
- (ii) if it does not
refuse under
section 42K(2) or
section 42Q(2) to
grant or vary an
environmental
licence in relation
to the activity,

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must assess the
activity; and

- (c) the Board may, by notice in writing served on the applicant for the permit within 28 days after the day of referral, require the applicant to provide it with additional information for the purpose of the assessment.

(1D) If the Board, in accordance with subsection (1C)(b)(i), determines that it does not need to assess an activity to which an application, referred to the Board under section 25, relates and has directed the planning authority, in a notice under section 27AC(2), to refuse to grant a permit in relation to the activity –

- (a) the planning authority, after determining, under section 40Y of the *Land Use Planning and Approvals Act 1993*, the application in accordance with the notice under section 27AC(2) by refusing to grant a permit, is to give notice to the

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applicant of the
determination; and

- (b) the planning authority is to be taken to have refused, under section 38 of the *Land Use Planning and Approvals Act 1993*, to prepare a draft amendment of an LPS that is referred to in a request under section 40T of that Act in relation to the application for a permit; and
- (c) despite any other provision of the *Land Use Planning and Approvals Act 1993*, no further action by the planning authority or the Commission is to be taken under the *Land Use Planning and Approvals Act 1993* in relation to –
 - (i) the application; or
 - (ii) the application, for an amendment to an LPS, that is referred to in a request under section 40T of that

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Act in relation to
the application for
a permit.

- (d) by inserting in subsection (2) “under subsection (1), (1A) or (1C)” after “applicant”;
- (e) by inserting in subsection (3) “, if any, for the purposes of the *Land Use Planning and Approvals Act 1993*,” after “its assessment”;
- (f) by omitting from subsection (3) “in subsection (1) or (1A)” and substituting “in subsection (1), (1A) or (1C)”;
- (g) by inserting the following subsections after subsection (3):
 - (3A) For the purposes of subsection (3), the result of the assessment, for the purposes of the *Land Use Planning and Approvals Act 1993*, is the result of the assessment before the Board takes into account any representations, in relation to the application, that are provided to the Board under section 41(3) of that Act.
 - (3B) The Board must complete its assessment, for the purposes of making a determination under Division 8 of Part 3 in relation to

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an application referred to in subsection (1C), as soon as practicable after the date on which the application was referred to the Board.

(3C) For the purposes of subsection (3B), the Board is to complete its assessment of an application referred to in subsection (1C), after taking into account any representations, in relation to the application, that are provided to the Board under section 41(3) of the *Land Use Planning and Approvals Act 1993*.

(3D) Section 41(4) of the *Land Use Planning and Approvals Act 1993* does not apply in relation to an application referred to in subsection (1C).

(h) by omitting from subsection (4) “subsection (1) or (1A)” and substituting “subsection (1), (1A) or (1C)”.

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

Section 27 of the Principal Act is amended by inserting after subsection (7) the following subsection:

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- (8) This section does not apply in relation to an activity to which section 27AA applies.

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

After section 27 of the Principal Act, the following sections are inserted in Division 1:

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

- (1) If a person proposes to undertake a level 2 activity that is an EL activity and that does not require a permit under the *Land Use Planning and Approvals Act 1993*, the person must refer the proposed activity to the Board for assessment under this Act.
- (2) Subsection (1) does not apply in relation to an activity if –
- (a) an application has been made under the *Living Marine Resources Management Act 1995* for a marine farming licence in relation to the activity; or
 - (b) there is a permit, issued under section 12 or 14 of the *Living Marine Resources Management Act 1995*, that is in force in relation to the activity.

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- (3) If an activity is referred to the Board under subsection (1) or an application in relation to an activity is referred to the Board under section 42I(2) –
- (a) the Board must determine under section 42K(2) whether to refuse to grant an environmental licence in relation to the activity; and
 - (b) if the Board does not refuse under section 42K(2) to grant an environmental licence in relation to the activity, the Board must undertake, in accordance with the Environmental Impact Assessment Principles and Division 1A, an assessment of the activity.
- (4) If an application in relation to an activity is referred to the Board under section 42O –
- (a) the Board must determine under section 42Q(2) whether to refuse to vary an environmental licence in relation to the activity; and
 - (b) if the Board does not refuse under section 42Q(2) to vary an environmental licence in relation to the activity, the Board must undertake, in accordance with the Environmental Impact

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Amended

Assessment Principles and
Division 1A, an assessment of the
activity.

**27AB. Assessment of EL activity where PORS
declared**

(1) In this section –

Panel, in relation to an activity, means
the Development Assessment
Panel established under section
60M of the *Land Use Planning
and Approvals Act 1993* in
relation to the activity.

(2) This section applies in relation to a
project that –

(a) is declared under section 60G of
the *Land Use Planning and
Approvals Act 1993* to be a
project of regional significance;
and

(b) consists of or includes an EL
activity.

(3) If a project to which this section applies
is referred to the Director under
section 60K(1) of the *Land Use Planning
and Approvals Act 1993* –

(a) section 60K(3), (4), (5) and (6) of
the *Land Use Planning and*

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Approvals Act 1993 do not apply
in relation to the project; and

- (b) the Director must, within 14 days, notify the Minister that an environmental licence is required in relation to the activity; and
 - (c) the Director is to refer the project to the Board.
- (4) If a project is referred to the Board under subsection (3) and the project –
- (a) is not a project to which paragraph (b) or (c) applies, the Board must, within 42 days, determine under section 42K(2) whether to refuse to grant an environmental licence in relation to the activity to which the project relates; or
 - (b) relates to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence and is not a project to which paragraph (c) applies, the Board must, within 42 days, determine under section 42Q(2) whether to refuse to vary an environmental licence in relation to the activity; or

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- (c) is a project to which relates a notice of intent, lodged under section 27B(1), in respect of an activity in relation to which the Board has determined under section 42K(2) or section 42Q(2) to refuse to grant or vary an environmental licence, the Board is not to undertake an environmental impact assessment of the project.
- (5) If a project is referred to the Board under subsection (3) –
 - (a) the Board, if –
 - (i) it does not refuse under section 42K(2) or section 42Q(2) to grant or vary an environmental licence in relation to the activity to which the project relates; and
 - (ii) subsection (4)(c) does not apply in relation to the project –

is to notify the Panel in relation to the project that the Board is to undertake an environmental impact assessment of the project; and

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- (b) a notice given under paragraph (a) is to be taken, for the purposes of section 60L of the *Land Use Planning and Approvals Act 1993*, to be a determination of the EPA Director under section 60K(3) of that Act that the EPA Board is to undertake an environmental impact assessment of the project.
- (6) If a project to which this section applies is referred to the Board under subsection (3)(c) –
- (a) the Board, if –
- (i) it refuses under section 42K(2) or section 42Q(2) to grant or vary an environmental licence in relation to the activity to which the project relates; or
- (ii) subsection (4)(c) applies in relation to the project –
- is to notify the Panel in relation to the project that the Board will not undertake an environmental impact assessment of the project; and
- (b) a notice given under paragraph (a) is to be taken, for

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the purposes of section 60L of the *Land Use Planning and Approvals Act 1993*, to be a determination of the EPA Director under section 60K(3) of that Act that the EPA Board will not undertake an environmental impact assessment of the project; and

(c) the EPA Board is not to undertake an environmental impact assessment of the project.

(7) If a project to which this section applies is referred to the Board under subsection (3)(c) –

(a) section 60L(8) and (9), and section 60U(2), of the *Land Use Planning and Approvals Act 1993* do not apply in relation to the project; and

(b) for the purposes of sections 60S(4)(a) and 60T(4)(e) of the *Land Use Planning and Approvals Act 1993*, a notice, or a relevant notice, given under section 27AC(2)(c) or section 42M(2) to the Panel in relation to the activity is to be taken to be a notice given to the Panel under section 60L(8) of that Act.

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- (8) If the Board has directed the Panel, in a notice under section 27AC(2)(c), to refuse to grant a permit in relation to a project –
- (a) sections 60N, 60O, 60P, 60Q, 60R and 60S and 60T(3) of the *Land Use Planning and Approvals Act 1993* do not apply in relation to the project; and
 - (b) the Panel is, as soon as practicable after receiving the notice, to comply with section 60T of the *Land Use Planning and Approvals Act 1993* in relation to the project.

27AC. Directions in relation to permits in respect of EL activities

- (1) In this section –

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

Panel, in relation to an activity, means the Development Assessment Panel established under section 60M of the *Land Use Planning and Approvals Act 1993* in relation to the activity;

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permit means a permit, or special permit, under the *Land Use Planning and Approvals Act 1993*.

- (2) As soon as practicable after the Board has decided under section 42K or section 42Q to refuse to grant or vary an environmental licence in relation to an activity –
- (a) to which relates an application, referred to the Board under section 25, including an application to which section 25A relates, the Board must, by notice to the planning authority, direct the planning authority; or
 - (b) referred to in an application to which section 25A relates, the Board must, by notice to the Commission, direct the Commission; or
 - (c) to which section 27AB or section 27B(1A) relates, the Board must, by notice to the Panel, direct the Panel –

to refuse to grant a permit in relation to the activity or the project, as the case may be.

- (3) If the Board has, under subsection (2), directed a planning authority, the

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Commission or a Panel to refuse to grant a permit in relation to an activity or the project, the planning authority, the Commission, or the Panel, as the case may be –

- (a) must refuse under the *Land Use Planning and Approvals Act 1993* to grant a permit in relation to the activity or the project; and
 - (b) must notify the Board of its decision to refuse to grant a permit.
- (4) If the Board, under section 42M(2) or section 42R(1), gives a relevant notice, to a planning authority, the Commission or a Panel, specifying that the Board has granted or varied an environmental licence in relation to an activity, the planning authority, the Commission, or the Panel, as the case may be, must not impose on a permit in relation to the activity a condition or restriction which is inconsistent with, or extends or restricts the operation of, a condition or restriction imposed on the licence.
- (5) If a planning authority, the Commission or a Panel grants a permit in relation to an activity to which section 25, 25A or 27AB relates, the planning authority, Commission, or Panel, respectively, must, within 7 days, notify the Board of

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the grant of the permit and provide to the
Board a copy of the permit.

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

- (1) If a permit is granted under the *Land Use Planning and Approvals Act 1993* in relation to an EL activity, the permit must not be amended under section 43 or 56 of that Act without the approval of the Board.
- (2) A planning authority may apply to the Board for approval to amend under section 43 or 56 of the *Land Use Planning and Approvals Act 1993* a permit in relation to an EL activity.
- (3) As soon as practicable after receiving an application under subsection (2) in relation to a activity, the Board must notify the planning authority whether the Board approves, or refuses to approve, the amendment, under section 43 or 56 of the *Land Use Planning and Approvals Act 1993*, of a permit in relation to the activity.

11. Section 27A amended (Classes of assessment)

Section 27A(1) of the Principal Act is amended
by omitting “section 25 or 27” and substituting
“section 25, 27 or 27AA”.

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12. Section 27B amended (Notice of intent)

Section 27B of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) If a notice of intent lodged under subsection (1) relates to an EL activity –
- (a) the Board, if the activity to which the notice of intent refers –
 - (i) is not an activity to which subparagraph (ii) applies, must determine under section 42K(2) whether to refuse to grant an environmental licence in relation to the activity; or
 - (ii) relates to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence, must determine under section 42Q(2) whether to refuse to vary an environmental licence in relation to the activity; and
 - (b) the Board, if it refuses under section 42K(2) or section 42Q(2) to grant or vary an environmental licence in relation to the activity,

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is not to take any further action
under this Division in relation to
the project to which the activity
relates.

13. Section 27C amended (Board to advise of proposed class of assessment)

Section 27C of the Principal Act is amended as follows:

- (a) by inserting “, except if section 27AA applies,” after “and”;
- (b) by omitting from paragraph (c) “section 27(1) or (2).” and substituting “section 27(1) or (2), section 27AA(1), section 42I or section 42O.”.

14. Section 27G amended (Periods for advertising of applications and proposals)

Section 27G(1)(b) of the Principal Act is amended by inserting “or section 27AA or that is a proposal in an application referred to the Board under section 42I(2) or 42O(1) or (5)” after “(2)”.

