

# Marine and Fisheries Legislation Amendment Act 2019

No.        of 2019

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- (b) to amend the **Marine (Drug, Alcohol and Pollution Control) Act 1988** to expand the application of the definition of *prescribed concentration of alcohol*; and
- (c) to amend the **Marine Safety Act 2010**—
  - (i) to provide that volunteers are not marine safety workers; and
  - (ii) to provide for the suspension and cancellation of inactive pilot licences; and
  - (iii) to make further provision in relation to the registration of pilotage services providers; and
- (d) to amend the **Transport (Safety Schemes Compliance and Enforcement) Act 2014** to extend the scope of that Act to premises associated with the design, manufacture or supply of recreational vessels or marine safety equipment and pilotage services provider premises.

## 2 Commencement

- (1) This Part and Parts 2 and 6 come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), Parts 3, 4 and 5 come into operation on a day or days to be proclaimed.
- (3) If a provision of Part 3, 4 or 5 does not come into operation before 1 August 2020, it comes into operation on that day.

## **Part 2—Amendment of Fisheries Act 1995**

### **3 Definitions and interpretative provisions**

**Insert** the following definition in section 4(1) of the **Fisheries Act 1995**—

*"Gippsland Lakes* means the total area of all waters bounded by a line commencing at the seaward end of the western pier at the entrance wall at the entrance to the Gippsland Lakes, continuing in a generally north-westerly direction to the shoreward end of that pier then following the shoreline along the mean high water mark of such waters in a generally clockwise direction to the shoreward end of the eastern pier at the entrance wall at the entrance to the Gippsland Lakes, then following that wall to its seaward end, then in a generally westerly direction to the commencement of that line, but does not include the waters east of Eastern Beach Road or any river, creek or stream flowing into the Gippsland Lakes (except Chinaman's Creek and Boxes Creek which flow into and form part of Bancroft Bay);".

### **4 Licences or permits must be returned to Victorian Fisheries Authority**

In section 58A(2) of the **Fisheries Act 1995**, for "Division 5" **substitute** "Division 5 or 6".

### **5 Cancelled transferable licences may be transferred**

(1) In section 60(1)(c) of the **Fisheries Act 1995**, for "Part 8." **substitute** "Part 8; or".

(2) After section 60(1)(c) of the **Fisheries Act 1995** **insert**—

"(d) a licence surrendered or cancelled under Division 6 of Part 8."

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**6 New Division 6 of Part 8 inserted**

After Division 5 of Part 8 of the **Fisheries Act 1995 insert—**

**"Division 6—Cancellation of Gippsland Lakes Fishery Access Licences**

**153M Definitions for this Division**

In this Division—

*Gippsland Lakes Fishery Access Licence*  
means a licence belonging to the class of access licence of that name prescribed in the regulations made for the purposes of section 38;

*licence holder* means the holder of a Gippsland Lakes Fishery Access Licence.

**153N Licence holder may elect to surrender Gippsland Lakes Fishery Access Licence**

- (1) The holder of a Gippsland Lakes Fishery Access Licence may elect to surrender their licence before 1 April 2020.
- (2) The procedure by which a licence holder may elect to surrender their licence is set out in Part 2 of Schedule 5.

**153O Cancellation of Gippsland Lakes Fishery Access Licences on 1 April 2020**

A Gippsland Lakes Fishery Access Licence that has been successfully surrendered in accordance with Part 2 of Schedule 5 is cancelled by virtue of this section on 1 April 2020.

**153P Cancellation of Gippsland Lakes Fishery Access Licences on 1 April 2021**

A Gippsland Lakes Fishery Access Licence that has not been cancelled by virtue of section 153O is cancelled by virtue of this section on 1 April 2021.

**153Q Rights and privileges against State extinguished**

Any right or privilege acquired or accrued against the State of Victoria in respect of a Gippsland Lakes Fishery Access Licence cancelled under this Division is extinguished, despite anything to the contrary in section 14(2) of the **Interpretation of Legislation Act 1984**.

