

Explanatory Paper

Draft Finfish Farming Environmental Regulation Bill 2017

Overview

The purpose of this paper is to provide an explanation of the main features of the draft Finfish Farming Environmental Regulation Bill 2017. The draft Bill provides for changes to the existing legislative framework so that powers over day-to-day environmental regulation of the finfish farming industry will be formally transferred from the Department of Primary Industries, Parks, Water and Environment (DPIPWE) to the Environment Protection Authority (EPA).

Proposed legislative changes cover the environmental regulation of both marine and freshwater finfish farming activities, including hatcheries. The planning and development processes for finfish marine farming will remain substantially unchanged and will continue under existing legislation. The draft Bill intends to provide a clearer separation of statutory responsibilities, and further strengthen existing regulatory processes to ensure that they keep pace with industry growth and meet community and market expectations.

Proposed legislative changes also cover the declaration of finfish marine farming exclusion zones. The draft Bill provides the mechanism for their declaration and revocation, and a prohibition on the preparation of marine farming development plans (MFDPs) for finfish farming in areas where there is a finfish marine farming exclusion zone.

To enable ongoing environmental regulation of the industry by the EPA, it will be necessary to amend the *Environmental Management and Pollution Control Act 1994* (EMPCA), the *Marine Farming Planning Act 1995* (MFPA), the *Living Marine Resources Management Act 1995* (LMRMA) and the *Inland Fisheries Act 1995* (IFA).

A summary of the proposed new arrangements is shown in the attached diagram.

Summary of amendments

EMPCA (Part 2 of the draft Bill)

EMPCA is Tasmania's main Act for environmental management and pollution control regulation – including provision for the establishment of the EPA, the appointment of a Director and Board, and powers for the EPA and authorised officers.

A key aspect of the EMPCA amendments is the creation of an environmental licence (EL), which is a new regulatory instrument (in the new **Division 8, Part 3** of EMPCA). It will facilitate environmental regulation by providing powers not presently in EMPCA, but which to a large extent mirror those in the IFA and LMRMA. The EL will provide flexible powers to impose and vary conditions on the operation of finfish farming activities. It will also provide for the:

- power to refuse a licence on the basis of an unsatisfactory environmental compliance record and other factors;
- power to grant a licence for either a limited period or indefinitely;
- power to suspend or cancel a licence; and
- power to disqualify a person from holding a licence.

Finfish Farming Environmental Regulation

Finfish farming (defined in new **section 5C** of EMPCA) will become a level 2 activity under schedule 2 of EMPCA. This will apply to both existing finfish farming activities and proposed new activities.

In the future, operators of a marine or freshwater finfish farm will be required to hold an EL under EMPCA in addition to a Marine Farming Licence under the LMRMA or Inland Fish Farm Licence under the IFA. For finfish marine farms, ELs will not necessarily coincide with leases – where there is a sub-lease, the lessee will require a separate EL.

Granting of Environmental Licences

Provisions are included to cover the granting of ELs for both existing finfish farming activities (**Subdivision 2, Division 8** of EMPCA) as well as proposed new activities (**Subdivision 3, Division 8**).

In relation to existing finfish farming activities:

- Existing authorisations (including marine and inland fish farm licences, permits and environment protection notices) will continue fully in force until the Director EPA grants and issues an EL.
- Environmental conditions of existing authorisations will be transferred to the EL and new conditions may be added.
- Where there is non-compliance with existing conditions, an Environmental Improvement Program (EIP) may be required.
- Where appropriate, two or more existing activities may be combined under one EL.
- There will be an appeal right for licence holders, but only against any new conditions that are imposed (except a condition requiring an EIP). In this and all other cases, appeals are to the Resource Management and Planning Appeal Tribunal (RMPAT).

In relation to proposed new finfish farming activities, **Subdivision 3, Division 8** of EMPCA will distinguish between marine and inland fish farms.

For proposed marine farms:

- When an application for an EL relating to a marine farming activity is received, the default process will be for the Director to internally assess the application and grant or refuse to grant an EL. In some instances, the Director may choose to refer the application to the EPA Board for full assessment.
- The Director must refuse to accept an application for an EL in relation to a proposed marine farm where no marine farm lease or special permit has been granted.

For proposed inland fish farms that require a permit under the *Land Use Planning and Approvals Act 1993* (LUPAA):

- The existing LUPAA/EMPCA assessment process will apply within the broader framework set out by the Resource Management and Planning System (RMPS). At the end of the process, the Board may grant an EL with conditions or refuse to grant an EL.
- Environmental conditions will not be included in the LUPAA permit, however, the Board will still direct the relevant Council to refuse to grant a permit if it does not grant an EL.
- The above applies to ordinary LUPAA permit applications, combined permit/scheme amendment applications and Project of Regional Significance (PORS) applications.

