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4 October 2019

Mr Wes Ford
Deputy Secretary
EPA Tasmania
Department of Primary Industries, Parks, Water and Environment
GPO Box 1550
Hobart TAS 7001

By email: Enquiries@epa.tas.gov.au

Dear Mr Ford

Draft Environmental Legislation (Miscellaneous Amendments) Bill 2019

We welcome the opportunity to comment on the draft *Environmental Legislation (Miscellaneous Amendments) Bill 2019* (**the draft Bill**).

EDO Tasmania is a non-profit, community legal service specialising in environmental and planning law.

This letter contains a summary of our comments on the draft Bill. Our more detailed submissions on the draft Bill, including the proposed amendments to the *Environmental Management and Pollution Control Act 1994* (**the EMPC Act**), and the *Marine Farming Planning Act 1995* (**the MFP Act**) are attached.

We first feel obliged to comment on the timeframe and form of public involvement in relation to this draft Bill. The timeframe for comment has been insufficient. While described as "minor improvements" to Tasmania's environmental laws, the changes are complex. Through Nicole Sommer, we requested an extension of time to consider the draft Bill, on the basis it is 99 pages of complex amendments. This request was refused by the EPA.

As can be seen by the length of this submission there are multiple complex questions raised by the draft Bill. EDO Tasmania has had multiple requests for advice as a result of the draft Bill and the timeframe has unfairly impacted upon the allocation of our resources.

We acknowledge that the draft Bill was released with an explanatory memorandum. However, we expect that legislative reform of this complexity has been the subject of an internal review and some level of stakeholder consultation within the EPA. The results of any review and that stakeholder consultation should be released by the EPA, so that those not consulted – including EDO Tasmania – can understand what is intended by the reform proposed and what positions were considered and adopted or rejected by the EPA and DPIPWE in determining the scope and contents of the draft Bill.

We ask that EDO Tasmania be consulted on any reform proposals in future. At the very least, such consultation would avoid the need for us to make this form of submission, not knowing what the purpose of the amendments are, allowing us to engage constructively with submission processes. More importantly, we work with EMPC Act on a daily basis, and provide advice to people affected by decision-making under the legislation administered by the EPA. We have expert and practical knowledge about the legislative processes of the EMPC Act, which would be of value to the EPA in understanding the scope of reform. Our request in those circumstances is not unreasonable.

Where the EPA proposes to amend the legislation it administers, we recommend that it be done together with the community affected. It is well established that environmental regulation is better if

the people affected are involved in decision-making. Indeed, the principle that public participation in environmental decision-making should be encouraged forms the basis of the RMPS objectives in Schedule 1 to the EMPC Act. If the EPA and DPIPWE are interested in increasing transparency, the processes adopted for the drafting of this regulatory reform are not consistent with such an approach.

Our comments are necessarily limited by the approach taken by the EPA and DPIPWE, including the timeframe in which we have been given to comment.

Moving now to our substantive comments on the draft Bill, the EPA's website has described the amendments proposed in this draft Bill as being "a range of minor improvements" to Tasmania's environmental laws.[1]

We support changes which give the EPA better ability to enforce the EMPC Act and clarify obligations, for instance, amendments that provide for:

- The provision of new definitions of clean fill to encourage the proper recycling, processing or disposal of waste;
- The creation of an offence for conducting a level 2 activity without authorisation; and
- The provision of new authorised officer emergency powers to assist with the prevention or mitigation of environmental harm.

However, these are not the only changes provided for in the draft Bill. Indeed, there are some substantive amendments to the regulation of finfish farming, changes to obligations to release monitoring data and regulation of amendments to EPA regulated activities.

Finally, in our submission, the draft Bill represents a lost opportunity to review the EMPC Act and complementary environmental laws. We question whether this draft Bill achieves its objective of clarifying existing environmental laws. The proposed amendments, particularly concerning finfish farming and environmental licences, adding a further layer of complexity to increasingly complex environmental laws, while at the same time failing to look more closely at the existing failures within the EMPC Act.

We have previously expressed support for the transfer of responsibility for the environmental regulation of finfish farming to the EPA: see our submission on the draft *Finfish Farming Environmental Regulation Bill 2017*.[2] However, the support expressed was always qualified. We had understood that the processes provided for in the 2017 Bill were of an interim nature and would be subject to review and replacement.

