

TASMANIA

LIVING MARINE MISCELLANEOUS AMENDMENTS (DIGITAL PROCESSES) BILL 2021

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement

PART 2 – LIVING MARINE RESOURCES MANAGEMENT ACT 1995 AMENDED

3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 63 amended (Fishing certificate)
6. Section 74A inserted
 - 74A. Interpretation of Division
7. Sections 77, 78 and 78A substituted
 - 76A. Eligible person
 - 76B. Suitability of person to be eligible person
 - 76C. Certain persons taken to be eligible persons
 - 76D. Review of approval as eligible person
 - 76E. Licence depends on holder's approval as eligible person
 77. Applications in relation to a licence
 - 77A. Licensing agent
 78. Grant of licence
8. Sections 81, 82 and 83 substituted
 81. Renewal of licence
 82. Transfer of licence

- 83. Variation of licence
- 9. Section 87 amended (Prohibition on use of licence by other persons)
- 10. Section 88 amended (Substitute licensee)
- 11. Section 89 amended (Supervision of activities)
- 12. Section 90 substituted
 - 90. Cancellation or suspension of licence
- 13. Section 145 amended (Records)
- 14. Sections 145A and 145B inserted
 - 145A. Approval of electronic record system
 - 145B. Submission of documents electronically
- 15. Section 191 amended (Production of records and documents)
- 16. Section 215A substituted
 - 215A. Service, &c., of documents, records and other information
- 17. Section 221 amended (Certificates relating to licensing and statistical matters)
- 18. Sections 249 and 250 repealed
- 19. Part 10, Division 1A inserted
 - Division 1A – Electronic decision making*
 - 273A. Interpretation
 - 273B. Approval of computer program
 - 273C. Replacing an electronic decision
 - 273D. Evidence of whether computer is functioning correctly
- 20. Section 298 amended (Register)
- 21. Section 298A inserted
 - 298A. Application to magistrate for correction of demerit points entry in register
- 22. Section 302 repealed
- 23. Section 308 inserted
 - 308. Savings and transitionals

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

- 24. Principal Act
- 25. Section 9 amended (Register)

26. Section 13 amended (Record of original entry)
27. Section 14 amended (Lost or damaged record of original entry)
28. Section 18 substituted
 18. Signature of Registrar

PART 4 – REPEAL OF ACT

29. Repeal of Act

**LIVING MARINE MISCELLANEOUS
AMENDMENTS (DIGITAL PROCESSES) BILL 2021**

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Guy Barnett)*

A BILL FOR

An Act to amend the *Living Marine Resources Management Act 1995* and the *Fishing (Licence Ownership and Interest) Registration Act 2001*

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 *Living Marine Miscellaneous Amendments (Digital Processes) Act 2021*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 3 Part 2 – Living Marine Resources Management Act 1995 Amended

**PART 2 – LIVING MARINE RESOURCES
MANAGEMENT ACT 1995 AMENDED**

3. Principal Act

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

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

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

approved electronic record system
means the electronic record system approved under section 145A;

- (b) by inserting the following definitions after the definition of *species*:

structure includes a platform, pontoon, jetty, building or any other thing used in connection with fishing or marine farming;

suitable person – see section 76B;

- (c) by omitting the definition of *structure*.

*No. 25 of 1995

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 5

5. Section 63 amended (Fishing certificate)

Section 63(1) of the Principal Act is amended by inserting “in such form (including electronic form) as the Secretary thinks fit” after “the person”.

6. Section 74A inserted

Before section 75 of the Principal Act, the following section is inserted in Division 5:

74A. Interpretation of Division

(1) In this Division –

category, of licence – see section 76A(1);

commercial fishing licence means a licence that authorises the licence holder to carry out fishing for commercial purposes;

eligible person, in respect of a category of licence, means –

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

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 7 Part 2 – Living Marine Resources Management Act 1995 Amended

category under section
76C;

recreational fishing licence means a
licence that authorises the licence
holder to carry out recreational
fishing.

- (2) For the purposes of this Division, a person is *eligible* to hold a licence if the person is an eligible person in respect of that category of licence.

