

## TERMS OF REFERENCE

### VICTORIAN PIPi FISHERY INDEPENDENT ALLOCATION PANEL

**Governing Authority:** Chief Executive Officer, Victorian Fisheries Authority

**Agency:** Victorian Fisheries Authority

**Panel Members:** Peter Wulf

Professor Daryl McPhee

Brett McCallum

#### Purpose

To provide advice to the Minister for Fishing and Boating and the Victorian Fisheries Authority (VFA) on the basis of access rights to the pipi fishery and allocation of pipi entitlement units under an Individual Transferrable Quota (ITQ) entitlement management regime as per the Victorian Pipi Fishery Management Plan 2018 (the Plan).

#### Scope

In developing its recommendations on the basis of access to the fishery and allocation of pipi ITQ entitlements under the Plan, the Independent Allocation Panel (the Panel) will consider the following including, but not limited, to:

- The entitlement conferred by a Pipi Fishery Access Licence (Pipi FAL) created and issued under Section 38 of the *Fisheries Act 1995* as set out in clause 5.2.5 of the Plan;
- Reported fishing catch and effort records (as required to be made in accordance with Regulation 59 of the *Fisheries Regulations 2009*) of Ocean Fishery Access Licence holders with a history of pipi catch and, in particular, those with an endorsement to take pipi for sale (8 individuals) and a Bait General Fishery Access Licence holder with a history of pipi catch (1 individual);
- Changes to management arrangements, implemented via Fisheries Notice, and accompanying correspondence, since the implementation of the Fisheries (Discovery Bay Pipi) Notice No. 11/2013 on 16 December 2013; and
- Any other information that is considered relevant by the Panel.

The Panel shall take all steps it considers reasonable in developing its final advice.

The Panel may seek further advice from the VFA on the scope of activities and from the VFA and Seafood Industry Victoria on other questions in response to issues that arise in considering the Terms of Reference or otherwise during the course of its activities.

### **Guiding principles**

In developing its recommendations, the Panel will take into account, where relevant, the following guiding principles:

1. **Fairness and equity** – an overarching principle that should inform an allocation issue is one of fairness and equity. That is, the resource is to be allocated in a way that distributes the benefits of use fairly amongst participants and minimises any differential economic impacts such as wealth redistribution arising from an allocation.
2. **Optimum utilisation** – this means that the resource is to be allocated in a way that achieves the best use of the resource for the community at large, not just best for a particular sector.
3. **Certainty for users** – fishing rights should be allocated in a way that recognises the needs of users of the resource, particularly those who rely on it for their livelihood.
4. **Opportunity to be heard** – participants in a fishery should have an opportunity to participate in the development of allocation arrangements for a fishery through a transparent process.
5. **Rights of existing participants to be recognised** – this means that allocation processes should have due regard to the historical access rights of participants in a fishery.
6. **Best available information** – the allocation recommendation should take account of the best available information.
7. **Integrity of allocation arrangements** – allocation decisions should be consistent with legislative requirements and other fisheries management objectives.

The Panel will also be guided by the *Fisheries Act 1995* – Objectives of the Act (Attachment 1) and the *Victorian Fisheries Authority Act 2016* – Objectives of the Authority (Attachment 2)

### **Required Activities**

The Panel will be required to:

- a) review reported fishing catch and effort records (as required to be made in accordance with Regulation 59 of the *Fisheries Regulations 2009*) of Ocean Fishery Access Licence holders with a history of pipi catch, in particular those with an endorsement to take pipi for sale (8 individuals) and a Bait General Fishery Access Licence holder with a history of pipi catch (1 individual);
- b) review previous Ministerial Decisions, Fisheries Notices and accompanying correspondence since the implementation of the Fisheries (Discovery Bay Pipi) Notice No. 11/2013 on 16 December 2013;

