



TASMANIA

**FISHERIES AMENDMENT (MARINE FARM
UTILIZATION) ACT 1994**

No. 12 of 1994

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**FISHERIES AMENDMENT (MARINE FARM
UTILIZATION) ACT 1994**

No. 12 of 1994

AN ACT to amend the *Fisheries Act 1959***[Royal Assent 17 March 1994]**

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 *Fisheries Amendment (Marine Farm Utilization) Act 1994*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Principal Act

3—In this Act, the *Fisheries Act 1959** is referred to as the Principal Act.

Section 16A inserted

4—After section 16 of the Principal Act, the following section is inserted:—

Power of Minister to process or reject applications

16A—(1) The Minister must, within 60 days after receiving an application under section 16 or, if further particulars are required in relation to the application, within 60 days after receiving those further particulars, make a determination in writing to—

- (a) process the application; or
- (b) reject the application outright.

(2) If the Minister fails to make a determination under subsection (1) within the time specified in that subsection, the Minister is taken to have determined to process the application.

(3) If the Minister makes a determination under subsection (1) to process an application for a lease, re-seeding lease or permit—

- (a) sections 17, 18 and 19 apply to that application; and
- (b) section 23C has effect in respect of a subsequent refusal to grant the application.

(4) If the Minister makes a determination under subsection (1) to reject an application for a lease, re-seeding lease or permit outright—

- (a) the Minister is not required to take any further action in respect of the application otherwise than under subsection (7); and
- (b) no right of appeal or objection lies against that determination.

* No. 16 of 1959. For this Act, as amended to 1 February 1987, see the continuing Reprint of Statutes, subsequently amended by Nos. 10, 19 and 58 of 1988, Nos. 38 and 52 of 1989, No. 5 of 1990, Nos. 7 and 46 of 1991, No. 34 of 1992 and Nos. 12, 24 and 62 of 1993.

(5) The power of the Minister under subsection (1) to determine whether to process an application or reject it outright is exercisable at the Minister's discretion having regard to such matters as the Minister considers necessary or appropriate.

(6) Without limiting the generality of subsection (5), the matters that the Minister may have regard to in making a determination under subsection (1) include the following:—

- (a) the state of the marine farming industry, both generally and in the vicinity of the area to which the application relates;
- (b) the number and type of subsisting leases, re-seeding leases and permits, both generally and in the vicinity of the area to which the application relates;
- (c) the impact that implementation of the proposals contained in the application would be likely to have in relation to any subsisting lease, re-seeding lease or permit;
- (d) the provisions of the *Salt-water Salmonid Culture Act 1985*;
- (e) the environmental impact of implementing the proposals contained in the application;
- (f) the prospective commercial viability of the proposals contained in the application;
- (g) the impact that implementation of the proposals contained in the application would be likely to have on other industries and on the reasonable recreational activities of the public;
- (h) the impact that implementation of the proposals contained in the application would be likely to have on navigation;
- (i) the history of the applicant in relation to marine farming or the fishing industry in Tasmania or elsewhere;
- (j) the merits of any competing application.

(7) The Minister must, as soon as practicable but in any event not later than 14 days after making a determination under subsection (1), serve on the applicant written notice of the determination and, in the case of an outright rejection, the reasons for the determination.

(8) Subject to subsection (9), nothing in this section disqualifies a person whose application under section 16 has been rejected outright from submitting another such application to the Minister.

(9) A person whose application under section 16 has been rejected outright is not entitled to submit the same or substantially the same application to the Minister within the period of 12 months after the day on which the notice referred to in subsection (7) is served on that person.

(10) Notwithstanding any other provision of this Division, the Minister is not required to take any action in respect of an application under section 16 that is submitted to the Minister in contravention of subsection (9).

Section 17 amended (Notice of application to be published, &c.)