For proposed inland fish farms that do not require a LUPAA permit (because the relevant interim planning scheme or Local Provisions Schedule does not require permit applications for fish farms), the Board will assess the proposal by a process similar to the one currently existing under section 27 of EMPCA.

In all cases where an EL is granted for a new activity:

- Appropriate conditions may be imposed (new **section 42Z** of EMPCA);
- There will be appeal rights for applicants and representors that are largely similar to those already existing (new **Subdivision 9, Division 8** of EMPCA); and
- Provisions will be included to ensure consistency between the conditions of an EL and the conditions of approvals issued under other legislation.

Changes to Environmental Licences once granted (Subdivisions 4, 5, 6 and 8 of Division 8):

- ELs may be varied either on application, on the Director's initiative, or by the Board following an assessment process.
- Upon receiving a variation application, the Director may decide that an application will not be accepted if there will be a LUPAA permit application and subsequent assessment by the Board. Otherwise, the Director must determine whether the variation is minor or major. If minor, the Director will assess it internally and vary/refuse to vary the EL. If major, the Director will refer the application to the Board for assessment.
- Fixed-term ELs may be renewed either on application, or on the Director's initiative (under exceptional circumstances).
- ELs may be transferred – this may be subject to conditions or restrictions.
- ELs may be suspended or cancelled. In such cases, the Director must give notice and invite the licence holder to submit an objection before a final decision is made.
- A person may be disqualified from holding an EL, after licence cancellation.
- A person may apply to surrender a licence. The Director may apply conditions to the surrender.
- There will be appeal rights for the licence holder in relation to most of the above decisions. Where the Board varies a licence there will also be an appeal right for representors.

Offence Provisions

Offences relating to finfish farming (new **section 42C**) will be:

- conducting a finfish farming activity without an EL;
- contravening the conditions of an EL;
- expanding, intensifying or modifying an activity without approval;
- ceasing or resuming an activity without notifying the Director.

It is also proposed that provisions be included in EMPCA to enable regulations to be made for special penalties for contravention of particular types of EL conditions. The provisions will be similar to those in section 91 of the MFPA. Regulations will prescribe the quantum of a special penalty to be imposed on conviction for contravention of a specified EL condition or conditions, and the method of calculating the penalty.

Notifications

Under the new **section 42ZE**, the Director EPA will be required to notify the Inland Fisheries Service and DPIPW of all significant decisions under EMPCA in relation to finfish farming activities. These provisions complement amendments that will be made to the IFA, MFPA and LMRMA to require the Director to be notified of significant decisions relating to finfish farming under those Acts.

Miscellaneous

Various provisions of EMPCA will be amended to take account of the new EL instrument – for example, section 55 will be amended to enable RMPAT to make civil enforcement orders in relation to ELs.

Regulations

- EMPCA will be amended to provide for EL fees to be imposed under the *Environmental Management and Pollution Control (General Fees) Regulations 2007* (which will be amended soon after the Act amendments commence). The quantum of fees to be applied is currently being considered.
- Where a LUPAA permit and EL are required for a new finfish activity, the EMPCA assessment fee will be as for the existing assessment process (as currently prescribed in the General Fees Regulations).
- Several other matters may require prescription under regulations – for example, the criteria for granting a licence that covers more than one finfish farming activity. Suitable provisions are being made in the amendments to enable appropriate regulations to be developed.
- Regulations will be required to specify the quantum and calculation method for special penalties.

These regulations will be made later in accordance with the normal requirements of the *Subordinate Legislation Act 1992*.

IFA amendments (Part 3 of the draft Bill)

Provision has been made for the Director of the Inland Fisheries Service to notify the Director, EPA of significant decisions in relation to inland fish farm licences associated with finfish farming.

LMRMA amendments (Part 4 of the draft Bill)

Provision has been made for the Secretary of DPIPWE to notify the Director, EPA of significant decisions in relation to marine farm licences relating to finfish farming. Amendments will be made to preclude the Minister for Primary Industries and Water from using the section 11 exemption power to exempt a finfish farming activity from other approvals.

