



New South Wales

# Fisheries Management (Aquaculture) Amendment Regulation 2009

under the

Fisheries Management Act 1994

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1994*.

IAN MACDONALD, MLC  
Minister for Primary Industries

## Explanatory note

The objects of this Regulation are as follows:

- (a) to allow certain activities (including small scale ornamental fish breeding and keeping fish for live sale in certain circumstances) to be undertaken without an aquaculture permit,
- (b) to make further provision in relation to annual contributions paid by class A aquaculture permit holders to the Minister for Primary Industries as security,
- (c) to remove the 3-month limit on the duration of aquaculture permits for charitable or non-profit making purposes,
- (d) to give the Minister for Primary Industries the discretion to refund all or part of any rent or contributions paid in advance by the holder of an aquaculture lease when the lease is terminated (at present, refunds are mandatory in certain circumstances).

This Regulation is made under the *Fisheries Management Act 1994*, including sections 144, 152, 165 and 289 (the general regulation-making power).

## **2009 No 270**

Clause 1 Fisheries Management (Aquaculture) Amendment Regulation 2009

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# **Fisheries Management (Aquaculture) Amendment Regulation 2009**

under the

Fisheries Management Act 1994

### **1 Name of Regulation**

This Regulation is the *Fisheries Management (Aquaculture) Amendment Regulation 2009*.

### **2 Commencement**

This Regulation commences on 1 July 2009 and is required to be published on the NSW legislation website.

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## Schedule 1      Amendment of Fisheries Management (Aquaculture) Regulation 2007

**[1] Part 2, Division 1**

Omit the heading to the Division. Insert instead:

**Division 1      General**

**[2] Clause 4 Kinds of aquaculture permits that can be issued**

Omit clause 4 (2).

**[3] Clause 4A**

Insert after clause 4:

**4A Certain persons do not require aquaculture permits**

- (1) A person who carries out an exempt activity is excluded from the operation of section 144 of the Act in respect of that exempt activity.
- (2) For the purposes of this clause, the following are *exempt activities*:
  - (a) the cultivation of ornamental fish by a person in a pond, tank or other structure, if the total capacity of all structures in which the person cultivates ornamental fish is less than 10,000 litres,
  - (b) the keeping of fish by a person in a confined area, for the purposes of selling the fish alive, if the person does not cultivate the fish concerned.
- (3) In this clause, *ornamental fish* means any fish cultivated for the purposes of exhibition or sale in the aquarium industry but does not include:
  - (a) any fish cultivated for the purposes of human consumption, or
  - (b) any fish cultivated for the purposes of stocking a farm dam (within the meaning of section 198A of the Act) or stocking public water land.

**[4] Clause 23 Contributions to be made by certain class A permit holders**

Omit “purposes of subclause (3) (b)” from clause 23 (4).

Insert instead “purpose of allowing the payment of a contribution by instalments”.

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**[5] Clause 23 (6)**

Insert “or any previous 12 month period” after “election is made”.

**[6] Clause 23A**

Insert after clause 23:

**23A Additional contributions to be made by certain class A permit holders**

- (1) A class A permit holder who, on or after the commencement of this clause, enters into a financial arrangement for the payment of annual contributions (by virtue of clause 19 (2)) must pay to the Minister a contribution in respect of each previous annual contribution period in which the permit was in force (even if the permit was in force for only part of the previous annual contribution period).
- (2) A *previous annual contribution period* is a period of 12 months commencing on 1 July in any year before the permit holder entered into the financial arrangement, excluding any period before 1 July 2001.
- (3) The contribution under this clause (the *additional contribution*) is payable in addition to the annual contribution payable under clause 23.
- (4) The additional contribution is calculated in the same manner as the annual contribution under clause 23 is calculated at the time that the person enters into the financial arrangement. For that purpose, a reference in clause 23 (1) to each period of 12 months beginning on 1 July in any year is to be read as a reference to each previous annual contribution period.
- (5) The additional contribution required by this clause must be paid, at the permit holder’s option, either:
  - (a) on or before the date that is 30 days after the date that the permit holder enters into the financial arrangement, or
  - (b) by instalments.
- (6) For the purpose of allowing the payment of a contribution by instalments, the Minister is required:
  - (a) to determine the amounts of the instalments that are payable, or the manner in which they are to be calculated, and
  - (b) to determine the dates on which the instalments are payable, and

- (c) to notify the amounts (or the manner of the calculation) of the instalments, and the dates on which they are payable, to the permit holder concerned.
- (7) If there is a failure to make a payment in accordance with such a notice, the Minister may treat the total unpaid balance as an overdue amount of contribution even if payment by instalments has begun.
- (8) A contribution paid under this clause is not refundable.

**[7] Clause 41 How rent for an aquaculture lease is to be calculated**

Omit clause 41 (5) (b). Insert instead:

- (b) may, if any rent, contributions or other amounts have been paid to the Minister for a period occurring after the date of termination, partly or fully refund the proportion of rent, contributions or other amounts paid in advance.