



tasmanian conservation trust inc

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Living Marine Resources Management Act 1995 Review
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GENERAL COMMENTS

Reason for the review

The LMRMA Terms of Reference and the Department of Natural Resources and Environment LMRMA Review webpage purport to address the reasons for the review but they are less than precise about this key point.

Terms of reference

The terms of reference start with two points under "Key messages" that seem to address the reasons for the review. The second point, relates to the impact of the COVID-19 pandemic that we admit highlighted some limitations of the LMRMA, but these were very discreet (as described in the discussion paper) and hardly justify a review of the entire act.

The first point under "Key messages" points to the "Seafood Industry Growth and Recovery Plan" being the reason for the government committing to the review. This would seem to be the lynch pin for why the review has been undertaken so I went to look for this plan. But it seems that such a plan does not exist.

My conclusion from this brief analysis is that, given the key role that this purported plan plays in justifying the LMRMA review, the government has deliberately deceived the community in making reference in the terms of reference to this non-existent document.

So, if the "Seafood Industry Growth and Recovery Plan" does not exist, is there evidence of where this reference came from? A simple online search of the plan title comes up with the following links: "Seafood Industry Growth and Recovery" in the 2020-21 State Budget. Chapter 10, DPIPWE. Table 10.1 (page 252) lists a line item allocation of \$500,000 for "Seafood Industry Growth and Recovery".

The other reference is on page 254:

Seafood Industry Growth and Recovery Funding of \$500 000 has been provided in 2020-21 to support seafood industry growth and recovery, including a review of the

Living Marine Resource Management Act 1995 and a study into the Tasmanian Ocean Business Incubator concept.

The 2021-22 state budget includes \$537,000 for Seafood Industry Recovery Initiatives which we assume is the same unspent funding allocated the previous year. It also includes the following:

COVID-19 Response - Seafood Industry Recovery Initiatives This initiative will support seafood industry growth and recovery, including a review of the Living Marine Resource Management Act 1995 and a study into the Tasmanian Ocean Business Incubator concept.

How and why did the apparent COVID-19 response included in the state budget evolve into a comprehensive review of the LMRMA that is purported to be based on a non-existent plan?

Another google search found another document that may provide answers to these questions – produced by Tasmanian Seafood Industry Council titled “Tasmanian Seafood Covid-19 Roadmap to Recovery A new ‘post covid’ journey for Tasmanian seafood”, May 2020. This appears to be a submission to the state government and may have found its way to the PESRAC.

Page 5 of that document (see below) includes a recommendation, based on the COVID experience, for a review of the LMRMA – the recommendation not being limited in any way.

During the Covid-19 crisis, one of the key barriers to the delivery of support for the Tasmanian seafood industry was the overarching regulation – the Living Marine Resources Management Act 1995. This Act is now 25 years old and is outdated relative to the modern seafood industry. It’s prescriptive nature is a considerable hinderance to many aspects of managing our marine resources.

- *Lobby the Government for a review of the Living Marine Resources Management Act 1995.*

Is it fair to conclude that the review of the LMRMA is entirely due to the TSIC? If so, the review seems to be based on a simple and unjustified claim by TSIC about the LMRMA’s “prescriptive nature”.

Department of Natural Resources and Environment LMRMA Review webpage

The comments on the NRE webpage under the heading “Background – Modernising Tasmania’s Fisheries Legislation” mainly repeat the comments in the terms of reference. However, there is one different point made:

Ensuring long-term sustainability is the overarching objective in managing Tasmania’s commercial and recreational fisheries, however, there are increasing questions about how well this is articulated in the legislation, particularly with respect to social and economic dimensions. The LMRMA has not been subject to any major review or strategic consideration of its effectiveness in the past 25 years.

While the terms of reference make a similar claim to the first point, i.e. the need for the LMRMA to achieve sustainability, the second part of the sentence from the website brings in a different element i.e. “there are increasing questions about how

well this is articulated in the legislation, particularly with respect to social and economic dimensions”.