5—Section 17 (1) of the Principal Act is amended by omitting “Where an application for a lease, re-seeding lease, or permit is made in accordance with section 16, the Minister shall, not less than 28 days before making a decision as to whether or not the application will be granted,” and substituting “If the Minister, under section 16A, makes or is taken to have made a determination to process an application made under section 16, the Minister must”.

Section 22 amended (Renewal of leases, re-seeding leases and permits)

6—Section 22 (1) of the Principal Act is amended by omitting “3 months” and substituting “5 years”.

Section 23A amended (Refund of fees)

7—Section 23A of the Principal Act is amended as follows:—

- (a) by omitting “Where” and substituting “(1) Where”;
- (b) by inserting in subsection (1) as amended by this Act “, whether by being rejected outright or otherwise,” after “refused”;
- (c) by adding the following subsection:—

(2) Notwithstanding subsection (1), the amount to be refunded to an applicant whose application under section 16 has been rejected outright under section 16A (1) (b) is to be not less than 70% of the fee that would otherwise be payable for that application.

Section 23B amended (Cancellation and variation of leases, re-seeding leases and permits)

8—Section 23B (1) of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (a) “farming;” and substituting “farming; or”;
- (b) by inserting the following paragraph after paragraph (a):—
 - (ab) if the Minister is satisfied that the area to which the lease or re-seeding lease relates is, or the waters to which the permit relates are, not being sufficiently or effectively farmed; or

Sections 23BA, 23BB, 23BC, 23BD and 23BE inserted

9—After section 23B of the Principal Act, the following sections are inserted:—

Power of Minister to vary leases, re-seeding leases and permits

23BA—(1) The Minister may vary a lease, re-seeding lease or permit in accordance with this section.

(2) The power of the Minister under subsection (1) is exercisable at the Minister's discretion and is in addition to the power of the Minister to vary a lease, re-seeding lease or permit under section 23B (2), (3) or (4).

(3) If the Minister decides to exercise the power referred to in subsection (1), the Minister must, subject to subsection (5), serve written notice of the decision on the holder of the relevant lease, re-seeding lease or permit.

(4) A notice under subsection (3) is to—

(a) contain full particulars of the proposed variation; and

(b) specify a day, not less than 30 days after the day of service of the notice, on which the variation is to take effect.

(5) The Minister must not serve a notice under subsection (3) without first affording the holder of the relevant lease, re-seeding lease or permit a reasonable opportunity to make submissions to the Minister in relation to the proposed variation.

(6) The Minister's power under subsection (1) may be exercised when the relevant lease, re-seeding lease or permit is renewed or at any other time.

(7) If the Minister exercises the power referred to in subsection (1) at a time other than when the relevant lease, re-seeding lease or permit is renewed, the day specified in the notice as the day on which the proposed variation is to take effect is not to be a day that is earlier than the day on which the lease, re-seeding lease or permit is due to expire if it is not renewed.

Partial cancellation of leases, re-seeding leases and permits

23BB—(1) In this section—

“area” includes waters;

“**withdrawn area**” means an area withdrawn from a lease, re-seeding lease or permit under this section.

(2) The Minister may make a determination in writing to withdraw from a lease, re-seeding lease or permit part of the area to which the lease, re-seeding lease or permit relates if the Minister is satisfied that—

- (a) the area to be withdrawn is not being used for the purposes of marine farming; or
- (b) the area to be withdrawn is not being sufficiently or effectively farmed.

(3) If the Minister makes a determination to withdraw from a lease, re-seeding lease or permit part of the area to which the lease, re-seeding lease or permit relates the Minister must, subject to subsection (5), serve written notice of the determination on the holder of the lease, re-seeding lease or permit.

(4) A notice under subsection (3) is to—

- (a) identify clearly the area to be withdrawn from the lease, re-seeding lease or permit; and
- (b) specify a day, not less than 30 days after the day of service of the notice, on which the withdrawal is to take effect; and
- (c) grant a reasonable period, not less than the period of 2 months after the day specified under paragraph (b) as the day on which the withdrawal is to take effect, in which the holder of the lease, re-seeding lease or permit is authorized to dismantle and remove any equipment, rafts or structures, and remove any fish stocks, from the area to be withdrawn from the lease, re-seeding lease or permit.