- c) provide an opportunity for Ocean Fishery Access Licence holders with an endorsement to take pipi for sale (8 individuals) and a Bait General Fishery Access Licence holder with a history of pipi catch (1 individual) to meet with, and make written representations to, the Panel with regards to access and entitlement allocation under the Plan;
- d) provide an opportunity for Seafood Industry Victoria (as a representative of Ocean Fishery Access Licence holders without an endorsement to take pipi for sale) to meet with, and make written representations to, the Panel with regards to access and entitlement allocation under the Plan;
- e) consult with other people or organisations as considered appropriate by the Panel;
- f) make a copy of the Draft Report available to VFA, Ocean Fishery Access Licence holders with an endorsement to take pipi for sale (8 individuals), Bait General Fishery Access Licence holder with a history of pipi catch (1 individual) and Seafood Industry Victoria (SIV) and consider written submissions received on the Draft Report; and
- g) submit a Final Report to the Minister and the VFA.

#### **Key Stakeholders**

- a) Ocean Fishery Access Licence holders with an endorsement to take pipi for sale, Bait General Fishery Access Licence holder with a history of pipi catch (individuals);
- b) Ocean Fishery Access Licence holders without an endorsement to take pipi for sale (represented by Seafood Industry Victoria),
- c) Seafood Industry Victoria; and
- d) Other stakeholders include Parks Victoria and the Department of Environment, Land, Water and Planning.

#### **Minimum Required Outputs (Deliverables)**

A Draft Report will be made available to VFA, Ocean Fishery Access Licence holders with an endorsement to take pipi for sale (8 individuals), Bait General Fishery Access Licence holder with a history of pipi catch (1 individual) and Seafood Industry Victoria (SIV) for a period of time during which written submission will be received. The Panel will consider written submissions received on the Draft Report prior to completing a Final Report.

A signed, formal Final Report outlining the Panel's recommendations to be provided to the Minister for Fishing and Boating and to the VFA. The Final Report shall provide advice/recommendations on the basis and supporting arguments, explanations and justification for:

- a. the commercial licence holders who are eligible for access to the fishery; and
- b. the allocation of pipi ITQ entitlements amongst those licence holders eligible for access to the fishery.

**Timeframe**

The final report is to be completed by 30 September 2019.

**Support**

The VFA will provide the Panel with required support (e.g. travel arrangements) on an agreed basis.

**Background Material**

The VFA will provide the Panel with relevant background information and access to the VFA's files regarding relevant matters. The VFA will also provide any additional relevant information requested by the Panel where such information exists.

**Guidance**

The Chief Executive Officer, Victorian Fisheries Authority, will provide the Panel with any further guidance as required.

**Governance and Confidentiality**

To the extent that they apply, the Panel will comply with the requirements of the *Fisheries Act 1995*, in particular Section 146 (Attachment 3).

The Panel will also comply with the ten Information Privacy Principles outlined in Schedule 1 of the *Privacy and Data Protection Act 2014* (Attachment 4).

**Intellectual Property and Retention of Records**

All documents and other materials other than Panel members' personal documents (such as receipts, invoices, diaries etc.) used and produced by the Panel in the course of its activities remains the property of the VFA and at the completion of its activities must be returned to the VFA for retention on VFA files. Any electronic documents, or electronic copies of documents, must be either returned to the VFA or, where the VFA already holds a copy or they are peripheral documents, destroyed on completion of the project.

### **Attachment 1 –*Fisheries Act 1995* – Objectives of the Act**

The objectives of this Act are —

- a) to provide for the management, development and use of Victoria's fisheries, aquaculture industries and associated aquatic biological resources in an efficient, effective and ecologically sustainable manner;
- b) to protect and conserve fisheries resources, habitats and ecosystems including the maintenance of aquatic ecological processes and genetic diversity;
- c) to promote sustainable commercial fishing and viable aquaculture industries and quality recreational fishing opportunities for the benefit of present and future generations;
- d) to facilitate access to fisheries resources for commercial, recreational, traditional and non-consumptive uses;
- e) to promote the commercial fishing industry and to facilitate the rationalisation and restructuring of the industry;
- f) to encourage the participation of resource users and the community in fisheries management.

