

**Version 3**

**January 2007**

## **Clean Green Convictions Policy**

### **Scope:**

This policy details the consequences to certified Clean Green organisations that are convicted for an offence under the relevant Acts and regulations across the three states (South Australia, Victoria & Tasmania).

### **Background:**

The Clean Green program is a product certification scheme with specified standards including behavioural & physical requirements in Product Quality, Food Safety, Workplace Safety and Environmental Management of Rocklobster fishing operations.

The environmental standards in the program address the sustainability of the resource (lobster stocks) and broader environmental concerns (ecological interactions). All Australian Southern Rocklobster fisheries implement scientific research and compliance activities to ensure the resources are monitored for sustainability and not over exploited through policing of commercial and recreational lobster catches.

Sections of the Clean Green standard are verified by checking that an organisation has not been convicted under the relevant Acts and regulations in each state.

The policy deals with convictions under the relevant Acts and regulations of Clean Green accredited organisations, details the implications on the organisations certification and the rights of appeal.

### **Convictions Policy:**

The process for dealing with convictions of Clean Green certified organisations shall be guided by the following;

1. All convictions of an organisation prior to undertaking the Clean Green training program and prior to public release of this policy are null and void.
2. Convictions will be classified into 2 classes in line with the Clean Green audit protocol;
  - a. **Critical:** There is a direct threat to the sustainability of the rocklobster resource or environment, safety and welfare of

individuals in the workplace and food safety. Specifically in relation to quota integrity the following shall apply:

Effective as of the date of written notification, Clean Green Certification will be withdrawn for any member of the Program found guilty of breaching State laws pertaining to quota integrity for a minimum of twelve months. Further extensions may be determined by the Board.

The table below lists the critical breaches of the standard and implications of such breaches (suspension time):

Critical Non-Conformances	Minimum Penalty (Suspension)	
	1 <sup>st</sup> Offence	2 <sup>nd</sup> Offence
Quota integrity and/or avoidance (excluding quota carry over)	1 year	Life
Taking undersize lobster	1 year	Life
Taking berried females	3 year	Life
Taking lobster in a closed period	3 year	Life
Pollution of the environment (i.e. disposal of oil/fuel)	As decided by SRL	
Killing of protected species (seals, dolphin, seabird, whales, turtle & other)	As decided by SRL	
Breaches of workplace safety regulations	As decided by SRL	
Contamination of product (e.g. Pouring chemical into the tank)	As decided by SRL	

- b. **Minor:** This is where absolute compliance to the fishing licence conditions has not been demonstrated, but has no impact on the sustainability of the resource or environment. These may include;

  - Minor licence breaches (e.g. No licence present on board vessel, not complying with fishing gear requirements, exceeding pot soak time)
  - Minor paper work accuracy
  - Inaccurate prior reporting
3. All other convictions not classified above will need to be assessed and classified as critical or minor on an individual basis by the Southern Rocklobster Limited Board.
4. If more than three minor convictions are given within a fishing season this will result in an organisation's certification to be withdrawn for one year.
5. If a critical conviction is issued, within a fishing season, this will result in an organisation's certification to be withdrawn in line with the penalty

guidelines or if the conviction is not listed in the penalty guidelines then the Southern Rocklobster Board will decide.

6. For an organisation to regain certification after a suspended period for either a minor or critical conviction an organisation will need to be fully audited against the standards and provide a corrective action plan to ensure that further convictions will not occur.
7. The organisation can lodge a complaint / appeal (Appendix 1 - SRL's Appeal Resolution Procedure), if they are not satisfied with the penalty received.
8. SRL will investigate all appeals in accordance to SRL's Disciplinary Process (Appendix 2) and provide a determination to the organisation.

## APPENDIX 1

### **Southern Rocklobster Limited Appeal Resolution Procedure**

Southern Rocklobster Limited's (SRL) investigation and disciplinary process is an integral part of being a leading professional industry peak body and the provision of good governance over the Clean Green Program.

As a professional body, SRL sets standards for the members of the Australian Southern Rocklobster Clean Green program. Part of monitoring compliance with the Clean Green standards includes a process by which organisations can appeal a decision and have such penalties further investigated.

The following information is provided to assist you to understand the practices and procedures of SRL in dealing with a member appeal.

#### **Appeal Resolution Procedure**

Please keep this information for your own records. SRL is aware that the expectations of appeals will vary widely. This information is therefore provided to you to explain SRL's complaint/appeal resolution procedures.

#### **Conduct of an Investigation**

Once a written appeal has been received by SRL's Clean Green Manager, the prime focus of the investigation is to obtain all of the relevant facts of the appeal, notwithstanding the time it takes to complete this task.