15. Section 27H amended (Period for completion of assessment)

Section 27H(1) of the Principal Act is amended by inserting “or section 27AA or that is a proposal in an application referred to the Board

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under section 42I(2) or 42O(1) or (5), the Board must complete its assessment” after “(2)”.

16. Section 29 amended (Effect of environmental agreements)

Section 29(3) of the Principal Act is amended by inserting “, an environmental licence” after “order”.

17. Section 35 amended (Financial assurance to secure compliance with Act)

Section 35(1) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

(da) complying with any conditions or restrictions imposed on an environmental licence held by the person; or

18. Part 3, Division 8 inserted

After section 42A of the Principal Act, the following Division is inserted in Part 3:

Division 8 – Environmental licences
Subdivision 1 – Interpretation and offences

42B. Interpretation of Division 8

In this Division –

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associate, in relation to another person, means –

- (a) a person who holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in their own right or on behalf of any other person), in a business of the other person and, by virtue of that interest or power, is able to, or will be able to, exercise a significant influence over or in respect of the management or operation of that business; or
- (b) a person who holds or will hold any relevant position (whether in their own right or on behalf of any other person) in a business of the other person; or
- (c) a person who is a relative of the other person;

exemption permit means –

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-
- (a) a permit issued under section 12 or 14 of the *Living Marine Resources Management Act 1995*; or
 - (b) a permit issued under section 172 of the *Inland Fisheries Act 1995* –

that authorises, whether expressly or impliedly, the carrying out of finfish farming;

existing authorisation, in relation to an activity, means –

- (a) a permit or a special permit under which the activity is authorised to be carried out; or
- (b) an exemption permit under which the activity is expressly or impliedly authorised to be carried out; or
- (c) an order under the *State Policies and Projects Act 1993* under which the activity is authorised to be carried out; or
- (d) a marine farming licence under which the activity is

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authorised to be carried out; or

(e) a fish farm licence under which the activity is authorised to be carried out; or

(f) an environment protection notice –

(i) that is issued under section 44(1) (other than section 44(1)(d)) or section 44(2) (other than section 44(2)(d)); and

(ii) that is an environment protection notice under which the activity is expressly or impliedly authorised to be carried out;

holder of an environmental licence,
in relation to an environmental licence, means the person to whom –

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-
- (a) the licence has been granted or, if the licence has been transferred, to whom the licence has been transferred; and
 - (b) the licence document in relation to the licence has been issued under section 42ZB;

land includes any water situated on land;

permit means a permit under the *Land Use Planning and Approvals Act 1993*;

relative, of a person, means –

- (a) the spouse, parent, child or sibling (whether of the full or half blood) of the person; or
- (b) the person with whom the first-mentioned person is in a personal relationship within the meaning of the *Relationships Act 2003*;

relevant financial interest, in relation to a business, means –

- (a) any share in the capital of the business; or

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- (b) any entitlement to receive any income derived from the business;

relevant position, in relation to a business, means the position of director, manager or other executive position or secretary, however that position is designated in that business;

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others –

- (a) to participate in a directorial, managerial or executive decision; or
- (b) to elect or appoint any person to any relevant position;

special permit means a special permit under the *Land Use Planning and Approvals Act 1993*;

vary, in relation to an environmental licence, means to –

- (a) vary the conditions or restrictions imposed on the licence, by –

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- (i) revoking a condition or restriction imposed on the licence; or
 - (ii) varying a condition or restriction imposed on the licence; or
 - (iii) imposing a condition or restriction on the licence; or
 - (b) vary the period for which a licence is to remain in force; or
 - (c) add to, alter or restrict the activities that may be carried out under the licence; or
 - (d) alter the area of land, or the area of State waters, to which the licence relates; or
 - (e) vary the licence so that an expansion, intensification or modification of an activity is expressly

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authorised to be carried
out under the licence.

42C. Offences relating to licences

- (1) A person must not carry out an EL activity unless the person is authorised under an environmental licence to do so.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
 - (b) an individual, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.
- (2) Subsection (1) does not apply in respect of a person in relation to an activity if the activity is expressly or impliedly authorised to be carried out under an environment protection notice.
- (3) Subsection (1) does not apply in respect of a person in relation to an activity if there is no environmental licence in force in relation to the activity and the person was, immediately before the commencement of this section –

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-
- (a) carrying out the activity under an existing authorisation; or
 - (b) carrying out the activity and –
 - (i) no permit, or special permit, is required under the *Land Use Planning and Approvals Act 1993* in relation to the activity; and
 - (ii) no marine farming licence is required in relation to the activity; and
 - (iii) no fish farm licence is required in relation to the activity.
- (4) A person who carries out an activity to which an environmental licence relates must not contravene –
- (a) a condition or restriction imposed on the licence; or
 - (b) a condition or restriction of a notice, issued under section 42ZH(2), of the approval of a surrender of the licence.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
 - (b) an individual, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.
- (5) A court must, in relation to an offence under subsection (4) in respect of a contravention of a condition or restriction imposed on an environmental licence, impose a special penalty of an amount –
 - (a) prescribed by the regulations; or
 - (b) calculated in accordance with a method prescribed by the regulations.
- (6) A special penalty imposed under subsection (5) is in addition to a fine, if any, imposed under subsection (4).
- (7) Regulations for the purposes of subsection (5) may prescribe different amounts, or different methods, that are to apply according to circumstances specified in the regulations.
- (8) The holder of an environmental licence must not expand, intensify or modify the activity to which the licence relates except if –

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(a) the expansion, intensification or modification –

(i) is expressly authorised under the environmental licence, including the licence as varied under Subdivision 4, and does not contravene the conditions or restrictions imposed on the licence; or

(ii) is expressly authorised under an environment protection notice; or

(b) the Board has determined under section 25(1DAB) that the expansion, intensification or modification of the activity is not environmentally significant.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 1 000 penalty units; or

(b) an individual, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.

(9) The holder of an environmental licence must not –

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- (a) cease to carry out an activity to which the licence relates; or
- (b) resume an activity to which the licence relates –

unless –

- (c) the person, before ceasing to carry out the activity or resuming the activity, notified the Director of the person's intention to cease or resume the activity, respectively; or
- (d) the cessation or resumption occurs in pursuance of a notice issued under section 42ZF(1) or because the licence has ceased to be suspended or cancelled; or
- (e) the cessation or resumption occurs in accordance with a requirement of an environment protection notice.

Penalty: Fine not exceeding 100 penalty units.

Subdivision 2 – Licences in relation to existing lawful activities

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

- (1) A person is, on the day on which this section commences, taken to have applied under this subsection for an environmental licence in relation to an activity if the activity is an EL activity and, immediately before that day –
- (a) the person is the person to whom the existing authorisation in relation to the activity –
 - (i) was granted or issued, if the person has not lawfully transferred the authorisation to another person; or
 - (ii) was lawfully transferred by a person to whom the authorisation was granted or issued or to whom the authorisation was lawfully transferred; or
 - (b) the person –
 - (i) is lawfully carrying out the activity; and

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- (ii) is a person authorised under a permit or a special permit to carry out the activity; and
 - (iii) is a person whom the Director determines under subsection (2) to be the person at whose direction the activity is being carried out; or
- (c) each of the following subparagraphs applies in relation to the activity:
 - (i) the person is lawfully carrying out the activity;
 - (ii) the person is a person to whom, if an existing authorisation (other than an existing authorisation referred to in paragraph (b)) were to be granted or issued to a person in relation to the activity, the authorisation would have been granted or issued or is a person whom the Director determines under subsection (2) to be the person at whose direction

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the activity is being
carried out;

(iii) no permit, or special
permit, was required
under the *Land Use
Planning and Approvals
Act 1993* in relation to the
activity;

(iv) no fish farm licence or
marine farming licence
was required to be held by
the person in relation to
the activity.

(2) The Director may determine, for the purposes of subsection (1)(b)(iii) or (c)(ii), a person to be the person at whose direction an activity, that is being lawfully carried out under a permit or a special permit, is being carried out immediately before the day on which this section commences.

(3) A person is, on the day on which this section commences, taken to have applied under this subsection for an environmental licence in relation to an activity if the activity is an EL activity and, immediately before the day on which this section commences –

(a) there is an existing authorisation,
consisting of a marine farming

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licence, in relation to the activity;
and

- (b) there is a lease under Part 4 of the *Marine Farming Planning Act 1995* in relation to the activity;
and
- (c) the person holds under Part 4 of the *Marine Farming Planning Act 1995* a sub-lease of the lease referred to in paragraph (b); and
- (d) the person is carrying out the activity under the sub-lease.

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

- (1) The Director must grant, to a person who is taken to have applied under section 42D for an environmental licence in relation to an activity, an environmental licence in relation to the activity.
- (2) An environmental licence in relation to an activity may not be granted under subsection (1) to more than one person who is to hold the licence, unless the persons comprise a trust that is to hold the licence.
- (3) If 2 or more persons are to be taken to have applied under section 42D for an

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environmental licence in relation to the same activity –

- (a) the persons may, by notice to the Director, nominate which of the persons is to be the person to whom the licence is to be granted; and
 - (b) the Director is to grant under subsection (1) an environmental licence in relation to the activity to the person so nominated.
- (4) An environmental licence may be granted under subsection (1) in relation to an activity –
- (a) that is to be conducted at more than one location; and
 - (b) that is conducted under more than one existing authorisation in relation to the activity –

but only if the prescribed criteria are satisfied.

- (5) Subject to subsection (6), the Director may grant an environmental licence under subsection (1) for a period determined by the Director or determine that the licence is granted for an unlimited period.

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- (6) If an environmental licence is granted under subsection (1) in relation to an activity to which relates an existing authorisation that is to expire on a day, the Director must determine under subsection (5) to grant the licence for a period that expires on the same day.
- (7) Subsection (6) does not apply in relation to an environmental licence if –
 - (a) the environmental licence is, in accordance with subsection (4)(b), granted under subsection (1) in relation to an activity that is conducted under more than one existing authorisation in relation to the activity; and
 - (b) the existing authorisations are to expire on different days.
- (8) The Director must notify a person to whom an environmental licence has been granted under subsection (1) of –
 - (a) the grant of the licence; and
 - (b) any conditions or restrictions that are imposed on the licence and the reasons for imposing them; and
 - (c) the rights of the person under Subdivision 9 to appeal to the

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Appeal Tribunal in relation to a
decision made by the Director
under this section.

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

- (1) Subject to section 42Z, the Director may impose conditions or restrictions, or both, on an environmental licence granted under section 42E(1).
- (2) The conditions or restrictions imposed, in accordance with subsection (1), on an environmental licence granted under section 42E(1) in relation to an activity are to include, but are not limited to including, conditions or restrictions –
 - (a) that are substantially the same as the conditions or restrictions, that relate to the environment, that were imposed on the existing authorisation in relation to the activity; or
 - (b) that, where the existing authorisation was an environment protection notice, are substantially the same as the measures or requirements imposed by that notice.
- (3) A condition or restriction that –

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(a) is imposed, in accordance with subsection (1), on an environmental licence in relation to an activity; and

(b) is not a condition, or restriction, (*a compulsory provision*) that is required under subsection (2) to be imposed on the licence –

may not be of substantially the same effect as, and relate to the same biomass, product containing finfish, raw material, water, source of energy or pollutant as, a compulsory provision.

(4) Subsection (3) does not apply in relation to a condition, referred to in section 42Z(2)(m), that is imposed on a licence in accordance with subsection (1).

(5) If –

(a) the environmental licence is, in accordance with section 42E(4)(b), granted in relation to an activity that is conducted under more than one existing authorisation in relation to the activity; and

(b) the conditions or restrictions imposed on the existing authorisations are not consistent –

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subsection (6) applies, and subsections (2) and (3) do not apply, in relation to the licence.

- (6) Without limiting the generality of subsection (1), if this subsection applies in relation to an environmental licence –
- (a) the conditions or restrictions imposed, in accordance with subsection (1), on an environmental licence, may include any of the conditions or restrictions that were specified in, or imposed by, any of the existing authorisations in relation to the activity to which the licence relates; and
 - (b) any other condition or restriction, not imposed in accordance with paragraph (a), may not be of substantially the same effect as, and relate to the same biomass, product containing finfish, raw material, water, source of energy or pollutant as, a condition or restriction imposed in accordance with paragraph (a).