### **Attachment 2 –*Victorian Fisheries Authority Act 2016* – Objectives of the Authority**

The objectives of the Authority are —

- a) to promote sustainability and responsibility in fishing and fishing-related activities in Victoria; and
- b) to optimise the social, cultural and economic benefits of the fisheries sectors; and
- c) to support the development of recreational fishing; and
- d) to support the development of commercial fishing and aquaculture; and
- e) to work cooperatively with fisheries management bodies in other States, in Territories and the Commonwealth; and
- f) to perform its functions and exercise its powers in any manner it considers best achieves its objectives.

### **Attachment 3 –*Fisheries Act 1995* - Section 146**

#### **146 Secrecy provision**

(1) Subject to this section, a person who is, or has at any time been—

- (a) the Secretary;
- (b) appointed for the purposes of this Act;
- (c) engaged as a member of the staff of the Secretary or as an authorised officer;
- (d) engaged under contract by the Secretary, or employed by a person engaged under contract by the Secretary;
- (e) a member of the Fisheries Co-Management Council;
- (ea) a member of the Fisheries Revenue Allocation Committee;
- (f) a member of a fishery committee;
- (g) a member of the Commercial Fisheries Licensing Panel;
- (h) a member or deputy of the Licensing Appeals Tribunal;
- (ha) a member or deputy of the Compensation Assessment Panel (established under Part 10);
- (hb) a member or deputy of the Compensation Appeals Tribunal (established under Part 10);
- (i) authorised to perform or exercise any function or power under this Act—

must not, except to the extent necessary to perform official duties, or to perform or exercise such a function or power, either directly or indirectly, make a record of, or divulge or communicate to any person, any information obtained in confidence or relating to the personal affairs of another person that is or was acquired by the person by reason of being or having been so appointed, engaged or authorised, or make use of any such information, for any purposes other than the performance of official duties or the performance or exercise of that function or power.

(2) Nothing in subsection (1) precludes a person from—

- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings against this Act;
- (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that subsection;
- (c) producing some or all of a document or divulging or communicating information to a person or body specified by the regulations for the purposes of this section if the production, divulging or communicating is authorised by the regulations or the Secretary and complies with any conditions or restrictions specified by the regulations or the Secretary for the purposes of this section;
- (d) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing;

(e) using skills that were developed as a result of having access to any information referred to in subsection (1) where the use of the skills does not involve the disclosure of the information.

#### **Attachment 4 – *Privacy and Data Protection Act 2014* - Schedule 1**

The *Privacy and Data Protection Act 2014*, protects ‘personal information’ held by Victorian government organisations. ‘Personal information’ means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information of a kind to which the Health Records Act 2001 applies.

The ten Information Privacy Principles outlined in Schedule 1 of the *Privacy and Data Protection Act 2014* are the core of privacy law in Victoria and set out the minimum standard for how Victorian public sector bodies should manage personal information. With limited exceptions, all Victorian Government organisations, local councils and government contracted service providers must comply with the Information Privacy Principles.

##### **Principle 1—Collection**

###### **1.1**

An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.

###### **1.2**

An organisation must collect personal information only by lawful and fair means and not in an unreasonably intrusive way.

###### **1.3**

At or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects personal information about an individual from the individual, the organisation must take reasonable steps to ensure that the individual is aware of—

- (a) the identity of the organisation and how to contact it; and
- (b) the fact that the individual is able to gain access to the information; and
- (c) the purposes for which the information is collected; and
- (d) to whom (or the types of individuals or organisations to which) the organisation usually discloses information of that kind; and
- (e) any law that requires the particular information to be collected; and
- (f) the main consequences (if any) for the individual if all or part of the information is not provided.

###### **1.4**

If it is reasonable and practicable to do so, an organisation must collect personal information about an individual only from that individual.