**153R State not liable**

Despite any Act or law to the contrary (other than the Charter of Human Rights and Responsibilities) and except as provided in this Division, the State of Victoria is not liable in any way for any loss, damage or injury whatsoever resulting directly or indirectly from or arising out of the cancellation of a Gippsland Lakes Fishery Access Licence under this Division and any action taken or decision made under this Division or Schedule 5.

**153S Compensation for cancellation of licences**

- (1) A licence holder whose licence is cancelled under this Division is only entitled to be paid compensation calculated in accordance with, and limited to, Part 3 of Schedule 5.
- (2) The compensation is to be paid out of the Consolidated Fund (which, by this section, is appropriated to the extent necessary).

**153T Exemption from offence relating to possession of commercial fishing equipment**

- (1) A person is exempt from section 36(2) in respect of the possession of commercial fishing equipment if—
  - (a) the person formerly held a Gippsland Lakes Fishery Access Licence that was cancelled on 1 April 2020—for a period of 12 months after that date; or
  - (b) the person formerly held a Gippsland Lakes Fishery Access Licence that was cancelled on 1 April 2021—for a period of 12 months after that date.
- (2) An exemption under subsection (1) does not apply to a person unless—
  - (a) the person possessed the commercial fishing equipment in the course of carrying out activities under a Gippsland Lakes Fishery Access Licence before it was cancelled under this Division; and
  - (b) the person has evidence of the person's ownership of the commercial fishing equipment immediately before 1 April 2020 or 1 April 2021 (as the case requires)."



**7 New Schedule 5 inserted**

After Schedule 4 to the **Fisheries Act 1995**  
**insert—**

**"Schedule 5—Cancellation of  
Gippsland Lakes Fishery Access  
Licences**

Sections 153N, 153O, 153R and 153S

**Part 1—Definitions**

**1 Definitions in this Schedule**

In this Schedule—

*licence* means a Gippsland Lakes Fishery  
Access Licence as defined in  
section 153M;

*licence holder* means the holder of a  
Gippsland Lakes Fishery Access  
Licence;

*records held by the Victorian Fisheries  
Authority* means the records of catch  
history as recorded in the Integrated  
Catch and Effort System maintained by  
the Victorian Fisheries Authority;

*survey period* means the 5-year period from  
1 April 2012 to 31 March 2017  
inclusive.

## **Part 2—Election to surrender licence**

### **2 Notice that licence holder may elect to surrender licence**

- (1) On or after the commencement of Division 6 of Part 8, the Minister must give notice in accordance with this clause to each holder of a Gippsland Lakes Fishery Access Licence that the licence holder may elect to surrender their licence.
  - (2) The notice must be—
    - (a) published in the Government Gazette;  
and
    - (b) sent by letter to each licence holder.
  - (3) The notice must state the following—
    - (a) that each licence holder may elect to surrender their licence;
    - (b) the opening and closing date for the making of the election;
    - (c) that the election must be made in writing addressed to the Victorian Fisheries Authority and signed by the licence holder;
    - (d) the address to which the election must be sent, which may include an email address;
    - (e) the information that must be included in the election, which must include the name of the licence holder and the licence number;
    - (f) that a successful election will result in the licence being cancelled on 1 April 2020;
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- (g) that on and after the surrender of the licence, the licence may not be transferred to another person;
  - (h) that if the licence holder does not elect to surrender their licence before the closing date, the licence will be cancelled on 1 April 2021;
  - (i) that compensation for the cancellation of the licence will be calculated in accordance with Part 3.
- (4) In addition, the notice sent to each licence holder must state the amount of compensation payable to the licence holder—
- (a) if the licence is successfully surrendered under this Part; or
  - (b) if the licence is not successfully surrendered under this Part.