MFPA amendments (Part 5 of the draft Bill)

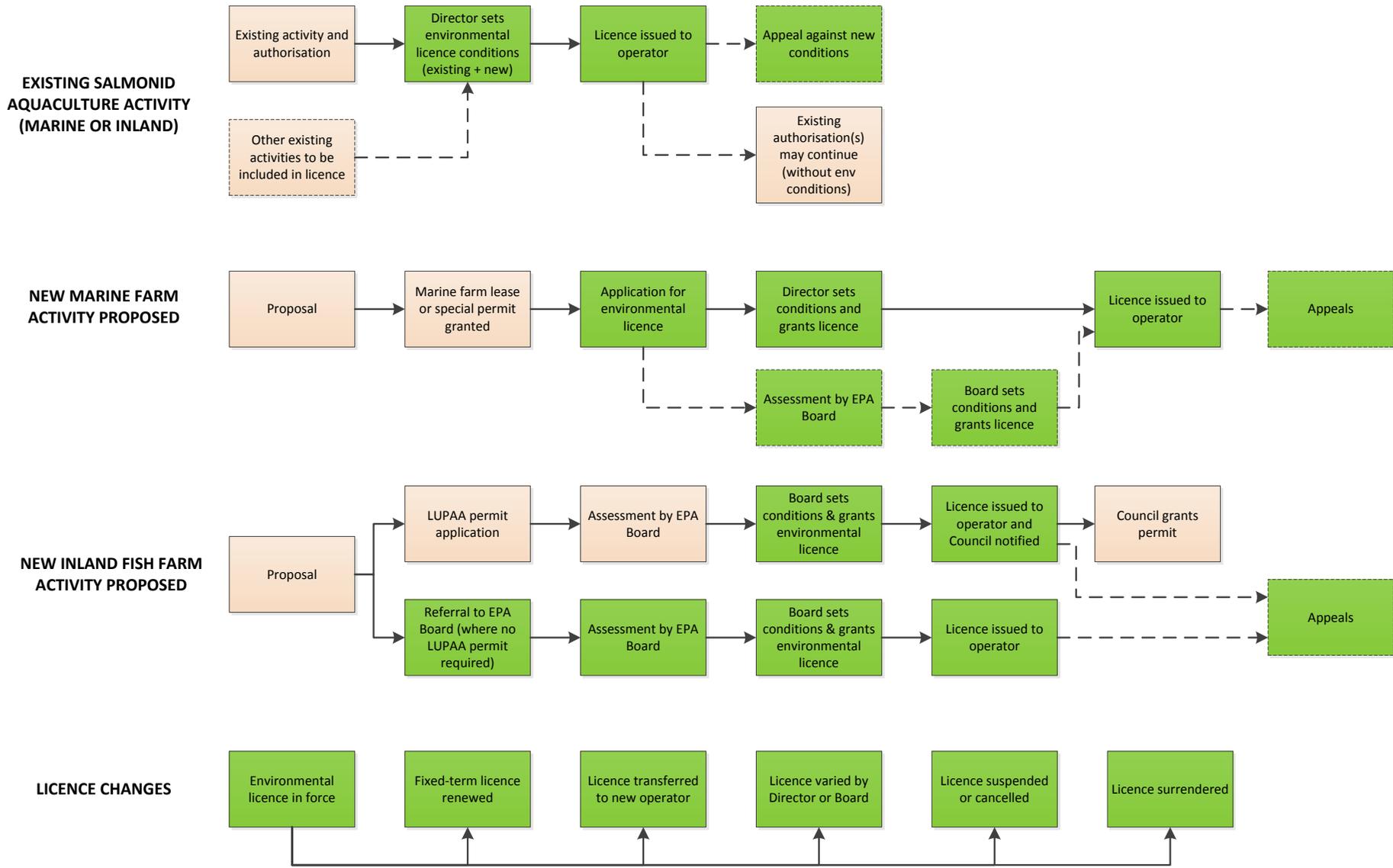
Provision has been made to grant the Director, EPA greater powers in relation to the development and amendment of Marine Farming Development Plans (MFDPs) relating to finfish farming. Primarily, the Director may require certain environmental matters to be addressed in Environmental Impact Statements and draft MFDPs.

Provisions have also been included to grant powers for the Director in relation to the issuing and amendment of emergency orders and plans relating to finfish farming and for the Minister of Primary Industries and Water to notify the Director, EPA of significant decisions in relation to finfish marine farm leases.

Provision has been made to remove the Director from the Marine Farming Review Panel, and replace them with a person with ability and experience in environmental management.

Provision has also been made for the declaration and revocation of finfish marine farming exclusion zones. Such zones are to be declared or revoked by the Governor with the approval of Parliament. In addition, MFDPs relating to finfish marine farming cannot be prepared for areas declared finfish marine farming exclusion zones.

Proposed Environmental Licensing Processes for Finfish Farming Activities



Note: This diagram is not fully representative of the proposed legislative changes. The draft Bill should be referred to for legal purposes.

Existing processes (Orange box)
New processes (Green box)