7. Sections 77, 78 and 78A substituted

Sections 77, 78 and 78A of the Principal Act are repealed and the following sections are substituted:

76A. Eligible person

- (1) The categories of licence are as follows:
- (a) recreational fishing licence;
 - (b) commercial fishing licence;
 - (c) marine farming licence;
 - (d) fish processing licence;
 - (e) handling licence.
- (2) A person may apply to the Secretary to be approved as eligible to hold a licence of a particular category.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 7

- (3) An application under subsection (2) must –
- (a) be made in an approved form; and
 - (b) specify the category of licence to which the application relates; and
 - (c) contain the information required in the approved form; and
 - (d) be accompanied by the prescribed fee.
- (4) The Secretary may grant an application for a person to be approved as eligible to hold a licence of a particular category, with or without conditions, or may refuse to grant the application.
- (5) The Secretary may only grant an application under subsection (4) if satisfied that –
- (a) the applicant is a suitable person to hold a licence of the category specified in the application; and
 - (b) in the case of a natural person who is applying to be eligible to hold a licence of a category, other than the category of licence for recreational fishing, the person is an adult.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 7

Part 2 – Living Marine Resources Management Act 1995 Amended

- (6) If a person's application to be eligible to hold a licence of a particular category is refused under this section, the person may not make a further application in respect of that category of licence under this section until 12 months has lapsed from the date on which the person's application was refused.
- (7) The Secretary may require a person to –
 - (a) provide such further information as the Secretary considers necessary in order to consider the application; and
 - (b) verify by statutory declaration any information given in connection with an application under this section.
- (8) The Secretary may defer a decision on an application under subsection (2) pending the determination or discontinuation of any proceedings against the applicant for an offence against –
 - (a) this Act; or
 - (b) any other Act that the Secretary considers relevant to the making of the decision; or
 - (c) a corresponding law.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 7

76B. Suitability of person to be eligible person

(1) In this section –

applicant means a person applying to be approved as eligible to hold a licence of a particular category under section 76A.

(2) For the purposes of determining whether an applicant or an eligible person is a suitable person to hold a licence of a particular category, the Secretary may take into account the following matters:

- (a) in the case of an applicant, whether the applicant is a fit and proper person to hold a licence of that category;
- (b) in the case of an eligible person, whether the eligible person is or remains a fit and proper person to hold a licence of that category;
- (c) whether the applicant or eligible person has, within the last 5 years, been convicted of any offence, under this Act, any other Act or a corresponding law, which the Secretary considers is relevant to the holding of a licence of that category;
- (d) whether the applicant or eligible person has any unpaid fees,

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 7 Part 2 – Living Marine Resources Management Act 1995 Amended

levies, charges or royalties due
and payable by the person under
this Act;

(e) anything else that the Secretary
considers relevant.

- (3) In determining whether an applicant or an eligible person is a suitable person to hold a licence of a particular category, the Secretary may take all steps and make all inquiries that are reasonable and appropriate.

76C. Certain persons taken to be eligible persons

- (1) This section applies subject to section 76D.
- (2) A person who applies for or holds a recreational fishing licence is taken to be approved as eligible to hold a licence of that category under section 76A.
- (3) A person who held a fishing licence of a particular category immediately before the commencement of this section is taken to be approved as eligible under section 76A to hold a licence of that category.
- (4) For the avoidance of doubt, a person who is taken under this section to be approved as eligible to hold a licence of a particular category is not taken to be

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 7

approved as eligible to hold a licence of any other category.

76D. Review of approval as eligible person

- (1) The Secretary may investigate an eligible person to determine whether the person is a suitable person to hold a licence of the category in respect of which the person is an eligible person at the following times:
 - (a) in the case of an eligible person who is the holder of a recreational fishing licence, at any time;
 - (b) in the case of an eligible person who is the holder of a licence other than a recreational fishing licence –
 - (i) when the person renews the licence; or
 - (ii) if the person is convicted of an offence under this Act, any other Act or a corresponding law, at that time;
 - (c) in the case of person who is eligible to hold a licence of a particular category but has not held a licence of that category during the past 2 years, at any time.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 7 Part 2 – Living Marine Resources Management Act 1995 Amended

- (2) If, following an investigation under subsection (1), the Secretary determines that an eligible person is not a suitable person to hold a licence of a particular category, the Secretary must notify the person in writing that they are no longer eligible to hold a licence of that category.
- (3) If the Secretary provides a person with written notification under subsection (2) that they are no longer eligible to hold a licence of a particular category, from the date specified in the notice, the following applies:
 - (a) if the person has been approved as eligible to hold a licence of that category under section 76A, that approval is revoked;
 - (b) if section 76C applies to that person in respect of a licence of that category, the person is no longer taken to be eligible to hold a licence of that category under that section.
- (4) The Secretary may not notify an eligible person under subsection (2) that they are no longer eligible to hold a licence of a particular category unless the Secretary has –
 - (a) at least 14 days before notifying the person under subsection (2),

