Oysters Tasmania
Submission to the Review of the
Living Marine Resources Management Act 1995

Thank you for the opportunity to provide a written submission to the Review of the *Living Marine Resources Management Act 1995* (LMRMA).

Oysters Tasmania is the peak body representing oyster growers in Tasmania. We are a recognised 'fishing body' under the LMRMA, and we receive the proceeds of an industry levy authorised under the LMRMA.

Tasmania's oyster farming industry produces around $30 million worth of oysters each year, employs around 300 Tasmanians, and — unlike other industries — pays more than $1½ million in industry-specific fees and levies to the State Government while having minimal environmental impact. The industry also has significant growth prospects provided the right regulatory arrangements are in place.

The State Government has provided generous support to Tasmania's oyster farming industry and regulates the industry in a consultative manner.

Nonetheless, some of the regulation of Tasmania's oyster farming industry generates more costs — both in terms of compliance costs on oyster growers and administrative costs on government — than benefits.

This is particularly the case with respect to regulation borne from the LMRMA. This legislation appears to be more suited to wild catch industries than the oyster farming industry, and it imposes regulation on oyster growers that duplicates regulation imposed by other legislation.

Oysters Tasmania recommends in this submission that some of the regulation imposed on the oyster farming industry through the LMRMA can be safely removed, with a commensurate reduction in regulatory charges.

Oysters Tasmania would appreciate consideration of these recommendations as well as any opportunity for ongoing engagement in the Review following this submission stage.

With the right regulatory arrangements, the oyster farming industry can be a booming industry of which Tasmania can be proud, producing ever increasing numbers of our high-value, environmentally-friendly delicacy.

oysters TASMANIA

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Recommendation 1: Remove the requirement for oyster growers (including oyster hatcheries) to obtain a licence under the LMRMA, as without such licensing oyster growers would continue to be effectively regulated under the *Marine Farming Planning Act* and/or *Primary Produce Safety Act*, and requiring oyster growers to obtain a general permission to farm is unusual and unwarranted.

If Recommendation #1 is rejected, such that the LMRMA's requirement for oyster growers to obtain a marine farming licence is to be retained, then adopt the following recommendations, at least with respect to oyster growers:

Recommendation 2: If the LMRMA's requirement for oyster growers to obtain a marine farming licence is to be retained, then marine farming licence decisions (i.e. whether to grant, renew, vary, etc.) should be made according to specific, legislated conditions — as opposed to vague conditions, guidelines that sit outside of legislation, and ministerial discretion beyond recourse to the courts. This would increase certainty and the capacity to borrow for oyster growers.

Recommendation 3: Ensure that marine farming licence decisions depend only on a person's compliance with those parts of the LMRMA that relate to marine farming.

Recommendation 4: Ensure that those licence rules that apply more to wild fishing than marine farming — namely rules about character requirements, environmental and resource constraints, and management plans — no longer apply to marine farming.

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Recommendation 12: Review related regulation affecting oyster growers, including lease security, lease and food safety charges, the regulation of run-off, and support for growth.

Recommendation 1: Permission to farm

Recommendation 1: Remove the requirement for oyster growers (including oyster hatcheries) to obtain a licence under the LMRMA, as without such licensing oyster growers would continue to be effectively regulated under the *Marine Farming Planning Act* and/or *Primary Produce Safety Act*, and requiring oyster growers to obtain a general permission to farm is unusual and unwarranted.

Technical implications of recommendation 1 (to apply at least with respect to oyster growers):

Amend section 64 so that marine farming in State waters is banned when there is no lease (rather than when there is no licence) and so that hatcheries do not require a marine farming licence.

Amend section 65 so that marine farming in State waters is permitted when there is a lease (rather than when there is a licence).

Repeal provisions made redundant by these changes and make associated technical amendments.

Section 64 bans those who do not hold a marine farming licence from carrying out marine farming (including operating a hatchery).

This represents a requirement to obtain a general permission to farm.

Most other farm industries do not require a general permission to farm. Outside of marine farming, the farm industries that require a general licence to farm in Tasmania are the dairy, emu and industrial hemp farming industries.

Requiring a general permission to farm is not the most straight-forward way to manage risks. Because risks are specific to particular practices (such as the use of chemicals), the most straight-forward way to manage risks is to have regulation that relates to particular practices (as we see with chemical use legislation).

Tasmania's oyster farming industry is already subject to legislation that relates to particular risks. The *Marine Farming Planning Act 1995* (MFPA) regulates the risks that oyster farming poses to its surrounds, and the *Primary Produce Safety Act 2011* (PPSA) regulates the risks that oyster farming (including the operation of a hatchery) poses to human health. These statutes should be the vehicles through which oyster farming is regulated.

If a regulation does not relate to a particular practice, it should at least relate to a particular industry. This is not the case with the LMRMA, which attempts to cover a range of markedly different industries.

