

# Debt Recovery for the NSW Commercial and Charter Fishing Industries

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Authorised by:	Deputy Director General DPI Fisheries	Authorised date:	13 November 2023
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## Policy Statement:

This policy is designed to provide a clear and transparent process to appropriately resolve overdue accounts from commercial wild harvest fishing businesses and charter fishing businesses administered by the Department. It should be read in conjunction with the 'Procedures for Commercial and Charter Fisheries Account Billing and Debt Recovery', which outlines the recovery process in detail.

This policy and associated procedures cover actions to be taken including establishing payment plans; taking action to suspend or cancel fishing related licences or endorsements; forfeiture of fishery quota or shares; waiver or writing off of debt; and pursuing action in a court of competent jurisdiction.

## Scope:

This policy applies to Departmental employees administering debts related to wild harvest commercial and charter fishing fees, charges, or contributions which customers are required to pay under the *Fisheries Management Act 1994* (FM Act) and the regulations made under the FM Act, or which may otherwise be lawfully applied.

The policy supports the application of relevant common law principles and legislation including the *Government Sector Employment Act 2013* and *Government Sector Finance Act 2018*.

Government sector values and standards for exercising financial management functions apply to all Departmental employees. A breach of those values and standards could result in disciplinary action under the *Government Sector Employment Act 2013*.

## Requirements:

### Debt recovery

1. Information about the debt will be provided to customers through Overdue Account Reminder letters being sent at 30, 60 and 90 days overdue. Reminder notices will outline that debt recovery action will be taken if the account is not settled.

2. All reasonable endeavours will be made to engage with a customer to resolve a debt before debt recovery action is taken (for example, through an agreed payment plan).
3. If the outstanding amount remains unpaid by the due date set out in the final Overdue Account Reminder letter, the overdue account holder will be written to, giving the opportunity to show cause as to why debt recovery actions should not be commenced.
4. After considering the overdue account holder's submission (if any), along with relevant factors including the nature of the debt, relevant circumstances and any other relevant matter the decision maker deems appropriate, action will be undertaken in accordance with the debt recovery process set out in this policy and related procedures.
5. Where debt recovery action is initiated, action will be taken in a way that minimises to the extent possible adverse impacts on the customer and results in the resolution of debt recovery action at the earliest opportunity.

#### *Payment plans*

6. To assist customers who have overdue debt and are experiencing difficulty meeting their payment commitment, a payment plan, such as regular monthly instalments, may be negotiated.
7. Failure to meet the requirements under a payment plan will render the total amount of the debt then outstanding immediately due and payable.
8. Overdue account holders may also request a short temporary suspension of debt recovery actions where they are experiencing financial hardship for one or more of the following reasons:
  - a. Terminal illness or a medical condition that is preventing them from working;
  - b. Loss of income due to declared pandemic or natural disaster such as fire or flood;
  - c. Other major expenses, losses or loans; or
  - d. Homelessness or other major personal crisis such as domestic violence.
9. Consideration may be given on a case by case basis to suspension of debt recovery actions for a short period of time, usually three months.

#### *Further debt recovery action*

10. Where a debt remains overdue following initial debt recovery actions, consideration will be given to further action including, suspension of commercial fishing licence and/or endorsements under clause 113 of the *Fisheries Management (General) Regulation 2019*, quota or share forfeiture under section 40V(1) of the *Fisheries Management Act 1994* and clause 103 of the *Fisheries Management (General) Regulation 2019* respectively, referral to a specialist debt recovery agency, waiving or write-off of debt.
11. If debt recovery actions do not result in settlement of a debt, relevant officers will seek appropriate legal advice regarding commencement of legal proceedings against a debtor in a court of competent jurisdiction.
12. An opportunity to show cause may be provided prior to undertaking further actions, including forfeiture of shares in share management fisheries.

#### *Debt waiver and write-off*

13. Debt should not be written-off until all reasonable attempts have been made to facilitate payment of the debt.
14. Debt is regarded as irrecoverable for the following reasons:
- a. The debtor cannot be located; or
  - b. It is uneconomic to finalise recovery action due to the relatively small value of the debt; or
  - c. The medical, financial, or domestic circumstances of a particular debtor at that time does not warrant the taking of recovery action or further recovery action; or
  - d. Legal proceedings through the courts have proved, or on legal advice, would prove unsuccessful.

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**Roles and responsibilities:**

- Implementation – Commercial Fisheries Customer Services
- Revision - Senior Fisheries Manager, Commercial Fisheries Customer Services

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**Delegations:**

- Payment plans – approved by Director of Fisheries, Strategy, Policy and Services
- Waiver and write-off processes – refer to Financial Delegations for the FM Act

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**Definitions:**

- **Customers:** participants in the NSW commercial fishing and charter fishing industry who are individuals, partnerships and companies who fall into one or more of the following groups:
  - Owners of shares in a share management fishery
  - Owners of endorsements in a restricted fishery
  - Owners of a charter fishing business
- **Debt recovery:** action including:
  - Forfeiture of quota (Section 40V(1) of the FM Act)
  - Suspension of relevant endorsement/s (Section 68(7) of the FM Act and clauses 133(e), 149(e) 163(e) of the FM General Regulation)
  - Suspension of commercial fishing licence (Clause 113 of the FM General Regulation)
  - Suspension of charter fishing licence (Clause 213 of the FM General Regulation)
  - Suspension of share and endorsement transfers (Clause 184 of the FM General Regulation)
  - Suspension of charter fishing business transfers (Clause 223 of the FM General Regulation)

- **Overdue account holders:** A customer with debt overdue by more than 30 days and who has been sent an Overdue Account Reminder letter shall be regarded as an overdue account holder until the debt is paid in full or they enter into a payment plan.
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### **Related documents and policies**

Other documents that should be read in conjunction with this policy:

- DRNSW Financial management framework
- DRNSW delegations
- Debt Recovery Guidelines - Responsible collection of State debts

Legislation that applies in respect of this policy:

- *Government Sector Employment Act 2013*
- *Government Sector Finance Act 2018*
- *Fisheries Management Act 1994* and related statutory instruments.