(5) The Minister must not serve a notice under subsection (3) without first affording the holder of the relevant lease, re-seeding lease or permit a reasonable opportunity to make submissions to the Minister in relation to the proposed withdrawal.

(6) If the holder of a lease, re-seeding lease or permit is served with a notice under subsection (3)—

(a) the lease, re-seeding lease or permit ceases to comprise, or have effect in respect of, the withdrawn area on the day specified in the notice as the day on which the withdrawal is to take effect; and

(b) all rights of that person under the lease, re-seeding lease or permit in respect of the withdrawn area cease on that day.

(7) The holder of a lease, re-seeding lease or permit is not entitled to any compensation as a result of the withdrawal under this section of part of the area to which the lease, re-seeding lease or permit relates.

(8) Nothing in subsection (7) prohibits the Treasurer, on the recommendation of the Minister, from approving the payment of compensation to a person in respect of—

(a) any costs incurred by that person as a result of the withdrawal referred to in that subsection; or

(b) any commercial losses that are reasonably attributable to that withdrawal—

if, in the Treasurer's opinion, it is equitable to do so.

(9) Any compensation approved under subsection (8) is to be paid out of money provided by Parliament for the purpose.

Removal of equipment, &c., following partial cancellation

23BC—(1) In this section, “**withdrawn area**” means an area that has been, or is to be, withdrawn from a lease, re-seeding lease or permit under section 23BB.

(2) A person who holds a lease, re-seeding lease or permit who is served with a notice under section 23BB (3)—

- (a) must, within the period granted by the notice for the purpose, dismantle and remove all equipment, rafts and structures, and remove all fish stocks, from the withdrawn area at that person's expense; and
- (b) must not, after the day on which the notice is served, place any new equipment, rafts or structures, or any new fish stocks, in the withdrawn area without the express written permission of the Minister.

Penalty: Fine not exceeding 20 penalty units and a daily fine not exceeding 2 penalty units.

(3) If the holder of the lease, re-seeding lease or permit fails to comply with subsection (2) (a), the Minister may—

- (a) seize any equipment, rafts or structures, or any fish stocks, in the withdrawn area without notice; and
- (b) remove and dispose of anything so seized in such manner, and on such terms and conditions, as the Minister thinks fit.

(4) The reasonable costs incurred by the Minister in exercising the power referred to in subsection (3) may, to the extent that such costs are not recoverable under the terms of the lease, re-seeding lease or permit or from the disposal of anything seized under the power, be recovered from the holder of the relevant lease, re-seeding lease or permit as a debt due to the Crown.

(5) Subject to subsection (6), the person who was the owner of a thing immediately before it was seized pursuant to the exercise of the Minister's power under subsection (3) is entitled to any proceeds obtained from the disposal of that thing that may remain after the reasonable costs incurred by the Minister in exercising that power are deducted from those proceeds.

(6) Any balance proceeds of the kind referred to in subsection (5) that are not claimed within the period of 12 months after the date of disposal referred to in subsection (3) (b) are to be paid into the Consolidated Fund.

(7) Notwithstanding subsection (2) (a), the Minister may, on such terms as the Minister and the holder of the lease, re-seeding lease or permit may agree, allow any equipment, rafts or structures, or any fish stocks, to remain in the withdrawn area after the expiration of the period referred to in that subsection.

New leases, &c., may be issued by tender following partial cancellation

23BD—(1) In this section—

“area” includes waters;

“occupation authority” means a lease, re-seeding lease or permit;

“withdrawn area” means an area withdrawn from a lease, re-seeding lease or permit under section 23BB.

(2) The Minister may, in the 9 month period after the day on which the withdrawal of an area from an occupation authority takes effect under section 23BB, invite tenders from persons interested in holding an occupation authority, of the kind specified in the invitation, in respect of the withdrawn area or any part of the withdrawn area.

