Guidelines on the collection of fees payable in arrears under the *Fisheries Act 1994*

October 2009
On 26 March 2009, the Department of Primary Industries and Fisheries was amalgamated with other government departments to form the Department of Employment, Economic Development and Innovation.
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1. Title
Guidelines on the collection of fees payable in arrears under the *Fisheries Act 1994*.

2. Effective date
These guidelines are effective from 9 October 2009.

3. Application of policy
These Guidelines apply to all Fisheries Licensing Unit staff and delegates of the Chief Executive exercising powers under the *Fisheries Act 1994* (The Act) in relation to collection of fees payable in arrears.

These Guidelines are not intended as, or a substitute for, legal advice. Staff and delegates are encouraged to seek legal advice specific to the circumstances of a particular case if they have any doubt about the scope or application of powers or obligations under the Act.

4. Background
Queensland Primary Industries and Fisheries (QPIF), part of the Department of Employment, Economic Development and Innovation (DEEDI), implemented a new commercial fishing licensing and fee regime on 1 July 2006. Renewable licences were converted to ongoing licences, and annual fees became a debt payable in arrears (hereafter simply referred to as fees) on a quarterly basis. The principal reason for these reforms were to provide clients with greater tenure over fishing rights and to ensure that fees were proportionate to the level of access rights held, thus eliminating inequities resulting in cross subsidisation between some licence types.

On 9 October 2009, an amendment was made to section 711 of the *Fisheries Regulation 2008* to change the invoicing of fees from a quarterly to six-monthly basis. This amendment was necessary to reduce the costs, time and effort of collecting fees for clients and DEEDI.

There are a variety of reasons why some payments are overdue and/or never made. These include clients:

- leaving the industry without formally surrendering their authorities (clients can surrender authorities terminating fee requirements)
- not receiving, or receiving late information, about payment requirements (which may be contributed to by client absences on long fishing trips or being in remote areas)
- experiencing financial difficulties.

It is therefore desirable to:

- ensure that all reasonable steps are taken to provide authority holders with the opportunity to pay fees
- minimise unrecoverable debts
- ensure that fishers are not operating under authorities for which financial obligations have not been met.
5. Objectives

The objectives of these Guidelines are to:

- document the statutory powers and responsibilities of the Chief Executive and arrangements with the Shared Services Agency (SSA)
- set out the administrative process to be followed for the collection of fees payable in arrears and related action to suspend and cancel authorities to ensure that the approach is consistent and statutory obligations are met
- set out the policy considerations relevant to the exercise of delegations under the Act.

The intent of these guidelines is to make sure the powers of delegates to collect fees – and the related suspension and cancellation actions – are exercised lawfully in a way that promotes the main purpose of the Act.

DEEDI should ensure that:

- there are appropriate processes for issuing clients with notifications for the collection of fees and subsequent action for non-payment of fees
- fishers are not fishing under authorities for which financial obligations have not been met
- the write-off of unrecoverable debts are minimised.

Clients are to be provided with reasonable opportunities to pay fees, including the ability to negotiate alternative arrangements with DEEDI in circumstances where clients are experiencing financial difficulties.

6. Relevant Legislation

*Fisheries Act 1994*

*Fisheries Regulation 2008 (the Regulation)*

7. Definitions

*For purposes of these Guidelines, the following definitions apply:*

- **Chief Executive** means the Chief Executive - DEEDI.
- **Delegate** means a person acting with the delegation of the Chief Executive as provided under section 21 of the Act.
- **Licensing staff** means a person employed in the Fisheries Licensing Unit within DEEDI.

8. Consultation

These guidelines have been developed by Licensing staff, in consultation with the Fisheries Policy and Planning and Queensland Boating and Fisheries Patrol (QBFP) Units within DEEDI.
9. Guideline provisions

9.1 Powers of delegates

*Fisheries Act 1994*

**Section 68AB Suspension or cancellation for non-payment of fee other than because of dishonoured cheque**

This section provides for:

- suspension of authorities for non-payment of fees within 30 days of a notice issued (non-payment notice) to authority holders
- cancellation of Commercial Fisher Licences (CFLs) where fees are not received within 90 days of the non-payment notice.

The Manager of the Fisheries Licensing Unit is delegated with the power to issue non-payment notices.

**Section 67 Suspension or cancellation of authority by chief executive**

This section provides for the cancellation of authorities for non-payment of fees. This includes long-standing suspended authorities where holders fail to pay accrued fees during the suspension period. The Manager of the Fisheries Licensing Unit is delegated to cancel licences under this section.

