




Australian Government

Australian Fisheries Management Authority

# AFMA Commission Charter

## Approval

This Commission Charter has been considered and approved by

 <p>Helen Kroger Commission Chair</p>	
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## Revision history

Date	Change Type	Author	Version
			1.0

# Commission – Charter

This document explains the authority and responsibilities of the Commission in relation to performing its functions. While the functions and duties of the Commission and the Chief Executive Officer (CEO) are identified in legislation, the practical responsibilities of these have evolved over the years. This document also discusses how the Commission and the CEO work together to interpret and operationalise the functions performed by the Australian Fisheries Management Authority (AFMA).

## Preamble

The staff, CEO and the Commission constitute AFMA, a listed non-corporate Commonwealth entity. AFMA is established under the *Fisheries Administration Act 1991* (FAA) to manage Australia's Commonwealth fisheries and to apply the provisions of the *Fisheries Management Act 1991* (FMA). This also extends to powers and functions under the *Torres Strait Fisheries Act 1984* (TSFA).

## Functions

### *Commission*

While the Commission must have general regard for pursuing AFMA's legislative objectives (section 6 of the FAA and section 3 of the FMA) and the appropriate performance of AFMA in managing Australia's Commonwealth fisheries, the Commission is specifically responsible (section 10B of the FAA) for performing and exercising the domestic fisheries management functions and powers of AFMA.

In meeting AFMA's legislative objectives and functions (section 7 of the FAA), as they relate to Commonwealth domestic fisheries, the Commission must review, consider and determine management arrangements and regulatory services that:

- implement efficient and cost-effective management of Commonwealth commercial fisheries
- ensure that the exploitation of fisheries resources are conducted in a manner consistent with the principles of ecologically sustainable development and have regard to the impact of fishing on non-target species and the long-term sustainability of the marine environment
- maximise the net economic returns to the Australian community from the management of Australian fisheries
- ensure accountability to the fishing industry and Australian community
- achieve government targets in relation to the recovery of AFMA costs.

In so doing, the Commission is to have regard to ensuring that the interests of commercial, recreational and Indigenous fishers are taken into account.

The Commission may delegate to the CEO any of the domestic fisheries management functions or powers of AFMA (section 92 of the FAA), particularly in support of the efficient day to day management of AFMA. A summary of main legislative delegations by the Commission to the CEO are at **Attachment A**.

AFMA must comply with lawful Ministerial directions given in writing concerning the performance of its functions and the exercise of its powers.

### *CEO*

As well as holding responsibilities as AFMA's CEO (see below), the CEO is a Commissioner. This role requires the CEO to draw on their high level of expertise as a fisheries manager and administrator, rather than as an advocate or representative of the agency.

In line with these responsibilities the CEO assists the Commission with administration of its responsibilities, including by giving effect to its decisions.

The CEO is also responsible for performing and exercising the foreign compliance functions and powers of AFMA. The Commission may not direct the CEO in regard to these functions and powers. Similarly, the Commission may not direct the CEO (as the Accountable Authority) in performing or exercising their functions and powers under the *Public Governance, Performance and Accountability Act 2013* (PGPA) or the *Public Service Act 1999*.

The CEO must comply with any lawful direction given by the Minister (subsection 10C(1) of the FAA) dealing with foreign compliance functions and powers of the AFMA.

The CEO manages services to Joint Authorities of the Commonwealth and State governments, including the Torres Strait.

Notwithstanding the limited role of the Commission on matters relating to the duties of the CEO as the accountable authority and agency head, foreign compliance and joint Authorities, the CEO provides regular updates to the Commission to facilitate the Commission's duties and responsibilities.

## **Duties**

### *Fisheries Administration Act 1991*

The Commission must comply with any legal Direction given by the Minister under section 91 of the FAA.

### *Public Governance, Performance and Accountability Act 2013*

The PGPA requires the accountable authority of AFMA, the CEO, to establish good governance policies and processes for the effective management and accountability of the Authority.

In undertaking their functions, Commissioners (as officials of AFMA under section 5A of the FAA and section 13(5) of the PGPA) must also comply with the general duties of officials under sections 25-29 of the PGPA:

- duty of care and diligence

- duty to act honestly, in good faith and for a proper purpose
- duty in relation to use of position
- duty in relation to use of information
- duty to disclose interests.

## **Responsibilities**

The Commission and CEO work together to achieve the legislative objectives of the FAA and the FMA, as well as meeting their duties under the PGPA. The respective roles of the Commission and the CEO are set out below, and summarised in **Attachment B**.

