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Robyn Webb
Chief Parliamentary Counsel
Dated 7 January 2020



TASMANIA

INLAND FISHERIES ACT 1995

No. 110 of 1995

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INLAND FISHERIES ACT 1995

No. 110 of 1995

An Act to consolidate the law relating to inland fisheries

[Royal Assent 8 December 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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Inland Fisheries Act 1995*.

2. Commencement

This Act commences on a day to be proclaimed.

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3. Interpretation

(1) In this Act –

acclimatised fish means a kind or species of fish that is not indigenous to inland waters;

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);

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

applicable fish means a kind or species of fish declared under section 60;

approved means approved by the Director;

Atlantic salmon means the species *Salmo salar* of the family *Salmonidae*;

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boat includes a ship or vessel of any kind;

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

controlled fish means fish declared as such
under section 149;

Council means the Inland Fisheries Advisory
Council established under section 20A;

dam includes any fixed obstruction used to
dam water;

declared fish means –

- (a) salmon; and
- (b) any freshwater fish declared
under section 39;

Director means the Director of Inland
Fisheries appointed under section 11;

eel means fish of the family *Anguillidae*;

equipment includes any net, implement,
apparatus or other device for taking or
facilitating the taking of fish;

excepted waters means any waters declared to
be excepted waters under section 8;

exemption permit means a permit referred to
in section 169;

fauna reserve means inland waters declared to
be a fauna reserve under section 154;

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fish includes –

- (a) any animal that throughout its ordinary life lives in water; and
- (b) the spawn, fry or young of such an animal;

fish dealer's registration certificate means the certificate issued under section 65;

fish farm means any area on land or in inland waters used to farm, culture, hatch, rear, ranch, enhance or breed freshwater fish for commercial or research purposes;

fish farm licence means a fish farm licence referred to in section 43;

fishery means –

- (a) an area of water or land; and
- (b) any premises; and
- (c) a kind or species of fish; and
- (d) a class of person; and
- (e) a method of fishing; and
- (f) a type of activity; and
- (g) a season;

fishery of the State means –

- (a) a fishery under the control of the Crown; or

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- (b) a fishery under the control of a body established under an Act;

fishing includes –

- (a) taking or attempting to take fish; and
- (b) searching for fish; and
- (c) doing any other activity which may reasonably be expected to result in taking or harvesting fish;

fishing permit means a permit referred to in section 168;

freshwater fish means –

- (a) any kind or species of fish that is ordinarily found in inland waters or during some part of its life is ordinarily found in inland waters; and
- (b) any kind or species of fish declared to be freshwater fish under section 4;

imported fish means freshwater fish, other than tinned fish, brought into the State;

indigenous fish means a kind or species of fish that is indigenous to inland waters;

infringement notice means a notice referred to in Part 6;

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inland waters means –

- (a) any waters specified in Schedule 1; and
- (b) any waters lying on the landward side of the seaward limit in relation to a river specified in Schedule 2; and
- (c) any waters declared to be inland waters under section 5; and
- (d) any waters in respect of which there is a fish farm licence; and
- (e) any natural or artificial lake, reservoir, tarn, pond, pool, swamp, marsh, dam or waterhole containing water; and
- (f) any waters in or running through any canal, raceway, sluice, conduit, duct, channel, pipe or other watercourse; and
- (g) any waters contained in any hatchery, aquarium, tank, trough or other container of any kind, size or shape;

juvenile eel means an eel less than 300mm long;

lake includes a lagoon and any water impounded or enlarged by a dam;

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licence means any licence in force under this Act;

licensed fish farm means a fish farm licensed under Division 3 of Part 3;

marine farm means a marine farm within the meaning of the *Living Marine Resources Management Act 1995*;

mark includes –

- (a) attach a tag, label or other thing to fish or any wrapping, package, box, can or other container containing fish; and
- (b) place or enclose fish in any wrapping, package, box, can or other container;

marking materials includes –

- (a) tags, labels or wrappings; and
- (b) boxes, cans or containers; and
- (c) any other thing that may be used to mark fish;

officer means a person appointed as such under section 20;

perch means English perch or Redfin perch of the species *Perca fluviatilis*;

private fishery means a fishery that is not a fishery of the State;

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recreational licence means a licence issued under Division 2 of Part 3;

registered fish dealer means a person who is the holder of a fish dealer's registration certificate;

registered premises means premises registered under Division 2 of Part 4;

registered private fishery means a fishery registered under Division 3 of Part 4;

regulations means regulations made under Division 8 of Part 8;

river includes creek, rivulet and stream;

salmon means –

- (a) fish of the family *Salmonidae*; and
- (b) any hybrid between fish of that family and polyploid variants of that fish;

salmon fishery means a fishery relating to salmon that occur in inland waters;

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);

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Secretary means the Secretary of the Department;

sell includes –

- (a) dispose by any method for valuable consideration; and
- (b) barter; and
- (c) dispose to an agent for sale on consignment; and
- (d) offer or attempt to sell; and
- (e) receive or have in possession for sale; and
- (f) expose for sale; and
- (g) send or deliver for sale; and
- (h) cause or permit to be sold, offered or exposed for sale; and
- (i) dispose by way of raffle, lottery or other game of chance;

State waters means the waters referred to in section 7;

take includes –

- (a) fish for, remove, gather, catch, capture, kill, destroy, dredge for, raise, collect, carry away or obtain in another way from water,

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land under water or the foreshore;
and

(b) land from a boat or bring ashore;
and

(c) attempt, cause or permit anything
mentioned in paragraph (a) or (b);

tench means the species *Tinca tinca* of the
family *Cyprinidae*;

unclean freshwater fish means any fish that is
about to spawn or has recently spawned
and has not recovered from spawning;

undersized freshwater fish means any fish
that is of a less size than the minimum
size which may be lawfully taken under
the regulations;

unseasonable freshwater fish means any fish
taken during a period when the taking of
the fish is not permitted;

warrant means a warrant issued under
Division 3 of Part 5;

whitebait includes any of the following kinds
or species of fish:

(a) Tasmanian whitebait *Lovettia*
sealii (Johnston);

(b) Jollytail *Galaxias maculatus*
(Jenyns);

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-
- (c) Climbing galaxias *Galaxias brevipinnis* Gunther;
 - (d) Spotted galaxias *Galaxias truttaceus* Valenciennes;
 - (e) Tasmanian Mudfish *Neochanna cleaveri* Scott;
 - (f) Tasmanian smelt *Retropinna tasmanica* McCulloch.
- (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 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.

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4. Freshwater fish

- (1) The Minister, by order and with the agreement of the Minister responsible for the administration of the *Living Marine Resources Management Act 1995*, may declare –
 - (a) fish or a kind or species of fish to be freshwater fish for the purposes of this Act; or
 - (b) freshwater fish or a kind or species of freshwater fish not to be freshwater fish for the purposes of this Act during any time they are in, or after they have been taken from, State waters.
- (2) An order under subsection (1)(b) does not apply to salmon in excepted waters.

5. Declaration of inland waters

The Minister, by order and with the agreement of the Minister responsible for the administration of the *Living Marine Resources Management Act 1995*, may –

- (a) declare waters to be inland waters; or
- (b) declare waters not to be inland waters.

6. Seaward limit of river

- (1) The Minister, by order and with the agreement of the Minister responsible for the administration of the *Living Marine Resources Management Act*

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1995, may declare any place to be the seaward limit of a river.

- (2) If the Minister makes an order under subsection (1), the Minister, in the same order, may amend Schedule 2 by omitting or altering the seaward limit of the river specified in that Schedule which is the subject matter of the order.
- (3) If the seaward limit of a river has not been declared or specified, the seaward limit of the river is the place where the waters of the river meet the waters of the sea or any harbour or bay at low waters of ordinary spring tides.
- (4) The Minister is to ensure that the seaward limit of a river is indicated or marked in the prescribed manner.
- (5) In any proceedings the seaward limit of a river is presumed to be the seaward limit as marked or indicated in the prescribed manner.

7. State waters

State waters are –

- (a) any waters of the territorial sea of Australia that are –
 - (i) within 3 nautical miles of the baseline by reference to which the territorial limits of Australia are defined for the purposes of international law; and
 - (ii) adjacent to the State; and

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- (b) any marine or tidal waters that are on the landward side of that baseline and are adjacent to the State, except inland waters; and
- (c) any land which is swept by those waters to the highest landward extent.

8. Excepted waters

The Minister, by order and with the agreement of the Minister responsible for the administration of the *Living Marine Resources Management Act 1995*, may declare waters to be excepted waters.

9.

10. Inconsistency with *Water Management Act 1999*

Any provision of the *Water Management Act 1999* which is inconsistent with a provision of this Act prevails over this Act to the extent of that inconsistency.

PART 2 – DIRECTOR AND COUNCIL

Division 1 – Director of Inland Fisheries

11. Appointment of Director

- (1) The Minister may appoint a State Service officer or State Service employee to be Director of Inland Fisheries.
- (2) A person appointed as Director of Inland Fisheries may hold that office in conjunction with State Service employment.
- (3) The Director is an employee for the purposes of the *Public Sector Superannuation Reform Act 2016*.

(4 - 7)

12. Corporation sole

- (1) The Director is a corporation sole with the corporate name of “Director of Inland Fisheries”.
- (2) The Director –
 - (a) has perpetual succession and a common seal; and
 - (b) may sue and be sued in the corporate name; and
 - (c) may acquire, hold, dispose of and otherwise deal with property.

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- (3) All courts, judges and persons acting judicially are to –
 - (d) take judicial notice of the common seal of the Director affixed to any document; and
 - (e) assume that it was duly affixed.

13. General powers and functions of Director

- (1) The Director has the following functions:
 - (a) to manage, control, protect, develop, improve, maintain and regulate salmon fisheries, fisheries in inland waters and freshwater fish;
 - (b) to stock inland waters with fish;
 - (c) to create, improve and maintain access to inland waters;
 - (d) to provide facilities in respect of access to inland waters;
 - (e) to carry out research and investigation into matters relating to salmon fisheries and fisheries in inland waters;
 - (f) to collect, publish and disseminate information relating to freshwater fish and inland waters.
- (2) The Director may do anything necessary or convenient to perform any function under this Act.

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- (3) The Minister may give directions to the Director relating to the Director's functions and the Director is to comply with those directions.

14. Contracts and arrangements

For the purpose of this Act, the Director may –

- (a) enter into any contract or agreement with any person or body; or
- (b) make any arrangement with any person or body.

15. Assistance

The Director may give assistance to any person or body by way of a grant or loan or otherwise for any purpose consistent with this Act.

16. Funds of Director

- (1) The funds of the Director consist of –
- (a) any money appropriated by Parliament for the purpose of this Act; and
 - (b) any fees and royalties payable under this Act; and
 - (c) any money received from the sale of anything forfeited to and sold by the Director; and
 - (d) any other money received by the Director from any other source.

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- (2) One-half of any money received by way of penalties under this Act is payable to the Director.
- (3) The Director must apply the funds for the following purposes:
 - (a) the payment of expenses, charges and obligations incurred in the administration of this Act;
 - (b) the provision of financial or other assistance for the purpose of this Act;
 - (c) the payment of remuneration payable to persons employed under section 19.
- (4) The Director may invest any of its funds –
 - (a) in accordance with section 6 of the *Trustee Act 1898*; or
 - (b) in any other manner the Treasurer approves.

17. Accounts and audit

- (1) The Director may establish any account in any financial institution.
- (2) The *Financial Management Act 2016* applies to the Director as if the Director were an Agency within the meaning of that Act.

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18. Delegation

- (1) The Director, in writing, may delegate to any person or body any function or power, other than this power of delegation.
- (2) The Secretary, in writing, may delegate to any person or body any function or power, other than this power of delegation.

19. Employees

Subject to and in accordance with the *State Service Act 2000*, persons may be appointed or employed for the purpose of this Act.

20. Officers

- (1) The Secretary may appoint a person appointed or employed pursuant to section 19 as an officer for the purpose of this Act.
- (2) The Secretary may make arrangements with another Head of a State Service Agency for any State Service officer or State Service employee in that Agency to be appointed as an officer for the purpose of this Act.
- (3) A person appointed under subsection (2) may hold office as an officer in conjunction with State Service employment.
- (4) The Director is to issue to an officer an identity card in an approved form.

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Part 2 – Director and Council

Division 2 – Inland Fisheries Advisory Council

20A. Inland Fisheries Advisory Council

- (1) The Inland Fisheries Advisory Council is established.
- (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.

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s. 20B

- (2A) The members of the Council are appointed by the Minister.
- (3) Schedule 3 has effect with respect to membership and meetings of the Council.

20B. General functions and powers of Council

- (1) The Council has the following functions:
 - (a) to advise the Minister on any matter under this Act;
 - (b) to advise the Minister on any matters referred to it by the Minister;
 - (c) to provide a forum for consultation on policy matters;
 - (d) to advise the Minister on the functions of the Director as they relate to public expectations;
 - (e) to promote understanding and acceptance of the functions of the Director;
 - (f) to encourage community support for fisheries management activities;
 - (g) to review management plans for inland fisheries.
- (2) The Council may do anything necessary or convenient to perform its functions.

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Part 3 – Licences

PART 3 – LICENCES

Division 1 – Commercial freshwater fishing licence

21. Commercial freshwater fishing licence

- (1) A person must not take freshwater fish for commercial purposes except under the authority of and in accordance with a commercial freshwater fishing licence.

Penalty: Fine not exceeding 100 penalty units.

- (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.

22 - 23.

24. Application for commercial freshwater fishing licence

- (1) An application for the grant, variation, renewal, transfer or replacement of a commercial freshwater fishing licence is to—
- (a) be in an approved form; and
 - (b) contain any information the Director requires; and
 - (c) be accompanied by the prescribed fee; and

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- (d) be lodged with the Director.
- (2) The Director may require a person to–
 - (a) provide any further information the Director determines; and
 - (b) verify by statutory declaration any information given in connection with an application.