## 1.5

If an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in IPP 1.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

## **Principle 2—Use and Disclosure**

### 2.1

An organisation must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection unless—

(a) both of the following apply—

- (i) the secondary purpose is related to the primary purpose of collection and, if the personal information is sensitive information, directly related to the primary purpose of collection;
- (ii) the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose; or

(b) the individual has consented to the use or disclosure; or

(c) if the use or disclosure is necessary for research, or the compilation or analysis of statistics, in the public interest, other than for publication in a form that identifies any particular individual—

(i) it is impracticable for the organisation to seek the individual's consent before the use or disclosure; and

(ii) in the case of disclosure—the organisation reasonably believes that the recipient of the information will not disclose the information; or

(d) the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent—

(i) a serious threat to an individual's life, health, safety or welfare; or

(ii) a serious threat to public health, public safety or public welfare; or

(e) the organisation has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant persons or authorities; or

(f) the use or disclosure is required or authorised by or under law; or

(g) the organisation reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by or on behalf of a law enforcement agency—

(i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction;

(ii) the enforcement of laws relating to the confiscation of the proceeds of crime;

(iii) the protection of the public revenue;

(iv) the prevention, detection, investigation or remedying of seriously improper conduct;

(v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or



(h) the Australian Security Intelligence Organisation (ASIO) or the Australian Secret Intelligence Service (ASIS), in connection with its functions, has requested the organisation to disclose the personal information and—

(i) the disclosure is made to an officer or employee of ASIO or ASIS (as the case requires) authorised in writing by the Director-General of ASIO or ASIS (as the case requires) to receive the disclosure; and

(ii) an officer or employee of ASIO or ASIS (as the case requires) authorised in writing by the Director-General of ASIO or ASIS (as the case requires) for the purposes of this paragraph has certified that the disclosure would be connected with the performance by ASIO or ASIS (as the case requires) of its functions.

## 2.2

If an organisation uses or discloses personal information under IPP 2.1(g), it must make a written note of the use or disclosure.

### **Principle 3—Data Quality**

#### 3.1

An organisation must take reasonable steps to make sure that the personal information it collects, uses or discloses is accurate, complete and up to date.

### **Principle 4—Data Security**

#### 4.1

An organisation must take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure.

#### 4.2

An organisation must take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose.

### **Principle 5—Openness**

#### 5.1

An organisation must set out in a document clearly expressed policies on its management of personal information. The organisation must make the document available to anyone who asks for it.

#### 5.2

On request by a person, an organisation must take reasonable steps to let the person know, generally, what sort of personal information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

### **Principle 6—Access and Correction**

#### 6.1

If an organisation holds personal information about an individual, it must provide the individual with access to the information on request by the individual, except to the extent that—

- (a) providing access would pose a serious threat to the life or health of any individual; or
- (b) providing access would have an unreasonable impact on the privacy of other individuals; or
- (c) the request for access is frivolous or vexatious; or
- (d) the information relates to existing legal proceedings between the organisation and the individual, and the information would not be accessible by the process of discovery or subpoena in those proceedings; or
- (e) providing access would reveal the intentions of the organisation in relation to negotiations with the individual in such a way as to prejudice those negotiations; or
- (f) providing access would be unlawful; or
- (g) denying access is required or authorised by or under law; or
- (h) providing access would be likely to prejudice an investigation of possible unlawful activity; or
- (i) providing access would be likely to prejudice—
  - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction; or
  - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime; or
  - (iii) the protection of public revenue; or
  - (iv) the prevention, detection, investigation or remedying of seriously improper conduct; or
  - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of its orders—by or on behalf of a law enforcement agency; or
- (j) ASIO, ASIS or a law enforcement agency performing a lawful security function asks the organisation not to provide access to the information on the basis that providing access would be likely to cause damage to the security of Australia.

## 6.2

However, where providing access would reveal evaluative information generated within the organisation in connection with a commercially sensitive decision-making process, the organisation may give the individual an explanation for the commercially sensitive decision rather than direct access to the information.

## 6.3

If the organisation is not required to provide the individual with access to the information because of one or more of IPP 6.1(a) to (j) (inclusive), the organisation must, if reasonable, consider whether the use of mutually agreed intermediaries would allow sufficient access to meet the needs of both parties.

