

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

PRAWN EXPORT PROMOTION BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Resources, the Hon David Beddall, MP)

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GENERAL OUTLINE

1. The prawn sector is an important component of the Australian fishing industry, providing a significant input to a number of regional economies. However, over some years, market share and earnings have been eroded through direct competition in overseas markets from aquacultured prawns.
2. Faced with these pressures, the prawn industry has sought Commonwealth Government assistance in working to increase the export value of Australian sea-caught prawns, especially those sold on the Japanese market.
3. The industry has developed a promotional strategy involving innovative marketing to differentiate Australian sea-caught prawns from the overseas farmed product.
4. The Government has agreed to collect funds for the scheme by means of a prawn boat levy and prawn export charge. These are imposed under the Prawn Boat Levy and the Prawn Export Charge Bills. This, the Prawn Export Promotion Bill, provides for the collection, management and expenditure of the funds collected. A large part of this Bill follows the model established in the Primary Industries Levies and Charges Collection Act 1991, which sets out a standard framework of provisions to cover the collection of levies and charges in respect of primary industry commodities.

FINANCIAL IMPACT STATEMENT

5. The promotion will be funded only by the abovenamed levy and charge. As all expenditure, including administration, will be funded from these collections, the proposal will have no impact on the Commonwealth Budget.

NOTES ON INDIVIDUAL CLAUSES

Clause 1: Short title

6. This clause provides for the Act to be called the Prawn Export Promotion Act 1994.

Clause 2: Commencement

7. This clause enables the Act to come into effect on the same day as the Prawn Boat Levy Act 1994. The Prawn Export Charge Act 1994 will also come into effect on that date. This is because the three Acts will be complementary.

Clause 3: Interpretation

8. This clause defines the terms "annual operational plan", "Australian Prawn Promotion Association Limited", "collecting authority", "collecting organisation", "FRDC", "levy", "levy payer", "mariculture installation", "net weight", "organisation", "prawn", "R&D Plan", "Research and Development Act", "sea", "sea-caught prawn", "sea-caught prawn product" and "State".

9. These definitions carry through to any mentions of these terms in the Prawn Boat Levy Bill and the Prawn Export Charge Bill.

Clause 4: Application of Act to Crown

10. This clause provides that the Act will bind the Crown in right of the Commonwealth, each of the States (defined in clause 3 to include the Northern Territory and Norfolk Island) and the Australian Capital Territory, but does not make the Crown liable to be prosecuted for an offence.

Clause 5: Prawn export promotion function of FRDC

11. FRDC's functions, as set out in the Research and Development Act, do not provide for activities by way of financing promotion. However, new functions may be conferred on a Research and Development Corporation by another Act. Accordingly, this clause confers on FRDC the function of providing funds for approved prawn export promotion activities.

12. Sub-clause 5(2) defines an approved prawn export promotion activity. The activity needs to be related to sea-caught prawn promotion and consistent with FRDC's R&D Plan, which has been approved by the Minister. The activity must also be approved by the prescribed industry organisation.

Clause 6: Prescribed industry organisation

13. This clause defines the prescribed industry organisation. Unless regulations prescribing another organisation or body are made, the prescribed industry organisation is the Australian Prawn Promotion Association Limited.

Clause 7: FRDC plans etc

14. Section 13, Division 3 of Part 2 and section 28 of the Research and Development Act provide for agreements between Research and Development Corporations such as FRDC and persons carrying out activities under the Act, 5 year R&D Plans, Annual Operational Plans and Annual Reports. Sub-clause 7(1) subjects prawn promotion to the same planning, approval and reporting procedures as research and development activities

and enables agreements similar to research and development agreements to be made between FRDC and a person or organisation carrying out an approved prawn export promotion activity.

15. Sub-clause 7(2) requires FRDC to obtain the prescribed industry organisation's approval in respect of sections of R&D Plans and Annual Operational Plans that deal with prawn promotion before the Plans are submitted for the Minister's approval.

Clause 8: Payment of levy money to FRDC

16. This clause provides that all levy moneys, plus moneys collected as penalty under clause 17, will go to FRDC via the Consolidated Revenue Fund.

Clause 9: Use of levy money

17. Sub-clause 9(1) provides that the prawn promotion scheme will be able to benefit both from the levies and penalty payments collected and from interest earned on them.

18. Sub-clause 9(2) specifies how levy money may be expended, ie, on approved prawn promotion activities and on covering administrative costs incurred by

- the Commonwealth, specifically the Department administering the legislation;
- FRDC; and
- the prescribed industry organisation in doing anything for the purposes of this Act, eg providing advice to FRDC.

19. Sub-clause 9(3) places a check on FRDC debiting funds to cover its own expenses in managing the prawn promotion funds. All payments to cover administrative expenses incurred by FRDC are required to be approved by the prescribed industry association.

