

EXPLANATORY STATEMENT

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

Primary Industries Research and Development Act 1989

Fisheries Research and Development Corporation Amendment (Fishing Levy) Regulations 2022

Legislative authority

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 related purposes.

Subsection 5(1) of the Act provides the conditions for a levy to be attached to a Research and Development Corporation by way of regulations. Paragraph 5(3)(a) of the Act relevantly 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.

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

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Purpose

The *Fisheries Research and Development Corporation Amendment (Fishing Levy) Regulations 2022* (the Amendment Regulations) amend the *Fisheries Research and Development Corporation Regulations 1991* (the Principal Regulations) to provide that the percentage of the fishing levy amount that is the research component of the levy and payable to the Fisheries Research and Development Corporation (FRDC) is 7.23 per cent for the financial year commencing on 1 July 2021. The Amendment Regulations do not affect the levy amount that is paid by industry.

Background

The Principal Regulations establish the FRDC in respect of the fishing industry. Subregulation 4A(1) of the Principal 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 for specified financial years commencing on 1 July. This enables 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 other than levies for separately levied fisheries.

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. The GVP for a financial year is calculated using the formula under subsection 4D(2) of the Principal 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), the FRDC and industry.

The 2020-21 determined GVP for leviable Commonwealth Fisheries is \$408,499,000 (this is the total 2020-21 determined GVP of \$564,471,000 minus the 2020-21 determined GVP for fisheries where AFMA does not collect levies for the FRDC of \$155,972,000).

As part of its annual levy processes AFMA collects an amount of research levy for the FRDC. This research levy amount is subject to potential adjustment in relation to an acquittal process based on the previous financial year. Such an adjustment may arise as calculations of the research amount are based on the previous financial year's determined GVP prior to the determined GVP figure for the current year becoming available.

AFMA has calculated that the amount of levy to be collected on behalf of the FRDC for the 2021-22 financial year is \$1,080,206 (this amount is 0.25 per cent of the 2020-21 determined GVP for leviable Commonwealth Fisheries (\$1,021,248) and includes an increase to account for an under collection of FRDC levies in 2020-21 of \$58,958).

The total amount of levies expected to be collected by AFMA from Commonwealth managed fisheries for the 2021-22 financial year is \$14,948,856. This excludes Torres Strait fisheries, which do not attract an FRDC levy as the Torres Strait fisheries are managed under the *Torres Strait Fisheries Act 1984*.

For 2021-22, the percentage of levy to be collected on behalf of the FRDC (\$1,080,206) out of the total amount of levies expected to be collected by AFMA (\$14,948,856) is 7.23 percent.

The amendment to the Principal Regulations made by the Amendment Regulations does not impose taxes or levies. The levy to which this amendment relates is imposed by section 5 of the Fishing Levy Act 1991. Amendments are made to the table in subregulation 4A(2) of the Principal Regulations on an annual basis to prescribe the research component of the levy for each financial year commencing on 1 July. These are regular amendments which are machinery in nature. The primary legislation does not provide for the percentage of the levy which is the research component as this requires calculation of the GVP for Commonwealth managed fisheries on an annual basis.

Consultation

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 Principal Regulations.

AFMA undertakes consultation with the fishing industry on the cost recovered budget and fishing levy regulation processes every year. This includes distributing a draft Cost Recovery Implementation Statement and draft cost recovered budget, for comment to the Commonwealth Fisheries Association (the peak industry body). These drafts are also provided to each of the fishery Management Advisory Committees (MACs) and other relevant consultative bodies for fisheries that do not have MACs. 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 and can be freely accessed at www.afma.gov.au. The FRDC component of the levy also appears on the Management and Research invoices issued to levy payers by AFMA.

Both AFMA and the FRDC are supportive of the Amendment Regulations. Broader consultation was not considered appropriate as the Amendment Regulations are routine and machinery in nature.

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

Details/Operation

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

Other

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 with Human Rights is set out in [Attachment B](#).

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

The Amendment Regulations commence the day after registration.

Details of the *Fisheries Research and Development Corporation Amendment (Fishing Levy) Regulations 2022*

Section 1 – Name

This section provides that the name of the instrument is the *Fisheries Research and Development Corporation Amendment (Fishing Levy) Regulations 2022* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the Amendment Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

The note below the table provides that the table relates only to the provisions of the Amendment Regulations as originally made. It will not be amended to deal with later amendments of the Amendment Regulations. The purpose of this note is to clarify that the commencement of any subsequent amendments will not be reflected in this table.

Section 3 – Authority

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

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the Amendment Regulations. This enables the amendment of the *Fisheries Research and Development Corporation Regulations 1991* (the Principal Regulations) (see Schedule 1 below).

Schedule 1 – Amendments

Fisheries Research and Development Corporation Regulations 1991

Item [1] – Subregulation 4A(2) (at the end of the table)

Item 1 inserts new item 23 at the end of the table in subregulation 4A(2) of the Principal Regulations. The date of 1 July 2021 and the figure of 7.23 per cent have been inserted to specify the research component of the levy for the financial year commencing on 1 July 2021.

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 2022

The *Fisheries Research and Development Corporation Amendment (Fishing Levy) Regulations 2022* (the Amendment Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Amendment Regulations amend the *Fisheries Research and Development Corporation Regulations 1991* to specify that the percentage of the fishing levy amount that is the research component is 7.23 per cent for the financial year commencing on 1 July 2021. This enables 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

The Amendment Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Regulations are compatible with human rights as they do not raise any human rights issues.

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