

Aquaculture account billing and debt recovery policy

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Authorised by:	Director, Fisheries & Aquaculture Management	Authorised date:	20 September 2024
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Category:	Operations and Industry	Review date:	20 September 2026

Policy statement:

NSW Department of Primary Industries and Regional Development (DPIRD) is required by the provisions of the *Fisheries Management Act 1994* and the Fisheries Management (Aquaculture) Regulation 2024 to charge aquaculture permit holders and lessees fees relevant to their aquaculture business.

Scope:

The policy applies to all current aquaculture permit holders and aquaculture lessees who are required to pay relevant fees prescribed in the *Fisheries Management Act 1994* (the Act) and the Fisheries Management (Aquaculture) Regulation 2024 (the Regulation). Permit holders and lessees are identified by a unique customer number in the FishOnline - AquaAssist database and the department's finance system. The aquaculture administration unit administers the aquaculture account billing process in accordance with the relevant legislation.

Requirements:

Aquaculture account billing schedule

1. The department charges fees relating to aquaculture permits and leases in NSW annually for a financial year period.
2. Invoices are raised in July through the department's finance system and reflect the current permit and lease holdings for each aquaculture customer as at 1 July.
3. Permit holders and lessees have the option to pay their aquaculture account in full by 30 September or via quarterly instalments as per the following schedule:
 - a. 30 September – payment in full or 1st instalment due.
 - b. 31 December – payment of 2nd instalment due.
 - c. 31 March – payment of 3rd instalment due.
 - d. 30 June – payment of 4th instalment due.
4. The department must give a permit holder or lessee a written notice (invoice) for each period they are required to pay an annual permit fee or lease rent. The notice will include:
 - a. The amount to be paid and the due date by which the amount is payable.
 - b. If the amount can be paid via instalments, the amount for each instalment and the due date for each instalment.

Permit contribution fee

5. In line with section 156 of the Act and section 14 of the Regulation, a permit holder must pay an annual contribution towards the cost of administration of their aquaculture permit, for each annual contribution period in which they hold the permit.
6. The permit contribution fee is payable either as a single payment due on 30 September, or by quarterly instalments as outlined in clause 3 of this policy.
7. The permit contribution fee is a flat annual rate as prescribed in schedule 3, item 5 of the Regulation.
8. If a customer holds more than one class of permit during the annual contribution period, they will be charged the permit contribution fee for only one permit.
9. The permit contribution fee will be reduced or refunded on a pro-rata basis, in line with section 288B of the Act, when a permit is:
 - a. Issued, calculated from the date of issue, or
 - b. Cancelled, calculated from the date of cancellation.
10. The permit contribution fee will be waived under section 288B of the Act for class F permits that have been issued for extensive fish-out operations.

Research contribution fee

11. In line with section 156 of the Act and section 16 of the Regulation, a permit holder must pay an annual contribution towards the cost of carrying out research into aquaculture that will benefit the NSW aquaculture industry, for each annual contribution period in which they hold the permit.
12. The research contribution fee is payable either as a single payment due on 30 September, or by quarterly instalments as outlined in clause 3 of this policy.
13. For class A and B permits, the research contribution fee is charged as a per hectare rate (calculated on the total area authorised by the permit), as prescribed in schedule 3, item 6 of the Regulation.
14. For class C, E and F permits, the research contribution fee is charged as a flat annual rate for, as prescribed in schedule 3, item 6 of the Regulation.
15. For class D and H permits, the research contribution fee is charged as either a flat annual rate or as a per hectare rate, whichever is the greater of the two options, as prescribed in schedule 3, item 6 of the Regulation.
16. If a customer holds more than one class of permit during the annual contribution period, they will be charged the highest annual contribution that applies to any one of their permits.
17. If the research contribution fee is charged as a per hectare rate, the total area authorised by the permit will be rounded up to the next whole hectare for the purpose of calculating the fee payable.
18. If the total area authorised by an aquaculture permit is less than one hectare, the contribution payable will be for one hectare.
19. A permit holder must pay the research contribution fee for the full annual contribution period if they hold an aquaculture permit at any time during that period.
20. The research contribution fee will be waived under section 288B of the Act for a permit holder who has already paid a federal research levy for their aquaculture business. In such cases, the permit holder is required to provide evidence of any such payment to access the waiver.
21. For lease-based aquaculture permits, an existing permit holder will be charged an additional research contribution fee for the full annual contribution period if the total area authorised by their permit increases by one or more hectares during that annual contribution period. The only exception is if the increase in total permit area is the result of a lease transfer, transmission, or