The LMRMA is primarily a statute focused on wild fishing rather than marine farming. The great bulk of the LMRMA sets out where wild fishing can occur and how much can be taken. It is unsurprising then that the objects of the LMRMA implicitly focus on industries whose products are extracted from communal waters and are part of Tasmania's native ecosystem. In contrast, oyster farming typically involves introducing and growing a non-native species in leased waters over which growers have an exclusive right. Trying to capture the markedly different environmental considerations of oyster farming in an Act focused on wild fishing is a recipe for unfocussed and confused regulation.

Given the argument above, paragraph 64(1)(a) should be amended so that it bans those without a marine farming lease (rather than those without a marine farming licence) from carrying out marine farming in State waters.

- Consequential amendments should be made to subsection 64(1A) to refer to marine farming leases instead of marine farming licences.
- Subsection 64(3), which provides direction for how to apply for a marine farming licence, would become redundant and should be repealed.
- Subsections 64(4) and 64(4A), which set out that a marine farming licence should only granted to leaseholders and area owners, would become redundant and should be repealed.

Paragraph 64(1)(b) bans those without a marine farming licence from taking fish for the purpose of marine farming in State waters. This paragraph is technically redundant already, given the broader ban on the taking of fish in State waters in section 60. The retention of paragraph 64(1)(b) would be useful only if it were thought that it implicitly authorised those with a marine farming licence to take fish for the purpose of marine farming in State waters. If this is the case, the paragraph should be amended to refer to a marine farming lease instead of a marine farming licence.

Paragraph 64(1)(c) bans those without a marine farming licence from operating a fish hatchery. This paragraph should be repealed as the licence conditions imposed on oyster hatcheries are already imposed on oyster hatcheries through other means, or can readily be imposed on hatcheries through other means.

- The licence conditions on oyster hatcheries include a requirement to comply with the Tasmanian Shellfish Quality Assurance Program. This requirement is already imposed under the *Primary Produce Safety Act*.
- The licence conditions on oyster hatcheries include a requirement to not release fish into State waters. This requirement is already a requirement under section 125 of the LMRMA.

- The licence conditions on oyster hatcheries include a requirement to submit samples where abnormal mortalities have been observed. This requirement, and associated record keeping and reporting requirements, can be readily imposed under the *Biosecurity Act*.
- The repeal of paragraph 64(1)(c) would make subsection 64(2) redundant such that it should be repealed. Subsection 64(2) relates to freshwater fish hatcheries, which would continue to be licensed and regulated under the *Inland Fisheries Act*.

Section 65, which currently authorises marine farming by marine farming licence holders, should be amended so that it authorises marine farming in State waters by marine farming lease holders.

Section 66, which sets out that marine farming licences are subject to marine farming development plans and other conditions, would become redundant and should be repealed.

- Holders of marine farming leases are already subject to marine farming development plans so removing the requirement to obtain a marine farming licence would not remove the requirement to comply with marine farming development plans.
- The licence conditions imposed on oyster growers are already imposed on oyster growers through other means, or can readily by imposed on oyster growers through other means.
    - The licence conditions on oyster growers including a requirement to comply with the Tasmanian Shellfish Quality Assurance Program. This requirement is already imposed under the *Primary Produce Safety Act*.
    - The licence conditions on oyster growers include a requirement to not release fish into State waters. This requirement is already a requirement under section 125 of the LMRMA (which should be amended to refer to marine farming leases instead of marine farming licences).
    - The licence conditions imposed on oyster growers include a requirement to notify officials of significant illnesses, mortality or disease. Such requirements can be readily imposed under the *Biosecurity Act*.
    - The licence conditions on oyster growers include a requirement to keep and submit records. These requirements can be readily imposed as lease conditions under section 64 of the *Marine Farming Planning Act*.

Section 66A, which provides for the cancellation of a marine farming licence in the absence of a marine farming lease, would become redundant and should be repealed.

The *Marine Farming Planning Act* and *Primary Produce Safety Act* provide for fees to be imposed, so removing the requirement for oyster growers to obtain a marine farm licence and pay a marine farm licence fee would not prevent the collection of revenue from oyster growers.

Recommendation 2: Discretion

Recommendation 2: If the LMRMA's requirement for oyster growers to obtain a marine farming licence is to be retained, then marine farming licence decisions (i.e. whether to grant, renew, vary, etc.) should be made according to specific, legislated conditions — as opposed to vague conditions, guidelines that sit outside of legislation, and ministerial discretion beyond recourse to the courts. This would increase certainty and the capacity to borrow for oyster growers.

Technical implications of Recommendation 2 (to apply at least with respect to oyster growers):

Amend subsections 78(1), 78(2), 81(3), 82(2), 82(3), 83(1), 83(1A), 83(1B), and 87(2) to insert 'must' instead of 'may'.

Remove paragraphs 78(1)(h), 81(2)(g), 83(1)(b), 83(1B)(b), and 87(2)(a).

Remove paragraphs 82(2)(fa) and 83(1A)(ea), and that part of 87(2)(c) referring to guidelines.

Remove section 84.

It would be disappointing if, following this review, oyster growers were required to continue to seek a general permission to farm, in the form of a marine farming licence. But it would add insult to injury if decisions surrounding marine farming licences continued to involve as much Ministerial discretion as is currently the case.

