

***FISH RESOURCES MANAGEMENT AMENDMENT BILL 2001***

**EXPLANATORY NOTES**

**CLAUSE 1 SHORT TITLE**

ESTABLISHES THAT THE ACT MAY BE CITED AS  
THE '*FISH RESOURCES MANAGEMENT  
AMENDMENT ACT 2001*'.

**CLAUSE 2 COMMENCEMENT**

PROVIDES THAT THE ACT COMES INTO  
OPERATION ON THE DAY IT RECEIVES ROYAL  
ASSENT.

**NOTE:** IT IS IMPERATIVE IN THE CONTEXT OF  
THE VALIDATION PROVISIONS THAT THE ACT  
COMES INTO OPERATION ASAP. [SEE ALSO  
NOTES TO CLAUSE (8)]

**CLAUSE 3 THE ACT [FRMA] - AMENDED**

THE AMENDMENTS IN THIS ACT ARE TO THE  
*FISH RESOURCES MANAGEMENT ACT 1994* [FRMA]

**NOTE:**

THE FRMA WAS REPRINTED AS AT 28 APRIL  
2000 TO AMALGAMATE A NUMBER OF  
EXTERNALLY INITIATED AMENDMENTS - E.G.  
*THE ACTS AMENDMENT (MARINE RESERVES)*  
*BILL* (SEE LIST OF AMENDING LEGISLATION  
ANNEXED).

**CLAUSE 4 SECTION 3 [OBJECTS] – AMENDED**

IN ADDITION TO THE ORIGINAL STATEMENT OF  
OBJECTS IN RELATION TO ‘AQUACULTURE’  
(S.3(2)(D)), THIS CLAUSE INSERTS THE  
EXTENDED OBJECT OF THE ‘*ESTABLISHMENT*

*AND MANAGEMENT OF AQUACULTURE FACILITIES  
FOR COMMUNITY OR COMMERCIAL PURPOSES’.*

THIS BROADLY DRAFTED OBJECT IS INTENDED  
TO ENSURE THE INCLUSION OF THE CONCEPT  
OF ‘AQUACULTURE PARKS’ (SEE ALSO CLAUSE  
8).

**NOTE:** THE ‘AQUACULTURE PARK’ CONCEPT IS  
A CONCEPT SIMILAR TO WHAT IS SOMETIMES  
REFERRED TO AS A ‘TECHNOLOGY PARK’. IT IS  
THE PROVISION OF INFRASTRUCTURE AND  
ANCILLARY SERVICES OF A TYPE DESIGNED TO  
ATTRACT TENANTS WHO ARE PREPARED TO  
PURSUE AQUACULTURE AND ASSOCIATED  
ACTIVITIES IN THE PARK.

**CLAUSE 5 SECTION 4 INTERPRETATION – AMENDED**

THE DEFINITION OF ‘SECURITY HOLDER’ WHICH  
APPEARS IN ITS ALPHABETICAL ORDER IN THE  
SECTION - AND IS DEFINED IN THE CONTEXT OF  
‘AUTHORISATIONS’ [LICENCES AND PERMITS] -

IS AMENDED IN TWO PLACES TO INCLUDE THE  
HOLDERS OF SECURITY INTERESTS OVER  
'AQUACULTURE LEASES'.

**CLAUSE 6 SECTION 97 [GRANT OF AQUACULTURE  
LEASES] - AMENDED**

THIS CLAUSE AMENDS THE EXISTING  
PROVISION TO REMOVE POSSIBLE AMBIGUITIES.

THE ORIGINAL PROVISIONS MAY CONTAIN AN  
AMBIGUITY. THE AMENDMENT WILL REMOVE  
THE AMBIGUITY BY PROVIDING THAT THE  
*LEASE MAY SPECIFY* THE SPECIES OF FISH WHICH  
MAY BE KEPT, BRED, HATCHED OR CULTURED  
WITHIN THE LEASED AREA [- I.E. IN  
ACCORDANCE WITH THE AQUACULTURE  
LICENCE].

