



Oysters Tasmania
Submission on the Draft
Environmental Management and Pollution Control Amendment Bill 2022

Thank you for the opportunity to provide a written submission regarding the draft *Environmental Management and Pollution Control Amendment Bill 2022*.

Oysters Tasmania is the peak body representing oyster growers in Tasmania.

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 \$1 million in industry-specific fees and levies to the State Government while having minimal environmental impact. The industry has significant growth prospects provided the right regulatory arrangements.

Tasmania's oyster farming industry is adversely affected by environmental damage caused by other parties. As such, more rigorous environmental regulation and enforcement is in the interests of Tasmania's oyster farming industry. More rigorous environmental regulation and enforcement is also in the interests of Tasmania more broadly as it would enhance the long-term prospects of interests like oyster farming more than it would detract from parties that currently generate environmental damage.

Set out below are recommended amendments to the draft *Environmental Management and Pollution Control Amendment Bill 2022*. The recommended amendments are to:

- maintain the requirement for the Government to reconsider its statement of expectation every two years,
- remove the proposed statement that the EPA Director has complete discretion (while supporting the amendments stating that the EPA Director is independent),
- require the release of information provided to the EPA under law as a result of the monitoring of environmental impacts — provided that the information is not a trade secret, is not patentable, and would not cause a disadvantage if disclosed, and
- ensure that environmental standards relate to environmental matters.

The Government should consider creating environmental standards for industries and activities responsible for pollutants, chemicals and waste that adversely affect oyster farming, such as dairy farming, forestry and sewerage services.



Oysters Tasmania would appreciate consideration of these recommendations, as well as any opportunity for ongoing engagement on this issue.

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.

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Separation of the EPA

Clause 6

Clause 6 replaces a requirement to provide a ministerial statement of expectation every two years with a requirement to review a ministerial statement of expectation every five years.

The structural and organisational separation of the EPA makes clear that the EPA is responsible for the implementation of environmental regulation in Tasmania. But the Government retains a responsibility both for determining environmental regulation and for overseeing the implementation of this regulation. The continuing Government responsibility for overseeing the implementation of environmental regulation ensures that the EPA remains connected with the democratic chain of accountability.

The ministerial statement of expectation is a key feature of the Government's oversight of the implementation of environmental regulation. The Government recognises this by retaining the ministerial statement of expectation, notwithstanding the structural and organisations separation of the EPA.

Reducing the frequency with which the Government must consider its ministerial statement of expectation would do nothing to reinforce the EPA's responsibility for the implementation of environmental regulation in Tasmania. Rather, it would represent the Government stepping away from its responsibility to oversee the implementation of environmental regulation in Tasmania.

No should be no such stepping away from an important Government responsibility. For this reason, Clause 6 should be removed.

Clause 7

Clause 7 reinforces the requirements for a ministerial statement of expectation to align with legislative provisions. Clause 7 is supported.

Clause 8

Clause 8 does two things.

First, Clause 8 makes explicit the independence from Ministers of the EPA Director, by stating this independence in the first fragment of the proposed 18A(1), and by stating in the proposed 18A(2) that the Director is not subject to direction from anyone in relation to various decisions. This aspect of Clause 8 is supported.

Second, Clause 8 states in the second fragment of the proposed 18A(1) that the Director 'subject to this Act and any other Act, has complete discretion in the performance and exercise of those functions and powers'. This aspect of Clause 8 is unnecessary to achieve independence from Ministers, and undermines the discipline imposed on the EPA Director by legislation.

If this aspect of Clause 8 were pursued, a Court that assesses that the EPA Director has deviated from the requirements of legislation may rule such a deviation to be within acceptable bounds, where otherwise it would rule such a deviation to be unacceptable.



The case for achieving independence from Ministers in no way supports a case for lightening the discipline of judicial review. For this reason, the second fragment of the proposed 18A(1) under Clause 8 should be removed.