This Ministerial discretion contributes to the borrowing and investment difficulties faced by oyster growers, as banks see how readily the Minister can remove an oyster grower's permission to farm through marine farming licence decisions under the LMRMA.

Even if the ministerial discretion in the LMRMA were considered necessary with respect to decisions regarding wild fishing — given that rogue operators in the wild fishing sector could drive a native species to extinction — no such argument applies with respect to marine farming.

Furthermore, the existence of specific conditions in the LMRMA upon which marine farming licence decisions are based means that ministerial discretion is unnecessary. The existence of these specific conditions means that the legislation does the work in determining what a decision should be. Overlaying these specific conditions with ministerial discretion is a duplication that introduces uncertainty and the potential for arbitrariness and corruption, while unnecessarily exposing the Minister to slander.

A particularly galling example of ministerial discretion riding roughshod over specific, legislated conditions arises with respect to applications to transfer a marine farming licence. Even if all the

legislated conditions for such a transfer are satisfied, the Minister is not required to grant the application, and is empowered to refuse the application. Undermining transferability in this way undermines the value of an oyster growing business, including in the eyes of potential financiers.

A long list of provisions in the LMRMA state that the Minister 'may' make various licence decisions when legislated conditions are present or absent. Given the above arguments, these provisions should be amended, at least with respect to oyster growers, so that the Minister 'must' do a particular thing when the legislated conditions are present, and 'must' refuse to do a particular thing when the legislated conditions are absent. Accordingly, 'must' should be inserted in the place of 'may' in subsections:

- 78(1), re granting a licence;
- 78(2), re refusing to grant a licence;
- 81(3), re refusing to renew a licence;
- 82(2), re transferring a licence;
- 82(3), re refusing to transfer a licence;
- 83(1) and 83(1A), re granting an application to vary a licence;
- 83(1B), re refusing an application to vary a licence; and
- 87(2), re allowing another person to use a licence.

Discretion is provided to the Minister not just through references to 'may', but also through legislated conditions that are so vague they allow the Minister to subjectively assert that the condition is met or is not met. For example, the Minister can refuse to renew an oyster grower's marine farming licence by asserting that it is not 'appropriate to do so'. This provides banks with reason to doubt that licence renewal is par for the course. These vague provisions should be removed, at least with respect to decisions affecting oyster growers, namely:

- the condition for granting a licence in paragraph 78(1)(h) — that 'it is appropriate to do so';
- the condition for renewing a licence in paragraph 81(2)(g) — that 'it is appropriate to do so';
- the condition for varying a licence against the wishes of the licence holder in paragraph 83(1)(b) — that 'the Minister considers it necessary or desirable to do so';
- the condition for refusing an application to vary a licence in paragraph 83(1B)(b) — 'for any other reason'; and
- the condition for allowing another person to use a licence in paragraph 87(2)(a) — that 'it is reasonable to do so'.

The discretion to vary a licence against the licence-holders wishes under paragraph 83(1)(b) is particularly egregious, as it creates a risk that an oyster grower could see the commercial viability of

their business disappear by decree at any time. This is a significant sovereign risk, which most other farming industries do not face, which has no parallel in business more broadly, and which would be hugely controversial if imposed on any other industry. Even if such an overwhelming discretion were considered necessary with respect to wild fishing to ensure that no native species is driven to extinction, no such argument applies with respect to marine farming. For these reasons, paragraph 83(1)(b) should be removed, at least with respect to oyster growers. If it must be retained, paragraph 83(1)(b) should at least be amended so that a marine farming licence cannot be varied simply because the Minister considers this to be 'desirable'.

The LMRMA also contains requirements for some, but not all, licensing decisions to be consistent with guidelines. These requirements are a further source of potential arbitrariness. Moreover, as guidelines exist outside of legislation, such requirements reduce the power of the directly-elected legislature and make it more difficult to discern what the current law is. These requirements for licensing decisions to be consistent with guidelines should be removed, at least with respect to decisions affecting oyster growers, namely:

- paragraph 82(2)(fa) requiring that granting an application to transfer a licence is consistent with guidelines;
- paragraph 83(1A)(ea) requiring that a licence variation is consistent with guidelines; and
- that part of paragraph 87(2)(c) requiring that approval to allow another person to use a licence is consistent with guidelines.

Finally, Section 84 strips a licence holder of the right to bring an action for damages against the Crown in respect of a transfer or variation of a licence. This makes the Minister's power absolute with respect to whether an oyster grower continues to have permission to farm. There should be no requirement to obtain and retain permission to farm, but if such a requirement is to exist, decisions regarding that permission should accord with the principles of natural justice and be subject to judicial review. Access to judicial review would make the holding a licence more secure in the eyes of a bank, and thus improve an oyster grower's capacity to borrow. For these reasons, section 84 should be removed, at least with respect to oyster growers.