2. THIS PROVISION DEALS WITH AN  
ASSOCIATED AMBIGUITY ABOUT THE  
'OWNERSHIP' OF FISH WITHIN THE LEASED  
AREA. FISH IN THE WILD ARE INCAPABLE OF

BEING 'OWNED'. FISH-IN-THE-WILD ARE IN LAW 'WILD ANIMALS *FERAE NATURAE*' AND BELONG TO THE PERSON WHO [LAWFULLY] TAKES THEM.

THE ORIGINAL PROVISION MIGHT HAVE BEEN TAKEN TO HAVE VESTED IN THE AQUACULTURE LEASE-HOLDER OWNERSHIP OF WILD STOCK FISH WHICH HAPPENED TO BE WITHIN THE LEASED AREA. THE AMENDMENT ENSURES THAT THE *OWNERSHIP OF AQUACULTURED FISH* ONLY IS VESTED IN THE AQUACULTURE LEASE-HOLDER.

3. SUBSECTIONS 97(5) AND (6) ARE REPEALED AND NEW SUB-SECTIONS - TO ESSENTIALLY THE SAME EFFECT - INSERTED WITH SOME REARRANGEMENT. THE AMENDED SUBSECTION (5) INCLUDES A REQUIREMENT FOR 'PAYMENT OF MONEY TO THE MINISTER'. PAYMENT OF 'RENT OR OTHER FEE' WAS PROVIDED FOR IN THE ORIGINAL SUBSECTION

(6). THE AMENDED SUBSECTION (6) PROVIDES THAT A LEASE MAY BE SUBJECT TO A CONDITION REQUIRING SECURITY TO BE GIVEN FOR THE OBSERVANCE OF ANY TERMS, COVENANTS, RESTRICTIONS OR CONDITION OF THE LEASE.

**CLAUSE 7 SECTION 99 AQUACULTURE LICENCE  
REQUIRED IN CONNECTION WITH LEASE -  
AMENDED**

SUBSECTION 99(1) REFERS TO ‘...THE [NON] USE OF THE LEASE WITHOUT AN AQUACULTURE LICENCE’.

THE AMENDMENT SUBSTITUTES FOR ‘..THE LEASE..’ THE ‘...USE OF THE LEASED AREA ‘WITHOUT A LICENCE’. THIS IS AN IMPROVEMENT TO THE DRAFTING IN THIS CONTEXT [I.E. ONE DOES NOT ‘...USE A LEASE...’, ONE USES ‘...A LEASED...’ AREA].

**CLAUSE 8 SECTION 101A INSERTED AND VALIDATION OF  
CERTAIN AQUACULTURE PARK  
ARRANGEMENTS**

**(NEW SECTION)**

THE SECTION CLARIFIES THE QUESTION OF THE EXTENT OF THE MINISTER'S POWERS IN RELATION TO THE ESTABLISHMENT OF FACILITIES [INFRASTRUCTURE] FOR THE PROMOTION OF, AND ASSISTANCE TO, COMMERCIAL AND COMMUNITY BASED AQUACULTURE, AND PEARL HATCHERY PURPOSES. THE CONCEPT - IN MATERIAL FORM - IS COMMONLY DESCRIBED AS AN 'AQUACULTURE PARK'.

THE ESTABLISHMENT OF THESE FACILITIES CALLS FOR THE SECURING BY THE MINISTER OF SUITABLE SITES, EITHER BY PURCHASE, LEASE OR AS A RESERVE, THE CONSTRUCTION OF PURPOSE-DESIGNED FACILITIES, AND THE PROVISION OF SERVICES. THE SECTION THEN



DEALS WITH THE POWER OF THE MINISTER TO MAKE THE SITES AVAILABLE TO PERSONS ENGAGED IN THE AQUACULTURE INDUSTRY BY WAY OF LEASE OR LICENCE, TO PROVIDE SERVICES BY WAY OF TECHNICAL AND ADMINISTRATIVE ADVICE AND TO RECOVER THE COSTS OF THESE SERVICES.

