

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: BS1010/21

First Plaintiff: **TWEED BAIT PTY LTD ACN 010 917 674**
AND
Second Plaintiff: **TPF MANAGEMENT COMPANY PTY LTD ACN 065 200 268**
AND
Defendant **COMMONWEALTH OF AUSTRALIA**

Amended pursuant to the order of Brown J 18 November 2022.
Dated this 21 November 2022.

Clyde & Co

Clyde & Co, Solicitors for the Plaintiffs

FURTHER AMENDED CLAIM STARTING A REPRESENTATIVE PROCEEDING
UNDER PART 13A OF
THE CIVIL PROCEEDINGS ACT 2011 (Qld)

Representative proceeding

The plaintiffs bring this claim as representative parties under Part 13A of the *Civil Proceedings Act* 2011.

The group members to whom this proceeding relates are persons who (using terms defined in the Further Amended Statement of Claim filed herewith (**FASOC**)):

1. during some or all of the period from on or around 22 November 2016 to date (**Claim Period**):
 - (a) conducted a business of commercial fishing for some or all of the following:
 - (i) prawns;
 - (ii) other decapod crustaceans, including crabs, crayfish and yabbies;
 - (iii) polychaete worms,(together and severally **Carrier Species**);
 - (b) conducted such business in a manner that involved:
 - (i) catching Carrier Species in or including in areas subject to the State Fishing Restrictions; or

FURTHER AMENDED CLAIM (REPRESENTATIVE PROCEEDING)

Filed on Behalf of the Plaintiffs
Form 2B, Version 1, approved 24 February 2017
Uniform Civil Procedure Rules 1999
Rule 77B

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- (ii) movement of Carrier Species in a manner that was affected by the State Movement Restrictions; and
- (c) allege they suffered loss and damage by reason of:
 - (i) the outbreak in 2016 of white spot syndrome virus (**WSSV**) and white spot disease (**WSD**) in Carrier Species in Logan River and Moreton Bay in Queensland (being the **2016 Outbreak**);
 - (ii) the implementation of biosecurity measures in response to the 2016 Outbreak (**Biosecurity Responses**), including:
 - (1) the State Movement Restrictions;
 - (2) the State Fishing Restrictions;
 - (3) the Commonwealth Import Suspension; or
 - (4) Other Biosecurity Responses; or
 - (iii) adverse impacts on demand from consumers of Carrier Species of the safety or desirability of the Carrier Species (including for human consumption), resulting from publicity regarding the 2016 Outbreak (**Marketability Consequences**),

(Commercial Fishing Group Members); or

2. during some or all of the Claim Period:

- (a) conducted a business in or including the storage, processing or transport of Carrier Species;
- (b) conducted such a business in a manner that involved:
 - (i) handling Carrier Species farmed, caught or landed in areas affected by the State Movement Restrictions or the State Fishing Restrictions (**Moreton Bay Product**);
 - (ii) handling imported Carrier Species (**Imported Product**); or
 - (iii) movement of Carrier Species (whether Moreton Bay Product or Imported Product) in a manner that was affected by the State Movement Restrictions;
- (c) allege they suffered loss and damage by reason of:
 - (i) the 2016 Outbreak;
 - (ii) the Biosecurity Responses; or
 - (iii) the Marketability Consequences,

(Handling Group Members); or

3. during some or all of the Claim Period:

- (a) conducted a business in or including wholesaling Carrier Species (whether Moreton Bay Product or Imported Product);
- (b) for the purposes of the business, ordinarily moved stocks of Carrier Species in a manner that was affected by the State Movement Restrictions; and
- (c) allege they suffered loss and damage by reason of:
 - (i) the 2016 Outbreak;
 - (ii) the Biosecurity Responses; or

- (iii) the Marketability Consequences;
- (being the **Wholesaler Group Members**); or
- 4. during some or all of the Claim Period:
 - (a) conducted a business in or including the farming of prawns at a prawn farm or aquaculture facility (together and severally, **Prawn Farm**):
 - (i) located in the Restricted Logan River Area; or
 - (ii) using prawn larvae, or post-larval prawns, supplied from Prawn Farms located in the Restricted Logan River Area; and
 - (b) allege they suffered loss and damage by reason of:
 - (i) the 2016 Outbreak;
 - (ii) the Biosecurity Responses; or
 - (iii) the Marketability Consequences;

(Prawn Farmer Group Members),

and who;

- 5. as at the date of filing the FASOC;
 - (a) are members of or have applied for membership of The Prawn White Spot Litigation Funding Scheme (ARSN 647 887 027) (**Signatory Claimant**); or
 - (b) are:
 - (i) in relation to a Signatory Claimant who is an individual:
 - (1) a partner or former partner of a partnership in which the individual is or was a partner;
 - (2) a corporation of which the individual is or was a related entity or associate within the meaning of the Corporations Act 2001 (Cth);
 - (ii) in relation to a Signatory Claimant who is a corporation, an entity that is or was a related entity or associate of that corporation within the meaning of the Corporations Act 2001 (Cth);
 - (iii) in relation to a Signatory Claimant who is a trustee of a trust, any beneficiary or object of a power of appointment of such trust; and
 - (iv) in relation to a Signatory Claimant who is the beneficiary or object of a power of appointment of a trust, any trustee of such trust.

Details of claim

The plaintiffs claim:

- 1. Damages;

2. Interest pursuant to s 58(3) of the *Civil Proceedings Act 2011* (Qld);
3. Costs;
4. Such further or other orders as the Court may deem appropriate.

The plaintiffs make this claim in reliance on the facts alleged in the attached Amended Statement of Claim.

Questions common to claims of group members

The questions of law or fact common to the claims of the plaintiffs and group members (**Claimants**) are (using terms defined in the FASOC):

1. whether the Commonwealth owed the Biosecurity Duty to a class of person including the Claimants or any subclass of the Claimants;
2. if the Commonwealth owed the Biosecurity Duty:
 - (a) whether the Duty required the Commonwealth to take any and if so which of the Available Precautions;
 - (b) whether and if so how the Commonwealth failed to take any and if so which of the Available Precautions;
 - (c) whether the Commonwealth's failure to take any and if so which of the Available Precautions amounted to a breach of the Duty;
3. if the Commonwealth breached the Biosecurity Duty –
 - (a) whether any breach was a factual cause of the 2016 Outbreak; and
 - (b) whether it is appropriate that the Commonwealth's scope of liability for such breach should include liability for the Claimants' losses or any class of such losses;
4. what are the correct principles for identifying and measuring compensable losses suffered by the Claimants or any of them as a result of the Commonwealth's negligence;
5. whether the Commonwealth (by its officers or agents) caused:
 - (a) the Fishing Nuisance;
 - (b) the Farm Waters Nuisance;
 - (c) the Farm Land Nuisance;
6. if the Commonwealth caused a nuisance referred to in question 5, what are the correct principles for identifying and measuring compensable losses suffered by the Claimants or any of them as a result of nuisance caused by the Commonwealth.

ISSUED WITH THE AUTHORITY OF THE SUPREME COURT OF QUEENSLAND

And filed in the Brisbane Registry on ~~8 September 2022~~ 21 November 2022

Registrar:



To the defendant(s):

TAKE NOTICE that you are being sued by the plaintiffs in the Court.

The proceeding will be listed for an initial case conference at a date to be fixed by the judge to whom the proceeding is assigned: see, generally, Practice Direction 2 of 2017 "Representative Proceeding.

If you intend –

- to dispute this claim or to raise any counterclaim against the plaintiffs;
 - to assert that this Court does not have jurisdiction in this matter or to assert any irregularity;
 - to object that this proceeding has not been commenced in the correct district of the Court; or
 - to raise any other issues concerning the adequacy of the claim,
- you must attend the initial case conference so that directions may be made as to the manner by which (and the time frame within which) the relevant issue may be dealt with by the Court.

Address of Registry:
QEII Courts of Law Complex
415 Gorge Street
Brisbane QLD 4000

PARTICULARS OF THE PLAINTIFFS:

First Plaintiff's Name:	Tweed Bait Pty Ltd
First Plaintiff's address:	26 Industry Drive Tweed Heads South NSW 2486
Second Plaintiff's Name:	TPF Management Company Pty Ltd
Second Plaintiff's address:	631 Jacobs Well Road Woongoolba QLD 4207
Plaintiffs' solicitors name: and firm name:	Maurice Thompson Clyde & Co
Solicitor's business address:	Level 22, 12 Creek St, Brisbane QLD 4000
Address for service:	Level 22, 12 Creek St, Brisbane QLD 4000
Telephone:	07 3234 3000
Fax:	07 3234 3099
E-mail address (if any):	<u>Maurice.Thompson@clydeco.com</u>

Signed: *Clyde & Co*

Description: Solicitors for the Plaintiffs

Dated: ~~8 September 2022~~ 21 November 2022

This Claim is to be served on:

Commonwealth of Australia
Australian Government Solicitor
Level 11
145 Ann St
Brisbane QLD 4000
processservice@ags.gov.au

Amended pursuant to the order of Brown J on 18 November 2022.
Dated this 21 November 2022

Clyde & Co
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Clyde & Co, Solicitors for the Plaintiffs

SUPREME COURT OF QUEENSLAND

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AND

Second Plaintiff: **TPF MANAGEMENT COMPANY PTY LTD ACN 065 200 268**

AND

Defendant **COMMONWEALTH OF AUSTRALIA**

FURTHER AMENDED STATEMENT OF CLAIM

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The claim in this proceeding is made in reliance on the following facts:

PART A PARTIES AND GROUP MEMBERS

A.1. Plaintiffs

1. The first plaintiff, Tweed Bait Pty Ltd ACN 010 917 674 (**Tweed Bait**):
 - (a) is a corporation registered under the *Corporations Act 2001* (Cth) and able to sue in its own corporate name and style; and
 - (b) at all material times carried on a business processing, storing and wholesaling prawns purchased *inter alia* from commercial fishermen operating in Moreton Bay, nearby rivers and surrounding waters in Queensland.

Particulars

- (1) *The first plaintiff purchased bait prawns from commercial fishermen in Moreton Bay, nearby rivers and surrounding waters (Moreton Bay area).*
- (2) *The prawns were delivered by fishermen (or transporters engaged by the fishermen) to the first plaintiff at various depots (primarily its depot in Hemmant in Brisbane) and taken by the first plaintiff for sorting and packing at the first plaintiff's packing plant in Tweed Heads in northern New South Wales.*
- (3) *The packed prawns were supplied uncooked ("green") by the first plaintiff to wholesalers and retailers around Australia, or direct customers around Brisbane.*

- 1A. The second plaintiff, TPF Management Company Pty Ltd ACN 065 200 268 (**TPF**):
 - (a) is a corporation registered under the *Corporations Act 2001* (Cth) and able to sue in its own corporate name and style;
 - (b) carries, and at all material times carried, on a business of farming of prawns; and
 - (c) carries and at all material times carried on the said business at, *inter alia*, premises located at 121 Faciles Road in Alberton on the Logan River in Queensland (**TPF Farm**).

Particulars

- (1) *Immediately prior to the 2016 Outbreak TPF was conducting prawn aquaculture operations at the TPF Farm and at premises at 2 Nicholson Road in Cardwell in North Queensland (TPF Cardwell).*

- (2) *The TPF Cardwell farm harvested prawns for sale in the Christmas markets while the TPF Farm, operating in cooler conditions, continued the grow-out period for the purpose of selling larger prawns in the Easter markets.*
- (3) *Immediately prior to the 2016 Outbreak the TPF Farm comprised storage yards, water tanks, an algae room, a maturation shed, a larval shed, machinery sheds, a processing room, offices and grow-out ponds.*
- (4) *Water for the TPF Farm was drawn from the Logan River via a pump station into pipes discharging into a central channel commencing about 30m south of the near bank of the river. Water from the central channel was pumped into the grow-out ponds and reticulated into outflow drains that surrounded the pond complex and discharged into the River.*

A.2. Group Members

2. The plaintiffs bring this proceeding on their own behalf and, pursuant to Part 13A of the *Civil Proceedings Act 2011* (Qld), on behalf of other persons (**Group Members**) (the plaintiffs and Group Members being collectively **Claimants**) who:
 - (a) during some or all of the period from on or around 22 November 2016 to date (**Claim Period**):
 - (i) conducted a business of commercial fishing for some or all of the following:
 - (A) prawns;
 - (B) other decapod crustaceans, including crabs, crayfish and yabbies;
 - (C) polychaete worms,(together and severally **Carrier Species**);
 - (ii) conducted such business in a manner that involved:
 - (A) catching Carrier Species in or including in areas subject to the State Fishing Restrictions (pleaded in paragraph 83(a)(ii) below); or
 - (B) movement of Carrier Species in a manner that was affected by the State Movement Restrictions (pleaded in paragraph 83(a)(i) below); and
 - (iii) allege they suffered loss and damage by reason of:

- (A) the outbreak in 2016 of white spot syndrome virus (**WSSV**) and white spot disease (**WSD**) in Carrier Species in Logan River and Moreton Bay in Queensland (being the 2016 Outbreak pleaded in paragraph 82 ~~80~~ below);
- (B) the implementation of biosecurity measures in response to the 2016 Outbreak (**Biosecurity Responses**), including:
 - (1) the State Movement Restrictions pleaded in paragraph 83(a)(i) below;
 - (2) the State Fishing Restrictions pleaded in paragraph 83(a)(ii) below;
 - (3) the Commonwealth Import Suspension pleaded in paragraph 83(a)(iii) below; and
 - (4) Other Biosecurity Responses as pleaded in paragraph 83(a)(v) below;
 or
- (C) adverse impacts on demand from consumers of Carrier Species of the safety or desirability of the Carrier Species (including for human consumption), resulting from publicity regarding the 2016 Outbreak (**Marketability Consequences**),

(**Commercial Fishing Group Members**); or

- (b) during some or all of the Claim Period:
 - (i) conducted a business in or including the storage, processing or transport of Carrier Species;
 - (ii) conducted such a business in a manner that involved:
 - (A) handling Carrier Species farmed, caught or landed in areas affected by the State Movement Restrictions or the State Fishing Restrictions (**Moreton Bay Product**);
 - (B) handling imported Carrier Species (**Imported Product**); or
 - (C) movement of Carrier Species (whether Moreton Bay Product or Imported Product) in a manner that was affected by the State Movement Restrictions;
 - (iii) allege they suffered loss and damage by reason of:
 - (A) the 2016 Outbreak;
 - (B) the Biosecurity Responses; or
 - (C) the Marketability Consequences,

(Handling Group Members); or

- (c) during some or all of the Claim Period:
 - (i) conducted a business in or including wholesaling Carrier Species (whether Moreton Bay Product or Imported Product);
 - (ii) for the purposes of the business, ordinarily moved stocks of Carrier Species in a manner that was affected by the State Movement Restrictions; and
 - (iii) allege they suffered loss and damage by reason of:
 - (A) the 2016 Outbreak;
 - (B) the Biosecurity Responses; or
 - (C) the Marketability Consequences;

(Wholesaler Group Members);

- (d) during some or all of the Claim Period:
 - (i) conducted a business in or including the farming of prawns at a prawn farm or aquaculture facility (together and severally, **Prawn Farm**):
 - (A) located in the Restricted Logan River Area defined in paragraph 55(a)(i) below; or
 - (B) using prawn larvae, or post-larval prawns, supplied from Prawn Farms located in the Restricted Logan River Area;
 - (ii) allege they suffered loss and damage by reason of:
 - (A) the 2016 Outbreak;
 - (B) the Biosecurity Responses; or
 - (C) the Marketability Consequences;

(Prawn Farmer Group Members);

and who;

- (e) as at the date of filing this further amended statement of claim;
 - (i) are members of or have applied for membership of *The Prawn White Spot Litigation Funding Scheme* (ARSN 647 887 027) (**Signatory Claimant**); or
 - (ii) are:
 - (A) in relation to a Signatory Claimant who is an individual:

- (1) a partner or former partner of a partnership in which the individual is or was a partner;
- (2) a corporation of which the individual is or was a related entity or associate within the meaning of the *Corporations Act 2001* (Cth);
- (B) in relation to a Signatory Claimant who is a corporation, an entity that is or was a related entity or associate of that corporation within the meaning of the *Corporations Act 2001* (Cth);
- (C) in relation to a Signatory Claimant who is a trustee of a trust, any beneficiary or object of a power of appointment of such trust; and
- (D) in relation to a Signatory Claimant who is the beneficiary or object of a power of appointment of a trust, any trustee of such trust.

Particulars

Prawn aquaculture facilities include both hatcheries and “grow out” facilities: Prawn IRA [PLF.001.001.0461] at page 13.

A.3. The Commonwealth

3. The Defendant (**Commonwealth**):

- (a) is a body politic capable of being sued;
- (b) regulated biosecurity risks to, and biosecurity emergencies in, Australia under:
 - (i) the *Quarantine Act 1908* (Cth) (*Quarantine Act*) from 1 July 1909 until 156 June 2016; and
 - (ii) the *Biosecurity Act 2015* (Cth) (*Biosecurity Act*) from 16 June 2016;
- (c) exercised its executive powers with respect to biosecurity by:
 - (i) Commonwealth entities, including the Department of Agriculture and Water Resources (CDAWR, also known at various times as the Department of Agriculture, Fisheries and Forestry and the Department of Agriculture) and Biosecurity Australia;
 - (ii) Ministers:

- (A) appointed as Ministers of State for the Commonwealth pursuant to s 64 of the *Constitution of Australia* to administer CDAWR; and
 - (B) who were “the Minister” for the purposes of the *Quarantine Act* and *Biosecurity Act*;
- (iii) at all material times:
- (A) until 15 June 2016 – the Director of Animal and Plant Quarantine (**Quarantine Director**) appointed in accordance with s 8B of the *Quarantine Act*; and
 - (B) on and from 16 June 2016 – the person who was, or was acting as, the Agriculture Secretary pursuant to s 540 of the *Biosecurity Act* (**Biosecurity Director**);
- (d) was, at all material times, vicariously liable for the acts and omissions pleaded below of:
- (i) the Quarantine Director or the Biosecurity Director as the case may be (such person being hereafter, as the context may admit, **Commonwealth Director**);
 - (ii) subordinates of the Commonwealth Director reporting directly to the Commonwealth Director; and
 - (iii) officers of CDAWR, including officers engaged in quarantine inspections pursuant to the *Quarantine Act* or the *Biosecurity Act* (**Inspectors**),
- (together and severally, **Biosecurity Officers**).

PART B WSSV AND WSD

4. WSSV:
- (a) is a virus affecting Carrier Species;
 - (b) was first reported in China between 1991 and 1992;
 - (c) by the end of the 1990s, had become endemic in Asia and in North and South America;
 - (d) can be transmitted to susceptible animals by the animals’:
 - (i) oral consumption of infected tissue from another infected susceptible animal; and/or
 - (ii) exposure to water contaminated with the virus;
 - (e) can survive commercial freezing, storage and transport;

- (f) is the pathogenic cause of WSD; and
 - (g) prior to 2016:
 - (i) was exotic to Australia;
 - (ii) had never been present in Carrier Species populations farmed or caught in Queensland; and
 - (iii) other than the Darwin Incident described in paragraph 17 below, had not been present in Carrier Species in the Australian Fishing Zone (as defined in s 4 of the *Fisheries Management Act 1991* (Cth)) (such Carrier Species being, whether farmed or wild, **Domestic Species**).
5. WSD:
- (a) is typically lethal to Carrier Species;
 - (b) is particularly lethal to prawns farmed in prawn farms, causing up to 100 per cent (100%) mortality within 3-10 days after first presentation of symptoms;
 - (c) is difficult to detect in wild populations of Carrier Species.
6. The matters pleaded in paragraphs 4 and 5 were at all material times known to the Commonwealth.

Particulars

- (1) *Such knowledge is to be inferred from the fact that the said matters were referred to in the 2009 Prawn IRA (pleaded below), being document [PLF.001.001.0461], at pages 99, 100, 103;*
- (2) *The said matters were further referred to in:*
 - (a) *CDAWR's report titled 'Report into the cause of white spot syndrome virus outbreak in the Logan River area of Queensland – December 2016' and published on or about 22 May 2017 (CDAWR Interim Report), being document [PLF.001.001.5074], at pages 5-7; and*
 - (b) *the Inspector-General of Biosecurity's report titled: "Uncooked prawn imports: effectiveness of biosecurity controls" (Review report no. 2017-18/01) (IG Report), being document [PLF.001.001.2871], at pages 50, 100;*

- (3) *All documents identified in this pleading by document identification numbers are available from the plaintiffs on request.*
- (4) *Further particulars may be provided after discovery.*

PART C COMMONWEALTH BIOSECURITY REGULATION AND KNOWLEDGE

C.1. Period to 165 June 2016 – *Quarantine Act 1908 (Cth)*

7. At all material times prior to 165 June 2016, pursuant to the *Quarantine Act*:
 - (a) the Commonwealth had power to, *inter alia*:
 - (i) appoint the Quarantine Director, who was responsible for execution of the Act, and any regulations and proclamations in force under the Act, in relation to animal and plant quarantine (s 8B);
 - (ii) appoint quarantine officers (animals or plants) (s 9AA(3));
 - (b) all goods on board an overseas vessel that arrived in Australia from a place outside Australia, or which had been on board that vessel since its arrival in Australia, were subject to quarantine (s 18(2)(a)(i));
 - (c) goods subject to quarantine remained so until they were released from quarantine (s 19A(1)), subject to pratique granted to a vessel or installation;
 - (d) goods forming part of the cargo of a vessel landed in Australia, that were subject to quarantine, were subject to restrictions as to movement without permission of a quarantine officer or the Quarantine Director (s 44B);
 - (e) a quarantine officer (including Inspectors as defined above) had power to examine any imported goods that had not been released from quarantine (s 44C(1));
 - (f) a quarantine officer was obliged:
 - (i) if he or she was of the opinion that there was an unacceptably high level of quarantine risk in respect of the goods – to order the goods into quarantine; or
 - (ii) otherwise – to release the goods from quarantine (s 44C(2));
 - (g) the Commonwealth had power to:

- (i) on application by the owner or occupier of a place and on payment of the prescribed fee, approve places where goods subject to quarantine may be treated or otherwise dealt with (s 46A);
 - (ii) direct that goods ordered into quarantine be detained or exported from Australia (ss 48(1)(a) and (1)(c));
 - (iii) examine imported animals that had not been released from quarantine (s 52(1)); and
 - (iv) enter premises, detain vessels, search and examine things, and take samples for testing in order determine whether the Act was being complied with (ss 66AA(1)(a), (b) and (f) and 66AB(1)(a) and (b));
- (h) the Commonwealth exercised the powers referred to above by developing and implementing a system of quarantine in respect of animals and animal products imported into Australia.

Particulars

The relevant features of the Commonwealth's quarantine system relied upon by the plaintiffs are set out in sections C.2 to C.4 below.

C.2. 2006-2009 Prawn IRA

8. In or about and from November 2006, Biosecurity Australia was:
- (a) an agency within CDAWR (which in November 2006 was called the Department of Agriculture, Fisheries and Forestry); and
 - (b) responsible for *inter alia* policy advice to the Australian Quarantine Inspection Service (AQIS) concerning biosecurity risks associated with importation of animals and animal products.
9. In or about:
- (a) November 2006, Biosecurity Australia released in draft form; and
 - (b) October 2009, Biosecurity Australia released in final form;
- a document titled "*Generic Import Risk Analysis Report for Prawns and Prawn Products*" (Prawn IRA), in order to *inter alia*:

- (i) identify pests and diseases relevant to non-viable (that is, not live) uncooked prawns and prawn products (including without limitation whole prawns, prawn meat or other prawn-based products) (**prawn meat**) intended for human consumption;
- (ii) assess the risks posed by those pests and diseases; and
- (iii) if those risks were unacceptable – specify measures that could be taken to reduce those risks to an acceptable level.

Particulars

- (1) *The plaintiffs does not presently have access to a copy of the November 2006 draft of the Prawn IRA (the **2006 Draft Prawn IRA**).*
- (2) *The October 2009 final form of the Prawn IRA is document [PLF.001.001.0461] (the **2009 Final Prawn IRA**).*
- (3) *So far as the plaintiffs are is able to say prior to discovery, the 2006 Draft Prawn IRA was substantially identical to the 2009 Final Prawn IRA save that it did not include marinating as a type of Coating: see Appendix 1 to the 2009 Final Prawn IRA (pp.181-2).*
- (4) *All further references to the Prawn IRA in this pleading are, unless the context indicates otherwise, references to the 2009 Final Prawn IRA.*

10. The Prawn IRA stated *inter alia* that or to the effect that:

- (a) the most likely pathways (**vectors**) that could lead to Domestic Species being exposed to uncooked prawns infected with pathogenic agents were:
 - (i) use of imported prawns as feed for crustacean broodstock, or as feed for crustaceans in research facilities and public aquaria;
 - (ii) disposal of solids and liquid waste from commercial processing of imported prawns; and
 - (iii) the use of imported prawns as bait for recreational fishing;
- (b) there was evidence suggesting that there had been an increase in the use, as bait, of prawns intended for human consumption;
- (c) the regular introduction of relatively small amounts of prawn material into the aquatic environment, through its use as bait, would present a significant pathway whereby wild crustaceans could become exposed to infected imported prawn meat;

- (d) there was potential, through recreational fishing in farm inlet channels, for recreational bait-use to lead to direct exposure of farmed crustaceans to infected imported prawn meat, thereby creating a “potentially significant exposure pathway”;
- (e) in the aquatic environment, if a disease does establish in a population following exposure, it is generally not possible to prevent its spread by natural means;
- (f) if an exotic disease agent were to establish in a wild aquatic animal population, it would be near-impossible to eradicate;
- (g) if the suspected outbreak of WSSV in the Northern Territory in 2000 (being the Darwin Incident) had become established, then zoning of the affected area and introduction of interstate movement controls on live crustaceans and crustacean products, pending eradication of the agent, would have been expected;
- (h) the establishment of a disease affecting prawns could harm prawn farms economically, through:
 - (i) the costs of implementing additional farm management procedures, including treatment of water and exclusion of pests;
 - (ii) the loss of domestic (and international) markets;
 - (iii) market oversupply during destocking, and resulting reduction of prices received for product; and
 - (iv) significant production losses due to disease;
- (i) the establishment in Australia of a disease affecting prawns could adversely impact the economic interests of associated industries, including processors, wholesalers and retailers;
- (j) any reduction in a wild prawn fishery, caused by the establishment of a disease affecting wild prawns, would be expected to diminish the capacity of the fishery to support extant numbers of fishers.