Recommendation 3: Compliance with marine farming rules

Recommendation 3: If the LMRMA's requirement for oyster growers to obtain a marine farm licence is to be retained, ensure that marine farming licence decisions depend only on a person's compliance with those parts of the LMRMA that relate to marine farming.

Technical implications of Recommendation 3 (to apply at least with respect to oyster growers):

Amend paragraphs 78(1)(a), 82(2)(a), and 83(1A)(a), subparagraph 87(2)(b)(i), and sections 246 and 246A, so that marine farming licence decisions depend on compliance with respect to marine farming.

Currently, breaches against wild fishing provisions hinder a person from obtaining and retaining a marine farming licence. This is a result of the happenstance of marine farming and wild fishing being dealt with in the one Act.

A person who has breached the provisions of the LMRMA relating to wild fishing, such as by over-taking from communal waters a species that is part of Tasmania's native ecosystem, should not be prevented from moving to the different industry of marine farming, where typically a non-native species is grown in leased waters over which the grower has an exclusive right. It would be just as relevant for wild fishing breaches to hinder a person from being allowed to farm potatoes.

To rectify the quirk of wild fishing and marine farming being dealt with in the one Act, various provisions that make compliance with the LMRMA a condition for obtaining a favourable licence decision should be amended so that obtaining a favourable *marine farming* licence decision requires compliance with the LMRMA *with respect to any prior marine farming*. These provisions include:

- paragraph 78(1)(a), re granting a licence;
- paragraph 82(2)(a), re transferring a licence;
- paragraph 83(1A)(a), re varying a licence; and
- subparagraph 87(2)(b)(i), re allowing another person to use a licence.

Paragraph 90(1)(b), which deals with cancelling or suspending a licence due to an offence equivalent to an offence under the LMRMA, should be amended, so that a *marine farming* licence is cancelled or suspended due to an offence *with respect to marine farming* that is equivalent to an offence under the LMRMA.

Sections 246 and 246A should also be amended so that a person/partner/partnership/body corporate is disqualified from holding a *marine farming* licence if 200 or more demerit points have

been allocated in any five-year period with respect to fisheries offences *committed in the course of marine farming*.

Recommendation 4: Wild catch rules

Recommendation 4: If the LMRMA's requirement for oyster growers to obtain a marine farm licence is to be retained, ensure that those licence rules that apply more to wild fishing than marine farming — namely rules about character requirements, environmental and resource constraints, and management plans — no longer apply to marine farming.

Technical implications of Recommendation 4 (to apply at least with respect to oyster growers):

Ensure that the following provisions no longer apply with respect to marine farming decisions: paragraphs 78(1)(b), 78(1)(d), 78(1)(e), 78(1)(f), 81(2)(b), 81(2)(d), 81(2)(e), 82(2)(b), 82(2)(d), 82(2)(e), 82(2)(f), 83(1A)(b), 83(1A)(c), and 83(1A)(e), subparagraphs 87(2)(b)(ii) and 87(2)(b)(iv), and that part of paragraph 87(2)(c) requiring that approval to allow another person to use a licence is not likely to contravene a management plan.

As a result of the happenstance of marine farming and wild fishing being dealt with in the one Act, a number of licence conditions whose justification relates primarily to wild fishing nonetheless apply to marine farming. These conditions should be removed with respect to marine farming licence decisions, at least with respect to oyster growers.

Character tests

Various licence decisions require that the applicant, within 5 years before the date of the application, has not been convicted of any offence under this Act, any other Act or a corresponding law which the Minister considers relevant to the holding of a licence. These licence decisions also require that the applicant is a fit and proper person to hold the licence.

Such tests of character add uncertainty regarding the right of oyster growers to operate into the future.

Such tests of character are of relevance to wild fishing, where operators extract native species from communal waters and where a disreputable operator could drive that native species to extinction through over-extraction. But this risk does not arise with marine farming or farming more generally. For this reason, such tests of character are not applied to most farming industries.

Oyster farming is environmentally-friendly. Oyster farming has minimal impact on the marine environment, and, as filter feeders, oysters improve water quality. So any justification for applying tests of character to operators in environmentally-harmful industries does not apply with respect to oyster farming.

Given the above argument, oyster farming should not be subject to tests of character. Accordingly, the following provisions should no longer apply to marine farming decisions, at least with respect to oyster growers:

- paragraphs 78(1)(b) and 78(1)(f), re the granting of a licence;
- paragraphs 81(2)(b) and 81(2)(e), re renewing a licence;
- paragraphs 82(2)(b) and 82(2)(f), re transferring a licence;
- paragraph 83(1A)(b), re varying a licence; and
- subparagraphs 87(2)(b)(ii) and 87(2)(b)(iv), re allowing another person to use a licence.

Management plans

Various licence decisions also require that granting the application is not likely to contravene a management plan. Management plans under the LMRMA relate to wild fishing, so this requirement regarding management plans is not relevant to marine farming. Given this, the following provisions should no longer apply to marine farming decisions, at least with respect to oyster growers:

- paragraph 78(1)(d), re the granting of a licence;
- paragraph 82(2)(d), re transferring a licence;
- paragraph 83(1A)(c), re varying a licence; and
- that part of paragraph 87(2)(c) requiring that approval to allow another person to use a licence is not likely to contravene a management plan.