(3) An invitation for tenders under subsection (2) is to be by notice placed in at least 3 newspapers published and circulated generally in the State.

(4) The notice referred to in subsection (3) is to—

(a) indicate the main conditions and restrictions to which an occupation authority that may be issued consequent upon the invitation for tenders would be subject; and

(b) specify where, and at what times, persons interested in submitting tenders may inspect the conditions and restrictions to which such an occupation authority would be subject and how copies of those conditions and restrictions may be obtained.

(5) For the purposes of this section, the Minister is not obliged to accept the highest or any other tender and a statement to that effect is to be included in the notice referred to in subsection (3).

(6) The holder of the occupation authority from which the Minister withdrew the area to which the invitation for tenders relates is not eligible to submit a tender under this section.

(7) Except as provided by this section, the procedure for inviting, considering and accepting or rejecting tenders is at the discretion of the Minister.

(8) The Minister may, after considering any tenders received pursuant to the notice referred to in subsection (3), issue to the successful tenderer an occupation authority, of the kind specified in the notice, in respect of—

- (a) the withdrawn area; or
- (b) if tenders were invited only in respect of a part of the withdrawn area—that part of the withdrawn area.

(9) Subsection (8) has effect whether or not the 9 month period referred to in subsection (2) has expired by the time the occupation authority is issued.

- (10) No right of appeal or objection lies against—
- (a) the exercise of the Minister's power under subsection (2); or
 - (b) the issuing of an occupation authority under subsection (8); or
 - (c) the conditions or restrictions to which an occupation authority issued under subsection (8) is subject.

(11) Nothing in subsection (10) prevents the Minister from considering any representations in relation to the proposed issuing of an occupation authority under subsection (8).

(12) Except as provided by this section, the provisions of this Division apply to an occupation authority that is issued under subsection (8) in the same manner as if it were an occupation authority issued under section 19.

New leases, &c., may be issued by tender following full cancellation

23BE—(1) In this section—

“**area**” includes waters;

“**occupation authority**” means a lease, re-seeding lease or permit.

(2) The Minister may, in the 9 month period after the day on which the cancellation of an occupation authority under section 23B takes effect, invite tenders from persons interested in holding an occupation authority, of the kind specified in the invitation, in respect of the area that comprised the cancelled occupation authority or any part of that area.

(3) Subsections (3), (4) and (5) of section 23BD apply to an invitation for tenders under this section in the same manner as if it were an invitation for tenders under that section.

(4) The holder of the cancelled occupation authority is not eligible to submit a tender under this section.

(5) Except as provided by this section, the procedure for inviting, considering and accepting or rejecting tenders is at the discretion of the Minister.

(6) The Minister may, after considering any tenders received pursuant to this section, issue to the successful tenderer an occupation authority, of the kind specified in the invitation for tenders, in respect of—

(a) the area that comprised the cancelled occupation authority; or

(b) if tenders were invited only in respect of a part of the area that comprised the cancelled occupation authority—that part of that area.

(7) Subsection (6) has effect whether or not the 9 month period referred to in subsection (2) has expired by the time the occupation authority is issued.

- (8) No right of appeal or objection lies against—
- (a) the exercise of the Minister's power under subsection (2); or
 - (b) the issuing of an occupation authority under subsection (6); or
 - (c) the conditions or restrictions to which an occupation authority issued under subsection (6) is subject.

(9) Nothing in subsection (8) prevents the Minister from considering any representations in relation to the proposed issuing of an occupation authority under subsection (6).

(10) Except as provided by this section, the provisions of this Division apply to an occupation authority that is issued under subsection (6) in the same manner as if it were an occupation authority issued under section 19.