There are considerable concerns in the manner in which finfish farming is regulated in the State and the draft Bill has missed the opportunity to alter those provisions.

The current regulation carves out public participation and appeal rights in relation to the granting of environmental licences for marine finfish farming. The special provisions introduced for marine finfish farming introduce an unwarranted level of complexity to the EMPC Act and have substantially reduced the level of transparency in the regulation of this industry relative to all other polluting industries in Tasmania.

Consistent with our submission on the 2017 Bill, we consider that the draft Bill should include an amendment to the EMPC Act so that finfish farming is regulated in the same way as other level 2 activities, with the same third-party notice and review rights. While we recognise there may still be a need for some specific provisions to deal with the unique nature of finfish farming, our suggested approach would greatly reduce the complexity of the Act, while at the same time, improve the transparency and, consequently, public confidence in the regulation of this industry.

More generally, we observe that Tasmania is facing a time of unprecedented environmental challenges, including human-induced climate change, increasing threats of species extinctions, and

[1] https://epa.tas.gov.au/epa/news/public-comment-invited-on-minor-changes-to-state-environmental-legislation

[2] Which can be accessed here: http://www.edotas.org.au/wp-content/uploads/2013/10/170728-EDO-Submission-on-Finfish-Farming-Environmental-Regulation-Bill-2017.pdf

pollution from new and emerging industries. As such, we are disappointed that the Tasmanian Government has failed to take this opportunity to undertake a more comprehensive review of the EMPC Act 25 years after it commenced. [3]

Given these environmental challenges are unlikely to diminish, we recommend that the Tasmanian Government urgently commission a comprehensive and independent review of the EMPC Act by a panel of independent environmental regulatory experts. The review should be informed by comprehensive community and industry consultation, updated State of the Environment reporting,[4] and the latest science. EDO Tasmania would be pleased to play an active role in the community consultation around such a review.

We have made some preliminary recommendations in the attached submission to address the regulation of finfish farming and provide clarity around the matters relevant to decision-making under the EMPC Act. These recommendations can and should be acted on now and adopted into the amendments proposed in the draft Bill, in advance of any broader review.

Thank you for the opportunity to comment on the draft Bill. Please do not hesitate to contact either Nicole Sommer or Claire Bookless to discuss any issues raised in this submission.

Yours sincerely
EDO Tasmania

Nicole Sommer
CEO / Principal Lawyer

Claire Bookless
Lawyer

[3] We note that Victoria has recently completed the wholescale review of environmental regulation in that State to determine whether the *Environmental Protection Act 1970* (Vic) is achieving its stated objectives. Refer to the report of the *Independent Inquiry into the Environment Protection Authority* dated 31 March 2016, and the Victorian Government's response to that Inquiry dated 17 January 2017 (both accessible at http://epa-inquiry.vic.gov.au/epa-inquiry-report).

[4] Under section 29 of the *State Policies and Projects Act 1993*, a State of the Environment report is to be published by the Tasmanian Planning Commission every 5 years. However, the last published State of the Environment Report is dated October 2009.

Submission on draft *Environmental Legislation (Miscellaneous Amendments) Bill 2019*

Access to environmental monitoring data

We support the release of environmental monitoring information provided by industry to the EPA. However, we do not support the release of such data be at the discretion of the Director of the EPA, as proposed in the draft Bill.

We question why the decision as to what monitoring information is made available to the public should be discretionary.

The EPA Director has said that We agree that it increases transparency to require data to be released. However, the draft Bill does not require data release – it remains at the discretion of the Director.

Currently, all monitoring information held by the EPA is subject to the *Right to Information Act 2009* (**RTI Act**). Therefore, unless it is exempt from disclosure under that Act, members of the public already have a right to access it as an assessed disclosure under that Act.

It is already at the discretion of the Director to release information under the RTI Act by "routine" or "active" disclosure. The Director can already simply adopt a practice of publishing monitoring data at his discretion, for instance, as is done in respect of environmental monitoring of salmon farming in Macquarie Harbour.

We assume the data referred to in clause 8 is data required to be provided to the EPA either:

- as requirement of a condition on a permit, EPN or licence or other "environmental management and enforcement instrument" within the meaning of s22 of the EMPC Act; or
- because of another requirement of the EMPC Act, such as the obligation to notify of environmental harm.

Any such information should necessarily be on a public register and be freely available to the public.