25. Grant of commercial freshwater fishing licence

- (1) The Director may–
 - (a) grant an application for a commercial freshwater fishing licence subject to any condition the Director determines; or
 - (b) refuse to grant an application.
- (2) The Director may only grant an application for a commercial freshwater fishing licence if satisfied that–
 - (a) the applicant has complied with this Act; and
 - (b) the applicant is not otherwise disqualified from holding the licence.
- (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;

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- (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.
- (4) The Director, by notice in writing, is to notify the applicant of the grant or refusal to grant the application.

26. Issue of commercial freshwater fishing licence

- (1) If the Director grants an application for a commercial freshwater fishing licence, the Director is to issue the licence on payment of the prescribed fee.
- (2) A commercial freshwater fishing licence is to—
 - (a) be in an approved form; and
 - (b) specify the full name and address of the holder of the licence; and
 - (c) specify the period for which it is in force; and
 - (d) specify any condition the Director determines under section 25; and
 - (e) be signed in ink by the holder of the licence.
- (3) A commercial freshwater fishing licence that is not issued by the Director is of no effect.
- (4) A person, other than the Director, must not issue a commercial freshwater fishing licence.

Penalty: Fine not exceeding 10 penalty units.

27. Period of commercial freshwater fishing licence

A commercial freshwater fishing licence is in force for the period specified in the licence, unless sooner cancelled.

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28. Sale of commercial freshwater fishing licences

- (1) The Director may sell a commercial freshwater fishing licence to any person the Director determines.
- (2) The Director may determine the price for the sale of a commercial freshwater fishing licence by either or both of the following:
 - (a) the process of tender;
 - (b) any other process the Director considers appropriate.
- (3) If the Director sells a commercial freshwater fishing licence to a person to take fish, the Director may—
 - (a) prohibit other persons from taking the kind or species of fish to which the licence relates; or
 - (b) issue a licence to take the kind or species of fish to which the licence relates subject to any condition, restriction or limitation the Director determines.

29. Variation of commercial freshwater fishing licence

- (1) The Director, by notice in writing served on the holder of a commercial freshwater fishing licence, may vary a commercial freshwater fishing licence by amending, omitting, substituting or adding to any condition of the licence.

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- (2) A person must comply with a condition of a licence as varied.

Penalty: Fine not exceeding 100 penalty units.

- (3) The variation of a commercial freshwater fishing licence takes effect on a date not earlier than 28 days after service of the notice under subsection (1) if–

- (a) an appeal is not made under section 58 or an appeal is abandoned; or
- (b) an appeal is made under section 58 and the Appeal Tribunal makes an order under section 59(2)(a).

- (4) The Director may vary a commercial freshwater fishing licence on application and on payment of the prescribed fee.

30. Substitute licence

If the Director varies a commercial freshwater fishing licence, the Director–

- (a) may require the holder of the licence to return it; and
- (b) is to serve notice on the holder of the licence of the variation and the date of its effect; and
- (c) may issue a substitute licence containing any new conditions.

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31. Transfer of commercial freshwater fishing licence

- (1) The holder of a commercial freshwater fishing licence may apply to the Director for approval to transfer the licence.
- (2) The Director, on payment of the prescribed fee, may approve the transfer of the licence if satisfied that—
 - (a) the holder has complied with the conditions of the licence; and
 - (b) the appropriate fees have been paid; and
 - (c) the person to whom the licence is to be transferred has not been convicted of an offence under this Act; and
 - (d) it is appropriate to do so.
- (3) The Director may approve the transfer of the licence subject to any condition the Director determines.
- (4) The Director may refuse to approve the transfer of the licence if not satisfied as required under subsection (2).
- (5) The Director, by notice in writing, is to notify the holder of the licence of the approval or refusal to approve the transfer of the licence.

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32. Renewal of commercial freshwater fishing licence

- (1) The holder of a commercial freshwater fishing licence may apply to the Director for the renewal of the licence.
- (2) The Director may—
 - (a) grant an application to renew the licence;
or
 - (b) refuse to grant the application.
- (3) In exercising any power under subsection (2), the Director must take into account whether or not—
 - (a) the holder has complied with the conditions of the licence; and
 - (b) the holder has not been convicted of an offence under this Act; and
 - (c) the appropriate fees, if any, have been paid.
- (4) The Director may impose any condition on the renewed licence the Director determines.
- (5) The Director, by notice in writing, is to notify the holder of the licence of the renewal or refusal to renew the licence.
- (6) This Act applies to a renewed licence and its conditions as if it were the original licence and conditions.

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33. Cancellation of commercial freshwater fishing licence

- (1) The Director, by notice in writing served on the holder of a commercial freshwater fishing licence, may cancel the licence if the holder—
 - (a) fails to comply with a condition of the licence; or
 - (b) is convicted of an offence under this Act.
- (2) The cancellation of a commercial freshwater fishing licence takes effect on a date not earlier than 28 days after service of the notice under subsection (1) if—
 - (a) an appeal is not made under section 58 or an appeal is abandoned; or
 - (b) an appeal is made under section 58 and the Appeal Tribunal makes an order under section 59(1)(a).
- (3) A person whose commercial freshwater fishing licence has been cancelled is not entitled to compensation or a refund in respect of any matter arising from the cancellation.

34. Surrender of commercial freshwater fishing licence

- (1) The holder of a commercial freshwater fishing licence, by notice in writing to the Director, may surrender the licence.
- (2) A commercial freshwater fishing licence ceases to have effect—

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- (a) on the date specified in the notice; or
 - (b) if a date is not specified, on the date of receipt of the notice.
- (3) A person who surrenders a commercial freshwater fishing licence is not entitled to any compensation or refund in respect of any matter arising from the surrender.

35. Returns

- (1) The holder of a commercial freshwater fishing licence is to submit a return to the Director in an approved form when required by the Director to do so.
- (2) A return is to specify –
 - (a) any details and information the Director requires; and
 - (b) any other prescribed details and information.

36. Disqualification from applying for or obtaining licence

The Director may determine that a person who is convicted of an offence under this Act is disqualified from applying for and obtaining a commercial freshwater fishing licence for a specified period.

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Division 2 – Recreational licences

37. Angling licence

- (1) A person must not take acclimatised fish or indigenous fish without an angling licence.

Penalty: In the case of –

- (a) a first offence, a fine not less than 2 penalty units and not more than 5 penalty units together with a special penalty of 0.5 penalty unit for each fish; and
 - (b) a subsequent offence, a fine not less than 5 penalty units and not more than 10 penalty units together with a special penalty of 0.5 penalty unit for each fish.
- (2) A person must not possess any assembled rod, reel and line at any inland waters during a period when the taking of acclimatised fish is permitted without an angling licence.

Penalty: In the case of –

- (a) a first offence, a fine not less than 2 penalty units and not more than 5 penalty units together with a special penalty of 0.5 penalty unit for each fish; and

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- (b) a subsequent offence, a fine not less than 5 penalty units and not more than 10 penalty units together with a special penalty of 0.5 penalty unit for each fish.
- (3) Subsection (1) does not apply –
 - (a) to a person taking indigenous fish in prescribed rivers; or
 - (b) to a person taking fish in a prescribed manner or by any prescribed means; or
 - (c) to a person taking fish in State waters other than salmon in excepted waters; or
 - (d) to a person or class of person exempted under subsection (4).
- (4) The Director, by notice in writing, may exempt a person or class of person from this section in relation to any specified waters and subject to any specified condition.
- (5) A person is to apply to a person authorised under subsection (7) for an angling licence in an approved form accompanied by the prescribed fee.
- (6) An angling licence is to –
 - (a) be in an approved form; and
 - (b) specify the full name and address of the holder of the licence; and

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- (c) specify the period for which it is in force; and
 - (d) be signed in ink by the holder of the licence.
- (7) The Director may authorise a person to issue angling licences.
- (8) A person authorised under subsection (7) is to issue an angling licence to an applicant on receipt of the application and payment of the prescribed fee.

38. Whitebait licence

- (1) A person must not take or possess whitebait without a whitebait licence.

Penalty: In the case of –

- (a) a first offence, a fine not less than 2 penalty units and not more than 5 penalty units together with a special penalty of 1 penalty unit for each kilogram of whitebait; and
 - (b) a subsequent offence, a fine not less than 5 penalty units and not more than 10 penalty units together with a special penalty of 1 penalty unit for each kilogram of whitebait.
- (2) A whitebait licence does not confer the right to sell any whitebait.

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- (2A) A person who has not attained the age of 10 years is not eligible to hold a whitebait licence.
- (3) A person is to apply to a person authorised under subsection (5) for a whitebait licence in an approved form accompanied by the prescribed fee.
- (4) A whitebait licence is to –
 - (a) be in an approved form; and
 - (b) specify the full name and address of the holder of the licence; and
 - (c) specify the period for which it is in force; and
 - (d) be signed in ink by the holder of the licence.
- (5) The Director may authorise a person to issue whitebait licences.
- (6) A person authorised under subsection (5) is to issue a whitebait licence to an applicant on receipt of the application and payment of the prescribed fee.

38A. Disqualification from applying for or obtaining recreational licence

- (1) The Director, by notice in writing, may disqualify a person who is convicted of an offence under this Act from applying for and obtaining a recreational licence for a specified period not exceeding 5 years.

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- (2) A notice is to be sent by normal post to the person's last known address.
- (3) A disqualification takes effect on a date not earlier than 28 days after the date of the notice if –
 - (a) an appeal is not made under section 58(1)(ea) or the appeal is made but abandoned; or
 - (b) an appeal is made under section 58(1)(ea) and the Appeal Tribunal makes an order under section 59(3A)(a).
- (4) A recreational licence held by a person disqualified under subsection (1) ceases to have effect 7 days after the disqualification takes effect.
- (5) A recreational licence obtained by a person disqualified under subsection (1) during the period of that disqualification is invalid.
- (6) In any proceedings for an offence under this Act, a copy of the notice is evidence of the fact that the notice was duly sent.

Division 3 – Fish farm licences

39. Declared fish

The Minister, by order, may declare any kind or species of freshwater fish to be fish to which this Division applies.

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40. Application for fish farm licence

- (1) A person must not operate a fish farm without a fish farm licence.

Penalty: Fine not exceeding 100 penalty units.

- (2) An application for a fish farm licence is to –
- (a) be in an approved form; and
 - (b) contain any relevant information the Minister or the Director requires; and
 - (c) be accompanied by the prescribed fee; and
 - (d) be lodged with the Director.
- (3) The Minister or the Director may require a person to–
- (a) provide any further relevant information the Minister or the Director determines; and
 - (b) verify by statutory declaration any information given in connection with an application.

41. Grant of fish farm licence

- (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

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- (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.
- (2) The Director must not grant an application for a fish farm licence relating to Atlantic salmon without the agreement of the Minister responsible for the administration of the *Living Marine Resources Management Act 1995*.
- (3) The Director must refuse to grant an application for a fish farm licence if not satisfied as required under subsection (1).
- (4) The Director, by notice in writing, is to notify the applicant of the grant or refusal to grant the application.

42. Conditions of fish farm licence

- (1) Subject to subsection (3), the Director may grant an application for a fish farm licence subject to any condition the Director considers necessary or desirable.

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- (2) The Director, by notice in writing served on the holder of the licence, may vary, amend, omit, substitute or add any condition of a fish farm licence.
- (3) The Director must not impose, vary, amend, omit, substitute or add any condition of a fish farm licence relating to Atlantic salmon without the agreement of the Minister responsible for the administration of the *Living Marine Resources Management Act 1995*.
- (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.

43. Issue of fish farm licence

- (1) If the Director grants an application for a fish farm licence, the Director is to issue the licence on payment of the prescribed fee.
- (2) A fish farm licence is to specify –

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- (a) the full name and address of the holder of the licence; and
 - (b) the fishery to which it relates or the waters or premises in which the fishery is contained or to be established; and
 - (c) the declared fish to which it relates; and
 - (d) any premises used or intended to be used in connection with the production, storage, treatment or disposal of fish from the fishery; and
 - (e) any conditions the Director determines under section 42; and
 - (f) the period for which it is in force.
- (3) A fish farm licence which is not issued by the Director or does not comply with subsection (2) is of no effect.

44. Period of fish farm licence

A fish farm licence is in force for the period, not exceeding 20 years, specified in the licence, unless sooner cancelled.

45. Variation of fish farm licence

- (1) Subject to subsections (6) and (7), the Director may decide to vary a fish farm licence.

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- (2) Before varying a fish farm licence, the Director is to serve a notice on the holder of the licence stating—
- (a) the proposed variation; and
 - (b) that the holder may make oral or written representations in respect of the proposed variation; and
 - (c) the period during which representations may be made.
- (3) The period during which representations may be made is to be at least 28 days from the date of service of the notice.
- (4) After taking into account any representations, the Director may vary a fish farm licence by serving notice on the holder of the licence stating—
- (a) any variation made; and
 - (b) the date on which any variation takes effect.
- (5) A variation of a fish farm licence takes effect –
- (a) on a date not earlier than 28 days after service of the notice under subsection (4) if –
 - (i) an appeal is not made under section 58 or an appeal is abandoned; or

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- (ii) an appeal is made under section 58 and the Appeal Tribunal makes an order under section 59(2)(a); or
 - (b) on an earlier date with the agreement of the holder of the licence.
- (6) The Director must not vary a fish farm licence relating to Atlantic salmon without the agreement of the Minister responsible for the administration of the *Living Marine Resources Management Act 1995*.
- (7) The Director must not vary a fish farm licence by reducing the level of production of Atlantic salmon unless the Director is satisfied that—
 - (a) there are environmental constraints on the continued production at that level; or
 - (b) after consultation with the Minister responsible for the administration of the *Living Marine Resources Management Act 1995*, that an emergency exists.

46. Transfer of fish farm licence

- (1) The holder of a fish farm licence may apply to the Director for approval to transfer the licence.
- (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

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- (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.
- (3) The Director may approve the transfer of a fish farm licence subject to any condition the Director determines.
- (4) The Director may refuse to approve the transfer of the licence if not satisfied as required under subsection (2).
- (5) The Director, by notice in writing, is to notify the holder of the licence of the approval or refusal to approve the transfer of the licence.