Particulars

Prawn IRA [PLF.001.001.0461] at pp.73, 78-79, 86, 90, 94 and 95.

11. The Prawn IRA further stated, in relation to the risk of WSSV associated with the importation of non-viable (dead), farm-sourced, frozen, uncooked whole prawns intended for human consumption, that or to the effect that:
 - (a) infectious WSSV had been detected in Australia in imports of the said products;

- (b) the presentation of clinical signs of WSD is variable, and clinically and sub-clinically infected prawns would be expected routinely to pass visual inspection procedures;
- (c) in the absence of any import controls, it was expected (by Biosecurity Australia) that significant volumes of prawns or associated wastes potentially infected with WSSV would be utilised as recreational fishing bait or berley;
- (d) as a result of the matters in paragraph 11(c), bait or berley use represented a significant pathway by which wild crustaceans could become exposed to WSSV;
- (e) use of imported prawns as bait for recreational fishing activities in or near prawn farm inlet channels (resulting in infected prawn tissue entering ponds through intake water) was a potentially significant WSSV exposure pathway for farmed crustaceans;
- (f) if WSSV were to become established in wild crustacean populations in the vicinity of prawn aquaculture facilities, WSSV could be introduced to farmed populations via movements of wild crustaceans;
- (g) the establishment of WSSV in an individual prawn farm could be followed by spread to adjacent farms, then general dispersal within a region, and interstate spread;
- (h) a strategy had been developed (by Biosecurity Australia) for control and eradication of WSSV in the event of an outbreak, which could include:
 - (i) quarantine and movement controls on crustaceans and things in declared areas to prevent the spread of infection;
 - (ii) destruction of all clinically diseased or dead prawns as soon as possible, to prevent further virus shedding;
 - (iii) decontamination of facilities, products and things to eliminate the virus from infected premises and to prevent spread of infection;
 - (iv) zoning to define and maintain infected and disease-free zones; and
 - (v) hygiene and biosecurity measures aimed at mitigating the on-farm effects of WSD;
- (i) the “**unrestricted risk**” (that is, the risk estimate derived in the absence of specific risk management measures) associated with WSSV had been determined to be high;
- (j) the unrestricted risk exceeded Australia’s “appropriate level of protection” (**ALOP**), and therefore, risk management was deemed necessary.

Particulars

- (1) *The ALOP was described in the Prawn IRA [PLF.001.001.0461] at [2.1].*

(2) *The other matters pleaded above are contained in pages 100 to 107 of the Prawn IRA.*

C.3. Import Protocol and other guidelines

12. Biosecurity Australia:

- (a) in or about July 2007 in the *Biosecurity Australia Policy Memorandum 2007/16 (2007 Memorandum)*; and
- (b) in the Prawn IRA (in its final form);

stated that or to the effect that in order to achieve Australia's ALOP with respect to WSSV, all imported prawns or prawn products (being prawn meat as defined above) would need to be:

- (i) sourced from countries or zones determined to the satisfaction of Australian government authorities to be free of WSSV; or
- (ii) cooked to a minimum time and temperature standard, in premises approved by and under the control of an appropriate Competent Authority, so that all the protein in the prawn meat was coagulated and no uncooked meat remained; or
- (iii) highly processed (that is, with the head and shell removed but with the last shell segment and tail fans permitted) (**Highly Processed**) and coated for human consumption (that is, breaded, battered, marinated or processed into a dumpling, spring roll, samosa or dimsum-type product) (**Coated**); or
- (iv) Highly Processed and, as to each batch (**Batch**) imported:
 - (A) held in quarantine control in Australia until tested:
 - (1) using polymerase chain reaction (**PCR**) tests, applied to
 - (2) a sampling regimen that would provide 95% confidence of detecting the agent if present at 5% prevalence,**(Batch Testing)**; and
 - (B) in the event that the Batch Testing returned positive results – re-exported, destroyed or further processed (i.e. cooked) in a facility approved by AQIS for that purpose;

(the matters in (i) to (iv) being together and severally the **Import Protocol**).

Particulars

- (1) *The 2007 Memorandum is [PLF.001.001.2636].*
- (2) *The 2007 Memorandum and the Prawn IRA use the term 'Competent Authority' in the sense in which it is used in the Manual of Diagnostic Tests for Aquatic Animals (OIE Manual) (being [PLF.001.001.3197]) published by the World Organisation for Animal Health (the Office International des Epizooties) (OIE). So much is to be inferred from:*
 - (a) *the references to the OIE Manual in the 2007 Memorandum and the Prawn IRA;*
 - (b) *the absence of any definition of 'Competent Authority' in those documents; and*
 - (c) *the presence of a definition of 'Competent Authority' in the OIE Manual.*
- (3) *In turn, the term 'Competent Authority' as it appears in the OIE Manual is defined as being used in sense defined in the Aquatic Animal Health Code published by the OIE (OIE Code) (being [PLF.001.001.0106]): OIE Manual (2003 edition) at page 3. 'Competent Authority' is defined in the OIE Code (at page xiii) as:*

'the Veterinary Authority or other Government Authority of a Member Country having the responsibility and competence for ensuring or supervising the implementation of aquatic animal health and welfare measures, international health certification and other standards and recommendations in the Aquatic Code in the whole territory'.
- (4) *'Batch' was defined on page 2 of the 2007 Memorandum [PLF.001.001.2636] as "a population from a different pond population or fishing period population".*
- (5) *The Import Protocol was specified on pages 2-4 of the 2007 Memorandum [PLF.001.001.2636] and page 175 of the Prawn IRA [PLF.001.001.0461].*
- (6) *So far as the plaintiffs are ~~is~~ able to say prior to discovery, the sampling procedure for Batch Testing consisted of selecting 5 samples from 13 cartons selected at random from each Batch, giving a total sample of 65 samples from each Batch: see IG Report [PLF.001.001.2871] at page 74.*
- (7) *Further particulars may be provided following discovery.*

13. At all material times from not later than the date of the Prawn IRA, Inspectors were directed by CDAWR to carry out sampling for Batch Testing in accordance with internal guidelines published by CDAWR from time to time.

Particulars

- (1) *The guidelines included the “Instruction & Guideline: Prawn sampling for disease testing, version 3.0” issued by the Department of Agriculture, Fisheries and Forestry, 28 May 2013. The document is referred to in IG Report [PLF.001.001.2871] at pages 86 and 175. The plaintiff does not, at the time of filing this pleading, have a copy of that document.*
- (2) *Further particulars may be provided after discovery.*

14. In April 2010, Biosecurity Australia issued *Biosecurity Australia advice 2010/11: quarantine policy determination for prawns and prawn products (2010 Biosecurity Advice)*, permitting the importation of prawn meat subject to:
- (a) the Quarantine Act; and
- (b) the application of the sanitary measures as specified in the Prawn IRA (being the Import Protocol).

Particulars

The 2010 Biosecurity Advice is [PLF.001.001.5144].

C.4. 2012 Intergovernmental Agreement on Biosecurity

15. In 2012, the Commonwealth entered into the Intergovernmental Agreement on Biosecurity (**IGAB**), under which the Commonwealth:
- (a) has formal responsibility for international government-to-government relations and Australia’s compliance with international sanitary and phytosanitary obligations including import and export conditions (cl 7.6);
- (b) is responsible for establishing Australia’s ALOP in order to meet its international obligations (cl 7.7); and

- (c) has responsibility for “risk management measures pre-border and at the Australian border and associated compliance and enforcement” (cl 7.11).

Particulars

The IGAB is [PLF.001.001.5114].

C.5. Period from 165 June 2016 – Biosecurity Act 2015 (Cth)

16. At all material times on and from 165 June 2016, pursuant to the *Biosecurity Act*:

- (a) the Commonwealth:
 - (i) administered the *Biosecurity Act* through the Biosecurity Director, who was the person who was, or was acting as, the Agriculture Secretary (ss 540 and 541(1));
 - (ii) had power to authorise persons to be biosecurity officers under the Act (s 545(1));
- (b) goods brought into Australia were subject to biosecurity control from the time that the aircraft or vessel carrying the goods entered Australian territory until the time that the goods were released from biosecurity control in accordance with Part 1, Division 10 of the Act (s 119);
- (c) the Commonwealth had power to:
 - (i) inspect, take samples or test goods subject to biosecurity control (s 125(1) to (3));
 - (ii) give directions to a person in charge of the goods relating to the movement of the goods (s 128(1)(a)), or cause them to be moved to another place (s 128(1)(b));
 - (iii) if certain conditions were satisfied, require biosecurity measures to be taken, including movement of the goods, treatment of the goods, export of the goods from Australia or destruction of the goods (ss 131 to 133, 135 and 136);
 - (iv) release goods from biosecurity control (s 162);
 - (v) approve arrangements allowing persons (**Biosecurity Industry Participants** or **BIPs**) to carry out activities to manage biosecurity risks associated with specified goods, premises or things (including the release of goods from biosecurity control), and to impose conditions on such approval (ss 162(1)(b) and 405 to 407);
 - (vi) vary, suspend or revoke approved BIPs arrangements (ss 413, 417 and 423);

- (vii) determine that specified classes of goods must not be imported into Australia unless specified conditions are complied with, including a condition that the goods must not be imported unless a permit has been granted (s 174(1) and (4));
 - (viii) grant permits authorising the importation of otherwise-prohibited goods, and determine the conditions on which those permits were granted (ss 176, 177, 179 and 180);
 - (ix) vary, suspend or revoke permits (s 181(1)); and
- (d) the Commonwealth exercised the powers referred to above by developing and implementing a system of quarantine in respect of animals and animal products imported into Australia.

PART D 2016 OUTBREAK

D.1. Lead-up to 2016 Outbreak

November 2000 'Darwin Incident'

17. At all material times from about November 2000, the Commonwealth Director knew or ought reasonably to have known that in or about late 2000:
- (a) uncooked prawn products imported from Indonesia and infected with WSSV had been fed to:
 - (i) crabs and fish at the Darwin Aquaculture Centre, and
 - (ii) black tiger prawns at the Darwin Aquaculture School;
 - (b) crustaceans which had been fed the imported prawns had become infected with the WSSV; and
 - (c) the WSSV infection had been discharged through the discharge systems of the Darwin Aquaculture Centre and spread to wild shore crabs and prawns in waters adjacent to the Centre's discharge outlet;

(the Darwin Incident).

Particulars

- (1) *CDAWR's knowledge is to be inferred from:*

- (a) *the fact that the Northern Territory Government alerted the Consultative Committee on Emergency Animal Disease (CCEAD) to the incident in November or December 2000, and CCEAD's membership included representatives from CDAWR;*
 - (b) *the fact that the Darwin Incident was subsequently referred to in documents prepared by CDAWR, including:*
 - (i) *the 2009 Final Prawn IRA [PLF.001.001.0461] (pages 2, 74, 182 and Appendix 2); and*
 - (ii) *'AQUAVETPLAN Disease Strategy: White Spot Disease, Version 2', being document [PLF.001.001.0001] (AQUAVETPLAN), page 11;*
 - (c) *the matters stated in the IG Report [PLF.001.001.2871] at pages 9, 52-53, 132 and 146.*
- (2) *Further particulars may be provided following discovery.*

Systemic import sector problems 2013-2016

18. At all material times from not later than December 2013, CDAWR was aware that:
- (a) *batches of uncooked prawns imported from three (3) countries, purchased at three (3) different supermarkets in Geelong in Victoria, had tested positive for WSSV; and*
 - (b) *the WSSV was infectious, and was detected at relatively high levels.*

Particulars

- (1) *CDAWR's knowledge is to be inferred from:*
 - (a) *communications between CDAWR and the Australian Animal Health Laboratory (AAHL) in or around May and December 2013; and*
 - (b) *the matters stated on page 93 of the IG Report [PLF.001.001.2871].*
- (2) *AAHL was (and under the name Australian Centre for Disease Preparedness is) a high security (Biosafety Level 4) laboratory for exotic animal disease diagnosis and research.*
- (3) *Further particulars may be provided following discovery.*

19. Between 2013 and 2016, CDAWR became aware of 2,048 instances of non-compliance by importers with prawn import conditions, including the Import Protocol.

Particulars

CDAWRD's awareness is to be inferred from the contents of the IG Report [PLF.001.001.2871] at pages 94-95.

March 2016 – Operation Cattai

20. On 16 March 2016, CDAWR commenced an investigation (**Operation Cattai**) into systemic non-compliance, by importers, with import conditions for uncooked prawn products.

Particulars

Operation Cattai is the investigation referred to on page 95 of the IG Report [PLF.001.001.2871].

21. In or about late June 2016, testing by AAHL reported that 54 of the 63 (86%) of imported uncooked prawn samples purchased from retail and wholesale outlets in Brisbane, Sydney and Melbourne as part of Operation Cattai had tested positive for WSSV.

Particulars

The AAHL testing is the testing referred to on pages 95-96 of the IG Report [PLF.001.001.2871].

D.2. Critical Failure Period

22. During the period from not later than 1 July 2015 until 6 January 2017 (**Critical Failure Period**), various persons imported into Australia consignments of uncooked prawn meat that was Highly Processed but not Coated (**Consignments**).

