

# Guideline for the Conduct of a Marine Farming Planning Review Panel Hearing

August 2024

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## Glossary

In this document, the definition of words and phrases may be found in section 3 of the *Marine Farming Planning Act 1995*, unless otherwise specified below.

The Act	Means the <i>Marine Farming Planning Act 1995</i> per section 1 of The Act.
The Panel	Means the Marine Farming Planning Review Panel established under Part 2 of The Act.
MFDP	Means a Marine Farming Development Plan.
Representor	Means a person who submits a representation in relation to a: <ul style="list-style-type: none"><li>• Draft MFDP exhibited under s26 of the Act; or</li><li>• Draft amendment to a MFDP exhibited under s38 of the Act.</li></ul>
Section 28 report	Means a report prepared by the Planning Authority about representations in relation to a MFDP exhibited under s26 of the Act, for consideration by the Panel.
Section 40 report	Means a report prepared by the Planning Authority about representations in relation to a draft amendment to a MFDP exhibited under s38 of the Act, for consideration by the Panel.

# Introduction

If a hearing is requested by a person in relation to a representation submitted during the public exhibition of a draft MFDP or a draft amendment to a MFDP (i.e. sections 27 or 39 of the Act), then the Panel must hold a hearing as per section 9(3).

Section 12 of the Act outlines the responsibilities in respect to a hearing. Section 12(1)(b) of the Act provides for the Panel to determine the procedure at a hearing and section 12(2) specifies how the Panel may inform itself, consult (and with whom), gather and consider evidence and interact with persons attending a hearing.

At the discretion of the Panel, a hearing may be 'closed' or held in 'public'.

A 'closed' hearing may occur in instances where a person, for reasons of privacy or commercial confidentiality, has requested their evidence be given in private. A person who wishes to provide evidence in private should request this prior to a hearing. The Panel will determine the outcome of any such request and notify a person accordingly.

A 'public' hearing means all person's present can witness the full proceedings of the hearing.

This guideline does not replace the provisions of the Act in relation to hearings and in the event of any inconsistency with this guideline the Act prevails to the extent of that inconsistency.

To read all provisions of section 12 (Hearings) see

<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1995-031#GS12@EN>.

## Purpose of a hearing

The purpose of a hearing is to:

- Allow the Panel to further inform itself about the nature of a draft MFDP or a draft amendment to a MFDP, and matters raised in relation to these plans through public representations. In conjunction with a 'section 28' or 'section 40' report<sup>1</sup>, a hearing allows the Panel to reach a well-informed decision about the merits of the marine farming proposals it is required to consider.
- Allow a person to clarify and expand on their written representation. A hearing affords a person the opportunity to address the Panel directly about matters raised in their representation, assisted by expert opinion and evidence where agreed.

## Composition of the Panel at the Hearing

The hearing may be conducted by either the full Panel or by members delegated by the Panel under section 7(2) of the Act.

Where a hearing is conducted under delegation, the Panels' delegates will consist of a Chair, together with additional Panel members with expertise in the matters to be heard.

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<sup>1</sup> Sections 28 and 40 of the Act specify the Planning Authority prepare reports about representations in relation to a draft MFDP and/or draft amendments to a MFDP for the Panel's consideration.

## Attendance and participation

Section 12(2)(b) of the Act specifies the Panel may require a person to attend a hearing, and by extension, give evidence.

More broadly, the Panel will invite other persons to attend a hearing at its discretion. This will be done through public notice in all Tasmanian daily newspapers that circulate generally in the State, that is *The Mercury*, *The Examiner* and *The Advocate*.

In general, a person other than a representor, their nominated representative or other person the Panel requires to attend who wishes to attend a hearing will need to register their intention no less than three business days prior to hearing commencement.

The hearing will be held with as little formality as necessary and there is no requirement for a person to be represented by a lawyer or other professional.

Panel members should be addressed as either Chair or by name, as appropriate.

All persons who attend and participate at a hearing are expected to model and in return observe polite and respectful behaviour. A person who attends a hearing must<sup>2</sup>:

- Arrive at least five minutes prior to the commencement of the hearing
- Dress appropriately
- Comply with any directions given by the Panel Chair, including matters relating to security and public safety
- Comply with any order or law that prohibits publication of the proceedings
- Not bring weapons to a hearing
- Not smoke, eat or drink at a hearing
- Switch off mobile devices or place on 'do not disturb', unless the Panel Chair states otherwise
- Speak quietly, preferably not at all, unless providing evidence and/ or responding to queries from the Panel
- Not take photos or make video and sound recordings and otherwise publish Panel proceedings.

## Giving evidence

A person entitled to give evidence at a hearing is a person who has:

- Requested a hearing under section 27 or 39 of the Act, or their nominated representative/appointed nominee; or

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<sup>2</sup> Expected behaviors drawn from Magistrates Court of Tasmania ([https://www.magistratescourt.tas.gov.au/going\\_to\\_court/how\\_to\\_behave\\_in\\_court](https://www.magistratescourt.tas.gov.au/going_to_court/how_to_behave_in_court)) and Supreme Court of Tasmania (<https://www.supremecourt.tas.gov.au/the-court/behaviour-and-etiquette/>), 22 April 2024.

- Been required to attend, by explicit invitation of the Panel.

A person who registers their intent to attend a hearing through the public notice process is not entitled to present evidence. Such a person attends a hearing in an observer capacity only.

A person will normally not be required to give evidence under oath or affirmation unless required otherwise by the Panel under section 12(3) of the Act.

When giving evidence, the Chair will ask each person to provide their full name and the capacity in which they are appearing, either privately, or as a representative of an organisation.

A representor will be given the opportunity to make a brief statement to clarify, amend or expand on points made in their written representation, noting Panel members will have previously read all written representations and have an awareness of their nature. There is no need to read the original representations aloud. Do not raise topics that were not included in the original submissions.

The Panel members will direct questions at persons to clarify aspects of written representations or other evidence given in relation to the subject of the hearing. The Panel is not bound by the rules of evidence when taking evidence as specified at section 12(2)(f). The Panel is, however, required to observe the rules of natural justice.

At the end of the hearing, each person who gives evidence will be invited to make a closing statement. Closing statements are received in the reverse order to the initial proceedings or may be requested in writing.

## Recordings of proceedings

An audio recording of the proceedings will be made for future reference by the Panel. The proceedings will not under normal circumstances be transcribed. Digital copies may be made available upon written request and at the discretion of the Panel, and subject to the *Personal Information Protection Act 2004* and commercial-in-confidence obligations.

For each draft MFDP or draft amendment to a MFDP, the Panel will prepare a decision report informed by matters including the public exhibition of a draft MFDP or draft amendment to a MFDP, section 28 and section 40 reports and recordings of proceedings.

Each decision report will be published on the NRE Tas website.

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