Environmental and resource constraints

Various licence decisions require that there are no environmental or resource constraints in granting the application. This condition relates primarily to wild fishing, as granting a fishing licence involves an additional operator extracting native species from communal waters, with obvious implications for the environment and the resource being extracted. In contrast, the critical stage for considering environmental impacts with respect to oyster farming is when a lease is granted under the *Marine Farming Planning Act*, rather than when making decisions regarding a marine farming licence under the LMRMA. Moreover, with oyster farming there is no parallel to the resource constraints that the wild fishing industry experiences regarding its product. Given this, the following provisions should no longer apply to marine farming decisions, at least with respect to oyster growers:

- paragraph 78(1)(e), re granting a licence;
- paragraph 81(2)(d), re renewing a licence;
- paragraph 82(2)(e), re transferring a licence;
- paragraph 83(1A)(e), re varying a licence.

Recommendation 5: Term limit

Recommendation 5: If the LMRMA's requirement for oyster growers to obtain a marine farm licence is to be retained, lift the marine farming licence term limit to 30 years.

Technical implications of Recommendation 5 (to apply at least with respect to oyster growers):

Amend section 80 to refer to 30, instead of 10, years.

Section 80 of the LMRMA limits the term of a licence to 10 years.

This term limit may be fine for wild fishing, as there may be no reference point for determining a term limit for a wild fishing licence.

But there *is* a reference point for determining a term limit for a marine farming licence — the 30-year limit for the duration of a lease under the *Marine Farming Planning Act*.

The misalignment of these term limits undermines the capacity of oyster growers to borrow. An oyster grower may be able to advise a financial institution that it has the exclusive right to the use of particular waters for 30 years, but the grower will only ever be able to refer to a 10-year permission to farm in those waters.

If the requirement to obtain a marine farming licence is to continue, the term limit for such licences should be lifted to 30 years. This will improve the capacity of oyster growers to borrow and reduce compliance costs for oyster growers and administration costs for government with respect to licence renewal.

Recommendation 6: Duplicative provisions

Recommendation 6: If the LMRMA's requirement for oyster growers to obtain a marine farm licence were retained, remove the requirement for marine farm licences to contain conditions that duplicate conditions imposed under other legislation.

Technical implications of Recommendation 6 (to apply at least with respect to oyster growers):

Remove paragraph 64(4)(b).

Paragraph 64(4)(b) requires marine farming licences to contain conditions and restrictions imposed under a marine farming development plan. These conditions and restrictions are already legally enforceable under the *Marine Farming Planning Act*. Requiring these conditions and restrictions to be contained in marine farming licences unnecessarily complicates marine farming licences, and means that, if there is a breach, oyster growers do not know whether enforcement action will be taken under the LMRMA, the *Marine Farming Planning Act*, or both. Given this argument, paragraphs 64(4)(b) should be repealed, at least with respect to oyster growers.

Recommendation 7: Licence conditions

Recommendation 7: If the LMRMA's requirement for oyster growers to obtain a marine farm licence were retained, remove the capacity to attach conditions to the licence.

Technical implications of Recommendation 7 (to apply at least with respect to oyster growers):

Remove paragraph 66(b).

It would be disappointing if, following this review, oyster growers were required to continue to seek a general permission to farm, in the form of a marine farming licence. But it would add insult to injury if this permission to farm remained subject to conditions that are unspecified in the legislation.

This power to impose condition is contained in paragraph 66(b), which states that a marine farming licence is subject to any condition specified in the licence. This power is unnecessary, as conditions can instead be imposed through other legislation — legislation that is more focussed on the risks to be managed.

- The licence conditions on oyster growers, including hatcheries, typically include a requirement to comply with the Tasmanian Shellfish Quality Assurance Program. This requirement is already imposed under the *Primary Produce Safety Act*.
- The licence conditions on oyster growers, including hatcheries, typically include a requirement to not release fish into State waters. This is already a requirement under section 125 of the LMRMA.
- The licence conditions on oyster hatcheries include a requirement to submit samples where abnormal mortalities have been observed. The licence conditions imposed on oyster growers include a requirement to notify officials of significant illnesses, mortality or disease. Such requirements, and associated record keeping and reporting requirements, can be readily imposed under the *Biosecurity Act*.
- The licence conditions imposed on oyster growers include a requirement to keep and submit records. These requirements can be readily imposed as lease conditions under section 64 of the *Marine Farming Planning Act*.

Given this argument, paragraph 66(b) should be repealed, at least with respect to oyster growers (including oyster hatcheries).

Recommendation 8: Keeping and submitting records

Recommendation 8: If the LMRMA's requirement for oyster growers to obtain a marine farm licence were retained, and if the capacity to attach conditions to the licence were also retained, then reduce the excessive record keeping and reporting requirements typically attached to marine farming licences.

