

# AQUATIC EAD RESPONSE LEVIES – EARLY CONSIDERATIONS FOR AQUATIC INDUSTRIES

## Aquatic Deed Working Group Information Paper

January 2017

### Background

Control of an aquatic emergency animal disease (EAD) incident conveys benefits to the public as well as to businesses.

A formal agreement (a deed) between governments and the private sector for responding to aquatic EAD incidents has been identified as an important measure to enhance Australia's management of aquatic animal diseases. Through the Aquatic Deed Working Group, government and industry representatives are working towards such a deed, similar to arrangements already in place for the terrestrial animal sector (*Emergency Animal Disease Response Agreement*, EADRA<sup>1</sup>) and the plant sector (*Emergency Plant Pest Response Deed*, EPPRD<sup>2</sup>).

Consistent with the existing deeds, one of the underlying principles of the aquatic deed is that those who benefit from aquatic EAD control contribute to its cost (the “beneficiary pays principle”). Industry parties to an aquatic deed will need to establish a mechanism to meet their cost sharing obligations of an aquatic EAD response.

This document is the second in a series in which we examine possible repayment mechanisms for aquatic animal industries that want to become parties to an aquatic deed. It is prepared for the information of these industries.

### Scope and purpose of this info paper

The Australian Government's role, through the Department of Agriculture and Water Resources (the department), is to liaise with industries that want a statutory levy and to guide the implementation of an effective collection system for them at minimum cost. This document explores some of the topics that should be discussed within an industry before approaching the Levies area in the department and the relevant policy area, noting:

***“For setting up a statutory levy, the department's Levy Principles and Guidelines<sup>3</sup> is the single most important document to understand and follow.”***

<sup>1</sup> <https://www.animalhealthaustralia.com.au/what-we-do/emergency-animal-disease/ead-response-agreement/>; accessed 11 November 2016

<sup>2</sup> <http://www.planthealthaustralia.com.au/biosecurity/emergency-plant-pest-response-deed/>; accessed 11 November 2016

<sup>3</sup> <http://www.agriculture.gov.au/ag-farm-food/levies/publications>; accessed 11 January 2017

## A. Legislative background to establishing an emergency response levy

First, let's look at some commonly used terms:

Levies and charges are taxes initiated at the request of primary industries and imposed on the producers in that industry. The term **"levies"** applies to taxes imposed on domestic products; the term **"charges"** applies to taxes imposed on imported and exported products.

The provisions for imposing a charge are identical to those for imposing a levy (very similar acts and regulations apply – see the [Appendix](#)). For the purposes of this paper, we will – for simplicity – mostly use the term "levies" (but please note that technically, an emergency response "levy" could be a "charge" if it is imposed on exported product).

Primary industries levies fund research and development (R&D), marketing, biosecurity and residue testing programs. **Emergency response levies (ERLs)** are biosecurity levies that help fund emergency animal disease response and emergency plant pest responses.

In the [Appendix](#), we have summarised information on levy-related legislation.

## B. The very first question: who in industry is going to develop a proposal?

Levy Principle #2 states that *"A request for a levy must be supported by industry bodies representing, wherever possible, all existing and/or potential levy payers, ..."*.

- It therefore makes sense that from the start, the process is driven by an industry body that is genuinely representative of prospective levy payers. If prospective levy payers are the producers, then the **"industry representative body"** should represent those producers.

*"While there is no single document or "check-list" for what makes an effective industry representative body, the following aspects are relevant. The body should:*

- *Truly represent the interests of its industry sector (primarily its members, but for the purposes of levy establishment, the body should ideally also be able to represent the interests of non-members)*
- *Provide information on the number of its members and non-members in the industry, and their proportion to the anticipated total number of levy payers*
- *Have the financial capability and capacity to represent the interests of its members and potential levy payers*
- *Have legal capacity, e.g. through being incorporated."*

## C. The second question: who should receive and handle the levies?

For a statutory levy, several "bodies" are involved.

- The Levies area in the department is the **"Levy collecting body"**; it is responsible for the collection of levies and for their disbursement to the relevant **"levy recipient bodies – LRBs"** and for ensuring compliance with levy legislation.

