



Australian Government

Australian Fisheries Management Authority



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Procedure for the recovery of outstanding
debts and other monies



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Purpose

This document outlines the Australian Fisheries Management Authority's (AFMA's) policy and procedures in relation to the recovery of outstanding debts and other monies that AFMA is responsible for collecting.

AFMA's Legislative Framework

AFMA's management of Commonwealth fisheries covers a range of activities that are required under AFMA's legislated functions. The *Fisheries Administration Act 1991* (FAA) requires AFMA to achieve government targets in relation to the recovery of the costs of the Authority.

In December 2002 the Australian Government adopted a formal cost recovery policy. The underlying principle of the cost recovery policy is that agencies should set charges to recover all the costs of products or services where it is efficient and effective to do so, where the beneficiaries are a narrow and identifiable group and where charging is consistent with Australian Government policy objectives. The *AFMA Cost Recovery Impact Statement* outlines AFMA's cost recovery arrangements. AFMA receives the majority of its cost-recovered funding through management levies and the remainder through fee for service transactions.

In addition to levies and fee for service payments, AFMA is also responsible for the collection of Commonwealth Fisheries Infringement Notices (CFINs) and court imposed penalties. AFMA is not the beneficiary of the revenue received from these collection activities but simply administers them on behalf of the Commonwealth prior to the being moved into the Consolidated Revenue Fund.

Commonwealth Financial Framework

Section 15 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) places requirements on all Accountable Authorities (AFMA's Chief Executive Officer) about how they govern their entity; including managing their entity in a way that promotes financial sustainability and the proper use and management of public resources.

These obligations guide decision-making about debt management, such as the extent to which possible debts are investigated and identified and the methods by which debt recovery is pursued by the Accountable Authority.

For non-corporate Commonwealth entities (AFMA), non-recovery of a debt is permitted where the non-recovery has been authorised by an Act, or it would not be economical to pursue the recovery of the debt, or where the debt is not legally recoverable. A decision to write off a debt does not legally extinguish the debt. For example, if the debtor's circumstances change in the future the debt can be reinstated and pursued. The only way to legally extinguish a debt or other amount owing to the Commonwealth is for the Finance Minister to waive the amount owing under section 63 of the PGPA Act.

The Finance Minister has delegated to the Accountable Authorities of non-corporate Commonwealth entities, the power to modify the terms and conditions on which an amount owing to the Commonwealth is to be paid.

Management and research levies

AFMA issues fishing concessions as a means of managing access to the various fisheries for which it is responsible. The holding of a fishing concession for a commercial fishery provides rights and responsibilities, including the payment of a levy to cover the costs AFMA incurs in managing the fishery. It is the fishing concession holder's responsibility to ensure that their debt is paid on or before the due date. If a concession holder does not pay their levy debt on or before the due date, an interest penalty of 20% per annum calculated daily on the overdue levy starts to accumulate. In addition to this penalty interest, the fishing concession holder risks having their fishing concession(s) suspended and/or cancelled. Levies on fishing concessions are debts due to the Commonwealth of Australia and are payable under the provisions of the *Fishing Levy Act 1991*. The amounts of levies due are as prescribed by Regulations made by the Governor-General under section 6 of the *Fishing Levy Act 1991*.

Where a person is facing financial hardship they may apply to AFMA to enter into an arrangement to pay outside the standard payment regime described in the regulations.

The collection process is illustrated in Figure 1 and described under *Procedure for the recovery of levy and fee for service debts*.

Fees for services provided

AFMA collects fees for providing particular services such as data entry associated with entering logbook data and providing observer coverage in some fisheries. AFMA's *Fee for Service Policy* outlines each service and their associated fees.

Late and unpaid fees will be collected using the same prescribed debt collection procedures as management and research levies. The collection process is illustrated in Figure 1 and described under *Procedure for the recovery of levy and fee for service debts*.