There are multiple reasons for this:

1. It allows people affected by an activity regulated by the EPA to know whether there is compliance with conditions regulating that activity. By way of example, where a quarry is next to residential premises and noise compliance testing is undertaken, that person should have access to the testing.
2. If a condition is imposed as a result of public representations made or an appeal, the person making that representation should have access to the information provided in compliance with the condition without needing to request it;
3. There are public interest reasons why environmental monitoring data should be publicly disclosed, not least of which is that it increases transparency with respect to the regulation of industrial activity in Tasmania;
4. Public disclosure of this material is consistent with objective 1(c) of the Resource Management and Planning System in Schedule 1 of the EMPC Act to encourage public involvement in resource management.
5. There can be no reason for a discretion to exist. Trade secrets and privacy are adequately protected by section 23 of EMPC Act and the *Personal Information Protection Act 2004*.

For this reason, we recommend that:

- the phrase "…that is dealt with by the Director under section 23AA(2);" be deleted from the proposed section 22(1)(ea);
- the definition of "relevant information" provided in the proposed section 23AA be inserted as a new section 22(3); and
- the proposed section 23AA be amended to prescribe how the relevant information is to be published.

We do not consider that the information should only be searchable on payment of a fee as s22 of the EMPC Act, rather the information should be published or available free of charge.

If any discretion should exist, the proposed section 23AA should be limited to deciding the most appropriate form for the release of information. For example, deciding whether the information should be released on the web, electronically, or in hardcopy format to be inspected.

Criteria for non-assessment of changes to existing level 2 activities by EPA Board

The draft Bill proposes to amend section 25 of EMPCA to require the EPA Board to consider "prescribed criteria" when determining if it needs to assess an application relating to a development proposed on the same land as an existing level 2 activity. The explanatory paper for the draft Bill indicates that this proposed amendment is aimed at empowering the EPA Board to decide not to undertake an assessment for certain "low-risk" changes to existing level 2 activities.

We have no objection to limiting the EPA Board's assessment of proposed changes to existing level 2 activities to proposals that will have environmental consequences. However, as the proposed prescribed criteria have not been outlined in the explanatory paper, it is not possible to comment on whether an appropriate balance will be achieved between process efficiency and the appropriate level of scrutiny of changes by both the EPA Board and the public.

We are concerned that any regulation will limit public participation and scrutiny of proposed amendments to environmentally damaging activities.

We recommend that criteria be prescribed in the legislation rather than in regulation and that such criteria be released for public comment. Such criteria for the purposes of the new section 25(1AA) should require the Board to undertake an assessment of proposed changes to an existing level 2 activity where:

- there is a change to the manner or the location where pollutants are emitted to the environment by the level 2 activity;
- there is a substantial intensification in the level 2 activity, with "substantial intensification" defined as the increase of more than 10% in intensity or scale of the level 2 activity; and/or
- the proposal necessitates any amendments to existing permit conditions previously imposed by the EPA Board on the level 2 activity.

Amendments relating to Environment Protection Policy processes

The draft Bill proposes to amend way the Environment Protection Policies (***EPP***) are formulated and amended:

- Currently, there is a requirement for the Minister to publicly notify the community of an intention to prepare an EPP. The purpose of this notification is to allow the community to be involved in the scope and form of EPPs before they are drafted. There is a further requirement for public consultation on the draft EPP after it has been prepared.

  The draft Bill proposes to remove the requirement for the Minister to give public notice prior to the drafting of an EPP. There are only two EPPs in force in Tasmania, with the last one published in 2009. We do not see how the removal of the notification requirement is warranted, for instance, we do not see that the requirement appears to have created a significant regulatory burden on the Minister or the Department.

  We object to the removal of public notice on the scope of draft EPPs. We consider that allowing public and interested stakeholders to have input in framing the scope of an EPP before it is drafted is likely to be of significant assistance in the drafting of the document. It ensures that the scope of the EPP takes into account the issues that members of the community and business consider ought to be within the scope of the draft EPP.

  We are not aware of the justification for this move. If the Government considers that the notice of intention to draft an EPP is not warranted because, in the past, the notices have failed to elicit any response from affected stakeholders or the community, we would simply say that this is no justification for not including such an opportunity in future. The objects of the RMP System are to encourage public participation – this move limits it.