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

- (1) Subsection (2) applies in relation to a permit or a special permit, if –

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- (a) immediately before the day on which this section commences, a person is carrying out an EL activity under the permit or special permit; and
 - (b) an environmental licence is issued in relation to the EL activity.
 - (2) If this subsection applies in relation to a permit or special permit –
 - (a) a condition or restriction imposed on the permit or special permit by virtue of –
 - (i) a direction under section 25(5) of this Act, as in force before the day on which this section commences; or
 - (ii) section 60L of the *Land Use Planning and Approvals Act 1993* as in force before the day on which this section commences –
- is void on and from the day on which an environmental licence is issued in relation to the activity; and
- (b) any –

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(i) condition or restriction of the permit or special permit that is included by a variation to the permit specified in any environment protection notice issued under section 44(1)(d) or section 44(2)(d); and

(ii) other variation, to a condition or restriction of the permit or special permit, that is specified in any environment protection notice issued under section 44(1)(d) or section 44(2)(d) –

is void on and from the day on which an environmental licence is issued in relation to the activity; and

(c) any environment protection notice, issued under section 44(1)(d) or section 44(2)(d), that varies a condition or restriction of the permit or special permit that is in force in relation to the activity, is taken to be revoked on and from the day on which an environmental licence is issued in relation to the activity; and

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(d) any condition or restriction, of the permit or special permit, that is not referred to in paragraph (a) or (b) and that –

(i) relates to the reduction, minimisation or removal of potential risk to the environment; and

(ii) is inconsistent with a condition or restriction of an environmental licence in relation to an activity –

is void on and from the day on which an environmental licence is issued in relation to the activity.

(3) If a person is, immediately before the day on which this section commences, carrying out an EL activity in accordance with an exemption permit, then, on and from the day on which an environmental licence is issued in relation to the activity, any condition or restriction of the exemption permit that is inconsistent with a condition or restriction of the environmental licence is void.

(4) If a person is, immediately before the day on which this section commences, carrying out an EL activity that the person is expressly or impliedly authorised to carry out –

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(a) by an environment protection notice issued under section 44(1) (other than section 44(1)(d)); or

(b) by an environment protection notice issued under section 44(2) (other than section 44(2)(d)) –

the environment protection notice is taken to be revoked on and from the day on which an environmental licence is issued in relation to the person.

(5) If a person is, immediately before the day on which this section commences, carrying out an EL activity in accordance with a fish farm licence or a marine farming licence, then, on and from the day on which an environmental licence is issued in relation to the person, a condition or restriction of the fish farm licence, or marine farming licence, that is inconsistent with a condition or restriction of the environmental licence is void.

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

(1) The Director may notify a person who, immediately before a licence document, in relation to an environmental licence granted under section 42E in relation to an activity, is issued to the person under section 42ZB, was carrying out an

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activity under an existing authorisation in relation to the activity –

- (a) that the existing authorisation is void; or
 - (b) that a condition or restriction of an existing authorisation that, in the opinion of the Director, is inconsistent with a condition or restriction imposed on the environmental licence, is void.
- (2) If the Director notifies a person under subsection (1)(b) that a condition or restriction of an existing authorisation is void, the condition or restriction is void.
- (3) Nothing in subsection (2) is to be taken to have the effect that a condition or restriction of an existing authorisation is not void only because the person has not been notified under subsection (1) that the condition or restriction is void.

Subdivision 3 – Licences where no existing authority

42I. Applications for environmental licences

- (1) A person may apply to the Director, in a form approved by the Director, for an environmental licence in relation to an activity that is an EL activity.
- (2) If –

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(a) an application is made under subsection (1) for an environmental licence in relation to an activity that does not require a permit; and

(b) either –

(i) an application has been made under the *Living Marine Resources Management Act 1995* for a marine farming licence in relation to the activity; or

(ii) there is a permit, issued under section 12 or 14 of the *Living Marine Resources Management Act 1995*, that is in force in relation to the activity –

the Director may refuse to accept the application under subsection (1) and instead refer the application to the Board for assessment under section 27AA.

(3) A decision by the Director under subsection (2) as to whether to refer an application to the Board for assessment under section 27AA is to be made in accordance with the prescribed criteria as to when the Director must, or must not, refer an application to the Board.

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- (4) If an application is made under subsection (1) by the holder of a sub-lease of a lease under Part 4 of the *Marine Farming Planning Act 1995*, the reference in subsection (2)(b)(i), to an application made under the *Living Marine Resources Management Act 1995* for a marine farming licence in relation to an activity, includes a reference to an application made under the *Living Marine Resources Management Act 1995* for a marine farming licence that is to relate in whole or in part to an area of land, or an area of State waters, to which the application under subsection (1) relates, whether or not the marine farming licence is to relate to the same activity.
- (5) The Director must refuse to accept an application under subsection (1) in relation to an EL activity if the activity is an activity in relation to which a lease is required under Part 4 of the *Marine Farming Planning Act 1995* and either –
 - (a) the lease has not been granted; or
 - (b) the applicant is not the holder of a permit under section 12 or 14 of the *Living Marine Resources Management Act 1995* in relation to the activity.

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- (6) The Director must refuse to accept an application under subsection (1) from a person if the application, or the activity to which the application relates, has been, or is required to be, referred to the Board under section 25(1), section 25A or section 27AA(1).
- (7) The Director may refuse to accept an application under subsection (1) from a person in relation to an EL activity if –
- (a) the proposal to carry out the activity has been declared, or, in the opinion of the Director, is likely to be declared, to be a project of regional significance under the *Land Use Planning and Approvals Act 1993*; or
 - (b) the proposal to carry out the activity has been declared, or, in the opinion of the Director, is likely to be declared, to be a project of state significance under the *State Policies and Projects Act 1993*.

42J. Grant of licence by Director

- (1) If an application has been made to the Director under section 42I(1) in relation to an activity and the Director has not refused under that section to accept the application, the Director must –

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- (a) grant an environmental licence in relation to the activity; or
 - (b) refuse to grant an environmental licence in relation to the activity.
- (2) Subject to section 42L, the Director may, under subsection (1), grant to a person an environmental licence in relation to an activity if the Director is satisfied that it is appropriate to do so.
- (3) An environmental licence may be granted under subsection (1) in relation to an activity that is to be conducted at more than one location, but only if the prescribed criteria are satisfied.
- (4) The Director may under subsection (1) only grant, in relation to an application under section 42I(1), an environmental licence that is to be held by more than one person, if the persons to whom the licence is to be granted will hold the licence as trustees.
- (5) Subject to section 42Z, the Director may impose conditions or restrictions, or both, on an environmental licence granted by the Director under subsection (1).
- (6) The Director may grant an environmental licence under subsection (1) for a period determined by the Director or determine that the licence is granted for an unlimited period.

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42K. Grant of licence by Board

(1) In this section –

relevant application means an application, in relation to an EL activity, that –

(a) is an application, or relates to an activity, referred to the Board –

(i) under section 25 or 27AA; or

(ii) under section 42I(2); and

(b) is not a relevant application within the meaning of section 42Q(1);

relevant project means a project that –

(a) is –

(i) referred to the Board under section 27AB(3)(c); or

(ii) a project, in relation to an EL activity, in relation to which a notice of intent is lodged

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under section 27B;
and

- (b) is not a relevant project within the meaning of section 42Q(1).

(2) The Board may –

- (a) within 28 days after a relevant application, or a relevant project, in relation to an EL activity is referred to the Board under section 25, section 27AA, section 42I(2) or section 27AB(3)(c); or
- (b) after a notice of intent in relation to a relevant project, in relation to an EL activity, is lodged under section 27B –

refuse, on a ground referred to in section 42L(1) or (2), to grant an environmental licence in relation to the activity.

(3) As soon as practicable after the Board has completed under section 25, 25A or 27AA, or section 60M of the *Land Use Planning and Approvals Act 1993*, as the case may be, an assessment in relation to an EL activity, the Board must –

- (a) grant an environmental licence in relation to the activity; or

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- (b) refuse to grant an environmental licence in relation to the activity.
- (4) Subject to section 42L, the Board may, under subsection (3), grant to a person an environmental licence in relation to an activity if the Board is satisfied that it is appropriate to do so.
- (5) An environmental licence may be granted under subsection (3) in relation to an activity that is to be conducted at more than one location, but only if the prescribed criteria are satisfied.
- (6) The Board may only grant an environmental licence under subsection (3) that is to be held by more than one person, if the persons to whom the licence is to be granted will hold the licence as trustees.
- (7) Subject to section 42Z, the Board may impose conditions or restrictions, or both, on an environmental licence granted by the Board under this section.
- (8) The Board may grant an environmental licence under this section for a period determined by the Board or determine that the licence is granted for an unlimited period.

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42L. Refusal by Director or Board to grant licence

- (1) The Director or the Board must refuse under section 42J or 42K to grant to a person an environmental licence in relation to an activity if the Director or the Board, respectively, is satisfied that the person is, at the time of the application, disqualified under section 42ZF(8) from holding an environmental licence.
- (2) The Director or the Board may refuse under section 42J or 42K to grant to a person an environmental licence in relation to an activity if the Director or the Board, respectively, is satisfied that –
 - (a) the person has contravened this Act; or
 - (b) the person has, within the 5-year period before the day on which the licence is granted, been convicted of an offence, which the Director, or the Board, respectively, considers to be an offence relevant to the holding of the licence, against –
 - (i) this Act; or
 - (ii) any other Act; or

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- (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment; or
 - (c) the person is not a fit and proper person to hold an environmental licence; or
 - (d) an associate of the person has, within the 5-year period before the day on which the licence is granted, been convicted of an offence, which the Director, or the Board, respectively, considers to be an offence relevant to the holding of the licence, against –
 - (i) this Act; or
 - (ii) any other Act; or
 - (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment; or
 - (e) where the person is a natural person, the person is not an adult; or
 - (f) the person has not paid any fees that are due and payable under

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this Act, in relation to the licence,
by the person.

- (3) The Director or the Board may determine for the purposes of subsection (2)(c) that a person is not a fit and proper person to hold an environmental licence in relation to an activity if the Director or the Board, respectively, is reasonably of the opinion that the person, or an associate of the person, was an associate in relation to another person (including a body corporate) who or that –

(a) had –

(i) committed an offence against a provision, of a law, relating to protection of the environment; or

(ii) failed to comply with a duty, including a duty of care, imposed on the person in relation to protection of the environment; or

(iii) caused environmental harm; and

(b) had sought to be declared bankrupt, or to be deregistered as a corporation under the Corporations Law, for the purpose of avoiding –

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- (i) liability for the offence, for failing to comply with the duty or for causing the environmental harm; or
 - (ii) liability to pay a fine, penalty, including a civil penalty, or damages, in relation to the offence, the failure to comply with the duty or the causing of environmental harm.
 - (4) Subsection (3) does not limit the circumstances in which the Director or the Board may determine that, for the purposes of subsection (2)(c), a person is not a fit and proper person to hold an environmental licence.
 - (5) Subsections (1) and (2) do not limit the circumstances in which the Director or the Board may refuse under section 42J or 42K to grant an environmental licence.

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

- (1) The Director must, as soon as practicable after deciding under section 42J to grant, or to refuse to grant, an environmental licence to a person, give a relevant notice to the person.

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- (2) The Board must, as soon as practicable after deciding under section 42K to grant, or refuse to grant, an environmental licence in relation to an EL activity –
- (a) to which section 25, 25A, 27AA or 27AB relates, give a relevant notice to the planning authority; and
 - (b) to which section 27AB relates, give a relevant notice to the Panel established under section 60M of the *Land Use Planning and Approvals Act 1993* in relation to the activity; and
 - (c) to which section 25A relates, give a relevant notice to the Commission within the meaning of the *Land Use Planning and Approvals Act 1993*; and
 - (d) to which section 25, 25A or 27AA relates, give a relevant notice to the person to whom the licence is granted or to whom, if the Board had not refused to grant the licence, the licence would have been granted; and
 - (e) to which section 27AB relates, give a relevant notice to the proponent of the project to which the decision relates.