- After an EAD response in livestock, the department collects (through “**levy collection agents**”) the ERLs from the affected industries and disburses them to AHA as the LRB (similarly, PHA is the LRB for plant ERLs).
- The department also collects the statutory R&D levy on farmed prawns and disburses the funds to the Fisheries Research and Development Corporation (FRDC) who is a statutory R&D corporation and the LRB in this case.
- LRBs are accountable to levy payers and the Australian Government. Funding acts describe in detail the flow of monies between the department and the LRBs (also *rf.* the Appendix).

The **industry representative body** needs to submit its proposal to establish a levy to the Minister for Agriculture and Water Resources, with a letter of support from the LRB; therefore, early consideration of who will be the LRB is required.

***“Industries should consider candidates for the levy recipient body with custodianship of the Aquatic Deed in mind.***

- ***While there is no imperative for the two functions to rest with the same organisation, it does make sense if the organisation that receives the ERLs after an aquatic EAD response and needs to tally the expenses also looks after the aquatic deed in non-outbreak times.”***

## **D. Costs of establishing a levy**

While all levy proposals need to follow the *Levy Principles and Guidelines*, each proposal differs in complexity. Early consultation with the Levies area and relevant policy area in the department is highly recommended; once staff receive relevant data, they will be able to advise on estimated set-up<sup>4</sup> and on-going costs for the proposed levy.

**In the levy proposal stage, the Industry Representative Body will incur expenses through:**

- Preparation of a dossier for the formal levy proposal
- Extensive consultation on the proposed levy within the industry (members, non-members and other potential levy-payers), lasting between three to six months
- Arranging a ballot on the proposed levy (the ballot needs to be conducted by the Australian Electoral Commission or a State Electoral Commission, but under certain conditions and subject to ministerial<sup>5</sup> approval, a private company or an independent “returning officer” may be used.

<sup>4</sup> Once a levy establishment proposal is agreed and legislative changes implemented (e.g. amendments to the Levies Regulations – *rf.* the Appendix), the department will recover the costs it has incurred through its work. There is no standard rate; rather, the cost varies and can depend on a number of factors that determine the complexity of the proposal

<sup>5</sup> Or Parliamentary Secretary, or Department

- Past examples of totals for the Industry Representative Body range between \$35,000 and \$40,000; however, these are not necessarily appropriate benchmarks because for each proposal, the total figure is determined by the complexity of the specific case (especially the extent of the consultation required).

**Once the levy is imposed, there will be levy collection, administration and disbursement costs.**

- If the ERL were **set at an operative rate outside a response**, for example to build up a contingency fund, there would be on-going collection, administration and disbursement fees.
  - The department's costs are based on the effort required to administer the levy rather than on the amount of revenue collected. As such, cost recovery as a percentage of levies disbursed varies considerably, with the number of collection points (i.e. where the levy is collected, for example, at first point of sale) a key driver. In 2013-14, the percentage ranged from 0.1% to 7.7%<sup>6</sup>.
  - See the *Report to levies stakeholders 2015-2016*<sup>7</sup> for up-to-date information on the operations and financial performance of levies administration by the department.
- If the ERL were **zero-rated and became operative only after an aquatic EAD response**, administrative costs incurred by the levy collecting body (the department) would be charged to the LRB after the levy is activated.
- In both scenarios, the LRB would also incur costs which need to be reimbursed; legislation allows for such amounts to be taken from the received levy.

### **E. “All that work just for an emergency response levy?”**

The process to establish a new levy that complies with the *Levy Principles and Guidelines* can be costly and time-consuming (between 12-18 months on average, based on recent experience). It is therefore prudent to think about other levies that could be established at the same time as the ERL – and following the same process – with the aim to collect all levies at the same collection points, at the same time, by the same agents, thus providing economies of scale.

Perhaps the most obvious additional levy is **a levy to fund custodianship of the aquatic deed**.

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<sup>6</sup>

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Rural\\_and\\_Regional\\_Affairs\\_and\\_Transport/Agriculture\\_levies](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Agriculture_levies); accessed 4 January 2017

<sup>7</sup> <http://www.agriculture.gov.au/ag-farm-food/levies/publications>; accessed 4 January 2017

- Deed custodianship incurs on-going expenses outside emergency responses (deed maintenance and updates, training, etc.). A “company levy” is an efficient and equitable means of paying the (yet to be determined) custodian of the aquatic deed; such a levy could also raise additional funds for other biosecurity activities.
- AHA and PHA are the custodians of the EADRA and the EPPRD, respectively. Parties to the EPPRD and the EADRA must be (or become) company members; while some industry members discharge their annual financial liabilities by membership fee payments, most do it through a levy.

