

Disqualification guideline

A guideline about the procedure for deciding whether to disqualify an applicant for the grant, or transfer of, a prescribed resource authority

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Purpose

This guideline describes the procedure for deciding whether to disqualify an applicant for the grant, or transfer of a prescribed resource authority under Chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (the MERCP Act). These legislative provisions do not apply for applications to renew a prescribed resource authority

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

Definitions

For the purpose of interpreting this guideline, the words *applicant*, *associate*, *prescribed resource authority* and *prescribed matter* have the meaning given in section 196A of the MERCP Act.

An *applicant* is an entity that applies for:

- the grant of a *prescribed resource authority*:
 - a mining claim; an exploration permit; a mineral development licence; a mining lease under the *Mineral Resources Act 1989*; or
 - an authority to prospect; a petroleum lease; a pipeline licence; a petroleum facility licence under the *Petroleum and Gas (Production and Safety) Act 2004*; or
 - a lease under the *Petroleum Act 1923*; or
 - a geothermal exploration permit or a geothermal production lease under the *Geothermal Energy Act 2010*; or
 - a GHG exploration permit or a GHG injection and storage lease under the *Greenhouse Gas Storage Act 2009*.
- a tender for a prescribed resource authority; or
- an application for approval of a prescribed dealing that is a transfer of a prescribed resource authority or a share in a prescribed resource authority.

Prescribed matter has the meaning given in section 196B of the MERCP Act –

- an application for the grant of a prescribed resource authority;
- a tender for a prescribed resource authority;
- an application for approval of a prescribed dealing that is a transfer of a prescribed resource authority or a share in a prescribed resource authority.

The definition of *associate* in section 196A includes directors and parent companies, as well as individuals or entities who are able to control or substantially influence the operations and decisions about the management of the resource authority. This may extend to family members, related bodies corporate, ultimate holding companies, and other entities.

An *associate* of an applicant for a prescribed matter means either:

- an entity (which includes a body corporate) the Minister or delegate (decision-maker) considers is in a position to control or substantially influence the applicant's affairs in connection with the prescribed resource authority the subject of the prescribed matter; or
- if the applicant is a body corporate –

- a director of the applicant; or
- if the applicant is a subsidiary of another body corporate (the *parent* company)
 - the parent company; or
 - a director of the parent company.

If the definition of *associate* applies, the decision-maker will consider whether a person is in a position to control or substantially influence the applicant's affairs in connection with the prescribed resource authority the subject of the prescribed matter. For example, the department will consider whether a parent company could substantially influence the management of a mining lease or its funding if granted. The decision-maker does not need to be satisfied that the person in question has actually exercised control or has actually substantially influenced these affairs.

Whether this definition applies will be a question of degree and fact and there is no prescriptive approach to the interpretation and application of the definition of *associate*. Each instance is considered on a case-by-case basis, taking into account all the relevant factors under section 196C(2) and any further information or documents that the decision-maker requires from the applicant to make a decision under section 196D.

Policy intent

The disqualification criteria are intended to allow the State to better assess the risk of applicants not being able to carry out or pursue the work program for the resource authority and remain compliant with resource authority obligations. This will mitigate the potential risk that the site may be disclaimed or left with other outstanding debts through an upfront assessment of the applicant's suitability to hold a resource authority. The disqualification criteria are in addition to the consideration of the financial and technical resources of an applicant and the application requirements which apply under the relevant Resource Act.

Natural justice procedure for deciding whether to disqualify an applicant

Request for further information or documentation

Under section 196D, the decision-maker may require the applicant to give further information or a document that the decision-maker requires to make a decision under section 196C. The applicant must be given a notice requiring the applicant to comply within a period of at least 10 business days, which may be extended by a further notice given to the applicant.

If the applicant does not comply with the requirement, the decision-maker may proceed with the decision-making process without the further information or document.

Notice of intended disqualification

Before making a decision to disqualify an applicant, procedural fairness *must* be afforded. Section 196G of the MERC Act has an in-built natural justice requirement that the decision-maker give a notice to the applicant stating:

- the proposed decision;
- the reasons for the decision; and

- that the applicant may, within 20 business days after the notice is given, make submissions to the decision-maker about the proposed decision.

The decision-maker may extend the period for making submissions by further notice to the applicant. This provides the applicant the opportunity to have their say as to why they should not be disqualified. Prior to making any final decision, the decision-maker will consider any submissions made by the affected applicant.

Criminal history check

Under section 196E, the decision-maker may ask the police commissioner for a report about the criminal history of the applicant or an associate of the applicant, but only if the applicant or associate has given written consent to the request.

The police commissioner must comply with the request to the extent that the information is in the police commissioner's possession, or it is information to which the commissioner has access.

The decision-maker must destroy the report as soon as practicable after the decision under section 196C is made.

The decision-maker may require the applicant to pay the reasonable costs of obtaining a criminal history report and the cost must not be more than the actual cost of obtaining a report.

Notice of disqualification

Under section 196H, if a decision is made to disqualify the applicant under section 196C, the applicant must be given a notice stating the decision and the reasons for the decision. There is no appeal for the decision to disqualify an applicant, however the applicant may commence a judicial review.

Transitional

The power to disqualify under section 196C applies only if the application or tender constituting the prescribed matter was made after 7 September 2020.

Existing undecided applications as at 6 September 2020 are not subject to the disqualification provisions.

Document information

Availability and location: External - Business Industry Portal

Owner and approver: Deputy Director-General, Georesources Division

Review date: September 2022

Related documents:

Contacts: For help and information about this policy, please contact the relevant Assessment Hub – Coal Assessment Hub on Ph: (07) 4936 0169 or email:

coalhub@dnrme.qld.gov.au; Mineral Assessment Hub on Ph: (07) 4447 9230 or email:

MineralHub@dnrme.qld.gov.au; and Petroleum Assessment Hub on Ph: (07) 3199 8118 or email: PetroleumHub@dnrme.qld.gov.au.

For help with MyMinesOnline please contact the MyMinesOnline Helpdesk on (07) 3199 8133 or email mines_online@dnrme.qld.gov.au.