Particulars

*The Consignments were made up of prawn meat packed in plastic packets, which were in turn packed in boxes or cartons (**Cartons**), which were in turn packed in shipping containers.*

23. The Consignments included Consignments of prawn meat that was:
- (a) packaged such that more than one Batch was or could be represented in any given Carton within the Consignment;
 - (b) shipped or packaged in a way that did not permit Inspectors to identify how many Batches were contained in the Consignment; further or alternatively
 - (c) shipped or packaged in a way that did not permit Inspectors to differentiate between prawn meat from one Batch within the Consignment, and prawn meat from another Batch within the Consignment;

(Unbatched Consignments).

Particulars

- (1) *The Unbatched Consignments are consignments of the kind described in the IG Report [PLF.001.001.2871] at pages 15, 73-74.*
- (2) *Further particulars may be provided after discovery.*

24. From time to time during the Critical Failure Period some importers, by themselves, their servants or agents, in relation to Consignments of imported prawn meat:
- (a) altered the Consignments by placing prawn meat known or thought by the importer to be or be likely to be free of WSSV and WSD (**clean product**) into Cartons (**Doctored Cartons**) within the Consignment;
 - (b) altered the Consignments by placing:
 - (i) Doctored Cartons in locations that were more readily physically accessible by Inspectors; and
 - (ii) Cartons that were not Doctored Cartons in locations that were not physically accessible by Inspectors;
 - (c) knowingly submitted clean product to Inspectors for sampling and testing, and hid from Inspectors prawn meat that was not clean product;

- (d) deliberately mislabelled product within Consignments so that it was not identified by Inspectors as requiring testing; further or alternatively
 - (e) otherwise took deliberate steps to prevent or impede Batch Testing of every Batch within a Consignment;
- (collectively and severally, the **Tampering Practices**).

Particulars

- (1) *So far as the plaintiff is able to say prior to discovery and receipt of expert reports, the persons who engaged in the Tampering Practices are the persons mentioned in the IG Report [PLF.001.001.2871] (see esp at pages 15, 97, 101 and 102) and will be known to the Commonwealth.*
- (2) *Further particulars may be provided after discovery.*

25. During the Critical Failure Period, Inspectors knew or suspected, or ought reasonably to have known or suspected, that Consignments had been compromised by some or all of the Tampering Practices (**Notice of Tampering**).

Particulars

- (1) *In the case of the Tampering Practices pleaded in paragraphs 24(a) and 24(b), Inspectors knew or suspected, or should have known or suspected because:*
 - (a) *those practices required the importer to break the seal on the shipping container holding the Consignment; and*
 - (b) *the breaking of that seal was, or ought by the exercise of reasonable care, to have been evident to the Inspectors.*
- (2) *In the case of the Tampering Practice pleaded in paragraph 24(c), Inspectors knew or suspected, or ought reasonably to have known or suspected, because of the fact of the importer presenting the prawn meat or Carton to the Inspector, rather than the Inspector selecting the prawn meat or Carton themselves.*
- (3) *Further particulars may be provided following discovery.*

26. During the Critical Failure Period, Inspectors, in sampling Consignments for the purpose of Batch Testing:

- (a) sampled or commonly sampled by taking samples of prawn meat from five (5) prawns from each of thirteen (13) Cartons in the Consignment;
- (b) took such samples:
 - (i) in circumstances where the Consignment may have had more than one Batch in it;
 - (ii) from Cartons that had not been selected randomly;
 - (iii) without identifying how many Batches were in the Consignment; further or alternatively
 - (iv) from Consignments tainted by the Tampering Practices, and in some instances did so having Notice of Tampering,

(the **Actual Sampling Practice**).

Particulars

- (1) *As to (b)(ii), so far as the plaintiff is able to say prior to discovery, Inspectors from time to time took their samples from cartons that:*
 - (a) *were presented to them by importers, or*
 - (b) *were the most conveniently located within a pallet, container or storeroom; or*
 - (c) *in any event were not selected by a method that involved truly random selection or some reasonable approximation thereof.*
- (2) *Further particulars may be provided after discovery.*

27. Samples collected using the Actual Sampling Practice were tested by a testing laboratory approved by CDAWR (**Approved Laboratory**) conducting a PCR test on each sample (the **Actual Testing Practice**).

Particulars

The Approved Laboratories were Advanced Analytical Australia Pty Ltd and Elizabeth Macarthur Agricultural Institute.

28. From time to time during the Critical Failure Period, Consignments that were sampled by the Actual Sampling Practice and tested by the Actual Testing Practice:
- (a) did not test positive for WSSV or WSD; and
 - (b) as a result, were:
 - (i) permitted by Biosecurity Officers to be released from quarantine or biosecurity control;
 - (i) not required by Biosecurity Officers to be re-exported, destroyed or further processed (i.e. cooked) in a facility approved by AQIS for that purpose; and
 - (ii) released into the domestic supply chain.

D.3. The 2016 Outbreak

November 2016 – Farm 1IP

29. On or around 22 November 2016, the operator of a Prawn Farm located at 528 Rotary Park Road, Alberton near the Logan River (**Farm 1IP**) reported to **Biosecurity Queensland** (an agency within the Queensland Department of Agriculture and Fisheries (**QDAF**)) that prawns located in Pond 12 on the farm appeared to be lethargic and experiencing a loss of appetite.

Particulars

- (1) *Farm 1IP is the farm referred to in the IG Report [PLF.001.001.2871] as “1IP” at pages 6 and 32.*
- (2) *Further particulars may be provided following discovery.*

30. By on or about 24 November 2016:
- (a) a number of prawns in Pond 12 at Farm 1IP had died; and
 - (b) samples of prawns from Pond 12 were provided to Biosecurity Queensland’s Biosecurity Sciences Laboratory (**BSL**) for diagnostic testing.

Particulars

- (1) *The samples were provided to BSL as referred to in the Fisheries Research Development Corporation (FRDC) report titled ‘Field observations and assessment of the response to an outbreak of White Spot Disease (WSD) in*

Black Tiger Prawns (Penaeus monodon) farmed on the Logan River in November 2016' and published on or about 21 February 2017 (FRDC Report), being document [PLF.001.001.2430], at page 10.

(2) *Further particulars may be provided following discovery.*

31. By 29 November 2016:

- (a) ninety per cent (90%) of the prawns in Pond 12 on Farm IIP had died; and
- (b) prawns in two (2) ponds adjacent to Pond 12 had been reported to Biosecurity Queensland as infected with WSD.

Particulars

(1) *The report to Biosecurity Queensland is the report referred to in the FRDC Report [PLF.001.001.2430] at page 10.*

(2) *Further particulars may be provided following discovery.*

32. On or about 30 November 2016:

- (a) BSL advised Farm IIP that the sample of prawns taken from Pond 12 had returned a preliminary positive test result for WSSV; and
- (b) the Queensland Chief Veterinary Officer notified the Australian Chief Veterinary Officer of the suspected detection of WSSV at Farm IIP; and
- (c) Biosecurity Queensland directed the owner of Farm IIP to treat or allow treatment of the affected ponds with chlorine, thereby destroying all prawn stock, as soon as possible.

Particulars

(1) *As to (a), the BSL advice is the advice referred to in the FRDC Report [PLF.001.001.2430] at page 10.*

(2) *As to (b), the notification by the Queensland Chief Veterinary Officer is the notification referred to in the CDAWR Interim Report [PLF.001.001.5074], at page 8.*

(3) *As to (c), the direction was given orally, and is the direction referred to in the FRDC Report [PLF.001.001.2430], at page 10.*

(4) *Further particulars may be provided following discovery.*

December 2016 – Farms 3IP, 4IP, 5IP and 2IP, and QDAF movement control orders

33. On or around 1 December 2016:

- (a) AAHL confirmed to Biosecurity Queensland that the prawns sampled from Pond 12 were infected with WSSV;
- (b) the WSSV infection that had commenced at Pond 12 on Farm 1IP had spread to prawns in seven of the ponds at Farm 1IP;
- (c) WSD had been reported to Biosecurity Queensland as having spread to prawns in seven (7) of the ponds at Farm 1IP;
- (d) QDAF imposed a **movement control order** under s 124 of the *Biosecurity Act 2014* (Qld) (*State Biosecurity Act*) (the **1 December Movement Control Order**).

Particulars

- (1) *As to (a), the confirmation by AAHL is the confirmation referred to in the FRDC Report [PLF.001.001.2430], at page 10.*
- (2) *As to (b), the spread referred to is the transmission of WSSV between the ponds at Farm 1IP referred to in the FRDC Report [PLF.001.001.2430], at page 10.*
- (3) *As to (c), the report is the advice referred to in the FRDC Report [PLF.001.001.2430], at page 10.*
- (4) *As to (d), the 1 December 2016 Movement Control Order is the movement control order referred to in the IG Report [PLF.001.001.2871], at page 36. At the time of filing this pleading, the plaintiff does not have a copy of the 1 December 2016 Movement Control Order.*
- (5) *Further particulars may be provided following discovery.*

34. On or around 5 December 2016:

- (a) prawns farmed at a Prawn Farm located at 505 Rotary Park Road, Alberton (**Farm 3IP**) were reported to Biosecurity Queensland as infected with WSD;

Particulars

Farm 3IP is the farm referred to in the IG Report [PLF.001.001.2871] as "3IP".

- (b) QDAF imposed a movement control order (the **5 December Movement Control Order**) *inter alia* prohibiting any person from moving decapod crustaceans (except the larval stages) and polychaete worms used for bait or feed out of the area comprised of Farm 1IP and Farm 3IP unless:
- (i) the crustaceans or worms:
 - (A) were cooked; or
 - (B) had originated from outside the said area and were transiting through the area in sealed, unopened packages that passed through the area without stopping; or
 - (ii) the person had a biosecurity instrument permit issued under section 132 of the *State Biosecurity Act* (**Biosecurity Instrument Permit**).

Particulars

The 5 December 2016 Movement Control Order is [PLF.001.001.2368].

35. On or around 7 December 2016, prawns farmed at the TPF Farm (described by CDAWR as **Farm 4IP**) were reported to Biosecurity Queensland as infected with WSD.

Particulars

- (1) *Farm 4IP is the farm referred to in the IG Report [PLF.001.001.2871] as "4IP".*
- (2) *The report is to be inferred from the matters stated in:*
 - (a) *the FRDC Report [PLF.001.001.2430] at pages 13-14; and*
 - (b) *the IG Report [PLF.001.001.2871] at page 162.*
- (3) *Further particulars may be provided following discovery.*

36. On or around 8 December 2016, QDAF imposed a movement control order (the **8 December Movement Control Order**) *inter alia* preventing any person from moving decapod crustaceans (except the larval stages) and polychaete worms used for bait or feed out of the areas specified in the said order unless:

- (a) the crustaceans or worms:
 - (i) were cooked; or
 - (ii) had originated from outside the said area and were transiting through the area in sealed, unopened packages that passed through the area without stopping; or
- (b) the person had a Biosecurity Instrument Permit.

Particulars

- (1) *The 8 December 2016 Movement Control Order is [PLF.001.001.1002].*
- (2) *The area specified in the order comprised of five properties near the Logan River including Farm 4IP, and prescribed areas within the Logan River. The relevant areas of the Logan River are shown on the map annexed at page 6 of the order.*

37. On 11 December 2016, QDAF made a biosecurity emergency order (the **11 December Emergency Order**):

- (a) effective for 21 days from 11 December 2016;
- (b) revoking the 5 December Movement Control Order and the 8 December Movement Control Order;
- (c) designating an area specified in the order including parts of the Logan River and seven (7) nearby properties (including Farms 1IP, 3IP and 4IP) to be a “Biosecurity Emergency Area” (the **Biosecurity Emergency Area**);
- (d) preventing any person within the Biosecurity Emergency Area from:
 - (i) moving a ‘regulated white spot syndrome virus carrier’ out of the Biosecurity Emergency Area unless:
 - (A) the person has a biosecurity emergency order permit issued under section 121 of the *State Biosecurity Act* (**Biosecurity Emergency Permit**); or
 - (B) the carriers:
 - (1) were cooked; or
 - (2) had originated from outside the area and were transiting through the area in sealed, unopened packages that passed through the area without stopping;

- (ii) carrying out, within the Biosecurity Emergency Area, activities involving the use of beam trawls, pots, dillies, traps for catching crabs, cast nets, yabby pumps, and implements for digging for worms;
 - (iii) taking decapod crabs (including yabbies), prawns and polychaete worms from the Biosecurity Emergency Area; or
 - (iv) moving water into and out of the parts of the Logan and Albert River within the Biosecurity Emergency Area, unless the person had a Biosecurity Emergency Permit; and
- (e) in the premises in (d)(i) – applied the restrictions set out in (d)(i) in respect of decapod crustaceans (except in their larval stages) and polychaete worms.

Particulars

- (1) *The 11 December 2016 Emergency Order is [PLF.001.001.2032].*
- (2) *As to (e), the expression 'regulated white spot syndrome virus carrier' was not defined in the 11 December 2016 Emergency Order but in the context of the 5 December Movement Control Order and the 8 December Movement Control Order (which were referred to in the 11 December Emergency Order), the term should be construed as a reference to decapod crustaceans (except the larval stages) and polychaete worms used for bait or feed.*

38. On or about 19 December 2016 CDAWR (by its servants, agents or contractors):

- (a) collected from recreational fishermen on the Logan River samples of uncooked imported prawns being used by the fishermen as bait or berley; and
- (b) detected in the said samples WSSV infection.