Farmed prawns were the first – and to date remain the only – aquatic commodity with a statutory R&D levy in place. While there is nothing stopping aquatic industries from seeking to establish their own **statutory R&D levies** at any time, the ERL process presents an opportunity to propose two levies in one process.

- A levy for R&D or marketing ensures long term, secure funding. Also, the Australian Government matches expenditure on eligible R&D (but not marketing), generally up to 0.5 per cent of the (ABARES-) determined industry gross value of production.
- For a current case study of establishing an ERL and R&D levy at the same time, see the proposal from the *Australian Tea Tree Industry Association*<sup>8</sup>.

*“Cost-effectiveness of proposing an emergency response levy would increase if an R&D/ marketing levy and/or a custodianship company levy were to be part of the same proposal process; it is also more cost-effective from an ongoing expense perspective.”*

## F. How to prepare for the first consultation

*“Some of the items detailed above require discussion among all prospective parties to the aquatic deed (e.g. custodianship). However, there are discrete questions that each prospective industry party itself should think about as early as possible.”*

Below is a list of items to consider even before engaging with the department’s Levies and policy area.

1. Who will be the **industry representative body** to lead the consultation process and liaise with the department and the Minister? How many of the producers in the industry are members of that body? What percentage of product volume does the body represent? What legal and financial capacity does this body have?
2. **Description of the industry:** What does it produce, and what are the volume and value? How many producers are in the industry? Who else is involved in the supply

<sup>8</sup> <http://www.teatree.org.au/>; accessed 29 December 2016

chain? How is the product altered along the chain? Is the product sold within Australia, or exported, or both? Is it sold evenly throughout the year or seasonally?

- The above data may help identify **efficient and practical levy collection points and collection frequencies**.
  - Are there already **levy collection agents** in the supply chain that could be used to achieve economies of scale for levy collection costs?
3. Description of the **product that is to be levied; when the levy is to be imposed; who is to pay the levy**. As an example, see the table below with information taken from “farmed prawns” as described in Schedule 27 Part 3, of the .

Product	<b><i>farmed prawns</i></b> means prawns that are: (a) produced in Australia by aquaculture; and (b) described below.																					
	<table><tr><th colspan="3">Farmed prawns</th></tr><tr><th>Item</th><th>Common name</th><th>Scientific name</th></tr><tr><td>1</td><td>Banana Prawn</td><td><i>Penaeus merguensis</i></td></tr><tr><td>2</td><td>Black Tiger Prawn</td><td><i>Penaeus monodon</i></td></tr><tr><td>3</td><td>Brown Tiger Prawn</td><td><i>Penaeus esculentis</i></td></tr><tr><td>4</td><td>Kuruma Prawn</td><td><i>Penaeus japonicus</i></td></tr><tr><td>5</td><td>School Prawn</td><td><i>Metapenaeus macleayi</i></td></tr></table>	Farmed prawns			Item	Common name	Scientific name	1	Banana Prawn	<i>Penaeus merguensis</i>	2	Black Tiger Prawn	<i>Penaeus monodon</i>	3	Brown Tiger Prawn	<i>Penaeus esculentis</i>	4	Kuruma Prawn	<i>Penaeus japonicus</i>	5	School Prawn	<i>Metapenaeus macleayi</i>
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Imposition of levy	levy is imposed on farmed prawns that ... are: (a) delivered, other than for storage, by the producer to another person; or (b) sold by the producer; or (c) used by the producer in the production of other goods.																					
Who pays the levy	levy imposed .. on farmed prawns is payable by the producer of the prawns.																					

4. Is the proposed levy imposition **equitable among levy payers**? Should there be **exemptions from the levy**, for example, for producers below a certain volume where the cost of collection would outweigh the levies collected?
5. **Levy rate** (e.g. x cents per unit of product) if the plan goes beyond a zero-rated ERL and is to build up a fund (operative ERL, custodianship levy, R&D levy, ...).
6. **Likelihood of support for a levy**: Will there be opposition, and if so, what may be its extent, source and nature? Can objections be addressed through consultation, Q&As, etc. ahead of the ballot process? Can majority support be achieved?

## G. How to get in contact with “Levies”

The Commonwealth Department of Agriculture and Water Resources welcomes the opportunity to provide any guidance, advice or feedback at all stages of the process and is keen to engage from the start with industries wishing to establish an ERL or other repayment mechanism.