47. Renewal of fish farm licence

- (1) The holder of a fish farm licence may apply to the Director for the renewal of the licence.

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- (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.
- (3) The Director may impose any condition on the renewed licence the Director determines.
- (4) The Director must not renew a fish farm licence relating to Atlantic salmon without the agreement of the Minister responsible for the administration of the *Living Marine Resources Management Act 1995*.
- (5) The Director may refuse to renew a fish farm licence if not satisfied as required under subsection (2).

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- (6) The Director, by notice in writing, is to notify the holder of the licence of the renewal or refusal to renew the licence.
- (7) This Act applies to a renewed licence and its conditions as if it were the original licence and conditions.

48. Cancellation of fish farm licence

- (1) The Director may decide to cancel a fish farm licence if satisfied that–
 - (a) the kind or species of fish to which the licence relates are not being produced in the quantities as to warrant the continuance of the licence; or
 - (b) the holder of the licence has no substantial interest in the fishery to which it relates; or
 - (c) any condition of the licence has not been complied with; or
 - (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.

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- (2) The Director must not decide to cancel a fish farm licence relating to Atlantic salmon without the agreement of the Minister responsible for the administration of the *Living Marine Resources Management Act 1995*.
- (3) Before cancelling a fish farm licence, the Director is to serve a notice on the holder of the licence stating—
 - (a) the grounds on which the licence is to be cancelled; and
 - (b) that the holder may make oral or written representations in respect of the cancellation; and
 - (c) the period during which representations may be made.
- (4) The period during which representations may be made is to be at least 28 days from the date of service of the notice.
- (5) After taking into account any representations, the Director may cancel a fish farm licence by serving notice on the holder of the licence stating the date on which the cancellation takes effect.
- (6) The cancellation of a fish farm licence takes effect —
 - (a) on a date not earlier than 28 days after service of the notice under subsection (5) if —

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- (i) an appeal is not made under section 58 or an appeal is abandoned; or
 - (ii) an appeal is made under section 58 and the Appeal Tribunal makes an order under section 59(1)(a); or
- (b) on an earlier date with the agreement of the holder of the licence.
- (7) A person whose fish farm licence has been cancelled is not entitled to compensation or a refund in respect of any matter arising from the cancellation.

49. Surrender of fish farm licence

- (1) The holder of a fish farm licence, by notice in writing to the Director, may surrender the licence.
- (2) A fish farm licence ceases to have effect –
 - (a) on the date specified in the notice; or
 - (b) if a date is not specified, on the date of receipt of the notice.
- (3) A person who surrenders a fish farm licence is not entitled to any compensation or refund in respect of any matter arising from the surrender.

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50. Disqualification from applying for or obtaining licence

The Director may determine that a person who is convicted of an offence under this Act is disqualified from applying for and obtaining a fish farm licence for a specified period.

51. Records relating to declared fish

- (1) The holder of a fish farm licence is to keep records relating to –
 - (a) declared fish removed from the fish farm to which the licence relates; and
 - (b) declared fish produced in that fish farm.
- (2) Records under subsection (1) are to –
 - (a) be kept in an approved form and manner; and
 - (b) state the following in respect of declared fish in the fish farm:
 - (i) the date on which the fish were removed;
 - (ii) the nature of the packages or containers in which they were removed;
 - (iii) the place or premises to which they were removed;

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- (iv) the name and address of any person to whom the fish were sold or delivered;
 - (v) the number of fish produced or removed;
 - (vi) the species of fish produced or removed;
 - (vii) the size and weight of fish produced or removed;
 - (viii) the prices received for the fish.
- (3) The holder of a fish farm licence must give the Director any records kept under this section as the Director requires.

Penalty: Fine not exceeding 10 penalty units.

51A. Notification of Director, EPA, of certain matters

- (1) In this section –

Director, EPA means the Director, Environment Protection Authority, appointed under section 18 of the *Environmental Management and Pollution Control Act 1994*;

finfish farming has the same meaning as in the *Environmental Management and Pollution Control Act 1994*.

- (2) The Director is to notify the Director, EPA of –

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- (a) an application for the grant, renewal, or transfer, of a fish farm licence in relation to finfish farming; and
- (b) a decision of the Director to grant, or to refuse to grant, a fish farm licence in relation to finfish farming; and
- (c) a decision of the Director to renew, or to refuse to renew, a fish farm licence in relation to finfish farming; and
- (d) a decision of the Director to transfer, or to refuse to transfer, a fish farm licence in relation to finfish farming; and
- (e) a decision of the Director to vary a fish farm licence in relation to finfish farming; and
- (f) a decision of the Director to cancel a fish farm licence in relation to finfish farming; and
- (g) the surrender of a fish farm licence in relation to finfish farming.

Division 4 – General provisions

52. Replacement of licence

- (1) A person may apply to the Director for the replacement of any licence if the original licence is lost or destroyed.

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- (2) The Director, on payment of the prescribed fee and if satisfied that an original licence is lost or destroyed, is to issue a replacement licence.
- (3) A replacement licence –
 - (a) is subject to the same conditions as the original licence; and
 - (b) is in force for the same period as the original licence; and
 - (c) must be clearly marked as being a replacement licence.

53. Production of licence

The holder of any licence must produce the licence to an officer within 14 days after the officer requires the production.

Penalty: Fine not exceeding 1 penalty unit.

54. Production of other person's licence

A person who is not the holder of any licence must not –

- (a) produce to an officer a licence of another person; or
- (b) falsely represent to an officer that he or she is the holder of the licence.

Penalty: Fine not exceeding 3 penalty units.

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55. Use of licences by others

The holder of a licence must not –

- (a) lend the licence to another person; or
- (b) cause or permit the licence to be used in a way which is likely to deceive an officer.

Penalty: Fine not exceeding 3 penalty units.

56. Effectiveness of licence

- (1) A licence has no effect unless any fees payable in respect of the licence have been paid.
- (2) A licence which is not signed in ink by the holder is of no effect.

57. Death of holder of licence

If the holder of a commercial freshwater fishing licence or a fish farm licence dies, the licence continues in force as if it had been transferred to the executor or administrator of the holder's estate.

58. Appeals

- (1) A person may appeal, in an approved form, to the Appeal Tribunal against any of the following:
 - (a) the refusal to grant a commercial freshwater fishing licence;

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- (b) the variation of a commercial freshwater fishing licence;
 - (c) the refusal to approve the transfer of a commercial freshwater fishing licence;
 - (d) the refusal to renew a commercial freshwater fishing licence;
 - (e) the cancellation of a commercial freshwater fishing licence;
 - (ea) the disqualification from applying for and obtaining a recreational licence;
 - (f) the refusal to grant a fish farm licence;
 - (g) the variation of a fish farm licence;
 - (h) the refusal to approve the transfer of a fish farm licence;
 - (i) the refusal to renew a fish farm licence;
 - (j) the cancellation of a fish farm licence.
- (2) An appeal is to be instituted within 28 days after service of a notice under –
- (a) section 25(4) for an appeal under subsection (1)(a); or
 - (b) section 29(1) for an appeal under subsection (1)(b); or
 - (c) section 31(5) for an appeal under subsection (1)(c); or

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- (d) section 32(5) for an appeal under subsection (1)(d); or
 - (e) section 33(1) for an appeal under subsection (1)(e); or
 - (f) section 41(4) for an appeal under subsection (1)(f); or
 - (g) section 45(4) for an appeal under subsection (1)(g); or
 - (h) section 46(5) for an appeal under subsection (1)(h); or
 - (i) section 47(6) for an appeal under subsection (1)(i); or
 - (j) section 48(5) for an appeal under subsection (1)(j).
- (3) An appeal under subsection (1)(ea) is to be instituted within 28 days after the date of a notice sent under section 38A.

59. Hearing of appeal

- (1) On the hearing of an appeal against the cancellation of a licence, the Appeal Tribunal may –
- (a) dismiss the appeal; or
 - (b) revoke the cancellation if satisfied that –
 - (i) substantial grounds for the cancellation do not exist; or

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- (ii) undue hardship would result from the cancellation and the continuance of the licence would not be contrary to the public interest.
- (2) On the hearing of an appeal against the variation of a licence, the Appeal Tribunal may –
 - (a) dismiss the appeal; or
 - (b) revoke the variation; or
 - (c) revoke the variation and substitute any other variation.
- (3) On the hearing of an appeal against the refusal to grant, renew or approve the transfer of, a licence, the Appeal Tribunal may –
 - (a) dismiss the appeal; or
 - (b) revoke the refusal if satisfied that –
 - (i) substantial grounds for the refusal do not exist; or
 - (ii) undue hardship would result from the refusal and the grant, renewal or approval would not be contrary to the public interest.
- (3A) On the hearing of an appeal against a disqualification from applying for and obtaining a recreational licence, the Appeal Tribunal may –
 - (a) dismiss the appeal; or

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- (b) revoke the disqualification if satisfied that –
 - (i) substantial grounds for the disqualification do not exist; or
 - (ii) undue hardship would result from the disqualification.
- (4) The decision of the Appeal Tribunal on the hearing of an appeal is final.

PART 4 – REGISTRATION PROVISIONS

Division 1 – Dealing with freshwater fish

60. Declaration of applicable fish

The Minister, by order, may declare any kind or species of freshwater fish to be applicable fish to which this Division applies.

61. Definition of “dealing with applicable fish”

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.

62. Restriction on dealing with applicable fish

- (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.

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- (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.

63. Registration as fish dealer

- (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).

64. Registration subject to conditions

- (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;

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-
- (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 certificate;
 - (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.

65. Issue of fish dealer's registration certificate

- (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.

66. Authority and term of registration

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:

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- (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.

67. General provisions relating to registration

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

Division 2 –

68.

Division 3 – Private fisheries

69. Registration of private fishery

A person may apply to the Director in accordance with section 76 for the registration of a private fishery.

70. Granting of registration of private fishery

The Director may—

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- (a) grant an application for the registration of a private fishery subject to any condition the Director determines; or
- (b) refuse to grant the application.

71. Certificate of registration of private fishery

- (1) If the Director grants an application to a person under section 70, the Director, on payment of the prescribed fee, is to issue to the person a certificate of registration of a private fishery.
- (2) A certificate of registration is to –
 - (a) be in an approved form; and
 - (b) specify the following:
 - (i) the full name and address of the applicant;
 - (ii) the particulars of the fishery to which it relates;
 - (iii) any condition to which the registration is subject;
 - (iv) the date of issue of the certificate.

72. Period of registration

The registration of a private fishery is in force for a period of 12 months after the date of issue of the certificate of registration.

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73. Duties of owner of registered fishery

- (1) The owner of a registered private fishery must, as soon as practicable, notify the Director—
 - (a) of any unusual mortality among fish in the fishery; or
 - (b) of any disease in the fish in the fishery.

Penalty: Fine not exceeding 10 penalty units.

- (2) The owner of a registered private fishery must ensure that any barriers or screens required by the Director to prevent fish swimming into or out of the fishery are provided and maintained in an approved manner.

Penalty: Fine not exceeding 10 penalty units and a daily fine not exceeding 1 penalty unit.

- (3) The owner of a registered private fishery, without the written consent of the Director, must not—
 - (a) extend or alter the fishery; or
 - (b) change the site of the fishery.

Penalty: Fine not exceeding 10 penalty units.

74. Change of ownership of registered fishery

- (1) The owner of a registered private fishery must notify the Director of a change of ownership of the fishery.

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Penalty: Fine not exceeding 10 penalty units.

- (2) If there is a change of ownership of a registered private fishery and a notification is not made under subsection (1), the registration of that fishery is cancelled.
- (3) The Director, on being notified of a change of ownership of a registered private fishery is to endorse the certificate of registration issued under section 71 accordingly.

75. Entry into fishery

- (1) An officer may enter a registered private fishery to –
 - (a) inspect the fishery; and
 - (b) sample, treat, remove or destroy any diseased or unhealthy fish.
- (2) An officer may order the owner of a registered private fishery to –
 - (a) cause any diseased or unhealthy fish to be treated, removed or destroyed; or
 - (b) cause the fishery to be drained and cleaned.
- (3) A person must comply with an order under subsection (2) within any period specified in the order.

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Penalty: Fine not exceeding 10 penalty units
and a daily fine not exceeding 1
penalty unit.

Division 4 – General provisions

76. Applications for registration

An application under this Part is to –

- (a) be in an approved form; and
- (b) contain any particulars the Director requires; and
- (c) be accompanied by the prescribed fee; and
- (d) be lodged with the Director.

76A. Amendment of registration

- (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

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-
- (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.

77. Renewal of registration

- (1) A person may apply to the Director in accordance with section 76 for the renewal of–
- (a) the registration as a registered fish dealer; or
 - (b) the registration of premises; or
 - (c) the registration of a private fishery.
- (2) The Director may–
- (a) grant an application subject to any condition the Director determines; or
 - (b) refuse to grant the application.
- (3) If the Director grants an application to a person, the Director, on payment of the prescribed fee, is

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to issue to the person a certificate of registration in accordance with section 64, 67 or 71.

78. Transfer of registration

- (1) A person may apply to the Director in accordance with section 76 to transfer the registration as a registered fish dealer to another person.
- (2) The Director may—
 - (a) grant an application subject to any condition the Director determines; or
 - (b) refuse to grant the application.
- (3) If the Director grants an application, the Director, on payment of the prescribed fee, is to—
 - (a) transfer the registration; and
 - (b) endorse on the certificate of registration issued under section 64 the name and address of the person to whom the registration has been transferred; and
 - (c) amend the relevant register referred to in section 196 accordingly.

79. Cancellation of registration

- (1) The Director, by notice in writing served on the person who is granted a registration under this Part, may cancel the registration if—

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- (a) the Director is satisfied that the person has failed to comply with a condition of the registration; or
 - (b) the person to whom the registration relates is convicted of an offence under this Act; or
 - (c) the Director is satisfied that the premises or the fishery to which the registration relates are not being used for the purpose for which the registration was granted.
- (2) If the Director cancels a registration, a person is disqualified from applying again for the cancelled registration for any period, not exceeding 5 years, the Director determines.
- (3) A person may cancel a registration by notice in writing lodged with the Director.
- (4) The cancellation of a registration takes effect on a date not earlier than 28 days after service of a notice under subsection (1) if –
- (a) an appeal is not made under section 81 or an appeal is abandoned; or
 - (b) an appeal is made under section 81 and the Appeal Tribunal makes an order under section 81(3)(a).