### **3 Election to surrender licence**

An election by a licence holder to surrender their licence must—

- (a) be made in writing to the Victorian Fisheries Authority and received by the Victorian Fisheries Authority within the period stated in the notice under clause 2; and
- (b) be signed by the licence holder; and
- (c) include the information required by the notice under clause 2.

### **4 Determination of successful elections**

After the closing date specified in the notice under clause 2 for making an election, the Victorian Fisheries Authority must determine that each of the elections to

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surrender a licence made in accordance with clause 3 is successful.

#### **5 Notification of successful election**

Within 28 days after receiving a successful election to surrender a licence from a licence holder, the Victorian Fisheries Authority must notify the licence holder in writing—

- (a) that the election made by the licence holder to surrender their licence is successful; and
- (b) that the licence will be cancelled on 1 April 2020; and
- (c) the amount of compensation to which the licence holder is entitled.

#### **6 Notification of unsuccessful election**

Within 28 days after receiving an unsuccessful election to surrender a licence, the Victorian Fisheries Authority must notify the licence holder in writing stating—

- (a) that the election made by the licence holder to surrender their licence has been unsuccessful; and
  - (b) the reasons why the election was unsuccessful; and
  - (c) that the licence holder may submit a further election to surrender their licence in accordance with clause 3; and
  - (d) that, despite paragraph (c), the further election must be made before the date specified in the notice under this clause (which must not be less than 14 days after receipt of the notice by the licence holder) or the closing date specified in
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the notice under clause 2, whichever is the later.

### **Part 3—Calculation of compensation**

#### **7 Calculation of compensation**

- (1) The amount of compensation payable to a licence holder whose licence is cancelled under section 153O or 153P is determined in accordance with Table 1 where—

**T** is the annual average catch value of the catch taken under the licence held by the licence holder over the survey period (whether or not the licence holder held the licence for the whole of that period).

**Table 1**

<i>Column 1</i> <i>Date on which licence cancelled</i>	<i>Column 2</i> <i>Formula for determining compensation</i>
1 April 2020	The amount ( <b>A</b> ) = \$371 000 + \$60 000 + (3 × T)
1 April 2021	The amount ( <b>B</b> ) = A × 8/10

- (2) For the purposes of subclause (1), the annual average catch value taken under a licence over the survey period (**T**) is determined as follows—
- (a) for each species of fish specified in column 1 of Table 2—
- (i) the total catch, in kilograms, of the species is determined based on the catch history of the licence over
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the survey period indicated in the records held by the Victorian Fisheries Authority; and

(ii) the total catch is multiplied by the value per kilogram specified opposite in column 2 of Table 2 to determine the total catch value of the species over the survey period; and

(iii) the total catch value of the species over the survey period is divided by 5 to determine the annual average catch value of the species;

(b) the annual average catch values of each of the species, as determined under paragraph (a), are added together.

**Table 2**

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<i>Column 1</i>	<i>Column 2</i>
<i>Species of fish</i>	<i>Value (per kg)</i>
Anchovy, Australian (whitebait)	\$5.51
Australian bass	\$4.26
Australian herring	\$4.32
Australian salmon	\$1.34
Australian Sardine (Pilchard)	\$4.20
Barracouta	\$0.73
Bream, black	\$9.87
Calamari, Southern (squid)	\$15.04
Carp, European	\$4.26
Cod, Southern Rock	\$4.26
Cod, Unspecified	\$4.26
Crab, Blue Swimmer	\$10.13
Crab, European Shore	\$4.26
Crab, Other Unspecified	\$2.82

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Part 2—Amendment of Fisheries Act 1995

