

LIVING MARINE RESOURCES MANAGEMENT ACT 1995
SECTION 75 - MINISTERIAL GUIDELINE

SUBJECT: TRANSFER A LICENCE WHERE AN INVESTIGATION IS BEING UNDERTAKEN THAT WILL OR MAY RESULT IN THE APPLICANT BEING CHARGED WITH AN OFFENCE UNDER THE ACT, A CORRESPONDING LAW OR ANY OTHER ACT WHICH THE MINISTER CONSIDERS RELEVANT.

This guideline is to replace a guideline dated 22 December 2004.

OBJECTIVES:

To provide for procedures in the event of an application to transfer a licence being made where an investigation is being undertaken that may result in the applicant being charged with an offence under the *Living Marine Resources Management Act 1995* (the Act), a corresponding law or any other Act which the Minister considers relevant.

POLICY STATEMENT:

A licence is not to be transferred to another person as provided by Section 82 of the Act where an investigation is being undertaken that will or may result in the applicant being charged with an offence under the Act, a corresponding law, or any other Act which the Minister considers relevant.

This policy will only be applied within three months from the date of the relevant application to transfer first being made.

BACKGROUND:

Fishing licences particularly licences that have a limited number have become a tradeable commodity. Some of these licences are sold for many thousands of dollars.

Section 82 of the Act states that the Minister may grant an application for the transfer of a licence if satisfied that:-

- (a) the other person has complied with this Act; and
- (b) the other person, within 5 years before the date of the application, has not been convicted of any offence under this Act, any other Act or a corresponding law which the Minister considers relevant to the holding of the licence; and
- (c) the other person is not disqualified from holding the licence; and
- (d) granting the application is not likely to contravene a management plan; and
- (e) there are no environmental or resource constraints in granting the application; and

- (f) the other person is a fit and proper person to hold the licence; and
- (fa) granting the application is consistent with guidelines issued under section 75; and
- (fb) in respect of a relevant licence within the meaning of the *Fishing (Licence Ownership and Interest) Registration Act 2001*, an application has been made under that Act by the owner of that licence to cancel all entries in the register under that Act relating to that licence; and
- (g) the applicant has paid the appropriate fees and charges.

The Minister may refuse to grant an application if not satisfied as required.

There are provisions in the Act that provide for the Minister to defer the transfer of a licence pending the outcome of proceedings where a charge is to be determined.

Those provisions are designed to protect persons from becoming the holder of a licence that may cease to be in force due to the effect of those proceedings

The Minister has also issued a Ministerial Guideline under Section 75 of the Act to prohibit the transfer of a licence where an application has been made to a magistrate to cancel that licence.

The Minister therefore issues this guideline to be consistent with the Act and directs that no transfer of a licence is to be effected under Section 82 of the Act after he has been given written advice from Tasmania Police that an investigation is being undertaken that will or may result in the applicant being charged with an offence under the Act, a corresponding law or any other Act which the Minister considers relevant.

This policy will only be applied within three months from the date of the relevant application to transfer first being made.

Approved by:



Date: 24/07/2006

David Llewellyn MHA
Minister for Primary Industries and Water