Clause 9

Clause 9 empowers the EPA Director make employment arrangements currently made by the Department Secretary. Clause 9 is supported.

Clause 18

Clause 18 empowers the EPA Director to appoint analysts currently appointed by the Department Secretary. Clause 18 is supported.



Public release of monitoring information

Clause 10

Clause 10 ensures that the EPA Director is not considered to be breaching trade secrets if the Director releases information as a result of Clause 11. Clause 11 includes a provision protecting information that is a trade secret, is patentable, or would cause a disadvantage if disclosed. Given this, Clause 10 is supported.

Clause 11

Clause 11 allows the EPA Director to publish, provide, or make available — in a manner and form that the Director thinks fit — information that is provided to the EPA under law and that is the result of the monitoring of environmental impacts. Clause 11 requires the EPA Director — when deciding whether to publish, provide or make available this information — to consider whether the information is a trade secret, is patentable, or would cause a disadvantage if disclosed.

Every additional release of information that:

1. is provided to the EPA under law,
2. is the result of the monitoring of environmental impacts, and
3. is not a trade secret, is not patentable, and would not cause a disadvantage if disclosed,

is in the public interest.

For this reason, Clause 11 is an improvement on the status quo.

However, Clause 11 does not go far enough. Rather than having a discretion to disclose information that meets each of the three conditions outlined above, the EPA Director should instead be required to disclose such information.

- This would maximise the public's understanding of the public asset that is our environment.
- It would simplify the EPA Director's job and reduce the scope for conflict with regulated parties, as information that meets each of the three conditions outlined above would not need to be separated into information to be released and information to be withheld.
- It would remove the possibility of perceived and actual cover-ups.

Clause 11 should be amended so that the EPA Director is required to disclose information that meets each of the three conditions outlined above. This would be achieved through:

- the proposed 23AA(2) referring to 'must' rather than 'may', and
- the proposed 23AA(4) stating that 23AA(2) does not apply if the Director considers that 'the information is information related to the business affairs of a person, other than a public authority, which if it were information of a public authority, would be exempt information within the meaning of the *Right to Information Act 2009*'.



Environmental standards and technical standards

Clauses 12 to 16

Clauses 12 to 16 are consequential to Clause 17 and are supported.

Clause 17

Environmental standards should relate to environmental matters. They should not be vehicles for government regulation of behaviour beyond that which may harm the environment. As such, there needs to be a provision to limit environmental standards to environmental matters. However, there is no provision in the draft bill that satisfies this need.

The proposed 96O(4) should be amended so that it serves as the necessary provision to limit environmental standards to environmental matters.

The proposed 96O(4) states that environmental standards may relate to any one or more of the following:

- (a) an environmentally relevant activity;
- (b) a pollutant or class of pollutants;
- (c) a chemical or class of chemicals;
- (d) an industry or activity;
- (e) waste management;
- (f) environmental monitoring of air, soil, noise or water;
- (g) the adoption of a national standard or an international standard.

The proposed 96O(4) should be amended so that 'may' is replaced with 'must' and 96O(4)(d) is removed.

Such amendment would mean that an environmental standard must relate to an environmentally relevant activity, or a pollutant or class of pollutants, or a chemical or class of chemicals, or waste management, or environmental monitoring of air, soil, noise or water, or the adoption of a national standard or an international standard.

Such amendment would prevent the Government from creating an environmental standard that in no way related to the environment, such as a standard whose only function was to regulate the office space provided to workers in a particular industry.

Such amendment would not hinder the Government's plan to create an environmental standard for finfish farming, as such a standard would relate to an environmentally relevant activity, or a pollutant or class of pollutants, or a chemical or class of chemicals, or waste management, or environmental monitoring of air, soil, noise or water, or the adoption of a national standard or an international standard.

The Government should consider creating environmental standards for industries and activities responsible for pollutants, chemicals and waste that adversely affect oyster farming, such as dairy farming, forestry and sewerage services.