THE SECOND PART OF THE SECTION SEEKS THE VALIDATION OF THE INITIATIVE UNDERTAKEN BY THE THEN MINISTER IN 1995, IN ESTABLISHING AN AQUACULTURE PARK IN AN AREA WITHIN THE BROOME PORT, BY PROVIDING THAT THE ARRANGEMENTS UNDERTAKEN AT THAT TIME ARE TO BE TAKEN TO BE AS VALID AS THEY WOULD HAVE BEEN HAD THESE AMENDMENTS TO THE ACT BEEN IN FORCE AT THE TIME THE ARRANGEMENTS WERE MADE.

THE THIRD PART OF THE SECTION DEALS WITH THE PARTICULARITY OF THREE TYPES OR

CHARACTERISATIONS OF ARRANGEMENTS AND PROVIDES THAT THEY ARE TO BE TAKEN TO BE AS VALID AS THEY WOULD HAVE BEEN HAD THESE AMENDING PROVISIONS BEEN IN FORCE AT THE TIME.

THESE ARRANGEMENTS ARE -

- (a) ARRANGEMENTS FOR THE ESTABLISHMENT OR MANAGEMENT BY THE MINISTER OF AQUACULTURE FACILITIES TO BE USED BY OTHER PERSONS FOR COMMUNITY OR COMMERCIAL PURPOSES;
  
- (b) ARRANGEMENTS FOR AQUACULTURE FACILITIES ESTABLISHED BY THE MINISTER TO BE MANAGED OR USED BY OTHER PERSONS FOR COMMUNITY OR COMMERCIAL PURPOSES;

(c) ARRANGEMENTS FOR OTHER PERSONS TO ESTABLISH AND MANAGE AQUACULTURE FACILITIES ON LAND OWNED BY THE MINISTER.

THE FOURTH PART OF THE SECTION DEFINES 'AQUACULTURE' FOR THE PURPOSES OF THE THIRD PART OF THE SECTION, IN ADDITION TO ITS STATUTORILY DEFINED MEANING - WHICH RELATES TO 'FISH' GENERALLY - TO INCLUDE, FOR THOSE PARTICULAR PURPOSES, 'PEARL OYSTERS'

[NOTE: THE INCLUSION OF 'PEARL OYSTERS' PERMITS THE PRODUCTION OF PEARL OYSTERS (PRINCIPALLY HATCHERY OPERATIONS) LICENSED UNDER THE *PEARLING ACT 1990* AT AQUACULTURE PARKS – E.G. BROOME.]

**CLAUSE 9 SECTION 102 REGULATIONS RELATING TO  
AQUACULTURE - AMENDED**

THIS SECTION ESTABLISHES THE  
'HEADPOWERS' FOR THE MAKING OF  
REGULATIONS RELATING TO AQUACULTURE.

THE AMENDMENT ADDS TO THE PROVISION  
RELATING TO 'AQUACULTURE LEASES', THE  
POWER TO MAKE REGULATIONS ABOUT THE  
*TRANSFER* OF AQUACULTURE LEASES.

**CLAUSE 10 SECTION 125 REGISTER – AMENDED**

THIS SECTION ESTABLISHED A PUBLIC  
REGISTER FOR THE KEEPING OF CERTAIN  
DETAILS OF 'AUTHORISATIONS AND  
EXEMPTIONS' AND OF THE PEOPLE WHO HOLD  
THEM.

THE AMENDMENT EXTENDS THE SCOPE OF THE  
REGISTER TO INCLUDE DETAILS OF

AQUACULTURE LEASES AND THE PEOPLE WHO HOLD THEM.

**CLAUSE 11 SECTION 126 INFORMATION TO BE INCLUDED IN REGISTER – AMENDED**

THIS SECTION SPECIFIES THE INFORMATION TO BE INCLUDED IN THE REGISTER ABOUT THE NATURE OF THE AUTHORISATION AND EXEMPTION AS WELL AS THE HOLDERS OF THOSE AUTHORISATIONS AND EXEMPTIONS.

THE AMENDMENT EXTENDS THE SCOPE OF THE SECTION TO INCLUDE THE DETAILS OF AQUACULTURE LEASES AND THE PERSONS WHO HOLDS THEM.