### *Commission*

The Commission sets the strategic direction for AFMA with respect to domestic commercial fisheries management, agrees on outcomes it wants and then monitors performance against those outcomes, including of the CEO and Management. The Commission may approve or endorse, as appropriate, fisheries management policies, strategies and arrangements and establish committees to guide the Commission in decision making on domestic fishery management operations and the use of related powers.

These responsibilities are delivered through:

- developing strategies, policies and arrangements to guide AFMA fulfil its legislative objectives
- considering and approving fisheries management measures in light of a changing environment
- engagement and communication with commercial, recreational and Indigenous fishers; major research providers; and other interested stakeholders
- monitoring AFMA's compliance with fisheries legislative requirements
- ensuring ministerial accountability including through review of corporate reports and statements.
- oversight of the management and performance of AFMA Management, including through:
  - review of AFMA's risk management framework and approach; and
  - Receiving regular updates on AFMA's budget allocations and resource use, principally in relation to their impact on AFMA's outcomes and achievement of strategic directions set by the Commission.

### *CEO*

AFMA's CEO is responsible for implementing the Commission's decisions and ensuring PGPA compliance through:

- cost-effectively and efficiently using AFMA's resources within budgetary limits

- preparing and using corporate planning and reporting processes (including the corporate plan, annual operation plan, annual report, annual performance statement and regulator performance framework)
- establishing and maintaining the governance requirements of the PGPA
- complying with legislative obligations and government policies applicable to the AFMA
- risk oversight and fraud control
- providing advice to the Commission and the Minister
- keeping the Commission and the Minister informed of AFMA's operations and performance.

## **Membership**

The Commission can comprise no more than eight part time members (including the Chair), as well as the CEO. All Commission members are appointed by the Minister by written instrument.

The Minister will appoint the Deputy Chair of the Commission who will act as chair in the absence of the Chair.

Commission members must have a high level of expertise in one or more fields relevant to the operations of AFMA including fisheries management, fishing industry operations, matters relating to recreational or Indigenous fishing; science, natural resource management, economics, business or financial management, law and public sector administration or governance.

Members must not hold an executive position in a fishing industry association or have ownership or control (eg as an executive of a body corporate) over a Commonwealth fishing concession, licence or permit.

AFMA Executive staff will attend meetings to provide Commissioners with information on fisheries management issues.

## **Tenure**

Members, apart from the CEO, are appointed on a part time basis. The CEO must be appointed on a full time basis. All Commission members are appointed for a period not exceeding five years. Members may be re-appointed.

## **Conflict of Interest**

AFMA benefits strongly from an expertise-based Commission, and it is reasonable to expect that conflicts of interest (perceived or real) will arise from time to time. In this regard, perceptions of conflict of interest may be as important as an actual conflict. Commissioners must ensure that all interests are identified, disclosed and managed in a rigorous and transparent way that promotes public confidence in the integrity, legitimacy, impartiality and fairness of the decision-making processes of the Commission.

To support effective management of such issues, the PGPA and FAA specify the handling of Commissioners' interests which may conflict with their Commission role. Under section 15 of the FAA, Commissioners must not engage, without the Minister's approval, in paid employment that may conflict with the proper performance of their duties. In addition, as required under section 29 of the PGPA Act, Commissioners must disclose material personal interests relating to the affairs of AFMA.

A register of Commissioners' interests is maintained by the AFMA. At each Commission meeting, Commissioners are required to identify changes to their register of interests as well as agenda items that may give rise to a potential conflict. Details of conflicts of interest declared by Commissioners and action taken are appropriately recorded. AFMA provides a summary of each Commission meeting to the Minister and this will include the updated register of interests.

Where an interest is identified as being potentially relevant to an agenda item, the Commissioner is excused from the meeting while the remaining members consider the most appropriate way to handle the situation.

Options include:

- simply acknowledging the declared interest, but agreeing that it is not in conflict or not of sufficient conflict as to change the Commissioner's participation in discussion and decision making;
- allowing the Commissioner to participate in consideration, but not decision-making;
- excluding the Commissioner from the item altogether; or
- another course of action agreed by the remaining Commissioners.

In the event that a conflict of interest is identified that precludes a Commissioner from discharging their duties, AFMA will bring seek approval from the Minister.

### **Authority to obtain information**

The Commission is authorised, within the scope of its functions and responsibilities, to:

- obtain any information it requires from any employee, AFMA committee member or external party (subject to any legal obligation to protect information); and
- obtain legal or other professional advice, as considered necessary to meet its responsibilities, at AFMA's expense to a preapproved limit of \$5 000.

