

TASMANIA

**INLAND FISHERIES AMENDMENT BILL
2002**

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INLAND FISHERIES AMENDMENT BILL 2002

(Brought in by the Minister for Primary Industries, Water and Environment, the Honourable Bryan Alexander Green)

A BILL FOR

An Act to amend the *Inland Fisheries Act 1995*

Be it enacted by His 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:

Short title

1. This Act may be cited as the *Inland Fisheries Amendment Act 2002*.

Commencement

2. This Act commences on a day to be proclaimed.

Principal Act

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

*No. 110 of 1995

Section 3 amended (Interpretation)

4. Section 3 of the Principal Act is amended as follows:

- (a) by omitting “In this Act” and substituting “(1) In this Act”;
- (b) by inserting the following definition after the definition of “accumulation scheme”:

“amend” means –

- (a) add any matter (including a condition if this Act provides for conditions to be specified in the document being amended); and
 - (b) omit any matter (including a condition); and
 - (c) omit any matter (including a condition) and substitute other matter (including a condition if this Act provides for conditions to be specified in the document being amended);
- (c) by omitting the definitions of “commercial fishing licence” and “commercial licence” and substituting the following definition:

“commercial freshwater fishing licence” means a licence referred to in section 21;

- (d) by inserting the following definition after the definition of “fish”:

“fish dealer’s registration certificate” means the certificate issued under section 65;

- (e) by omitting the definition of “juvenile eel licence”;
- (f) by omitting the definition of “seaward limit” and substituting the following definition:

“seaward limit” means –

- (a) the seaward limit declared to be the seaward limit of a river under section 6(1); and
 - (b) the seaward limit of a river referred to in section 6(3);
- (g) by inserting the following subsection:

(2) If any licence, permit, certificate of registration, permission, consent, approval, other like document or exemption is subject to conditions specified or otherwise contained in the document or exemption, it is sufficient for the conditions to be –

- (a) specified or otherwise contained in the document or exemption; or
- (b) attached to the document or exemption; or
- (c) provided to the holder of the document or exemption at the time of issuing the document or exemption; or
- (d) provided to the holder of the document or exemption at any other time if they are provided

with a written notice stating that they are conditions which attach to the document or exemption.

Section 20A amended (Inland Fisheries Advisory Council)

5. Section 20A of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

- (2)** The Council consists of –
- (a) one person who represents the interests of freshwater angling associations; and
 - (b) 3 persons who hold angling licences, each of whom represents one of the following:
 - (i) the northern area;
 - (ii) the north-western area;
 - (iii) the southern area; and
 - (c) one person who represents the interests of freshwater commercial fisheries; and
 - (d) one person with expertise in the area of conservation of freshwater ecosystems; and
 - (e) one person with expertise in the area of tourism relating to inland fisheries; and
 - (f) the Director; and
 - (g) the chairperson; and
 - (h) such other persons as the Minister considers appropriate.

(2A) The members of the Council are appointed by the Minister.

Part 3, Division 1: Heading amended

6. Division 1 of Part 3 of the Principal Act is amended by omitting “*Commercial licences*” from the heading to that Division and substituting “*Commercial freshwater fishing licence*”.

Section 21 amended (Commercial freshwater fishing licence)

7. Section 21 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “without a commercial fishing licence” and substituting “except under the authority of and in accordance with a commercial freshwater fishing licence”;
- (b) by omitting subsection (2) and substituting the following subsection:

(2) Subsection (1) does not apply to a person who takes freshwater fish on behalf of, and as authorised or required by, the holder of a commercial freshwater fishing licence.

Sections 22 and 23 repealed

8. Sections 22 and 23 of the Principal Act are repealed.

Section 24 amended (Application for commercial freshwater fishing licence)

9. Section 24(1) of the Principal Act is amended by inserting “freshwater fishing” after “commercial”.

Section 25 amended (Grant of commercial freshwater fishing licence)

10. Section 25 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

(3) A commercial freshwater fishing licence may be limited in one or more of the following matters:

- (a) the taking of a species of freshwater fish specified in the licence;
- (b) the taking of freshwater fish at a particular stage of life specified in the licence;
- (c) the taking of freshwater fish from inland waters specified in the licence;
- (d) any other matter the Director considers relevant.

(3A) Each of the following persons must comply with the conditions of a commercial freshwater fishing licence in respect of the taking of freshwater fish under that licence:

- (a) the holder of the licence;
- (b) a person authorised or required by the holder of the licence to take freshwater fish on behalf of the holder.

Penalty: Fine not exceeding 100 penalty units.