sublet, and the the previous permit holder has already been charged the research contribution fee for those leases.

22. For land-based aquaculture permits, an existing permit holder will be charged an additional research contribution fee for the full annual contribution period when an aquaculture farm is:
- a. added to the permit, increasing the total permit area by more than 1 hectare, or
 - b. modified, increasing the total permit area by more than one hectare.

Lease security financial arrangement

23. In line with section 152 of the Act and section 23 of the Regulation, a class A permit holder of a class 1 lease must guarantee the performance of their compliance obligations by maintaining one of the following financial arrangements for lease security:
- a. The default financial arrangement (annual contribution), or
 - b. An elective financial arrangement (cash deposit or bank guarantee).
24. In line with section 152 of the Act and section 23 of the Regulation, all other class A and B aquaculture permit holders must guarantee the performance of their compliance obligations by maintaining an elective financial arrangement (cash deposit or bank guarantee).
25. A permit holder must, within 60 days from the date their permit is granted, give the department written notice confirming the type of financial arrangement they have chosen to guarantee their compliance obligations. If this is an elective financial arrangement, the permit holder must have their chosen arrangement in place within this 60-day period.
26. If a permit holder chooses to enter into an elective financial arrangement, this arrangement may involve a combination of cash deposit and bank guarantee. A permit holder cannot have a combination of elective and default financial arrangements.
27. If a class A permit holder with a class 1 lease has not finalised a financial arrangement for their lease security within 60 days from the date their permit is granted, the default financial arrangement will be applied.
28. If any other class A or B permit holder has not finalised a financial arrangement for their lease security within 60 days from the date their permit is granted, the department will move to cancel the aquaculture permit due to a breach of permit conditions.
29. If a permit holder enters into the default financial arrangement, in line with section 30 of the Regulation, they must pay the prescribed fee for each annual default arrangement payment period in which they hold their permit, even if the permit is in force for only part of that payment period.
30. The lease security default arrangement payment is payable either as a single payment due on 30 September, or by quarterly instalments as outlined in clause 3 of this policy.
31. The lease security default arrangement payment is charged as a per hectare rate, calculated on the total area authorised by the permit, as follows:
- a. If all leases held under the permit meet the best practice requirements defined in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS), the rate prescribed in schedule 3, item 9(a) of the Regulation.
 - b. Otherwise the rate prescribed in schedule 3, item 9(b) of the Regulation.
32. To calculate the lease security financial arrangement payable, the total area authorised by the permit will be rounded up to the next whole hectare for the purpose of calculating the amount payable. If the total area authorised by an aquaculture permit is less than one hectare, the financial arrangement payable will be for one hectare.
33. A permit holder must maintain a financial arrangement until their permit is no longer in force and the department has given the person written notice that they have satisfied their compliance obligations.

34. A permit holder who has entered into an elective financial arrangement for lease security may change their financial arrangement at any time, with the Minister's approval, while their aquaculture permit is in force. In such cases, the following conditions apply:
- a. For a class A or B permit holder, they may change their elective financial arrangement to another elective financial arrangement (for example, from cash deposit to bank guarantee).
 - b. For a class A permit holder with a class 1 lease, they may change their elective financial arrangement to the default financial arrangement. In this case, they will be required to pay the default arrangement payment for each annual default arrangement payment period that their permit was covered by the elective financial arrangement.
35. A permit holder who is changing their elective financial arrangement (cash deposit or bank guarantee) to a different arrangement must have their new financial arrangement in place before the department will release their cash deposit or bank guarantee.
36. A permit holder who has entered into the default financial arrangement for lease security may change their arrangement to an elective financial arrangement at any time, while their aquaculture permit is in force. In this case, the annual default arrangement payment that has been charged for the current annual default arrangement payment period is not refundable.

