

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Fisheries and Forestry

Fisheries Levy Act 1984

Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Repeal Regulations 2022

Legislative Authority

The *Fisheries Levy Act 1984* (Levy Act) provides for the imposition of a levy with respect to certain fisheries licences granted and renewed under the *Torres Strait Fisheries Act 1984* (TSFA) and certain units of fishing capacity (units) allocated and renewed under a plan of management determined under that Act.

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 issued under the TSFA. Section 6 of the Levy Act relevantly provides that the amount of levy imposed on the grant or renewal of a licence or on the allocation or renewal of units are such amounts as specified in, or calculated in accordance with, the regulations.

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

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 purpose of the *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Repeal Regulations 2022* (the Regulations) is to repeal the *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020* (the No. 2 Regulation).

The No. 2 Regulation was made in error as it does not contain any substantive content. The Senate Standing Committee for the Scrutiny of Delegated Legislation (Senate Committee) noted an issue with drafting of the instrument being defective or unclear in accordance with principle (e) of the Senate standing order 23(3).

The repeal of the No. 2 Regulation will give effect to an undertaking that was provided in March 2021 by the then Department of Agriculture, Water and Environment to the Senate Committee that the No. 2 Regulation would be repealed. This undertaking has been listed in Appendix D of *Delegated Legislation Monitor 5 of 2021*.

The No. 2 Regulation has been identified by the Australian Fisheries Management Authority and the Department of Agriculture, Fisheries and Forestry as being suitable for repeal.

Background

The No. 2 Regulation was registered on 16 December 2020 and came into force on 17 December 2020. Due to an error, the No. 2 Regulation did not contain the Schedule referred to in section 4 of the instrument and therefore did not have any substantive content. To correct this error, the Regulations repeal the No. 2 Regulation in their entirety.

Consultation

It is considered unnecessary to consult on the Regulations as they are of an administrative nature as they repeal a regulation that has no effect.

Impact and Effect

There will be no impact or effect in repealing the No. 2. Regulation. Levies for the Torres Strait Prawn Fishery for the relevant period were implemented by the *Fisheries Levy (Torres Strait Prawn Fishery) Regulation 2020* [F2020L01620] which amended the *Fisheries Levy (Torres Strait Prawn Fishery) Regulation 2016* to provide for the correct levy amounts in the fishery for the relevant year.

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

The Regulations commence the day after they are registered on the Federal Register of Legislation.

Details of the *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Repeal Regulations 2022*

Section 1 - Name of Regulations

This section provides that the name of the proposed Regulations is the *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Repeal Regulations 2022*.

Section 2 - Commencement

This section provides that the proposed Regulations commence on the day after they are registered.

Section 3 - Authority

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

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 – Repeals

This schedule repeals the *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020*.

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) Repeal Regulations 2022

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 Disallowable Legislative Instrument

This Disallowable Legislative Instrument repeals the *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020* to give effect to an undertaking that was provided in March 2021 by the then Department of Agriculture, Water and Environment to the Senate Standing Committee for the Scrutiny of Delegated Legislation that the instrument would be repealed.

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. Murray Watt
Minister for Agriculture, Fisheries and Forestry