

Fisheries (Further Amendment) Bill

EXPLANATORY MEMORANDUM

- Clause 1 This Bill amends the **Fisheries Act 1995** ("the Act"), particularly in respect of licensing under the Act, declaration of fisheries and declaration of noxious aquatic species.
- Clause 2 This Bill comes into effect on the day of Royal Assent. The effect of commencement is to amend the Act. The day to day operation of the changes made by this Bill will not take place until the relevant sections of the Act as amended are proclaimed.
- Clause 3 This clause extends the date by which all sections of the Act must be in operation to 1 January 1999.
- Clause 4 A number of definitions will be no longer be required consequent on amendments to the Act and they are therefore repealed. The clause also amends some definitions contained in the Act and inserts new definitions. In particular definitions of licence categories have been amended by inserting in the Act the general classes of entitlements of licence holders. A more complete definition of 'catch limit' is also inserted and, consequent upon changes concerning quota, definitions of terms relevant to quota have been inserted.
- Clause 5 The definition of a fishery is fundamental to defining entitlements under the Act. The definition has been amended as a consequence of other amendments to the Act.
- Clause 6 The purpose of this clause is to clarify for the purposes of the Act the meaning of the term "species", as this term is to be used in the context of compliance and subordinate instruments.
- Clause 7 This clause clarifies the applicability of the Act with respect to fish or other aquatic biota taken in other jurisdictions and with respect to limitations imposed in Victoria or other jurisdictions. It provides that any fish in Victoria will be treated as if it had been taken in Victoria unless it can be proved that it was taken outside Victoria and in accordance with the law of the relevant jurisdiction.

- Clause 8 The purpose of this clause is to clarify that guidelines in a management plan may include criteria to reduce licences and permits in a fishery. This is an important tool in managing a fishery sustainably.
- Clause 9 This clause replaces Part 4 of the 1995 Act. Division 1 creates several categories of licences and their entitlements and creates offences for carrying out activities regulated under these licences without being the holder of the relevant licence. Licences established under this Division are access licences, the primary licence for commercial fishing, fish receivers' licences, aquaculture licences and recreational licences. There is an ability in respect of access licences for the regulations to specify certain fisheries in which the name of any person carrying out a fishing operation on behalf of the licence holder must be stated on the licence. The Division also establishes the ability for the Secretary to grant permits for a number of activities for up to 3 years. Such permits are not renewable or transferable.

The Division provides that any prohibition on unlicensed recreational fishing in marine waters does not take effect until the Minister has endorsed a report from the Co-Management Council and consulted with the Premier and the Treasurer.

Division 2 sets out procedures for the issue of licences and permits, for variations to licences or permits for transfer or renewal of licences and for cancellation of licences. It requires licence or permit holders to comply with any conditions of the licence or permit. It also provides power for the Secretary to require a licence holder to show cause why the licence should not be cancelled for ceasing to engage in the relevant activity or for ceasing to satisfy any relevant eligibility criteria. The ability is provided for a person who has a financial interest in a licence but is not the licence holder to register that interest with the Secretary and to be notified of a proposed transfer of the licence.

Division 3 deals with a range of matters relating to management of fisheries. It provides for the Minister to make policy statements about any fishery management matter after consultation with relevant consultative bodies and to make an order concerning the definition of a fishery and licence entitlements. If an access licence is cancelled as the result of an order under this Division, there are provisions for the payment of compensation.

The Division provides for the setting of the total allowable catch in a fishery and for determining individual quota within the total allowable catch. It establishes offences in relation to individual quota. The Division also provides

for the closure of fisheries, the setting of bag and catch limits and offences for contravention.

- Clause 10 This clause clarifies the circumstances in which the Secretary must not issue a permit for activities relating to protected aquatic biota.
- Clause 11 This clause simplifies existing provisions for the declaration and management of noxious aquatic species.
- Clause 12 This clause is part of the simplification of the provisions governing noxious aquatic species. It establishes offence provisions for any unauthorised activity relating to noxious species.
- Clause 13 This clause provides for the issue of non-renewable permits authorising activities relating to noxious aquatic species notwithstanding the prohibitions under clause 27.
- Clause 14 This clause provides for revocation of a permit under clause 14 at any time.
- Clause 15 This clause provides that the taking of noxious aquatic species attracts no penalty provided that anything taken is killed immediately.
- Clause 16 This clause makes a consequential amendment and also confers on the Council the ability to prepare, publicise and distribute codes of practice.
- Clause 17 This clause repeals provisions which are no longer required. Codes of practice are provided for under clause 16.
- Clause 18 Clause 18 extends the time available for an authorised officer to give a receipt for documents seized from 7 to 14 days.
- Clause 19 This clause expands and clarifies existing provisions concerning the use of explosives and substances in taking fish.
- Clause 20 The purpose of this clause is to provide for the prohibition of specified boats or gear either absolutely or under specified circumstances. This is one of the management options available to regulate the operations of a fishery.
- Clause 21 This amendment is consequential to other changes concerning the way in which commercial fishing equipment is described.
- Clause 22 This amendment clarifies the ability of a court to require removal of an obstruction if it has found a person guilty of an offence under this section but has not convicted the person.