80. Surrender of registration

A person must surrender to the Director a certificate of registration in respect of a registration cancelled under this Part.

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Penalty: Fine not exceeding 5 penalty units.

81. Appeal against cancellation of registration

- (1) A person may appeal to the Appeal Tribunal against the cancellation of a registration under this Part.
- (2) An appeal is to be –
 - (a) in an approved form; and
 - (b) instituted within 28 days after service of a notice under section 79(1).
- (3) On the hearing of an appeal, the Appeal Tribunal may –
 - (a) dismiss the appeal; or
 - (b) revoke the cancellation if satisfied that –
 - (i) substantial grounds for the cancellation do not exist; or
 - (ii) undue hardship would result from the cancellation and the continuance of the registration would not be contrary to the public interest.

82. Records

- (1) A person who sells imported fish is to keep records relating to imported fish on or at the registered premises.

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- (2) A registered fish dealer is to keep records relating to dealings with fish.
 - (3) The owner of a registered private fishery is to keep records relating to the management of the fishery.
 - (4) Records are to –
 - (a) be kept in an approved form and manner; and
 - (b) contain any relevant information that the Director requires.
 - (5) The Director may require any records to be made available to the Director on request.
 - (6) A person must not fail to comply with this section.

Penalty: Fine not exceeding 10 penalty units.

83. Notification of changes

A registered fish dealer or a person who sells imported fish must notify the Director in writing of any of the following:

- (a) any change of name or address;
- (b) any change in the particulars of any premises—
 - (i) on or at which the person deals with fish; or

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- (ii) from which the person sells imported fish.

Penalty: Fine not exceeding 5 penalty units.

PART 5 – POWERS OF OFFICERS

Division 1 – General powers

84. Limited police powers

An officer, in performing any functions under this Act, has the powers and protection of a police officer with the rank of constable.

85. Production of identity card

- (1) An officer, if required by a person in relation to whom the officer is exercising or intends to exercise a power under this Act, must produce his or her identity card for inspection by that person.
- (2) If an officer fails to produce his or her identity card when required by a person to do so, the person is not guilty of –
 - (a) hindering or obstructing the officer; or
 - (b) failing to comply with a requirement or an order of the officer.

86. Police officer

- (1) A police officer has the powers of an officer under this Act.
- (2) It is not necessary for a police officer exercising any power as an officer under this Act to produce any authority other than what is required as a police officer.

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87. Assistance to officers

- (1) For the purpose of exercising a power under this Act, an officer may require a person to assist in any way the officer considers necessary.
- (2) A person is not liable for anything done or omitted to be done by that person in good faith in assisting an officer.

Division 2 – Entry, inspection and search

88. Entry and inspection of land and waters

- (1) For the purpose of this Act, an officer may at any reasonable time –
 - (a) enter into and pass through land; and
 - (b) enter into and pass through or along the banks or borders of any State waters or inland waters; and
 - (c) enter into and examine any reservoir, sluice, millpool, millrace, dam, fish-pass, watercourse and channel; and
 - (d) enter into and inspect any land or premises to ascertain if this Act or the conditions of any licence or registration under this Act are being complied with; and
 - (e) enter any premises where records are required to be kept and inspect those records.

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- (2) An officer, without a warrant, must not enter –
- (a) a garden enclosed with a wall or fence;
or
 - (b) a dwelling house; or
 - (c) a curtilage of a dwelling house.
- (3) Subsection (2)(a) and (c) does not apply if the ordinary passage of any waters is through the garden or curtilage.

89. Search of premises

An officer who reasonably believes that a person has committed or is about to commit an offence under this Act may enter and search any premises –

- (a) under a warrant; or
- (b) with the consent of the occupier of the premises; or
- (c) if the officer has pursued the person without interruption from the place, or near the place, where the offence was believed to have been committed to the premises being searched.

90. Entry and inspection of premises

- (1) An officer, at any reasonable time, may enter and inspect any place where fish are –
- (a) publicly exposed for sale; or

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- (b) kept or treated for the purpose of sale.
- (2) An officer, at any reasonable time, may enter and inspect any premises or fishery registered under Part 4.
- (3) An officer may search any receptacle or container at any place or on any premises entered under this section.

91. Securing boat, land and premises

An officer, by notice in writing, may require the owner or occupier of any land or premises to secure the land or premises.

92. Stopping and searching boat or vehicle

- (1) An officer may signal or direct a person apparently in charge of a boat or vehicle –
 - (a) to stop the boat or vehicle; or
 - (b) not to move the boat or vehicle for a reasonable period.
- (2) A person is not required to comply with a signal or direction under subsection (1) if the person –
 - (a) reasonably believes that to comply would endanger the person, another person, the boat or vehicle; and
 - (b) complies with the signal or direction as soon as it is practicable to do so.

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- (3) An officer may board and search a boat or search a vehicle.

93. Use of boat

- (1) In exercising a power under this Act, an officer may require the person apparently in charge of a boat to allow the officer to use the boat.
- (2) The Director is to pay compensation to any person entitled to use a boat at the time an officer used the boat.
- (3) Compensation is payable –
- (a) for any reasonable loss incurred –
 - (i) in respect of the boat because of its use by an officer; or
 - (ii) for any other reason the Minister considers appropriate; and
 - (b) at an amount the Minister considers appropriate.

94. Detaining boat

- (1) An officer may require the person apparently in charge of a boat which the officer reasonably believes has been used, is being used or is about to be used in contravention of this Act –
- (a) to bring the boat to a specified place; and
 - (b) not to move the boat from that place until directed by the officer to do so.

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- (2) An officer must direct the person apparently in charge of a boat to move the boat within a reasonable period.

95. Examination of fish and articles

For the purpose of this Act, an officer may –

- (a) examine any fish and anything in which fish are kept; and
- (b) take samples of any fish and any medium in which fish are kept; and
- (c) examine any equipment or other article found in any place used, intended to be used or adapted for fishing.

96. Opening and unlocking boat, door or container

- (1) For the purpose of this Act, an officer may require a person to open or unlock any boat, door, gate, package, receptacle or other container.
- (2) An officer may break open and search any boat, door, gate, package, receptacle or other container –
- (a) in searching or inspecting a place; or
 - (b) if the officer reasonably believes that it contains fish or any evidence of the commission of an offence under this Act.

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97. Production of things

An officer may require a person to produce for inspection any thing in the person's possession if the officer reasonably believes that it may disclose evidence of the commission of an offence under this Act.

98. Production of documents and records

- (1) An officer may require a person to produce –
 - (a) any document or record required to be kept under this Act; or
 - (b) any document or record relating to the sale or purchase of fish.
- (2) An officer may –
 - (a) examine any document or record produced under subsection (1); and
 - (b) remove any document or record produced under subsection (1) for the purpose of paragraph (c); and
 - (c) take extracts from, or copies of, any document or record by any means.
- (3) A person must –
 - (a) provide reasonable facilities and assistance to an officer exercising any power under this section; and

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- (b) remove any physical or other obstruction which may hinder or prevent an officer from exercising a power under this section.

Penalty: Fine not exceeding 10 penalty units.

99. Production of licence or registration

An officer may –

- (a) require a person to produce for inspection any licence or certificate of registration under this Act the person holds or should hold; and
- (b) examine, remove and take photographs or copies of, or extracts or notes from, any licence or certificate of registration under this Act.

100. Photographs, sketches, measurements and recordings

For the purpose of this Act, an officer may –

- (a) take any photograph, film or video recording; and
- (b) take any copy of, or extract from, any record; and
- (c) take any measurements; and
- (d) make any sketches or drawing; and
- (e) make any recording by any means.

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101. Examination and inquiry

An officer may carry out any examination and inquiry the officer considers necessary to ascertain if any provisions of this Act or any conditions imposed under this Act have been complied with.

102. Information requirements

- (1) An officer may require –
 - (a) any of the following persons to give his or her full name and residential address:
 - (i) any person on board a boat;
 - (ii) any person in or on any premises or fishery registered under Part 4;
 - (iii) any person whom the officer reasonably believes is committing or has committed an offence under this Act; and
 - (b) a person to give details of any licence, registration or exemption under this Act; and
 - (c) the person apparently in charge of a boat to give the full name and address of any person on board the boat.
- (2) An officer may require any person to give information about that person's or another person's activities in respect of any matter under this Act.

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- (3) A person must comply with a requirement under this section.

Penalty: Fine not exceeding 2 penalty units.

103. Arrest

An officer may arrest a person without warrant if

–

- (a) the person does not give the information or details required under section 102; or
- (b) the officer reasonably believes that the person has given a false name or address; or
- (c) the officer reasonably believes that the person has committed an offence under this Act and that –
 - (i) the offence is likely to continue or recur if the person is not arrested; or
 - (ii) any other procedure for dealing with the offence would not be effective; or
- (d) the officer reasonably believes that the person has contravened any order under this Act.

Division 3 – Warrants

104. Application and issue of warrant

- (1) An officer may apply to a justice for a warrant to enter and search any land, waters, premises or place.
- (2) A justice may issue a warrant if satisfied –
 - (a) that there are reasonable grounds for believing that there is on the land or on or in any waters, premises or place any evidence of the commission of an offence under this Act; or
 - (b) that the issue of a warrant is reasonably required to ascertain if a person has not complied with this Act.
- (3) A warrant is to authorise an officer –
 - (a) to enter and search the land, waters, premises or place specified in the warrant; and
 - (b) to do any acts authorised under this Part –
 - (i) with any assistance, and by any force, reasonably necessary; and
 - (ii) on the date and during the hours or at any time the warrant specifies.

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- (4) A warrant is to specify the date on which, and the time at which, the warrant ceases to have effect.

105. Urgent situations

- (1) An officer may apply to a justice for a warrant by telephone, facsimile or other prescribed means if the officer considers the urgency of a situation requires it.
- (2) The justice may complete and sign a warrant in the terms referred to in section 104(3) if satisfied that there are reasonable grounds for issuing the warrant urgently.
- (3) The justice is to –
- (a) tell the officer –
 - (i) the terms of the warrant; and
 - (ii) the date on which, and the time at which, the warrant was signed; and
 - (iii) the date on which, and the time at which, the warrant ceases to have effect; and
 - (b) record on the warrant the reasons for granting the warrant.
- (4) The officer is to –

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- (a) complete a form of warrant in the same terms as the warrant signed by the justice; and
 - (b) write on the form –
 - (i) the name of the justice; and
 - (ii) the date on which, and the time at which, the warrant was signed; and
 - (c) send the justice the completed form of warrant not later than the day after the warrant ceases to have effect or is executed, whichever is the earlier.
- (5) On receipt of the form of warrant, the justice is to attach it to the warrant the justice signed.
- (6) A form of warrant completed by an officer under subsection (4) has the same force as a warrant signed by the justice under subsection (2).

Division 4 – Seizure and forfeiture

106. Seizure of fish, boat and other things

An officer may seize –

- (a) any fish the officer reasonably believes has been the subject of an offence under this Act; and
- (b) any receptacle or container containing such fish; and

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- (c) any boat or equipment the officer reasonably believes has been used, is being used or is about to be used in the commission of an offence under this Act; and
- (d) any money or cheque the officer reasonably believes is the proceeds of the unlawful sale of any fish; and
- (e) any document or thing the officer reasonably believes is evidence of the commission of an offence under this Act.

107. Seizure of abandoned equipment and fish

- (1) An officer may seize –
 - (a) any equipment unattended in, or adjacent to, any waters which appears to have been lost or abandoned; and
 - (b) any fish in, or adjacent to, any waters which appear to have been abandoned.
- (2) The officer may destroy or render inoperative any thing used for taking or holding fish if, in the opinion of the officer, it is not practicable to seize it.

108. Interference with seized property

- (1) A person must not interfere with, remove or damage any fish, boat, equipment or other thing seized under this Part unless authorised to do so by an officer.

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Penalty: Fine not exceeding 5 penalty units.

- (2) A court, in addition to imposing a penalty on a person under subsection (1), may order the person to pay compensation for any damage or loss to any other person.

109. Forfeiture on conviction

- (1) If a court convicts a person of an offence under this Act, any of the following is forfeited to the Director:
 - (a) any fish to which the offence relates;
 - (b) any equipment used, or intended to be used, in the commission of the offence;
 - (c) any boat or other thing used in the commission of the offence.
- (2) A person may apply to the court during proceedings leading to a conviction or associated with a relevant offence for an order that forfeiture is not to be carried out.
- (3) The court, if satisfied that special reasons exist, may –
 - (a) make the order applied for; and
 - (b) make any other order it considers appropriate.
- (4) In addition to any penalty imposed for an offence under this Act, a court, on application of the complainant, may order the forfeiture to the

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Director of any money, cheque or other thing that is the proceeds of the sale of any fish, boat or equipment in contravention of this Act.

110. Forfeiture on acceptance of infringement notice

- (1) If a person is taken under section 20 of the *Monetary Penalties Enforcement Act 2005* to have been convicted of an offence, any of the following seized under this Act is forfeited to the Director:
 - (a) any fish to which the offence relates;
 - (b) any equipment used, or intended to be used, in the commission of the offence;
 - (c) any boat or other thing used in the commission of the offence.
- (2) Forfeiture takes effect –
 - (a) if an application is not made under section 111, 108 days after service of the infringement notice; or
 - (b) if an application is made under section 111 and a court under section 111(5)(b) refuses to make an order, on the date of that refusal.

111. Order for return of boat

- (1) The owner of any boat or equipment forfeited under section 110 may apply to a court for an order for its return.