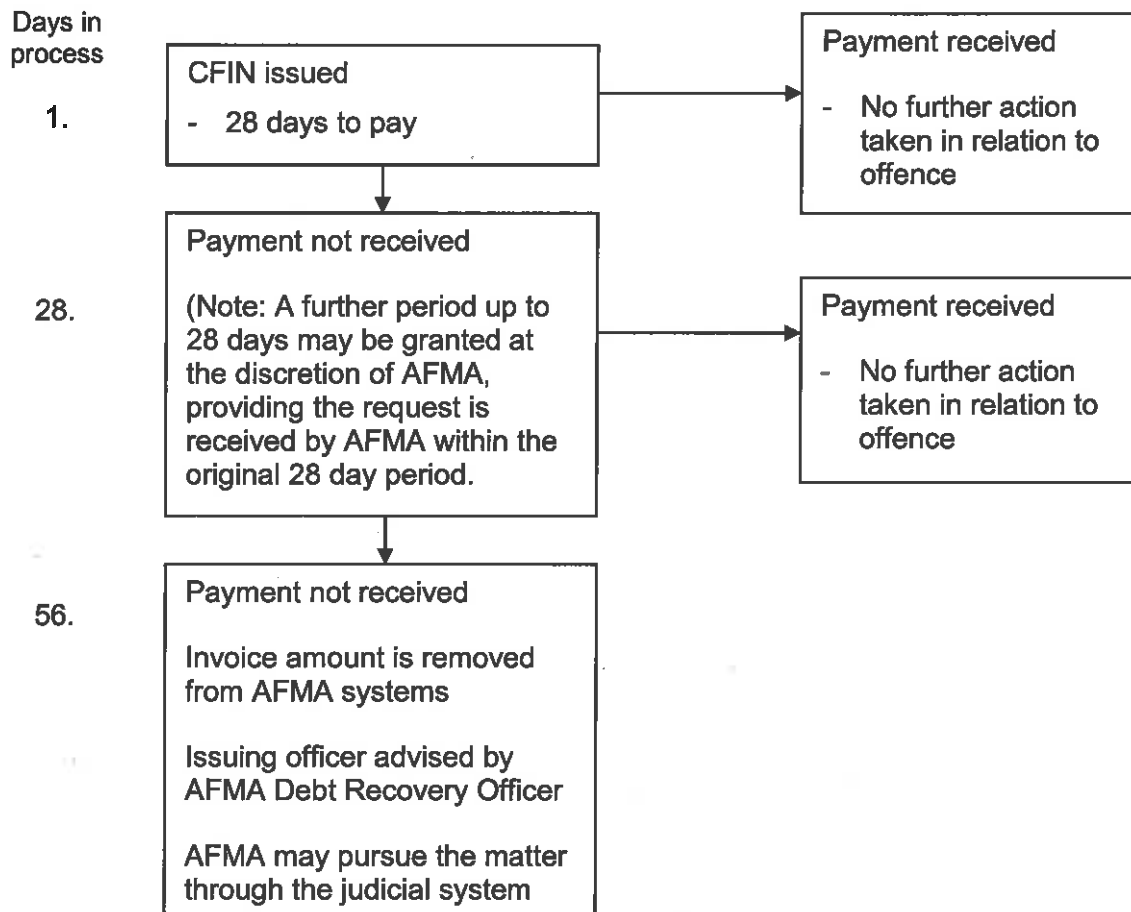
Under the Cost Recovery Impact Statement (2010) the cost of issuing and collecting fee for service invoices as well as management and research levy is fully funded by industry through the levy base. Any monies that are not able to be recovered are added to the levy base for the relevant fishery in the following year. As such, AFMA will take all reasonable steps to recover outstanding amounts in a cost effective manner.

Commonwealth Fisheries Infringement Notices

Under Regulation 38 of the *Fisheries Management Regulations 1992* (FMR), AFMA Compliance officers may serve Commonwealth Fisheries Infringement Notices (CFINs) notices to persons suspected of committing an offence under the fisheries legislation. If the CFIN is paid before the due date for payment passes the person's liability is taken to be discharged and further proceedings cannot be taken against the person for the offence.

