

EXPLANATORY STATEMENT

Issued by Authority of the Parliamentary Secretary to the Minister for Agriculture and Water Resources

Fisheries Levy Act 1984

Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2017

Legislative Authority

The *Fisheries Levy Act 1984* (Levy Act) provides for the imposition of a levy with respect to certain fisheries licences granted under the *Fisheries Act 1952* (repealed) and the *Torres Strait Fisheries Act 1984* (Torres Strait Fisheries Act) and certain units of fishing capacity issued under a plan of management determined under those Acts.

Section 8 of the Levy Act provides that the Governor-General may make regulations for the purposes of sections 5 and 6 of the Levy Act.

Section 5 of the Levy Act imposes a levy on, amongst other things, the grant or renewal of a licence and the allocation and renewal of units of fishing capacity issued under the *Torres Strait Fisheries Act 1984*.

Section 6 of the Levy Act provides that the amount of levy imposed on the grant or renewal of a licence or on the allocation or renewal of units of fishing capacity is as specified in the regulations.

Section 7 of the Levy Act provides that the levy is payable at the time of the grant, renewal or variation of the licence, and at the time of the allocation or renewal of units of fishing capacity.

The *Fisheries Levy (Torres Strait Prawn Fishery) Regulation 2016* (Levy Regulation) specifies matters for the purposes of sections 5 and 6 of the Levy Act, including levy amounts.

Purpose

There are two intended purposes of the *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2017* (the amendment Regulations).

The primary purpose of the amendment Regulations is to amend the levy rates set in the Levy Regulation applicable to licences and allocated units of fishing capacity held in the Torres Strait Prawn Fishery (the Fishery).

Levy rates for the Fishery are determined annually in line with required budgeting processes for the Australian Fisheries Management Authority (AFMA) and the Queensland Department of Agriculture and Fisheries and annual renewal of TSPF boat licences and allocation of units of fishing capacity. The recoverable costs of administering the fishery are divided between the fishing boat licence(s) and/or the units of fishing capacity held by a person or entity. The fixed cost components of the

cost recovered budget are allocated to the levy for licences and the variable cost components are allocated to the levy for each unit of fishing capacity.

For the 2018 fishing season the levy rate for licences will decrease from \$3,491.64 to \$2,412.86 per licence (a \$1,078.78 decrease per licence), and each individual allocated unit of fishing capacity will decrease from \$23.75 to \$17.78 per unit (a \$5.97 decrease per unit).

The decrease in the 2017-18 levy compared to the 2016-17 levy results mainly from the 2016-17 cost recovered budget being underspent by \$81,735, which is carried forward as a credit into the 2017-18 levies. Additional reductions in cost have been found across the range of fisheries management activities.

The secondary purpose of the amendment Regulations is to provide clarity surrounding the application of levy to allocated Australian units of fishing capacity only. No levy is applied to PNG units. The inclusion of the definition of PNG units is important in bringing the amendment Regulations in line with the *Torres Strait Prawn Fishery Management Plan 2009* (the Plan) and adding certainty to which units attract a levy.

Background

The Plan is a legislative instrument made under the Torres Strait Fisheries Act, which provides for the allocation of ‘units of fishing capacity’ to the Fishery licence holders. The units of fishing capacity are then converted annually into a number of fishing days (referred to as an ‘annual use entitlement’) depending on the total allowable effort for the fishery in a given season.

The units of fishing capacity in the Fishery are divided into Australian units and PNG units. The Protected Zone Joint Authority (PZJA), which is established by the Torres Strait Fisheries Act and has responsibility for the management of all Torres Strait fisheries, must allocate Australian units to Fishery boat licence holders. The PNG units are held in trust by the Australian government for the purpose of meeting its obligation under the Torres Strait Treaty for catch sharing arrangements with PNG, although may be temporarily transferred to Fishery boat licence holders.

The attributable costs of managing the Fishery are recovered from the holders of fishing licences and units of fishing capacity pursuant to a decision of the PZJA.

