

EXPLANATORY STATEMENT

Issued by Authority of the Assistant Minister for Forestry and Fisheries, Parliamentary Secretary to the Minister for Agriculture, Drought and Emergency Management

Fisheries Management Act 1991

Fisheries Management (Fishing Levy Collection) Amendment (2021-2022 Instalment Dates) Regulations 2021

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 relevantly provides that the Governor-General may make regulations prescribing all matters required or permitted by the Management Act to be prescribed, or necessary or convenient to be prescribed in carrying out or giving effect to the Management Act.

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 relevantly provides that the regulations may provide for the payment of levy to be made 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) Amendment (2021-2022 Instalment Dates) Regulations 2021* (the Regulations) is to provide for when the various instalments of the levy amounts imposed under the Levy Act are due and payable for the 2021-22 financial year.

A related instrument, the *Fishing Levy Amendment (2021-2022 Levy Amounts) Regulations 2021*, sets the amounts of levy payable imposed by the Levy Act.

Background

After consultation with relevant stakeholders, AFMA introduced an invoicing regime that split the year's levy across three (approximately equal) instalments. Each invoice includes an account summary that itemises all concessions owned by the holder (across all relevant fisheries) and the respective levy amount for each. The intention behind splitting the annual levy across the three instalments is to reduce "bill shock" for concession holders.

The timing of the levy regulation making process is largely governed by the government's budget and financial reporting processes, including the completion of AFMA's levy acquittal process. If the Regulations are made by the Governor-General late in the calendar year, the first practical window for invoicing is January in the following year. All levy invoicing and due dates fall between early January and the end of May.

AFMA's levy invoices allow for 28 days for payment. If a due date passes and no payment has been received there is a series of debt recovery actions that may eventually escalate to cancellation of concessions if a levy debt remains unpaid. This invoicing regime allows for a complete collection 'cycle' after each of the invoices is issued and intends to avoid any overlap of recovery activities between instalments.

AFMA's current invoicing and collection regime was developed in consultation with the fishing industry and is well established, having been in place for over eight years. Concession holders have certainty regarding the timing of the issuing of levy invoices and an expectation of when their levy payments will be due. This regime also allows for efficient and effective debt recovery processes, which are aimed at completing levy recovery within the relevant financial year.

Once the instalment payment dates are prescribed in the Regulations, only the accountable authority, or their delegate, has the power under Section 63 of the *Public Governance, Performance and Accountability Act 2013* (Cth) to approve a change to the due dates through a deferral of timing or allowing payment of a debt by instalments (arrangement to pay).

Consultation

Each financial year, AFMA, in accordance with the Australian Government Cost Recovery Guidelines, prepares a cost-recovery budget to recover the annual costs of managing Commonwealth fisheries from fishing concession holders through the imposition of levies. Relevant stakeholders have input into the cost recovered budget before it is finalised.

There was no direct consultation in relation to this specific instrument. The changes to the due and payable dates for the 2021-2022 financial year are machinery in nature.

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 a levy to the 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 instrument 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*, and will commence on the day after being registered on the Federal Register of Legislation.

Details of the *Fisheries Management (Fishing Levy Collection) Amendment (2021-2022 Instalment Dates) Regulations 2021*

Section 1 – Name

This section provides that the name of the instrument is the *Fisheries Management (Fishing Levy Collection) Amendment (2021-2022 Instalment Dates) Regulations 2021* (Amendment Regulations).

Section 2 – Commencement

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

Section 3 – Authority

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

Section 4 – Schedules

This section provides that 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 (Fishing Levy Collection) Regulations 2018

Items [1] – [3] – Paragraphs 5(3)(a), 5(3)(b) and 5(3)(c)

These items amend paragraphs 5(3)(a), (b) and (c) of the *Fisheries Management (Fishing Levy Collection) Regulations 2018* (Principal Regulations) to specify the various dates by which the first, second, and third instalments of a levy imposed by the Levy Act are payable in 2022. The first instalment is due and payable on 9 February 2022, the second instalment is due and payable on 6 April 2022, and the third instalment is due and payable on 30 May 2022.

