

TASMANIA

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**ENVIRONMENTAL MANAGEMENT AND  
POLLUTION CONTROL (ENVIRONMENTAL  
LICENCES) REGULATIONS 2019**

**STATUTORY RULES 2019, No. 20**

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**ENVIRONMENTAL MANAGEMENT AND  
POLLUTION CONTROL (ENVIRONMENTAL  
LICENCES) REGULATIONS 2019**

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Environmental Management and Pollution Control Act 1994*.

Dated 8 April 2019.

C. WARNER  
Governor

By Her Excellency's Command,

ELISE ARCHER  
Minister for Environment

**1. Short title**

These regulations may be cited as the  
*Environmental Management and Pollution  
Control (Environmental Licences) Regulations  
2019*.

**2. Commencement**

These regulations take effect on the day on  
which their making is notified in the *Gazette*.

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### 3. Interpretation

(1) In these regulations –

*Act* means the *Environmental Management and Pollution Control Act 1994*;

*emergency application* means an application to which regulation 4 applies;

*emergency order* has the same meaning as in the *Marine Farming Planning Act 1995*;

*emergency plan* has the same meaning as in the *Marine Farming Planning Act 1995*;

*marine farming development plan* has the same meaning as in the *Marine Farming Planning Act 1995*;

*marine farming development plan amendment* means an amendment, under Division 2 of Part 3 of the *Marine Farming Planning Act 1995*, of a marine farming development plan;

*marine farming lease* means a lease under Part 4 of the *Marine Farming Planning Act 1995* and includes a sub-lease of such a lease;

*Panel* has the same meaning as in the *Marine Farming Planning Act 1995*.

(2) For the purposes of these regulations, a marine farming development plan is taken to have been in force for all of the 10-year period immediately

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before an application is made in relation to an area of State waters if –

- (a) there has been one such plan in relation to the area of State waters for such a period; or
- (b) at all times during that period there has been one or more such plans in relation to the area of State waters, whether or not one or more of the plans replaces another plan during that period.

**4. Emergency application**

For the purposes of these regulations, an application is an emergency application –

- (a) if –
  - (i) a permit has been issued under section 12 or 14 of the *Living Marine Resources Management Act 1995* in respect of all or part of the activity to which the application relates; and
  - (ii) the permit authorises, for a period specified in the permit, the keeping of finfish in the area of State waters to which the application relates; and
  - (iii) the Director is satisfied that an environmental licence in relation

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to the application should be issued on urgency; or

- (b) if there is an emergency order in relation to the lease area to which the application relates; or
- (c) if there is an emergency plan in relation to the lease area to which the application relates.

**5. Special penalty**

- (1) For the purposes of section 42C(5)(a) of the Act, the amount of the special penalty to be imposed on a person who commits an offence, against section 42C(4) of the Act, constituted by contravening a condition of an environmental licence that limits the rate of dissolved nitrogen being produced, or emitted, in the course of the conduct of an activity under the licence, is a fine of 1 000 penalty units for each tonne of dissolved nitrogen that exceeds that rate.
- (2) For the purposes of subregulation (1), if the amount of dissolved nitrogen is not a whole number of tonnes, the special penalty is to be calculated on a pro rata basis.

**6. Period in which application for renewal of licence to be made**

For the purposes of section 42S(2) of the Act, the number of days, before the day on which the licence expires, is prescribed to be 60.

**7. Environmental infringement notices and penalties**

- (1) For the purposes of section 72 of the Act, an offence under a provision of the Act specified in column 1 of Schedule 1 is a prescribed offence.
- (2) The penalty for a prescribed offence is –
  - (a) for an environmental infringement notice issued to an individual, the penalty for that offence that is specified in column 2 of Schedule 1 opposite that offence; and
  - (b) for an environmental infringement notice issued to a body corporate, the penalty for that offence that is specified in column 3 of Schedule 1 opposite that offence.