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- (3) The Board must, as soon as practicable after deciding under section 42K to grant, or refuse to grant, an environmental licence in relation to an EL activity after completing an assessment referred to in section 42K(2)(a), give a relevant notice to each person who has made, in relation to the activity, a representation under section 27G(2) or the *Land Use Planning and Approvals Act 1993*.
- (4) If the Director refuses under section 42I to accept an application for an environmental licence, the Director must give a relevant notice to the person who made the application.
- (5) For the purposes of this section, a relevant notice, in relation to a decision, to be given to a person or body is a notice –
- (a) that the decision has been made, the terms of the decision and the reasons for making the decision; and
 - (b) of any conditions or restrictions that have been imposed on an environmental licence in accordance with the decision and the reasons for imposing them; and

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- (c) if the person is a person who has a right under Subdivision 9 to appeal to the Appeal Tribunal in relation to the decision, of that person's right under Subdivision 9 to appeal to the Appeal Tribunal in relation to the decision.

Subdivision 4 – Variation of licences

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

- (1) The holder of an environmental licence granted by the Board or the Director may apply to the Director, in a form approved by the Director, for a variation of the licence.
- (2) The Director must refuse to accept an application to vary an environmental licence so as to authorise a proposed expansion, intensification or modification of an activity (a ***relevant alteration***) to be carried out under the licence if the Director is of the opinion that a permit, or a special permit, is required under the *Land Use Planning and Approvals Act 1993* in relation to the relevant alteration and such a permit has not been granted.
- (3) The Director must, on receiving an application under subsection (1) from the

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holder of an environmental licence, if the Director has not refused, under subsection (2), to accept the application –

- (a) vary the licence, unless the Director must refer the application under section 42O to the Board for assessment under section 27AA; or
 - (b) refuse to vary the licence, unless the Director must refer the application under section 42O to the Board for assessment under section 27AA; or
 - (c) refer the application under section 42O to the Board for assessment under section 27AA.
- (4) The Director may, in accordance with subsection (3), vary an environmental licence under that subsection if the Director is satisfied that it is appropriate to do so.
- (5) The Director may, in accordance with subsection (3), refuse to vary an environmental licence under that subsection if the Director is satisfied that –
- (a) the holder of the environmental licence has contravened this Act; and

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- (b) the holder of the environmental licence has, within the 5-year period before the day on which the licence is varied, been convicted of an offence, which the Director considers to be an offence relevant to the holding of the licence, against –
 - (i) this Act; or
 - (ii) any other Act; or
 - (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment; and
 - (c) the holder of the environmental licence has not paid any fees that are due and payable under this Act, in relation to the licence, by the holder of the licence.
- (6) Subsection (5) does not limit the circumstances in which the Director may refuse under subsection (3) to vary an environmental licence.
- (7) The Director must notify the holder of an environmental licence of –
 - (a) a decision by the Director –

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- (i) to refuse to accept an application under this section in relation to the licence; or
 - (ii) to vary, or to refuse to vary, a licence under this section; or
 - (iii) to refer to the Board, under section 42O, an application under this section in relation to the licence; and
- (b) the reasons for the decision; and
 - (c) if the decision is a decision to vary the licence, the details of each variation and the reason for each variation; and
 - (d) the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.

42O. Referral to Board of certain applications for variation

(1) If –

- (a) an application is made under section 42N(1) for a variation of

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an environmental licence in relation to an EL activity that does not require a permit; and

- (b) an application has been made under the *Living Marine Resources Management Act 1995* for a variation of a marine farming licence in relation to the activity –

the Director may, instead of accepting the application, refer the application to the Board for assessment under section 27AA.

- (2) A decision by the Director under subsection (1) as to whether to refer an application to the Board for assessment under section 27AA is to be made in accordance with the prescribed criteria as to when the Director must, or must not, refer an application to the Board.

- (3) If –

- (a) an application is made under section 42N(1) for a variation of an environmental licence in relation to an EL activity that does not require a permit; and

- (b) either –

- (i) an application has not been made under the

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Living Marine Resources Management Act 1995 for a variation of a marine farming licence in relation to the activity and such an application is not required to be made under that Act; or

- (ii) the application under section 42N(1) is not an application to which subparagraph (i), or subsection (1), applies –

the Director must determine whether the variation to which the application under section 42N(1) relates is a minor variation or a major variation.

- (4) In making a determination under subsection (3) as to whether the variation to which an application under section 42N(1) relates is a minor variation or a major variation, the Director –
 - (a) must take into consideration the characteristics set out in Schedule 5, as if a reference in that Schedule to a project or an activity were a reference to the proposed variation; and

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- (b) if the Director is of the opinion that the variation has class A characteristics under that Schedule, must determine that the variation is a minor variation; and
 - (c) if the Director is of the opinion that the variation has class 2B or class 2C characteristics under that Schedule, must determine that the variation is a major variation.
- (5) If the Director determines under subsection (3) that the variation to which an application under section 42N(1) relates is a major variation, the Director, instead of accepting the application, must refer the application to the Board for assessment under section 27AA.

42P. Variation of licence on Director's initiative

- (1) The Director may, on his or her own initiative, vary an environmental licence, including a licence granted by the Board.
- (2) The Director may only vary an environmental licence under subsection (1) if the Director –
 - (a) has, at least 14 days before varying the licence, issued a notice to the holder of the environmental licence –

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- (i) specifying the proposed variation; and
 - (ii) specifying the reasons why the Director proposes to vary the licence; and
 - (iii) inviting the holder of the environmental licence to provide to the Director, within 14 days after receiving the notice, written reasons as to why the licence ought not be varied as proposed; and
 - (b) has considered any written reasons provided to the Director under subsection (3).
 - (3) The holder of an environmental licence to whom a notice is issued under subsection (2) may provide to the Director, within 14 days after receiving the notice, written reasons as to why the licence ought not be varied as proposed.
 - (4) The Director must notify the holder of an environmental licence of –
 - (a) a decision by the Director to vary the licence under this section; and
 - (b) the details of the variation and the reason for the variation; and

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- (c) the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.

42Q. Variation by Board of licence

- (1) In this section –

relevant application means –

- (a) an application, referred to the Board under section 25 or 27AA, in relation to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence; and
- (b) an application that is referred to the Board by the Director under section 42O;

relevant assessment means an assessment completed by the Board –

- (a) under section 25 or 27AA, or under section 60L of the *Land Use Planning and Approvals*

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Act 1993, in relation to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence; or

- (b) under section 27AA in relation to an application that is referred to the Board by the Director under section 42O;

relevant project means a project that –

- (a) consists of a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence; and
- (b) is referred to the Board under section 27AB(3)(c) or is a project, in relation to an EL activity, in relation to which a notice of intent has been lodged under section 27B.

(2) The Board may –

- (a) within 28 days after a relevant application, or a relevant project, in relation to an EL activity is

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referred to the Board under
section 25, section 27AA,
section 27AB(3)(c) or
section 42O; or

- (b) after a notice of intent in relation to a relevant project, in relation to an EL activity, is lodged under section 27B –

refuse, on a ground referred to in subsection (5), to vary an environmental licence in relation to the activity.

- (3) As soon as practicable after the Board has completed a relevant assessment, the Board must –

- (a) vary an environmental licence in relation to the activity; or

- (b) refuse to vary an environmental licence in relation to the activity.

- (4) The Board may vary under subsection (3) an environmental licence if the Board is satisfied that it is appropriate to do so.

- (5) The Board may, under subsection (2) or subsection (3), refuse to vary an environmental licence if the Board is satisfied that –

- (a) the holder of the environmental licence has contravened this Act; and

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- (b) the holder of the environmental licence has, within the 5-year period before the day on which the licence is varied, been convicted of an offence, which the Board considers to be an offence relevant to the holding of the licence, against –
- (i) this Act; or
 - (ii) any other Act; or
 - (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment; and
- (c) the holder of the environmental licence has not paid any fees that are due and payable under this Act, in relation to the licence, by the holder of the licence.
- (6) Subsection (5) does not limit the circumstances in which the Board may refuse to vary an environmental licence under subsection (3).

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

- (1) The Board must, as soon as practicable after making a decision under

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section 42Q(2) or (3) in relation to a relevant application within the meaning of section 42Q(1), give a relevant notice to –

- (a) the person who made the application; and
 - (b) if the application is an application to which section 25 or 25A relates, the planning authority for the area of land, or area of State waters, to which the application relates; and
 - (c) if the application is an application to which section 25A relates, the Commission.
- (2) The Board must, as soon as practicable after making a decision under section 42Q(3) in relation to an EL activity, give a relevant notice to each person who has made a representation under the *Land Use Planning and Approvals Act 1993* or section 27G(2) in relation to the activity.
- (3) For the purposes of this section, a relevant notice, in relation to a decision, to be given to a person or body is a notice –
- (a) specifying whether the Board has varied, or refused to vary, the environmental licence to which

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the decision relates and the reasons for making the decision; and

- (b) if the decision is a decision to vary an environmental licence, specifying details of the variation and the reason for the variation; and
- (c) if the person is a person who has a right under Subdivision 9 to appeal to the Appeal Tribunal in relation to the decision, of the person's right under Subdivision 9 to appeal to the Appeal Tribunal in relation to the decision.

Subdivision 5 – Renewal of licences

42S. Applications for renewal of licences

- (1) The holder of an environmental licence that is in force for a period specified on the licence, may apply to the Director, in a form approved by the Director, for a renewal of the environmental licence.
- (2) An application under subsection (1) for the renewal of an environmental licence is invalid if it is not made before the number of days, before the day on which the licence expires, that is prescribed.

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- (3) The Director, in his or her discretion, may, despite subsection (2), accept an application under subsection (1) for the renewal of an environmental licence, if the application is made before the day on which the licence expires and, if the Director so accepts the application, the application is, despite subsection (2), valid.
- (4) If an application under subsection (1) for the renewal of an environmental licence is valid, the licence remains in force, despite section 42ZC(5), until the holder of the environmental licence is notified under section 42T(9) of the decision of the Director to renew, or to refuse to renew, the licence.

42T. Renewal of licences on application

- (1) If the Director receives under section 42S(1) a valid application for the renewal of an environmental licence, the Director must –
 - (a) renew the environmental licence;
or
 - (b) refuse to renew the environmental licence.
- (2) Subject to this section, the Director may renew under subsection (1) an

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environmental licence if the Director is satisfied that it is appropriate to do so.

- (3) The Director must refuse to renew an environmental licence under subsection (1) if, immediately before the licence is renewed, the licence contained a condition that the licence may not be renewed.
- (4) The Director may refuse to renew an environmental licence under subsection (1) if he or she is satisfied that the applicant for renewal of the licence –
 - (a) has contravened the conditions and restrictions of the licence in the 5-year period immediately before the application for renewal of the licence is made; or
 - (b) has, within the 5-year period before the day on which the licence is renewed, been convicted of an offence against –
 - (i) this Act; or
 - (ii) any other Act; or
 - (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment –

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which the Director considers to be an offence relevant to the holding of the licence; or

- (c) is not a fit and proper person to hold an environmental licence; or
 - (d) has not paid any fees that are due and payable under this Act, in relation to the licence, by the person.
- (5) Subsection (4) does not limit the circumstances in which the Director may refuse to vary an environmental licence.
- (6) If, immediately before an environmental licence is renewed under subsection (1), the licence contained a condition limiting the ability of the Director to renew the licence, the Director may only renew the licence under subsection (1) in accordance with the condition.
- (7) Subject to section 42Z, the Director may impose conditions or restrictions, or both, on an environmental licence renewed under subsection (1).
- (8) The Director may renew an environmental licence under subsection (1) for a period determined by the Director or determine that the licence is renewed for an unlimited period.

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- (9) The Director must give notice, to the person who applied for the renewal of an environmental licence –
- (a) of a decision by the Director to renew, or to refuse to renew, the environmental licence under this section; and
 - (b) if the Director has refused to renew the licence under this section, of the reasons for refusing to renew the licence; and
 - (c) of any conditions or restrictions that are imposed on the licence as renewed under subsection (1) and the reasons for imposing them; and
 - (d) of the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.

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

- (1) The Director may, on his or her own initiative, renew an environmental licence.
- (2) The Director may renew an environmental licence under

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subsection (1) whether or not the licence has expired.