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<i>Column 1</i>	<i>Column 2</i>
<i>Species of fish</i>	<i>Value (per kg)</i>
Crab, sand	\$4.26
Crab, Spider	\$2.53
Dory, Silver	\$2.72
Eel, longfin	\$4.33
Eel, Unspecified	\$4.26
Flathead, dusky	\$7.93
Flathead, southern sand	\$3.16
Flathead, Unspecified	\$6.27
Flounder, greenback	\$4.26
Flounder, Unspecified	\$7.21
Garfish, river	\$6.65
Garfish, Southern (Sea)	\$3.58
Gudgeons	\$4.26
Gurnard perch, Common	\$4.26
Gurnard, Butterfly	\$4.26
Gurnard, Unspecified	\$4.26
Kingfish, Yellowtail	\$7.57
Latchet	\$1.64
Leatherjacket	\$1.45
Ling, Rock	\$4.26
Luderick	\$2.11
Mackerel, Blue	\$3.41
Mackerel, jack	\$1.24
Mackerel, Unspecified	\$4.26
Morwong, dusky	\$4.26
Mud crab (unspecified)	\$2.82
Mullet, sand	\$1.69
Mullet, sea	\$2.73
Mullet, yelloweye	\$6.95

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<i>Column 1</i>	<i>Column 2</i>
<i>Species of fish</i>	<i>Value (per kg)</i>
Mulloway	\$6.21
Mussel, blue	\$2.31
Octopus	\$9.72
Perch, estuary	\$4.26
Perch, Unspecified	\$4.26
Pike, Unspecified	\$4.26
Prawn, Eastern King	\$18.70
Prawn, Eastern School	\$10.03
Prawn, Other (Unspecified)	\$3.81
Ray, Southern Eagle	\$2.17
Rays	\$1.32
Sandworms	\$4.26
Sea Carp, Southern	\$4.26
Shark, angel	\$2.23
Shark, Elephant	\$4.26
Shark, gummy	\$6.29
Shark, Other (Unspecified)	\$4.26
Shark, Thresher	\$1.29
Shellbait	\$4.26
Shrimp bait	\$4.26
Shrimp, Ghost	\$4.26
Skates and Rays, Other	\$1.32
Snapper	\$7.87
Snook	\$6.41
Sole, Unspecified	\$4.26
Sprat (Unspecified)	\$4.26
Sprat, Blue	\$4.26
Squid, Goulds	\$2.93
Tailor	\$6.30

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<i>Column 1</i>	<i>Column 2</i>
<i>Species of fish</i>	<i>Value (per kg)</i>
Trevalla, Spotted	\$2.30
Trevally, silver	\$5.05
Trout, brown	\$4.26
Trout, rainbow	\$5.00
Tuna, Unspecified	\$4.26
Warehou, blue	\$4.26
Whiting, blue weed	\$12.21
Whiting, King George	\$17.18
Whiting, Sand	\$12.21
Whiting, school	\$3.32
Whiting, Unspecified	\$4.26
Wrasse, blue throat	\$8.52
Wrasse, Unspecified	\$4.26
All other species	\$4.26

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**8 Statute law revision amendments**

- (1) In section 38(7)(c) and (d) of the **Fisheries Act 1995**, for "1 year" **substitute** "one year".
  - (2) In section 51(6) of the **Fisheries Act 1995**, for "1 year" **substitute** "one year".
  - (3) In section 65A(2) of the **Fisheries Act 1995**, for "1 or more" **substitute** "one or more".
  - (4) In paragraph (a) of the penalty at the foot of section 66(1) of the **Fisheries Act 1995**, for "1 individual" **substitute** "one individual".
  - (5) In section 66K(2) of the **Fisheries Act 1995**, for "1 or more" **substitute** "one or more".
  - (6) In paragraph (a) of the penalty at the foot of section 66M(1) of the **Fisheries Act 1995**, for "1 individual" **substitute** "one individual".
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- (7) In section 66P of the **Fisheries Act 1995**, for "1 or more" **substitute** "one or more".
- (8) In section 67(4)(b) of the **Fisheries Act 1995**, for "1 penalty" **substitute** "one penalty".
- (9) In section 68A(7) of the **Fisheries Act 1995**, for "1 penalty" **substitute** "one penalty".
- (10) In section 101H(3) of the **Fisheries Act 1995**, for "1 year" **substitute** "one year".
- (11) In section 132(2)(c) of the **Fisheries Act 1995**, for "1 person" **substitute** "one person".
- (12) In section 155A(g)(i) of the **Fisheries Act 1995**, for "1 year" **substitute** "one year".