(3B) If a person authorised or required by the holder of a commercial freshwater fishing licence to take freshwater fish on behalf of that holder contravenes a condition of the licence, both that person and that holder are taken to contravene the condition.

Section 32 amended (Renewal of commercial freshwater fishing licence)

11. Section 32 of the Principal Act is amended as follows:

- (a) by inserting in subsection (3)(c) “, if any,” after “fees”;
- (b) by inserting the following subsection after subsection (5):

(6) This Act applies to a renewed licence and its conditions as if it were the original licence and conditions.

Section 41 amended (Grant of fish farm licence)

12. Section 41 of the Principal Act is amended as follows:

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

(1) The Director may grant an application for a fish farm licence if satisfied that –

- (a) the applicant is a fit and proper person to hold the licence; and

- (b) there are no environmental or resource constraints on doing so; and
- (c) the applicant has paid any prescribed application fee; and
- (d) it is appropriate to do so.

(1A) In determining whether an applicant is a fit and proper person to hold a fish farm licence, the Director must consider whether the applicant –

- (a) has contravened this Act; and
 - (b) has committed any offence the Director considers relevant.
- (b) by omitting from subsection (3) “Minister may” and substituting “Director must”.

Section 42 amended (Conditions of fish farm licence)

13. Section 42 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

(4) Each of the following persons must comply with the conditions of a fish farm licence:

- (a) the holder of the licence;
- (b) an employee or contractor of the licence holder;
- (c) any other person authorised or required by the holder of the licence to undertake work relating to the aquatic freshwater species to which the fish farm licence relates on behalf of the licence holder.

Penalty: Fine not exceeding 100 penalty units.

Section 45 amended (Variation of fish farm licence)

14. Section 45 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Minister, after consulting with the Director,” and substituting “Director”;
- (b) by omitting from subsection (7)(b) “the Director and”.

Section 46 amended (Transfer of fish farm licence)

15. Section 46 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

(2) The Director may approve the transfer of a fish farm licence if satisfied that –

- (a) the transfer recipient is a fit and proper person to hold the licence; and
- (b) there are no environmental or resource constraints on doing so; and
- (c) any prescribed application fee for the transfer of the fish farm licence has been paid; and
- (d) it is appropriate to do so.

(2A) In determining whether the transfer recipient is a fit and proper person to hold the fish farm licence, the Director must consider whether that person –

- (a) has contravened this Act; and

- (b) has committed any offence the Director considers relevant.

Section 47 amended (Renewal of fish farm licence)

16. Section 47 of the Principal Act is amended as follows:

- (a) by omitting subsection (2) and substituting the following subsections:

(2) The Director may renew a fish farm licence if satisfied that –

- (a) the applicant is a fit and proper person to continue to hold the licence; and
- (b) there are no environmental or resource constraints on doing so; and
- (c) any prescribed application fee for the renewal of the fish farm licence has been paid; and
- (d) it is appropriate to do so.

(2A) In determining whether an applicant is a fit and proper person to continue to hold a fish farm licence, the Director must consider whether the applicant –

- (a) has contravened this Act; and
- (b) has committed any offence the Director considers relevant.

- (b) by inserting the following subsection after subsection (6):

(7) This Act applies to a renewed licence and its conditions as if it were the original licence and conditions.

Section 48 amended (Cancellation of fish farm licence)

17. Section 48(1) of the Principal Act is amended as follows:

- (a) by omitting “Minister, after consulting with the Director,” and substituting “Director”;
- (b) by omitting paragraph (d) and substituting the following paragraphs:
 - (d) the holder of the licence has been convicted of –
 - (i) an offence under this Act; or
 - (ii) any other offence the Director considers relevant; or
 - (e) the holder of the licence has failed to pay any relevant fee.

Sections 61, 62, 63 and 64 substituted

18. Sections 61, 62, 63 and 64 of the Principal Act are repealed and the following sections are substituted:

Definition of “dealing with applicable fish”

61. A person deals with applicable fish if the person –

- (a) imports the fish for commercial purposes; or
- (b) sells the fish; or
- (c) processes or treats the fish for commercial purposes; or
- (d) manufactures or obtains any substance from the fish for commercial purposes.

Restriction on dealing with applicable fish

62. (1) A person must not deal with applicable fish except where the person is a registered fish dealer and does so under the authority of, and in accordance with, a fish dealer's registration certificate.

Penalty: Fine not exceeding 100 penalty units.

(2) The Director, by notice in the *Gazette*, may exempt a person or class of person from any provision of this Division –

- (a) in respect of any specified kind or species of fish; or
- (b) in any specified circumstances.