(3) The Director may only renew an environmental licence under subsection (1) if the Director is of the opinion that it is necessary to do so to ensure –

(a) that potential environmental harm from the conduct of an activity under, or purportedly under, the licence before it is renewed, is reduced; or

(b) the decommissioning of any facilities on the area of land, or the area of State waters, to which the licence relates; or

(c) the rehabilitation of –

(i) the area of land, or the area of State waters, to which the licence, before it was renewed, related; or

(ii) areas of land, or of State waters, to which environmental harm may have been caused by the conduct of the activity under, or purportedly under, the licence.

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- (4) Subject to section 42Z, the Director may, under subsection (1), impose conditions or restrictions, or both, on an environmental licence that is renewed.
 - (5) The Director may renew an environmental licence under subsection (1) for a period determined by the Director or determine that the licence is renewed for an unlimited period.
 - (6) The Director must give notice, to the holder of an environmental licence, of –
 - (a) a decision by the Director to renew the licence under this section; and
 - (b) any conditions or restrictions that are imposed on the licence renewed under subsection (1) and the reasons for imposing them; and
 - (c) the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.

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Subdivision 6 – Transfer of licences

42V. Transfer of licence only authorised if approved

- (1) The holder of an environmental licence must not transfer, or purport to transfer, the licence to another person.
- (2) A transfer, or purported transfer, of an environmental licence otherwise than by the Director under section 42W(2) is void and of no effect.

42W. Transfer of licences

- (1) The holder of an environmental licence may apply to the Director, in a form approved by the Director, for the Director to transfer the licence to another person.
- (2) The Director may, if he or she receives an application under subsection (1) from the holder of an environmental licence –
 - (a) transfer the licence to another person; or
 - (b) refuse to transfer the licence to another person.
- (3) Subject to section 42X, the Director may transfer under subsection (2) an

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environmental licence if the Director is satisfied that it is appropriate to do so.

- (4) Subject to section 42Z, the Director may impose conditions or restrictions, or both, on an environmental licence as transferred under subsection (2).
- (5) The Director may determine that an environmental licence, when transferred under subsection (2) –
 - (a) is to remain in force, subject to this Act, for a period determined by the Director and specified in the licence document; or
 - (b) is to remain in force, subject to this Act, for an unlimited period.
- (6) The Director must notify a person who has applied under subsection (1) for the transfer of an environmental licence –
 - (a) of a decision by the Director to transfer, or to refuse to transfer, the licence under subsection (2); and
 - (b) if the Director has refused to transfer the licence under subsection (2), of the reasons for refusing to transfer the licence; and

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- (c) of any conditions or restrictions that are imposed on the licence as transferred under subsection (2) and the reasons for imposing them; and
- (d) of the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section or section 42Y(1).

42X. Refusal to transfer licence

- (1) The Director must not transfer under section 42W(2) an environmental licence to another person if the licence is to be held by more than one person, unless the persons comprise a trust that is to hold the licence.
- (2) The Director must not transfer under section 42W(2) an environmental licence to another person if –
 - (a) the other person is a person to whom a licence must not, under section 42L(1), be granted; or
 - (b) the transfer of the licence would be in contravention of a condition or restriction of the licence to which the application relates; or

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- (c) the activity is an activity in relation to which a lease is required under Part 4 of the *Marine Farming Planning Act 1995* and either –
- (i) the lease has not been transferred under that Act to the person to whom the licence is to be transferred; or
 - (ii) the person to whom the licence is to be transferred is not the holder of a permit issued under section 12 or 14 of the *Living Marine Resources Management Act 1995* in relation to the activity.
- (3) The Director may refuse to transfer under section 42W(2) an environmental licence to a person if the person is a person in relation to whom the Director may refuse under section 42L(2) to grant an environmental licence.
- (4) The Director may refuse to transfer under section 42W(2) an environmental licence to another person if the holder of the environmental licence, or the person to whom the licence is to be transferred, has not paid any fees that are due and payable under this Act, in relation to an

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environmental licence, by the holder of the licence.

- (5) Subsections (1), (2), (3) and (4) do not limit the circumstances in which the Director may refuse to transfer an environmental licence under section 42W(2).

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

- (1) The Director may, but is not required to, agree to transfer an environmental licence under section 42W(2) subject to conditions or restrictions specified in the agreement.
- (2) If a condition or restriction is specified, in accordance with subsection (1), in an agreement to transfer an environmental licence under section 42W(2), the Director may refuse to transfer the licence under section 42W(2) if the condition or restriction has not been complied with.
- (3) A condition or restriction specified, in accordance with subsection (1), in an agreement to transfer an environmental licence under section 42W(2), may relate to the person to whom the licence is to be transferred, the person from whom the licence is to be transferred or any other person.

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Subdivision 7 – General provisions

42Z. Conditions and restrictions of licences

- (1) The conditions or restrictions that may be imposed on an environmental licence as granted, varied, transferred or renewed –
 - (a) by the Director, are the conditions or restrictions that the Director thinks fit to impose on the licence and which, in the opinion of the Director, will further the objectives of this Act; and
 - (b) by the Board, are the conditions or restrictions that the Board thinks fit to impose on the licence and which, in the opinion of the Board, will further the objectives of this Act.
- (2) Without limiting the generality of subsection (1), the conditions or restrictions that may be imposed on an environmental licence in relation to an activity include the following:
 - (a) a condition or restriction limiting the amount of biomass of finfish that may be contained in or at the facilities, or on the area of land, or area of State waters, in, at or on which the finfish farming is

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conducted, or is to be conducted,
under the licence;

- (b) a condition or restriction limiting the amount of finfish, or a product containing finfish, that is capable of being produced under the licence;
- (c) a condition or restriction limiting the amount of raw materials (including smolt) that may be introduced into the facilities, or an area of land, or an area of State waters, in, at or on which the finfish farming is conducted, or is to be conducted, under the licence;
- (d) a condition or restriction limiting the amount of water or energy that may be used to conduct finfish farming under the licence;
- (e) a condition or restriction that –
 - (i) limits the amount of a pollutant that may be produced or emitted in the course of the conduct of an activity; or
 - (ii) prohibits the production or emission of any amount of a pollutant that may be produced or

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emitted in the course of
the conduct of an activity;
or

(iii) limits the rate, or
concentration, or both, at
which a pollutant that
may be produced or
emitted in the course of
the conduct of an activity
may be produced or
emitted in the course of
the conduct of the
activity;

(f) a condition or restriction
requiring the holder of the
environmental licence to prepare,
and submit to the Director for
approval, an environmental
management plan in relation to
the conduct of the activity under
the licence;

(g) a condition or restriction
requiring the holder of the
environmental licence to
undertake monitoring of the
environmental effects of the
conduct of the activity under the
licence and to report the results of
that monitoring to the Director at
a time, or at times, specified in
the condition or restriction or by
the Director;

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- (h) a condition or restriction requiring that, if the conduct of the activity under the licence ceases, the licence holder must ensure that the site is decommissioned or rehabilitated in accordance with the Director's requirements;
- (i) a condition or restriction requiring the holder of the environmental licence to undertake such measures as are specified in the licence to limit the environmental effects of traffic movements, or vessel movements, to and from the area of land, or area of State waters, to which the licence applies;
- (j) a condition or restriction that gives effect to a State policy or an environment protection policy;
- (k) a condition that prevents or limits the renewal of the licence;
- (l) a condition or restriction to secure compliance with the general environmental duty;
- (m) a condition or restriction –
 - (i) requiring the holder of the licence to prepare and submit to the Board a

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draft environmental
improvement programme;
and

- (ii) requiring the holder of the licence to comply with an environmental improvement programme, approved by the Board under section 40(4), that is in force.

- (3) If conditions of a kind referred to in subsection (2)(m) are imposed on an environmental licence –

- (a) the draft environmental improvement programme prepared and submitted to the Director in accordance with the condition is to be treated as such a programme prepared and submitted to the Board under section 39, and Division 7 applies accordingly; and
- (b) any requirements of the environmental improvement programme approved by the Board under section 40(4) in relation to the holder of the licence are to be taken to be conditions of the environmental licence while the programme remains in force; and

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- (c) any activity undertaken in accordance with the requirements of the environmental improvement programme approved by the Board under section 40(4) in relation to the holder of the licence is not to be taken for the purposes of this Act to constitute an expansion, intensification or modification of an activity to which the environmental licence relates.
- (4) In determining the conditions and restrictions, if any, to be imposed on an environmental licence in relation to the conduct of an activity to which a marine farming development plan applies under the *Marine Farming Planning Act 1995*, the Director or the Board, as the case may be, is to take into account –
 - (a) the conditions and restrictions, if any, included in the plan; and
 - (b) the management controls, if any, included in the plan.
- (5) Nothing in subsection (4) is to be taken to limit the conditions or restrictions that may be imposed on an environmental licence.

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(6) If a condition or restriction imposed on an environmental licence in relation to an activity is inconsistent with –

- (a) the conditions and restrictions, if any, included in a marine farming development plan that applies in relation to the activity under the *Marine Farming Planning Act 1995*; or
- (b) a management control, if any, included in a marine farming development plan that applies in relation to the activity under the *Marine Farming Planning Act 1995* –

the condition or restriction, or management control, included in the marine farming development plan is of no effect to the extent of the inconsistency.

(7) If a condition or restriction imposed on an environmental licence in relation to an activity is inconsistent with the conditions and restrictions, if any, imposed on –

- (a) a marine farming licence or a fish farm licence; or
- (b) an exemption permit –

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that applies in relation to the activity, the condition or restriction of the marine farming licence, fish farm licence or exemption permit is of no effect to the extent of the inconsistency.

42ZA. Director may require information to be provided

- (1) This section applies in relation to a person if –
- (a) the person is taken under section 42D to have applied for an environmental licence; or
 - (b) the person has applied under section 42I(1) for an environmental licence; or
 - (c) the person has applied under section 42N(1) for a variation of an environmental licence or the Director is proposing to vary under section 42P(1) an environmental licence held by the person; or
 - (d) the person has applied under section 42S(1) for the renewal of an environmental licence; or
 - (e) the person has applied under section 42W(1) for the transfer of an environmental licence.

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- (2) If this section applies in relation to a person, the Director may require the person to –
- (a) provide any information that the Director requires; or
 - (b) verify by statutory declaration any information given in an application made by the person or pursuant to a requirement under this section.
- (3) If this section applies in relation to a person in respect of an application referred to in subsection (1), the Director may refuse to make a decision under this Division in relation to the application before the information is provided or verified.
- (4) If this section applies in relation to a person by virtue of subsection (1)(a), the person must comply with a requirement imposed on the person by a notice under subsection (2).

Penalty: Fine not exceeding 100 penalty units.

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

- (1) If an environmental licence is granted, varied, transferred or renewed under this Division by the Director or the Board, the Director must issue a licence document in relation to the licence, by serving the licence document on –
 - (a) the person to whom the licence is granted; or
 - (b) the holder of the environmental licence that is being varied or renewed; or
 - (c) the person to whom the environmental licence is to be transferred –as the case may be.
- (2) If an environmental licence, a variation of an environmental licence, or a condition or restriction of an environmental licence, is specified in section 42ZK to be of no effect subject to the determination of an appeal, a licence document in relation to the environmental licence is not, if an appeal against the decision is made, to be issued, if at all, until the determination of the appeal within the meaning of that section.

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- (3) Subsection (2) does not apply in relation to the grant of an environmental licence under section 42E.
- (4) If the Board was required –
- (a) under section 42K to determine whether to grant an environmental licence in relation to an activity in relation to which a permit or special permit is required; or
 - (b) under section 42Q to determine whether to vary an environmental licence in relation to a proposed expansion, intensification or modification of an activity that is carried out under an environmental licence and that is an expansion, intensification or modification for which a permit or special permit is required –

the Director must not issue a licence document in relation to the activity unless and until the Board is notified under section 27AC(5) that a permit, or special permit, has been granted in relation to the activity or the proposed expansion, intensification or modification of an activity that is carried out under an environmental licence, as the case may be.