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 7

issued a notice to the eligible person –

- (i) advising that the Secretary has determined that the person is not a suitable person to hold a licence of that category; and
 - (ii) specifying the grounds on which the Secretary has determined that the person is not suitable to hold a licence of that category; and
 - (iii) inviting the person to provide to the Secretary, within 14 days after receiving the notice, written reasons as to why the person is a suitable person to hold a licence of that category; and
- (b) considered any written reasons provided to the Secretary under subsection (5).
- (5) An eligible person to whom a notice has been issued under subsection (4)(a) may provide to the Secretary, within 14 days after receiving the notice, written reasons as to why the person is a suitable person

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 7

Part 2 – Living Marine Resources Management Act 1995 Amended

to hold a licence of the category specified in the notice.

- (6) If the Secretary determines that a person is not a suitable person to hold a licence of a particular category under this section, that person may not make a further application under section 76A, to be approved as eligible to hold a licence of that category, for a period of 12 months from the date of the determination.

76E. Licence depends on holder's approval as eligible person

- (1) If the Secretary notifies a person under section 76D(2) that they are no longer eligible to hold a licence of a particular category, the Secretary must cancel any licences of that category held by that person.
- (2) A cancellation under subsection (1) takes effect as soon as the holder of the licence is given written notice of the cancellation of the licence by the Secretary.

77. Applications in relation to a licence

- (1) An application for the grant, renewal, variation or transfer of a licence or quota or entitlement under a licence –
 - (a) may be made by a person who is eligible to hold the licence; and

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 7

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- (b) must be made to the Secretary in an approved form; and
 - (c) must contain the information required in the approved form; and
 - (d) must be accompanied by the prescribed fee.
- (2) The Secretary may require a person to provide such further information as the Secretary considers necessary in order to consider the application.

77A. Licensing agent

- (1) In this section –

party to a deed of agreement means a person who has a right to take and acquire commercially protected fish pursuant to a deed of agreement.

- (2) The following persons may nominate an adult to be a licensing agent for the purposes of a licence or a deed of agreement:
- (a) a person applying for a licence;
 - (b) the holder of a licence;
 - (c) a party to a deed of agreement.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 7 Part 2 – Living Marine Resources Management Act 1995 Amended

- (3) A person applying for the grant of a commercial fishing licence must nominate an adult to be the licensing agent for the purposes of the licence if the applicant is a partnership, a corporation or a trustee.
- (4) The nomination of a person to be a licensing agent under this section must –
 - (a) be made to the Secretary in an approved form; and
 - (b) specify those activities that the licence holder or party to the deed of agreement authorises the licensing agent to carry out on behalf of the licence holder or the party to the deed of agreement; and
 - (c) contain the information required in the approved form.
- (5) Activities that may be specified under subsection (4)(b) include, but are not limited to, the following activities:
 - (a) the provision of specified classes of records, documents or information, on behalf of the licence holder or the party to the deed of agreement;
 - (b) access and use of any specified online facility on behalf of the

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

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- licence holder or the party to the deed of agreement;
- (c) the receipt of specified classes of records, documents or information, on behalf of the licence holder or the party to the deed of agreement;
 - (d) the signing of specified classes of records, documents or information, on behalf of the licence holder or the party to the deed of agreement;
 - (e) specified actions of an administrative nature required or permitted under this Act, on behalf of the licence holder or the party to the deed of agreement.
- (6) Any notice or other document required to be served on the holder of a licence or a party to a deed of agreement by or under this Act is taken to be served on the holder of the licence or the party to the deed of agreement if such service on the licensing agent is an activity authorised under subsection (4)(b).
- (7) A licensing agent under this section is not entitled to any rights conferred by, or interest in, a licence only because the person is a licensing agent.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 7 Part 2 – Living Marine Resources Management Act 1995 Amended

- (8) The holder of a licence or a party to a deed of agreement may revoke the nomination of a licensing agent for the licence or deed of agreement by notice in writing to the Secretary in the approved form.
- (9) The holder of a commercial fishing licence that is a partnership, a corporation or a trustee must nominate a new licensing agent for the purposes of that licence in accordance with subsection (4) if –
 - (a) the licensing agent has had his or her nomination as a licensing agent revoked under subsection (8); or
 - (b) the licensing agent is no longer able to carry out the activities of a licensing agent for the purposes of the licence.

