

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture

Primary Industries Research and Development Act 1989

Fisheries Research and Development Corporation Amendment (Farmed Prawns) Regulations 2019

Legislative Authority

The *Primary Industries Research and Development Act 1989* (the PIRD Act) provides for the establishment of research and development corporations (Corporations) and related matters, such as their constitution, operational plans, accountability and financial arrangements.

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

Section 8 of the PIRD Act provides that where the regulations declare the establishment of a Corporation in respect of a primary industry or class of primary industries and specify a name for the Corporation:

- a) a Corporation is established in respect of that primary industry or class of primary industries; and
- b) the Corporation is to be known by the name specified in the regulations.

Regulation 4 of the *Fisheries Research and Development Corporation Regulations 1991* (the FRDC Regulations) declares the establishment of the Fisheries Research and Development Corporation (FRDC) in respect of the fishing industry.

Section 5 of the PIRD Act provides for a levy or a class of levies to be attached to a Corporation through declaration of such in regulations. Where a levy or class of levies is so declared to be attached, paragraph 5(3)(a) requires that the regulations declare which part of the levy, for each relevant levy, is the research component. Subsection 4(1) of the PIRD Act provides that 'levy' includes an export or import charge and an excise on the produce of a primary industry.

Purpose

The purpose of the *Fisheries Research and Development Corporation Amendment (Farmed Prawns) Regulations 2019* (FRDC Amendment Regulations) is to amend the FRDC Regulations to declare the following 'levies' to be attached to the FRDC for the purposes of paragraph 5(1)(a) of the PIRD Act:

- white spot disease repayment levy (WSDR levy) on farmed prawns imposed by clause 3.5 of Schedule 27 to the *Primary Industries (Excise) Levies Regulations 1999*;
- white spot disease repayment charge (WSDR charge) on farmed prawns imposed by clause 2.5 of Schedule 14 to the *Primary Industries (Customs) Charges Regulations 2000*.

The amended FRDC Regulations will also specify the research component of the WSDR levy and the WSDR charge respectively for the purposes of paragraph 5(3)(a) of the PIRD Act.

The research component of the levies is effectively the amounts of levy that are collected after the prawn industry's liability to the Commonwealth is repaid, divided proportionally between each levy based on the amount of each levy received in the financial year that liability is repaid.

Background

On 4 May 2017, following a request from the Australian Prawn Farmers Association (APFA), the peak body for the farmed prawn industry, the then Minister for Agriculture and Water Resources approved an up to \$20 million assistance package for prawn farmers affected by the response to white spot disease in the Logan River. White spot disease is not an animal disease covered under any current response deed and APFA is not a party to the Emergency Animal Disease Response Agreement (EADRA), therefore it was agreed that costs would be shared with industry on an 80/20 split under arrangements consistent with those applied to other industries under EADRA. These EADRA-like arrangements included repayment in a reasonable amount of time (usually within ten years) and indexation of the outstanding balance each year at the relevant CPI rate to preserve the value of the underwritten funds.

The then Minister and the APFA agreed that the industry contribution (20 per cent, up to \$4 million) would be underwritten by the Australian Government and then repaid through a statutory levy and charge on farmed prawns. They also agreed that the levy and charge would not commence for three years after the destruction of prawns on affected farms to give the industry time to restock after a required fallow period.

Details and Effect

The amendments will result in the WSDR levy and the WSDR charge respectively being attached to the FRDC. The amended Regulations will also specify the research component of the WSDR levy and the WSDR charge respectively.

The research component of these levies is made up of excess amounts of levy that are collected after the prawn industry's liability to the Commonwealth is repaid. Until that liability is paid off, the WSDR levy and WSDR charge are retained by the Commonwealth for the purposes of satisfying that liability.

The levy rate for the WSDR levy on farmed prawns was calculated to facilitate repayment of the prawn industry's liability to the Australian Government in approximately ten years, at which time the government intends to cease the levy. However, it is not possible to cease the levy at an exact collected dollar amount. Therefore, a small amount of levy will be collected over the amount needed to fully repay the liability. The excess levy amount will be considered to be the research component of the levy, and will be disbursed by the Department of Agriculture to the FRDC. FRDC has been consulted and supports this approach.