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- (5) A licence document is to be in the form approved by the Director, which may be an electronic form.
- (6) The form, of a licence document, in relation to an environmental licence, that is approved by the Director, must include the following:
 - (a) the name of the person to whom the licence document is issued, with sufficient particularity to accurately identify the person;
 - (b) a statement as to –
 - (i) whether the Board or the Director granted, varied, transferred or renewed the licence; and
 - (ii) the provision of this Act under which the licence was granted, varied, transferred or renewed;
 - (c) the conditions or restrictions, if any, imposed on the licence as granted, varied, transferred or renewed, as the case may be;
 - (d) a description of the land, and any premises, to which the licence relates, that is sufficient to accurately identify the land and premises;

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- (e) if, under the licence, finfish farming is to be conducted in State waters, a description, of the area of State waters on which the finfish farming is to be conducted, that accurately identifies the area of State waters;
 - (f) the period, if any, for which the licence is, subject to this Act, to remain in force or, if such a period has not been determined in relation to the licence, a statement that the licence remains in force, subject to this Act, for an indefinite period.
- (7) The Director is to provide a copy of a licence document issued under this section to each planning authority in respect of the area of land, or the area of State waters, to which the licence document relates.
- (8) The Director may issue, reissue or cancel a licence document if necessary for the purposes of a determination of the Appeal Tribunal in relation to a decision under this Part.

42ZC. When licences take and cease to have effect

- (1) This section applies subject to section 42ZK.

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- (2) An environmental licence that is granted or renewed takes effect on the day on which the licence document in relation to the licence is served under section 42ZB(1) on the holder of the environmental licence.
- (3) The variation of an environmental licence under section 42N, 42P or 42Q takes effect on the day on which the licence document in relation to the licence, as so varied, is served under section 42ZB(1) on the holder of the environmental licence.
- (4) On the day on which a copy of a licence document in relation to an activity is served under section 42ZB(1) on a person to whom the environmental licence to which the licence document relates is transferred –
 - (a) the environmental licence specified in the licence document takes effect; and
 - (b) the previous environmental licence, in relation to the activity, that was in force immediately before that day, ceases to have effect.
- (5) Subject to this Act, an environmental licence remains in force from the day on which it takes effect until –

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- (a) if a period for which the licence is to remain in effect is specified in the licence document in relation to the licence – the day on which that period expires; or
 - (b) if the licence is surrendered – the day on which the licence ceases under section 42ZH to have effect; or
 - (c) the day on which a subsequent licence in relation to the activity that is issued under section 42ZB(1) takes effect; or
 - (d) the day on which notice of the cancellation of the licence is served on the holder of the licence –

whichever occurs first.

42ZD. Deferral of certain decisions pending outcome of proceedings

(1) In this section –

relevant person, in relation to a decision, means –

- (a) a person who has made an application to which the decision relates or an associate of such a person; or

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- (b) a person –
 - (i) whose application under the *Land Use Planning and Approvals Act 1993* or this Act is referred to the Board or who intends to carry out, or is carrying out, an activity which is referred to the Board under this Division; and
 - (ii) who is a person to whom the decision relates; or
 - (c) an associate of a person referred to in paragraph (b); or
 - (d) a person to whom, in an application under section 42W, it is proposed that an environmental licence be transferred or an associate of such a person.
- (2) This section applies in relation to section 42I, section 42J, section 42K, section 42N, section 42Q, section 42T and section 42W.
- (3) If the Director or the Board is required under a section to which this section applies to make a decision in relation to a relevant person, the Director or the Board, respectively, may defer making the decision pending the outcome of proceedings, against the relevant person

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or another relevant person, in relation to
an offence committed against –

- (a) this Act; or
- (b) any other Act; or
- (c) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment –

by the relevant person or the other relevant person.

42ZE. Notices of certain decisions to be given

- (1) In this section –

Director of Inland Fisheries means the Director of Inland Fisheries appointed under section 11 of the *Inland Fisheries Act 1995*;

Secretary means the Secretary of the Department responsible to the Minister to whom the administration of the *Living Marine Resources Management Act 1995* is assigned.

- (2) The Director is to notify the Director of Inland Fisheries of –

- (a) an application under this Division for the grant, variation, renewal

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- or transfer of an environmental licence in relation to inland fish farming or for approval of the surrender of an environmental licence in relation to inland fish farming; and
- (b) a decision of the Director or the Board to grant or vary, or to refuse to grant or vary, an environmental licence in relation to inland fish farming; and
 - (c) a decision of the Director to renew, transfer, or approve the surrender of, or to refuse to renew, transfer, or approve the surrender of, an environmental licence in relation to inland fish farming; and
 - (d) a decision of the Director to suspend or cancel an environmental licence in relation to inland fish farming.
- (3) The Director is to notify the Secretary of –
- (a) an application under this Division for the grant, variation, renewal or transfer of an environmental licence in relation to marine farming or for approval of the surrender of an environmental

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licence in relation to marine farming; and

- (b) a decision of the Director or the Board to grant or vary, or to refuse to grant or vary, an environmental licence in relation to marine farming; and
- (c) a decision of the Director to renew, transfer, or approve the surrender of, or to refuse to renew, transfer, or approve the surrender of, an environmental licence in relation to marine farming; and
- (d) a decision of the Director to suspend or cancel an environmental licence in relation to marine farming.

Subdivision 8 – Surrender, suspension and cancellation of licences

42ZF. Suspension, or cancellation, of licences

- (1) The Director may, by notice to the holder of an environmental licence, suspend or cancel the licence.
- (2) The Director may only suspend or cancel an environmental licence under subsection (1) if the Director is satisfied that –

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- (a) a condition or restriction of the licence has been contravened; or
- (b) the holder of the environmental licence has, within the 5-year period before the suspension or cancellation, been convicted of an offence, which the Director considers to be an offence relevant to the holding of the environmental licence, against –
 - (i) this Act; or
 - (ii) any other Act; or
 - (iii) a law of another State, a Territory, or the Commonwealth, that relates to the protection of the environment; or
- (c) a lease under Part 4 of the *Marine Farming Planning Act 1995*, for an area on which activities under the environmental licence are carried out, has been cancelled or has expired; or
- (d) the holder of the environmental licence has not paid any fees that are due and payable under this Act, in relation to an environmental licence, by the holder of the licence; or

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- (e) an activity under the licence has caused, is causing or is likely to cause serious environmental harm or material environmental harm and the risk of such harm cannot be, within a reasonable period, removed, or adequately reduced, by varying the licence.
- (3) If an environmental licence is suspended, the licence is to be taken not to be in force while the suspension remains in force.
- (4) A notice under subsection (1) –
- (a) may suspend an environmental licence –
- (i) for a period specified in the notice; or
- (ii) until a requirement specified in the notice is satisfied; or
- (iii) until the Director issues a notice under subsection (7) in relation to the licence –
- whichever occurs first; and
- (b) must specify the reasons for suspending or cancelling the licence; and

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- (c) must specify the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.
- (5) Without limiting the generality of subsection (4)(a)(ii), a requirement specified in a notice under that subsection may include a requirement that the holder of a licence to which the notice relates –
 - (a) ensure that a scientific study be carried out; or
 - (b) take an action to prevent environmental harm; or
 - (c) take an action to ensure the remediation of environmental harm.
- (6) A person does not commit an offence under section 42C in relation to an activity conducted in accordance with a requirement specified in a notice under subsection (1).
- (7) The Director may, by notice in writing to the holder of an environmental licence, notify the holder of the environmental licence that the suspension of the licence has ceased.

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- (8) The Director may, by notice in writing to a person who was the holder of an environmental licence that has been cancelled under this section, disqualify the person from holding an environmental licence at any time or for a period specified in the notice.
- (9) The Director may only issue a notice under subsection (8) to a person who was the holder of an environmental licence that has been cancelled under this section if –
- (a) the notice is issued after the end of the period in which an application for an appeal against the decision to cancel the licence may be made under Subdivision 9; and
 - (b) where an application for an appeal is made under Subdivision 9 against the decision to cancel the licence, the appeal is not upheld.

42ZG. Notice to be given before suspension or cancellation

- (1) The Director may not suspend or cancel an environmental licence under section 42ZF(1) unless the Director has –

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- (a) at least 14 days before the suspension or cancellation, issued a notice to the holder of the environmental licence –
 - (i) advising that the Director intends to suspend or cancel the licence; and
 - (ii) specifying the grounds on which the Director intends to suspend or cancel the licence; and
 - (iii) inviting the holder of the environmental licence to provide to the Director, within 14 days after receiving the notice, written reasons as to why the licence ought not be suspended or cancelled; and
 - (b) considered any written reasons provided to the Director under subsection (3).
- (2) If the Director has complied with subsection (1) in relation to a notice to the holder of an environmental licence advising that the Director intends to cancel the licence, the Director may suspend the licence instead of cancelling it.

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- (3) The holder of an environmental licence to whom a notice has been issued under subsection (1) may provide to the Director, within 14 days after receiving the notice, written reasons as to why the licence ought not be suspended or cancelled as proposed in the notice.

42ZH. Surrender of licence

- (1) The holder of an environmental licence may apply to the Director, in a form approved by the Director, for an approval of the surrender of the licence.
- (2) The Director may, on receiving an application under subsection (1), by notice to the holder of an environmental licence –
- (a) grant an approval of the surrender of the licence without conditions or restrictions; or
 - (b) grant an approval of the surrender of the licence on the conditions or restrictions specified in the notice; or
 - (c) refuse to grant an approval of the surrender of the licence.
- (3) A notice under subsection (2) must –

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- (a) if the Director grants an approval of the surrender of an environmental licence on conditions or restrictions, specify the reasons for imposing the conditions or restrictions; and
 - (b) if the Director refuses to grant an approval of the surrender of an environmental licence, specify the reasons for the refusal; and
 - (c) specify the rights of the person under Subdivision 9 to appeal to the Appeal Tribunal in relation to a decision made by the Director under this section.
- (4) If the Director grants an approval of the surrender of an environmental licence –
 - (a) under subsection (2)(a), the licence is surrendered and ceases to have effect on the day on which the notice of grant of the approval is given under that subsection or on a later date specified in the approval; or
 - (b) under subsection (2)(b), the licence is surrendered and ceases to have effect on the day on which the conditions or restrictions specified in the

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approval of the surrender are
satisfied.

- (5) A person whose environmental licence is surrendered under this section is not entitled to any compensation or refund in respect of any matter arising from the surrender.

Subdivision 9 – Appeals in relation to licences

42ZI. Right of appeal

- (1) A person who intends to carry out an EL activity may appeal to the Appeal Tribunal against a decision of the Director or the Board under section 42J or section 42K to refuse to grant an environmental licence in relation to the activity, except in relation to a decision in accordance with section 42L(1).
- (2) A person to whom an environmental licence has been granted may appeal to the Appeal Tribunal against a decision of the Director or the Board –
- (a) under section 42F to impose conditions or restrictions on the environmental licence, but only if the condition or restriction to which the appeal relates is not a condition or restriction substantially the same as a condition or restriction imposed

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- on an existing authorisation in relation to the activity to which the environmental licence relates; or
 - (b) under section 42J, or section 42K, to impose conditions or restrictions on the environmental licence.
- (3) A person who holds or has held an environmental licence may appeal to the Appeal Tribunal against a decision of the Director or the Board –
- (a) under section 42N to vary the environmental licence, if the variation is not a variation of the licence for which the holder of the environmental licence applied under section 42N(1); or
 - (b) under section 42N to refuse to vary the environmental licence; or
 - (c) under section 42P to vary the environmental licence, but only if the person provided the Director under section 42P(3) with written reasons why the licence ought not be so varied; or
 - (d) under section 42Q to vary the environmental licence; or

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- (e) under section 42Q to refuse to vary the environmental licence; or
 - (f) under section 42T to refuse to renew the environmental licence; or
 - (g) under section 42U to renew the environmental licence; or
 - (h) under section 42T or 42U to impose a condition or restriction on an environmental licence as renewed under that section, if the condition or restriction was not a condition or restriction of the licence before the licence was renewed; or
 - (i) under section 42W to refuse to transfer the environmental licence; or
 - (j) under section 42W(4) to impose, on the environmental licence as transferred under section 42W, a condition or restriction that was not a condition or restriction of the environmental licence before it was transferred; or
 - (k) under section 42ZF to suspend or cancel the environmental licence; or

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- (l) under section 42ZH to refuse to grant an approval of the surrender of the environmental licence; or
 - (m) under section 42ZH to impose a condition or restriction on an approval, granted under that section, of the surrender of the environmental licence.
- (4) Subsections (2) and (3) do not apply in relation to a decision of the Director or the Board to impose on an environmental licence a condition referred to in section 42Z(2)(m) or to vary such a condition.
- (5) An appeal under this section must be made by a person within 14 days after the day on which notice of the decision to which the appeal relates was given to the person under section 42E(8), section 42M, section 42N(7), section 42P(4), section 42R, section 42T(9), section 42U(6), section 42W(6), section 42ZF(1) or section 42ZH(2), as the case may be.

