

Fisheries (Amendment) Bill

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EXPLANATORY MEMORANDUM

- Clause 1 sets out the main purposes of the Bill.
- Clause 2 provides for commencement of the Bill (other than clauses 9 and 22) to occur on the day after the day on which it receives the Royal Assent. Clauses 9 and 22 of the Bill will commence on a day or days to be proclaimed. Clause 2 includes a forced commencement date for clause 9 (1 April 2002) and clause 22 (1 April 2003).
- Clause 3 amends section 4(1) of the **Fisheries Act 1995** to make a consequential amendment to the definition of "quota order" and to include definitions of "quota fishery" and "vessel monitoring system".
- Clause 4 inserts a further exemption to the offence contained in section 42(1) of the **Fisheries Act 1995** which prohibits a person from certain activities relating to aquaculture and live fish. The exemption allows a person to undertake the prohibited activities for commercial purposes (other than for sale) if authorised to do so by a general permit.
- Clause 5 amends section 49(2) of the **Fisheries Act 1995** to enable the Secretary to authorise the holder of a general permit to do certain activities which are prohibited by section 42(1) of the **Fisheries Act 1995**.
- Clause 6 provides a new process for varying fishery licences and conditions of licences if the change applies to all members of a class of licence. The Secretary can only vary a licence in this way in order to give effect to a management plan declared under section 28 of the **Fisheries Act 1995** or to any change to a management plan. The new process requires the Secretary to give the consultative body and the relevant recognised peak body

written notice of the proposal and must consider any submissions made by those bodies.

Clause 7 amends section 59 of the **Fisheries Act 1995** to require the Secretary to notify each holder of a registered financial interest of an application to permanently transfer individual quota units. The Secretary must not permanently transfer individual quota units if the holder of a registered financial interest disapproves the proposed transfer.

Clause 8 includes provisions to allow the Secretary to issue a notice to remove specified commercial aquaculture equipment, fish, fishing bait or aquatic flora from the site of an aquaculture licence if the licence has expired or is cancelled and the licence related to an area that is Crown land. The provisions also allow the Secretary to enter the land and seize the equipment, fish, fishing bait or aquatic flora if the person fails to comply with the notice.

Clause 9 amends the **Fisheries Act 1995** to enable the Minister to allow quota units to be permanently transferred. Proposed new section 64 allows the Minister, by order, to declare a zone or zones of a fishery to be managed by quota, to determine the method for setting and allocating individual quota units and to declare if quota units can be transferred permanently or only during a quota period (temporary). If permanent transfer of quota is allowed, the Minister cannot vary the zones or method of setting or allocating quota unless the variation gives effect to a management plan or to a change to a management plan or if there is an error in the order.

Proposed new section 64A allows the Minister, by order, to set the total allowable catch and the value of an individual quota unit for a quota period. The total allowable catch and the value of a quota unit can be varied even if the permanent transfer of quota is allowed.

Proposed new section 64B provides general requirements in relation to quota orders, including a requirement for the Minister to undertake consultation before making, revoking or amending an order.

Proposed new section 64C saves any quota order or quota notice currently in existence.

Proposed new section 65 requires the Secretary to issue quota notices to licence holders which set out details of individual quota after a licence is issued, renewed or transferred or if the allocation of individual quota is changed by a quota order.

Proposed new section 65A provides that individual quota units may only be transferred with the approval of the Secretary. Approval may be granted if the application is consistent with relevant quota orders and management plans. The Secretary must not grant approval if the application is inconsistent with any provision of the **Fisheries Act 1995**.

- Clause 10 amends section 68A(3) of the **Fisheries Act 1995** to restructure the offences to allow infringement notices to be issued. Clause 10(1) of the Bill removes the two-tier penalty from the offence to section 68A(3) of the **Fisheries Act 1995** in favour of a single maximum penalty. The two-tier penalty meant that the offence was not suitable for the issue of infringement notices. Clause 10(2) replaces the existing section 68A(5) with new offences to separate out the offence of taking or possessing more than the catch limit but not more than twice the catch limit. This offence has a smaller maximum penalty than the offence to take or possess more than twice the catch limit which will make the offence suitable for the issue of infringement notices. The proposed amendments do not of themselves allow infringement notices to be issued. The offences will have to be added to the Schedule to the Conservation Forests and Land (Infringement Notice) Regulations 1992 before infringement notices can be issued. Clause 10(2) also provides a defence to certain offences in relation to the possession of undersize or oversize fish or more fish than the relevant catch limits if the person can prove that the fish were taken in accordance with the **Fisheries Act 1995**. This will allow, for example, a person to possess undersize fish that are taken from an aquaculture farm. Sub-clause 10(3) ensures that the additional penalty of up to 1 penalty unit for each fish does not apply to an offence for which an infringement notice has been issued.