The PIRD Act requires regulations to specify exactly which proportion of a levy attached to a Corporation is the research component. For that reason, the FRDC Regulations divide up this excess levy into an amount attributable to the WSDR levy and the WSDR charge respectively. Specifically, that excess will be divided proportionally between each levy based on the amount of each levy received in the financial year that liability is fully repaid.

Consultation

APFA's agreement to the arrangements of cost sharing was unanimously supported by farmed prawn industry members at the Ridley Australian Prawn Farmers Symposium 2017 on 2 August 2017. The matter was raised again at the 2018 symposium (on 13 August) and again received unanimous support. APFA undertook consultation with actual and potential levy

payers on the proposed rate of the levy at 3.01 cents per kilogram. A formal objection period was held from 4 February to 8 March 2019. No objections on the WSDR levy were received.

Details / Operation

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 Research and Development Corporation Amendment (Farmed Prawns) Regulations 2019*

Section 1 – Name of Regulations

This section provides that the name of the Regulations is the *Fisheries Research and Development Corporation Amendment (Farmed Prawns) Regulations 2019*.

Section 2 – Commencement

This section provides for the Regulations to commence on 1 January 2020.

Section 3 – Authority

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

Section 4 – Schedule

This section provides for the *Fisheries Research and Development Corporation Regulations 1991* to be amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 amends the heading of Regulation 4B to replace “farmed prawns” with “product levies on farmed prawns” in order to differentiate between the product levy and the special purpose (white spot disease repayment) levy, which is being introduced at the same time this amendment takes effect.

Item 2 inserts a new section: 4BA Levies attached to the Corporation—white spot disease repayment levies on farmed prawns.

This section attaches two levies for the purposes of paragraph 5(1)(a) of the PIRD Act – the levy imposed by Division 3.3 of Schedule 27 to *Primary Industries (Excise) Levies Regulations 1999* and the charge imposed by Division 2.3 of Schedule 14 to the *Primary Industries (Customs) Charges Regulations 2000* – to the FRDC. As required by paragraph 5(3)(a) of the PIRD Act, it declares a specified part of the levies to be the research component.

This section sets out how that research component is to be calculated. Specifically, the research component of these levies is made up of excess amounts of levy that are collected after the prawn industry’s liability to the Commonwealth is repaid. The section divides up this excess levy into an amount attributable to the WSDR levy and the WSDR charge respectively.

Specifically, the research component will be:

- the amounts of excess of levy collected in the financial year in which the liability is paid off (final repayment year), divided proportionally between each levy based on the amount of each levy received in that financial year;
- any amounts of each levy due for payment before the end of the final repayment year which are not paid until a later financial year; and

- any amounts of each levy due for payment in any financial year following final repayment year.

The intention of this section is to provide to the FRDC, WSDR levies (including levies and charges) that are collected after the prawn industry's liability to the Commonwealth is fully repaid, prior to the levies being ceased. In order to identify when this point has been reached, the outstanding debt to the Commonwealth must be known. The debt will change each year based on amounts of levy that have been paid (reducing the debt) and the indexation that has been applied to the outstanding balance at the end of each financial year (increasing the debt).

This section sets out how the outstanding industry debt is to be calculated each financial year. It specifies the outstanding industry debt at the end of the financial year ending on 30 June 2019 to provide a starting point for these calculations. It also sets out how the indexation factor is to be calculated. It provides a separate calculation for the first year's indexation factor, as in the first year indexation is only being applied to the six months where the WSDR levies will apply. It specifies how the research amount will be affected by matter such as levy refunds.

ATTACHMENT B

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 (Farmed Prawns) Regulations 2019

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 purpose of the Fisheries Research and Development Corporation Amendment (Farmed Prawns) Regulations 2019 (FRDC Amendment Regulations) is to amend the FRDC Regulations to declare the white spot disease repayment levy (WSDR levy) and white spot disease repayment charge (WSDR charge) to be attached to the Fisheries Research and Development Corporation. The FRDC Amendment Regulations specify that the research component of the WSDR levy and the WSDR charge respectively are amounts of levy that are collected after the prawn industry's liability to the Commonwealth is repaid, divided proportionally between each levy based on the amount of each levy received in the financial year that liability is fully repaid

The Regulations commence on 1 January 2020.

Human rights implications

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

Conclusion

The measures in the Regulations are 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* as the Regulations do not engage any human rights issues.

Senator the Hon. Bridget McKenzie
Minister for Agriculture