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- (2) An application is to –
 - (a) be in writing; and
 - (b) be made within 108 days after service of the infringement notice; and
 - (c) state the reasons for the application.
- (3) A person must serve a copy of the application on the Director.
- (4) The Director, or a person authorised by the Director, may appear before the court at the hearing of the application.
- (5) A court, if satisfied that special reasons exist, may –
 - (a) make the order applied for; or
 - (b) refuse to make the order applied for; or
 - (c) make any other order it considers appropriate.

112. Forfeiture if owner is not found

- (1) The Director may determine that anything seized under section 107 for which an owner is not found is forfeited to the Director.
- (2) Forfeiture takes effect on the date determined by the Director.

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113. Sale or disposal

- (1) The Director may sell, destroy or otherwise dispose of anything forfeited under this Act.
- (2) Any proceeds of a sale or disposal are payable to the Director.

114. Application to buy a forfeited thing

- (1) A person who owned any thing, or who had any legal or equitable interest in, any thing forfeited under this Act immediately before the forfeiture may apply to the Minister to buy it.
- (2) An application is to be –
 - (a) in writing; and
 - (b) made within 30 days after the forfeiture.
- (3) The Minister may –
 - (a) approve the application subject to any condition; or
 - (b) refuse to approve the application.
- (4) If the Minister approves the application, the Minister is to order the sale of the forfeited thing to the applicant on payment of an amount equal to its estimated market value.
- (5) Any proceeds of a sale are payable to the Director.

115. Release of seized property

- (1) The Director may authorise the release of anything seized but not forfeited—
 - (a) to the owner; or
 - (b) to the person entitled to the possession of the thing; or
 - (c) to the person from whom the thing was seized.
- (2) The Director may authorise the release of any thing subject to—
 - (a) any condition relating to the payment of a bond; or
 - (b) any condition relating to the provision of any other security; or
 - (c) any other condition the Director determines.
- (3) The amount of payment of a bond or the provision of a security is to be equivalent to the current market value of the thing.
- (4) A person must not fail to comply with a condition imposed under subsection (2).

Penalty: Fine not exceeding 5 penalty units.

- (5) In addition to a penalty imposed on a person for an offence under subsection (4), a court may order the person to pay compensation for any damage or loss caused by the offence.

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116. Return of seized things

- (1) A person from whom any thing was seized may apply to the Director for its return if—
 - (a) a decision is made not to institute any proceedings in respect of the alleged offence for which the thing was seized; or
 - (b) proceedings in respect of the alleged offence for which the thing was seized are not instituted within 30 days after the seizure; or
 - (c) proceedings in respect of the alleged offence for which the thing was seized are discontinued or the alleged offender is acquitted.

- (2) An application is to be —
 - (a) in writing; and
 - (b) made within —
 - (i) 3 months after the seizure, for an application to which subsection (1)(a) or (b) relates; or
 - (ii) 6 weeks after the proceedings are discontinued or the applicant is acquitted, for an application to which subsection (1)(c) relates.

- (3) The Director may—

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- (a) approve an application to which subsection (1)(a) or (b) relates if satisfied that the circumstances warrant; or
 - (b) refuse to approve the application if not so satisfied.
- (4) The Director must approve an application to which subsection (1)(c) relates if satisfied that the proceedings have been discontinued or the alleged offender was acquitted.
 - (5) If a thing seized is sold before an application for its return is approved, the Director is to pay the applicant the proceeds of the sale of the thing less any reasonable costs incurred in maintaining, storing and selling it.
 - (6) If an application for the return of any seized thing is not made within the period referred to in subsection (2), the thing is forfeited to the Director.
 - (7) This section does not apply to any fish forfeited under this Act.

117. Live fish returned to water

- (1) If, in the opinion of an officer, it is practicable to return any fish seized under this Act to inland waters, the officer may do so.
- (2) If, in the opinion of an officer, any fish seized under this Act is likely to deteriorate or rot if no action is taken to preserve it, the officer may sell, preserve or otherwise dispose of the fish.

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- (3) A person is not entitled to any compensation in respect of any action taken under this section.

PART 6 – INFRINGEMENT NOTICES

118. Infringement notices

- (1) An officer may serve an infringement notice on a person, other than a person under the age of 16 years, if of the opinion that the person has committed a prescribed offence.
- (2) An infringement notice is not to relate to 4 or more offences.
- (3) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.

119 - 121.

122. Payments in respect of infringement notices

Half of the payments made in respect of an infringement notice are to be paid into the Public Account and half to the Director.

123 - 125.

PART 7 – OFFENCES

Division 1 – Offences relating to fish

126. Poisonous and chemical substances

- (1) A person must not put, or allow to flow, into any inland waters containing fish any liquid, gaseous or solid matter which is likely to be poisonous or injurious to fish, the spawning grounds of fish or the food of fish.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (1) does not apply –

(a)

(b) to any works involving rock, soil, sand, gravel, shingle, mud or muddy water carried out by the Crown, a council or the Tasmanian Ports Corporation Pty. Ltd. (ACN 114 161 938) in–

(i) constructing a road, bridge, ford, dam or channel; or

(ii) improving a river or harbour; or

(iii) laying an underwater pipeline or cable; or

(iv) reclaiming land; or

(c) to the discharge of sewage undertaken under an Act; or

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- (d) to anything authorised under the *Mineral Resources Development Act 1995*; or
 - (e) in relation to a registered private fishery; or
 - (f) in relation to a licensed fish farm.
- (3) A person, without the consent of the Director, must not put into any inland waters any fertiliser or any other chemical substance.

Penalty: Fine not exceeding 50 penalty units.

127. Explosive substances, firearms and missiles

A person must not take fish in inland waters by the use of –

- (a) any explosive substance; or
- (b) any material which is likely to poison, stupefy or paralyse any fish; or
- (c) an electric current in those waters; or
- (d) any stone or other missile; or
- (e) any firearm.

Penalty: Fine not exceeding 10 penalty units.

128. Removing, freeing or introducing fish

- (1) A person must not remove from, or release into, a registered private fishery any live fish without the written consent of the Director.

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Penalty: Fine not exceeding 50 penalty units.

- (2) A person must not remove fish from any equipment in inland waters unless the person –
- (a) is the owner of the equipment; or
 - (b) has the consent of the owner of the equipment.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person, without the written consent of the Director, must not release, plant or introduce in any inland waters–
- (a) any kind or species of fish or amphibious or aquatic invertebrate animal; or
 - (b) any kind or species of aquatic plant.

Penalty: Fine not exceeding 50 penalty units.

- (4) A person must not remove any freshwater crayfish of the family *Parastacidae* or any spawn or product of the freshwater crayfish from the State without the written consent of the Director.

Penalty: Fine not exceeding 50 penalty units.

128A. Transporting fish

- (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.

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- (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*.

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

129. Restriction on possessing fish near inland waters

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.

130. Use of lights and instruments

- (1) A person, except as authorised by regulations, must not take or facilitate the taking of fish by the use of –
- (a) any light; or
 - (b) any wire, snare, spear or gaff; or
 - (c) any instrument used to foulhook fish; or
 - (d) any board, stick, club or other instrument.

Penalty: Fine not exceeding 10 penalty units.

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- (2) A person must not have possession of anything referred to in subsection (1) for the purpose of taking or facilitating the taking of fish.

Penalty: Fine not exceeding 10 penalty units.

- (3) This section does not apply to fish –
- (a) in State waters other than salmon in excepted waters; or
 - (b) in any registered private fishery; or
 - (c) in any licensed fish farm.

131. Protected fish

- (1) The Minister, by order, may declare any kind or species of freshwater fish to be protected fish.

- (2) A person must not take any protected fish.

Penalty: Fine not exceeding 50 penalty units.

132. Importing fish

- (1) A person, without the written consent of the Director, must not import–

- (a) any live aquatic crustacean, molluscan or invertebrate animal; or
- (b) any kind or species of live fish; or
- (c) any live salmon eggs or sperm.

Penalty: Fine not exceeding 100 penalty units.

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- (2) Subsection (1)(b) does not apply to goldfish (*Carassius auratus*) landed in the State in accordance with any other Act.

133. Fertilising salmon

A person, without written consent of the Director, must not–

- (a) fertilise, hatch, rear, propagate or strip salmon; or
- (b) have possession of the fertilised eggs of salmon.

Penalty: Fine not exceeding 10 penalty units.

134. Selling and buying fish

- (1) A person must not sell or buy any declared fish produced or taken at a registered private fishery –
- (a) except for the purpose of fishing in accordance with the certificate of registration issued in respect of that fishery; or
 - (b) unless the fish have been taken by a purchaser in accordance with the certificate of registration issued in respect of that fishery.

Penalty: Fine not exceeding 20 penalty units.

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- (2) A person must not take any fish for the purpose of sale unless the fish is taken in a licensed fish farm or under a commercial freshwater fishing licence.

Penalty: Fine not exceeding 20 penalty units.

- (3) A person must not buy, sell or have possession of, other than in a registered private fishery or in a licensed fish farm, any –

- (a) undersized freshwater fish; or
- (b) unclean freshwater fish; or
- (c) unseasonable freshwater fish.

Penalty: Fine not exceeding 20 penalty units.

- (4) A person must not buy or sell any declared fish unless –

- (a) if the fish is produced or taken at a licensed fish farm, the fish –
 - (i) are of a kind or species in respect of which the fish farm is licensed; and
 - (ii) have not been removed or escaped from the fish farm and liberated or escaped into any water that is not in a fish farm; or
- (b) the fish is imported into the State in accordance with this Act; or

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- (c) the fish is taken under a commercial freshwater fishing licence.

Penalty: Fine not exceeding 20 penalty units.

- (5) A person who carries out the business of a fishmonger, butcher or dealer of smallgoods must not sell or have possession of on any premises in which the business is carried out any kind or species of fish, other than –

- (a) eels, tench or perch; or
- (b) salmon; or
- (c) other declared fish.

Penalty: Fine not exceeding 20 penalty units.

135. Storing fish

- (1) A person, other than an officer, must not store or deposit in any commercial cool-store any freshwater fish other than fish taken under a commercial freshwater fishing licence unless–

- (a) the fish have been lawfully taken by the person; and
- (b) the fish are clearly labelled with–
 - (i) the name and address of the person; and
 - (ii) the date on which they were stored or deposited.

Penalty: Fine not exceeding 10 penalty units.

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- (2) The owner or person in charge of a commercial cool-store in which fish are stored or deposited must allow an officer to enter and inspect the fish at any reasonable time.

Penalty: Fine not exceeding 10 penalty units.

136. Possessing salmon

A person must not have possession of the whole or part of any live or dead salmon during a prescribed period unless it was –

- (a) lawfully produced or taken at a licensed fish farm or a marine farm; or
- (b) lawfully taken at a registered private fishery; or
- (c) lawfully taken from State waters; or
- (d) canned, frozen or otherwise preserved and is lawfully imported.

Penalty: Fine not exceeding 10 penalty units.

137. Disturbing spawn

- (1) A person must not disturb –
- (a) any spawn or spawning fish; or
 - (b) any bed, bank or shallow on which any spawn or spawning fish may be; or

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- (c) any fish at a place and during a time at which the fish are spawning or accustomed to spawn.

Penalty: Fine not exceeding 10 penalty units.

- (2) Subsection (1) does not apply in relation to –
 - (a) State waters; or
 - (b) any registered private fishery; or
 - (c) any licensed fish farm.

138. Marking fish

- (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.

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Penalty: Fine not exceeding 5 penalty units.

- (2) A person must not mark any salmon or other declared fish in a manner likely to deceive any person into believing that the fish is properly marked.

Penalty: Fine not exceeding 5 penalty units.

- (3) A person must not have possession of any salmon or other declared fish marked in a manner likely to deceive any person into whose possession the fish may subsequently come that the fish has been properly marked.

Penalty: Fine not exceeding 5 penalty units.

- (4) It is a defence in proceedings for an offence under subsection (3) for a person to prove that he or she reasonably believed the salmon or declared fish was properly marked.

139. Free passage of fish

- (1) A person, without the written consent of the Director, must not–
- (a) place or use in any inland waters any equipment, instrument or device likely to hinder or obstruct the free passage of fish in those waters; or
 - (b) injure a fish-pass; or
 - (c) do anything likely to impair the efficiency of a fish-pass; or

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- (d) cut through, break down or otherwise destroy a dam, floodgate or sluice for the purpose of destroying or taking any fish.

Penalty: Fine not exceeding 10 penalty units.

- (2) Subsection (1) does not apply in relation to –
 - (a) a registered private fishery; or
 - (b) a licensed fish farm; or
 - (c) dam works authorised by a permit issued under Part 8 of the *Water Management Act 1999*.

140. Obstruction

A person must not place or leave unattended anything that obstructs or is likely to obstruct –

- (a) a public boat launching ramp adjacent to any inland waters; or
- (b) the access to or from a public boat launching ramp adjacent to any inland waters.

Penalty: Fine not exceeding 5 penalty units.

140A. Juvenile eel

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

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Penalty: Fine not exceeding 1 000 penalty units.

Division 2 – General offences

140B. Contravening condition

- (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.

141. Refusing search

A person, without reasonable excuse, must not refuse to allow a search to be made under this Act.

Penalty: Fine not exceeding 10 penalty units.

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142. Impersonation of officer

A person must not –

- (a) impersonate an officer; or
- (b) hold himself or herself out as an officer.

Penalty: Fine not exceeding 20 penalty units.

143. Offences against officer

A person must not –

- (a) assault, abuse or threaten an officer exercising a power or performing a function under this Act; or
- (b) hinder, mislead, obstruct or delay an officer exercising a power or performing a function under this Act; or
- (c) incite or encourage another person to anything referred to in paragraphs (a) and (b).

Penalty: Fine not exceeding 50 penalty units.

144. False and misleading statements

A person, in making an application, giving any information or producing a document under this Act, must not –

- (a) make a statement knowing it to be false or misleading; or

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- (b) omit any matter from a statement knowing that without that matter the statement is misleading.

Penalty: Fine not exceeding 10 penalty units.