78. Grant of licence

- (1) The Secretary may grant an application for a licence with or without conditions.
- (2) The Secretary may refuse to grant a licence to an applicant –
 - (a) if the applicant is not eligible to hold the licence; or

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 8

-
- (b) if the applicant is disqualified from holding the licence; or
 - (c) if there are environmental or resource constraints on granting the licence; or
 - (d) if granting the application will contravene a management plan; or
 - (e) on such other grounds that the Secretary considers reasonable for refusing the application.
- (3) The Secretary must not grant a licence under this section if the application is for a licence to replace a licence that –
- (a) has been surrendered or cancelled; or
 - (b) is suspended.

8. Sections 81, 82 and 83 substituted

Sections 81, 82 and 83 of the Principal Act are repealed and the following sections are substituted:

81. Renewal of licence

- (1) The holder of a licence may, before the licence ceases to be in force, apply to the Secretary for the renewal of the licence.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 8

Part 2 – Living Marine Resources Management Act 1995 Amended

- (2) The Secretary may, on payment of the prescribed fee, renew the licence with or without conditions.
- (3) The Secretary may refuse to renew the licence –
 - (a) if the applicant has failed to comply with a condition of the licence in the previous 5 years; or
 - (b) if the applicant is disqualified from holding the licence; or
 - (c) if there are environmental or resource constraints on renewing the licence; or
 - (d) in the case of a fish processing licence –
 - (i) if any place, vessel or vehicle to which the licence relates has not been used to process fish within the previous 2 years; or
 - (ii) if the Secretary of a Department administering any Act relating to public health has advised the Secretary not to renew the licence; or

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 8

- (e) if the applicant has not paid any fees, levies, charges or royalties due and payable by that person under this Act; or
 - (f) on such other grounds that the Secretary considers reasonable for refusing the application.
- (4) If the application for the renewal of the licence is not determined by the Secretary before the day on which it ceases to be in force, it is, despite section 80, taken to continue in force until it is renewed or its renewal is refused under this section.

82. Transfer of licence

- (1) The holder of a licence may apply to the Secretary to transfer –
 - (a) the licence to a person (*the transferee*); or
 - (b) a quota or entitlement under the licence to another licence holder.
- (2) The Secretary may grant an application to transfer a licence, or transfer a quota or entitlement under a licence, with or without conditions.
- (3) The Secretary may refuse to grant an application for the transfer of a licence –

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 8 Part 2 – Living Marine Resources Management Act 1995 Amended

- (a) if the transferee is not eligible to hold the licence; or
 - (b) if the transferee is disqualified from holding the licence; or
 - (c) if granting the application will contravene a management plan; or
 - (d) if there are environmental or resource constraints on granting the application; or
 - (e) if, in respect of a relevant licence within the meaning of the *Fishing (Licence Ownership and Interest) Registration Act 2001*, an application has not been made under that Act by the owner of that licence to cancel all entries in the register under that Act relating to that licence; or
 - (f) if the applicant has not paid any fees, levies, charges or royalties due and payable by that person under this Act; or
 - (g) on such other grounds that the Secretary considers reasonable for refusing the application.
- (4) The Secretary may refuse to grant an application for the transfer of a commercial fishing licence if the

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

transferee is a partnership, a corporation or a trustee and the transferee has not nominated an adult to be the licensing agent for the purposes of the licence in accordance with section 77A.

- (5) The Secretary may refuse to grant an application to transfer a quota or entitlement under a licence under subsection (1)(b) –
- (a) if granting the application will contravene a management plan; or
 - (b) if there are environmental or resource constraints on granting the application; or
 - (c) if, in respect of a relevant licence within the meaning of the *Fishing (Licence Ownership and Interest) Registration Act 2001*, an application under that Act has not been made by the owner of that licence and the other licensee to vary an entry in the register relating to the quota or entitlement under the licence; or
 - (d) if the applicant has not paid any fees, levies, charges or royalties due and payable by that person under this Act; or

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 8 Part 2 – Living Marine Resources Management Act 1995 Amended