Lease rent

37. In accordance with section 165 of the Act and section 51 of the Regulation, the lessee of an aquaculture lease must pay the rent payable for the lease, for the 12 month period beginning on 1 July of each year.
38. Lease rent is payable in advance either as a single payment due on 30 September, or by quarterly instalments as outlined in clause 3 of this policy.
39. The minimum rent payable each year for any class of lease is specified in schedule 3, item 12 of the Regulation. It is charged as either a minimum flat rate or as a per hectare rate, whichever is the greater of the two options.
40. If a lessee has two or more leases of the same class, the leases are treated as a single lease for the purpose of calculating lease rent. The total lease area will be rounded up to the next whole hectare.
41. In line with section 52 of the Regulation, the department will adjust the rent payments on a pro-rata basis if the total lease area held by the lessee increases by one or more hectares following the granting or renewal of a lease.
42. In line with section 52 of the Regulation, the department will reduce the rent payments on a pro-rata basis if the total lease area held by the lessee decreases by one or more hectares following the termination (expiry, surrender, cancellation) of a lease.
43. Lease rent is not adjusted when an aquaculture lease is subject to transfer, transmission or sublet.

Debt recovery

44. In line with sections 14(5), 16(6), 30(5) or 53(4) of the Regulation, if a permit holder or lessee fails to make a payment of an instalment for an annual permit or research contribution, the default lease security financial arrangement, or lease rent, the department may treat the total unpaid balance as an overdue amount.
45. Debt recovery involves the following actions:
- a. Three dunning letters are sent to the debtor 30 days, 60 days and 90 days after the debt has become overdue. These reminder notices seek immediate payment of the debt.
 - b. If, after the 3rd dunning letter, the overdue debt is unpaid and it relates to an annual permit, research or lease security fee, the department will move to cancel the

aquaculture permit in line with section 160 of the Act. Before this action is taken, the permit holder is given the opportunity to show cause on the matter.

- c. If, after the 3rd dunning letter, the overdue debt is unpaid and it relates to lease rent, the department will move to cancel the aquaculture leases in line with section 177 of the Act. Before this action is taken, the lessee is given the opportunity to show cause on the matter.
- d. If the aquaculture permit is cancelled, the permit holder may be disqualified from holding an aquaculture permit, in line with section 161 of the Act. Before this action is taken, the permit holder is given the opportunity to show cause on the matter.

46. If the department's debt recovery actions are unsuccessful, the debt may be referred to an external debt recovery agency for further action, unless there are mitigating circumstances that enable the debt to be written off as irrecoverable (refer to the relevant section below).

Payment plans

47. If a customer is unable to pay their annual lease and permit fees, the department may offer them a payment plan, which will enable them to pay the account via monthly instalments.
48. A payment plan will consist of equal monthly instalments over a maximum 12 month period.
49. If a payment plan is requested for a period exceeding 12 months, it must be approved by the Program Leader, Aquaculture.
50. If a customer misses an instalment of a payment plan, the department may cancel the payment plan and the entire debt will become due and payable.
51. If a customer requests an extension to pay an instalment of a payment plan, a maximum 14-day extension can be provided, unless otherwise approved by the Program Leader, Aquaculture.
52. A payment plan will expire 12 months from the due date of the first instalment (unless otherwise approved by the Program Leader Aquaculture). The entire payment plan debt must be paid within this 12-month period, even if the customer was approved for an extension to pay an instalment during the term of the payment plan.
53. If a customer who is on a payment plan acquires new debt (for example, the payment plan crosses over into a new billing period), they may request an updated payment plan to incorporate the new debt. In these cases, the original debt must be paid within the 12-month period of the first payment plan (unless otherwise approved by the Program Leader Aquaculture).
54. If a payment plan is put in place following debt recovery action, however the conditions of the payment plan are not met, the department may recommence debt recovery action from the point at which it was ceased when the payment plan was actioned. In the case of show cause action involving permit or lease cancellation, the cancellation can occur if the show cause notice was issued less than 12 months previously.