A person that receives a CFIN has 28 days to pay the amount on the notice. This may be extended for a further period of up to 28 days at the discretion of AFMA, providing the extension is sought within the original 28 day period. If at the end of the 28 days (plus any extension period granted) the invoice still remains unpaid, it is removed from AFMA's financial management system and the AFMA Debt Recovery Officer will notify the issuing fisheries officer of the event, at which time AFMA may decide to progress the matter through the courts.

Figure 2: Commonwealth Fisheries Infringement Notices



Court imposed penalties

AFMA prosecutes foreign and domestic fishers that breach the fisheries management arrangements in the appropriate state court system. State courts are able to impose penalties on convicted fishers. Unpaid penalties are AFMA's responsibility; however these penalties are pursued through the State-based collection agencies. AFMA will monitor the payment of these court imposed penalties and use its powers under the *Fisheries Management Act 1991* (FMA) to assist the state agencies in the recovery of these debts.

Procedures for the recovery of levy and fee for service debts

The recovery of debts for levies and fees for services will be in accordance with the processes described below. Where a person repeatedly defaults on their debts AFMA reserves the right to impose stricter conditions.

Invoice(s) issued

AFMA will issue a levy or fee for service invoice at least 28 days prior to the due date for payment. This invoice will state:

- AFMA's logo;
- AFMA's ABN;
- amount owing to AFMA;
- details of the transaction;
- the due date for payment;
- how to make the payment;
- if the debt is payable by instalments;
- any penalty that will apply if payment is not made by the due date; and
- who to contact for enquiries.

Methods of payment

AFMA provides a number of payment methods, all of which are detailed on the relevant invoice or notice. Concession holders may pay their debt in any one of the following ways:

- BPay by internet or phone
- direct deposit at any branch of the National Australia Bank
- cheque or money order
- credit card by fax, phone or post (only Visa or Mastercard accepted)

Payments posted in are deemed to have been received by AFMA one working day prior to its receipt being recorded in the AFMA mail registry. This provides one extra working day for mail to have been cleared by AFMA.

Credit Card payments and direct deposits are deemed to have been received when the payment is credited to the AFMA bank account. A debt paid by cheque is deemed paid once the cheque is honoured.

Overdue Notice

An Overdue Notice is issued if payment is not received by the due date. The Overdue Notice will state:

- AFMA's logo;
- AFMA's ABN;
- the concession holder failed to make payment on or before the due date;
- the payment is now overdue;
- if any interest penalty is currently accumulating and if so the rate at which it is accruing;
- if no payment is received within 14 days from the date of the Overdue Notice, any associated fishing concession(s) will be suspended;

- if the debt remains unpaid the fishing concession may be cancelled and legal action commenced to recover the debt; and
- who to contact for enquiries.

Suspension of fishing concession(s)

Telephone contact with concession holder

If payment is still outstanding seven days from the date of issue of the overdue notice, AFMA will attempt to contact the fishing concession holder by their telephone number(s) registered in AFMA's Licensing database. This call is to advise that the fishing concession will be suspended if no payment or satisfactory request to enter into an arrangement for payment is received. This action is to be logged by the AFMA official within the relevant database.

In accordance with section 38(1)(a) of the FMA, AFMA will suspend a fishing concession if any overdue debt is not paid or a satisfactory arrangement to pay entered into 14 days after the date of the Overdue Notice.

Invoking a suspension

If a fishing concession is suspended by AFMA, it ceases to be in force and cannot be used until the suspension is revoked by the appropriate delegate.

When a fishing concession is suspended, a letter is sent to the concession holder stating:

- that their fishing concession has been suspended and that it is now illegal to fish under that fishing concession;
- the amount owing;
- how to pay the outstanding debt;
- that the suspension will be revoked and the fishing concession reinstated if the outstanding debt is paid or an arrangement to pay has been received on or before the 14th day from the date of the letter;
- that if a subsequent amount becomes overdue the concession will not be 'unsuspended' until all overdue amounts are paid;
- that once all their outstanding debt has been cleared, they will be invoiced for any penalties that maybe payable on the overdue payment;
- that if no payment or request to enter into an arrangement to pay the debt has been received within 14 days from the date of the letter, then the fishing concession may be cancelled;
- who to contact regarding the suspension; and
- their right of appeal.