At the minimum, EDO Tasmania recommends that the public consultation period on a draft EPP provided under section 96I(2)(e) of EMPCA be extended from not less than 30 days to not less than 60 days. We do not see this as in any way offsetting the loss of consultation on the scope of a draft EPP. However, it will provide for greater opportunity for public participation in the formulation of EPPs.

- Currently, the EPP Panel can determine if a proposed amendment to an existing EPP is "significant". If it determines a proposed change is not significant, then the Minister does not need to undertake public consultation before making the change.

  The amendments in the draft Bill propose to give the function of determining what is a significant change to an EPP to the Chairperson of the EPP Panel alone. The proposed new section 96M(5A)) prescribes certain criteria which the Chairperson must consider in making determination as to what is a significant change to an EPP.

  The explanatory paper does not provide any information as to why the responsibility for determining what is a significant change to an EPP is proposed to be given to the Chairperson alone instead of the EPP Panel. We do not see any justification for the change.

  This change simply moves discretion to a single decision-maker, rather than operating on a scientific basis. We object to it.

  EDO Tasmania recommends that this function be left with the EPP Panel to ensure an appropriate level of independent oversight of proposed amendments. Furthermore, as the criteria listed in subsections (c), (d) and (e) of section 96M(5A) may not be consistent with the definition of "significant change" currently found in section 96M(1), EDO Tasmania recommends that these proposed subsections be omitted from the draft Bill.

Amendments to list of level 2 activities

The draft Bill proposes amendments to the list of level 2 activities in Schedule 2 of EMPCA.

While most of the proposed changes appear reasonable, we object to the proposed amendment to the definition of Item 3(b) to allow for the prescription of exceptions to the Waste Depot activity.

The explanatory paper states that this amendment will allow certain prescribed activities, "particularly once-off and temporary activities", to avoid assessment and regulation as a level 2 Waste Depot activity. As the waste disposal activities which are proposed to be excluded from the definition of Waste Depot under Schedule 2 have not been outlined in the explanatory paper, it is not possible to comment on whether an appropriate balance will be achieved between assessment efficiency and an adequate level scrutiny of potentially environmentally polluting activities.

Again, this concern would have been alleviated if the EPA/DPIPWE had either released better information to provide detail on the intention of amendments or properly consulted on the proposed amendments before release of the draft Bill.

Our concern about this proposed amendment arises because we are aware of examples where a "temporary" Waste Depot activity has already not been subject to appropriate assessment by the EPA Board.

For example, in 2017, the EPA purportedly authorised, through the issue of an Environment Protection Notice (***EPN***), the disposal of up to 60,000L/day of salmon farm waste from underneath Tassal's Macquarie Harbour finfish farm pens to the trade waste of George Town Seafoods. Given the volume of waste, and the potential risks to biosecurity and environmental nuisance posed, the proposal should have been subject to a proper assessment by the EPA Board with associated rights for public notice and review rather than be authorised through the grant of an EPN with no oversight or scrutiny.

At the time, it was said that the need for the waste disposal arose as a result of an emergency (i.e. the benthic "dead zone" under Tassal's pens in Macquarie Harbour). However, this is not the appropriate approach to the use of an EPN. Rather than authorise an activity with potential for serious or material environmental harm or environmental nuisance through an EPN, it was open to the EPA to require that Tassal destock its salmon pens to a more sustainable level rather than authorise disposal contrary to

the existing processes under the EMPC Act. Best practice environmental regulation would suggest that disposal of waste in such volumes and with consequential risks to the environment be subject to proper environmental assessment, including with public notice and review.

"Once-off and temporary activities", such as the disposal of Tassal's salmon farm pen waste, are precisely the sort of activities that should be assessed by the EPA Board. These activities can pose a a significant risk to the community and the environment, and be of public concern, in some circumstances more so than activities otherwise assessed as Level 2 activities.

As a matter of fairness and transparency, all proposals with the potential for environmental harm should be subject to a level regulatory playing field.

This is another example of the need for more than an explanatory paper, as no justification is given as to why this change is necessary or what mischief it is intended to address.

The proposed amendment to Clause 3(b) should be deleted from the draft Bill.

Amendments to relating to finfish farming

Definition of finfish farming

Section 5C of the EMPC Act defines finfish farming. The draft Bill proposes to amend section 5C(2)(b) of the EMPC Act to allow the EPA to prescribe "associated activities" that are captured in the definition of finfish farming.