Registration as fish dealer

63. (1) On receipt of an application for registration as a fish dealer under section 76, the Director may register or refuse to register the applicant as a registered fish dealer.

(2) The Director must notify the applicant, in writing, of the decision made under subsection (1).

Registration subject to conditions

64. (1) The registration of a fish dealer is subject to any condition specified in the fish dealer's registration certificate.

(2) Without limiting the conditions which may be specified in a fish dealer's registration certificate, those conditions may include conditions relating to one or more of the following:

- (a) a kind or species of applicable fish;
- (b) the premises in which applicable fish may be kept or dealt with;
- (c) the keeping and provision of records and returns.

(3) Each of the following persons must comply with the conditions of a fish dealer's registration certificate in respect of activities under that certificate:

- (a) the holder of the licence;
- (b) a person authorised or required by the holder of the certificate to undertake activities on behalf of the holder.

Penalty: Fine not exceeding 100 penalty units.

(4) The conditions specified in a fish dealer's registration certificate form part of that certificate.

Issue of fish dealer's registration certificate

65. (1) After granting registration as a registered fish dealer and on receipt of any prescribed fee, the Director is to issue a fish dealer's registration certificate to the person granted registration.

(2) A certificate of registration is to be in the approved form.

Authority and term of registration

66. A registered fish dealer is authorised to carry on one or more of the following activities as specified in the fish dealer's registration certificate:

- (a) importing all, or a specified species or a specified kind of, applicable fish;
- (b) selling a specified species or a specified kind of applicable fish;
- (c) processing or treating a specified species or a specified kind of applicable fish;
- (d) manufacturing or obtaining any substance from all, or a specified species or a specified kind of, applicable fish for the purpose of sale.

General provisions relating to registration

67. Division 4 applies in respect of a registration under this Division.

Part 4, Division 2 repealed

19. Division 2 of Part 4 of the Principal Act is repealed.

Section 76A inserted

20. After section 76 of the Principal Act, the following section is inserted in Division 4:

Amendment of registration

76A. (1) In this section, “**registration certificate**” means a fish dealer’s registration certificate and a certificate of registration under section 71.

(2) At any time the Director may amend a registration certificate.

(3) If the Director alters a registration certificate, the Director must notify the holder of the certificate in writing of –

- (a) the alteration; and
- (b) the day on which the alteration takes effect, being a day not earlier than 21 days after the notice is provided to the holder of the certificate; and
- (c) the reasons for the alteration.

(4) The Director may require the holder of a registration certificate to surrender it for the purpose of altering it.

(5) The holder of a registration certificate must comply with a requirement made under subsection (4).

Penalty: Fine not exceeding 100 penalty units.

Section 128 amended (Removing, freeing or introducing fish)

21. Section 128(3) of the Principal Act is amended as follows:

- (a) by omitting “or in a registered private fishery”;

- (b) by inserting in paragraph (a) “aquatic” after “amphibious or”.

Section 128A inserted

22. After section 128 of the Principal Act, the following section is inserted in Division 1:

Transporting fish

128A. (1) A person must not transport a live fish taken from inland waters, except with the written permission of the Director.

Penalty: Fine not exceeding 50 penalty units.

(2) The Director, on payment of any prescribed application fee, may grant a permission that authorises the holder of the permission to –

- (a) transport live fish during the period specified in the permission; or
- (b) transport live fish on the occasion or in the circumstances specified in the permission.

(3) The permission is subject to the conditions specified in it.

(4) At any time, the Director may revoke or amend the permission by written notice provided to the holder of the permission.

(5) The Director may exempt from the application of subsection (1) –

- (a) a person; and
- (b) a class of person; and

(c) a kind or species of fish.

(6) An exemption –

(a) under subsection (5)(a) is to be made by written notice provided to the person; and

(b) under subsection (5)(b) or (c) is to be made by notice published in the *Gazette*.

(7) A notice referred to in subsection (6)(b) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

Section 129 substituted

23. Section 129 of the Principal Act is repealed and the following section is substituted:

Restriction on possessing fish near inland waters

129. A person must not possess on or within 100 metres of any inland waters any kind or species of fish or an amphibious or aquatic invertebrate animal unless that person does so –

(a) with the written consent of the Director; or

(b) under and in accordance with the authority of a licence, permit or other authority issued under this Act.

Penalty: Fine not exceeding 50 penalty units.

Section 134 amended (Selling and buying fish)

24. Section 134(4) of the Principal Act is amended by inserting after paragraph (c) the following penalty:

Penalty: Fine not exceeding 20 penalty units.