Section 23C amended (Appeals in respect of leases, re-seeding leases and permits)

10—Section 23C of the Principal Act is amended as follows:—

- (a) by inserting in subsection (1) the following paragraphs after paragraph (b):—
 - (ba) a determination of the Minister to withdraw from a lease or re-seeding lease held by that person part of the area to which the lease or re-seeding lease relates; or
 - (bb) a determination of the Minister to withdraw from a permit held by that person part of the waters to which the permit relates; or
- (b) by inserting in subsection (3) the following paragraph after paragraph (b):—
 - (ba) a determination to withdraw from a lease or re-seeding lease part of the area to which the lease or re-seeding lease relates; or

- (c) by inserting in subsection (4) the following paragraph after paragraph (b):—
- (ba) a determination to withdraw from a permit part of the waters to which the permit relates; or
- (d) by inserting in subsection (5) the following paragraphs after paragraph (d):—
- (da) the service of a notice under section 23BB (3) in the case of an appeal against—
- (i) a determination to withdraw from a lease or re-seeding lease part of the area to which the lease or re-seeding lease relates; and
- (ii) a determination to withdraw from a permit part of the waters to which the permit relates; and
- (db) the service of a notice under section 23BA (3) in the case of an appeal against the variation of a lease, re-seeding lease or permit under section 23BA (1); and
- (e) by inserting in paragraph (e) of subsection (5) “under section 23B (1) or (4)” after “permit”;
- (f) by omitting subsection (9) and substituting the following subsection:—
- (9) Where an appeal is brought under this section in respect of—
- (a) the cancellation or variation of a lease, re-seeding lease or permit; or
- (b) a determination to withdraw from a lease or re-seeding lease part of the area to which the lease or re-seeding lease relates; or
- (c) a determination to withdraw from a permit part of the waters to which the permit relates—

that cancellation, variation or determination of withdrawal is of no effect until the abandonment or determination of the appeal or until such later date as the magistrate may determine.

23D amended (Delivery of leases, re-seeding leases and permits to Minister)

11—Section 23D of the Principal Act is amended as follows:—

- (a) by omitting paragraph (a) of subsection (1) and substituting the following paragraphs:—
 - (a) a lease, re-seeding lease or permit has been varied under section 23B or 23BA; or
 - (ab) a lease, re-seeding lease or permit has been partially cancelled under section 23BB; or
 - (ac) a lease, re-seeding lease or permit has been cancelled under section 23B; or
- (b) by omitting paragraph (a) of subsection (2) and substituting the following paragraphs:—
 - (a) which has been varied under section 23B or 23BA; or
 - (ab) which has been partially cancelled under section 23BB; or
- (c) by inserting in subsection (2) “or partial cancellation” after “variation”.

Section 23PA inserted

12—After section 23P of the Principal Act, the following section is inserted:—

Subdivision of leases, re-seeding leases and permits

23PA—(1) In this section—

“area” includes waters;

“subdivision application” means an application under subsection (2);

“variations” includes conditions.

(2) The holder of a lease, re-seeding lease or permit may apply to the Minister for permission to subdivide the area comprised in the lease, re-seeding lease or permit.

(3) A subdivision application is to—

- (a) be made in writing in a form approved by the Minister; and

- (b) be accompanied by the prescribed application fee, if any; and
- (c) be accompanied by the lease, re-seeding lease or permit; and
- (d) contain a plan and full particulars of the subdivision proposal.

(4) An applicant under subsection (2) must, if required by the Minister to do so—

- (a) provide such further particulars in relation to the subdivision application as the Minister specifies; and
- (b) allow such inspections of the area to which the subdivision application relates as the Minister specifies.

(5) The Minister must, as soon as practicable and in any event not later than 3 months after receiving a subdivision application, make a determination in writing to—

- (a) approve the application as proposed by the applicant; or
- (b) approve the application subject to such variations as the Minister considers appropriate or necessary; or
- (c) reject the application.

(6) The power of the Minister to determine whether to reject a subdivision application or approve it, with or without variation, is exercisable at the Minister's discretion having regard to such matters as the Minister considers necessary or appropriate.

