

## **EXPLANATORY STATEMENT**

### **SELECT LEGISLATIVE INSTRUMENT 2015 No. 42**

Issued by Authority of the Parliamentary Secretary to the Minister for Agriculture

*Fisheries Management Act 1991*

*Fisheries Management Amendment (Super Trawlers) Regulation 2015*

Section 168(1) of the *Fisheries Management Act 1991* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, in carrying out or giving effect to the Act.

The Act gives effect to the Government's policies with respect to Commonwealth fisheries management. Section 14 of the Act provides that for the purpose of conserving the marine environment, regulations made under the Act may prohibit, or make provision for the regulation of, the engaging in specified activities, or the use of specified practices by persons engaged in fishing in the Australian fishing zone (AFZ) and Australian boats, and persons on Australian boats, engaged in fishing outside the AFZ. This section describes that regulations may be made in relation to the employment of specified fishing practices or methods, the use of specified fishing equipment, the taking, and treatment of, by-catches, and the making of returns in relation to by-catches taken and littering at sea.

The *Fisheries Management Amendment (Super Trawlers) Regulation 2015* (the Amendment Regulation) provides an explicit legal ban on all boats over 130 metres in length from undertaking fishing related activities within the AFZ.

The Amendment Regulation gives effect to Senator the Hon. Richard Colbeck's statement on 24 December 2014 that the Australian Government would move to ban super trawlers from Australian waters by introducing regulations under the Act to prohibit fishing vessels over 130 metres in length. This supports the statement made by the Prime Minister, the Hon. Tony Abbott MP, in Parliament in March 2014 that the super trawler will stay banned.

Extensive consultation with industry and the community has been undertaken since 2012 on whether vessels of this size should be allowed to fish in the AFZ. This included formal public consultation undertaken by a scientific expert panel convened to investigate the risks associated with using similarly large vessels to fish in the small pelagic fishery. Many of the submissions received were general in nature, however they have provided a wide range of views on the use of super trawlers in Australian waters.

The Amendment Regulation inserts section 4D in the *Fisheries Management Regulations 1992* (the Regulations) to set out requirements relating to boats used by persons engaged in fishing in the AFZ. Under the Amendment Regulation a person commits an offence of strict liability if the person uses a boat to engage in a fishing related activity in the AFZ and the boat is more than 130 metres in length. The offence is of strict liability because there is a strong element of specific and general deterrence to the offence and to require proof of intention would undermine the regulatory effectiveness of the provision and its objective to

conserve the environment (the legislative objective of section 14 of the Act). It is also consistent with other offences in the Regulations, all of which are strict liability offences. In accordance with the Commonwealth Guide to Framing Offences, the penalty attached to the offence is well below the 60-penalty unit maximum threshold for strict liability offences. The offence is not punishable by imprisonment but fine only and no element of the offence is dependent on a subjective or community standard.

The department consulted with the Australian Fisheries Management Authority in the preparation of the Amendment Regulation and consulted with the Office of Best Practice in the preparation of its Regulation Impact Statement (ID 17021). The Regulation Impact Statement is required to be published at the time of the implementation of the Amendment Regulation.

The Amendment Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amendment Regulation is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the Attachment.

### **Details of the *Fisheries Management Amendment (Super Trawlers) Regulation 2015***

#### Section 1 – Name of Regulation

Provides that the Amendment Regulation is to be cited as the *Fisheries Management Amendment (Super Trawlers) Regulation 2015*.

#### Section 2 – Commencement

Provides that the Amendment Regulation commences on the day after registration.

#### Section 3 – Authority

Provides that the Amendment Regulation is made under the *Fisheries Management Act 1991*.

#### Section 4 – Schedules

Provides that the Amendment Regulation is amended as set out in Schedule 1.

#### Schedule 1 – Amendments

##### **Item 1 – After Part 2B**

Insert:

##### **Part 2C—Regulation etc. of certain practices**

##### **4D Requirements relating to boats used by persons engaged in fishing in the AFZ**

- (1) For section 14 of the Act, this regulation sets out requirements relating to boats used by persons engaged in fishing in the AFZ.

- (2) A person commits an offence if:
- (a) the person uses a boat to engage in a fishing-related activity in the AFZ; and
  - (b) the boat is more than 130 metres in length.

Penalty: 25 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Fisheries Management Amendment (Super Trawlers) Regulation 2015**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

This Legislative Instrument provides an explicit legal ban on all boats over 130 metres in length from undertaking fishing related activities within the Australian fishing zone, under the *Fisheries Management Regulations 1992*.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon. Richard Colbeck MP  
Parliamentary Secretary to the Minister for Agriculture**