

Eligible Person Policy and Procedure

Purpose

This Statement provides guidance on the relevant matters to be taken into consideration in approving a person to be eligible to hold a category of licence (defined as an 'eligible person') under section 76A of the *Living Marine Resources Management Act 1995* (the Act).

It does not apply to consideration of permits under section 12 of the Act, or consideration of assignment of a licence under an abalone deed of agreement.

Background

The *Living Marine Resources Management Act 1995* (the Act) is the primary legislation governing Tasmania's marine fisheries, and part of a suite of legislation regulating marine farming. The Act provides for the licensing of commercial fishing, recreational fishing, marine farming, fish processing and handling.

Amendments to the Act (in the *Living Marine Miscellaneous Amendments (Digital Processes) Act 2021*) commenced on 31 March 2023 to provide for digital licensing and reporting.

The matters that the Secretary must consider in making a licensing decision have not changed from before the amendments came into force.

Digital licensing now requires a two-stage licencing process where a person must first become an 'eligible person' to hold a licence of a particular category before being granted a licence of that category.

The categories of licence for eligible status are:

- Recreational fishing
- Commercial fishing
- Marine farming
- Fish processing
- Handling

Eligibility in one category of licence is not taken to be eligibility in any other category of licence. For example, a person who is eligible for a commercial fishing licence is not automatically eligible for a marine farming licence. That person will need to be granted eligibility for the marine farming licence.

Eligible person

This policy statement relates to the first stage of the licensing process, being the approval of a person as an 'eligible person' provided for at section 76A. Section 76A(5) provides that the Secretary may only grant an application if satisfied that:

- (a) The applicant is a suitable person (provided for in section 76B); and
- (b) In the case of a natural person, they are an adult.

Transitional arrangements

Section 76C of the Act provides that a person who held a fishing licence of a particular category immediately before 31 March 2023 is taken to be approved as eligible to hold a licence of that category.

Section 76C also provides that any applicant for a recreational fishing licence is taken to be eligible to hold that category of licence.

These transitional arrangements reflect that licence holders would have already been assessed as 'eligible persons' to hold their fishing licence before the amendments came into force.

New entrants to commercial marine fishing, marine farming, or processing and handling will need to have their eligibility assessed before being granted a licence or a transfer.

Review of eligibility

Section 76D provides that the Secretary may investigate an eligible person to determine whether the person should remain an eligible person, at certain times.

- For recreational fishing licence holder – at any time.
- For any other licence holder – when the licence is renewed, or at the time the person is convicted of an offence under the Act or another Act or corresponding law.
- In the case where a person has been approved as eligible to hold a licence but has not held that licence during the past 2 years – at any time.

Determination of suitability to be an eligible person

The following matters will be considered in relation to either the approval of a new applicant, or the review of eligibility of an existing eligible person.

The following matters are relevant in determining whether an applicant or an eligible person is suitable to hold a licence of a particular category:

fit and proper person

Whether the applicant or eligible person, is or remains a fit and proper person

The Secretary will consider whether the applicant or eligible person has:

- Been issued with demerit points under the Act, and the circumstances surrounding those demerits.
- Been disqualified from holding a licence under the Act for a period of time, and the circumstances surrounding that disqualification.
- Convictions recorded against them related to serious criminal activity, fraudulent activities or other circumstances related to their character.

The Secretary may require a National Police check to be undertaken. Information should be provided to the Secretary by the applicant or eligible person, particularly to demonstrate that past poor character can be mitigated by current circumstances. The Secretary can seek further information in accordance with section 76A(7) of the Act.

In relation to applicant / eligible persons that are not a natural person, the Secretary will also consider whether the company or entity is solvent and may seek a statement from ASIC to obtain company details

relevant convictions

Whether the applicant / eligible person has, within the last 5 years, been convicted of an offence under this Act, any other Act or a corresponding law, which the Secretary considers is relevant.

The Secretary will consider any relevant convictions within a 5 year period under the Act or any other Tasmanian Act or a corresponding law. The Secretary will consider the nature of the offence and conviction in determining if the applicant or eligible person is suitable to be or remain eligible.

Information should be provided to the Secretary by the applicant or eligible person in relation to the circumstances of the conviction. The applicant or eligible person must consent to the Secretary seeking information from other Tasmanian Government agencies, and from other Australian jurisdictions in relation to the corresponding laws administered by them.

unpaid fees, levies, charges or royalties

Whether the applicant or eligible person has any unpaid fees, levies, charges or royalties due and payable under the Act.

The Secretary will consider any unpaid dues. All fees, levies, charges and royalties must be paid up to date, or the Secretary may not consider an application for suitability to be eligible.

The Secretary may consider a payment plan in the in the event of financial hardship.

Other relevant matters

Anything else that the Secretary considers relevant.

The Secretary may take into account other matters deemed appropriate for the determination of suitability to be an eligible person. As a matter of procedural fairness, the Secretary will inform the applicant / eligible person, and provide any adverse finding in advance. The applicant / eligible person will be provided the reasonable opportunity to provide reasons why they are a suitable person to hold a licence.