Technical implications of Recommendation 8 (to apply at least with respect to oyster growers):

In the absence of a justification to the contrary, change the typical licence conditions issued under the LMRMA so that:

-oyster growers are only required to keep records for one year; and

-employee numbers are reported annually.

The marine farming licences of oyster growers typically include conditions requiring the keeping and submitting of records.

Records not routinely submitted

Oyster growers are required to record the date of each movement of oysters brought onto and taken off the lease, the species, class and quantity involved, the origin of the oysters brought onto the lease, and the destination of the oysters taken off the lease. Oyster growers are required to keep such records for five years.

As part of this review, the Government should publicly provide a justification (akin to a Regulation Impact Statement) for why each of these details needs to be recorded. Part of this justification should include outlining, for each detail that needs to be recorded, how often, over the 27-year history of the LMRMA, that detail was requested by, and provided to, the Government, and how often that detail was relevant to an investigation.

As part of this review, the Government should publicly provide a justification for why records need to be kept for five years, as opposed to four, three, two, or one. Record keeping obligations on oyster growers should be justified on the grounds of their usefulness in human health emergencies, and any human health emergency will become apparent well before the passage of five years.

In the absence of any compelling justification to the contrary provided by the Government, the requirement to keep records regarding the movement of oysters should be reduced to a one-year requirement.

Records routinely submitted:

Oyster growers are separately required to record details for the stock taken off a lease area each quarter. Growers (including hatcheries) are required to distinguish stock taken off a lease area for consumption (a non-sensical reporting requirement for hatcheries) or processing, and stock taken off a lease area for on-growing outside Tasmania. Growers are required to record: the species; the state, territory or country that the stock is destined for; and the quantity, in their metric of choice. Growers are also required to record their employee numbers each quarter. These details need to be submitted each quarter, and records need to be retained for five years.

As part of this review, the Government should publicly provide a justification why each of these details needs to be recorded and submitted each quarter. Part of this justification should include outlining, for each detail that needs to be recorded, how often, over the 27-year history of the LMRMA, that detail contributed to a critical State Government function.

- Publishing a measure of the size of the industry in Departmental annual reports is not a critical State Government function. Moreover, measuring elements of the economy is a function of the Federal Government, for which federal legislation exists, and which ABARES and the ABS can deliver, without data mandatorily gathered from oyster growers through marine farming licence conditions.
- As growers submit measures of quantity in a metric of their choosing, and as growers do not provide information on prices, the measure of the size of the industry produced in Departmental annual reports from the data provided by growers is inaccurate.

It is not clear why this requirement to record and submit is quarterly rather than annual. Departmental reporting, the calculation of accreditation fees based on employment, and engagement with the federal Fisheries Research and Development Corporation, is annual.

In the absence of any compelling justification to the contrary provided by the Government, the requirement, over and above the requirement discussed under 'Records not routinely submitted', to record and submit details regarding stock taken off a lease area should be dropped. The reporting of employee numbers should be retained but be made annual.

If this requirement to record and submit details regarding stock taken off a lease area is retained, it should be an annual, rather than quarterly, requirement.

Recommendation 9: Licence fees

Recommendation 9: If the LMRMA's requirement for oyster growers to obtain a marine farm licence were retained, reduce the licence fee on oyster growers so that the revenues no longer contribute to the costs of administering other legislation.

Technical implications of Recommendation 9 (to apply at least with respect to oyster growers):

Reduce the annual licence fee on oyster growers from $1,377.75 to the level reflecting administration costs specific to the LMRMA, e.g. $165, the level of the additional bivalve species licence fee.

A licence fee should reflect the cost of administering a single licence under the LMRMA. It should not reflect the costs of administering other legislation.

- The *Marine Farming Planning Act* is the Act that casts the Government as landlord and the oyster grower as tenant. Just as the costs of inspections by a landlord should be covered by the rent paid by a tenant, the cost of ensuring that oyster growers are taking care of their surrounds should be covered by lease fees under the *Marine Farming Planning Act*, not licence fees under the LMRMA.
- The *Primary Produce Safety Act* is the Act that ensures that food produced in Tasmania, including oysters, is fit for human consumption. While there can be debate as to how much the costs of food safety regulation should be covered by general taxation vis-à-vis industry, how much oyster growers should be charged vis-à-vis other industry, and whether the food safety regulation costs to be paid by oyster growers should be charged under the *Primary Produce Safety Act* or under section 279 of the LMRMA, there is no case for the food safety regulation costs that are to be paid by oyster growers being paid by way of licence fees.
- Oyster farming is environmentally-friendly. Oyster farming has minimal impact on the marine environment, and, as filter feeders, oysters improve water quality. So there is no case for oyster growers to be charged for environmental services under the *Environmental Management and Pollution Control Act*.

The annual licence fee for an oyster grower is $1,377.75. Given that there are around 112 current licences, this implies annual licence revenues from oyster growers of around $150,000. It is not clear what this $150,000 is for, given that:

- as argued under Recommendation #1, there is no justification for the licensing of oyster growers under the LMRMA — an Act primarily focussed on wild fishing;

- the ‘landlord’ services under the *Marine Farming Planning Act* should be covered by lease fees;
- the food safety regulation costs not covered by general taxation should be covered by fees charged under the *Primary Produce Safety Act* and section 279 of the LMRMA; and
- general public service costs associated with overseeing and supporting industries are generally recouped through taxation rather than industry-specific charges.