**8. Criteria for referral to Board, under section 42I(3) of Act, of certain applications**

- (1) For the purposes of section 42I(3) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42I(3) applies, for an environmental licence in relation to the activity

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of finfish farming if any one or more of the following criteria are satisfied:

- (a) there is likely to be a very high level of public interest in the application;
  - (b) it is reasonably likely that an approval, in relation to the activity to which the application relates, will be required under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth;
  - (c) there is neither a marine farming development plan, nor an emergency plan, in relation to the area of State waters in which the activity to which the application relates is to be conducted by the applicant, unless –
    - (i) the activity is not an activity referred to in section 5C(2)(a) of the Act; and
    - (ii) there is a permit, issued under the *Living Marine Resources Management Act 1995*, under which the activity is to be conducted by the applicant.
- (2) For the purposes of section 42I(3) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42I(3) applies, for an environmental licence in relation to the activity of finfish farming if the application –

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- (a) relates to an area of State waters in relation to which a marine farming development plan has been in force for all of the 10-year period immediately before the application is made; and
  - (b) is not an emergency application; and
  - (c) relates to an area of State waters in which no finfish have been kept, in the course of marine farming, by any person or, if finfish have been kept in that area of State waters in that 10-year period, they have been kept under –
    - (i) a permit that has been issued under section 12 or 14 of the *Living Marine Resources Management Act 1995* in respect of all or part of the activity to which the application relates; or
    - (ii) an emergency order in relation to the lease area to which the application relates; or
    - (iii) an emergency plan in relation to the lease area to which the application relates.
- (3) For the purposes of section 42I(3) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42I(3) applies, for an environmental licence in relation to the activity of finfish farming, if –

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- (a) more than 2 years before the application was made to the Director, there was approved by the Minister under the *Marine Farming Planning Act 1995* –
    - (i) a marine farming development plan that applies to all or part of the area of State waters in which the activity is to be conducted under the licence; or
    - (ii) a marine farming development plan amendment to a marine farming development plan referred to in subparagraph (i); and
  - (b) the Director considers that the information, in relation to the environmental impact of fish farming, that was provided to the Panel under that Act before the Panel determined whether to recommend to the Minister under section 31 or 41 of that Act that a draft of the plan, or a draft amendment of the plan, referred to in paragraph (a), be accepted by the Minister, did not adequately take into account the likely effects of an activity of the kind to which the application relates, so as to make an environmental assessment by the Board of the application unnecessary.
- (4) For the purposes of section 42I(3) of the Act, the Director must refer to the Board, for assessment

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under section 27AA of the Act, an application, to which section 42I(3) applies, for an environmental licence in relation to the activity of finfish farming, if –

- (a) there is a marine farming development plan in relation to an area of State waters in all or part of which the activity to which the application relates is to be conducted by the applicant under the licence; and
  - (b) there has been specified by a person under the marine farming development plan a maximum rate of dissolved nitrogen that is permitted under the plan to be produced, or emitted, in the course of the conduct of finfish farming in the area of State waters to which the plan relates; and
  - (c) the conduct by the applicant of the activity to which the application relates is likely to cause the rate of dissolved nitrogen that is produced or emitted, in the course of the conduct, whether by the applicant or other persons, of finfish farming in the area of State waters to which the plan relates, to exceed by more than 10% the maximum rate referred to in paragraph (b).
- (5) For the purposes of section 42I(3) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to

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which section 42I(3) applies, for an environmental licence in relation to the activity of finfish farming, if –

- (a) the activity to which the application relates is to be conducted by the applicant in an area of State waters to all or part of which –
  - (i) a marine farming development plan applies; and
  - (ii) one or more marine farming leases, in relation to finfish farming, that are held by the applicant, relate; and
- (b) a maximum rate of dissolved nitrogen that is permitted to be produced, or emitted, in the course of the conduct of finfish farming in the area of State waters, has been, by a person, under the plan, set in relation to –
  - (i) those marine farming leases under which the activity to which the application relates is to be conducted; or
  - (ii) all marine farming leases, in relation to finfish farming, held by the applicant in relation to all or part of the area of State waters to which the plan relates; and