Division 3 – Control orders

145. Application for control order

- (1) The Director may apply to the Supreme Court for a control order against a person–
 - (a) who has been convicted of more than one offence against this Act; and
 - (b) who the Director reasonably believes is likely to commit further offences against this Act.
- (2) An application for a control order must be accompanied by –
 - (a) a draft control order in accordance with section 146; and
 - (b) any evidence and argument to justify the making of the control order.

146. Draft control order

A draft control order must –

- (a) specify the person to whom it is to apply; and

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- (b) describe the activities which are proposed to be restricted or prohibited; and
- (c) specify the period during which the control order is to be in force; and
- (d) describe any relevant circumstances.

147. Issue of control order

- (1) The Supreme Court –
 - (a) may issue the control order applied for; or
 - (b) if satisfied that to do so would be harsh and unjust, may –
 - (i) amend the control order; or
 - (ii) refuse to issue the control order.
- (2) A person must not fail to comply with a control order.

Penalty: Fine not exceeding 50 penalty units.

148. Variation or revocation of control order

- (1) The Director may apply to the Supreme Court to vary or revoke a control order.
- (2) An application for the variation of a control order is to be accompanied by –
 - (a) a draft of any variation being sought; and

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- (b) any evidence and argument to justify the variation of the control order.
- (3) The Supreme Court may –
 - (a) revoke the control order; or
 - (b) vary the control order if satisfied that to do so would not be harsh and unjust; or
 - (c) refuse to vary the control order if not so satisfied.

Division 4 – Penalty of imprisonment

148A. Penalty of imprisonment

- (1) In addition to, or instead of, imposing a penalty on a person for an offence under this Act, a court may impose a penalty of a term of imprisonment not exceeding 3 months in respect of the offence.
- (2) Subsection (1) only applies if the person was previously convicted of an offence under this Act.

PART 8 – MISCELLANEOUS

Division 1 – Controlled fish

149. Declaration of controlled fish

- (1) The Minister, by order, may declare fish to be controlled fish to which this Division applies.
- (2) The occupier of land on or in which any inland waters are situated is taken to have possession of any controlled fish in those waters.

150. Offences relating to controlled fish

A person must not –

- (a) keep or have possession or control of any controlled fish; or
- (b) consign or convey any controlled fish; or
- (c) release into any inland waters, water hole, dam, aquarium, hatchery or container any controlled fish.

Penalty: Fine not exceeding 100 penalty units.

151. Notification of location of controlled fish

- (1) A person who owns or has possession or control of any fish knowing it to be controlled fish must notify the Director of that fact as soon as obtaining that knowledge.

Penalty: Fine not exceeding 10 penalty units.

- (2) A notification is to –
 - (a) be in writing; and
 - (b) specify the location of the controlled fish.

152. Removal or destruction of controlled fish

- (1) An officer may seize and remove from any place any controlled fish.
- (2) The Minister, by order, may authorise the Director–
 - (a) to destroy any controlled fish in a specified manner if the Minister is satisfied that it is not practicable to seize or remove the fish; and
 - (b) to take any action necessary to delay or prevent the spreading of controlled fish to other places or waters.
- (3) An order to destroy controlled fish is to be carried out even though other fish may be destroyed.
- (4) In taking any action under subsection (2)(b), the Director may issue any directions necessary.
- (5) A person must comply with any direction of the Director.

Penalty: Fine not exceeding 20 penalty units.

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- (6) Any expenses incurred in carrying out an order are payable from the Public Account.

153. Immunity from liability

Any person carrying out an order under section 152 is not liable for anything done or omitted to be done in good faith by that person in carrying out the order.

Division 2 – Fauna reserve

154. Fauna reserve

- (1) The Minister, on the recommendation of the Director, may declare any inland waters to be a fauna reserve.
- (2) The Minister must not make an order in respect of inland waters in which there is a private fishery without the consent of the owner of that fishery.

155. Offences relating to fauna reserves

A person must not –

- (a) take or remove from, place on or in, or introduce in, a fauna reserve or within 100 metres of the edge of the fauna reserve any animal, fish, plant or other living organism without the Director's approval; or

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- (b) interfere with any animal, fish, plant or other living organism in a fauna reserve;
or
- (c) do any act which, in the opinion of the Director, is likely to—
 - (i) disturb or pollute the fauna reserve; or
 - (ii) alter the character of the fauna reserve; or
 - (iii) have a deleterious effect on, or alter the nature of, any animal or vegetation in the fauna reserve.

Penalty: Fine not exceeding 50 penalty units.

Division 3 – Provisions relating to land

156. Purchase or acquisition of land

- (1) The Minister or the Director, with the consent of the Minister, may purchase or acquire land for the purposes of this Act.
- (2) The *Land Acquisition Act 1993* applies to the acquisition of land by the Director.
- (3) The Director, with the consent of the Minister, may sell land under the *Land Acquisition Act 1993*.

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157. Reserved land

- (1) The Minister may make an order declaring land to be reserved land for the purposes of this Act if satisfied that the land is required by the Director for the purposes of this Act.
- (2) The possession, management and control of reserved land vests in the Director.

Division 4 – Powers relating to inland waters

158. Altering bed of river

The Director may make any alteration to the bed of a river to secure free and uninterrupted passage of fish if satisfied that the river and any reef, ledge, shoal or other natural obstruction is likely to—

- (a) prevent or impede the free passage of fish; or
- (b) hinder the approach and access of fish to a fishery and the depositing of spawn in the fishery.

159. Gratings across conduit or channel

- (1) A person in control of a conduit or artificial channel used to direct water from waters frequented by salmon must place efficient gratings across the conduit or channel to prevent the descent or entry of salmon from or into the outflow.

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Penalty: Fine not exceeding 10 penalty units.

- (2) Gratings are to be –
 - (a) constructed and placed in an approved manner; and
 - (b) maintained at the person's own expense.

160. Fish-pass

- (1) The Director, by notice in writing, may require the owner or occupier of a dam placed in or across a river, an outlet or the shores of a lake to make a fish-pass if satisfied that the dam does not permit the free passage of fish.
- (2) A notice is to state the period within which the fish-pass is to be made.
- (3) A fish-pass is to be –
 - (a) made in an approved manner; and
 - (b) maintained at the person's own expense.
- (4) A person must comply with a notice.

Penalty: Fine not exceeding 10 penalty units.

161. Work carried out by Director

If a person fails to comply with this Division, the Director may–

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- (a) do any work or cause to be done any work required to be done by the person; and
- (b) enter into and upon any dam, land or place for that purpose; and
- (c) recover from the person in a court of competent jurisdiction as a debt due to the Director any expenses incurred in doing the work.

162. Using turbines

In carrying out any work in relation to inland waters, a person must provide a grating, lattice or other efficient means of preventing fish from passing into any turbines, pumps or similar hydraulic machines.

Penalty: Fine not exceeding 10 penalty units.

163. Shutting sluices

- (1) The owner or occupier of a dam must keep shut the sluices for drawing off water which would otherwise flow over the dam into waters frequented by freshwater fish so that the water flows –
 - (a) if there is a fish-pass, through the fish-pass in or connected with the dam; or
 - (b) if there is no fish-pass, over the dam.

Penalty: Fine not exceeding 10 penalty units.

- (2) Subsection (1) does not apply if –
- (a) water is required for water-power, navigation, irrigation or other purposes of the dam; or
 - (b) the person opens a sluice to let off water in case of flood; or
 - (c) with prior written notice to the Director, the person cleans or repairs the dam or any works used in connection with the dam.

164. Non-application of Division

- (1) This Division does not apply in relation to –
- (a) a registered private fishery; or
 - (b) a licensed fish farm; or
 - (c) a person exempted under section 165, to the extent of the exemption; or
 - (d) dam works authorised by a permit issued under Part 8 of the *Water Management Act 1999*.
- (2) This section and sections 159, 160 and 162 do not apply to the Hydro-Electric Corporation.

165. Exemption from Division

- (1) A person, by notice in writing, may apply to the Director to be exempted from any of the provisions of this Division.

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- (2) The Director may—
 - (a) grant an application for an exemption with or without any conditions; or
 - (b) refuse to grant the application.
- (3) An exemption remains in force until whichever of the following occurs first:
 - (a) the Director revokes the exemption;
 - (b) the date specified in the exemption as the date on which the exemption ceases to be in force.

Division 5 – Fish Farm Development Committee

166. Fish Farm Development Committee

There is established a Fish Farm Development Committee consisting of –

- (a) the Director; and
- (b) the Secretary of the department responsible for the administration of the *Living Marine Resources Management Act 1995*.

167. General functions and powers of Committee

- (1) The functions of the Fish Farm Development Committee are to arrange for the co-operation and consultation between the Secretary of the department responsible for the administration of the *Living Marine Resources Management Act*

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1995 and the Director on matters relating to fish farms and marine farms.

- (2) The Fish Farm Development Committee may do anything necessary or convenient to perform its functions.

Division 6 – Permits

168. Taking fish from State fishery

- (1) A person who is not the holder of a licence must not take fish from a fishery of the State without a fishing permit.

Penalty: Fine not exceeding 5 penalty units.

- (2) A person is to apply for a fishing permit in accordance with section 170.

169. Taking prohibited action

- (1) A person may apply to the Director for a permit to take any action prohibited under this Act for any of the following purposes:
- (a) scientific research;
 - (b) the promotion of fishing;
 - (c) the development of fisheries;
 - (d) the development of fishing technology;
 - (e) educational and community awareness programs;

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- (f) fish stock depletion or enhancement;
 - (g) the collection, keeping, breeding, hatching or cultivating of freshwater fish;
 - (h) sport or recreation purposes by a person who, in the opinion of the Director, would otherwise be unable by reason of that person's disability to engage in fishing by methods permitted under this Act;
 - (i) any other approved purpose.
- (2) A person is to apply for an exemption permit in accordance with section 170.

170. Application for permit

- (1) An application for a fishing permit or an exemption permit is to –
- (a) be in an approved form; and
 - (b) contain any information the Director requires; and
 - (c) be accompanied by the prescribed fee; and
 - (d) be lodged with the Director.
- (2) The Director may require a person to–
- (a) provide any further information the Director determines; and

- (b) verify by statutory declaration any information given in connection with an application.

171. Grant of permits

The Director may–

- (a) grant an application for a fishing permit or an exemption permit; or
- (b) refuse to grant the application.

172. Issue of permits

The Director is to issue a fishing permit or an exemption permit in an approved form.

173. Conditions of permits

- (1) A fishing permit and an exemption permit is subject to any conditions the Director determines.
- (2) A person must not fail to comply with, or contravene, a condition of a fishing permit or an exemption permit.

Penalty: Fine not exceeding 5 penalty units.

- (3) The Director may vary or omit any condition of a fishing permit or an exemption permit by notice in writing served on the holder of the permit.

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174. Duration of permits

A fishing permit or an exemption permit is in force for the period specified in the permit unless the Director sooner revokes it.

175. Revocation of permits

The Director may revoke a fishing permit or an exemption permit by notice in writing served on the holder of the permit.

Division 7 – Evidence and presumptions

176. Entry in register

In any proceedings for an offence under this Act, a copy of an entry in a register kept under section 196 is evidence –

- (a) that the entry was duly made; and
- (b) of any matter specified in the entry.

177. Identity card

In any proceedings for an offence under this Act, production of an identity card issued under section 20 is evidence of any fact appearing in it.

178. Evidence of licensing and statistical matters

In any proceedings for an offence under this Act, production of a certificate purporting to be

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signed by the Director stating any of the following facts is evidence of those facts:

- (a) that on any date or during any period a person was, or was not, authorised to do anything under a licence or permit or was, or was not, exempted from a specified provision of this Act;
- (b) that on any date or during any period any premises or fisheries were, or were not, the subject of a licence, permit, registration or exemption;
- (c) that on any date or during any period a licence, permit, registration or exemption was cancelled, suspended or had no effect for any other reason.

179. Evidence of certain facts

In any proceedings for an offence under this Act, any of the following allegations in the complaint is evidence of the facts contained in them:

- (a) that any fish is of a specified kind or species or has a particular characteristic;
- (b) that any fish was taken from a particular place or area;
- (c) that any kind or species of fish is, or is not, found in a particular area;
- (d) that an activity occurred in a particular place or area;

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- (e) that any equipment is of a particular type or is designed, used or capable of being used for a particular purpose or for taking a particular species of fish;
- (f) that a person is of a certain age;
- (g) that a person was, or was not, the holder of a licence or permit under this Act.

180. Proof fish were taken for sale

- (1) In any proceedings for an offence under this Act, evidence that any fish taken by a person was subsequently sold by, or on behalf of, the person is evidence that the fish was taken for the purpose of sale.
- (2) In any proceedings for an offence under this Act, evidence that any fish in a person's possession was subsequently sold by, or on behalf of, the person is evidence that the person possessed the fish for the purpose of sale.

181. Presumption of purpose of sale

In any proceedings for an offence under this Act, a person is presumed to have possessed fish for the purpose of sale if it is proved that –

- (a) the fish was at a place in, on or from which fish were normally sold or were sold during a period of 6 months before the offence was allegedly committed; and

- (b) the fish was in the possession of the person who was not a customer.

182. State fishery

In any proceedings for an offence under this Act, unless the contrary is proved –

- (a) a fishery is a fishery of the State; and
- (b) fish taken from a fishery is taken from a fishery of the State.

183. Accuracy of measuring equipment

In any proceedings for an offence under this Act in which evidence is given as to the weight, size, direction or location as determined by an officer, any scales, callipers, rule, compass or other navigational or measuring equipment used by the officer in making the determination are, unless the contrary is proven –

- (a) taken to be accurate; and
- (b) taken to have been operated properly.

Division 8 – Regulations

184. Regulations in general

- (1) The Governor may make regulations for the purpose of this Act.
- (2) Regulations may be made so as to apply differently according to any matter, condition,

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limitation, restriction, exception or circumstance specified in the regulations.

- (3) The regulations may authorise any matter to be determined, applied or regulated by any person or body.
- (4) The regulations may confer a power and impose a duty on a specified person or a specified class of persons.
- (5) The regulations may adopt or incorporate the whole or any part of any document, standard, rule, code, specification or method, with or without modification, issued, prescribed or published by any person or body before or after the regulations take effect.
- (6) Regulations may be of a savings or transitional nature consequent to the enactment of this Act.
- (7) Regulations under subsection (6) may take effect from the commencement of this Act or a later date.