There is no evidence provided that supports this claim. Who is asking questions about sustainability and are they really asking questions specifically about social and economic sustainability and not about the environment? There is however, a growing number of people in the community asking questions about environmental sustainability in the marine environment (most notably regarding to marine farming and *Centrostephanus*) but this is not mentioned.

Exemptions

The Terms of Reference address the scope of the review of the LMRMA including identifying a number of issues the review will not address and the full text is included below.

The Review will not:

Consider the following Acts, except as so far as they interact with the Act:

- *Marine Farming Planning Act 1995,*
- *Fisheries (Licence Ownership and Interest) Registration Act 2001*
- *Legislation governing nature conservation, environmental protection, and biosecurity.*

Consider the Government's policy of no new marine reserves.

Consider changes to Abalone Deed arrangements.

Failure to justify the exemptions

The state government ought to have provided a justification for each specific exclusion but there is no information provided at all. The failure to do so diminishes the legitimacy of the process and invites speculation that the exemptions were made for political and/or commercial reasons i.e. the fishing and marine farming industries influenced the state government to include these exemptions.

Need for information on acts that interact with the LMRMA

While it is legitimate to have limits to any legislative review, it is critical to define them very precisely. One exemption applies to “*Legislation governing nature conservation, environmental protection, and biosecurity*” but the particular acts are not even named.

It is very unhelpful that terms of reference state that “*The Review will not: Consider the following Acts, except as so far as they interact with the Act*” but fails to provide information to assist the reader in knowing where they interact with the LMRMA.

Marine Farming Planning Act 1995

It is hoped that the department is flooded with comments about the inadequacies of the Marine Farming Planning Act 1995 and provisions of the Environmental Management and Pollution Control Act 1994 (EMPCA) that relate to marine farming.

The state government has failed to respond to the fundamental flaws in the Marine Farming Planning Act 1995 in particular those that relate to the functioning of the Marine Farming Planning Review Panel. There was a comprehensive review of the EMPCA as it relates to marine farming but the government has sat of the myriad draft amendments for more than two years. If the concerns relating to these acts were properly addressed then the community would accept the need for the LMRMA review to exempt them.

Other environment legislation

We have many concerns about how existing state and Commonwealth legislation as well as the LMRMA fails to properly conserve marine species and ecosystems. Because of the vagueness of the exemptions we are uncertain about whether to mention concerns as they relate to these other acts.

For example, there are serious weaknesses in how the national environment laws, the Environment Protection and Biodiversity Conservation Act, integrate and work with the LMRMA. One notable example is the EPBC Act/LMRMA processes for endorsing state based fisheries management plans and environmental assessments for fisheries requiring export approval. There has been a major failure in this regard in relation to the EPBC Act approvals for export of rock lobster and in particular the changes implemented in 2018. The flaws relate to both pieces of legislation and yet the terms of reference may exempt these issues being raised.

While we could provide much more detail here (which has been provided previously to the Department and Tasmanian minister for fisheries) we are reluctant to do this extra work until the review terms or reference are amended to explicitly and precisely encourage this type of issue to be raised.

It is noted that the discussion paper invites comments on the LMRMA purpose and objectives. Relevant here is the sub-section 7(1)(ba) "take account of a corresponding law" which we understand to refer to laws of other states and the Commonwealth. It would be very helpful if concerns about the EPBC Act are explicitly encouraged.

We make suggestions about how the purposes and objectives of the LMRMA may be changed and these may benefit from or require change to other legislation. It would be very helpful if concerns about other act are explicitly encouraged.

If the terms of reference were appropriately amended to allow for comments on appropriate corresponding laws the TCT may have issues to raise that relate to other state legislation e.g. whether protected marine species are given appropriate protection in Victorian marine waters.

Management of existing marine protected areas

The TCT is uncertain if the LRMMA review is inviting comments on the management of existing marine protected areas and the potential need for strengthening of reserve status and/or fisheries controls through the LMRMA. It is unclear if these concerns are affected by the "no new marine reserve exemptions" or other exemptions.

