

EXPLANATORY STATEMENT

Issued by Authority of the Assistant Minister for Agriculture and Water Resources

Primary Industries Research and Development Act 1989

*Fisheries Research and Development Corporation Amendment (Fishing Levy)
Regulations 2018*

The *Primary Industries Research and Development Act 1989* (the Act) provides for the undertaking of research and development relating to primary industries and natural resources, and for related purposes.

Section 149 of the Act provides that the Governor-General may make regulations not inconsistent with the Act, prescribing matters required by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 5(1) of the Act allows a levy to be attached to a Research and Development Corporation by way of regulations. Paragraph 5(3)(a) of the Act requires that if regulations attach a levy to a Research and Development Corporation, then the regulation must also declare the whole or a specified proportion of the levy to be the research component of the levy.

The *Fisheries Research and Development Corporation Regulations 1991* (the FRDC Regulations) establish the Fisheries Research and Development Corporation (FRDC) in respect of the fishing industry. Subregulation 4A(1) of the FRDC Regulations attaches the fishing levy imposed by section 5 of the *Fishing Levy Act 1991* to the FRDC. Subregulation 4A(2) specifies the proportion of the fishing levy to be the research component of that levy for the purpose of paragraph 5(3)(a) of the Act. This would enable an amount equal to the research component of the levy collected from the fishing industry to be paid to the FRDC in accordance with section 30A of the Act.

The *Fisheries Research and Development Corporation Amendment (Fishing Levy) Regulations 2018* (the Regulations) amend the FRDC Regulations to provide that the percentage of the fishing levy amount that is the research component and payable to the FRDC is 6.55 per cent for the financial year commencing on 1 July 2017.

The proportion of the fishing levy that comprises the research component is derived from the gross value of production (GVP) of Commonwealth managed fisheries, as determined by the Minister for the relevant financial year. GVP for a financial year is calculated using the formula under subsection 4D(2) of the FRDC Regulations.

The notional research levy is 0.25 per cent of the GVP for each Commonwealth managed fishery. This notional levy rate was agreed by the Australian Fisheries Management Authority (AFMA), FRDC and industry.

Based on the determined GVP for 2016-17 of \$368,344,000 (\$468,941,000 minus \$100,597,000 – fisheries where AFMA does not collect levies – and an adjustment for an under-collection against the determined GVP for 2016-17 (of \$65,655), AFMA has calculated that the amount of levy to be collected on behalf of the FRDC for the 2017-18 financial year

is \$986,515. This amount is then divided by the total amount of levies expected to be collected by AFMA from Commonwealth managed fisheries (excluding Torres Strait fisheries, which do not operate on a cost recovered basis) for the 2017-18 financial year (\$15,053,149) and converted to a percentage: 6.55 per cent.

The department consulted with AFMA in determining the proportion of the levy to be paid to the FRDC. AFMA collects the research component of the fishing levy on behalf of the FRDC. The FRDC was notified of the amendments to the FRDC Regulations.

AFMA undertakes consultation with the fishing industry on the cost recovered budget and fishing levy regulation processes every year. Once consultation is concluded, the total management and research levy rate for each Commonwealth fishing concession type is made available to the fishing industry in AFMA's annual levy guide, which is published on the AFMA website. The FRDC component of the levy also appears on the Management and Research invoices issued to levy payers by AFMA. An explanation for the calculation of the research component appears in the Explanatory Statement supporting the FRDC regulations.

The Office of Best Practice Regulation advised in 2016 that the Department is exempt from submitting a Preliminary Assessment for annual amendments to the Regulations (ID 20522).

The Amendment Regulations are 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.

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

Details of the Fisheries Research and Development Corporation Amendment (Fishing Levy) Regulations 2018

Section 1 – Name of Regulation

This section provides that the Regulations are the *Fisheries Research and Development Corporation Amendment (Fishing Levy) Regulations 2018*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration.

Section 3 – Authority

This section provides that the Regulations are made under the *Primary Industries Research and Development Act 1989*.

Section 4 – Schedule(s)

This section provides that the FRDC Regulations are amended as set out in the Schedule.

Schedule 1 – Amendments

Item 1 – This inserts an additional line, for item 19, at the end of the table in subregulation 4A(2) of the FRDC Regulations. In item 19, the figure “6.55 per cent” and the phrase “1 July 2017” have been inserted, to specify the research component of the levy for the financial year commencing on 1 July 2017. A figure is inserted annually into this table to enable funds collected through fishing levies for research and development to be paid to the FRDC.

Statement of Compatibility with Human Rights

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

Fisheries Research and Development Corporation Amendment (Fishing Levy) Regulations 2018

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 Legislative Instrument amends the *Fisheries Research and Development Corporation Regulations 1991* to specify that the percentage of the fishing levy amount that is the research component is 6.55 per cent for the financial year commencing on 1 July 2017. This will enable an amount equal to the research component of the levy collected from the fishing industry to be paid to the Fisheries Research and Development Corporation from the Consolidated Revenue Fund.

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
**Parliamentary Secretary to the Deputy Prime Minister and Minister for Agriculture
and Water Resources**