185. Penalties

The regulations may –

- (a) provide that a contravention of, or a failure to comply with, any regulations is an offence; and
- (b) provide for the imposition of a fine for such an offence not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 5

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penalty units for each day during which the offence continues; and

- (c) prescribe a minimum penalty for such an offence; and
- (d) prescribe different maximum penalties for successive offences; and
- (e) provide for the imposition of a special penalty for such an offence not exceeding 1 penalty unit in relation to –
 - (i) each fish or fish of any kind or species taken, bought or sold in connection with the commission of the offence; or
 - (ii) each fish or fish of any kind or species in the possession of any person committing the offence; or
 - (iii) each 500 grams of fish or fish of any kind or species bought or sold in connection with the commission of the offence or in the possession of any person committing the offence; and
- (f) provide for the imposition of a special penalty for such an offence not exceeding 5 penalty units in relation to any equipment or other article used by or in the possession of a person committing the offence; and

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- (g) provide that any special penalty may be imposed for an offence in addition to any other penalty that may be imposed for the offence.

186. Prescribed offences and penalties

- (1) The Governor may make regulations prescribing –
 - (a) offences for the purposes of infringement notices; and
 - (b) the penalty applicable to such offences.
- (2) Offences may be prescribed under subsection (1) that are offences under regulations made under this Act and in force for the time being.

187. Regulations relating to taking fish

- (1) The Governor may make regulations –
 - (a) regulating any fish or any taking of any specified kind or species of fish either generally or for a specified period; and
 - (b) prescribing the minimum size of fish or of any kind or species of fish that may be taken; and
 - (c) prescribing the conditions under which fish or any specified kind or species of fish may be taken; and

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- (d) prohibiting any activity which is likely to be detrimental to taking fish.
- (2) This section does not apply to –
- (a) State waters; or
 - (b) any fish, other than salmon or other declared fish taken from State waters; or
 - (c) any registered private fishery; or
 - (d) any licensed fish farm.
- (3) Subsection (1)(d) does not apply to the Hydro-Electric Corporation.

188. Regulations relating to buying and selling fish

- (1) The Governor may make regulations –
- (a) prohibiting the sale or possession by any specified class of person on business premises of any fish or fish of any specified kind or species of fish; and
 - (b) regulating the buying and selling of any fish or any specified kind or species of fish.
- (2) Subsection (1)(a) does not apply to –
- (a) State waters; or
 - (b) any fish, other than freshwater fish, taken from State waters; or
 - (c) any registered private fishery; or

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- (d) any licensed fish farm.
- (3) Subsection (1)(b) does not apply to –
 - (a) declared fish produced or taken at a licensed fish farm that –
 - (i) are of the kind or species in respect of which that fish farm is licensed; and
 - (ii) have not been removed or escaped from the fish farm and liberated or escaped into any water other than another licensed fish farm; or
 - (b) declared fish imported into the State under this Act.

189. Regulations relating to equipment

- (1) The Governor may make regulations –
 - (a) prescribing the description, form and size of equipment that may be used –
 - (i) to take fish or any specified kind or species of fish; or
 - (ii) in any place for fishing; or
 - (b) regulating the use or possession of any equipment for taking fish or any specified kind or species of fish.
- (2) Subsection (1) does not apply to –

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- (a) State waters; or
- (b) any fish, other than salmon or other declared fish, taken from State waters; or
- (c) any registered private fishery; or
- (d) any licensed fish farm.

190. Regulations relating to conduct

- (1) The Governor may make regulations regulating the conduct of any person –
 - (a) fishing from any specified waters; or
 - (b) entering in or going upon any specified waters or specified land containing, adjoining or adjacent to those waters.
- (2) Subsection (1) does not apply to –
 - (a) State waters; or
 - (b) any fish, other than salmon or other declared fish, taken from State waters; or
 - (c) any registered private fishery; or
 - (d) any licensed fish farm.

191. Regulations relating to disease in private fisheries

The Governor may make regulations with respect to –

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- (a) the control and prevention of disease in, and the spread of disease from, registered private fisheries; and
- (b) the removal and destruction of fish from registered private fisheries in which disease is present; and
- (c) the drainage and cleaning of registered private fisheries in which disease is present; and
- (d) regulating the keeping of fish capable of being a nuisance in a fishery of the State; and
- (e) the liberation of fish in or from registered private fisheries.

192. Regulations relating to importing freshwater fish

The Governor may make regulations regulating the importation of freshwater fish.

193. Regulations relating to marking

- (1) The Governor may make regulations –
 - (a) regulating the marking of freshwater fish; and
 - (b) regulating the possession of marking materials or of marking materials of a specified nature or kind; and

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- (c) regulating the supply of marking materials; and
 - (d) prescribing the manner and circumstances in which marking materials are to be returned or destroyed; and
 - (e) prescribing the manner in which records relating to the supply, use, disposal or destruction of marking materials are to be kept; and
 - (f) prescribing the manner in which, and the persons by whom, freshwater fish may be marked; and
 - (g) regulating the buying, selling or possession of freshwater fish that are not properly marked; and
 - (h) regulating the removal from a licensed fish farm of any freshwater fish unless they are properly marked.
- (2) This section does not apply to the keeping of freshwater fish on a licensed fish farm that are not properly marked if the fish –
- (a) have been produced or taken in that fish farm; and
 - (b) are of a kind or species in respect of which the fish farm is licensed.
- (3) A fish is properly marked if it is marked –
- (a) in the prescribed manner; and

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- (b) by a person authorised under regulations made under this section to mark it.

194. Regulations relating to fees and charges

- (1) The Governor may make regulations prescribing fees and charges in relation to –
 - (a) any matter under this Act; and
 - (b) any services provided under this Act.
- (1A) The Governor may make regulations providing for the payment of royalties in respect of the taking of eels.
- (2) Regulations made under this section may prescribe a fee, charge or royalty by–
 - (a) specifying a set amount; or
 - (b) specifying any other method of calculating the fee, charge or royalty.

195. Waiving and refund of fees, charges or royalties

The Director may waive or refund any fees, charges or royalties or part of any fees, charges or royalties payable under this Act.

Division 9 – Miscellaneous

196. Registers

- (1) The Director is to keep a separate register of each of the following:

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- (a) registered premises;
 - (b) registered fish dealers;
 - (c) registered private fisheries;
 - (d) commercial freshwater fishing licences;
 - (e) fish farm licences.
- (2) Each register is to contain the following particulars:
- (a) the full name and address of any person to whom the registration or licence relates;
 - (b) the particulars of any premises to which the registration or licence relates;
 - (c) the date on which the registration or licence took effect;
 - (d) any condition to which the registration or licence is subject;
 - (e) the cancellation of the registration or licence;
 - (f) any other information the Director determines.
- (3) A person, on payment of the prescribed fee, may
- (a) inspect a register; or
 - (b) obtain a copy of, or extract from, a register.

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197. Taking fish at specified dates

- (1) The Minister, by order, may determine the seasons, dates and places on or at which the taking of any specified kind or species of fish may –
 - (a) start and stop; or
 - (b) be prohibited; or
 - (c) be permitted.
- (2) The Minister may impose any condition to an order.
- (3) A person must comply with an order.

Penalty: Fine not exceeding 5 penalty units.

197A. Aiding and abetting

A person must not aid, abet or induce another person to commit an offence under this Act or any subordinate legislation made under this Act.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding one year, or both.

197B. Limitation on time for complaints

Notwithstanding the *Justices Act 1959*, a complaint for an offence under this Act or any subordinate legislation made under this Act may be brought at any time within 5 years from the

date on which the matter giving rise to the complaint arose.

197C. Validation of royalties and fees

(1) In this section –

amending Act means the *Inland Fisheries Amendment (Royalties) Act 2019*;

commercial freshwater fishing licence (eel) means a commercial freshwater fishing licence that authorises the taking of eel;

eel royalty means an amount paid under the former regulations by the holder of a commercial freshwater fishing licence (eel) –

- (a) on the renewal of that licence; and
- (b) for each kilogram of fish caught under the authority of that licence during the previous year;

fish farm licence fee means an amount paid under the former regulations by the holder of a fish farm licence in respect of the issue or renewal of that licence where the amount paid was based on –

- (a) megalitres of commissional water rights; or

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- (b) each megalitre of a water allocation on a licence under the *Water Management Act 1999*;

former regulations means the following regulations:

- (a) the *Inland Fisheries Regulations 1996*;
 - (b) the *Inland Fisheries (Commercial Nets and Fees) Regulations 1999*;
 - (c) the *Inland Fisheries (General) Regulations 2009*.
- (2) An eel royalty, or fish farm licence fee, prescribed, and collected by the Director, before the commencement of the amending Act is not invalid solely on the basis that the provisions of the former regulations that purportedly prescribed such a royalty, or fee, were invalid.
 - (3) No action lies against the Crown in right of Tasmania, or the Director, in relation to any loss incurred by a person if the loss is only incurred as a consequence of the imposition or the payment of an eel royalty or a fish farm licence fee, that, but for this section, would not have been validly imposed or collected.

198. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

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- (a) the administration of this Act is assigned to the Minister for Inland Fisheries; and
- (b) the Department responsible to the Minister for Inland Fisheries in relation to the administration of this Act is the Department of Environment and Land Management.

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SCHEDULE 1 – INLAND WATERS

Section 3

Inland Waters

1. Big Lagoon in the Parish of Hartlepool in the County of Dorset.
2. Big Waterhouse Lake.
3. Dianas Basin.
4. Grants Lagoon.
5. Little Waterhouse Lake.
6. Sloop Lagoon.
7. Pittwater—the part into which the Orielson Rivulet flows that lies to the north of the causeway carrying the Tasman Highway between Midway Point and Sorell.
8. Rushy Lagoon.
9. Templestowe Lagoon.
10. Wrinkler's Lagoon.

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SCHEDULE 2 –

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**SCHEDULE 3 – MEMBERSHIP AND MEETINGS OF
COUNCIL**

Section 20A(3)

1. Interpretation

In this Schedule –

chairperson means the chairperson of the
Council;

member means a member of the Council.

2. Period of appointment

(1) A member, other than the Director, is to be appointed for a period, not exceeding 4 years, as specified in the instrument of appointment.

(2)

3. Holding other office

(1) The holder of an office who is required under any Act to devote the whole of the time to the duties of that office is not disqualified from –

(a) holding that office and also the office of a member; or

(b) accepting any remuneration payable to a member.

(2) If a State Service officer or State Service employee is appointed as a member, the officer

or employee retains all existing and accruing rights as if service as a member was service within the meaning of the *State Service Act 2000*.

4. Remuneration

A member is entitled to be paid any remuneration and travelling and subsistence allowances the Minister determines.

5. Vacation of office

- (1) A member vacates office if the member –
 - (a) dies; or
 - (b) resigns; or
 - (c) is removed from office under subclause (2) or (3).
- (2) The Minister may remove a member from office if the member –
 - (a) is absent from 3 consecutive meetings of the Council without the permission of the Council; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any remuneration or estate for their benefit; or

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- (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer.
- (3) The Minister may remove a member from office if satisfied that the member –
 - (a) is permanently unable to perform adequately or competently the duties of office; or
 - (b) no longer has the qualifications as necessary to be appointed as a member.

6. Filling of vacancies

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

7. Meetings of Council

- (1) The chairperson or any other 2 members may convene a meeting of the Council.
- (2) The Council is to meet at least 4 times a year.

8. Procedure at meetings

- (1) The quorum at any duly convened meeting of the Council is 6 members, one of whom must be the chairperson.

- (2) Any duly convened meeting of the Council at which a quorum is present is competent to transact any business of the Council.
- (3) A question arising at a meeting of the Council is to be determined by a majority of votes of the members present and voting.

9. Chairperson

- (1) The chairperson is to preside at all meetings of the Council.
- (2) If the chairperson is not present at a meeting of the Council, a member elected by the members present is to preside at that meeting.

10. Minutes

- (1) The Council is to keep minutes of the –
 - (a) proceedings at the meetings; and
 - (b) attendance of members at the meetings.
- (2) Minutes kept of a meeting are to be signed by the chairperson at the next meeting.

11. General procedure

Subject to this Schedule, the procedure for the calling of, and for the conduct of business at, meetings of the Council is to be determined by the Council.

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12. Validity of proceedings

- (1) An act or proceeding of the Council or of a person acting under the direction of the Council is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Council.
- (2) An act or proceeding of the Council or of a person acting under the direction of the Council is valid even if –
 - (a) the appointment of a member was defective; or
 - (b) a person appointed as a member was disqualified from acting as, or incapable of being, such a member.