## **Part 3—Amendment of Marine (Drug, Alcohol and Pollution Control) Act 1988**

### **9 Definitions**

In section 3(1) of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**, in the definition of *prescribed concentration of alcohol*, for paragraph (a) **substitute—**

- "(a) in the case of a person who is operating a vessel underway, or is the master of a vessel underway or at anchor, any concentration of alcohol present in the blood or breath of that person, if either or both of the following apply—
- (i) the person is under the age of 21 years;
  - (ii) the vessel is a domestic commercial vessel; and
- (ab) in the case of a person who is a pilot of a vessel underway or at anchor, any concentration of alcohol present in the blood or breath of that person; and".

### **10 Statute law revision**

In section 3(1) of the **Marine (Drug, Alcohol and Pollution Control) Act 1988**, in the definition of *Victorian Marine Pollution Contingency Plan*, for "2013." **substitute "2013;"**.

## **Part 4—Amendment of Marine Safety Act 2010**

### **11 Definitions**

In section 3(1) of the **Marine Safety Act 2010**, for the definition of *marine safety worker* substitute—

*"marine safety worker—*

- (a) means a person who has carried out, is carrying out or is about to carry out marine safety work; and
- (b) does not include a volunteer;"

### **12 New Part 4.6A inserted**

After Part 4.6 of the **Marine Safety Act 2010** insert—

#### **"Part 4.6A—Inactive pilot licences**

##### **173A Suspension and cancellation of inactive pilot licences**

Subject to section 173B, the Safety Director may suspend or cancel a pilot licence if the Safety Director is satisfied that the person who holds that licence—

- (a) has not acted as a pilot for a period of at least 12 months; or
- (b) does not intend to act as a pilot.

##### **173B Procedure for suspension and cancellation of inactive pilot licences**

- (1) If the Safety Director proposes to suspend or cancel a pilot licence under section 173A, the Safety Director must serve on the person who holds that licence a notice that—

- (a) states the proposed action (including any proposed period of suspension); and
  - (b) states the grounds for the proposed action; and
  - (c) invites the person to make a written submission within a stated period as to why the proposed action should not be taken.
- (2) For the purposes of subsection (1)(c), the period stated in the notice must be a period of at least 28 days after the notice is served on the person.
- (3) In deciding whether to take action under section 173A, the Safety Director must consider any submission given to the Safety Director in accordance with subsection (1)(c).
- (4) If the Safety Director is satisfied that grounds for action under section 173A have been established, the Safety Director may take any action of which a notice was given under subsection (1).
- (5) The Safety Director, as soon as practicable, must serve written notice on the person who holds the relevant pilot licence with respect to taking, or not taking, action under section 173A and, if the decision is to take such action, of—
- (a) the action being taken; and
  - (b) the date, which must not be earlier than 7 days after the day on which the notice under this subsection is served, on which any suspension or cancellation takes effect.
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**173C Effect of suspension of pilot licence**

- (1) This section applies if the Safety Director suspends a person's pilot licence under section 173A.
- (2) During the period of suspension, the person is taken not to hold a pilot licence.

**173D Return of pilot licence**

- (1) A person whose pilot licence has been suspended or cancelled under section 173A must, not later than 7 days after the suspension or cancellation takes effect—
  - (a) return the pilot licence to the Safety Director; or
  - (b) if the pilot licence has been lost, stolen or destroyed, give the Safety Director a statement, verified by a statutory declaration, that the pilot licence has been lost, stolen or destroyed.

Penalty: 10 penalty units.