Tasmania’s oyster farming industry pays more than $1½ million in industry-specific fees and levies to the State Government each year. This consists of more than $150,000 in licence fees, more than $600,000 in lease fees, more than $60,000 in accreditation fees, and around three quarters of a million dollars in ShellMAP levies, depending on the year.

Given that oyster growers generate limited administrative costs specific to the LMRMA, and given the significant government revenues provided by oyster growers more generally, the annual licence fee on oyster growers should be reduced from $1,377.75 to the level reflecting the LMRMA-specific administration costs generated by oyster growers (and hence excluding the general public service costs associated with overseeing and supporting industries). In the absence of data on this from Government, a licence fee of $165, the level of the additional bivalve species licence fee, would be a more reasonable licence fee for oyster growers.

Recommendation 10: Consolidation

Recommendation 10: If the LMRMA's requirement for oyster growers to obtain a marine farm licence were retained, allow an oyster grower who holds multiple licences to consolidate those licences.

Technical implications of Recommendation 10 (to apply at least with respect to oyster growers):

Officials should raise with relevant licence holders an offer to facilitate licence consolidation (through the variation of a licence to incorporate the lease areas of other licences, accompanied by the surrender of those other licences).

The marine farming licence conditions imposed on oyster growers do not vary depending on the nature of the lease area. Rather, the imposition of different conditions depending on the nature of the lease area is achieved under the *Marine Farming Planning Act*. Given this, oyster growers that hold multiple marine farming licence conditions should be allowed to consolidate their licences into one. This would reduce compliance costs on oyster growers and administration costs on the Government.

Note that the cost of administering a licence should not rise with any increase in the lease area under the licence. This is the case because those administration costs that are somewhat proportional to lease area, such as the costs of administering the *Marine Farming Planning Act* and the *Primary Produce Safety Act*, are not costs from administering a licence under the LMRMA. As such, there would be no case for increasing licence fees if there were an increase in the average lease area per licence.

Note also that the ShellMAP levy and the levy payable to Oysters Tasmania are currently imposed on a per licence basis. Allowing licence consolidation would change the distribution of these imposts. This is not a reason to stand in the way of licence consolidation, particularly as there may be little logic in the current method for imposing these levies. The question of whether licence consolidation should be allowed should be determined on its own merits. If licence consolidation serves as a prompt for reconsideration of the basis for the imposition of various charges, then that is not a bad outcome.

Recommendation 11: Industry levies

Recommendation 11: If the LMRMA's requirement for oyster growers to obtain a marine farm licence were retained, require that decisions regarding industry levies paid by licensed oyster growers under the LMRMA are effectively made by industry.

Technical implications of Recommendation 11 (to apply at least with respect to oyster growers):

Remove paragraphs 279(1A)(a) and 279(1A)(b).

Amend subsection 279(1) to require the Minister to impose a levy where the relevant 'fishing body' requests it request and where there is majority industry support.

Amend subsection 279(9) so that it deals with the discontinuation of all current and future levies, and so the Minister must discontinue a levy if there is majority industry support to do so.

Amend subsection 279(2) to similarly empower the relevant 'fishing body' in the setting of the amount of levy.

Recommendation #1 outlines how the levy payable to Oysters Tasmania and the ShellMAP levy could be collected outside of the authority of the LMRMA. Nonetheless, if these levies are to continue to be collected under the authority of the LMRMA, decisions regarding their imposition should effectively be made by industry.

Establishing a levy

There are two provisions for establishing a levy under the LMRMA — paragraph 279(1A)(a) and subsection 279(1).

- Paragraph 279(1A)(a) requires Ministerial approval and consultation with the relevant 'fishing body' for a levy to be established.
- Subsection 279(1) requires Ministerial approval, a request from the relevant 'fishing body', and majority industry support, for a levy to be established.

Paragraph 279(1A)(a) should be repealed and subsection 279(1) should be amended so that the Minister must establish a levy if there is a request from the relevant 'fishing body' and majority industry support.

- Note that this change may only affect future levies, rather than those that are already established. Note also that it is odd to call an aquaculture peak body such as Oysters Tasmania a 'fishing' body. This is another quirk of being bundled into the LMRMA.

Discontinuing a levy

There are two provisions for discontinuing a levy under the LMRMA — paragraph 279(1A)(b) and subsection 279(9).

- Paragraph 279(1A)(b) requires Ministerial approval and industry consultation in order to discontinue a levy established under 279(1A)(a).
- Subsection 279(9) requires Ministerial approval and an industry request in order to discontinue a levy established under subsection 279(1).

Paragraph 279(1A)(b) should be repealed and subsection 279(9) should be amended so that:

- Subsection 279(9) deals with the discontinuation of all current and future levies, rather than just those established under subsection 279(1);
- the Minister must discontinue a levy if there is majority industry support for discontinuation.