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SCHEDULE 4 –

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NOTES

The foregoing text of the *Inland Fisheries Act 1995* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 12 December 2019 are not specifically referred to in the following table of amendments.

| Act | Number and year | Date of commencement |
|---|-----------------|----------------------|
| <i>Inland Fisheries Act 1995</i> | No. 110 of 1995 | 31.5.1996 |
| <i>Financial Institutions (Miscellaneous Amendments) Act 1996</i> | No. 62 of 1996 | 1.1.1997 |
| <i>Inland Fisheries Amendment Act 1999</i> | No. 101 of 1999 | 1.3.2000 |
| <i>Inland Fisheries Amendment (Penal) Act 2000</i> | No. 58 of 2000 | 19.9.2000 |
| <i>Superannuation (Miscellaneous and Consequential Amendments) Act 2000</i> | No. 103 of 2000 | 13.12.2000 |
| <i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i> | No. 86 of 2000 | 1.5.2001 |
| <i>Statute Law Revision Act 2003</i> | No. 9 of 2003 | 16.4.2003 |
| <i>Inland Fisheries Amendment Act 2002</i> | No. 55 of 2002 | 10.5.2003 |
| <i>Police Service (Consequential Amendments) Act 2003</i> | No. 76 of 2003 | 1.1.2004 |
| <i>Inland Fisheries Amendment Act 2005</i> | No. 45 of 2005 | 24.11.2005 |
| <i>Public Sector Superannuation (Miscellaneous Amendments) Act 2005</i> | No. 65 of 2005 | 15.12.2005 |
| <i>Tasmanian Ports Corporation Act 2005</i> | No. 41 of 2005 | 31.12.2005 |
| <i>Dam Works Legislation (Miscellaneous Amendments) Act 2007</i> | No. 6 of 2007 | 16.7.2007 |
| <i>Inland Fisheries Amendment Act 2007</i> | No. 64 of 2007 | 19.12.2007 |
| <i>Monetary Penalties Enforcement (Transitional Arrangements and Consequential Amendments) Act 2007</i> | No. 72 of 2007 | 28.4.2008 |
| <i>Inland Fisheries Amendment Act 2009</i> | No. 7 of 2009 | 27.4.2009 |
| <i>Monetary Penalties Enforcement (Miscellaneous Amendments) Act 2011</i> | No. 4 of 2011 | 1.6.2011 |
| <i>Water Management Amendment</i> | No. 34 of 2015 | 1.1.2016 |

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| Act | Number and year | Date of commencement |
|---|-----------------|----------------------|
| <i>(Consequential and Transitional Provisions) Act 2015</i> | | |
| <i>Public Sector Superannuation Reform (Consequential and Transitional Provisions) Act 2016</i> | No. 54 of 2016 | 31.3.2017 |
| <i>Finfish Farming Environmental Regulation Act 2017</i> | No. 46 of 2017 | 4.12.2017 |
| <i>Financial Management (Consequential and Transitional Provisions) Act 2017</i> | No. 4 of 2017 | 1.7.2019 |
| <i>Inland Fisheries Amendment (Royalties) Act 2019</i> | No. 46 of 2019 | 12.12.2019 |

TABLE OF AMENDMENTS

| Provision affected | How affected |
|----------------------|---|
| Section 3 | Amended by No. 101 of 1999, s. 4, No. 103 of 2000, Sched. 1 Substituted by No. 55 of 2002, s. 4 Amended by No. 65 of 2005, Sched. 1, No. 64 of 2007, s. 4 and No. 54 of 2016, s. 49 |
| Section 4 | Amended by No. 7 of 2009, s. 4 |
| Section 9 | Repealed by No. 101 of 1999, s. 5 |
| Section 10 | Amended by No. 9 of 2003, Sched. 1 |
| Part 2 | Substituted by No. 101 of 1999, s. 6 |
| Division 1 of Part 2 | Inserted by No. 101 of 1999, s. 6 |
| Section 11 | Substituted by No. 101 of 1999, s. 6 Amended by No. 86 of 2000, Sched. 1, No. 103 of 2000, Sched. 1, No. 65 of 2005, Sched. 1 and No. 54 of 2016, s. 50 |
| Section 12 | Substituted by No. 101 of 1999, s. 6 |
| Section 13 | Substituted by No. 101 of 1999, s. 6 |
| Section 14 | Substituted by No. 101 of 1999, s. 6 |
| Section 15 | Substituted by No. 101 of 1999, s. 6 |
| Section 16 | Substituted by No. 101 of 1999, s. 6 Amended by No. 103 of 2000, Sched. 1 and No. 46 of 2019, s. 4 |
| Section 17 | Amended by No. 62 of 1996, s. 3 and Sched. 1 Substituted by No. 101 of 1999, s. 6 Amended by No. 4 of 2017, Sched. 1 |
| Section 18 | Substituted by No. 101 of 1999, s. 6 |
| Section 19 | Substituted by No. 101 of 1999, s. 6 Amended by No. 86 of 2000, Sched. 1 |
| Section 20 | Substituted by No. 101 of 1999, s. 6 |

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| Provision affected | How affected |
|----------------------|---|
| Division 2 of Part 2 | Amended by No. 86 of 2000, Sched. 1 Inserted by No. 101 of 1999, s. 6 |
| Section 20A | Inserted by No. 101 of 1999, s. 6 Amended by No. 55 of 2002, s. 5 |
| Section 20B | Inserted by No. 101 of 1999, s. 6 |
| Section 21 | Amended by No. 55 of 2002, s. 7 |
| Section 22 | Repealed by No. 55 of 2002, s. 8 |
| Section 23 | Amended by No. 101 of 1999, Sched. 1 Repealed by No. 55 of 2002, s. 8 |
| Section 24 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, s. 9 |
| Section 25 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, s. 10 |
| Section 26 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, Sched. 3 |
| Section 27 | Amended by No. 55 of 2002, Sched. 3 |
| Section 28 | Amended by No. 101 of 1999, Sched. 3 and No. 55 of 2002, Sched. 3 |
| Section 29 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, Sched. 3 |
| Section 30 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, Sched. 3 |
| Section 31 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, Sched. 3 |
| Section 32 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, s. 11 |
| Section 33 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, Sched. 3 |
| Section 34 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, Sched. 3 |
| Section 35 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, Sched. 3 |
| Section 36 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, Sched. 3 |
| Section 37 | Amended by No. 101 of 1999, s. 8 |
| Section 38 | Amended by No. 101 of 1999, s. 9, No. 45 of 2005, s. 4 and No. 64 of 2007, s. 5 |
| Section 38A | Inserted by No. 58 of 2000, s. 4 |
| Section 40 | Amended by No. 101 of 1999, Sched. 1 |
| Section 41 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, Sched. 2 |
| Section 42 | Amended by No. 55 of 2002, s. 13 |
| Section 43 | Amended by No. 55 of 2002, Sched. 2 |
| Section 45 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, s. 14 |
| Section 46 | Amended by No. 55 of 2002, Sched. 2 |
| Section 47 | Amended by No. 55 of 2002, s. 16 |

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| Section 48 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, Sched. 2 |
| Section 49 | Amended by No. 55 of 2002, Sched. 2 |
| Section 50 | Amended by No. 101 of 1999, Sched. 1 |
| Section 51 | Amended by No. 101 of 1999, Sched. 1 |
| Section 51A | Inserted by No. 46 of 2017, s. 26 |
| Section 52 | Amended by No. 101 of 1999, Sched. 1 |
| Section 57 | Amended by No. 55 of 2002, Sched. 3 |
| Section 58 | Amended by No. 58 of 2000, s. 5 and No. 55 of 2002, Sched. 3 |
| Section 59 | Amended by No. 58 of 2000, s. 6 |
| Section 61 | Substituted by No. 55 of 2002, s. 18 |
| Section 62 | Amended by No. 101 of 1999, Sched. 1 Substituted by No. 55 of 2002, s. 18 |
| Section 63 | Amended by No. 101 of 1999, Sched. 3, No. 101 of 1999, Sched. 1 Substituted by No. 55 of 2002, s. 18 |
| Section 64 | Amended by No. 101 of 1999, Sched. 1 Substituted by No. 55 of 2002, s. 18 |
| Section 65 | Amended by No. 101 of 1999, Sched. 1 Repealed by No. 55 of 2002, s. 19 Substituted by No. 55 of 2002, s. 18 |
| Section 66 | Amended by No. 101 of 1999, Sched. 3 Repealed by No. 55 of 2002, s. 19 Substituted by No. 55 of 2002, s. 18 |
| Section 67 | Amended by No. 101 of 1999, Sched. 1 Repealed by No. 55 of 2002, s. 19 Substituted by No. 55 of 2002, s. 18 |
| Division 2 of Part 4 | Repealed by No. 55 of 2002, s. 19 |
| Section 68 | Amended by No. 101 of 1999, Sched. 1 Repealed by No. 55 of 2002, s. 19 |
| Section 69 | Amended by No. 101 of 1999, Sched. 1 |
| Section 70 | Amended by No. 101 of 1999, Sched. 3 and No. 101 of 1999, Sched. 1 |
| Section 71 | Amended by No. 101 of 1999, Sched. 1 |
| Section 73 | Amended by No. 101 of 1999, Sched. 1 |
| Section 74 | Amended by No. 101 of 1999, Sched. 1 |
| Section 76 | Amended by No. 101 of 1999, Sched. 1 |
| Section 76A | Inserted by No. 55 of 2002, s. 20 |
| Section 77 | Amended by No. 101 of 1999, Sched. 1 |
| Section 78 | Amended by No. 101 of 1999, Sched. 1 |
| Section 79 | Amended by No. 101 of 1999, Sched. 1 |
| Section 80 | Amended by No. 101 of 1999, Sched. 1 |
| Section 82 | Amended by No. 101 of 1999, Sched. 1 |
| Section 83 | Amended by No. 101 of 1999, Sched. 1 |
| Section 84 | Amended by No. 76 of 2003, Sched. 1 |
| Section 93 | Amended by No. 101 of 1999, Sched. 1 |

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| Section 109 | Amended by No. 101 of 1999, Sched. 1 |
| Section 110 | Amended by No. 101 of 1999, Sched. 1 and No. 4 of 2011, s. 40 |
| Section 111 | Amended by No. 101 of 1999, Sched. 1 |
| Section 112 | Amended by No. 101 of 1999, Sched. 1 |
| Section 113 | Amended by No. 101 of 1999, Sched. 1 |
| Section 114 | Amended by No. 101 of 1999, Sched. 1 |
| Section 115 | Amended by No. 101 of 1999, Sched. 1 |
| Section 116 | Amended by No. 101 of 1999, Sched. 1 |
| Section 118 | Amended by No. 72 of 2007, Sched. 1 |
| Section 119 | Amended by No. 101 of 1999, s. 13 Repealed by No. 72 of 2007, Sched. 1 |
| Section 120 | Repealed by No. 101 of 1999, s. 14 |
| Section 121 | Repealed by No. 72 of 2007 |
| Section 122 | Amended by No. 101 of 1999, s. 15, No. 101 of 1999, Sched. 1 Substituted by No. 72 of 2007 Amended by No. 4 of 2017, Sched. 1 |
| Section 123 | Repealed by No. 72 of 2007 |
| Section 124 | Amended by No. 101 of 1999, Sched. 1 Repealed by No. 72 of 2007 |
| Section 125 | Repealed by No. 72 of 2007 |
| Section 126 | Amended by No. 101 of 1999, Sched. 1, No. 9 of 2003, Sched. 1 and No. 41 of 2005, Sched. 1 |
| Section 128 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, Sched. 1 |
| Section 128A | Inserted by No. 55 of 2002, s. 22 |
| Section 129 | Amended by No. 101 of 1999, Sched. 1 Substituted by No. 55 of 2002, s. 23 |
| Section 131 | Amended by No. 55 of 2002, Sched. 1 |
| Section 132 | Amended by No. 101 of 1999, Sched. 1 and No. 64 of 2007, s. 6 |
| Section 133 | Amended by No. 101 of 1999, Sched. 1 |
| Section 134 | Amended by No. 55 of 2002, s. 24 |
| Section 135 | Amended by No. 55 of 2002, Sched. 3 |
| Section 138 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, s. 25 |
| Section 139 | Amended by No. 101 of 1999, Sched. 1, No. 6 of 2007, s. 43 and No. 34 of 2015, s. 12 |
| Section 140A | Inserted by No. 55 of 2002, s. 26 |
| Section 140B | Inserted by No. 55 of 2002, s. 27 |
| Section 145 | Amended by No. 101 of 1999, Sched. 2 |
| Section 148 | Amended by No. 101 of 1999, Sched. 2 |
| Section 148A of Part 7 | Inserted by No. 58 of 2000, s. 7 |
| Section 151 | Amended by No. 101 of 1999, Sched. 1 |
| Section 152 | Amended by No. 101 of 1999, Sched. 2 and No. 4 of 2017, Sched. 1 |

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| Section 154 | Amended by No. 101 of 1999, Sched. 1 |
| Section 155 | Amended by No. 101 of 1999, Sched. 1 |
| Section 156 | Amended by No. 101 of 1999, Sched. 1 |
| Section 157 | Amended by No. 101 of 1999, Sched. 1 |
| Section 158 | Amended by No. 101 of 1999, Sched. 1 |
| Section 160 | Amended by No. 101 of 1999, Sched. 1 |
| Section 161 | Amended by No. 101 of 1999, Sched. 1 |
| Section 163 | Amended by No. 101 of 1999, Sched. 1 |
| Section 164 | Amended by No. 6 of 2007, s. 44 and No. 34 of 2015, s. 13 |
| Section 165 | Amended by No. 101 of 1999, Sched. 1 |
| Section 166 | Amended by No. 101 of 1999, Sched. 2 |
| Section 167 | Amended by No. 101 of 1999, Sched. 1 |
| Section 169 | Amended by No. 101 of 1999, Sched. 1 |
| Section 170 | Amended by No. 101 of 1999, Sched. 1 |
| Section 171 | Amended by No. 101 of 1999, Sched. 1 |
| Section 172 | Amended by No. 101 of 1999, Sched. 1 |
| Section 173 | Amended by No. 101 of 1999, Sched. 1 |
| Section 174 | Amended by No. 101 of 1999, Sched. 1 |
| Section 175 | Amended by No. 101 of 1999, Sched. 1 |
| Section 178 | Amended by No. 101 of 1999, Sched. 2 |
| Section 185 | Amended by No. 101 of 1999, s. 17 |
| Section 194 | Amended by No. 46 of 2019, s. 5 |
| Section 195 | Amended by No. 101 of 1999, Sched. 1 and No. 46 of 2019, s. 6 |
| Section 196 | Amended by No. 101 of 1999, Sched. 1 and No. 55 of 2002, s. 28 |
| Section 197A | Inserted by No. 64 of 2007, s. 7 |
| Section 197B | Inserted by No. 64 of 2007, s. 7 |
| Section 197C | Inserted by No. 46 of 2019, s. 7 |
| Schedule 2 | Repealed by No. 55 of 2002, s. 29 |
| Schedule 3 | Substituted by No. 101 of 1999, s. 18 Amended by No. 86 of 2000, Sched. 1 and No. 54 of 2016, s. 51 |
| Schedule 4 | Repealed by No. 101 of 1999, s. 19 |
