

EXPLANATORY STATEMENT

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

Fisheries Management Act 1991

Fisheries Management (Fishing Levy Collection) Regulations 2018

Legislative Authority

The *Fisheries Management Act 1991* (the Management Act) provides for the efficient and cost effective management of Commonwealth Fisheries; the exploitation of fisheries resources in a manner consistent with the principles of ecologically sustainable development; the maximising of the net economic returns to the Australian community; the ensuring of accountability to the fishing industry; and the achievement of government targets in relation to the recovery of the costs to Australian Fisheries Management Authority (AFMA).

Paragraph 168(1)(a) of the Management Act provides that the Governor-General may make regulations prescribing all matters required or permitted by the Management Act to be prescribed.

Section 110 of the Management Act provides that the levy imposed by the *Fishing Levy Act 1991* (the Levy Act) is due and payable at a time or times ascertained in accordance with the regulations. Subsection 111(1) of the Management Act further provides that the regulations may provide for the payment of levy by instalments, each instalment being due and payable at a time ascertained in accordance with the regulations.

Purpose

The purpose of the *Fisheries Management (Fishing Levy Collection) Regulations 2018* (the Regulations) is to provide for when levy amounts imposed under the Levy Act are due and payable for the 2018-19 financial year, and to provide for the payment of those levies by way of instalments, pursuant to sections 110 and 111 of the Management Act.

Background

Each financial year AFMA, in accordance with the Australian Government cost recovery policy and guidelines, prepares a cost recovery budget to cover the costs, through the imposition of levies, of Commonwealth fisheries management (excluding fisheries managed under the *Torres Strait Fisheries Act 1984* (the Torres Strait Act) from concession holders. This includes the costs of developing and implementing management arrangements, data collection and the costs of running the management advisory committees (MAC). The 2018-19 cost recovered budget was calculated to be \$14,763,000, which is a decrease of 0.14 per cent on the previous year.

The amount of levy to be recovered from fishing concession holders for the 2018-19 financial year has decreased by 2.79 per cent on the previous year to \$13,675,000. This levy comprises the cost recovered budget for 2018-19 which is then adjusted for the acquittal from the previous financial year. In addition, AFMA will collect a research component that is paid to the Fisheries Research and Development Corporation, which for 2018-19 is approximately \$1,050,000. Levy amounts for Commonwealth fisheries and the Torres Strait Prawn Fishery are prescribed in separate regulations.

Consultation

The cost recovered budget for each fishery has been prepared in consultation with either the relevant fishery MAC, established under section 54 of the *Fisheries Administration Act 1991*, or the relevant consultative body for fisheries that do not have a MAC.

On 14 March 2018, AFMA distributed a draft of the 2018-19 cost recovered budget for comment to MAC members and industry representatives. Relatively minor changes were made to the draft budget based on feedback received during the industry consultation period and involved revisions to the budgeted amounts against certain fisheries management and policy support activities. A copy of the final cost recovered budget for 2018-19 budget was forwarded to the Commonwealth Fisheries Association (CFA), which is the peak industry body, on 14 May 2018. The CFA did not object to the final budget.

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).

Impact and Effect

The impact of the Regulations is that it requires fishing concession owners to pay levy to the Commonwealth government in instalments on prescribed dates. The effect of the Regulations is to assist in enabling fishing concession owners to utilise their fishing concessions in the relevant Commonwealth fishery. This is because AFMA's cost-recovered activities include the administration of the fishing concessions system, the setting of sustainable catch limits using the best available science, developing and implementing the fishing rules and monitoring fishing activity.

Details of the Regulations are set out in [Attachment A](#).

The 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 [Attachment B](#).

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

Details of the *Fisheries Management (Fishing Levy Collection) Regulations 2018*

Section 1 – Name of Regulations

This section provides that the name of the Regulations is the *Fisheries Management (Fishing Levy Collection) Regulations 2018* (the Regulations).

Section 2 - Commencement

This section provides for the Regulations to commence the day after the instrument is registered.

Section 3 - Authority

This section provides that the Regulations are made under the *Fisheries Management Act 1991*.

Section 4 - Definitions

This section defines terms used in the Regulations.