While we would agree that, as presently drafted, the definition of finfish farming might be considered broad, there is no detail given in the explanatory paper. We would expect to see some clarity as to what might ultimately be prescribed as an associated activity to a finfish farm activity, or where the EPA is presently "drawing the line" for associated activities.

We do not object to the proposed amendment to section 5C of EMPCA on the basis that:

- Detail of what will be prescribed as an associated activity be released prior to the introduction of the draft Bill to Parliament, with an opportunity for public comment;
- At a minimum, any prescribed finfish farm "associated activities" should have a nexus with the primary location of the finfish farm activity. For example, in order to be part of a finfish farm, an associated activity should be located within the marine farming lease or be involved in travel to or from the lease by boat, whereas for hatcheries, associated activities should be located on the same site.
- Activities like the disposal of fish carcasses or fish farm waste outside of the marine lease or hatchery site should not be captured within the definition of a finfish farm. These activities should continue to be separately regulated in accordance with the relevant provisions of EMPCA and LUPAA.

Amendments to environmental licence provisions

The explanatory paper states that the proposed amendments to environmental licence (***EL***) provisions in the draft Bill are primarily directed at "drafting, legal doubt and administrative efficiency issues".

While most of the proposed amendments to the EL provisions appear logical given the context of the existing provisions for finfish farming in the Act, we consider that this is a missed opportunity to provide for better regulation of the finfish farming industry and inclusion of public participation in the granting of ELs or variations to existing ELs for marine finfish farms.

As an example, the EMPC Act provides for a broad discretion the EPA Director's to:

- assess applications for ELs for new marine finfish farms without referral to the EPA Board;
- assess applications for variations to ELs for existing marine finfish farms without referral to the EPA Board.

If EL applications are not referred to the EPA Board by the EPA Director, public participation and appeal rights in relation to those activities are effectively excluded.

The draft Bill should, at a minimum, prescribe criteria as to when ELs or variations must be referred by the Director to the Board.

While regulations 8 and 9 of the *Environmental Management and Pollution Control (Environmental Licences) Regulations 2019* (***EL Regulations***) do prescribe the circumstances where the Director must refer EL applications to the EPA Board for assessment, there are problems with the practical operatyion of these provisions.

Take, for example, the proposed expansion of finfish farming in Storm Bay.

Tassal's and Huon Aquaculture's recent application for ELs for new/expanded finfish farms in Storm Bay were not referred to the EPA Board for assessment by the EPA Director. It was said at the time that the proposals had recently been assessed by the Marine Farming Planning Review Panel. While it is unclear whether the EL Regulations were in effect at the time of the companies' EL applications, even the draft EL Regulations stated that a very high level of public interest about a proposal would warrant the EPA Director's referral of EL applications to the EPA Board for assessment. Arguably this criterion was satisfied in these cases.

And yet, in those circumstances, the EPA Director did not refer these EL application to the EPA Board. There was consequently no public notice or appeal over the grant of the ELs including any conditions that ought to have been imposed on the grant of any EL.

Noting section 8 of the EMPC Act requires that a person exercising a function or power conferred by the Act is required to exercise that power in accordance with the Schedule 1 objectives, including to encourage public participation, we would expect such proposals to be referred to the Board.

We would be concerned if any future proposal for new or intensified operations were not referred to the EPA Board for assessment.

Yet, in the Storm Bay example:

- the ELs issued do not impose any limits on biomass or total dissolved nitrogen. It may be that any intensification of the activity may not give rise to any need for an EL variation application to be made;
- If a proposal for intensification did necessitate a variation to an EL and the EPA Director determines that variation is not a "major variation",[5] the EL Regulations presently require the EPA Director to refer applications for the variation of ELs to the EPA Board where *inter alia* there is a proposal to exceed by 10% either the biomass or dissolved nitrogen caps imposed by a person under a Marine Farming Development Plans (***MFDPs***). [6]
- The Storm Bay MFDPs do not explicitly impose a biomass or total permissible dissolved nitrogen caps either. Rather, the MFDPs allow the EPA Director to set these caps "from time to time". The exercise of this power by the EPA Director is not subject to any public comment or third-party appeal rights.
- A situation could easily arise where the assessment of proposed substantial intensification of Storm Bay finfish farms by the EPA Board is avoided, simply by the EPA Director increasing the caps under the MFDPs.
- Further, there is nothing to stop the companies from simply applying for increases in biomass/nitrogen caps amounting to less than 10% on multiple occasions in order to avoid the EPA Board's assessment (and thereby public participation and appeal rights).