Revoking a suspension

Under section 38(4)(b) of the FMA, AFMA will notify a person in writing that the suspension of a fishing concession has been revoked if:

- the outstanding debt is paid and there is no further monies owed to AFMA; or
- the concession holder enters into an arrangement to pay the overdue debt that is satisfactory to AFMA; or
- there is a remission or refund made under the regulation of the whole of the money.

Payment of an outstanding debt does not mean a suspension is automatically revoked. If a concession has been suspended due to non-payment of a levy or fee for service debt and a subsequent amount becomes overdue, the concession will not be 'unsuspended' until all overdue amounts are paid.

A suspension can only be considered as revoked when AFMA formally advises the concession holder in writing.

Cancellation of fishing concession(s)

AFMA will cancel a fishing concession under section 39(1)(a) of the FMA if 28 days from the date of the suspension letter any outstanding debt is not paid or the concession holder has not entered into an arrangement to pay the overdue debt.

In all instances AFMA will proceed with the following measures before issuing a cancellation notice to a concession holder:

Telephone contact with concession holder

At least seven days from the date of the suspension letter, AFMA will attempt to contact the fishing concession holder by their telephone number(s) registered in AFMA's Licensing database to advise that the fishing concession(s) may be cancelled if no payment is received, or if a satisfactory request to enter into an arrangement to pay is made.

Cancellation warning letter

If a concession holder fails to either pay their outstanding debt or enter into an arrangement satisfactory arrangement to pay, then at least 14 days after the date of the suspension, a cancellation warning letter will be sent to the holder stating:

- their fishing concession remains suspended for failure to pay their outstanding debt or enter into an arrangement to clear their debt;
- they have a further 14 days from the date of the cancellation warning letter to either pay the debt or enter into an arrangement to pay;
- the amount owing;
- how to pay the outstanding debt;
- that the suspension will be revoked and the fishing concession reinstated if all their outstanding debt is paid or an arrangement to pay the debt that is satisfactory to AFMA has been received on or before the 14th day from the date of issue of the letter;
- that once the outstanding debt has been cleared, they will be invoiced any applicable penalty that is payable on the overdue debt payment;
- that if no payment or request to enter into an arrangement to pay the debt that is satisfactory to AFMA has been received on or before the 14th day from the date of issue of the cancellation warning letter then the fishing concession will be cancelled; and
- who to contact regarding the suspension and pending cancellation.

Invoking a cancellation

If no payment is received, or request to enter into an arrangement to pay approved, by AFMA within 14 days from the date of the cancellation warning letter, the fishing concession(s) will be cancelled.

Once a fishing concession is cancelled, all entitlements associated with it including any quota appearing as a condition on the concession, cease to exist and cannot be reinstated (unless a successful appeal is made) even if the fishing concession holder subsequently pays the outstanding debt.

Where a fishing concession(s) is cancelled, a letter is sent to the concession holder stating:

- that their fishing concession has been cancelled and that they will no longer be eligible to conduct any future fishing activity on the basis of having held the fishing concession;
- the background that resulted in the cancellation of their fishing concession;
- that further debt recovery action may be commenced to recover the outstanding amount;
- who to contact regarding the cancellation; and
- their appeal rights.

Interest Penalty

In accordance with section 112 of the FMA, if a concession holder does not pay a levy debt on a fishing concession by the due date, they are liable to pay the Commonwealth an interest penalty. This penalty is also applicable to amounts owing as part of an arrangement to pay.

The interest penalty is charged at the rate of 20% per annum (calculated daily) on amounts owing.

Penalty invoice(s) issued

In accordance with section 112 of the FMA, a penalty at the rate of 20% per annum (calculated daily) will be imposed upon all overdue levy amounts. Once payment of the overdue levy has been received in full a penalty invoice is sent to the fishing concession holder. The Penalty invoice states:

- AFMA's logo;
- AFMA's ABN;
- that full payment has been received but that a penalty has been incurred for late payment;
- the amount of interest payable on the overdue debt;
- that failure to pay the penalty by the due date may result in the loss of fishing concession(s) and/or legal action to recover the penalty amount;
- how to make the payment; and
- who to contact for enquiries.