20. Sub-clause 9(4) requires the investment of funds not immediately needed in prawn promotion or meeting the administrative costs outlined above.

Clause 10: When levy due for payment

21. This clause provides for the timing of levy payments to be prescribed by regulation.

Clause 11: Collection agreements with States

22. The purpose of this clause is to provide one of the means that can be used to achieve levy collection.

23. Sub-clause 11(1) provides that the Commonwealth may enter into agreements with a State for the purposes of collecting levy in that State on behalf of the Commonwealth.

24. Sub-clause 11(2) outlines what may constitute such an agreement.

25. Sub-clause 11(3) provides that while an agreement is in force payments of amounts of levy in that State are to be made through the appropriate collecting authority and the collecting authority may retain out of any money owed by it to a person an amount that the person is liable to pay in levy.

26. Sub-clause 11(4) stipulates that where amounts of levy are deducted or paid from moneys payable to a person, that person is discharged from further liability to pay levy to the extent of the amount paid or deducted.

27. Sub-clause 11(5) requires that the Secretary give notice in the *Gazette* within 21 days of agreements that have been entered into with collecting authorities.

28. Sub-clause 11(6) allows that failure to give notice in the *Gazette* will not invalidate any collection agreement.

29. Sub-clause 11(7) provides for payment of expenses by FRDC to the collecting authority in accordance with the terms of the agreement.

30. Sub-clause 11(8) binds FRDC to pay the amounts mentioned in sub-clause 11(7) as if it were a party to the agreement.

Clause 12: Collection agreements with collecting organisations

31. As another means to achieving levy collection, this clause enables the Secretary of the Department administering the Act to appoint a non-government organisation as the Commonwealth's agent for this purpose.

32. Sub-clause 12(1) provides that the Secretary may enter into agreements with a non-government organisation for the collection of levy on behalf of the Commonwealth.

33. Sub-clause 12(2) outlines what may be included in such an agreement.

34. Sub-clause 12(3) provides that while an agreement with a collecting organisation is in force in relation to levy collection, payments of amounts of levy are to be made through that collecting organisation.

35. Sub-clause 12(4) stipulates that where amounts of levy are paid by a person, that person is discharged from further liability to pay levy to the extent of the amount paid.

36. Sub-clause 12(5) requires that the Secretary give notice in the *Gazette* within 21 days of agreements that have been entered into with collecting organisations.

37. Sub-clause 12(6) allows that failure to give notice in the *Gazette* will not invalidate any collection agreement.

38. Sub-clause 12(7) provides for payment of expenses by FRDC to the collecting organisation in accordance with the terms of the agreement.

39. Sub-clause 12(8) binds FRDC to pay the amounts mentioned in sub-clause 12(7) as if it were a party to the agreement.

Clause 13: Industry consultation

40. This clause provides that the Secretary is to consult with the prescribed industry organisation before entering into an agreement for the collection of levy with a State, Territory or organisation other than the prescribed industry organisation. Failure to consult does not, however, invalidate an agreement.

Clause 14: Application of Audit Act

41. This clause provides that none of the accounting, banking or audit provisions in the *Audit Act 1901* apply to amounts collected by collecting authorities or organisations until they are paid to the Commonwealth. The requirements relating to the management of

the funds before payment to the Commonwealth will be as set out in this Bill and in the relevant agency agreement.

Clause 15: Exemption of small exports from duty

42. To ensure cost-efficient collection of levy, sub-clause 15(1) provides a threshold of 5000 kilograms per financial year of prawn exports below which there is no liability for an exporter to pay levy under the Prawn Export Charge Bill.

43. Sub-clause 15(2) provides that, if the amount of prawns exported does exceed 5000 kilograms, then the levy is payable on the whole amount of exports, not merely on the amount by which it exceeds 5000 kilograms.

44. Sub-clause 15(3) provides that the due date for payment of levy in respect of prawn exports cannot pre-date the day on which the amount of prawns exported first exceeds 5000 kilograms in a financial year. This protects the levy payer from the possibility of being levied penalty for late payment on any component of prawns exported before the total exceeded 5000 kilograms.

Clause 16: Commonwealth not to discriminate or give preference

45. The Constitution provides that the Commonwealth, in making laws relating to taxation, or to trade, commerce or revenue, shall not discriminate or give preference to one State or part of a State over another. This clause provides that the same requirement will apply to the drafting of agency agreements.

Clause 17: Penalty for non-payment

46. This clause sets the penalty to apply to late payment of levy.

47. Penalty is to be calculated at the end of the first month during which it is due at the rate of 2% on the amount of levy outstanding during that month. For each subsequent month, calculations of penalty are to be made on a compound basis, ie on the sum of levy then payable plus penalty already accrued at the end of the previous month.