Section 138 amended (Marking fish)

25. Section 138 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

(1) In this section, a person marks a live freshwater fish if he or she –

- (a) affixes an identification mark or tag to the fish; or
- (b) removes a fin from the fish; or
- (c) mutilates the fish; or
- (d) marks the fish in any other manner.

(1A) A person must not mark a live freshwater fish except where that person holds a fish farm licence or operates a registered private fishery and –

- (a) marks the fish in accordance with the licence or registration; or
- (b) marks that fish as directed by the Director.

Penalty: Fine not exceeding 5 penalty units.

Section 140A inserted

26. After section 140 of the Principal Act, the following section is inserted in Division 1:

Juvenile eel

140A. A person must not take juvenile eel for any non-commercial reason without the written consent of the Director.

Penalty: Fine not exceeding 1 000 penalty units.

Section 140B inserted

27. Before section 141 of the Principal Act, the following section is inserted in Division 2:

Contravening condition

140B. (1) If a licence, permit, certificate of registration, permission, consent, approval, other like document or exemption is subject to conditions, the holder of, and any person acting or omitting to do an act under the authority of, that licence, permit, certificate of registration, permission, consent, approval, other like document or exemption must not contravene those conditions.

Penalty: Fine not exceeding 100 penalty units.

(2) For the purposes of subsection (1), the owner of a registered private fishery is the holder of the certificate of registration of the private fishery.

(3) Subsection (1) does not apply to the contravention of a condition if another provision of this Act imposes a penalty for that contravention.

Section 196 amended (Registers)

28. Section 196(1)(d) of the Principal Act is amended by inserting “freshwater fishing” after “commercial”.

Schedule 2 repealed

29. Schedule 2 to the Principal Act is repealed.

Substitution of penalty

30. Each of the provisions of the Principal Act specified in Column 1 of Schedule 1 is amended by omitting “10” on the number of occurrences specified in Column 2 of that Schedule and substituting “50”.

Substitution of “Minister”

31. Each of the provisions of the Principal Act specified in Column 1 of Schedule 2 is amended by omitting “Minister” on the number of occurrences specified in Column 2 of that Schedule and substituting “Director”.

Substitution of “commercial licence”

32. Each of the provisions of the Principal Act specified in Column 1 of Schedule 3 is amended by omitting “commercial licence” on the number of occurrences specified in Column 2 of that Schedule and substituting “commercial freshwater fishing licence”.

SCHEDULE 1 - SUBSTITUTION OF PENALTY

Section 30

Column 1	Column 2
Provision amended	Number of occurrences
The penalty under section 128(1)	1
The penalty under section 128(2)	1
The penalty under section 128(3)	1
The penalty under section 128(4)	1
The penalty under section 131(2)	1

SCHEDULE 2 - SUBSTITUTION OF "MINISTER"

Section 31

Column 1	Column 2
Provision amended	Number of occurrences
Section 41(2)	first only
Section 41(4)	1
Section 42(1)	2
Section 42(2)	1
Section 42(3)	first only
Section 43(1)	2
Section 43(2)(e)	1
Section 43(3)	1
Section 45(2)	1
Section 45(4)	1
Section 45(6)	first only
Section 45(7)	first only
Section 45(7)	second only
Section 46(1)	1
Section 46(3)	2
Section 46(4)	1
Section 46(5)	1
Section 47(1)	1

Column 1 Provision amended	Column 2 Number of occurrences
Section 47(3)	2
Section 47(4)	first only
Section 47(5)	1
Section 47(6)	1
Section 48(2)	first only
Section 48(3)	1
Section 48(5)	1
Section 49(1)	1

**SCHEDULE 3 – SUBSTITUTION OF “COMMERCIAL
LICENCE”**

Section 32

Column 1	Column 2
Provision amended	Number of occurrences
Section 25(1)(a)	1
Section 25(2)	1
Section 26(1)	1
Section 26(2)	1
Section 26(3)	1
Section 26(4)	1
Section 27	1
Section 28(1)	1
Section 28(2)	1
Section 28(3)	1
Section 29(1)	2
Section 29(3)	1
Section 29(4)	1
Section 30	1
Section 31(1)	1
Section 32(1)	1
Section 33(1)	1

Column 1 Provision amended	Column 2 Number of occurrences
Section 33(2)	1
Section 33(3)	1
Section 34(1)	1
Section 34(2)	1
Section 34(3)	1
Section 35(1)	1
Section 36	1
Section 57	1
Section 58(1)(a)	1
Section 58(1)(b)	1
Section 58(1)(c)	1
Section 58(1)(d)	1
Section 58(1)(e)	1
Section 134(2)	1
Section 134(4)(c)	1
Section 135(1)	1