Particulars

- (1) *As described in the CDAWR Interim Report [PLF.001.001.5074], at page 9; IG Report [PLF.001.001.2871], at page 44:*
 - (a) *CDAWR investigators identified two recreational fishermen at Skinners Park on the northern riverbank of the Logan River fishing with raw vannamei prawns imported for human consumption;*
 - (b) *CDAWR sent samples of the prawns to the Elizabeth Macarthur Agricultural Institute (EMAI) and AAHL for WSSV testing, and test confirmed the prawns were positive for WSSV.*

(2) *Further particulars may be provided following discovery.*

39. By 29 December 2016, Biosecurity Queensland confirmed that prawns farmed at Prawn Farms on Marks Road, Woongoolba (**Farm 5IP**) and Rotary Park Road, Alberton (**Farm 2IP**) and provided to Biosecurity Queensland for testing had tested positive for WSSV.

Particulars

(1) *Farm 5IP is the farm referred to in the IG Report [PLF.001.001.2871] on pages 33 and 162 as “5IP”.*

(2) *Farm 2IP is the farm referred to in the IG Report [PLF.001.001.2871] on pages 33 and 162 as “2IP”.*

(3) *The confirmation is referred to in the FRDC Report [PLF.001.001.2430], at page 19 (and see also pages 15-16).*

(4) *Further particulars may be provided following discovery.*

40. On 30 December 2016, QDAF made a biosecurity emergency order (the **30 December Emergency Order**):

- (a) effective for 21 days from 30 December 2016;
- (b) revoking the 11 December 2016 Emergency Order;
- (c) *inter alia* preventing any person within the area specified in the orders (thereafter the **Biosecurity Emergency Area**) from:
 - (i) moving any decapod crustaceans, polychaete worms or salt water out of the Biosecurity Emergency Area unless:
 - (A) the person had a Biosecurity Emergency Permit; or
 - (B) the decapod crustaceans, polychaete worms and salt water:
 - (1) were cooked; or
 - (2) had originated from outside the area and were transiting through the area in sealed, unopened packages that passed through the area without stopping;
 - (ii) carrying on the activities pleaded in paragraph 37(d)(ii) to 37(d)(iv) above.

Particulars

The 30 December Emergency Order is [PLF.001.001.3060].

January 2017 – Farm 8IP, Import Suspension and further movement control orders

41. Between 1 December 2016 and 11 February 2017, QDAF sampling detected WSSV-infected prawns and crabs in southern Moreton Bay.

Particulars

The area in which the WSSV was detected is shown in the IG Report [PLF.001.001.2871], Map 2, titled 'White spot disease response surveillance areas, positive detections, Queensland, 1 December 2016 to 11 February 2017', page 34.

42. On 4 January 2017, AAHL notified CDAWR that 14 of the 19 samples of uncooked imported prawn products collected by Commonwealth officers from retail outlets within 10km of Farms 1IP to 5IP had tested positive for WSSV.

Particulars

- (1) *The notification is referred to in the IG Report [PLF.001.001.2871], at page 44.*
- (2) *Further particulars may be provided following discovery.*

43. On 6 January 2017, the Commonwealth Director:
- (a) issued the *Biosecurity (Suspended Goods – Uncooked Prawns) Determination 2017* (the **Import Suspension Determination**); and
- (b) by reason of (a) – suspended all imports of most uncooked prawns and uncooked prawn meat for a period of 6 months commencing on 7 January 2017 (the **Import Suspension**).

Particulars

- (3) *The Import Suspension Determination was issued under s 182(1) of the Biosecurity Act 2015 (Cth). It is [PLF.001.001.2047].*
- (4) *The Import Suspension Determination excluded the following products from the Import Suspension:*

- (i) *uncooked prawns and uncooked prawn meat sourced from New Caledonia;*
- (ii) *uncooked prawns and uncooked prawn meat processed into dumplings, spring rolls, samosas, other dim sum-type products and other similar products; and*
- (iii) *uncooked prawns and uncooked prawn meat which had been coated for human consumption by being breaded, crumbed or battered.*

44. On or about 20 January 2017, QDAF imposed a movement control order (the **20 January Movement Control Order**):

- (a) effective for a period of 3 months from 21 January 2017; and
- (b) prohibiting any person from moving any decapod crustaceans or polychaete worms out of the area specified in the order unless:
 - (i) the person had a Biosecurity Instrument Permit; or
 - (ii) the decapod crustaceans or polychaete worms:
 - (A) were cooked; or
 - (B) had originated from outside the area and were transiting through the area in sealed, unopened packages that pass through the area without stopping.

Particulars

The 20 January 2017 Movement Control Order is [PLF.001.001.1311]. The area specified in the order was identified in the annexure to the order and included the Logan River downstream of Jabiru Weir and the Albert River downstream of Luscombe Weir.

45. By 30 January 2017, Biosecurity Queensland had confirmed that prawns from a prawn farm on Rocky Point Road, Woongoolba (**Farm 8IP**) and given to Biosecurity Queensland for testing had tested positive for WSSV.

Particulars

(1) *Farm 8IP is the farm referred to in the IG Report [PLF.001.001.2871] on pages 33 and 162 as "8IP".*

- (2) *The confirmation is to be inferred from the fact that Biosecurity Queensland advised the author of the FRDC Report of the test result (as referred to in the FRDC Report [PLF.001.001.2430], page 24).*
- (3) *Further particulars may be provided following discovery.*

February 2017 – Farm 7IP and Biosecurity Determinations

46. On 3 February 2017, the Commonwealth Director issued the *Biosecurity (Suspended Goods – Uncooked Prawns) Amendment (Exceptions) Determination 2017* (the **Import Suspension Exceptions Determination (No. 1)**), excluding from the Import Suspension:
- (a) uncooked prawns or prawn meat sourced from the exclusive economic zone;
 - (b) uncooked prawns or prawn meat processed into dried prawns or a product that was shelf-stable (as defined in s.4 of the Determination); and
 - (c) uncooked prawns or prawn meat processed into bait for aquatic use, pet-fish food or aquaculture feed.

Particulars

- (1) *The Import Suspension Exceptions Determination (No. 1) is [PLF.001.001.1215].*
- (2) *As to (a), “exclusive economic zone” was defined in the Determination by reference to the Acts Interpretation Act 1901 (Cth), which defined the term by reference to the Seas and Submerged Lands Act 1973 (Cth), which defined the term by reference to the United Nations Convention on the Law of the Sea, and which had the practical effect of describing Australian territorial waters.*
- (3) *As to (c), “processed into bait” referred to the process described at Schedule 4 of the Determination, which included gamma irradiation (to a level of 50kGy) upon arrival into Australia, at an on-shore facility approved by CDAWR.*

47. By 13 February 2017, a further prawn farm on Rocky Point Road, Woongoolba, had been reported to Biosecurity Queensland as infected with WSSV (**Farm 7IP**).

Particulars

- (1) *Farm 7IP is the farm referred to in the IG Report [PLF.001.001.2871] on pages 33 and 162 as “7IP”.*
- (2) *The report should be inferred from the matters stated in the FRDC Report [PLF.001.001.2430] at pages 24 and 27.*
- (3) *Further particulars may be provided following discovery.*

48. On 27 February 2017, the Commonwealth Director issued the *Biosecurity (Suspended Goods – Uncooked Prawns) Amendment (Exceptions) Determination (No. 2) 2017* (the **Import Suspension Exceptions Determination (No. 2)**), *inter alia* excluding the following products from the Import Suspension:

- (a) prawns sourced from Australian territory other than the area covered by the 20 January Movement Control Order;
- (b) uncooked prawns and uncooked prawn meat intended for use as laboratory or food samples for analysis;
- (c) transhipped uncooked prawns, and uncooked prawn meat for outgoing passenger vessels engaged in international travels; and
- (d) certain uncooked prawns and uncooked prawn meat wild-caught in Australia and exported to Thailand for processing by a specified processor.

Particulars

The Import Suspension Exceptions Determination (No.2) is [PLF.001.001.4769].

The exemption in (d) related to uncooked prawns and uncooked prawn meat deriving from prawns that, in accordance with the secure supply chain, were:

- a. wild-caught in Australian territory other than the area to which the 20 January Movement Control Order related; and*
- b. exported, either in the form of uncooked prawns or uncooked prawn meat, for processing by Thai Union Group Public Company Limited as specified in the Determination.*

March to July 2017 – further regulatory restrictions

49. In March 2017, QDAF sampling detected WSSV-infected prawns and crabs in north-west Moreton Bay.

Particulars

The area in which the WSSV was detected is shown in the IG Report [PLF.001.001.2871], Map 3, titled 'White spot disease response, positive detections in northern Moreton Bay, Queensland, 28 February to 12 April 2017', page 35.

50. On 16 March 2017, QDAF imposed a movement control order (the **16 March Movement Control Order**):

- (a) effective for 3 months from 16 March 2017;
- (b) covering:
 - (i) the coastline from Moffatt Beach at Caloundra to the Queensland/New South Wales border (including Moreton Bay, Moreton Island and Bribie Island),
 - (ii) inland areas including the local government areas of Moreton Bay Regional Council, Logan City, Brisbane City, Ipswich City and Gold Coast City, and
 - (iii) selected localities from the Sunshine Coast Regional Council,(together **Restricted Coastal Area**);
- (c) prohibiting any person within the Restricted Coastal Area from moving any decapod crustaceans or polychaete worms out of the Restricted Coastal Area unless:
 - (i) the person had a Biosecurity Instrument Permit; or
 - (ii) the decapod crustaceans or polychaete worms:
 - (A) were cooked; or
 - (B) had originated from outside the area and were transiting through the area in sealed, unopened packages that passed through the area without stopping; and
- (d) revoking the 20 January Movement Control Order.

Particulars

- (1) *The 16 March Movement Control Order is [PLF.001.001.1227].*
- (2) *The Restricted Coastal Area is shown on the map attached at page 4 of the order.*

51. On 3 April 2017, the Commonwealth Director issued the *Biosecurity (Suspended Goods – Uncooked Prawns) Amendment (Exceptions) Determination (No. 3) 2017* (the **Import Suspension Exceptions Determination (No. 3)**), excluding from the Import Suspension uncooked prawns and uncooked prawn meat in a processed form that were:
- (a) derived from prawns that were wild-caught in Australian territory and exported to another country, either in the form of uncooked prawns or uncooked prawn meat, for processing;
 - (b) brought or imported into Australian territory without first having been brought or imported into any other country;
 - (c) accompanied by a foreign country processing declaration and a foreign country health certificate that related to the product; and
 - (d) not covered by s 7(3)(i) of the Import Suspension.

Particulars

The Import Suspension Exceptions Determination (No. 3) is [PLF.001.001.0829].

52. On 15 May 2017, the Commonwealth Director issued the *Biosecurity (Suspended Goods – Uncooked Prawns) Amendment (Exceptions) Determination (No. 4) 2017* (the **Import Suspension Exceptions Determination (No. 4)**), excluding from the Import Suspension prawns marinated for human consumption and accompanied by a foreign country health certificate.

Particulars

The Import Suspension Exceptions Determination (No. 4) is [PLF.001.001.1008].

53. On 16 June 2017:
- (a) the *Biosecurity Regulation 2016* (Qld) was amended by the *Biosecurity (White Spot Syndrome Virus) Amendment Regulation 2017* (Qld); and
 - (b) the *Biosecurity Regulation 2016* (Qld) (as amended):
 - (i) established the whole of the State of Queensland as a ‘biosecurity zone’ for WSSV;
 - (ii) permitted the Director-General of QDAF to establish particular biosecurity areas (**biosecurity areas**), in which lesser restrictions would apply;
 - (iii) prohibited persons from moving decapod crustaceans or polychaete worms from a place in the ‘regulated movement area’ (being the biosecurity zone other than biosecurity areas) to a place outside the regulated movement area;

Particulars

Biosecurity Regulation 2016 (Qld) s 94C.

- (iv) prohibited fishing in the biosecurity zone in drainage and intake channels used by a prawn facility, and within 100km of an intake or outlet of such a channel;

Particulars

Biosecurity Regulation 2016 (Qld) s 94D.

- (iii) required owners of prawn facilities to ensure that each drainage and intake channel used by the facility, and each intake and outlet of the channels, was identified by signage.

Particulars

Biosecurity Regulation 2016 (Qld) s 94E.