Clause 18: Remission of penalty

48. This clause provides that the Minister or an authorised person may remit the whole or part of an amount of penalty.

49. Sub-clause 18(2) restricts the power of an authorised person (but not of the Minister) to remit penalty. The amount remitted by the authorised person must not exceed \$2000, or such lower figure as is specified in the authorisation.

Clause 19: Recovery of levy etc.

50. This clause provides for the recovery of levy and penalties as debts due to the Commonwealth.

Clause 20: Refund of levy etc.

51. This clause provides for refunds to be made in the case of overpayments of levy and other amounts.

Clause 21: Power to call for information

52. This clause provides that an authorised person may write to a person requiring information on matters that are relevant to the operation of the Act.

53. Increasingly, data are being stored in forms that are machine-readable only and thus not in forms that are immediately intelligible. Clause 21 recognises this and provides for a reasonable time to be specified in the notice requiring the information. It is also provided that a notice requesting information may require the information to be verified by statutory declaration.

Clause 22: Offences in relation to returns etc.

54. This clause details offences for failing to submit or provide a return or information as required under the Act and for presenting false or misleading information. Under current legislation, a penalty unit is equivalent to \$100.

55. Sub-clause 22(2) restricts the purposes for which returns of information under the Bill are admissible as evidence in prosecutions. This is intended to remove any extraneous disincentive to boat owners and prawn exporters providing accurate information.

Clause 23: Conduct of directors, servants and agents

56. This clause stipulates that, subject to certain conditions:-

the conduct of directors, servants and agents of a body corporate may be taken as that of the body corporate, and

- the conduct of agents acting for a person other than a body corporate may be taken to be that of the other person.

Clause 24: Appointment of authorised persons

57. This clause provides that the Secretary may appoint a person employed by, or in the service of, a collecting authority or collecting organisation to be an authorised person for the purposes of seeking returns or information under clause 21. The Secretary may appoint an officer of the Australian Public Service to be an authorised person for this and all other purposes specified in the Bill, ie those set out in clauses 18, 21 and 25.

Clause 25: Publishing of information

58. This clause is intended to enable the prescribed industry organisation to adequately carry out its responsibilities in advising the Minister. To enhance the organisation's ability to analyse trends and to consult levy payers, it is considered necessary for the Department to have the ability to release levy statistics and name and address details of levy payers to the prescribed industry organisation and to other persons as determined by the Secretary.

59. Sub-clause 25(2) ensures that information about levy payments may be made available only in the form of compiled statistics, which maintain the anonymity of levy payers.

Clause 26: Reconsideration and review of decisions

60. Sub-clause 26(1) allows for a person who is dissatisfied with a "relevant decision" to request the Minister to reconsider the decision. ,

61. Sub-clause 26(2) stipulates that the request for review must be made within 28 days of the decision coming to the notice of the person making the request.

62. Sub-section 26(3) requires reasons to be included in requests for review.

63. Sub-clause 26(4) requires the Minister, within 45 days of receiving the request, to reconsider the relevant decision and make a decision either in place of the original decision (whether in the same terms or not) or to revoke it.

64. Sub-clause 26(5) provides that after reconsidering a relevant decision the Minister must inform, in writing, the person requesting the review of the result.

65. Sub-clauses 26(6), (7) and (8) provide that application may be made to the Administrative Appeals Tribunal (AAT) for a review of a relevant decision. Any notice advising a person of a relevant decision must include reference to the fact that a review by the AAT is available to that person if desired.

66. Sub-clause 26(9) provides that failure to include advice that AAT review is available to a person will not invalidate the decision.

67. Sub-clause 26(10) defines "relevant decision" to mean a decision involving the remission of penalty for late payment.

Clause 27: Delegation by Secretary

68. This clause provides that the Secretary may delegate any or all of his or her powers under this legislation, other than the power to appoint authorised persons, to an officer of the Department. A delegate when exercising a delegated power is subject to the direction of the Secretary. The delegations will be made to the most senior officer available, but, as with collection agreements in other commodity areas, for purposes of clause 12, the delegate is unlikely to be a senior executive service officer.

Clause 28: Regulations

69. This clause makes provision for the Governor-General to make regulations under the Act providing for, but not limited to, the manner and payment of levy and other moneys, the keeping of accounts and other records in respect of boats and prawn exports, furnishing returns and information and setting penalties for breaches of the regulations.

70. To change the definition of a "prawn" for the purpose of levy collection, sub-clause 28(3) requires the Governor-General to take account of any relevant recommendation made to the Minister by the prescribed industry organisation.

71. Sub-clause 28(4) requires the prescribed industry organisation to obtain approval from its immediately preceding annual general meeting before making any recommendation about the definition of "prawns".

Clause 29: Orders

72. This clause provides for the Minister to have power to make Orders consistent with this Act.

Schedule

73. The Schedule lists species currently covered by the definition of prawns.