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- (c) the conduct by the applicant of the activity to which the application relates, in an area of State waters to which one or more of those marine farming leases under which the activity is to be conducted relate, is likely to cause the rate of dissolved nitrogen that is produced or emitted to exceed by more than 10% the maximum rate, referred to in paragraph (b), that has been, by a person, under the plan, set in relation to –
  - (i) those marine farming leases under which the activity to which the application relates is to be conducted by the applicant; or
  - (ii) all marine farming leases, in relation to finfish farming, held by the applicant in relation to all or part of the area of State waters to which the plan relates.
  
- (6) For the purposes of section 42I(3) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42I(3) applies, for an environmental licence in relation to the activity of finfish farming, if –
  - (a) there is a marine farming development plan in relation to an area of State waters in all or part of which the activity to which the application relates is to be conducted by the applicant; and

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- (b) there has been specified by a person, under the marine farming development plan, a maximum biomass of finfish that is permitted to be contained, in the area of State waters to which the plan relates, in the course of the conduct of finfish farming; and
  - (c) the conduct by the applicant of the activity to which the application relates is likely to cause the biomass of finfish, contained in the area of State waters to which the plan relates, to be more than 10% higher than the maximum biomass of finfish referred to in paragraph (b).
- (7) For the purposes of section 42I(3) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42I(3) applies, for an environmental licence in relation to the activity of finfish farming, if –
  - (a) the activity to which the application relates is to be conducted by the applicant in an area of State waters to all or part of which –
    - (i) a marine farming development plan applies; and
    - (ii) one or more marine farming leases, in relation to finfish farming, that are held by the applicant, relate; and

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- (b) the maximum biomass of finfish that may be contained, in the course of the conduct of finfish farming, in the areas of State waters to which the marine farming leases relate, has been, by a person, under the plan, set in relation to –
  - (i) those marine farming leases under which the activity to which the application relates is to be conducted; or
  - (ii) all marine farming leases, in relation to finfish farming, held by the applicant in relation to all or part of the area of State waters to which the plan relates; and
- (c) the conduct by the applicant of the activity to which the application relates, in an area of State waters to which one or more of the marine farming leases under which the activity is to be conducted relate, is likely to cause the maximum biomass of finfish that are contained in those areas to exceed by more than 10% the maximum biomass of finfish referred to in paragraph (b) that has been, by a person, under the plan, set in relation to –
  - (i) those marine farming leases under which the activity to which the application relates is to be conducted; or

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- (ii) all marine farming leases, in relation to finfish farming, held by the applicant in relation to all or part of the area of State waters to which the plan relates.
- (8) For the purposes of section 42I(3) of the Act, the Director must not refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42I(3) applies, for an environmental licence in relation to the activity of finfish farming, if –
  - (a) less than 2 years before the application was made to the Director, there was approved by the Minister under the *Marine Farming Planning Act 1995* –
    - (i) a marine farming development plan that applies to all or part of the area of State waters in which the activity is to be conducted under the licence; or
    - (ii) a marine farming development plan amendment to a marine farming development plan referred to in subparagraph (i); and
  - (b) no other subregulation of this regulation applies in relation to the application.