54. On 30 June 2017, Biosecurity Australia issued *Biosecurity Advice 2017/12 (2017 Biosecurity Advice)* which *inter alia* stated that or to the effect that:

- (a) the Import Suspension would lapse on 6 July 2017;
- (b) from 7 July 2017, all uncooked prawns or prawn products imported for human consumption would need to be (relevantly):
 - (i) sourced from countries or zones determined to the satisfaction of Australian government authorities to be free of WSSV and certified by the Competent Authority in the exporting country:
 - (A) to have been sourced from a specified country which is free from WSSV;
 - (B) to have been processed, inspected and graded in premises approved by and under the control of the Competent Authority;
 - (C) to be free from visible signs of infectious diseases; and
 - (D) to have had each package marked with the words ‘*for human consumption only – not to be used as bait or feed for aquatic animals*’ (**Anti-Bait Labelling**); or
 - (ii) Highly Processed and Coated; or

- (iii) Highly Processed and:
- (A) free from WSSV;
 - (B) certified by the Competent Authority in the exporting country to the effect that:
 - (1) the uncooked prawns are frozen and Highly Processed;
 - (2) product from each batch has been found, post-processing, to be free of WSSV based on a sampling and testing method recognised by OIE for demonstrating absence of WSSV;
 - (3) the product has been inspected and graded in a premises approved by and under the control of the Competent Authority;
 - (4) the product is free from visible signs of infectious diseases;
 - (5) the product is fit for human consumption;
 - (6) the product is marked with Anti-Bait Labelling;
 - (C) on arrival in Australia – subjected (for each Batch) to:
 - (1) seals-intact inspection; and
 - (2) Batch Testing for WSSV at an approved screening laboratory;
 - (D) held under biosecurity control until the results of the Batch Testing are available; and
 - (E) in the event that Batch Testing returned positive results – re-exported, destroyed or further processed (i.e. cooked) in a facility approved by CDAWR for that purpose.

Particulars

- (1) *The 2017 Biosecurity Advice is [PLF.001.001.5260].*
- (2) *The 2017 Biosecurity Advice stated as follows under the heading 'Batch definition':*

For the purposes of testing prawns for disease agents of biosecurity concern, a batch may be defined by one of the following (to be determined by the competent authority), but in any case, a batch cannot exceed 1 shipping container.

- *product from a single line in a single processing run*

- *product harvested from a single aquaculture pond - (i.e. prawns harvested from separate ponds are considered separate populations for the purposes of defining a batch)*
- *one species of prawn wild caught during one continuous fishing period;*

Each consignment (container) will be considered as one batch unless multiple batches are specified in the container. If a batch is shipped in two containers each container will be considered a single unrelated batch. In addition, each batch in a consignment must be labelled and clearly identifiable.

Documentation from the exporter, supplier or the Competent Authority verifying the number of batches in the consignment must be provided to the Department of Agriculture and Water Resources. This documentation must clearly detail the labelling of each batch in the consignment. If the number of batches cannot be determined from documentation, full unpacking and inspection may be required in order to determine the number of batches. This may result in additional testing and inspection costs.

55. On 5 July 2017, the Director-General of QDAF issued a notice under the *Biosecurity Regulation 2016* (Qld) (the **5 July Biosecurity Regulation Notice**) *inter alia*:
- (a) designating as biosecurity areas two areas within the State of Queensland, being:
 - (i) the Queensland State Electorate Area for Coomera (**Restricted Logan River Area**);
and
 - (ii) the Restricted Coastal Area (which incorporated the Restricted Logan River Area);
and
 - (b) providing that:
 - (i) the movement prohibition referred to in paragraph 53(b)(iii) above applied only to the Restricted Coastal Area; and
 - (iv) the fishing prohibition referred to in paragraph 53(b)(iv) above applied only to the Restricted Logan River Area.

Particulars

The 5 July 2017 Biosecurity Regulation Notice is [PLF.001.001.1308].

End of Import Suspension

56. On 6 July 2017, the Import Suspension ended.
57. On 15 June 2018, the fishing prohibition referred to in paragraph 53(b)(iv) above was amended to be limited to “fishing with a fishing line”.

Particulars

Biosecurity Regulation 2016 (Qld) as amended by the Biosecurity and Other Legislation Amendment Regulation 2018 (Qld).

PART E COMMONWEALTH DUTY OF CARE

E.1. Foreseeable risk of harm

58. At all material times since the late 1980s:
- (a) there have been; and
 - (b) CDAWR has known that there were;

Prawn Farms:

- (i) located adjacent to the Logan River in Queensland; and
- (ii) drawing water from the Logan River for the purposes of cycling through ponds or tanks in which prawns at varying stages of maturity were grown.

Particulars

- (1) *So far as the plaintiffs are able to say prior to discovery, CDAWR’s knowledge is to be inferred from its operation of a levy system in respect of prawn farms, introduced in October 2001. Under this system, prawn farmers are required to pay a levy to CDAWR after each harvest. In order to pay this levy, prawn farmers must register with CDAWR and receive a unique ‘LRS number’ (a five-digit number identifying the levies account).*

- (2) *In September 2013, CDAWR (then known as the Department of Agriculture) published the AQUAVETPLAN [PLF.001.001.0001], which stated (at page 35) that or to the effect that:*
- (a) *Australian prawn farms are dependent on an external water supply during rearing;*
 - (b) *“Most prawn farms in Australia use a flow-through system, where water is taken from, and released into, a supply source as necessary”;*
and
 - (c) *‘Flow-through system farms are not usually designed to be self-contained ...’.*
- (3) *Prawn farms 1IP-6IP (inclusive) and 8IP had water intake channels drawing from the Logan River or, in the case of 8IP, from Moreton Bay.*

59. At all material times from not later than publication of the 2006 Draft Prawn IRA it was reasonably foreseeable to, and in fact foreseen by, the Commonwealth, by its officers or servants including Biosecurity Officers, that:
- (a) imported uncooked prawn meat could contain WSSV capable of infecting Domestic Species;
 - (b) if imported prawn meat infected with WSSV were publicly available in Australia it could be used *inter alia*:
 - (i) as feedstock for farmed populations of Domestic Species;
 - (ii) as bait or berley for fishing, including recreational fishing; or
 - (iii) in other uses leading to uncooked prawn product being discarded as waste;
 - (c) uses as described in (b) (and in particular uses as bait or berley) could involve or result in:
 - (i) the depositing of viable WSSV into Australian riverine, estuarine or marine waters, or aquaculture or aquaria water systems that discharged into such waters (**Waterborne Virus**); and
 - (ii) infection of Domestic Species with WSSV or WSD (**Infected Species**);
 - (d) Waterborne Virus and Infected Species could transmit WSSV to Domestic Species in the wild;

- (e) Waterborne Virus and wild Infected Species in the vicinity of Prawn Farms could lead to the introduction of WSSV into farmed populations of Domestic Species;
- (f) the establishment of WSSV in an individual Prawn Farm could lead to transmission of WSSV to other farms and to general dispersal within a region and interstate spread;
- (g) the establishment of WSSV in farmed Prawn Farm populations could cause:
 - (i) loss of prawn production at infected farms; and
 - (ii) escape of viable WSSV virus from infected farms, through:
 - (A) discharge or waste systems;
 - (B) carriage by birds feeding on living or dead prawns in the farm;
 - (C) transport on clothing or equipment;
 - (D) transport in water, broodstock or other stock moved between farms;
- (h) the matters in (d), further or alternatively (g), could cause:
 - (i) dispersal of WSSV infection in Domestic Species within a region and potentially interstate;
 - (ii) widespread mortality of Domestic Species; and
 - (iii) adverse impacts on the marketability of Carrier Species;
- (i) the establishment and detection of WSSV in Domestic Species, including as a result of any of (c) to (h) above, was likely to lead to:
 - (i) the imposition by State or Commonwealth biosecurity authorities of quarantine or biosecurity measures in respect of Carrier Species, including:
 - (A) movement controls;
 - (B) destruction of Carrier Species;
 - (C) additional processing of Carrier Species; and
 - (D) decontamination of facilities and equipment used in connection with Carrier Species;
 - (ii) fishing bans in or near areas where WSSV infection had been detected;
 - (iii) widespread mortality of Domestic Species;
 - (iv) reduced catch of Domestic Species by commercial fishermen; and
 - (v) adverse impacts on the marketability of Carrier Species;

- (j) the matters in (i) above could result in economic losses to persons who earned income from activities that involved:
- (i) commercial fishing for Domestic Species;
 - (ii) commercial farming of Domestic Species;
 - (iii) commercial processing, storing, transporting or otherwise handling Carrier Species in Australia; or
 - (iv) wholesaling Carrier Species (whether Domestic Species or imported) in Australia;
- (k) the losses referred to in (j) above could be substantial, given the commercial value of the activities described in (j);
- (the risks in (a) to (k) being together and severally the **Risks of Harm**).

Particulars

- (1) *The Risks of Harm:*
- (a) *are referred to, or arise from matters referred to in:*
 - (i) *the Prawn IRA [PLF.001.001.0461] at pages 11-23; 67-107 and appendices 2 and 3;*
 - (ii) *the AQUAVETPLAN [PLF.001.001.0001] (in its entirety);*
 - (iii) *the document titled 'Ross Lobbeiger Report to Farmers: Aquaculture production summary for Queensland 2015-16', published by QDAF in 2016, being document [PLF.001.001.1918] at page 4;*
 - (iv) *the document titled 'Australian Fisheries and Aquaculture Statistics 2016', published by the Australian Bureau of Agricultural and Resource Economics and Sciences in December 2017, being document [PLF.001.001.2710] at page 28;*
 - (v) *IG Report [PLF.001.001.2871] at [3.1]; and*
 - (b) *are obvious as matters of common sense.*
- (2) *Further particulars may be provided following discovery and receipt of expert reports.*

- (a) if they eventuated, involved or potentially involved:
 - (i) the establishment of an exotic pathogen, being WSSV, in wild and farmed Domestic Species in which the pathogen had never previously been established;
 - (ii) widespread WSSV infection in affected Domestic Species;
 - (iii) significant mortality among affected Domestic Species;
 - (iv) significant adverse impacts on industries dealing in the Carrier Species, including from:
 - (A) reduced volumes of stock, caused by mortalities among Domestic Species or restrictions on the catch, harvesting or movement of Carrier Species (whether Domestic Species or imported);
 - (B) increased costs of operations, associated with Biosecurity Responses; further or alternatively
 - (C) adverse impacts on marketability of Carrier Species;
- (b) in the premises in (a) – were serious; and
- (c) were not insignificant, within the meaning of s 9(1)(b) of the *Civil Liability Act 2003* (Qld) (CLA).

Particulars

- (1) *The Prawn IRA [PLF.001.001.0461] determined that:*
 - (a) *the risk of WSSV exposure in imported uncooked frozen prawns was high;*
 - (b) *the use of imported frozen prawns as bait or berley was a significant exposure pathway for infection of both wild and farmed prawns;*
 - (c) *infection, once established, could have catastrophic consequences for prawn populations and consequential economic impacts upon prawn farmers, fishers and associated industries.*
- (2) *The significance of the risk posed by WSSV in imported uncooked frozen prawns was recognised in the Commonwealth's adoption, in the 2010 Biosecurity Advice, of the sanitary measures specified in the 2009 IRA.*
- (3) *Further particulars may be provided following discovery and receipt of expert reports.*

61. At all material times, the class of persons whose economic interests would be damaged as a result of failure by the Commonwealth to take reasonable care to avoid the Risks of Harm was reasonably ascertainable by the Commonwealth, being the class of persons (including the Claimants) who earned income from activities that involved:
- (a) commercial fishing for Domestic Species;
 - (b) commercial farming of Domestic Species;
 - (c) commercial processing, storing, transporting or otherwise handling Carrier Species in Australia; or
 - (d) wholesaling Carrier Species (whether Domestic Species or imported) in Australia.

E.2. Control

62. At all material times, the Commonwealth:
- (a) had exclusive power and responsibility for:
 - (i) Australia's compliance with international sanitary and phytosanitary obligations, including import conditions;
 - (ii) biosecurity, including quarantine requirements, in respect of imports into Australia; and
 - (iii) administering the *Quarantine Act* and *Biosecurity Act*, as respectively in force from time to time;
 - (b) without limiting (a), had exclusive power to:
 - (i) prohibit the importation of certain goods, including animals;
 - (ii) control the importation of certain goods (including animals), including by:
 - (A) making importation conditional upon the grant of a Commonwealth permit; and
 - (B) attaching conditions to such permits (**import conditions**);
 - (c) had exclusive power, alternatively power to the exclusion of members of the public (including the Claimants), to monitor and enforce importers' compliance with import conditions by *inter alia*:
 - (i) exercising its powers to detain, search, inspect, sample and test imported goods; and

- (ii) if necessary, suspending or revoking the import permit;
- (d) had exclusive control over, alternatively powers of direction in respect of, imported goods while the goods were subject to quarantine or biosecurity control (hereafter **Quarantine**);
- (e) had exclusive power, alternatively effective power, to determine where and how goods were detained, inspected and sampled whilst they were subject to Quarantine;
- (f) had exclusive power to approve certain places or persons to carry out biosecurity activities, including the testing of imported goods and the granting of authorities to release imported goods from Quarantine;
- (g) by reason of the matters in sub-paragraph (a) to (d) above, had control over:
 - (i) the imposition and terms of import conditions for uncooked prawn meat;
 - (ii) the appointment and supervision of persons authorised to carry out biosecurity activities, including BIPs;
 - (iii) enforcement of import conditions for uncooked prawn meat, including:
 - (A) the setting of inspection procedures; and
 - (B) the implementation of inspection procedures;
 - (iv) the release of imported uncooked prawn meat into the supply chain for wholesale and retail sale in Australia (**domestic supply chain**); and
- (h) in the premises in (a) to (g):
 - (i) exercised control over the release into the domestic supply chain of imported uncooked prawn meat;
 - (ii) in the premises in (i) – exercised control over the potential release into the domestic supply chain of pathogens bearing material risks of causing:
 - (A) substantial environmental damage among Domestic Species and the ecosystems they inhabit;
 - (B) substantial economic harm to persons engaged in commercial fishing for, farming, handling or importing Carrier Species;
 - (iii) in the premises in (i) – exercised control over the release of a dangerous substance, being prawn meat infected with WSSV; and
 - (iv) in the premises in (i) and (ii) – was, in the implementation of the Import Protocols, carrying on an activity that was inherently dangerous or hazardous to the economic interests of the Claimants.