We support changes to prohibit commercial fishing in a number of existing MPAs but this would require providing details about the need for changing the reserve status (achieved through the Nature Conservation Act) as well as using provisions

in the LMRMA. We are also concerned at the lack of formal management plans for many existing MPAs and the consequent lack of active management, protection, monitoring and enforcement over unauthorized fishing. These concerns relate to use of the current provisions in these two acts as well as the need for detailed review and amendment to them. We are unwilling to provide detailed arguments until the terms of reference are amended to make it explicitly clear that comments on marine protected areas management and fisheries controls are allowed and encouraged.

No new marine reserves policy exemption

The exemption relating to "the Government's policy of no new marine reserves" is actually misrepresenting the state government's policy. The state government announced at the 2021 state election that it would maintain the existing moratorium on new marine protected areas. This is a critical misrepresentation as those making submissions, if there were told the correct policy, may suggest that the moratorium should be lifted.

Marine Protected Areas

In case the issues are considered we offer this summary of the very limited state of Tasmania's marine protected area system. Excluding the large Marine Protected Areas (MPA) around Macquarie Island there is only 2.66% of Tasmania's marine waters in MPAs and only 1.1% is no-take. Tasmania has eight marine bioregions but four of these have zero MPAs. There are no reserves on the west coast north of Bathurst Harbour and the entire north coast and Bass Strait Islands. The Freycinet Bioregion has only two reserves and one is very small. The Bruny Bioregion only has two small no-take reserves and all the other reserves allow fishing.

Tasmania's Marine Protected Areas system is pitifully inadequate but it has been more than ten years since any MPA's were proclaimed in Tasmania. With the growing impact of global climate change on our coastal waters and other threats (such as the destruction of rocky reefs on Tasmania's east coast due to proliferation of the *Centrostephanus* sea urchin) there is a greater need than ever to have a comprehensive system of MPAs.

Some "Discussion Questions" are slanted or biased

The provision of "Discussion Questions" throughout the discussion paper is a useful means of stimulating comments however some of them are worded in ways that are not appropriate and the worst of these contain a clear bias. The most concerning questions relate to Theme Three: Regulatory framework. This reinforces our assumption that the true reason for the review was to respond to concerns raised by the fishing and/or seafood industry about regulation under the act.

The following are the most concerning examples:

Does the current direct government regulatory regime adequately support the objectives of the Act? How else could regulatory outcomes be achieved? (page 35)

The description in this question of the current system as "current direct government regulatory regime" might be disputed and could be viewed as leading respondents to a particular response. The second question might also be viewed

as biasing answers. The question should have included the option of keeping the current system.

What should the control arrangements be in the Tasmanian fisheries framework? Could access be controlled in a simpler way while still achieving the objectives of the Act? Examples of your experiences with licensing under the Act can be provided. (page 42)

The suggestion in the second question of "simpler" control arrangements may bias responses. The wording implies there are benefits of simpler arrangements whereas complex arrangements may be preferable or unavoidable.

How could the current fees and levy arrangements be improved? (page 45)

The question may bias answers as it implies that improvements are possible or necessary and avoids providing an option of no change. We note that the question in regard to "Exemptions" is worded very similarly but provides an appropriately worded caveat i.e. "How can the exemption process be improved, if at all?" (page 49).

Are the current penalties for fisheries offences appropriate? How could the rules dealing with compliance be improved? (Page 51)

The second question repeats the same flaw in that it implies that the rules need to be can be improved without raising the option of no change.

Could the Act's objectives be strengthened with regards to Aboriginal activities and connection to sea country and sea country values? (page 13).

While we support consideration of changing the Act's objectives to better reflect the interests of the Aboriginal community these interests are singled out whereas others (included in comments on objectives) are not mentioned or are excluded from the review scope.

No back ground on marine species and environment

The discussion paper includes a few brief cases studies that provide a little information about the state of the marine environment.