**CLAUSE 12 SECTION 127 APPLICATION FOR NOTATION OF SECURITY INTEREST – AMENDED**

THE SECTION PROVIDES FOR AN APPLICATION PROCESS FOR THE NOTING OF SECURITY INTERESTS OVER AUTHORISATIONS [I.E. LICENCES AND PERMITS].

THE AMENDMENT EXTENDS THE SCOPE OF THE PROCESS TO INCLUDE APPLICATIONS TO NOTE SECURITY INTERESTS OVER 'AQUACULTURE LEASES'.

**CLAUSE 13 SECTION 128 NOTATION OF SECURITY**

**INTEREST – AMENDED**

THIS SECTION PROVIDES FOR THE NOTATION BY THE REGISTRAR OF A SECURITY INTEREST OVER AN 'AUTHORISATION' ON THE REGISTER [I.E. A LICENCE OR PERMIT].

THE AMENDMENT EXTENDS THE SCOPE OF THE NOTATION OF SECURITY INTEREST TO INCLUDE SECURITY INTERESTS OVER AQUACULTURE LEASES.

[THE PURPOSE IS TO PROVIDE COMFORT TO LENDERS INTO THE INDUSTRY WHO ARE ALREADY LENDING MONEY, TAKING AQUACULTURE LICENCES AS SECURITY, AND

NOTING THEIR INTERESTS AQUACULTURE  
LEASES AND AQUACULTURE LICENCES ON THE  
PUBLIC REGISTER].

**CLAUSE 14 SECTION 129 REGISTRAR NOT TO BE  
CONCERNED WITH CERTAIN MATTERS –  
AMENDED**

THIS SECTION PROVIDES THAT WHEN NOTING A  
SECURITY INTEREST THE REGISTRAR IS ‘NOT TO  
BE CONCERNED WITH’ THE NATURE OF THE  
INTEREST CLAIMED IN THE RELEVANT  
APPLICATION OR WHETHER OR NOT THE  
PERSON CLAIMING THE INTEREST ACTUALLY  
HAS THAT INTEREST. ALSO THAT THE FACT OF  
NOTATION ON THE REGISTRAR OF A SECURITY  
INTEREST IN AN AUTHORISATION DOES NOT  
GIVE THE INTEREST ANY FORCE THAT IT  
WOULD NOT HAVE HAD IF FRMA ‘PART 12,  
REGISTER’ HAD NOT BEEN ENACTED.

THE AMENDMENT EXTENDS THE SCOPE OF  
SUBSECTION (2) SO THAT THE NOTATION OF A

SECURITY INTEREST OVER AN AQUACULTURE LEASE SIMILARLY ADDS NOTHING TO THE FORCE OF THE SECURITY INTEREST OVER THE AQUACULTURE LEASES.

**CLAUSE 15 SECTION 130 EFFECT OF NOTATION –  
SECURITY HOLDER TO BE NOTIFIED OF  
CERTAIN EVENTS AFFECTING SECURITY  
INTEREST - AMENDED**

THIS SECTION DEALS WITH THE OBLIGATIONS OF THE REGISTRAR TO GIVE NOTICE TO THE HOLDERS OF SECURITY INTERESTS OVER LICENCES OF THE HAPPENINGS OF CERTAIN EVENTS.

THE AMENDMENT EXTENDS THIS OBLIGATION TO GIVE NOTICE, TO THE HOLDERS OF SECURITY INTERESTS NOTED IN RESPECT OF AQUACULTURE LEASES.



**CLAUSE 16 SECTION 131 REMOVAL OR VARIATION OF  
NOTATION - AMENDED**

THIS SECTION DEALS WITH THE REMOVAL OR  
VARIATION OF DETAILS OF A NOTATION OF A  
SECURITY INTEREST ON THE REGISTER IN  
RESPECT OF AN 'AUTHORISATION' [= LICENCE  
OR PERMIT].

THE AMENDMENT EXTENDS THE POWER OF THE  
REGISTRAR TO DEAL SIMILARLY WITH  
NOTATIONS IN RELATION TO SECURITY  
INTERESTS OVER AQUACULTURE LEASES.