Finally, we note that a full assessment by the EPA Board, as the EMPC Act is currently drafted, there is no requirement for representors involved in that process to be notified of later variations to EL conditions made by either the EPA Board or EPA Director. This is out of step with other provisions in EMPCA and LUPAA which require representors to be notified of changes to conditions.[7]

This is one of the foremost reasons that we consider that the draft Bill represents a missed opportunity. The draft Bill has failed to grapple with existing deficiencies in the regulation of finfish farming under

[5] In accordance with subsection (3) to (5) of section 42O of the EMPC Act.
[6] See subregulations 9(5), (6), (7) and (8) of the EL Regulations.
[7] Refer to section 44(8) of the EMPC Act and section 56(3) of the LUPA Act.

both the EPBC Act and the MFP Act. This failure entrenches the lack of transparency over the regulation of finfish farming, to the detriment of both the industry and community affected.

For the reasons we have stated, we recommend that there be a review of the EMPC Act. We further ask that EDO Tasmania be involved in setting the scope of the review.

However, pending that review, we recommend that the draft Bill be amended such that finfish farming is regulated like every other industry in Tasmania, as a Level 2 activity, with the same public notice and review rights. We recognise there may still be a need for some specific provisions to deal with the unique nature of finfish farming, our suggested approach would greatly reduce the complexity of the Act, while at the same time, improve the transparency and, consequently, public confidence in the regulation of this industry.

We have made recommendations on the changes needed to the law in order to address the deficiencies in regulation of the finfish farming industry and ensure consistency and transparency in its regulation. We have made at least 10 submissions on the regulation of the finfish farming industry, with recommendations for reform, and produced a paper prior to the transfer of powers to the EPA *Tasmania's Marine Farming Regulatory Framework, and how to improve it* (2014).

Our past submissions have called for reform in order that the efficiency, consistency, and transparency of finfish farm regulation is improved. We attach our submissions:

- Draft *Finfish Farming Environmental Regulation Bill 2017*;
- Draft *Environmental Management and Pollution Control (Environmental Licences) Regulations 2018*.

As we have previously recommended in our detailed submissions on this subject, we make the following recommendations:

- the EMPC Act be amended to require that all EL applications or applications for variations to ELs be referred to the EPA Board for assessment, irrespective of whether the finfish farms are land-based or marine;
- the EMPC Act and MFP Act be amended to require that any EL application relating to a new marine finfish farm or substantial intensification to existing marine finfish farms be assessed by the EPA Board concurrently with any Marine Farming Planning Review Panel assessment under the provisions of the MFP Act;
- the EMPC Act and MFP Act be amended to empower the EPA Board to direct the refusal of a new MFDP, or amendment to a MFDP, if it considers that an EL should not be issued for the finfish farm (in much the same way as the EPA Board presently may direct a planning authority to refuse to grant development permit for any level 2 activity);
- the EMPC Act and MFP Act be amended to require that MFDPs impose maximum biomass and dissolved nitrogen caps as environmental controls, and that these caps be reflected in EL conditions;
- the MFP Act be amended to require that MFDP include strict criteria for changes to biomass and dissolved nitrogen levels set under the MFDP; and
- the EMPC Act ensure that any person who has made a representation in relation to an EL application be notified of later applications for variations to the EL conditions and be given an opportunity to appeal against any changes that are made, as is the case for LUPA Act applications.

We invite the EPA and DPIPWE to work with us on amendments required to implement these recommendations and improve the regulation of finfish farming in the State.

Criteria for decisions to grant environmental licences and other approvals

The draft Bill proposes a minor consequential amendment to section 74(3) of EMPCA. While that amendment is uncontroversial, we submit that the draft Bill presents an ideal opportunity to strengthen the criteria against which the EPA Board is required to assess all level 2 activities.

The EMPC Act currently provides that the EPA Director and Board may grant an EL or a variation to an EL only if they are "satisfied that it is appropriate to do so". There is no similar provision in relation to the assessment of other level 2 activities, however, the EPA Board is required to assess any application in accordance with the Environmental Impact Assessment Principles outlined in section 74 of the EMPC Act.