While this change would allow a majority of oyster growers to discontinue the ShellMAP levy as authorised under the LMRMA, this would be unlikely if the Government flagged that the consequence would be that no oyster growers would be accredited under the *Primary Produce Safety Act* such that oyster growers would be barred from operating their businesses. There is also the option to authorise the ShellMAP levy under the *Primary Produce Safety Act* without the need for grower support.

This change would also allow a majority of oyster growers to discontinue the levy payable to Oysters Tasmania. This is as it should be.

Setting the levy amount

Subsection 279(2) states that the amount of the levy is determined by the Minister.

It is inconsistent to empower the industry when it comes to the establishment of a levy, but to disempower the industry when it comes to determining the amount of that levy. To remove the inconsistency, subsection 279(2) should be amended so that:

- if subsection 279(1A) is to be retained, the levy amount is to be determined after consultation with the relevant fishing body; and
- if subsection 279(1A) is to be repealed, the levy amount is to accord with the amount supported by the majority of the industry, or, if that amount is not known, with the amount requested by the relevant fishing body.

While this change would allow industry to set the ShellMAP levy at a level below what the Government prefers, this course of action would be unlikely if the Government flagged that the consequence would be that no oyster growers would be accredited under the *Primary Produce Safety Act*, such that oyster growers would be barred from operating their businesses. And again, there remains the option to authorise the ShellMAP levy under the *Primary Produce Safety Act* without the need for grower support.

This change would also allow a majority of oyster growers to set the levy payable to Oysters Tasmania at a level below that the Government or Oysters Tasmania prefers. This is as it should be.

Recommendation 12: Related regulation

Recommendation 12: Review related regulation affecting oyster growers — including lease security, lease and food safety charges, the regulation of run-off, and support for growth.

The reform of the LMRMA is welcome. At the same time, such reform will draw attention to related regulatory and industry policy settings affecting oyster growers that are also in need of reform.

Lease security

Current elements of licensing under the LMRMA impinge on the security of oyster growers and their capacity for borrowing and investment. A number of recommendations in the submission would address this. But a lack of security for oyster growers, leading to difficulties with borrowing and investment, also arises from lease arrangements under the *Marine Farming Planning Act*.

These arrangements should be amended so that marine farming leases are as secure as water rights in the Murray Darling Basin. The 30-year leases of oyster farmers should be an asset that can serve as collateral for borrowing. Each incongruity between the security of farming on land compared to farming on water needs to be closely examined, and if the incongruity cannot be justified, it should be removed.

Taxes, fees and levies

The fees for licences under the LMRMA cover the costs of administering other legislation. This submission recommends the cessation of this cross-subsidisation. Yet other imposts on oyster growers also warrant review.

The oyster farming industry makes a unique contribution to the State budget.

Like other industries, the oyster farming industry pays significant federal, state and local taxes.

But unlike most industries, including most farming industries, the oyster farming industry makes a significant industry-specific contribution to the State budget. The oyster farming industry pays more than $800,000 each year through licence, lease, and accreditation fees, and this year is set to pay more than $870,000 in the form of the ShellMAP levy.

Lease fees should be reviewed to ensure they do no more than cover the 'landlord' costs of government inspecting the leases of the 'tenant' oyster growers, and do not exceed what alternative users would be willing to pay for similar access to the waters.

Industry members are unclear on what accreditation fees fund. Government should apportion the costs of food safety regulation between food-producing industries, and set out the food safety charges (including accreditation fees and the ShellMAP levy) paid by each food-producing industry. This would hopefully demonstrate to the oyster farming industry that the food safety charges it pays are proportional to the food safety regulation costs it is responsible for.

The ShellMAP levy is paid for by the bivalve shellfish industry, but the costs covered by this levy provide benefits beyond the bivalve shellfish industry. For instance, as part of the ShellMAP levy, oyster growers pay more than $500,000 each year for both the capital and running costs of mass spectrometers that test for biotoxins. This is despite the fact that the mass spectrometers are assets providing options value for the entire state, and biotoxin testing benefits industries beyond the oyster farming industry. The magnitude of the ShellMAP levy, and the lack of grower control over the levy, makes it a further factor holding back the growth of the industry. Urgent action is required to reduce the ShellMAP levy while ensuring that harvest days are maximised and our product remains safe.

Run-off

Run-off from agriculture, industry and TasWater is prompting significant restrictions on the growth of the oyster farming industry at existing lease sites. Run-off from agriculture, industry and TasWater needs to be better regulated, and regulations need to be enforced, in line with Tasmania's branding opportunity as a clean, green state.

Growth and support

New lease areas for oyster growing need to be explored. Much of Tasmania's vast coastline presents opportunities for oyster growing, which is a low-impact industry with minimal impact on both the marine and human environment. As filter feeders, oysters improve water quality. We produce a sophisticated, environmentally-friendly delicacy of which Tasmania can be proud. There is no better candidate for industry support.