**CLAUSE 17 SECTION 171 INTERFERENCE WITH LAWFUL  
FISHING ACTIVITIES - AMENDED**

THIS SECTION DEALS WITH AND CREATES AN  
OFFENCE OF 'PREVENTING, HINDERING OR  
OBSTRUCTING PERSONS PURSUING A LAWFUL  
FISHING ACTIVITY'.

THE AMENDMENT EXTENDS THE SCOPE OF THE SECTION TO DEAL WITH PERSONS SIMILARLY PREVENTING, HINDERING OR OBSTRUCTING LAWFUL *AQUACULTURE* ACTIVITIES.

**CLAUSE 18 SECTION 172 UNLAWFUL INTERFERENCE WITH FISHING GEAR – AMENDED**

THIS PROVISION DEALS WITH AND CREATES AN OFFENCE OF ‘UNLAWFUL INTERFERENCE WITH FISHING GEAR’.

THE AMENDMENT EXTENDS THE SCOPE OF THE SECTION TO DEAL WITH AQUACULTURE GEAR

[**NOTE:** THIS HAS PARTICULAR APPLICATION IN MARINE AREAS WHERE INTERFERENCE WITH MARINE AQUACULTURE CAGES IN CERTAIN AREAS IS PREVALENT].

**CLAUSE 19 SECTION 212 EVIDENCE OF LICENSING**

**MATTERS – AMENDED**

EXTENDS THE RANGE OF MATTERS WHICH MAY  
BE THE SUBJECT OF THE REGISTRAR’S  
EVIDENTIARY CERTIFICATES, TO INCLUDE  
CERTIFICATION IN RELATION TO DETAILS OF  
AQUACULTURE LEASES.

**CLAUSE 20 SECTION 238 FISHERIES RESEARCH AND  
DEVELOPMENT FUND – AMENDED**

THIS SECTION SETS OUT THE SOURCE AND  
APPLICATION OF FISHERIES RESEARCH AND  
DEVELOPMENT FUND (FRDF) MONIES.

THE AMENDMENT DEALS WITH MONIES  
DERIVED FROM

- THE OPERATION OF AQUACULTURE  
FACILITIES [E.G. AQUACULTURE PARKS]

- LEASES OR LICENCES IN RESERVES [E.G. THE ABROLHOS ISLANDS RESERVE] OR A FISH HABIT PROTECTION AREA OR
- THE PROVISION OF SERVICES [E.G. AQUACULTURE ‘EXTENSION’ SERVICES] OR OTHER WORK PERFORMED BY OR ON BEHALF OF THE MINISTER

AND PROVIDES THAT THESE MONIES ARE TO BE PAID INTO FRDF.

**CLAUSE 21 SECTION 239 RECREATIONAL FISHING FUND – AMENDED**

THIS SECTION DEALS WITH THE SOURCE OF MONIES PAYABLE TO THE RECREATIONAL FISHING FUND AND THE PURPOSES FOR WHICH THE MINISTER MAY APPLY THOSE MONIES. THE AMENDMENT ADDS TO THOSE PURPOSES THE PAYMENT OF CONSIDERATION FOR THE SURRENDER OF AN AQUACULTURE LEASE [SO THAT IF AN AQUACULTURE LEASE HOLDER

NEGOTIATED THE SURRENDER OF HIS LEASE  
AREA - AS IT WERE IN FAVOUR OF - A  
RECREATIONAL FISHING GROUP, THE  
CONSIDERATION FOR THE SURRENDER COULD  
BE APPROPRIATED IN WHOLE OR IN PART - AT  
THE MINISTER'S DISCRETION - OUT OF THE  
RECREATIONAL FISHING FUND].

**CLAUSE 22 SECTION 246 POLICY GUIDELINES – GENERAL  
– AMENDED**

THIS SECTION DEALS WITH THE MATTERS IN  
RELATION TO WHICH THE MINISTER MAY ISSUE  
FORMAL GUIDELINES. THE SECTION PRESENTLY  
DEALS SPECIFICALLY WITH THE 'FISHING  
INDUSTRY'.