No comprehensive review has been undertaken of the state of the marine environment and fisheries in particular.

The first of the three review objectives is to "Strategically consider if Tasmania's marine resource management regime meets the objectives of achieving sustainable development and aligns with current best practice fisheries and marine resource management principles".

We are being asked to comment on how the LMRMA has contributed to achieving sustainable development in the absence of adequate information about the state of the marine environment and whether the LMRMA has performed as intended and if this has had positive impact on the marine environment.

There are a few high profile issues that have been documented by IMAS and the Department of NRE in publically available reports – perhaps the most prominent issue is the proliferation of *Controstephanus* and the barrens that result. These

reports could easily have been, but were not, provided via the department's website for consideration by the community in preparing submissions.

The state government and partner organisations such as IMAS undertake monitoring that is designed principally to inform ongoing review of fisheries management but this is limited in its scope and no details are provided on the review website.

We note that the Forest Practices Authority undertakes bi-annual reporting in the State of the Forests Report, annual auditing of Forest Practices Plan implementation (I understand that 15% of plans are audited for compliance) and research projects investigate the effectiveness of prescriptions included in the Forest Practices Plan. The Review needs to consider the need for similar program of monitoring, research and reporting in regard to the LMRMA.

Climate change

In the entire discussion paper there seems to be a single mention of climate change in the "Introduction" at page 7. This section is followed by a series of questions including one that asks about the major challenges for the next 20 years. This is expressed as if climate change is not an established fact, that all readers should be briefed on, but as a subject that is open to opinion and comparable to any other issue people wish to raise.

This is another reason for the review to be restarted with amended terms of reference. A discussion paper needs to be rewritten to include a chapter on climate change in the marine environment.

SPECIFIC COMMENTS ON "MODERNIZING TASMANIA'S FISHERIES LEGISLATION A REVIEW OF THE LMRMA DISCUSSION PAPER"

Theme one: Objectives and scope

Purpose and objectives of LMRMA and sustainable development

The Purpose and objectives of LMRMA are very limited and need a thorough rewrite. However, this must not happen unless the entire process is restarted and the numerous critical flaws have been addressed. This revised process ought to include providing information in a discussion paper about the weaknesses of the current objectives and how the objectives might be amended including examples from other state fisheries legislation.

The current Purpose and Objectives are limited to two essential statements both amounting to single sentences:

Subsection 7(1) starts with the statement "The purpose of this Act is to achieve sustainable development of living marine resources" and then this is followed by a list of five sub-points. These sub-points seem to have limited effect because fisheries managers are only to "have regard" to them.

The meaning of 7(1) requires interpretation of the definition of Sustainable Development included in Schedule 1 and this is also limited. The definition is generic and is not specific to the marine environment or marine natural resources. Neither section 7 or Schedule 1 include any criteria to help fisheries managers to

know how to apply the purpose and objectives and whether they have achieved them – this is a fundamental weakness of the act.

Subsection 7(2) refers to schedule 1 which includes the objectives of the Resource Management and Planning System. The application of these is also limited by the wording of 7(2) that requires that the objectives of the RMPS are merely “furthered”.

A simple google search found numerous state fisheries acts with statements of objectives that have obvious advantages over the LMRMA objectives. For example the NSW Fisheries Management Act includes the following.

Objects of Act

- (1) The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.*
- (2) In particular, the objects of this Act include—*
 - (a) to conserve fish stocks and key fish habitats, and*
 - (b) to conserve threatened species, populations and ecological communities of fish and marine vegetation, and*
 - (c) to promote ecologically sustainable development, including the conservation of biological diversity,*
and, consistently with those objects—
 - (d) to promote viable commercial fishing and aquaculture industries, and*
 - (e) to promote quality recreational fishing opportunities, and*
 - (f) to appropriately share fisheries resources between the users of those resources, and*
 - (g) to provide social and economic benefits for the wider community of New South Wales, and*
 - (h) to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing.*

Some of the advantages of the NSW objectives are the reference to:

- conserving and development of fisheries resources;
- the need to conserve fish stocks and key fish habitats;
- the need to conserve threatened species, populations and ecological communities and marine vegetation;
- reference to biological diversity.