## 6.4

If an organisation charges for providing access to personal information, the organisation—

- (a) must advise an individual who requests access to personal information that the organisation will provide access on the payment of the prescribed fee; and
- (b) may refuse access to the personal information until the fee is paid.

## 6.5

If an organisation holds personal information about an individual and the individual is able to establish that the information is not accurate, complete and up to date, the organisation must take reasonable steps to correct the information so that it is accurate, complete and up to date.

6.6

If the individual and the organisation disagree about whether the information is accurate, complete and up to date, and the individual asks the organisation to associate with the information a statement claiming that the information is not accurate, complete or up to date, the organisation must take reasonable steps to do so.

6.7

An organisation must provide reasons for denial of access or a refusal to correct personal information.

6.8

If an individual requests access to, or the correction of, personal information held by an organisation, the organisation must—

- (a) provide access, or reasons for the denial of access; or
  - (b) correct the personal information, or provide reasons for the refusal to correct the personal information; or
  - (c) provide reasons for the delay in responding to the request for access to or for the correction of personal information—
- as soon as practicable, but no later than 45 days after receiving the request.

## **Principle 7—Unique Identifiers**

7.1

An organisation must not assign unique identifiers to individuals unless the assignment of unique identifiers is necessary to enable the organisation to carry out any of its functions efficiently.

7.2

An organisation must not adopt as its own unique identifier of an individual a unique identifier of the individual that has been assigned by another organisation unless—

- (a) it is necessary to enable the organisation to carry out any of its functions efficiently; or
- (b) it has obtained the consent of the individual to the use of the unique identifier; or
- (c) it is an outsourcing organisation adopting the unique identifier created by a contracted service provider in the performance of its obligations to the organisation under a State contract.

7.3

An organisation must not use or disclose a unique identifier assigned to an individual by another organisation unless—

- (a) the use or disclosure is necessary for the organisation to fulfil its obligations to the other organisation; or

- (b) one or more of IPP 2.1(d) to (g) applies to the use or disclosure; or
- (c) it has obtained the consent of the individual to the use or disclosure.

#### 7.4

An organisation must not require an individual to provide a unique identifier in order to obtain a service unless the provision of the unique identifier is required or authorised by law or the provision is in connection with the purpose (or a directly related purpose) for which the unique identifier was assigned.

### **Principle 8—Anonymity**

#### 8.1

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering into transactions with an organisation.

### **Principle 9—Transborder Data Flows**

#### 9.1

An organisation may transfer personal information about an individual to someone (other than the organisation or the individual) who is outside Victoria only if—

- (a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the Information Privacy Principles; or
- (b) the individual consents to the transfer; or
- (c) the transfer is necessary for the performance of a contract between the individual and the organisation, or for the implementation of precontractual measures taken in response to the individual's request; or
- (d) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between the organisation and a third party; or
- (e) all of the following apply—
  - (i) the transfer is for the benefit of the individual;
  - (ii) it is impracticable to obtain the consent of the individual to that transfer;
  - (iii) if it were practicable to obtain that consent, the individual would be likely to give it; or
- (f) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the Information Privacy Principles.

### **Principle 10—Sensitive Information**

#### 10.1

An organisation must not collect sensitive information about an individual unless—

- (a) the individual has consented; or
- (b) the collection is required or authorised under law; or
- (c) the collection is necessary to prevent or lessen a serious threat to the life or health of any individual, where the individual whom the information concerns—

- (i) is physically or legally incapable of giving consent to the collection; or
- (ii) physically cannot communicate consent to the collection; or
- (d) the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

## 10.2

Despite IPP 10.1, an organisation may collect sensitive information about an individual if—

- (a) the collection—
  - (i) is necessary for research, or the compilation or analysis of statistics, relevant to government funded targeted welfare or educational services; or
  - (ii) is of information relating to an individual's racial or ethnic origin and is collected for the purpose of providing government funded targeted welfare or educational services; and
- (b) there is no reasonably practicable alternative to collecting the information for that purpose; and
- (c) it is impracticable for the organisation to seek the individual's consent to the collection.