- (e) on such other grounds that the Secretary considers reasonable for refusing the application.
- (6) The Secretary may defer a decision on an application under subsection (1) pending the determination or discontinuation of any proceedings against the applicant, the transferee or an associate of the transferee for an offence against –
 - (a) this Act; or
 - (b) any other Act that the Secretary considers relevant to the making of the decision; or
 - (c) a corresponding law.
- (7) For the purposes of subsection (6), a person is an associate of the transferee if the person –
 - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in the person’s own right or on behalf of any other person), in a business of the proposed transferee and, by virtue of that interest or power, is able or will be able to exercise a significant influence over or in respect of the management or operation of that business; or

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 8

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- (b) holds or will hold any relevant position (whether in the person's own right or on behalf of any other person) in a business of the transferee; or
- (c) is a relative of the transferee.
- (8) In this section –

relative means –

- (a) the spouse, parent, child or sibling (whether of the full or half blood); or
- (b) the person with whom a 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
- (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,

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 8 Part 2 – Living Marine Resources Management Act 1995 Amended

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.

83. Variation of licence

(1) The Secretary may, at any time, vary a licence by notice to the holder of the licence.

(2) The variation of a licence under subsection (1) may be made –

(a) on the application of the holder of the licence; or

(b) on the Secretary's own initiative.

(3) The Secretary must not vary a licence under subsection (1) if –

(a) varying the licence will contravene a management plan; or

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 8

-
- (b) varying the licence will contravene a marine farming development plan under the *Marine Farming Planning Act 1995*; or
 - (c) varying the licence will, if it includes matters provided for under a deed of agreement, be inconsistent with that deed of agreement; or
 - (d) there are environmental or resource constraints on varying the licence.
- (4) The Secretary may defer a decision on an application under subsection (2)(a) pending the determination or discontinuation of any proceedings against the applicant for an offence against –
- (a) this Act; or
 - (b) any other Act that the Secretary thinks is relevant to the making of that decision; or
 - (c) a corresponding law.
- (5) If the Secretary varies a licence, the Secretary –
- (a) may require the holder to return the previously issued licence; and

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 9 Part 2 – Living Marine Resources Management Act 1995 Amended

- (b) is to issue a substitute licence.
- (6) A variation of a licence takes effect on the day on which the substitute licence is issued.
- (7) In this section –
 - vary a licence* includes vary the conditions of the licence by doing one or more of the following:
 - (a) omitting an existing condition;
 - (b) amending an existing condition;
 - (c) adding a new condition.

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

Section 87 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Minister’s” and substituting “Secretary’s”;
- (b) by omitting subsection (2) and substituting the following subsection:
 - (2) The Secretary may, for the purposes of subsection (1), grant an approval for a person to use a licence if satisfied that the person

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

for whom the approval is sought –

- (a) is eligible to hold the licence; and
- (b) is not disqualified from holding a licence under this Act.
- (c) by omitting from subsection (2A) “Minister” first occurring and substituting “Secretary”;
- (d) by omitting from subsection (2A)(a) “Minister” and substituting “Secretary”;
- (e) by omitting from subsection (4) “Minister” and substituting “Secretary”.

10. Section 88 amended (Substitute licensee)

Section 88 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Minister” and substituting “Secretary”;
- (b) by omitting from subsection (2) “Minister” and substituting “Secretary”;
- (c) by inserting the following subsections after subsection (2):
 - (3) A substitute licensee for a licence is, for the purposes of this

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 11 Part 2 – Living Marine Resources Management Act 1995 Amended

section, taken to be approved as eligible to hold that category of licence under section 76A.

- (4) For the avoidance of doubt, a substitute licensee is not taken to be approved as eligible to hold a category of licence under section 76A for the purpose of applying for or holding any other licence.

11. Section 89 amended (Supervision of activities)

Section 89 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (2);
- (b) by omitting from subsection (5) “Minister” and substituting “Secretary”;
- (c) by omitting subsection (6).

12. Section 90 substituted

Section 90 of the Principal Act is repealed and the following section is substituted:

90. Cancellation or suspension of licence

- (1) In this section –

approved user, of a licence, means a person who is allowed to use the

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

licence pursuant to an approval under section 87.