- (2) If a pilot licence held by a person is suspended and it has not expired when the suspension ends, the Safety Director must return the pilot licence to the person."

**13 Section 241 substituted**

For section 241 of the **Marine Safety Act 2010** substitute—

**"241 Registration as a pilotage services provider**

- (1) On receiving an application under section 240, the Safety Director must register the person as a pilotage services provider if the Safety Director is satisfied that the person has the competence and capacity to carry out pilotage services safely.
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- (2) For the purposes of subsection (1), the Safety Director must have regard to whether the person meets or satisfies the prescribed requirements (if any).".

**14 New section 247A inserted**

After section 247 of the **Marine Safety Act 2010** insert—

**"247A Pilotage services providers must report reportable incidents to Safety Director**

If a pilot has the conduct of a vessel that is involved in a reportable incident, the pilotage services provider who provided that pilot must report the full particulars of the incident to the Safety Director as soon as possible, in writing and in the form determined by the Safety Director.

Penalty: 10 penalty units."

**15 Schedule 2—Subject matter for regulations**

After item 10 in Schedule 2 to the **Marine Safety Act 2010** insert—

- "10A. Requirements to be met or satisfied for the purposes of registration as a pilotage services provider, including, but not limited to, requirements in relation to the following—
- (a) systems (including but not limited to safety management systems), procedures and policies to ensure pilots are not impaired by fatigue, alcohol or drugs;
  - (b) systems (including but not limited to safety management systems), procedures and policies relating to the training, instruction, assessment and supervision of pilots;

- (c) maintenance and records of any systems, procedures and policies referred to in paragraphs (a) and (b);
- (d) notices and reports to be given to the Safety Director in relation to any systems, procedures and policies referred to in paragraphs (a) and (b);
- (e) for ensuring that pilots employed or engaged are qualified and competent, and medically fit, to act as pilots."

#### **16 Statute law revision**

- (1) In section 93(2) of the **Marine Safety Act 2010**, after "vessel" (where first occurring) **insert** "that is".
  - (2) In section 298A of the **Marine Safety Act 2010**, in the definition of *authorised representative*—
    - (a) for paragraph (c) **substitute**—

"(c) a medical treatment decision maker for the individual within the meaning of the **Medical Treatment Planning and Decisions Act 2016**; or";
    - (b) in paragraph (d) **omit** "or a person responsible".
  - (3) The heading to Part 9.3 of the **Marine Safety Act 2010** is **repealed**.
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## **Part 5—Amendment of Transport (Safety Schemes Compliance and Enforcement) Act 2014**

### **17 Definitions**

In section 3 of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014**—

(a) in the definition of *marine premises*—

(i) in paragraph (b), after "purposes;"  
**insert "and";**

(ii) after paragraph (b) **insert—**

"(c) premises associated with the design, commission, construction, manufacture, supply, maintenance, repair or modification of a recreational vessel; and

(d) premises associated with the design, commission, construction, manufacture, supply, installation, maintenance, repair or modification of marine safety equipment; and

(e) premises owned or occupied by pilotage services providers for the purpose of providing pilotage services;"

(b) **insert** the following definitions—

*"marine safety equipment* has the same meaning as in section 3(1) of the **Marine Safety Act 2010**;

*pilotage services* has the same meaning as in section 3(1) of the **Marine Safety Act 2010**;

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*pilotage services provider* has the same  
meaning as in section 3(1) of the  
**Marine Safety Act 2010**;"

## **Part 6—Repeal of this Act**

### **18 Repeal of this Act**

This Act is **repealed** on 1 August 2021.

#### **Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

† *Minister's second reading speech—*

*Legislative Assembly:*

*Legislative Council:*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Fisheries Act 1995**, the **Marine (Drug, Alcohol and Pollution Control) Act 1988**, the **Marine Safety Act 2010** and the **Transport (Safety Schemes Compliance and Enforcement) Act 2014** and for other purposes."