Particulars

The inherently dangerous or hazardous nature of imported uncooked prawn meat that had not been Batch Tested in accordance with the Import Protocol arises from the matters pleaded in paragraphs 4, 5, 10 and 11 above.

E.3. Vulnerability

63. At all material times, persons who in Australia carried on businesses catching, farming, processing, transporting or dealing in Carrier Species (including the Claimants):

(a) were likely to be affected, as to:

- (i) their ability to catch, rear, or otherwise source supplies of, Domestic Species;
- (ii) their costs of taking biosecurity precautions in respect of their handling of Carrier Species;
- (iii) their ability to trade in Carrier Species;
- (iv) the market prices likely to be obtained for Carrier Species caught, farmed or supplied by them; and
- (v) by reason of (i) to (iv) (together or in any combination) – their economic interests, including as to incomes and net asset values;

by:

(A) widespread WSSV infection of Domestic Species;

(B) Biosecurity Responses to:

- (1) the detection of widespread WSSV infection in Domestic Species, or in imported prawn meat already released into the domestic supply chain, such as to imply systemic problems with extant Commonwealth biosecurity procedures or practices in respect of imported prawn meat; or
- (2) the detection of systemic problems with extant Commonwealth biosecurity procedures or practices in respect of imported prawn meat; further or alternatively

(C) in respect of (iii) and (iv) above – adverse effects on marketability of Carrier Species associated with publicity as to matters described in (A) or (B);

- (b) had little or no ability to prevent the introduction of WSSV into Australia by the importation of uncooked prawn meat infected with WSSV;
- (c) in the premises in (a) and (b) – were vulnerable to the risk of imported uncooked prawn meat introducing WSSV into the domestic supply chain, or into Domestic Species;
- (d) in the premises in (a) to (c) – were dependent, for the protection of their economic interests, on the Commonwealth taking reasonable care, by its officers, servants, agents and contractors, to:
 - (i) prevent, or minimise the risk of, WSSV becoming established in Australia;
 - (ii) minimise, so far as practicable, the risk of imported prawn meat infected with WSSV from being released from Quarantine into the domestic supply chain;
 - (iii) adhere to and enforce biosecurity procedures that would achieve the ALOP in respect of WSSV, including without limitation the Import Protocol;
 - (iv) ensure, so far as practicable, that persons whom it had approved or authorised to deal with imported prawn meat in quarantine (being or including the BIPs) carried out their functions in accordance with such approvals or authorisations.

64. Further and in the alternative, at all material times, persons who in Australia carried on businesses farming or catching Domestic Species (including the Prawn Farmer Group Members and the Commercial Fishing Group Members):

- (a) were likely to be affected, as to their ability to farm or catch Domestic Species, by loss of Domestic Species caused by WSSV or WSD;
- (b) had the impediments referred to in paragraph 63(b) above;
- (c) in the premises in (a) and (b) – were vulnerable to the risk of imported uncooked prawns or prawn products introducing WSSV into the domestic supply chain or into Domestic Species;
- (d) in the premises in (a) to (c) – were dependent, for the protection of their property (in the case of prawn farmers) and economic interests, on the Commonwealth taking reasonable care, by its officers, servants, agents and contractors, to:
 - (i) prevent, or minimise the risk of, WSSV becoming established in Australia;
 - (ii) minimise, so far as practicable, the risk of imported prawns or prawn products infected with WSSV from being released from quarantine into the domestic supply chain;

- (iii) adhere to and enforce biosecurity procedures that would achieve the ALOP in respect of WSSV, including without limitation the Import Protocol;
- (iv) ensure, so far as practicable, that persons whom it had approved or authorised to deal with imported prawns in quarantine carried out their functions in accordance with such approvals or authorisations.

E.4. Duty of care

65. By reason of the matters pleaded in paragraphs 58 to 64 ~~63~~ above, at all material times the Commonwealth owed to the classes of persons described in paragraph 63 and (further or alternatively) paragraph 64 **(Duty Classes)** a duty to take reasonable care:

- (a) by its officers, servants and agents; and
- (b) as a non-delegable duty – to ensure that reasonable care was taken by any delegates or contractors engaged by it,

to avoid the Risks of Harm (the **Biosecurity Duty**).

66. At all material times the Claimants were part of the Duty Classes.

67. By reason of the matters set out in the two preceding paragraphs, at all materials times the Commonwealth owed the Biosecurity Duty to the Claimants and each of them.

PART F PRECAUTIONS, BREACHES AND CAUSATION

F.1. Available precautions

68. At all material times, the Risks of Harm were likely to be materially reduced if the Commonwealth, by the Biosecurity Officers:

- (a) implemented Batch Testing (as defined above) by taking reasonable care to ensure that:
 - (i) each Batch in each Consignment was identified;

- (ii) samples were collected from each Batch by the Inspector;
- (iii) such samples were:
 - (A) in fact from the Batch to be tested;
 - (B) selected randomly;
 - (C) selected by the Inspector;
 - (D) not selected by, or under the influence of, an Interested Person;
 - (E) collected in a way that was reasonably likely to avoid the risk of prior manipulation of the Consignment by an Interested Person; and
 - (F) in the premises in (A) to (E) –
 - (1) a valid random sample;
 - (2) reasonably reliable to provide 95% confidence of detecting WSSV, if WSSV were present at 5% prevalence within the Batch; and
 - (3) by reason of (1) and (2) – actually Batch Tested within the meaning of the Import Protocol;
- (b) took reasonable care to ensure that any Batch that had not been Batch Tested, or could not reliably be assured to have been Batch Tested, was not released from Quarantine;
- (c) in relation to any Batch that was infected with WSSV (**Infected Batch**) – took reasonable care to ensure that the Infected Batch was:
 - (i) not released from Quarantine;
 - (ii) destroyed, further processed to neutralise WSSV, or re-exported; and
 - (iii) not otherwise released into the domestic supply chain.
- (d) took reasonable care to detect and report to CDAWR any sign that a Consignment had been or may have been opened or tampered with prior to the Inspector’s extraction of a sample for Batch Testing;
- (e) in the event of any suspicion of unauthorised opening or tampering as described in (d) – imposed enhanced biosecurity and product-testing requirements on or in respect of the BIP responsible for the Consignment, including:
 - (i) additional stock-management requirements, to define and isolate every individual Batch pending Batch Testing;

- (ii) closer examination by Inspectors of future Consignments for signs of unauthorised opening or tampering;
 - (iii) additional sampling by Inspectors, for the purposes of Batch Testing;
 - (f) in the event of material indications that imported uncooked prawn meat was being cleared from Quarantine despite infection with exotic pathogens (such as WSSV):
 - (i) by its Biosecurity Officers other than Inspectors –
 - (A) directed Inspectors, or reinforced directions to Inspectors to take the precautions in (a) to (d), (e)(ii) and (e)(iii); and
 - (B) took the precautions in (d) and (e); further or alternatively
 - (ii) by its Inspectors – took the precautions in (a) to (d), (e)(ii) and (e)(iii);
- (together and severally the **Available Precautions**).

69. The Available Precautions, if taken, had a high probability of:

- (a) detecting any Infected Batch;
- (b) preventing any Infected Batch from being cleared from quarantine and released into the domestic supply chain; and
- (c) in the premises – preventing the Risks of Harm.

Particulars

The Batch Testing procedure where applied to a true random sample taken from an individual Batch would:

- (1) with 95% confidence detect WSSV prevalence at least 5% or more (IG Report [PLF.001.001.2871] at page 74) and;
- (2) more probably than not detect WSSV in the Batch even at prevalence levels below 5%.

70. The Available Precautions were:

- (a) required by;
- (b) implied by; alternatively
- (c) consistent with;

the Import Protocol, in particular the Import Protocol in respect of Batch Testing.

Particulars

- (1) *The plaintiffs refers to and repeats the particulars under paragraph 69 68 above.*
- (2) *The random-sampling approach that underpinned Batch Testing was only effective or valid if the Available Precautions in paragraphs 68(a) and (b) were taken.*
- (3) *The objectives of the Import Protocol, namely preventing the introduction of biosecurity hazards into Australia, were only achieved if the Available Precautions in paragraph 68(b) and (d) were taken.*
- (4) *Further particulars may be provided following discovery and receipt of expert reports.*

71. There was no or negligible financial, logistical or other burden on the Commonwealth in taking the Available Precautions in connection with the Import Protocol, as compared to observing the Import Protocol but without the Available Precautions.

Particulars

- (1) *As to the human or other resources required by the Available Precautions, the said Precautions:*
 - (a) *required the Biosecurity Officers, and in particular the Inspectors, to exercise reasonable care and skill in implementing the inspection and testing procedure required or contemplated by the existing Import Protocol; and*
 - (b) *as to the Available Precautions pleaded in paragraph 68(b) and (d)–concerned administrative steps to be taken under the Quarantine Act or the Biosecurity Act, as the case may be, by the Biosecurity Officers, and in particular the Commonwealth Director or his delegate(s).*
- (2) *As to the financial resources required by the Available Precautions, CDAWR recovers most or all of its inspection costs by way of fees charged to importers: IG Report [PLF.001.001.2871] at page 126.*

72. If the Available Precautions were taken there was or was likely to be:

- (a) a positive effect; and
- (b) no or negligible negative effect;

on the social utility of having uncooked imported prawn meat available in Australian domestic supply chains, compared to the social utility of having such products available but without the Available Precautions having been taken.

Particulars

- (1) *Imported prawns and prawn products are highly discretionary consumables. To the limited extent that there was positive social utility at all in permitting such imports, that utility existed only to the extent that such importation was:*
 - (a) *safe and regarded by consumers as safe, and*
 - (b) *not at the expense of Domestic Species or farmers or fishermen of, or associated industries involved in, Domestic Species.*
- (2) *There was positive utility in permitting such imports together with the Available Precautions, compared to permitting them without the Available Precautions, in that the former was likely to conduce to continued consumer confidence in and demand for imported or domestic prawn meat.*
- (3) *There was (and the Commonwealth had identified in inter alia the Prawn IRA) special and substantial negative social utility in exposing Domestic Species to exotic pathogens like WSSV, including the negative social utility associated with:*
 - (a) *the contamination of the natural environment,*
 - (b) *the depletion of wild fisheries enjoyed by recreational fishermen, and*
 - (c) *adverse economic impacts on farmers or fishermen of, or associated industries dealing in, Domestic Species.*
- (4) *Further particulars may be provided following discovery and receipt of expert reports.*

73. In the premises set out in paragraphs 69 to 72 above:

- (a) a reasonable person would have taken the Available Precautions; and
- (b) in the premises – the Biosecurity Duty required the Commonwealth to take the Available Precautions.

F.2. Breach of duty – inadequate inspections

74. During the Critical Failure Period, Inspectors, in carrying out the Actual Sampling Regime and authorising Consignments to be released from Quarantine:
- (a) failed to take any or any adequate steps to ensure that the samples taken for Batch Testing were selected randomly;
 - (b) failed to take any or adequate steps to ensure that samples, adequate for Batch Testing, were taken for every Batch within a given Consignment;
 - (c) took samples, for the purposes of Batch Testing, from Consignments compromised by the Tampering Practices;
 - (d) as a consequence of (c), took samples that were:
 - (i) not in fact from the Batch to be tested;
 - (ii) not representative of the Batch to be tested;
 - (iii) not selected by the Inspector;
 - (iv) selected by, or under the influence of, an Interested Person; further or alternatively
 - (v) not selected randomly;
 - (e) in the premises in (d) – failed to take samples that were adequate for valid Batch Testing of every Batch in every Consignment;
 - (f) engaged in the conduct in (a) to (e) in circumstances where Inspectors had Notice of Tampering;
 - (g) failed to take any or any adequate step to report to the Commonwealth Director, or an officer of DAWR authorised by him for this purpose, incidents of apparent or suspected Tampering Practices;
 - (h) authorised the release from Quarantine of:
 - (i) Batches that had not been, or could not reliably be assured to have been, Batch Tested and free of WSSV, including:
 - (A) Unbatched Consignments; and
 - (B) Consignments compromised by the Tampering Practices; and
 - (ii) Infected Batches.