- Clause 11 includes provision for retention notices to be issued by an authorised officer or a member of the police force. A retention notice could be issued in situations where seizure is impractical (for example, live fish) or where further investigations are necessary.
- Clause 12 inserts a provision to allow authorised officers and police officers to undertake certain activities which would otherwise constitute an offence against the **Fisheries Act 1995** if the activity is done under written instructions given by the Secretary. The provision only applies if the Secretary has given instructions in relation to the particular case in which it is relied upon. The Secretary cannot delegate this power.
- Clause 13 extends section 130 of the **Fisheries Act 1995** to allow a court, in certain circumstances, to make an order which prohibits a person from being in possession of specified fish or from engaging in fishing activities unless the person has installed a vessel monitoring system.
- Clause 14 inserts proposed new sections 130A and 130B into the **Fisheries Act 1995**. Proposed new section 130A allows the Secretary to apply for a court order against a person who has been prohibited in another State or Territory or by the Commonwealth from engaging in specified fishing activities or possessing specified fish or fishing equipment. A court may make an order which prohibits the person from undertaking those activities or from possessing such fish or fishing equipment in Victoria. A court may only make such an order if the application is accompanied by information which justifies the making of the order and if the court is satisfied that the person is likely to engage in the activity or be in possession of the fish or fishing equipment in Victoria.
- Proposed new section 130B enables a court to make, on the application of the Secretary, an order which prohibits a person from being in or on specified Victorian waters without a lawful purpose. An order can only be made if the court convicts the person of an offence against the **Fisheries Act 1995** which is punishable by imprisonment and if the person has previously been convicted on 2 or more separate occasions of such an offence. The court must also be satisfied that the application is accompanied by information that justifies the order and that the person is likely to commit further offences in or on the specified

waters. The court must limit the specification of the waters to the maximum extent possible whilst having regard to the purpose of the order. To establish a breach of the order it is not necessary for the prosecution to prove that the person was in or on the specified waters without a lawful purpose, it is sufficient for the prosecution to prove that the person was in or on the specified waters on the relevant date. However, the prosecution must still prove every other fact constituting the offence.

To ensure that it is only an evidential burden which is shifted to the person charged, a defence has been included which applies if the person charged gives, in the opinion of the court, a satisfactory account as to why he or she was in or on the specified waters. The provision has been set up this way because the purpose for which the person charged is in the waters is something which would be difficult for the prosecution to prove but relatively easy for the person charged to prove.

- Clause 15 amends section 137 of the **Fisheries Act 1995** to make a decision by the Secretary to refuse to approve a transfer of individual quota units reviewable under section 136 of the **Fisheries Act 1995**.
- Clause 16 amends section 145 of the **Fisheries Act 1995** to require licence conditions imposed by the Secretary on a class of fishery licence to be made available for inspection, without charge, at the principal office of the Department of Natural Resources and Environment.
- Clause 17 amends section 146(1) of the **Fisheries Act 1995** to apply the secrecy provisions in that section to members of the Fisheries Revenue Allocation Committee.
- Clause 18 amends section 151 of the **Fisheries Act 1995** to allow separate levies to be prescribed for a class of licence or permit. For example, this will allow a rate of levy to be prescribed for marketing purposes and another rate of levy to be prescribed to cover administrative costs for the one licence class. Currently, there is only one prescribed levy which can not be split to reflect the different purposes of the levy.

- Clause 19 provides for the establishment of the Recreational Fishing Licence Trust Account and the Fisheries Revenue Allocation Committee to administer money received from the issue of recreational fishing licences.
- Clause 20 makes a consequential amendment to the definition of "body" in Schedule 1 to the **Fisheries Act 1995** to enable the Schedule to apply to the Fisheries Revenue Allocation Committee.
- Clause 21 inserts a new regulation making power into Schedule 3 to the **Fisheries Act 1995** in relation to vessel monitoring systems.
- Clause 22 provides for the repeal of proposed new section 64C of the **Fisheries Act 1995** which relates to the saving of quota orders. Clause 2 of the Bill provides for this repeal to occur by 1 April 2003.