The LMRMA objectives does not even mention “conserving”, “key fish habitats”, “conserve threatened species, populations and ecological communities” and “biological diversity”.

There is also a recognition in the objects of the NSW Act of Aboriginal interest in marine environment with an inclusion of a need “to recognise the spiritual, social and customary significance”.

It is of particular note that the Queensland Fisheries Act includes “Particular Purposes” and “How particular purposes are to be primarily achieved”. The LMRMA needs to include such a section to assist in guiding managers to achieve the objectives or purposes.

Fish habitats

The discussion paper identifies that:

The Act (Part 5 Division 2 and 3) provides for the establishment of marine resources protected areas and for habitat protection plans. No such areas or plans have been established.

The fact that, in the more than 26 years the LMRMA has been in existence, these measures have not been put to use to protect fish habitat are a glaring indictment on the failure of the act at a fundamental level. The discussion paper also fails to articulate what improvement to knowledge of habitats has occurred in these 26 year and how science is providing guidance as to the need for habitat protection.

I suggest that the reason for lack of action on these provisions is that fish habitat protection is not an explicit objective of the act.

Shark nurseries

While the provisions relating to fish habitats have not been utilised there are numerous shark refuge areas that have existed for many years. This is potentially a great achievement of the act that has not been raised in the discussion paper. The discussion paper fails to include any details about whether the refuges have been beneficial in assisting with breeding.

Aboriginal fishing

The TCT supports consideration in the review of the interests of the Tasmanian Aboriginal people in regard to marine resources and environment and these should be recognized in the objectives of the act as is the case in mainland states.

One discussion question relates to support of "ceremonial, cultural and economic practices" but the full range of interests should have been explicitly canvassed including potential hand back of marine waters for management, control and even ownership by Aboriginal people.

Theme Two: Fisheries Management Framework

Centrostephanus

The issue of Centrostephanus proliferation and the resulting destruction of east coast reefs is perhaps the gravest threat to the Tasmanian marine environment and provides the best example of the failure of the LMRMA. The state government has made every effort to avoid decisive action to address the problem and has avoided recognizing the critical role played by over fishing of rock lobsters along with the warming of east coast waters due to climate change.

As stated in relation to other issues, the TCT is unwilling to provide further detailed comments until the fundamental flaws in the LMRMA review process are addressed.

Current management framework

In response to the questions provided on page 28 and 29 (included below), the short answer is that the system is ineffective and Centrosephanus provides the most compelling example of it. In terms of the improvements I would like to see these start with ensuring that the current act is more thoroughly reviewed, giving more focus to the LMRMA performance e.g. Centrostephanus and making a fundamental change to the purpose and objectives. While the impacts of Centrostephanus are catastrophic it is not clear that this actually demonstrates a contravention of the objectives of the LMRMA as these are so inadequate.

Do you think the current management framework for fisheries making is effective, easy to understand and supports the objectives of the Act?

What improvements would you like to see?

Consultation on fisheries management

The TCT is possibly in a unique position to provide feedback about the consultative measures provided for in the LMRMA as we have employed a marine campaigner (the same individual) with particular focus on marine fisheries since the act was being developed in 1994. The TCT's employee was been on the fisheries advisory committees and participated in other consultative processes for almost the entire life of the LMRMA. Unfortunately the TCT's employee is currently on sick leave and not able to provide input to the current LMRMA review.

Theme Three: Regulatory Framework

The TCT is unable at this time to make detailed comments about the regulatory framework due to our marine campaigner being on sick leave. We have provided some comments under General Comments, in particular in relation to the apparent bias in many Discussion Questions regard the regulatory framework.

One other comment is that there are numerous, largely unjustified, comments that infer that the regulatory processes are overly complex and prescriptive.

Yours sincerely



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