*Fisheries Regulation 2008*

**Section 711 Other fees payable under the Act**

This section states that annual fees listed in Schedule 9, Tables 1 - 3 payable in arrears on a six-monthly basis.

9.2 Procedure for the administration of fee collection

DEEDI and SSA jointly administer the collection of fees. SSA is responsible for managing all financial transactions with DEEDI clients who have debts payable in arrears. Under an operating service level agreement, SSA:

- generates and issues client invoices
- receipts fees paid
- processes refunds and fee adjustments
- writes off unrecoverable debts on request by DEEDI.

SSA uses the database SAP, which Licensing staff can access to monitor client payments. SAP relies on client and other information provided by Licensing staff. The Licensing Unit manages the Register of Authorities and records authority transactions (licence or quota issues, suspensions, surrenders, cancellations etc) on behalf of DEEDI. In addition, the Licensing staff:

- provides SSA with six-monthly information about clients, their authority details and fees payable (which SSA use to generate and issue invoices)
- notifies SSA of any client detail changes (new clients, changes to names, addresses etc.)
- provides SSA with details of clients that are - 
  - referred to the collection agency for debt collection action
  - to have their outstanding payments written off.
- issues non-payment notices (first reminder after an invoice is issued) and other advices (suspensions, show cause, cancellation).
For the purpose of charging fees, the two six-monthly periods end on 31 December and 30 June of each year. The following procedure applies to the collection of fees by Licensing staff which are payable in arrears. Appendix A provides a flowchart summary of the procedures of the steps described below. Fees for services as stated in Schedule 9, Table 4 of the Regulation are to be paid in advance.

9.2.1 All authorities

**Step 1**
Using information provided by QPIF, SSA issue a ‘30–day term’ invoice at the end of each six month period (for example, for the six month period ending 31 December 2009 invoices will be sent 1 December 2009).

**Step 2**
If the fees are not paid within 30 days of the invoice, a non-payment notice is issued by a person delegated under section 68AB of the Act two weeks after the payment due date (in the above example, the notice will be issued on 14 January 2010). The notice is sent to the authority holders’ residential address by ordinary mail.

In summary, the non-payment notice states that:
- fees must be paid within 30 days of the notice date
- the authority will be suspended if payment is not made within 30 days of the notice
- if the authority is a commercial fishers licence (CFLs), it will be cancelled within 90 days if:
  - (a) the fees are not received,
  - (b) a repayment agreement has not been arranged, or
  - (c) the licence is not surrendered
- clients may apply to enter into an agreement with DEEDI to repay the outstanding fee, as an alternative to having an authority suspended, cancelled or surrendered.

**Step 3**
In circumstances where the fees are not paid within 30 days of the non-payment notice, no repayment agreement arranged or the authority has not been surrendered, DEEDI:
- suspends the authority
- confirms the suspension by forwarding a notice to the residential address of the client by ordinary mail. The suspension notice will give a further 14 days to either pay the fees, arrange a repayment agreement or surrender the authority
- for quota authorities, an activity statement is issued by ordinary mail showing the suspended quota and owners are contacted by phone to advise them of the suspended quota.

9.2.2 For CFLs

**Step 4**
If the fees are not paid within 90 days of the non-payment notice, no repayment agreement has been arranged or the authority has not been surrendered, DEEDI:
- cancels the CFL
- confirms the cancellation by forwarding a cancellation notice to the residential address of the authority holder by ordinary mail
- issues an additional ‘30–day term’ invoice for any outstanding balances up to the time of cancellation

Supported by General Manager, Fisheries Policy and Planning……………………………………..Date…………………………………

Approved by Deputy Director-General, Fisheries ………………………………………………..Date………………………………….4
9.2.3 For authorities other than CFLs

Step 5
Where fees are not paid, no repayment agreement arranged and the authority is not surrendered within 14 days of the suspension advice:
- debt collection action will be initiated to recoup the outstanding fees
- where debt collection action is unsuccessful, the authority may be cancelled through a “show cause” process.

Step 6
If the delegate is satisfied that there are sufficient grounds to cancel the authority, the delegate cancels the authority.

9.2.4 For all debts

Step 7
If fees remain unpaid after debt collection action and authority cancellation, the fees are deemed unrecoverable. The General Manager, Fisheries Harvest Management may request SSA to write them off.