- (2) The Secretary may, by notice in writing, cancel a licence, or suspend it for a period of up to 5 years, if –
- (a) the licence holder, or a supervisor or an approved user, of the licence is convicted of an offence, against this Act, another Act or a corresponding law, being an offence of a kind that is –
 - (i) relevant to the holding, supervision or use of the licence; and
 - (ii) of such character as to merit the cancellation or suspension of the licence; or
 - (b) the holder, or a supervisor or approved user, of the licence is convicted of an offence, against a corresponding law or a law of New Zealand, that is the equivalent of an offence under this Act; or
 - (c) the holder, or a supervisor or approved user, of the licence contravenes a condition of the licence; or

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 12 Part 2 – Living Marine Resources Management Act 1995 Amended

- (d) the holder, or a supervisor or approved user, of the licence contravenes a provision of this Act relating to the keeping or supply of any records, accounts or other information; or
 - (e) a fee or charge or other money payable in respect of the licence is not paid by the due date.
- (3) The authority conferred by a licence is of no effect while it is suspended.
- (4) The Secretary may not cancel or suspend a licence under subsection (2) unless the Secretary has –
 - (a) at least 14 days before the cancellation or suspension, issued a notice to the holder of the licence –
 - (i) advising that the Secretary intends to cancel or suspend the licence; and
 - (ii) specifying the grounds on which the Secretary intends to cancel or suspend the licence; and
 - (iii) inviting the person to provide to the Secretary within 14 days after

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 13

receiving the notice,
written reasons as to why
the licence ought not to be
cancelled or suspended;
and

- (b) considered any written reasons provided to the Secretary under subsection (5).
- (5) The holder of a licence to whom a notice has been issued under subsection (4)(a) may provide to the Secretary, within 14 days after receiving the notice, written reasons as to why the licence should not be cancelled or suspended as proposed in the notice.
- (6) The cancellation or suspension of a licence under this section takes effect as soon as the licence holder has been given notification of the cancellation or suspension under subsection (2).

13. Section 145 amended (Records)

Section 145(1) of the Principal Act is amended by inserting “complete and” after “must”.

14. Sections 145A and 145B inserted

After section 145 of the Principal Act, the following sections are inserted in Division 2:

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 14 Part 2 – Living Marine Resources Management Act 1995 Amended

145A. Approval of electronic record system

- (1) The Secretary may approve an electronic record system for the purpose of completing, submitting, supplying and keeping records, documents, accounts and other information required to be completed, submitted, supplied or kept under this Act.
- (2) The Secretary may approve the electronic record system under subsection (1) to be used in respect of the completing, submitting, supplying and keeping of records, documents, accounts and other information in respect of all licences, in respect of a category or categories of licences or in respect of one or more fisheries.
- (3) The Secretary may publish on a public website maintained by the Department, instructions setting out requirements for the use of the approved electronic record system.

145B. Submission of documents electronically

- (1) A person may complete, submit, supply and keep documents, records, accounts and other information required to be completed, submitted, supplied or kept under this Act using the approved electronic record system.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

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- (2) If a person uses the approved electronic record system to complete, submit, supply or keep, documents, records, accounts or other information required to be completed, submitted, supplied or kept under this Act, that person must do so in accordance with any instructions published under section 145A(3).

Penalty: Fine not exceeding 200 penalty units.

- (3) If a provision of this Act specifies requirements in relation to the completion, submission, supply or keeping of a document, record, account or other information by a person, that person is taken to have complied with those requirements if the document, record, account or other information is completed, submitted, supplied or kept using the approved electronic record system –
- (a) within the time required for the completion, submission, supply or keeping of the document, record, account or other information under this Act; and
 - (b) in accordance with any instructions for the use of the approved electronic record system published by the Secretary under section 145A(3).

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 15 Part 2 – Living Marine Resources Management Act 1995 Amended

- (4) A fisheries officer may require a person to provide the fisheries officer with access to the person’s electronic records in the approved electronic record system.
- (5) A person must not, without reasonable excuse, fail to comply with a requirement of a fisheries officer under subsection (4).

Penalty: Fine not exceeding 20 penalty units.

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

Section 191 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “, or a copy of any record or document,” after “document”;
- (b) by inserting in subsection (1)(b) “, or a copy of any document,” after “document”;
- (c) by inserting the following subsection after subsection (1):
 - (1A) The records or documents that a person may be required to produce under subsection (1) include, but are not limited to including, a record, or document,

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 16

in writing that reproduces, in a comprehensible form, information in the possession of the person that is stored by an electronic device, object or process.