Please contact them on the free call number: 1800 020 619 or by email: [levies.policy@agriculture.gov.au](mailto:levies.policy@agriculture.gov.au)

You will also find much useful information on levies on:

<http://www.agriculture.gov.au/ag-farm-food/levies>.

**For background information about aquatic deed development, please visit:**

<https://www.animalhealthaustralia.com.au/what-we-do/emergency-animal-disease/development-emergency-aquatic-animal-disease-response-arrangements/>

## Abbreviations and acronyms

ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences	<a href="http://www.agriculture.gov.au/abares">http://www.agriculture.gov.au/abares</a>
AHA	Animal Health Australia	<a href="https://www.animalhealthaustralia.com.au/">https://www.animalhealthaustralia.com.au/</a>
EAD	(Aquatic) emergency animal disease	
EADRA	Emergency Animal Disease Response Agreement	<a href="https://www.animalhealthaustralia.com.au/what-we-do/emergency-animal-disease/ead-response-agreement/">https://www.animalhealthaustralia.com.au/what-we-do/emergency-animal-disease/ead-response-agreement/</a>
EPPRD	Emergency Plant Pest Response Deed	<a href="http://www.planthealthaustralia.com.au/biosecurity/emergency-plant-pest-response-deed/">http://www.planthealthaustralia.com.au/biosecurity/emergency-plant-pest-response-deed/</a>
ERL	Emergency response levy	
FRDC	Fisheries Research and Development Corporation	<a href="http://frdc.com.au/Pages/home.aspx">http://frdc.com.au/Pages/home.aspx</a>
LRB	Levy recipient body	
PHA	Plant Health Australia	<a href="http://www.planthealthaustralia.com.au/">http://www.planthealthaustralia.com.au/</a>

## Appendix: Summarised information on levy-related legislation

### Imposition legislation

The *Primary Industries (Excise) Levies Act 1999* and the *Primary Industries (Customs) Charges Act 1999* authorise the imposition of primary industries levies and charges, respectively.

- According to the two Acts, **fishing and aquaculture are primary industries' activities that result in animals and animal products that are leviable**. To date, “farmed prawns” are the only aquatic commodity with a statutory R&D levy and charge in place.

Schedules in the two acts and their corresponding *The Primary Industries (Excise) Levies Act 1999* and the *Primary Industries (Customs) Charges Act 1999* authorise the imposition of primary industries levies and charges, respectively. and *The Primary Industries (Excise) Levies Act 1999* and the *Primary Industries (Customs) Charges Act 1999* authorise the imposition of primary industries levies and charges, respectively. impose – for specific commodities or groups of commodities – a particular levy or charge and make provisions for the operative rate of the levy or charge, the maximum rate, the person who is liable to pay, and any exemptions.

If an emergency response levy is to be imposed on something other than an animal or animal product, separate legislation is required. An example was the establishment of the *Horse Disease Response Levy* which in the event of a disease response would be imposed on horse feed and worm treatments for horses – i.e. not on horses or horse products as such.

### Collection legislation

*The Primary Industries Levies and Charges Collection Act 1991* and the *Primary Industries Levies and Charges Collection Regulations 1991* set out the basic reporting and levy and charge collection arrangements for primary products.

Because the horse disease response levy is established under a separate act (see above), there is a separate *Horse Disease Response Levy Collection Act 2011*.

### Disbursement legislation

These acts direct funds collected from levies to the levy recipient bodies. See the *AHA Funding Act 1996*<sup>9</sup> and the *PHA Funding Act 2002*<sup>10</sup> as examples where emergency response levies are directed to those companies to fund emergency responses. See the *FRDC Funding Agreement 2015-2019*<sup>11</sup> as an example that sets out the performance, reporting, accountability and industry consultation obligations for the FRDC as a statutory R&D corporation and the levy recipient body for R&D fisheries levies.

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<sup>9</sup> *Australian Animal Health Council (Live-stock Industries) Funding Act 1996*;  
<https://www.legislation.gov.au/Details/C2004C00676>; accessed 9 January 2017

<sup>10</sup> *Plant Health Australia (Plant Industries) Funding Act 2002*;  
<https://www.legislation.gov.au/Details/C2014C00040>; accessed 9 January 2017

<sup>11</sup> <http://frdc.com.au/about/frdc/corporate-documents/Pages/Funding-Agreement-2015-19.aspx>; accessed 9 January 2017