42ZJ. Appeals by persons who have made representations

- (1) In this section –

relevant representation means –

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- (a) a representation under the *Land Use Planning and Approvals Act 1993*, or under section 27G(2), in relation to an application for a permit under that Act in relation to an EL activity; and
 - (b) a representation under the *Land Use Planning and Approvals Act 1993*, or under section 27G(2), in relation to a project of regional significance that relates to an EL activity; and
 - (c) a representation under section 27G(2), in relation to an assessment under section 27AA.
- (2) A person who has, in respect of an EL activity, made a relevant representation may, within 14 days after being notified under section 42M(3) or section 42R(2) of a decision by the Board –
- (a) to grant or refuse to grant an environmental licence; or
 - (b) to vary or refuse to vary an environmental licence; or
 - (c) to impose a condition or restriction on an environmental licence –

appeal to the Appeal Tribunal, within the meaning of the *Resource Management*

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and Planning Appeal Tribunal Act 1993,
in relation to the decision of the Board.

- (3) Subsection (2) does not apply in relation to a decision of the Board to impose on an environmental licence a condition referred to in section 42Z(2)(m) or to vary such a condition.

42ZK. Effect of notice of appeal

- (1) If an application is made under section 42ZJ(2)(a) in relation to a decision to grant an environmental licence, the licence is of no effect, subject to the determination of the appeal.
- (2) If an application is made under section 42ZI(2)(a) in relation to a decision to impose a condition or restriction on an environmental licence, the licence remains in effect, but the condition or restriction against which the appeal is made is of no effect, subject to the determination of the appeal.
- (3) If an application is made under section 42ZI(2)(b) or section 42ZJ(2)(c) in relation to a decision to impose a condition or restriction on an environmental licence, the licence is of no effect, subject to the determination of the appeal.

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- (4) If an application is made under section 42ZI(3)(a), (c) or (d) or section 42ZJ(2)(b) in relation to a decision to vary an environmental licence, the variation of the licence is of no effect, subject to the determination of the appeal.
 - (5) If an application is made under section 42ZI(3)(f) in relation to a decision to refuse to renew an environmental licence, the licence remains of no effect from the date on which it was due to expire, subject to the determination of the appeal.
 - (6) If an application is made under section 42ZI(3)(g) in relation to a decision to renew an environmental licence, the licence remains in effect, subject to the determination of the appeal.
 - (7) If an application is made under section 42ZI(3)(h) in relation to a decision to impose a condition or restriction on an environmental licence that is renewed, the condition or restriction of the licence remains in effect, subject to the determination of the appeal.
 - (8) If an application is made under section 42ZI(3)(j) in relation to a decision under section 42W(4) to impose

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a condition or restriction on an environmental licence, the condition or restriction remains in effect, subject to the determination of the appeal.

- (9) If an application is made under section 42ZI(3)(k) in relation to a decision to suspend or cancel an environmental licence, the suspension or cancellation remains in force, subject to the determination of the appeal.
- (10) If an application is made under section 42ZI(3)(l) in relation to a decision to refuse to grant an approval of the surrender of an environmental licence, the licence remains in effect, subject to the determination of the appeal.
- (11) If an application is made under section 42ZI(3)(m) in relation to a decision to impose, on a grant of an approval under section 42ZH to surrender the licence, a condition or a restriction, the condition or restriction remains in effect, subject to the determination of the appeal.
- (12) A reference in this section to the determination of an appeal includes a reference to the withdrawal, abandonment or dismissal of an appeal.

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

If an application is made under section 42ZI in relation to an EL activity, the Appeal Tribunal may direct the Board to –

- (a) conduct an assessment under Division 1A and, if it thinks fit, to conduct the assessment in accordance with the directions of the Appeal Tribunal; and
- (b) to provide to the Appeal Tribunal the results of the assessment.

19. Section 44 amended (Environment protection notices)

Section 44 of the Principal Act is amended by inserting after subsection (7) the following subsection:

- (7A) An environment protection notice has effect even if it is inconsistent with an environmental licence and the environmental licence has no effect to the extent of the inconsistency.

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20. Section 48 amended (Civil enforcement proceedings)

Section 48(5)(d) of the Principal Act is amended by inserting “environmental licence,” after “programme,”.

21. Section 55A amended (General environmental duty defence)

Section 55A(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “, a condition or restriction specified in an environmental licence (other than a condition referred to in section 42Z(2)(a), (b), (c) or (d)),” after “policy”;
- (b) by inserting in paragraph (b)(i) “environmental licence,” after “policy,”.

22. Section 98AA amended (Liability for payment of fees)

Section 98AA(1) of the Principal Act is amended by inserting after paragraph (b) the following paragraphs:

- (ba) in relation to an assessment undertaken under section 27AA or 27AB, is payable by the person who made the referral, or is the proponent of the project, to which the assessment relates; and

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- (bb) in relation to an application under section 42I(1) for an environmental licence, is payable by the applicant for the licence; and
- (bc) in relation to an application for –
- (i) the variation under section 42N(3) of an environmental licence; or
 - (ii) the renewal under section 42T(1) of an environmental licence; or
 - (iii) the transfer under section 42W(2) of an environmental licence; or
 - (iv) the grant under section 42ZH(2) of an approval to surrender an environmental licence –
- is payable by the holder of the environmental licence; and
- (bd) in respect of an environmental licence, including an annual fee, or any other action taken by the Director or the Board in relation to an environmental licence, is payable by the holder of the environmental licence; and

23. Section 102 amended (Regulations)

Section 102 of the Principal Act is amended as follows:

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- (a) by inserting the following paragraphs after paragraph (a) in subsection (3):
 - (ab) an application under section 42I(1) for an environmental licence; and
 - (ac) an application under section 42N(1) for a variation of an environmental licence; and
 - (ad) an application under section 42S(1) for the renewal of an environmental licence; and
 - (ae) an application under section 42W(1) for the Director to transfer an environmental licence; and
 - (af) an application under section 42ZH(1) for an approval to surrender an environmental licence; and
 - (ag) the determination by the Director as to whether to impose a condition or restriction on an environmental licence and the determination of such a condition or restriction; and
- (b) by inserting the following paragraph after paragraph (b) in subsection (3A):

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- (ba) an environmental licence,
including an annual fee, or any
other action taken by the Director
or the Board in relation to an
environmental licence; and

24. Schedule 2 amended (Level 2 Activities)

Clause 4 of Schedule 2 to the Principal Act is
amended by inserting after paragraph (g) the
following paragraph:

- (h) Finfish farming.

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Part 3 – Inland Fisheries Act 1995 Amended

PART 3 – INLAND FISHERIES ACT 1995 AMENDED

25. Principal Act

In this Part, the *Inland Fisheries Act 1995** is referred to as the Principal Act.

26. Section 51A inserted

After section 51 of the Principal Act, the following section is inserted in Division 3:

51A. Notification of Director, EPA, of certain matters

(1) In this section –

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

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

(2) The Director is to notify the Director, EPA of –

(a) an application for the grant, renewal, or transfer, of a fish

*No. 110 of 1995

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Part 3 – Inland Fisheries Act 1995 Amended

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farm licence in relation to finfish farming; and

- (b) a decision of the Director to grant, or to refuse to grant, a fish farm licence in relation to finfish farming; and
- (c) a decision of the Director to renew, or to refuse to renew, a fish farm licence in relation to finfish farming; and
- (d) a decision of the Director to transfer, or to refuse to transfer, a fish farm licence in relation to finfish farming; and
- (e) a decision of the Director to vary a fish farm licence in relation to finfish farming; and
- (f) a decision of the Director to cancel a fish farm licence in relation to finfish farming; and
- (g) the surrender of a fish farm licence in relation to finfish farming.

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Part 4 – Living Marine Resources Management Act 1995 Amended

**PART 4 – LIVING MARINE RESOURCES
MANAGEMENT ACT 1995 AMENDED**

27. Principal Act

In this Part, the *Living Marine Resources Management Act 1995** is referred to as the Principal Act.

28. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of *export* the following definition:

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

29. Section 11 amended (Exemption from Act)

Section 11 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) The Minister must not, under subsection (1), exempt a person or a class of persons from a requirement to hold a licence in relation to an activity, referred to in section 64(1)(a) or (c), that relates to finfish farming.

*No. 25 of 1995

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Part 4 – Living Marine Resources Management Act 1995 Amended

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30. Section 92A inserted

After section 92 of the Principal Act, the following section is inserted in Division 5:

92A. Notification of Director, EPA of certain matters

(1) In this section –

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

(2) The Secretary is to notify the Director, EPA of –

- (a) an application for the grant, renewal, or transfer, of a licence in relation to finfish farming; and
- (b) a decision of the Minister to grant, or to refuse to grant, a licence in relation to finfish farming; and
- (c) a decision of the Minister to renew, or to refuse to renew, a licence in relation to finfish farming; and
- (d) a decision of the Minister to transfer, or to refuse to transfer, a

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Part 4 – Living Marine Resources Management Act 1995 Amended

licence in relation to finfish farming; and

- (e) a decision of the Minister to vary, or to refuse to vary, a licence in relation to finfish farming; and
- (f) a decision of the Minister to cancel or suspend a licence in relation to finfish farming; and
- (g) the surrender of a licence in relation to finfish farming.

**PART 5 – MARINE FARMING PLANNING ACT 1995
AMENDED**

31. Principal Act

In this Part, the *Marine Farming Planning Act 1995** is referred to as the Principal Act.

32. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *demerit point*:

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

- (b) by inserting the following definition after the definition of *environmental impact statement*:

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

*No. 31 of 1995

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Part 5 – Marine Farming Planning Act 1995 Amended

33. Section 8 amended (Marine Farming Planning Review Panel)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “8 persons” and substituting “9 persons”;
- (b) by omitting paragraph (c) from subsection (2) and substituting the following paragraphs:
 - (c) one is a person, other than the Director, EPA, with ability and experience in environmental management; and
 - (ca) one is a person, other than the Director, EPA, with ability and expertise in fish health and biosecurity; and
- (c) by omitting from subsection (3) “subsection (2)(a), (d), (e) or (f)” and substituting “subsection (2) (a), (c), (ca), (d), (e) or (f)”.

34. Section 17A inserted

After section 17 of the Principal Act, the following section is inserted in Division 1:

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Part 5 – Marine Farming Planning Act 1995 Amended

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

(1) The Director, EPA, by notice in writing to the Panel, may require –

(a) any matter, specified in the notice, that relates to environmental management of finfish farming, to be contained in –

(i) a draft plan, or draft amendment, that relates to finfish farming; or

(ii) any draft plan, or any draft amendment, that relates to finfish farming; and

(b) any matter, specified in the notice, that relates to environmental management of finfish farming, to be addressed in –

(i) an environmental impact statement; or

(ii) any environmental impact statement –

that is, under section 23, to accompany a draft plan, or a draft amendment, in relation to finfish

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Part 5 – Marine Farming Planning Act 1995 Amended

- farming, or any draft plan, or any draft amendment, in relation to finfish farming; and
- (c) any environmental management controls, specified in the notice, to be included in draft management controls, to which section 24 relates, that relate to finfish farming; and
 - (d) the Panel to consider, under section 29 or section 41, a matter, specified in the notice, that relates to environmental management of finfish farming; and
 - (e) a matter, specified in the notice, that relates to environmental management of finfish farming, to be included in –
 - (i) a draft plan, in relation to finfish farming, to which a recommendation of the Panel under section 31(1) relates; or
 - (ii) a draft amendment, in relation to finfish farming, to which a notification under section 41A(1) relates.
- (2) The Panel must give to a person preparing a draft plan, or an amendment of a draft plan, in relation to finfish

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farming, a copy of any notice, given to the Panel under subsection (1), that, in the opinion of the Panel, relates to the draft plan, or the amendment of a draft plan, being prepared.