16. Section 215A substituted

Section 215A of the Principal Act is repealed and the following section is substituted:

215A. Service, &c., of documents, records and other information

- (1) Any document, record or other information authorised or required by or under this Act to be given to, issued to, supplied to or served on a person may be given, issued, supplied or served to or on that person –
 - (a) by delivering it to the person personally; or
 - (b) by delivering it to the place of residence or business of the person and by leaving it there for the person with some other person who is apparently more than 16 years of age; or
 - (c) by posting it duly stamped and addressed to the person at the place last shown in the records of

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 17 Part 2 – Living Marine Resources Management Act 1995 Amended

the Secretary as the person’s place of residence or business; or

(d) by delivering it electronically to an email address nominated by the person as an email address for the giving or service of documents, records or other information; or

(e) by sending it by any other electronic means nominated by the person as a means of giving or serving documents, records or other information.

(2) Nothing in this section affects the operation of any provision of another law, or of the rules of a court, authorising a document to be served on a person in any other manner.

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

Section 221(1)(j) of the Principal Act is amended by omitting “nominated person under section 77” and substituting “licensing agent”.

18. Sections 249 and 250 repealed

Sections 249 and 250 of the Principal Act are repealed.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 19

19. Part 10, Division 1A inserted

After section 273 of the Principal Act, the following Division is inserted in Part 10:

Division 1A – Electronic decision making

273A. Interpretation

In this Division –

approved computer program means a computer program that is approved by the Secretary under section 273B;

electronic decision means a decision made by the operation of an approved computer program.

273B. Approval of computer program

- (1) The Secretary may approve, in writing, a computer program, which is under the Secretary's control, to be used to make a decision under the following provisions:
 - (a) section 78;
 - (b) section 81;
 - (c) section 82;
 - (d) section 83;
 - (e) section 87;

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 19 Part 2 – Living Marine Resources Management Act 1995 Amended

- (f) such other section of this Act as may be prescribed.
- (2) The Secretary is to publish notice of the approval of a computer program under subsection (1) –
 - (a) in the *Gazette*; or
 - (b) on a public website maintained by the Department.
- (3) An electronic decision is taken to be a decision made by the Secretary.

273C. Replacing an electronic decision

- (1) This section applies if the Secretary is satisfied that an electronic decision that was made by the operation of an approved computer program was made at a time when the approved computer program was not functioning correctly.
- (2) An approved computer program is not functioning correctly if the electronic decision that was made by the approved computer program is not the same as the decision that the Secretary would have made if the Secretary had made the decision.
- (3) The Secretary may revoke the electronic decision and replace it with the decision

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 19

that the Secretary would have made if the Secretary had made the decision.

- (4) The Secretary may do so –
- (a) on the initiative of the Secretary;
or
 - (b) on the written application of the applicant who had sought the electronic decision.
- (5) If the Secretary revokes an electronic decision after the Secretary has notified the applicant about the electronic decision, the Secretary must, as soon as practicable after revoking the electronic decision, give to the applicant a written notice that states –
- (a) that the electronic decision has been revoked; and
 - (b) the reasons for revoking the electronic decision; and
 - (c) the new decision.

273D. Evidence of whether computer is functioning correctly

- (1) In this section –

computer function notice means a document that –

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 20 Part 2 – Living Marine Resources Management Act 1995 Amended

- (a) is, or is purported to be, signed by the Secretary; and
 - (b) states whether or not a specified computer program was functioning correctly –
 - (i) in relation to a specified electronic decision; and
 - (ii) at a specified time or during a specified period.
- (2) In any proceedings, a computer function notice is prima facie evidence of the matters that are stated in the notice.
- (3) A computer program is functioning correctly if an electronic decision that the computer program makes is the same as the decision that the Secretary would have made if the Secretary had made the decision.

20. Section 298 amended (Register)

Section 298 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(c) “certificates.” and substituting “certificates; and”;
- (b) by inserting the following paragraph after paragraph (c) in subsection (1):

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 20

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- (d) the particulars of any demerit point allocated to a person, licence or fishing certificate.
- (c) by omitting subsection (2) and substituting the following subsections:
- (2) The register may be kept in any form, including electronic form, that the Secretary approves.
- (2A) Subject to subsection (2B), the Secretary may allow a person –
- (a) on payment of the prescribed fee, to obtain a copy of, or an extract from, an entry in the register during normal business hours; or
- (b) to access the register in electronic form and to download entries in the register.
- (2B) A person may only obtain a copy of, or an extract from, an entry in the register relating to demerit points or access an electronic entry in the register relating to demerit points if –
- (a) the demerit points are allocated to that person, a licence held by that

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 21 Part 2 – Living Marine Resources Management Act 1995 Amended

person or a fishing certificate maintained in respect of any fishing licence held by that person; or

(b) the person is authorised to do so by a person entitled to access, obtain a copy of or obtain an extract from an entry in the register in respect of those demerit points under paragraph (a).