9.2.5 For authorities that have been surrendered

Where an authority is surrendered:
- an additional ‘30-day term’ invoice is issued for any outstanding balances up to the time of surrender
- if fees are not received within 30 days, a reminder notice giving a further 14-day term to pay is issued
- if fees are not received within 14 days of the reminder notice, the outstanding amounts are referred for debt collection action.

9.3 Assessing the merits of proposals for alternative fee payment arrangements.

Section 68AB of the Act allows DEEDI to consider repayment agreements as an alternative to making full payments within 30 and 90-day terms of the non-payment notice to prevent suspension and cancellation of CFLs respectively. The person who holds the position of Manager of the Fisheries Licensing Unit and General Manager, Fisheries Harvest Management are delegated with the power to approve a repayment agreement. These are made in writing between the authority holder and the delegate.

9.4 Assessing the merits of cancellation

Cancellation of authorities is a last resort and therefore it is important that the steps under section 9.2 above be followed in sequence. It is particularly important for the delegate to consider whether clients are likely to have received the various notices issued such as invoices, non-payment notices, suspension and letters inviting them to show cause why their authority should not be cancelled. Where notices are returned to DEEDI, the delegate should consider what address was used (postal or residential), whether sources such as phone books or the electoral roll have been...
used to investigate the accuracy of the address and whether alternative address details recorded by DEEDI have been utilised.

For authorities other than CFLs, the delegate should consider the benefits of cancellation in reducing the accumulation of debt when it is clear that holders of suspended authorities have left the industry (e.g. through returned mail with no alternative addresses).

Other considerations include the consequences of cancellation given the nature of the authority to be cancelled. For example quota cannot be re-issued if cancelled, and new licences in lieu of cancelled boat licences are unlikely to be granted under limited entry policies.

The delegate should consider all relevant circumstances, including any put forward by the authority holder, before cancelling the authority.

9.5 Assessing the merits of writing off unrecoverable debts
Writing off unrecoverable debts should be a last resort after all reasonable steps have been taken to attempt to recover the outstanding fees.

An important consideration is how much debt collection action is warranted, that is the potential cost of the debt collection action compared to the size of the debt. For example, effort for debts under $100 may not be warranted.

Under the Financial Administration and Audit Act 1974, the General Manager, Fisheries Harvest Management is authorised to write off debts up to $5,000. Licensing staff are responsible for bringing outstanding debts to the attention of the General Manager, Fisheries Harvest Management, particularly if the potential cost of further debt collection is large compared to the size of the debt.

9.6 Role of the Queensland Boating and Fisheries Patrol
QBFP has access to details of suspended and cancelled authorities via:
- the DEEDI intranet site under Report Manager which is updated daily to reflect suspended and cancelled authorities
- access to the Licensing database.

QBFP may take enforcement action against people operating under authorities that have been suspended or cancelled for non-payment of fees. The enforcement action available includes the issue of a Fisheries Infringement Notice or prosecution.

10. Guideline Amendments
These guidelines replace the guidelines of the same title which were signed by the General Manager, Fisheries Resource Management on 1 May 2008.

11. Supporting Information
Nil
Appendix A – Debt collection flow chart

**Step 1**
Invoice issued – 30 days to pay

- Fee paid.
- Authority remains active

- Fees not paid within 30 days

**Step 2**
Non-payment notice issued, advising:
- Further 30 day payment term from notice date
- Authorities suspended in 30 days if fees not paid
- CFLs cancelled in 90 days if not paid
- Arrangements for a repayment agreement, or authority can be surrendered.

- Fee paid / repayment agreement arranged
- Authority remains active

- Fees not paid / no repayment agreement / no authority surrender within 30 days of the non payment notice

**Step 3**
- Authorities suspended and suspension advice issued.
- For other than CFL’s, suspension advice gives further 14 days to pay before debt collection action initiated.

- For CFL’s, fees not paid / no repayment agreement / no authority surrender, within 90 days of the non payment notice.

**Step 4**
CFL cancelled and unpaid fees are referred for debt collection.

- Authorities other than CFL’s, fees not paid / no repayment agreement / no authority surrender 14 days after suspension

**Step 5**
- Outstanding fee referred for debt collection action.
- For unsuccessful debt collection action, authority is cancelled.

- Fee paid / repayment agreement arranged
- Authority unsuspended.

- Fees not paid / no repayment agreement / no authority surrender after debt collection.

**Step 6**
Show cause notice issued, followed by cancellation of authorities

**Step 7**
Unpaid fees deemed unrecoverable and are referred for write-off.

- For authorities not cancelled and fees paid / repayment agreement arranged
- Authorities unsuspended.