Items [4] and [5] – Subsection 5(4) and paragraph 5(4)(a)

These items amend subsection 5(4) of the Principal Regulations to clarify that, despite the first instalment of the levy being due and payable on 9 February 2022, if a dealing occurs on or after 12 January 2022 and before 9 February 2022, that has the effect of transferring the leviable fishing concession (but for subsection 46(2) of the Management Act), the first instalment is due and payable on the earlier of:

- 9 February 2022; and

- The day before the day an application is made to register the dealing under section 46 of the Management Act.

The amendments by items [4] and [5] will provide that if the holder of the leviable fishing concession transfers that concession after the date of the invoice for the first instalment, payment of the invoice must be made before the transfer of the concession. This will ensure that the holder of the leviable fishing concession is unable to divest themselves of that asset prior to payment of the first instalment.

Items [6] and [7] – Subsection 5(5) and paragraph 5(5)(a)

These items amend subsection 5(5) of the Principal Regulations to clarify that, despite the second instalment of the levy being due and payable on 6 April 2022, if a dealing occurs after 9 March 2022 and before 6 April 2022, that has the effect of transferring the leviable fishing concession (but for subsection 46(2) of the Management Act), the second instalment is due and payable on the earlier of:

- 6 April 2022; and
- the day before the day an application is made to register the dealing under section 46 of the Management Act.

The amendments by items [6] and [7] will provide that if the holder of the leviable fishing concession transfers that concession after the date of the invoice for the second instalment, payment of the invoice must be made before the transfer of the concession. This will ensure that the holder of the leviable fishing concession is unable to divest themselves of that asset prior to payment of the second instalment.

Items [8] and [9] – Subsection 5(6) and paragraph 5(6)(a)

These items amend subsection 5(6) of the Principal Regulations to clarify that, despite the third instalment of the levy being due and payable on 30 May 2022, if a dealing occurs on or after 2 May 2022 and before 30 May 2022, that has the effect of transferring the leviable fishing concession (but for subsection 46(2) of the Management Act), the third instalment is due and payable on the earlier of:

- 30 May 2022; and
- The day before the day an application is made to register the dealing under section 46 of the Management Act.

The amendments by items [8] and [9] will provide that if the holder of the leviable fishing concession transfers that concession after the date of the invoice for the third instalment, payment of the invoice must be made before the transfer of the concession. This will ensure that the holder of the leviable fishing concession is unable to divest themselves of that asset prior to payment of the third instalment.

Items [10] and [11] – Paragraph 5(8)(a) and paragraph 5(8)(b)

These amendments concern payment of a leviable Southern and Eastern Scalefish and Shark Fishery (SESSF) quota fishing permit to which subsection 18(4) of the *Fishing Levy Regulations 2018* (Levy Regulations) applies. The amount of the levy for such a permit must be paid in two approximately equal instalments.

These items amend paragraphs 5(8)(a) and 5(8)(b) of the Principal Regulations to clarify that the first instalment of the levy is due and payable on 9 February 2022 and the second instalment is due and payable on 6 April 2022.

Items [12]-[14] – Paragraphs 5(9)(a) and (b), subparagraph 5(9)(b)(i)

These amendments concern the amount of the levy in respect of a leviable SESSF quota statutory fishing right (SFR) that authorises the taking of a quota species mentioned in items 14 of 17 of the table in subsection 17(3) of the Levy Regulations, or item 1, 2, 10 or 11 of the table mentioned in subsection 17(4) of the Levy Regulations.

These items have the effect that the amount of that levy is due and payable on 30 May 2022. Alternatively, if a dealing occurs on or after 2 May 2022 and before 30 May 2022 that has the effect of transferring the SFR (apart from subsection 46(2) of the Management Act), the levy is due and payable on the earlier of:

- 30 May 2022; and
- The day before the day an application is made to register the dealing under section 46 of the Management Act.

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) Amendment (2021-2022 Instalment Dates) Regulations 2021

This Disallowable 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 Disallowable Legislative Instrument provides when levy amounts are due and payable for Commonwealth fishing concessions for the 2021-22 financial year, and provides for payment of levy amounts by way of instalments.

Human rights implications

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

Conclusion

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

**Senator the Hon. Jonathon Duniam
Assistant Minister for Forestry and Fisheries
Parliamentary Secretary to the Minister for Agriculture, Drought and Emergency
Management**