It provides that ‘leviable fishing concession’ has the same meaning as in the Levy Regulations.

It provides that ‘leviable SESSF quota fishing permit’ has the same meaning as in section 18 of the *Fishing Levy Regulations 2018* (Levy Regulations).

It provides that ‘leviable SESSF quota SFR’ has the same meaning as in section 17 of the Levy Regulations.

It provides that ‘levy’ means levy imposed by the Levy Act.

It provides that ‘Levy Regulations’ means the *Fishing Levy Regulations 2018*.

It provides that ‘Management Act’ means the *Fisheries Management Act 1991*.

Section 5 - Collection and payment of levy

This section provides for when the levy provided for under the Levy Regulations for 2018-2019 is due and payable.

Subsection 5(1) provides that for the purposes of sections 110 and 111 of the Management Act, this section of the Regulations provides for when levy is due and payable and for the payment of levy by instalments.

Subsection 5(2) provides that, subject to subsections (7) to (9) (which deal with leviable SESSF quota fishing permits), an amount of levy in respect of a leviable fishing concession is due and payable in three approximately equal instalments. Subsection 5(3) provides that the instalments are due and payable on 5 February 2019, 2 April 2019 and 29 May 2019.

Subsection 5(4) provides that, despite paragraph 3(a) (which provides that the first instalment is due and payable on 5 February 2019), if a 'dealing', such as the transfer or sale of a fishing right, occurs on or after 8 January 2019 and before 5 February 2019 that would, but for subsection 46(2) of the Management Act, have the effect of transferring the leviable fishing concession, the first instalment is due and payable on the earlier of 5 February 2019 and the day before the day an application is made to register the dealing under section 46 of the Management Act.

Subsection 5(5) provides that, despite paragraph 3(b) (which provides that the second instalment is due and payable on 2 April 2019), if a dealing occurs on or after 5 March 2019 and before 2 April 2019 that would, but for subsection 46(2) of the Management Act, have the effect of transferring the leviable fishing concession, the second instalment is due and payable on the earlier of 2 April 2019 and the day before the day an application is made to register the dealing under section 46 of the Management Act.

Subsection 5(6) provides that, despite paragraph 3(c) (which provides that the third instalment is due and payable on 29 May 2019), if a dealing occurs on or after 1 May 2019 and before 29 May 2019 that would, but for subsection 46(2) of the Management Act, have the effect of transferring the leviable fishing concession, the third instalment is due and payable on the earlier of 29 May 2019 and the day before the day an application is made to register the dealing under section 46 of the Management Act.

Subsections 5(7) to 5(8) provide for when levy is due and payable for leviable SESSF quota fishing permits' to which subsection 18(4) of the Levy Regulations applies.

Subsection 5(7) provides that the amount of levy in respect for leviable SESSF quota fishing permits must be paid in two approximately equal instalments. Subsection 5(8) would provide that the instalments are due and payable on 5 February 2019 and 2 April 2019.

Subsection 5(9) provides for when levy is due and payable for certain leviable SESSF quota SFRs.

It provides that the amount of levy in respect of a leviable SESSF quota SFR that authorises the taking of a quota species mentioned in item 14 or 17 of the table in subsection 17(3) of the Levy Regulations, or item 1, 2, 10 or 11 of the table in subsection 17(4) of the Levy Regulations, is due and payable in a single instalment on 29 May 2019 or, if a dealing occurs on or after 1 May 2019 and before 29 May 2019 that would, but for subsection 46(2) of the Management Act, have the effect of transferring the SFR, the amount of levy is due and payable on the earlier of 29 May 2019 and the day before an application is made to register the dealing under section 46 of the Management Act.

A note at the end of subsection 5(9) provides that section 7 of the Levy Act provides that levy in respect of a fishing concession is payable by the person who, at the time at which the levy is due and payable, is the holder of the fishing concession.

Statement of Compatibility with Human Rights

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

Fisheries Management (Fishing Levy Collection) Regulations 2018

This 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 provides when levy amounts are due and payable for Commonwealth fishing concessions for the 2018-19 financial year, and provides for payment of levy amounts by way of instalments.

Human rights implications

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

Conclusion

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

Senator the Hon. Richard Colbeck
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