Between 2006 and 2008 consultations were held between key stakeholders within the Fishery on the development of the Plan. Having regard to stakeholder feedback and recommendations of the Torres Strait Prawn Management Advisory Committee (the MAC), the PZJA agreed to split the recovery of costs of management between licences and units of fishing capacity to provide an equitable division of expenses depending on a holder’s level of investment in the Fishery. This was achieved, by allocating the fixed cost components of the cost recovered budget to the levy for licences. Variable cost components were allocated to the levy for each unit of fishing capacity.

The levy costs for the Fishery are attributable to services provided by AFMA and the Queensland Department of Agriculture and Fisheries (QDAF). AFMA is responsible for the licensing functions, annual issuing of levy notices, general management and consultation in relation to the Fishery. QDAF is responsible for compliance activities conducted in the Fishery.

Consultation

The MAC was consulted on the draft budget for the Fishery. The MAC includes members from the commercial fishing industry (of which there are 46 levy payers), traditional inhabitants and State and Commonwealth Government members. There is no peak industry body for the Fishery. The MAC noted the Fishery budget was subject to cost recovery arrangements, but made no specific comment on the draft budget. It is the responsibility of industry members on MACs to communicate with the broader industry on matters considered by the MAC. AFMA also consulted on the annual cost-recovered budget with the peak Commonwealth industry body; the Commonwealth Fisheries Association.

Impact and Effect

The Levy Act imposes a levy on the grant and renewal certain of Australian fishing boat licences and the allocation or renewal of allocation of Australian units of fishing capacity. The Levy Regulation sets the amount of levy imposed. The amount of levy payable by each holder depends on the quantity of licences and units of fishing capacity held. The amendment Regulation amends the levy rates set in the Levy Regulation.

The total of the levy collected from all Torres Strait Prawn Fishery licence holders reflects the level of activity the PZJA is required to undertake to provide appropriate management of the fishery. This includes activities such as setting allowable fishing effort levels and monitoring the condition of the prawn stocks. Renewal of licences under the legislation is subject to payment of levy, which in turn will allow fishers to use their fishing entitlements in the 2018 fishing season.

Consistent with the carve-out agreement made with the Office of Best Practice Regulation on 30 June 2014, AFMA is not required to complete a Regulation Impact Statement in relation to this instrument. Under this agreement the annual setting of cost recovery levies is considered machinery in nature (ID 14421).

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

The proposed Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Regulations

Details of the Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2017

Section 1 – Name of Regulations

This section provides for the instrument to be cited as the *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2017*.

Section 2 – Commencement

This section provides that the whole of the instrument commences on the day after it is registered.

Section 3 - Authority

This section provides that the authority for making the Regulations is the *Fisheries Levy Act 1984*.

Section 4 - Schedules

This section provides that the *Fisheries Levy (Torres Strait Prawn Fishery) Regulations 2016* to be amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 amends Section 5, by omitting “In” and substituting “(1) In.”

Item 2 inserts a definition of “PNG Unit” in section 5. PNG Units is defined as having the same meaning as in the *Torres Strait Prawn Fishery Management Plan 2009* as amended from time to time.

Item 3 amends Section 5, to add a new subsection 5(2) that clarifies that a reference to units of fishing capacity does not include a reference to PNG units.

Item 4 amends Subsection 8(2), to omit “\$3,491.64 plus \$23.75” and substitute it with “\$2,412.86 plus \$17.78”.

Item 5 amends Subsection 8(3), to omit “\$3,491.64 plus \$23.75” and substitute it with “\$2,412.86 plus \$17.78”.

Item 6 amends Subsection 8(4), to omit “\$23.75” and substitute it with “\$17.78”.

Item 7 amends Subsection 8(5), to omit “\$23.75” and substitute it with “\$17.78”.

Statement of Compatibility with Human Rights

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

Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2017

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

The instrument amends the *Fisheries Levy (Torres Strait Prawn Fishery) Regulation 2016* to allow for a decrease in the levy payable for licences granted or renewed and a decrease in the levy payable for the units of fishing capacity in the Torres Strait Prawn Fishery.

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. Anne Ruston
Assistant Minister for Agriculture and Water Resources