Unpaid penalty invoices will be collected using the same prescribed debt collection procedures as fee for service invoices and management and research levies.

Request to enter into an arrangement to pay

If a concession holder applies to enter into a formal arrangement to pay an outstanding debt, a fee of \$220 is charged for the administration of the arrangement.

A request to enter into an arrangement for the payment of overdue debt must be submitted in writing to AFMA and must set out a proposed payment plan together with any necessary justification.

Standard payment plan

In an application to enter into an arrangement to pay, a concession holder must include:

- a repayment schedule which;
 - includes an initial payment of \$220 administration fee and 25 per cent of the outstanding debt
 - includes monthly payment instalments of 25 per cent of the outstanding debt.
- an acknowledgment that failure to pay any of the instalments by the due date will result in the immediate suspension of their concession(s) and the remainder of the debt will become immediately payable.
- acknowledgement that a penalty will accrue on outstanding amounts (levy debts only);
- a commitment to make payment on or before the due dates of the plan.

Extreme financial hardship payment plan

Under exceptional circumstances, concession holders may apply for a payment plan outside the criteria of the standard payment plan outlined above. To apply for a non-standard payment plan, concession holders must be in extreme financial hardship and be able to provide to AFMA substantial evidence to support their claim.

AFMA will review the financial hardship request and notify the applicant of the delegate's decision in line with AFMA's service charter.

AFMA's consideration of arrangement

In considering whether or not to enter into an arrangement for payment of overdue debt, AFMA will take the following considerations into account:

- the financial impact on AFMA of the proposed plan;
- the management arrangements applicable to the fishery for which the request has been made;
- statements and evidence from the applicant in relation to their financial situation;
- previous payment history;
- the timing of payments of the overdue debt.

If AFMA agrees to an arrangement for payment of an overdue debt, a letter will be forwarded which:

- sets out the conditions and terms applying to the arrangement;
- sets out the schedule of payments;
- advises that, if any repayment is missed, the balance will immediately become due and payable and the fishing concession(s) will be suspended;
- the rate of any penalty accruing on the overdue amount;
- who to contact regarding the arrangement.

Failure to make a scheduled payment under arrangement

If any scheduled payment is not made by the date agreed in the arrangement:

- the fishing concession(s) will be suspended; and
- payment of the total outstanding debt is due immediately.

In this event, a letter is sent to the fishing concession holder advising that their fishing concession is suspended. If the concession holder wishes to enter into a new payment plan, then they may make another submission, however payment history will be considered and a payment plan might not be agreed to by AFMA. An additional \$220 administration fee is applicable to any subsequent request for additional time to pay.

Refusal to approve transfer or lease

In accordance with sections 32A and 46 of the FMA, AFMA may refuse to approve the transfer and/or lease, of a fishing concession where there is an outstanding levy.

Withholding the grant of a fishing permit

If a concession holder applies for the grant of a fishing concession upon the expiry of an existing one, AFMA may not grant a subsequent fishing concession where a debt or penalty against that concession holder is due.

Surrender of Fishing Concessions

For levy debts, if a fishing concession holder surrenders their fishing concession(s) before the due date for payment has passed, the debt is extinguished and any monies that have already been paid relating to that debt will be refunded.

If a fishing concession holder surrenders their fishing concession(s) after the due date for payment, but has not undertaken any fishing activities under those concessions, then in accordance with section 113 of the FMA, a concession holder may apply to AFMA to waive the levy payable in respect of the surrendered concession including any penalty amount payable.

In determining if the levy will be waived, the delegate must consider AFMA's capacity to forego the collection of the revenue and the impact on the relevant fishery's levy base for the following year.

Withholding the provision of fee for service Observers

Where a concession holder has an outstanding debt, AFMA may withhold the provision of fee for service Observers until such time as the debt and any associated penalty is paid in full. When providing Observers on a fee for service basis, AFMA may take into account a concessions holder's previous payment history and may require full or partial payment of the estimated Observer fee prior to commencement of the fishing trip.

Figure 1: Unpaid debt collection process