- Clause 23 This clause makes amendments consequential on changes to the licensing provisions of the Act and repeals a statutory defence which was unnecessary because the situation is provided for under other legislation.
- Clause 24 This clause provides for certain statements and certificates by authorised officers or sealed by the Secretary to be admitted as evidence of facts in the absence of evidence to the contrary.
- Clause 25 This clause sets out requirements for certain classes of certificates in section 123 to be served on a defendant before the certificate can be tendered as evidence at a hearing.
- Clause 26 This clause clarifies the requirements of the existing section 125 of the Act in relation to evidence by an authorised officer about locality.
- Clause 27 This clause amends the existing section 126 of the Act concerning evidence of consignment.
- Clause 28 This clause provides that if a licence or permit holder is convicted of certain offences specified in the regulations, a court may impose an additional penalty by suspending the licence or permit.
- Clause 29 This clause makes amendments consequential to the way in which offences are prescribed to a provision enabling an additional penalty to be imposed if an offence is committed by a corporation.
- Clause 30 This clause clarifies and modifies the existing provision which prevents a court taking account of convictions which occurred more than 10 years previously when determining a sentence.
- Clause 31 This clause clarifies that the Commercial Licensing Panel is not concerned with recreational licences.
- Clause 32 This clause clarifies that a decision of the Licensing Appeals Tribunal must be given effect.
- Clause 33 Certain decisions by the Secretary with respect to licensing are reviewable. This clause makes amendments to the list of reviewable decisions consequent on changes to licensing and permit provisions.
- Clause 34 The existing provision requiring maintenance of a register is repealed by this clause. The information which would have been included on a register is provided for generally through the issue of licences and permits and the records maintained as a result.

- Clause 35 This clause further specifies the nature of research which may be carried out by the Secretary.
- Clause 36 The existing section 141 is repealed as the activities authorised under it are now subsumed under the general permit provisions.
- Clause 37 This clause makes consequential amendments to the list of documents to be available for inspection.
- Clause 38 There is a general prohibition on disclosure of information obtained in the course of official duties, but the Act contains exemptions for actions required in legal proceedings or under any other Act. This clause clarifies that a person is not prevented from using skills acquired in the course of official duties provided that information is not disclosed.
- Clause 39 The amendment contained in this clause clarifies that there is no requirement to advertise or to consult on the granting of a licence other than a recreational fishery licence. It also makes other minor amendments.
- Clause 40 The amendments in this clause simplify the existing provisions in section 149.
- Clause 41 The provisions of this clause clarify that the regulations may prescribe a date by which a royalty must be paid. They also clarify the way in which a levy may be calculated, the purposes for which it may be used, and provide that if it is imposed for the benefit of an organisation then it must be applied for that purpose.
- Clause 42 This clause specifies the matters relating to royalties which may be provided for in the regulations.
- Clause 43 This clause clarifies the matters which may be the subject of a fisheries notice and clarifies the consultative arrangements for a notice. It provides that a notice which applies solely for the management of a specified area of inland waters may apply for up to 3 years, whereas all other fisheries notices expire after a maximum of one year.
- Clause 44 This clause provides for regulation-making powers to be moved from the body of the Act to a Schedule and makes other minor amendments.
- Clause 45 Changes to transitional provisions in this clause are for the most part consequent on changes to licensing, to ensure that existing holders of licences may be issued an equivalent entitlement. However sub-clause 45(2) inserts a new provision which permits a single renewal of a licence or permit under the **Fisheries Act 1968** which was in force immediately prior to repeal of that Act.

This provision is to ensure that there is administrative continuity during the transitional period.

- Clause 46 This clause makes changes consequential to the amendments relating to the making of orders concerning a fishery or fishery licence in clause 9.
- Clause 47 This makes other amendments consequential on changes to licensing.
- Clause 48 The purpose of this clause is to enable the issue of a licence at the transition from the **Fisheries Act 1968** for a period which may be less than one year. This provides for the situation where a licence is issued part of the way through the licensing year.
- Clause 49 This amendment makes the Act a relevant law for the purposes of the **Conservation Forests and Lands Act 1987**.
- Clause 50 This clause makes various minor and consequential amendments.
- Clause 51 This schedule consolidates regulation making powers contained in the Act.