The Environmental Impact Assessment Principles do not provide clear criteria against which projects should be assessed.

To ensure consistency and transparency of decision-making for all level 2 activities, any decision to grant or amend an environmental licence, planning permit or environment protection notice that requires assessment under the EMPC Act should have clearly prescribed criteria. This is consistent with the position in other environmental assessment legislation. It provides a level playing field for proponents, transparency for members of the public engaging with the EMPC Act and clear obligations for decision-makers.

We recommend that criteria be prescribed could include that the following must be met or considered:

- that the decision further the objectives of the Resource Management and Planning System in Tasmania as set out in Schedule 1 of the EMPC Act;
- that the activity complies with any applicable Environment Protection Policies and State Policies;
- the environmental impact likely to be caused by the activity;
- any relevant environmental impact study, assessment or report;
- whether the proponents have considered all viable alternatives to the proposed activity;
- whether the likely impacts of the activity on the character, resilience and values of the receiving environment are acceptable;
- all submissions made by the applicant and any representors;
- whether the activity accords with best practice environmental management for the proposed activities; and
- the public interest.

We recommend that section 74 of EMPCA be amended to incorporate these criteria accordingly.

Further, we recommend that new regulations be made which prescribe the quality and requirements of environmental impact studies, assessments or reports for the purposes of the criterion above, including a requirement that the level of scientific uncertainty be explicitly stated in the documents.

The Marine Farming Planning Review Panel

Currently, the Marine Farming Planning Review Panel (the ***Panel***) is dominated by members who represent the marine farming or fishing industries. While there is now a requirement for a person "with ability and experience in environmental management" to be appointed to the Panel, there is no requirement that they be involved in the quorum that makes a decision on whether or not to recommend approval of a MFDP or an amendment to a MFDP (as has been demonstrated with the Panel's recent decisions on the industry's expansion into Storm Bay where the panel members with expertise in environmental management and biosecurity resigned). This is a serious shortcoming in the process.

We therefore recommend that Item 3(1) in Schedule 3 be amended as follows:

3. Procedure at meetings

(1) The quorum at any duly convened meeting of the Panel is 5 members <u>but must include the appointed panel members with ability and experience in environmental management and ability and expertise in fish health and biosecurity.</u>

In addition to our recommendations about the assessment processes for finfish farms outlined on page 9 of our submission, we further recommend that:

- section 8 of the MFPA be amended to allow for the appointment to the Panel of a person to represent the interests of the community; and
- amendments be made to sections 31 and 42 the MFPA to ensure that where the Panel recommends the rejection of a MFDP or an amendment to an MFD Plan, the Minister may not otherwise approve it.

Other general comments

- The proposed amendments to section 27A of EMPCA are reasonable, however, the new subsection (1A)(b) should clarify that the EPA Board may only allow for upgrade of assessment level for a proposal currently under assessment. This is because the determination of the assessment level has an impact on the length of public consultation required to be undertaken by the EPA Board under section 27G of EMPCA. If a proposal is so complex that further information is required for the Board to determine the appropriate assessment level, then it follows that the level of public consultation on such a proposal should only increase, not decrease.
- The proposed amendment to section 44(3)(ca) of EMPCA is unnecessary. This section already makes it plain that EPNs can vary conditions of a permit (see section 44(1)(d)). The current drafting of the section makes it clear that the variation of conditions of a permit is not the overarching purpose of an EPN. It is not appropriate that EPNs are used as a quasi-permit amendment process. Substantial changes to a permit should always be subject to appropriate assessment by the EPA Board and transparent public notice and review rights.
- The draft Bill proposes amendments to section 42Z(8) to clarify that a condition imposed on an EL overrides any conditions of a planning permit in relation to that activity to the extent of any inconsistency. This change emphasises the need to get the scope of "associated activities" for finfish farms right. Our recommended limits on "associated activities" on page 7 of this submission have considered the fact that the grant of an EL should not override permits for other land-based uses like onshore aquaculture bases, and waste disposals or landfills issued by local councils.
- The proposed amendments to sections 42Z(2A) and (2B) are reasonable, however they should make it clear that any marine farming equipment, such as nets etc, need to be contained within lease boundaries.
- We recommend that sections 42S(3A) and 42ZF(2A) be amended so that the phrase "The Director may ..." be amended to "The Director must ...".