The Clean Green Manager will require the organisation lodging the appeal to provide "unconditional authority" to release any correspondence forwarded to the Clean Green Manager to the SRL Board for comment to ensure that the appeal investigation is conducted fully.

The Clean Green Manager will usually have to obtain further information from the SRL Board and the complainant. It would be expected that the complainant would cooperate should such a request for further information be made. However, if the complainant does not answer a second request for the same information, the Clean Green Manager may place the complaint on hold until a reply is received as there may be insufficient information to continue the investigation. The Clean Green Manager will endeavour to keep the complainant informed of the progress of the complaint.

The complainant is required to cooperate with the Clean Green Manager during the investigation and appeal process.

### **Responsibility of the Clean Green Manager**

The Clean Green Manager has the responsibility to investigate all written complaints/appeals received, together with the SRL Executive, decide whether the Clean Green organisation has a "case" then the complaint/appeal is referred to the SRL Board for a formal hearing into the complaint/appeal. This action signifies the change in responsibility for the complaint from the Clean Green Manager to the SRL Board. However, the Clean Green Manager or the SRL Executive will present the complaint at any formal hearing of the SRL Board.

It is important to note that the action of the investigation being forwarded to the SRL Board, because the member has been found by the Clean Green Manager and/or the SRL Executive to have a "case" of appeal, is only a determination that there are matters requiring further consideration by the SRL Board.

### **Complaints also the Subject of Legal Proceedings**

Investigation of a complaint by SRL is not a conflict resolution avenue, nor does the investigation replace the legal avenues open to resolve commercial conflicts. However, once legal action has been taken against SRL, the Clean Green Manager will suspend consideration of the complaint until the legal action has been completed. When the legal proceedings are complete, the Clean Green Manager may resume the investigation of the complaint, taking into account the legal decision.

Such matters are put on hold for two reasons. First, SRL does not want to prejudice either party by making a determination prior to the finalisation of the legal proceedings. Second, the legal proceedings may either resolve the matter or produce further information that may aid SRL in its investigations.

Therefore, SRL puts further action on hold until the legal proceedings are finalised. However, if the legal proceedings do not relate to the complaint, the investigation may proceed regardless.

### **Compensation**

SRL is not a court of law and does not have the power to award compensation payments or demand the repayment of, or a reduction in, revenue. Any claim for compensation, reduction in fees etc. must be lodged with a court.

### **Mediation**

SRL's investigation process is not mediation; it is an investigation of an appeal to determine if a Clean Green organisation may have case to present as to why a suspension of the Clean Green certification should not be imposed.

## **Privacy Statement**

The information (as defined by the *Privacy Act 1988*) you provide to SRL as part of the investigation process may be used in the following manner:

- To investigate the complaint;
- As part of any potential hearing before SRL's Disciplinary Tribunal; and
- Forwarded to a statutory authority where there may be a breach of the law or statutory requirements.

SRL may provide personal information provided as part of the complaint/appeal process to the following:

- The Clean Green Manager and SRL Executive Officer;
- Members of the SRL Board; and
- Statutory/Regulatory bodies.

The failure of the complainant to provide personal information required for the purposes of the investigation may cause SRL to be unable to carry out an investigation.

In line with the *Privacy Act 1988*, you have the right to access any personal information that SRL holds about you. You can also request that any inaccurate information be corrected.

**Complainant(s) Details**

**Title** \_\_\_\_\_  
**Surname** \_\_\_\_\_  
**Given Name** \_\_\_\_\_  
**Bus. Address** \_\_\_\_\_  
\_\_\_\_\_  
**Suburb** \_\_\_\_\_ **Post code** \_\_\_\_\_  
**Bus. Phone #** \_\_\_\_\_ **Bus. Fax #** \_\_\_\_\_  
**Email** \_\_\_\_\_

**If acting on behalf of a Complainant, please provide your own details and the relationship with the complainant.**

**Title** \_\_\_\_\_  
**Surname** \_\_\_\_\_  
**Relationship** \_\_\_\_\_  
**Given Names** \_\_\_\_\_  
**Bus. Address** \_\_\_\_\_  
**Suburb** \_\_\_\_\_ **Post code** \_\_\_\_\_  
**Bus. Phone #** \_\_\_\_\_ **Bus. Fax #** \_\_\_\_\_  
**Email Address** \_\_\_\_\_

**Issue complaint relates to**

**Description** \_\_\_\_\_  
**Organisation / certification No.** \_\_\_\_\_  
**Bus. Address** \_\_\_\_\_

**Suburb** \_\_\_\_\_ **Post code** \_\_\_\_\_

**Short summation of the complaint / appeal (please attach further documentation and full details of the complaint to this form)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I / we understand and authorise SRL to, for the purpose of investigating the complaint, to seek and gain access to any of my / our files, records and other documentation held by the member. I / we further authorise SRL to collect, use and disclose, as is necessary for the purpose of the investigation, any and all information provided to SRL in relation to this complaint.

