

Disqualifying aquaculture permit holders policy

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Policy Statement:

This policy defines when NSW Department of Primary Industries (NSW DPI) may disqualify a person or corporation from holding an aquaculture permit following the cancellation of their aquaculture permit, in line with sections 160 and 161 of the *Fisheries Management Act 1994* (the Act).

Scope:

This policy applies to any person or corporation who has held an aquaculture permit within NSW and that permit has been cancelled in line with section 160 of the Act. In line with section 161 of the Act, NSW DPI may:

- Disqualify a person who is not a corporation (s 161(1)).
- Disqualify a corporation and any director or other person concerned in the management of that corporation (s 161(2)).

NSW DPI may disqualify a person or corporation for a specified period or until an outstanding issue has been resolved, or it may permanently disqualify a person or corporation (s 161(3)).

Requirements:

1. Following the cancellation of an aquaculture permit under section 160 of the Act, NSW DPI will determine if the person or corporation who held the permit should be disqualified from holding an aquaculture permit in NSW, either for a specified period or permanently.
2. A decision to disqualify a person or corporation will be made at the discretion of NSW DPI. In making this decision, the department will consider the reason for permit cancellation and any mitigating factors affecting the person or corporation (for example, financial hardship or poor health).
3. Before NSW DPI can disqualify a person or corporation from holding an aquaculture permit, it is required to give the person or corporation an opportunity to be heard on the matter or to make written submissions on the matter (s 161(6) of the Act). This requirement will be met via a show cause notice that will provide the permit holder with a minimum of 30 days to respond.
4. Any responses to the show cause notice will be considered prior to the disqualification of the person or corporation.
5. If, after the show cause period, NSW DPI decides to proceed to disqualify the person or corporation, the disqualification will be applied to the following entities:
 - a. Where the permit was held by an individual, the individual will be disqualified.

- b. Where the permit was held by a partnership, all partners will be disqualified.
 - c. Where the permit was held by a corporation, the corporation and all of its directors will be disqualified.
6. A person or corporation will be disqualified for a specified period if the aquaculture permit was cancelled for one of the following reasons. In such instances, NSW DPI may revoke the disqualification on its own initiative (s 161(4) of the Act) when specific requirements are met.
- a. Outstanding debt related to permit fees - disqualification may be revoked when the outstanding debt is paid in full.
 - b. Outstanding production return – disqualification may be revoked when the production return is submitted.
7. A person or corporation will be disqualified for a specified period if the aquaculture permit was cancelled for one of the following reasons. In such instances, NSW DPI may revoke the disqualification if the person or corporation concerned applies to have the disqualification lifted (s 161(4) of the Act).
- a. Failure to comply with a notice issued under section 153 of the Act (request for information).
 - b. Failure to maintain a lease security arrangement (class A and B permit holders).
 - c. Failure to provide evidence of their public liability insurance (PLI) (class A and B permit holders).
 - d. Failure to return a signed deed of undertaking and acknowledgeent (U&A) (class A and B permit holders).
 - e. The permit holder is not undertaking aquaculture in line with their commercial farm development plan (for example, the permit does not authorise any current leases or farms, or the permit holder has had nil production for a significant period).
 - f. Any other breach of permit conditions.
8. A person or corporation who has held 3 aquaculture permits, which have been cancelled for any reason under section 160 of the Act, may be permanently disqualified (section 161(3) of the Act). The previously cancelled permits do not need to be the same class of permit and they do not need to have been held in the same name.
9. A disqualified person or corporation cannot apply for a new aquaculture permit (of any class) unless the disqualification is revoked by NSW DPI. A permanent disqualification will not be revoked by NSW DPI.
10. An application for a new aquaculture permit involving a disqualified person or corporation will be refused in line with section 146(2)(b) and (c) of the Act.
11. A disqualified person or corporation cannot apply for a new aquaculture permit in a different name. For example, a director of a disqualified corporation will be unable to apply for a new permit in a different company name if they are the director of the new company. A disqualified individual will be unable to apply for a new permit as a partner in a partnership.
12. A disqualified a person or corporation may apply to the NSW Civil and Administrative Tribunal (NCAT) for an administrative review under the *Administrative Decisions Review Act 1997*. NSW DPI will advise the disqualified person or corporation of this option in the disqualification notice.
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Roles and responsibilities:

- Program Leader Aquaculture – has the delegation to disqualify a person or corporation and to revoke a declaration to disqualify.
- Senior Fisheries Manager Aquaculture – administers the database in which the permit holder disqualification data are held.

Delegations:

- Fisheries Management Instrument of Delegation (Secretary) 2023
 - Fisheries Management Instrument of Delegation (Minister) 2021
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Definitions:

- **Permit fees:** in line with the Fisheries Management (Aquaculture) Regulation 2017 (the Regulation), an aquaculture permit holder is required to pay an annual permit contribution fee (cl 14) and a research contribution fee (cl 16). Failure to pay these annual contributions is a breach of permit conditions.
 - **Lease security arrangement:** in line with cl 25 of the Regulation, a class A permit holder is required to pay an annual contribution for lease security (unless they have a refundable arrangement in place). Failure to pay this annual contribution is a breach of permit conditions.
 - **Production return:** each financial year, all permit holders must provide NSW DPI with their annual production data. This information is requested under s 153 of the Act. It is a condition of every permit that the holder complies with a s 153 notice.
 - **Public liability insurance:** it is a condition of every class A and B permit that the holder must maintain public liability insurance to a minimum of \$10 million covering the lease areas on which they are authorised to undertake aquaculture.
 - **Deed of undertaking and acknowledgement:** it is a condition of every class A and B permit that the holder must indemnify the State of NSW and its agents against any claims, demands, actions, suits, losses and expenses arising from the actions of those permitted to be in the permit area.
 - **Commercial farm development plan:** in line with s 145 of the Act, a person applying for an aquaculture permit must submit a 5-year plan, which describes how they intend to development their business and undertake aquaculture. The plan must include a biosecurity and lease maintenance plan.
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