- (3) The Secretary –
 - (a) is to notify the Director, EPA of an application made under section 16 for approval to prepare a draft plan in relation to finfish farming; and
 - (b) is to provide to the Director, EPA a copy of the application under section 16 to which the approval relates and any information that accompanied the application; and
 - (c) is to notify the Director, EPA if an approval under section 17 relates to finfish farming.
- (4) The Panel must provide to the Director, EPA a copy of a report, in relation to finfish farming, forwarded to the Panel under section 28.
- (5) The Panel –
 - (a) is to notify the Director, EPA of an application under section 33(1) or (2) in relation to finfish farming; and

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- (b) is to provide to the Director, EPA a copy of such an application.
- (6) As soon as practicable after the Minister gives an approval, sought under section 33(5), in relation to finfish farming, the Panel –
 - (a) is to notify the Director, EPA of the approval; and
 - (b) is to provide to him or her a copy of the request to which the approval relates.
- (7) As soon as practicable after the Panel directs a planning authority under section 34 to prepare a draft amendment (other than in response to a request from the Director, EPA) of a marine farming development plan in relation to finfish farming, the Panel –
 - (a) is to notify the Director, EPA of the direction; and
 - (b) is to provide to him or her a copy of the request to which the direction relates.
- (8) The Panel is to notify the Director, EPA of the withdrawal of a draft amendment, in relation to finfish farming, in accordance with section 36.
- (9) The Panel, within 7 days of receiving a report under section 40 in relation to

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finfish farming, is to forward the report to the Director, EPA.

(10) A planning authority –

- (a) before preparing a draft emergency plan under section 45 in relation to finfish farming, is to notify the Director, EPA of the authority's intention to prepare the plan; and
- (b) as soon as practicable after an emergency plan in relation to finfish farming is approved by the Minister under section 45, is to notify the Director, EPA of the approval of the emergency plan.

35. Section 19 amended (Area comprised in draft plan)

Section 19 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) A draft plan, in so far as it relates to finfish farming, may not relate to an area of State waters, or an area that adjoins State waters, if all or part of the area to which the draft plan relates is a finfish marine farming exclusion zone under section 19A.

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36. Section 19A inserted

After section 19 of the Principal Act, the following section is inserted in Division 1:

19A. Finfish marine farming exclusion zones

- (1) Each area that is indicated on a map in Schedule 6 to be a finfish marine farming exclusion zone is a finfish marine farming exclusion zone.
- (2) The Governor, by proclamation, may amend Schedule 6 by –
 - (a) adding to Schedule 6 a map indicating an area that is to be a finfish marine farming exclusion zone; or
 - (b) revoking a map that is in Schedule 6.
- (3) The Governor may only make a proclamation under subsection (2) if a draft of the proclamation has been approved by both Houses of Parliament.
- (4) For the purposes of subsection (3), a House of Parliament is to be taken to have approved a draft of a proclamation if a copy of it has been laid on the table of the House and –
 - (a) it is approved by the House; or
 - (b) at the expiration of 5 sitting-days after it was laid on the table of the

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House, no notice has been given of a motion to disallow it or, if such notice has been given, the notice has been withdrawn or the motion has been negated; or

(c) if any notice of a motion to disallow it is given during that period of 5 sitting-days, the notice is, after the expiration of that period, withdrawn or the motion is negated.

(5) An amendment of Schedule 6 by a proclamation under subsection (2) takes effect on the day on which notice of the making of the proclamation is published in the *Gazette*.

37. Section 21 amended (Draft marine farming development plan)

Section 21(1) of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

(ca) if it relates to finfish farming, contain any matter relating to environmental management that is required by the Director, EPA, in a notice under section 17A(1), to be contained in the marine farming development plan or any marine farming development plan; and

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38. Section 23 amended (Environmental impact statement)

Section 23(2) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) if it relates to finfish farming, address any matter relating to environmental management that is required by the Director, EPA, in a notice under section 17A(1), to be addressed in the environmental impact statement or in any environmental impact statement; and

39. Section 24 amended (Draft management controls)

Section 24 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (2A) Draft management controls must, if they relate to finfish farming, contain any environmental management controls that the Director, EPA, in a notice under section 17A(1), requires to be included in the draft management controls.

40. Section 25 amended (Approval of draft plan)

Section 25(3) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) contains any matter relating to environmental management of finfish

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farming that the Director, EPA, in a notice under section 17A(1), requires the Panel to include in the draft plan or any draft plan; and

41. Section 29 amended (Consideration of draft plan, management controls and representations)

Section 29 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “any matter relating to environmental management of finfish farming that the Director, EPA, in a notice under section 17A(1), requires the Panel to consider,” after “plan,”;
- (b) by omitting from subsection (2) “plan,” and substituting “plan, matters, if any,”.

42. Section 31 amended (Final approval of draft plan)

Section 31(1) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (b) the draft plan contains any matter relating to environmental management of finfish farming that the Director, EPA, in a notice under section 17A(1), requires the Panel to include in the draft plan or any draft plan.

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43. Section 32 amended (Requirements for preparation of amendment)

Section 32(2) of the Principal Act is amended by inserting after paragraph (a) the following paragraphs:

- (ab) must not extend the area to which the plan applies in relation to finfish farming so as to include an area of State waters, or an area that adjoins State waters, that is within a finfish marine farming exclusion zone under section 19A; and
- (ac) must contain any matter relating to environmental management of finfish farming that the Director, EPA, in a notice under section 17A(1), requires the Panel to include in the draft amendment or any draft amendment; and

44. Section 34 amended (Amendment of marine farming development plan)

Section 34(1) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

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

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45. Section 35 amended (Certification of draft amendment)

Section 35(3) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

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

46. Section 41 amended (Consideration by Panel of draft amendment, &c.)

Section 41(1) of the Principal Act is amended by inserting “must consider any matter, relating to environmental management of finfish farming, that it is required by the Director, EPA, in a notice under section 17A(1), to consider and” after “Panel”.

47. Section 42 amended (Final approval or refusal of draft amendment)

Section 42(2) of the Principal Act is amended by inserting “Director, EPA,” after “Board,”.

48. Section 43 amended (Emergency order)

Section 43 of the Principal Act is amended by inserting after subsection (6) the following subsection:

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

49. Section 44 amended (Operation of emergency order)

Section 44 of the Principal Act is amended by inserting after subsection (3) the following subsection:

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

50. Section 45 amended (Emergency plans)

Section 45 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):
- (1AA) An emergency plan must include any matters relating to environmental management of finfish farming that the Director,

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EPA requires to be included in such a plan.

- (b) by inserting in subsection (2) “and to the Director, EPA” after “Panel”.

51. Section 46 amended (Operation of emergency plan)

Section 46 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) The planning authority in relation to an emergency plan that relates to finfish farming must notify the Director, EPA as soon as practicable after the emergency plan ceases to be in force.

52. Section 47 amended (Exemption from emergency plan)

Section 47 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (2):
- (2A) The Minister must consult with the Director, EPA before determining whether or not to grant an exemption from an emergency plan that relates to finfish farming.
- (b) by inserting the following subsection after subsection (4):

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

53. Section 59 amended (Granting of lease)

Section 59(4) of the Principal Act is amended by omitting “of a” and substituting “for a”.

54. Section 60 amended (Special lease)

Section 60(1) of the Principal Act is amended by omitting “a special lease” and substituting “an application for a special lease”.

55. Schedule 6 inserted

After Schedule 5 to the Principal Act, the following Schedule is inserted:

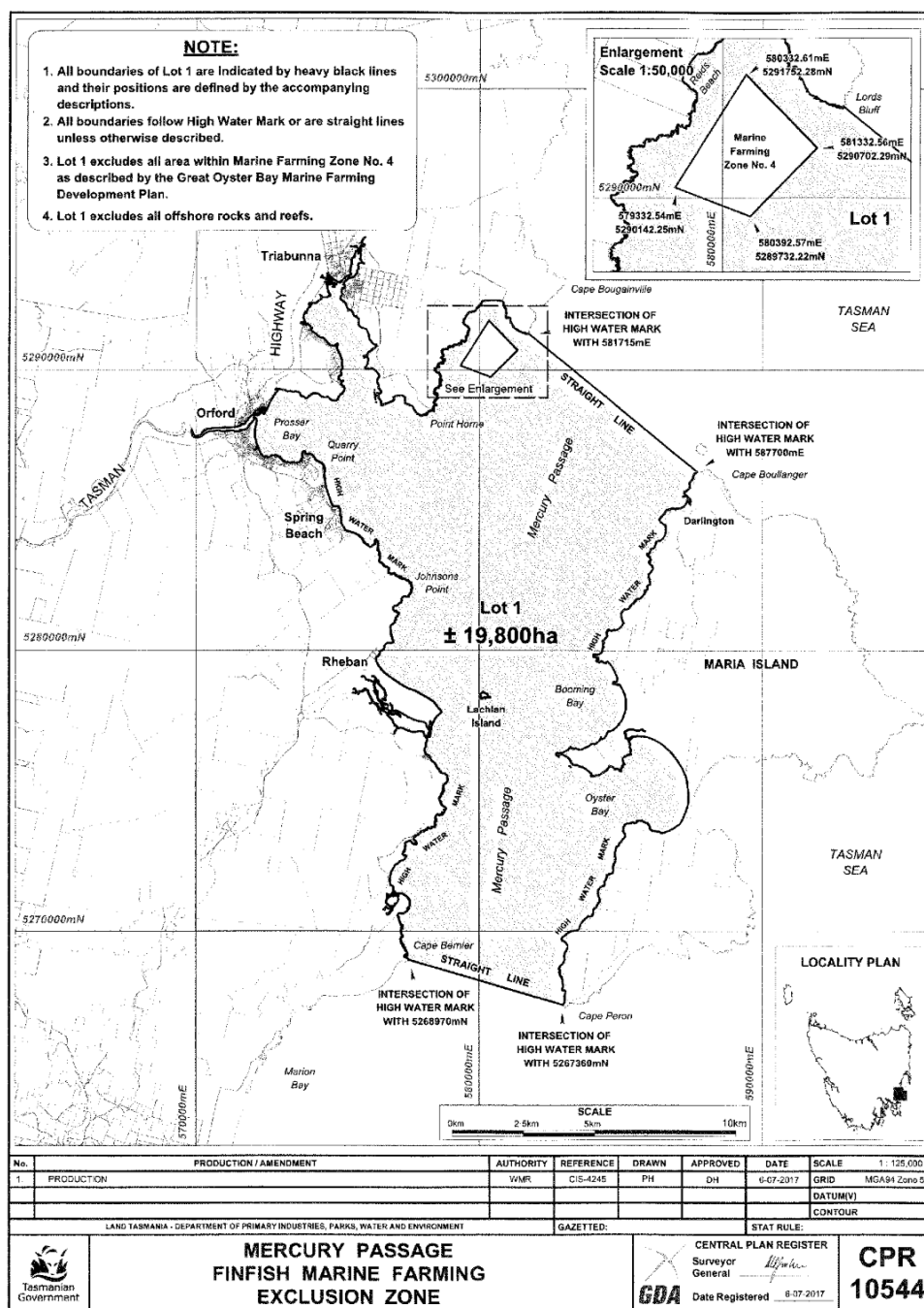
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**SCHEDULE 6 – FINFISH MARINE FARMING
EXCLUSION ZONE**

Section 19A



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s. 56 Part 6 – Resource Management and Planning Appeal Tribunal Act 1993
 Amended

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

56. Principal Act

In this Part, the *Resource Management and Planning Appeal Tribunal Act 1993** is referred to as the Principal Act.

57. Section 14 amended (Parties to appeal before Appeal Tribunal)

Section 14(1A)(b) of the Principal Act is amended by inserting “or 27AC(2)(a)” after “section 25(5)(b)”.

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PART 7 – CONCLUDING PROVISION

58. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.