(7) Without limiting the generality of subsection (5) (b), the Minister may, under that subsection, determine that any lease, re-seeding lease or permit that is issued in respect of an area that may be subdivided as a result of the subdivision application is to be subject to conditions and restrictions that differ from those of the lease, re-seeding lease or permit to which the application relates.

(8) The Minister must, within 30 days of making a determination under subsection (5)—

- (a) serve written notice of the determination on the applicant; and
- (b) in a case to which subsection (5) (b) applies— give the applicant full particulars of the proposed variations.

(9) If an applicant to whom subsection (5) (b) applies considers that the variations proposed by the Minister are not acceptable, the applicant is not required to proceed with the subdivision application.

(10) If an applicant to whom subsection (5) (b) applies proposes to proceed with the subdivision application, adopting the variations proposed by the Minister, the applicant is to serve written notice of acceptance to the Minister within the period of 3 months after the day on which the notice referred to in subsection (8) (a) is served on the applicant.

(11) The Minister is not required to take any further action in respect of a subdivision application to which subsection (5) (b) applies until the Minister receives the notice of acceptance referred to in subsection (10).

(12) If an applicant to whom subsection (5) (b) applies does not serve on the Minister a notice of acceptance in accordance with subsection (10), the applicant is taken to have elected not to proceed with the subdivision application and, accordingly, the application is taken to have been withdrawn.

(13) If a subdivision application is approved under subsection (5) (a), or an applicant to whom subsection (5) (b) applies serves on the Minister a notice of acceptance in accordance with subsection (10), the Minister, as soon as practicable after payment by the applicant of the prescribed subdivision fee, if any, must—

- (a) cancel the lease, re-seeding lease or permit to which the application relates; and
- (b) issue the applicant with a separate lease, re-seeding lease or permit, as the case requires, in respect of each of the areas into which the area comprised in the original lease, re-seeding lease or permit is being subdivided.

(14) A lease, re-seeding lease or permit issued under subsection (13) (b) in respect of a subdivided area is not to be issued for a term exceeding the balance of the term remaining under the lease, re-seeding lease or permit from which it is derived.

(15) Except in a case to which subsection (5) (b) applies, a lease, re-seeding lease or permit that is issued under subsection (13) (b) in respect of a subdivided area is to be subject to the same conditions and restrictions, save for any necessary variations as to area or otherwise, as the lease, re-seeding lease or permit from which it is derived.

(16) Nothing in this section authorizes the subdivision, at the same time, of the area comprised in a lease, re-seeding lease or permit into more than 4 parts.

(17) Except as provided by this section, the provisions of this Division apply to a lease, re-seeding lease or permit that is issued under subsection (13) (b) in the same manner as if it were a lease, re-seeding lease or permit issued under section 19.

- (18) No right of objection or appeal lies against—
- (a) a determination of the Minister under subsection (5); or
 - (b) the issuing of a lease, re-seeding lease or permit under subsection (13) (b); or
 - (c) the conditions or restrictions to which a lease, re-seeding lease or permit issued under subsection (13) (b) is subject.

(19) A subdivision application is not to be made in respect of an area that has been subdivided in the preceding 12 months.

(20) A person whose subdivision application has been rejected or withdrawn, or a person who is not proceeding with a subdivision application by reason of subsection (9), is not entitled to submit the same or substantially the same application to the Minister within the period of 12 months after the date on which the subdivision application was submitted to the Minister.

(21) Notwithstanding any other provision of this section, the Minister is not required to take any action in respect of a subdivision application that is submitted to the Minister in contravention of subsection (19) or (20).

Transitional provision

13—The amendments of the Principal Act made by sections 4, 5 and 7 of this Act do not apply to applications made under section 16 of the Principal Act before the commencement of this Act.

*[Second reading presentation speech made in:—
House of Assembly on 15 February 1994
Legislative Council on 22 February 1994]*