(d) by omitting from subsection (3) “was” and substituting “is”;

(e) by omitting from subsection (3) “due to any accidental or inadvertent error, omission or misstatement”.

21. Section 298A inserted

After section 298 of the Principal Act, the following section is inserted in Division 5:

298A. Application to magistrate for correction of demerit points entry in register

(1) A person may apply to a magistrate for an order to correct an entry in the register under section 298 relating to demerit points kept in respect of that person.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 2 – Living Marine Resources Management Act 1995 Amended

s. 22

- (2) The magistrate –
- (a) if satisfied that the entry in the register is incorrect, may order the Secretary to correct the entry as specified in the order; or
 - (b) if not so satisfied, may dismiss the application.
- (3) The magistrate may make any order that the magistrate considers appropriate in respect of costs of the application.

22. Section 302 repealed

Section 302 of the Principal Act is repealed.

23. Section 308 inserted

After section 307 of the Principal Act, the following section is inserted in Division 5:

308. Savings and transitionals

- (1) In this section –

amendment Act means the *Living Marine Miscellaneous Amendments (Digital Processes) Act 2021*;

commencement day means the day on which section 7 of the amendment Act commences.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 23

Part 2 – Living Marine Resources Management Act 1995 Amended

- (2) For the avoidance of doubt, the commencement of the amendment Act does not affect the validity of any licence that was in force immediately before the commencement day.
- (3) An approval granted by the Minister under section 88 or 89 that was in force immediately before the commencement day is taken, on and after the commencement day, to be an approval granted by the Secretary under that section.
- (4) An application under section 77 to the Minister that has not been determined by the commencement day is taken, on and after the commencement day, to be an application made to the Secretary under the relevant section.
- (5) An appeal under section 283 from a determination by the Minister under section 78, 81, 82, 83, 87, 88 or 89 that has not been determined by the commencement day is taken, on and after the commencement day, to be an appeal under section 283 from a determination by the Secretary under the relevant section.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 3 – Fishing (Licence Ownership and Interest) Registration Act 2001
Amended

s. 24

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

24. Principal Act

In this Part, the *Fishing (Licence Ownership and Interest) Registration Act 2001** is referred to as the Principal Act.

25. Section 9 amended (Register)

Section 9(4) of the Principal Act is amended by inserting “in electronic or printed form” after “register”.

26. Section 13 amended (Record of original entry)

Section 13 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) The Registrar may, at the Registrar’s discretion, issue a replacement record of original entry in electronic form.
- (5) If the Registrar issues a replacement record of original entry under subsection (4), the Registrar is to notify each person holding an interest to which the record of original entry relates.

*No. 96 of 2001

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 27 Part 3 – Fishing (Licence Ownership and Interest) Registration Act 2001
Amended

- (6) If the Registrar issues a replacement record of original entry under subsection (4), the holder of the record of original entry must return to the Registrar the record of original entry that is being replaced as soon as practicable after receiving the replacement record of original entry.

Penalty: Fine not exceeding 5 penalty units.

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

Section 14(3)(a) of the Principal Act is amended by inserting “, in electronic or printed form,” after “issue”.

28. Section 18 substituted

Section 18 of the Principal Act is repealed and the following is substituted:

18. Signature of Registrar

- (1) The signature of the Registrar may be in electronic form and may be applied electronically.
- (2) All courts and persons acting judicially must take judicial notice of –

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

Part 3 – Fishing (Licence Ownership and Interest) Registration Act 2001
Amended

s. 28

- (a) the signature of a person who is or has been the Registrar; and
- (b) the fact that the person holds or has held the office of Registrar.

Living Marine Miscellaneous Amendments (Digital Processes)
Act 2021
Act No. of 2021

s. 29

Part 4 – Repeal of Act

PART 4 – REPEAL OF ACT

29. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.