**9. Criteria for referral to Board, under section 42O(2) of Act, of certain applications**

- (1) In this regulation, a reference to the conduct by the applicant of an activity under a licence as varied in accordance with an application is a reference to the conduct of the activity under the licence in the area to which the licence will relate if the licence is varied in accordance with the application, whether or not the application is for a variation of the area to which the licence is to relate.
- (2) For the purposes of section 42O(2) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42O(2) applies, for a variation of an environmental licence in relation to the activity of finfish farming, if –
  - (a) there is likely to be a very high level of public interest in the application; or
  - (b) it is reasonably likely that an approval, in relation to the activity to be conducted by the applicant under the licence as varied in accordance with the application, will be required under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.
- (3) For the purposes of section 42O(2) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an

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application, to which section 42O(2) applies, for a variation of an environmental licence in relation to the activity of finfish farming, if the application –

- (a) is not an emergency application; and
  - (b) relates to an area of State waters in which no finfish have been kept, in the course of marine farming, by any person or, if finfish have been kept in that area of State waters in the 10-year period before the application is made, they have been kept under –
    - (i) a permit, issued under section 12 or 14 of the *Living Marine Resources Management Act 1995*, in respect of all or part of the activity to which the application relates; or
    - (ii) an emergency order in relation to the lease area to which the application relates; or
    - (iii) an emergency plan in relation to the lease area to which the application relates.
- (4) For the purposes of section 42O(2) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42O(2) applies, for a variation of an environmental licence in relation to the activity of finfish farming, if –

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- (a) more than 2 years before the application was made to the Director, there was approved by the Minister under the *Marine Farming Planning Act 1995* –
  - (i) a marine farming development plan that applies to all or part of the area of State waters in which the activity is to be conducted by the applicant under the licence as varied in accordance with the application; or
  - (ii) a marine farming development plan amendment to a marine farming development plan referred to in subparagraph (i); and
- (b) the Director considers that the information, in relation to the environmental impact of fish farming, that was provided to the Panel under that Act before the Panel determined whether to recommend to the Minister under section 31 or 41 of the Act that a draft of the plan, or a draft amendment of the plan, referred to in paragraph (a), be accepted by the Minister, did not adequately take into account the likely effects of an activity of the kind to be conducted under the licence, so as to make an environmental assessment by the Board of the application unnecessary.

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- (5) For the purposes of section 42O(2) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42O(2) applies, for a variation of an environmental licence in relation to the activity of finfish farming, if –
- (a) there is a marine farming development plan in relation to all or part of an area of State waters in which the activity is to be conducted by the applicant under the licence as varied in accordance with the application; and
  - (b) there has been specified by a person, under the marine farming development plan, a maximum rate of dissolved nitrogen that is permitted under the plan to be produced, or emitted, in the course of the conduct of finfish farming in the area of State waters to which the plan relates; and
  - (c) the conduct by the applicant of the activity under the licence as varied in accordance with the application is likely to cause the rate of dissolved nitrogen that is produced or emitted, in the course of the conduct, whether by the applicant or other persons, of finfish farming in the area of State waters to which the marine farming development plan relates, to exceed by more than 10% the maximum rate referred to in paragraph (b).

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- (6) For the purposes of section 42O(2) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42O(2) applies, for a variation of an environmental licence in relation to the activity of finfish farming, if –
- (a) the activity is to be conducted by the applicant, under the licence as varied in accordance with the application, in an area of State waters to all or part of which –
    - (i) a marine farming development plan applies; and
    - (ii) one or more marine farming leases in relation to finfish farming that are held by the applicant, relate; and
  - (b) a maximum rate of dissolved nitrogen that is permitted to be produced, or emitted, in the course of the conduct of finfish farming in the area of State waters to which one or more marine farming leases in relation to finfish farming that are held by the applicant, relate, has been, by a person, under the plan, set in relation to –
    - (i) those marine farming leases; or
    - (ii) all marine farming leases, in relation to finfish farming, held by the applicant in relation to all

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or part of the area of State waters  
to which the plan relates; and

(c) the conduct by the applicant of the activity, under the licence as varied in accordance with the application, in an area of State waters to which one or more of the marine farming leases under which the activity is to be conducted relate, is likely to cause the rate of dissolved nitrogen that is produced or emitted to exceed by more than 10% the maximum rate, referred to in paragraph (b), that has been, by a person, under the marine farming development plan, set in relation to –

(i) those marine farming leases; or

(ii) all marine farming leases, in relation to finfish farming, held by the applicant in relation to all or part of the area of State waters to which the plan relates.