### **Meetings and Quorum**

The Commission will meet at least four times per year, although these may not all be face-to-face meetings.

A quorum will consist of a majority of Commission members, noting that should a Commissioner leave the discussion for a matter involving a conflict of interest, the remainder of the Commissioners present constitutes a quorum for the purpose of that decision.

In addition, the Commission may make decisions out-of-session.

The Commission will consider its performance at the end of each of its meetings.

### **Secretariat**

The CEO will appoint an AFMA staff member to provide secretariat arrangements for the Commission.

### **Remuneration**

Commissioners' remuneration is governed by Remuneration Tribunal determinations.

**Attachment A**

**Fisheries Legislation - Delegations by Commission to CEO**

<b>Section / Reg</b>	<b>Description</b>
<p><i>Fisheries Administration Act 1991 -</i> Section 7(1)(c), 7(1)(f), 7(1)(g), 7(1)(ga), 7(1)(gaa), 7(1)(gb), 7(1)(h), 7(1)(3), 7(4), 8(2)(c), 8(2)(f), and 9</p>	<p>Various information disclosure powers and consultation powers and functions</p>
<p><i>Fisheries Administration Act 1991 –</i> Section 7(1)(a), 7(1)(aa), 7(1)(ab), 7(1)(ac), 7(1)(b), 7(d), 7(e), 7(e)(a), 7(m), and 7(ma)</p>	<p>Various fisheries arrangement functions in relation to devising and implementing management arrangements and operations</p>
<p><i>Fisheries Administration Act 1991 –</i> Section 7, 23(1), 23(7), 72(1), 72(2), 72(3), 73(3), 74(2), 74(4), 75(3), 77(1), 78(3), 79(2), 87(1) and 90(1)</p>	<p>Development of corporate planning documents</p>
<p><i>Fisheries Administration Act 1991 –</i> Section 61 (1) and 62 (1)</p>	<p>Short term appointments to MACs</p>
<p><i>Fisheries Management Act 1991 –</i> Section 26, 31(F), 31(G), 32, 32 (A), 33, 34, 40, 46, 53, 89, 91, and 94</p>	<p>Approval of forms</p>
<p><i>Fisheries Management Act 1991 –</i> Section 4(2), 4 (3)(a), 4 (3)(b), 16A(1), 16B(1), 16B(3), 16B(4), 16B(5), 17(2), 17(2A), 17(4)(c), 17A(1), 17A(2), 17A(4), 17A(5), 17A(6), 18(1) 18(4), 18(5), 19(1), 20(2), 22(1), 22(2), 22(5), 22(5A), 23(2), 24(1) 24(2)(c), 25, 26(3), 27(4), 29(4), 31,</p>	<p>General delegation of various powers in relation to fisheries operations and management</p>



31A(3), 31B(1)(b), 31B(3), 31C(1)(a), 31C(2),  
31E(1), 31F(4), 31F(5), 31F(7), 31G(1), 31G(2),  
31G(3), 31K(1), 31K(2), 31K(3), 32(1), 32(2), 32(3),  
32(8), 32A(3), 32A(4), 33(1), 33(2), 33(5)(a), 33(6),  
34(1), 34(2), 34(7), 34(8), 34(9), 35(1), 35(2), 36(2),  
36(3), 38(1)(a), 38(1)(b)(i), 38(1)(c), 38(3),

38(3A), 38(4), 39(1), 40(1), 40(2), 40(5), 40(8),  
40A(1), 40A(7), 40B(1), 41A(2), 41A(2B), 42(1),  
43(3), 43(6), 43(7), 44(1), 45(1), 46(3A), 46(4),  
46(4A), 46(4B), 46(4C), 46(4D), 50(1)(a), 50(1)(b),  
50(2), 50(3), 50(4), 50(5), 53(2), 53(5), 54(5), 55,  
57A, 57B(1), 57B(3), 57B(4), 57B(5), 57B(6),  
57C(1), 57C(2), 57C(3), 57C(4)(a), 57C(4)(b),  
57G(1), 57H(1), 57H(2), 57H(3), 57H(4), 70(3),  
83(1), 83(2), 88(1), 91(1), 91(2), 91(3), 91(6), 91(10),  
94(2), 94(5), 97A(1)(b), 97A(2)(b), 113(1A), 113(2),  
115, 114(2), 163B(1), 163C(1), 163C(3), 163C(5),  
165(2)(b), 165(5), 165(6), 166(2), 167(1), 166(2),  
167(1A) and 167(2).

## Attachment B