I / we have read and understand the information contained in this form and request that the SRL investigate this complaint / appeal.

**Signature**

**Print Name**

**Date:     /     /20**

**Signature**

**Print Name**

**Date:     /     /20**

If you are acting on behalf of the complainant, please provide proof that you have authority to so act and to received and provide personal information.

Please lodge the complaint together with this form (and all future correspondence) to:

Level 1, 16 Unley Road  
UNLEY SA 5061

## APPENDIX 2

### **Southern Rocklobster Limited's Disciplinary Process**

Having a disciplinary process is important to maintaining the creditability of the Clean Green Trade Mark.

Southern Rocklobster Limited (SRL), as a professional body, manages the Clean Green standards for the members and enforces those standards through a variety of methods, the ultimate method being determination by the SRL Board.

The following information is provided to assist you to understand the practices and procedures of the SRL Disciplinary Process and why you are before the SRL Board.

#### **Why am I under investigation?**

The reason you are under investigation is that the SRL investigation process has determined that there are matters that need to be considered by the SRL in relation to your ongoing Clean Green Certification. It is for the SRL Board to determine if there is sufficient evidence to make a finding that your penalty should be reduced or dismissed. If this is found to be the case, the SRL Board will impose what it considers to be an appropriate penalty.

A Clean Green member may appeal a decision made by SRL referred to the SRL Board if sufficient evidence exists.

#### **How does the investigation / appeal process work?**

The SRL Board will inform you of the date, time and place of the hearing of your appeal so that you may appear either in person or by teleconference, with or without counsel, if you wish. On the day of the hearing, the SRL Board determines the order that the appeals are to be heard. When your appeal comes before the SRL Board, SRL's Clean Green Manager and / or SRL Executive Officer will present the information SRL has collected in relation to your appeal.

The SRL Board may ask questions of the Clean Green Manager / SRL Executive Officer. If you are present, the SRL Board will allow you or your counsel to make a statement. After the SRL Board has heard your statement, you may be asked further questions. If you are not present, you can still make a written statement to the SRL Board which will be considered.

After hearing this information, the SRL Board will dismiss all present and discuss the information before them.

The SRL Board will then make a determination. The SRL Board may:

- Find that you have no case and then impose a penalty;
- Find that you have a case and then impose a reduced penalty;
- Find that you have a case and dismiss the penalty; or
- Defer making a decision on the complaint until further information can be presented to the Board.

The process is an inquisitional process, not an adversarial process. This means that the SRL Board is tasked with finding out what has happened through a process of questions and answers of the organisation involved. It is not like a court in that the role of the Clean Green Manager / SRL Executive is not that of a prosecutor. The Clean Green Manager / SRL Executive's role is to present all the information that has been provided, to answer questions and if necessary to seek further information. The role of the Clean Green organisation should also be that of providing additional information and giving context to the information which has been presented. The SRL Board must review all information at hand and make its decision based on the balance of probabilities.

The penalties that can be imposed by the SRL Board are as follows:

- Forfeiture of membership (in accordance to the Certification Mark and Participation Agreement);
- Suspension of membership and use of the Clean Green Trade Mark (in accordance to the Certification Mark and Participation Agreement);
- Other penalty deemed appropriate.

Members who have had their membership forfeited or suspended by the SRL Board will have these details published in the next edition of SRL newsletter.

### **Do I have to appear before the SRL Board?**

Members are not required to appear before the SRL Board. However, it may be advantageous for you to be present in order to present your argument in person.

This can be done by appearing in person or via teleconference. If you intend to appear via teleconference you will need to inform SRL of this at least 7 days prior to the hearing date. You may also be accompanied by legal counsel (or other representatives) should you choose. However, you must inform the SRL Board 14 days prior to the date of the hearing that you intend to be represented by legal counsel (or other representatives). SRL will not pay for such representation. You may alternatively present your case in writing or fail to respond at all. Failure to respond in any form, though, may be detrimental to your case.

**Can I appeal the decision of the SRL Board?**

You cannot appeal the decision of the SRL Board.

**Further information**

For further information please contact your SRL on 1300 853 880.