



Mr Jonathon Root  
Commissioner of State Revenue  
State Revenue Office  
GPO Box 1374  
Hobart TAS 7000

19 November 2024

Dear Commissioner

### **Marine Farm Leases**

Thank you for your letter of 31 October 2024 regarding marine farm leases and the Tasmanian *Duties Act 2001*.

On 5 August 2022 Mr Jarrod Hibberd, Senior Revenue Officer, advised me via email that the transfer of a marine farm lease is dutiable because a lease constitutes an interest in land. That day I responded seeking a change in the Office's position given that common dictionary definitions of 'seabed' and 'land' are mutually exclusive. On 8 August 2022 Mr Hibberd replied advising that the Duties Team does not intend to charge duty on the transfer of marine farming leases.

On 8 August 2022 the *Coverdale v West Coast Council [2016] HCA 15* judgment was available. Therefore *Coverdale* does not provide a justification for a change to the 8 August 2022 position of the Duties Team.

Since 8 August 2022, the *MAPA Pearls Pty Ltd v Haliotis Fisheries Pty Ltd [2023] VSCA 108* judgment has become available. However this judgment does not justify a change to the 8 August 2022 position of the Duties Team.

- This judgment covers the concept of land in Victoria, and the Victorian *Interpretation of Legislation Act 1984* states that "*land*" includes buildings and other structures permanently affixed to land, land covered with water, and any estate, interest, easement, servitude, privilege or right in or over land". It is therefore unsurprising that land in Victoria includes marine farm leases.
- The Tasmanian *Acts Interpretation Act 1931* includes its own definition of land. As such, the definition of land in the Victorian *Interpretation of Legislation Act 1984* does not apply.
- The definition of land in the Tasmanian *Acts Interpretation Act 1931* does not comment on the relationship between land and the seabed. It merely states that "*land shall include*



*messuages, tenements, and hereditaments, houses, and buildings of any tenure and any estate or interest therein". As such, the common dictionary definitions of 'seabed' and 'land' as mutually exclusive concepts apply.*

I note that duties are not charged on the transfer of marine farming leases in South Australia, the other Australian state with significant Pacific oyster production.

I request that you revert to the interpretation of 8 August 2022 wherein duty is not charged on the transfer of marine farming leases.

Alternatively:

- if you consider my reading of *MAPA Pearls Pty Ltd v Haliotis Fisheries Pty Ltd [2023] VSCA 108* to be incorrect, I would appreciate your advice on this,
- if you consider that *Coverdale v West Coast Council [2016] HCA 15* supports the application of duty, I would appreciate your advice on this, including why such a view was not held on 8 August 2022, and
- I would appreciate receiving a copy of the advice you sought on this matter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Duncan Spender".

Duncan Spender  
CEO  
Oysters Tasmania