



# **Fisheries Management Amendment (Compliance and Enforcement) Regulations 2017**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 23 March 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Anne Ruston  
Assistant Minister for Agriculture and Water Resources  
Parliamentary Secretary to the Deputy Prime Minister and Minister for Agriculture and  
Water Resources

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## 1 Name

This instrument is the *Fisheries Management Amendment (Compliance and Enforcement) Regulations 2017*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	25 March 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Fisheries Management Act 1991*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Fisheries Management Regulations 1992*

#### **1 Subregulation 3(1) (definition of *infringement notice*)**

Repeal the definition.

#### **2 Subregulation 3(1)**

Insert:

*provision subject to an infringement notice* means section 93, 95 or 100 of the Act.

#### **3 Subregulation 3(1) (definitions of *relevant offence* and *relevant penalty*)**

Repeal the definitions.

#### **4 Regulation 9**

Omit “39(c),”, substitute “39(1)(c) of the Act,”.

#### **5 Regulation 9 (note)**

Omit “39(c)”, substitute “39(1)(c)”.

#### **6 Part 4 (heading)**

Repeal the heading, substitute:

### **Part 4—Fish receiver permits**

#### **7 Division 1 of Part 4**

Repeal the Division.

#### **8 Division 2 of Part 4 (heading)**

Repeal the heading.

#### **9 Regulation 10A**

Omit “Division”, substitute “Part”.

#### **10 Subregulations 12(3), (4) and (5) (penalty)**

Repeal the penalties, substitute:

Penalty: 15 penalty units.

#### **11 Subregulation 13(4) (penalty)**

Repeal the penalty, substitute:

Penalty: 15 penalty units.

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**12 Regulation 14**

Repeal the regulation.

**13 Subregulations 15(1) and 16(1) (penalty)**

Repeal the penalties, substitute:

Penalty: 25 penalty units.

**14 Subregulation 17(2)**

Omit “names”, substitute “names, dates of birth, residential addresses”.

**15 Subregulation 17(3) (penalty)**

Repeal the penalty, substitute:

Penalty: 15 penalty units.

**16 Subregulation 29(3)**

Repeal the subregulation.

**17 Regulation 30**

Repeal the regulation.

**18 Part 10**

Repeal the Part, substitute:

**Part 10—Infringement notices****38 When an infringement notice may be given**

- (1) If an officer believes on reasonable grounds that a person has contravened a provision subject to an infringement notice, the officer may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subregulation (4) applies.
- (4) An officer may give a person a single infringement notice relating to multiple contraventions of a single provision if:
  - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
  - (b) the person fails or refuses to do that thing within that period or before that time; and
  - (c) the failure or refusal occurs on more than 1 day; and
  - (d) each contravention is constituted by the failure or refusal on one of those days.

Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*.

### **39 Matters to be included in an infringement notice**

- (1) An infringement notice must:
  - (a) be identified by a unique number; and
  - (b) state the day on which it is given; and
  - (c) state the name of the person to whom the notice is given; and
  - (d) state the name and contact details of the person who gave the notice, and that the person is an officer for the purposes of issuing the infringement notice; and
  - (e) give brief details of the alleged contravention, including:
    - (i) the provision that was allegedly contravened; and
    - (ii) the maximum penalty that a court could impose if the provision were contravened; and
    - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
  - (f) state the amount that is payable under the notice; and
  - (g) give an explanation of how payment of the amount is to be made; and
  - (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn) the person will not be liable to be prosecuted in a court for the alleged contravention; and
  - (i) state that payment of the amount is not an admission of guilt or liability; and
  - (j) state that the person may apply to the CEO to have the period in which to pay the amount extended; and
  - (k) state that the person may choose not to pay the amount and, if the person does so, the person may be prosecuted in a court for the alleged contravention; and
  - (l) set out how the notice can be withdrawn; and
  - (m) state that if the notice is withdrawn, the person may be prosecuted in a court for the alleged contravention; and
  - (n) state that the person may make written representations to the CEO seeking the withdrawal of the notice.
- (2) The amount to be stated in the notice for the purposes of paragraph (1)(f) for the alleged contravention of the provision by the person must be the lesser of:
  - (a) one-fifth of the maximum penalty that a court could impose on the person for that contravention; and
  - (b) 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate.

### **40 Extension of time to pay amount**

- (1) A person to whom an infringement notice has been given may apply to the CEO for an extension of the period referred to in paragraph 39(1)(h).
- (2) If the application is made before the end of that period, the CEO may, in writing, extend that period. The CEO may do so before or after the end of that period.



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- (3) If the CEO extends that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 39(1)(h) is taken to be a reference to that period so extended.
  - (4) If the CEO does not extend that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 39(1)(h) is taken to be a reference to the period that ends on the later of the following days:
    - (a) the day that is the last day of the period referred to in paragraph 39(1)(h);
    - (b) the day that is 7 days after the day the person was given notice of the CEO's decision not to extend.
  - (5) The CEO may extend the period more than once under subregulation (2).

#### **41 Withdrawal of an infringement notice**

##### *Representation seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given may make written representations to the CEO seeking the withdrawal of the notice.

##### *Withdrawal of notice*

- (2) The CEO may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the CEO:
  - (a) must take into account any written representations seeking the withdrawal that were given by the person to the CEO; and
  - (b) may take into account the following:
    - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to an infringement notice;
    - (ii) the circumstances of the alleged contravention;
    - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision subject to an infringement notice if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
    - (iv) any other matter the CEO considers relevant.

##### *Notice of withdrawal*

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
  - (a) the person's name and address; and
  - (b) the day the infringement notice was given; and
  - (c) the identifying number of the infringement notice; and
  - (d) that the infringement notice is withdrawn; and
  - (e) that the person may be prosecuted in a court for the alleged contravention.

##### *Refund of amount if infringement notice withdrawn*

- (5) If:

- (a) the CEO withdraws the infringement notice; and
  - (b) the person has already paid the amount stated in the notice;
- AFMA must refund to the person an amount equal to the amount paid.

#### **42 Effect of payment of amount**

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 39(1)(h):
  - (a) any liability of the person for the alleged contravention is discharged; and
  - (b) the person may not be prosecuted in a court for the alleged contravention; and
  - (c) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
  - (d) the person is not regarded as having been convicted of the alleged offence.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

#### **43 Effect of this Part**

This Part does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice; or
- (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice if:
  - (i) the person does not comply with an infringement notice given to the person for the contravention; or
  - (ii) an infringement notice is not given to the person for the contravention; or
  - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice.

#### **44 Delegation by CEO**

The CEO may, in writing, delegate the following powers and functions to an officer:

- (a) the power under regulation 40 to extend the period referred to in paragraph 39(1)(h) in relation to an infringement notice;
- (b) the power under regulation 41 to withdraw an infringement notice.

#### **19 Subregulations 76(1) and (2) (penalty)**

Repeal the penalties, substitute:

Penalty: 25 penalty units.

**20 Subregulation 77(2)**

Omit “only if the concession is for a boat with an overall length less than 20 metres”.

**21 Subregulation 77(3)**

Omit “Also, if”, substitute “If”.

**22 Subregulation 77(3) (penalty)**

Repeal the penalty, substitute:

Penalty: 25 penalty units.