(7) For the purposes of section 42O(2) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42O(2) applies, for a variation of an environmental licence in relation to the activity of finfish farming, if –

(a) there is a marine farming development plan in relation to an area of State waters in all or part of which the activity is to be

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- conducted by the applicant under the licence as varied in accordance with the application; and
- (b) there has been specified by a person, under the marine farming development plan, a maximum biomass of finfish that is permitted to be contained, in the area of State waters to which the plan relates, in the course of the conduct of finfish farming; and
  - (c) the conduct by the applicant of the activity under the licence as varied in accordance with the application is likely to cause the biomass of finfish, contained in the area of State waters to which the plan relates, to be more than 10% higher than the maximum biomass of finfish referred to in paragraph (b).
- (8) For the purposes of section 42O(2) of the Act, the Director must refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42O(2) applies, for a variation of an environmental licence in relation to the activity of finfish farming, if –
- (a) the activity is being conducted by the applicant under the licence in an area of State waters to all or part of which –
    - (i) a marine farming development plan applies; and

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- (ii) one or more marine farming leases in relation to finfish farming that are held by the applicant, relate; and
- (b) the maximum biomass of finfish that may be contained, in the course of the conduct of finfish farming in the area of State waters, has been, by a person, under the marine farming development plan, set in relation to –
  - (i) those marine farming leases; or
  - (ii) all marine farming leases, in relation to finfish farming, held by the applicant in relation to all or part of the area of State waters to which the plan relates; and
- (c) the conduct by the applicant of the activity, under the licence as varied in accordance with the application, in an area of State waters to which one or more of the marine farming leases under which the activity is to be conducted relates, is likely to cause the maximum biomass of finfish that are contained in the areas of State waters to which the leases relate to exceed by more than 10% the maximum biomass of finfish referred to in paragraph (b) that has been, by a person, under the plan, set in relation to –
  - (i) those marine farming leases; or

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- (ii) all marine farming leases, in relation to finfish farming, held by the applicant in relation to all or part of the area of State waters to which the plan relates.
- (9) For the purposes of section 42O(2) of the Act, the Director must not refer to the Board, for assessment under section 27AA of the Act, an application, to which section 42O(2) applies, for a variation of an environmental licence in relation to the activity of finfish farming, if –
- (a) less than 2 years before the application was made to the Director, there was approved by the Minister under the *Marine Farming Planning Act 1995* –
    - (i) a marine farming development plan that applies to all or part of the area of State waters in which the activity is to be conducted by the applicant under the licence; or
    - (ii) a marine farming development plan amendment to a marine farming development plan referred to in subparagraph (i); and
  - (b) no other subregulation of this regulation applies in relation to the application.

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**SCHEDULE 1 – INFRINGEMENT OFFENCES AND  
PENALTIES**

Regulation 7

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Section of Act</b>	<b>Penalty – individual (penalty units)</b>	<b>Penalty – body corporate (penalty units)</b>
Section 42C(1)	50	100
Section 42C(4)	50	100
Section 42C(8)	50	100
Section 42C(9)	10	20
Section 42ZA(4)	10	20

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 17 April 2019.

These regulations are administered in the Department of Primary Industries, Parks, Water and Environment.

**EXPLANATORY NOTE**

*(This note is not part of the regulations)*

These regulations prescribe –

- (a) offences that are to be infringement notice offences and the penalties for such offences; and
- (b) a special penalty for an offence of breaching a condition of an environmental licence relating to the maximum rate of dissolved nitrogen permitted; and
- (c) the number of days, before an environmental licence expires, before which an application for renewal of the licence is to be made; and
- (d) criteria for when the Director must, or must not, refer to the Board certain applications in relation to environmental licences.