Debt declared as irrecoverable

55. When all practical means have been taken to recover debt, the debt may be declared as irrecoverable:
- a. For debt greater than \$500, this includes referral of the debt to an external debt recovery agency.
 - b. For debt less than \$500, this includes the issuance of the required dunning notices.
56. A debt may be declared as irrecoverable without referral to an external debt recovery agency if the following mitigation circumstances exist:
- a. The debtor cannot be located.
 - b. It is uneconomic to finalise debt recovery action due to the small value of the debt (< \$500).

- c. The medical, financial or domestic circumstances of the debtor do not warrant the taking of recovery action.
- d. Legal proceedings through the courts have proved, or on legal advice, would prove unsuccessful.

57. In cases involving the death, bankruptcy or liquidation of a customer, the debt may be pursued through the estate of the late customer, or through the administrator appointed to facilitate the notice of bankruptcy.
58. If the debt cannot be recovered through the estate or administrator, it may be declared as irrecoverable. Written confirmation from the estate or administrator that the debt is irrecoverable will be required.
59. The department may reinstate a debt that has previously been declared as irrecoverable, if the circumstances of the debtor changes for the better.
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Roles and responsibilities:

- Program Leader, Aquaculture: has delegation to approve most debt recovery actions.
 - Senior Fisheries Manager, Aquaculture: manages the aquaculture administration team who is responsible for annual billing and debt recovery.
 - Fisheries Manager, Aquaculture: team leader for the aquaculture administration team.
 - Fisheries Management Officer, Aquaculture: completes the day-to-day tasks involved in annual billing and debt recovery.
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Legislation

- *Fisheries Management Act 1994*
 - Fisheries Management (Aquaculture) Regulation 2024
 - Government Sector Finance Act 2018
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Delegations:

- Fisheries Management Instrument of Delegation (Minister) 2024
 - Fisheries Management Instrument of Delegation (Secretary) (No 2) 2024
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Definitions:

- **Annual contribution period:** the period of 12 months beginning on 1 July in each year, in which the permit contribution and research contribution fees are payable.
- **Annual default arrangement payment:** the lease security financial arrangement that is payable under section 30 of the Act.
- **Annual default arrangement payment period:** the period of 12 months beginning on 1 July in each year, for which the lease security default arrangement payments are payable.
- **Bank guarantee:** a guarantee issued by an authorised guarantor (deposit taking institute or corporation authorised to undertake insurance business) that indemnifies the Crown to the extent of the required amount to secure the permit holder's compliance obligations.
- **Cash deposit:** an arrangement under which the permit holder deposits the requirement amount with the department to guarantee the permit holder's compliance obligations.
- **Default financial arrangement:** the arrangement available to class A permit holders with class 1 leases, under which they are required to pay the annual security payments to guarantee the permit holder's compliance obligations.

- **Elective financial arrangement:** a bank guarantee or cash deposit financial arrangement, or a combination of these, for the required amount to guarantee the permit holder's compliance obligations.
- **Compliance obligations:** the permit holder's or former permit holder's obligations to complete lease clean-up work under a notice issued in line with sections 162, 170 or 171 of the Act.

Related policies:

- Aquaculture debt and fee waiver policy

Revision history:

This policy replaces IND-O-232 Aquaculture account billing and debt recovery policy v 3.0 (RDOC22/133462).

Version	Revised date	Details
4.0	20 September 2024	<ul style="list-style-type: none">• Updated references to the 2024 Regulation.• Remove references to class G permit (repealed).• Remove clause stating that lease security is not refundable.• Add sections for payment plans and irrecoverable debt (moved from the aquaculture debt and fee waiver policy).• Remove payment plan requirement of 10% first payment.