THE AMENDMENT REMOVES ANY DOUBT THAT  
THE MINISTER MAY ALSO ISSUE GUIDELINES IN  
THE SAME WAY DEALING WITH THE  
AQUACULTURE, AQUATIC ECO-TOURISM AND  
FISHING TOUR INDUSTRY SEGMENTS.

**CLAUSE 23 SECTION 258 REGULATIONS –**

**MISCELLANEOUS – AMENDED**

THIS SECTION DEALS WITH THE POWER TO MAKE REGULATIONS ABOUT ‘INTERFERENCE WITH OR OBSTRUCTION OF FISHING’.

THE AMENDMENT ADDS ‘AQUACULTURE’ TO THIS HEADPOWER SO THAT THERE IS A CLEAR POWER TO MAKE REGULATIONS ABOUT INTERFERENCE WITH AQUACULTURE

[SEE ALSO CLAUSE 17, SECTION 171 AND CLAUSE 18 SECTION 172 WHICH MAKES IT AN OFFENCE TO HINDER LAWFUL AQUACULTURE ACTIVITIES OR TO INTERFERE WITH AQUACULTURE GEAR].

**CLAUSE 24 SECTION 261 SERVICE OF NOTICES –**

**AMENDED**

THE SECTION PROVIDES THAT IF A NOTICE IS TO BE SERVED ON AN ‘AUTHORISATION HOLDER’, SERVICE MAY BE EFFECTED BY POSTING THE

NOTICE TO THE ADDRESS SPECIFIED ON THE REGISTER.

THE AMENDMENT ADDS 'AQUACULTURE LEASE HOLDERS' TO AUTHORIZATION HOLDERS, REFLECTING THE ADDITIONS OF LEASE-HOLDERS TO THE REGISTER [SEE CLAUSE 10, SECTION 125 REGISTER].

## ACTS IN FORCE

<i><b>ACT</b></i>	<b>NO. AND YEAR</b>	<b>ASSENT</b>	<b>COMMENCEMENT</b>
<i>FISH RESOURCES MANAGEMENT ACT 1994</i>	53 OF 1994	2 NOV 1994	PROCLAIMED 1 OCT 1995 (SEE GAZETTE 29 SEPT 1995 P.4649)
<i>SENTENCING (CONSEQUENTIAL PROVISIONS) ACT 1995, PART 34</i>	78 OF 1995	16 JAN 1996	PROCLAIMED 4 NOV 1996 (SEE SECTION 2 AND GAZETTE 25 OCT 1996 P.5632)
<i>LOCAL GOVERNMENT (CONSEQUENTIAL AMENDMENTS) ACT 1996, SECTION 4</i>	14 OF 1996	28 JUN 1996	1 JUL 1996 (SEE SECTION 2)
<i>ACTS AMENDMENT (MARINE RESERVES) ACT 1997, PART 6</i>	5 OF 1997	10 JUN 1997	PROCLAIMED 29 AUG 1997 (SEE SECTION 2 AND GAZETTE 29 AUG 1997 P.4867)
<i>FISHING AND RELATED INDUSTRIES COMPENSATION (MARINE RESERVES) ACT 1997, SECTION 14</i>	39 OF 1997	2 DEC 1997	2 DEC 1997 (SEE SECTION 2)
<i>SUNDAY OBSERVANCE LAWS AMENDMENT AND REPEAL ACT 1997, SECTION 5</i>	49 OF 1997	10 DEC 1997	10 DEC 1997 (SEE SECTION 2)
<b><i>REPRINTED AS AT 28 APR 2000</i></b>			
<i>FISH RESOURCES MANAGEMENT AMENDMENT ACT 2000</i>	41 OF 2000	2 NOV 2000	TO BE PROCLAIMED
<i>ACTS AMENDMENT (AUSTRALIAN DATUM) ACT 2000, SECTION 3</i>	54 OF 2000	28 NOV 2000	TO BE PROCLAIMED
<i>AFFECTING ACT - FISHING INDUSTRY PROMOTION TRAINING AND MANAGEMENT LEVY ACT</i>			
55 OF 1994			