Particulars

- (1) *So far as the plaintiffs are ~~is~~ able to say prior to discovery and receipt of expert reports, the said conduct is described in or to be inferred from the IG Report [PLF.001.001.2871] at:*

 - (a) [7.4] page 94;
 - (b) [8.2.2] page 101;
 - (c) [8.2.4] page 102;

- (2) *Further particulars may be provided after discovery and receipt of expert reports.*

75. In the premises set out in the preceding paragraph, the Commonwealth by its Biosecurity Officers:

- (a) failed to exercise reasonable care and skill to ensure that:
 - (i) each Batch in each Consignment was identified;
 - (ii) samples were collected from each Batch by the Inspector;
 - (iii) such samples were:
 - (A) truly from the Batch to be tested;
 - (B) selected randomly;
 - (C) selected by the Inspector;
 - (D) not selected by, or under the influence of, an Interested Person;
 - (E) collected in a way that was reasonably likely to avoid the risk of prior manipulation of the Consignment by an Interested Person;
- (b) in the premises in (a) – failed to exercise reasonable care and skill to ensure (valid) Batch Testing of every Batch in every Consignment;
- (c) failed to exercise reasonable care and skill to detect and report to DAWR any sign of Tampering Practices;
- (d) failed to exercise reasonable care and skill to ensure that Batches that had not been, or could not reliably be assured to have been, Batch Tested were:
 - (i) not released from Quarantine; and
 - (ii) not otherwise released into the domestic supply chain; and

- (e) failed to exercise reasonable care and skill to ensure that Infected Batches were:
 - (i) not released from Quarantine; and
 - (ii) destroyed, further processed to neutralise WSSV, or re-exported; and
 - (iii) not otherwise released into the domestic supply chain.

76. In the premises set out in the preceding paragraph, the Commonwealth:

- (a) failed to take the Available Precautions described in paragraph 68(a) to (c) above; and thereby
- (b) breached the Biosecurity Duty (**Inspection Breaches**).

F.3. Breach of duty – inadequate response to earlier quarantine failures

77. Further and in the alternative to the matters set out in paragraphs 74 to 76 above, the Commonwealth, by the Commonwealth Director, knew or ought reasonably to have known:

- (a) by not later than January 2015 – that very high levels of non-compliance with prawn import conditions were being detected and reported by Biosecurity Officers;

Particulars

- (1) *So far as the plaintiffs are able to say prior to discovery, the Commonwealth's concerns about levels of non-compliance with prawn import conditions led to the introduction in 2013 of a system for tabulating instances of non-compliance. By the start of the 2015-16 period for that system approximately 1000 incidents had been tabulated: IG Report [PLF.001.001.2871] at [7.4].*
- (2) *Further particulars may be provided following discovery.*

- (b) by about late February 2016 – that a significant proportion of imported uncooked prawn meat available for sale in Queensland and NSW had been cleared from Quarantine despite being infected with WSSV;

Particulars

- (1) *So far as the plaintiffs are able to say prior to discovery, the Commonwealth's knowledge is to be inferred from:*

- (a) *the instances of non-compliance identified by CDAWR between 2013 and 2016, as stated in the IG Report [PLF.001.001.2871] at [7.4] page 94; and*
 - (b) *an intelligence assessment (not currently in the possession of the plaintiffs) prepared for CDAWR on or about 25 February 2016 suggesting that WSSV infected prawns were being imported into Australia.*
 - (2) *Further particulars may be provided following discovery.*
- (c) by about late June 2016 – the matters set out in paragraph 21 above.

Particulars

- (1) *So far as the plaintiffs are able to say prior to discovery:*
 - (a) *the Commonwealth instigated the sampling and testing referred to in paragraph 21 above as part of Phase 1 of Operation Cattai;*
 - (b) *the results of Phase 1 informed the approach taken by the Commonwealth in Phase 2 of Operation Cattai;*
 - (c) *it may be inferred from (a) and (b) that results of AAHL's testing (as stated in the IG Report [PLF.001.001.2871] at [7.5.2] page 95-96) were communicated to the Commonwealth before Phase 2 of Operation Cattai commenced in August 2016.*
- (2) *Further particulars may be provided following discovery.*

78. In the premises set out in the preceding paragraph, by:

- (a) July 2015,
- (b) late February 2016, alternatively
- (c) late June 2016,

the Commonwealth Director knew or ought reasonably to have known there were material indications that the Import Protocol was not being followed by Inspectors, further or alternatively BIPs.

Particulars

- (1) *So far as the plaintiffs are able to say prior to discovery, the Commonwealth's knowledge is to be inferred from:*
 - (a) *AAHL having advised CDAWR in or around May and December 2013 that batches of uncooked prawns imported from 3 countries, purchased at 3 different supermarkets in Geelong in Victoria, had tested positive for WSSV, referred to in paragraph 18 above and the IG Report [PLF.001.001.2871] at [7.2] page 93;*
 - (b) *the instances of non-compliance identified by CDAWR between 2013 and 2016, as stated in the IG Report [PLF.001.001.2871] at [7.4] page 94;*
 - (c) *the high levels of WSSV detected in Phase 1 of Operation Cattai, as stated in the IG Report [PLF.001.001.2871] at [7.5.2] page 95-96.*
- (2) *Further particulars may be provided following discovery.*

79. In and from July 2015 until late November 2016 at the earliest the Commonwealth Director:
- (a) caused Operation Cattai to be undertaken;
 - (b) took no or no adequate step to direct Inspectors to identify Tampering Practices;
 - (c) took no or no adequate step, based on the results of enquiries in (b), to require, in respect of any importer suspected of having engaged in Tampering Practices:
 - (i) additional stock-management requirements, to define and isolate individual Batches;
 - (ii) closer examination by Inspectors of Consignments for signs of Tampering Practices;
 or
 - (iii) additional sampling by Inspectors for the purposes of Batch Testing; further or alternatively

Particulars

- (1) *So far as the plaintiffs are able to say prior to discovery, by early August 2016 the Commonwealth Director was aware of individual importers who were suspected to be systemic infringers of the Import Protocol, such that those importers were targeted for further investigation as part of Operation Cattai: IG Report [PLF.001.001.2871] at [7.5.3].*
- (2) *Further particulars may be provided following discovery.*

- (d) took no or no adequate step to issue or reiterate directions to Inspectors to take the precautions identified in paragraph 68(a) to (c) above.

Particulars

- (1) *So far as the plaintiffs are able to say prior to discovery, the Commonwealth's failure may be inferred from the fact that a number of the said measures were only identified during, and implemented following, Operation Cattai, including:*
- (a) *seals-intact inspections (see IG Report [PLF.001.001.2871] at [8.2.4] page 102);*
 - (b) *applying a detailed definition of a 'batch' sufficient to enable Inspectors to identify undeclared batches (see IG Report [PLF.001.001.2871] at [8.2.2] page 101);*
 - (c) *ensuring that Inspectors (and not BIPs) selected pallets for sampling (see IG Report [PLF.001.001.2871] at [8.2.3] page 102).*
- (2) *Further particulars may be provided following discovery.*

80. In the premises set out in the preceding paragraph, in and from July 2015 until not earlier than late November 2016 the Commonwealth Director:
- (a) failed to take the Available Precautions described in paragraph 68(d) to (f) above; and thereby
 - (b) breached the Biosecurity Duty (**Critical Response Breaches**).

F.4. Causation

'But for' causation – CLA s.11(1)(a)

81. By reason of:
- (a) the Inspection Breaches referred to in paragraph 76; further or alternatively
 - (b) the Critical Response Breaches referred to in paragraph 80 above;
- it was the case that from time to time during the Critical Failure Period:

- (i) Batches that had not been, or could not reliably be assured to have been, Batch Tested were:
 - (A) released from Quarantine; and
 - (B) released into the domestic supply chain; and
- (ii) Infected Batches were:
 - (A) released from Quarantine;
 - (B) not required to be destroyed, further processed to neutralise WSSV, or re-exported; and
 - (C) released into the domestic supply chain.

Particulars

- (1) *So far as the plaintiffs are able to say prior to discovery, the release of Batches that were not properly Batch Tested, and Infected Batches, may be inferred from:*
 - (a) *the 2007 Memorandum [PLF.001.001.2636] which provided that Batches that did not return a WSSV-positive result were to be released from quarantine;*
 - (b) *the matters pleaded in paragraph 28 above; and*

8the detection of WSSV in a significant proportion (86%) of imported uncooked prawn samples purchased from retail and wholesale outlets in Brisbane, Sydney and Melbourne as part of Operation Cattai in or about June 2016.
- (2) *Further particulars may be provided following discovery and receipt of experts' reports.*

82. By reason of the matters set out in paragraph 81 (together and severally **Quarantine Failures**) prawn meat infected with WSSV or WSD:

- (a) was released into the domestic supply chain;
- (b) was purchased by:
 - (i) commercial users for applications leading to the discharge of uncooked prawn tissue into the Logan River near Brisbane; and

- (ii) recreational fishermen for use as bait or berley in the Logan River or waters joining the Logan River;
- (c) as a result of (b)(i), further or alternatively (b)(ii):
 - (i) was consumed by wild Domestic Species in the Logan River; and
 - (ii) was released into the water in the Logan River or waters joining the Logan River;
- (d) by reason of the matters in (c) – caused:
 - (i) WSSV infection or WSD in Domestic Species in the Logan River, Farms and Moreton Bay; and
 - (ii) widespread mortality in Domestic Species in the Farms, Logan River and Moreton Bay;
 (being **the 2016 Outbreak**).

83. By reason of the matters set out in the preceding paragraph:

- (a) the Biosecurity Responses were imposed, including:
 - (i) the restrictions on movement of Carrier Species under:
 - (A) the 5 December Movement Control Order;
 - (B) the 8 December Movement Control Order;
 - (C) the 11 December Emergency Order;
 - (D) the 30 December Emergency Order, the 20 January Movement Control Order;
 - (E) the 16 March Movement Control Order; and
 - (F) the Biosecurity Regulation 2016 as amended from time to time,
 (together and severally the **State Movement Restrictions**);
 - (ii) the restrictions on fishing for Carrier Species under:
 - (A) the 11 December Emergency Order;
 - (B) the 30 December Emergency Order; and
 - (C) the Biosecurity Regulation 2016 as amended from time to time,
 (together and severally the **State Fishing Restrictions**);
 - (iii) the restrictions on importing prawn meat contained in the Import Suspension;

- (iv) the fallowing of the Prawn Farms located within the Restricted Coastal Area for a period of approximately 18 months following the 2016 Outbreak (the **Fallow Period**);
- (v) irradiation protocols, cleaning requirements, licensing and permit requirements, and other biosecurity precautions imposed by:
 - (A) Commonwealth or State regulatory agencies; alternatively
 - (B) prudent commercial practice;(the matters in (iv) being together and severally **Other Biosecurity Responses**);
and

Particulars

- (1) *A summary of the State Movement Restrictions is contained in section H.1.*
- (2) *A summary of the State Fishing Restrictions is contained in section H.2.*
- (3) *A summary of the Import Suspension is contained in section H.3.*
- (4) *The Other Biosecurity Responses included:*
 - (a) *destruction of prawn meat infected or suspected to be infected with WSSV;*
 - (b) *treatment of prawn meat infected or suspected to be infected with WSSV, including by radiation;*
 - (c) *additional processing of prawn meat (including additional requirements as to identifying packaging of prawn meat);*
 - (d) *emergency harvesting of prawns from ponds;*
 - (e) *treating affected ponds in prawn farms with liquid chlorine and lime;*
 - (f) *treating outlet canals of prawn farms with hydrogen peroxide;*
 - (g) *the closure of prawn farms and hatcheries (being **fallowing** as described above) in and around the Logan River and Moreton Bay;*
 - (h) *prawn farmers having to identify intake and drainage channels on their farms pursuant to the Biosecurity (White Spot Syndrome Virus Amendment Regulation 2017 (Qld));*
 - (i) *commercial fisherman being required to implement measures for decontaminating fishing vessels and equipment published by QDAF on*

its website: <https://www.daf.qld.gov.au/business-priorities/biosecurity/animal-biosecurity-welfare/animal-health-pests-diseases/a-z-list-of-significant-animal-pests-and-diseases/white-spot-disease/decontamination>;

- (j) prawn farmers having to:
 - (i) devise and implement systems on their farming operations to address the risk of WSSV, including the installation of new plant, equipment and infrastructure, and the imposition of density limits on prawn ponds; and
 - (ii) satisfy Biosecurity Queensland, through the submission of a written plan outlining the measures taken to address the risk of WSSV, that approval should be granted to resume farming operations.
- (5) Further particulars may be provided following discovery and receipt of experts' reports.
- (6) TPF was required to follow the TPF Farm for the period from about 7 December 2016 to 31 May 2018.

(b) the Marketability Consequences occurred.

Particulars

- (1) As a result of the adverse publicity regarding the 2016 Outbreak, and/or changes in consumers' perception of the Carrier Species as a result of the 2016 Outbreak:
 - (a) fewer consumers purchased the Carrier Species; and
 - (b) the price for the Carrier Species was lower than it had been prior to the 2016 Outbreak.
- (2) Further particulars may be provided following discovery and receipt of experts' reports.

84. The opportunity to profit from:

- (a) continuing, during the period after the imposition of the State Movement Restrictions and the State Fishing Restrictions, to:

(i) catch Carrier Species without the constraints imposed by the State Fishing Restrictions; or

(ii) move catches of Carrier Species without the constraints imposed by the State Movement Restrictions;

was a valuable commercial opportunity to the Commercial Fishing Group Members (**the Commercial Fishing Opportunity**);

(b) continuing, during the period after the imposition of the State Movement Restrictions, to:

(i) handle Imported Product; or

(ii) move Carrier Species;

without the constraints imposed by the State Movement Restrictions was a valuable commercial opportunity for the Handling Group Members (**the Handling Opportunity**);

(c) continuing, during the period after the imposition of the State Movement Restrictions, to wholesale Carrier Species without the constraints imposed by the State Movement Restrictions was a valuable commercial opportunity for the Wholesaler Group Members (**the Wholesaling Opportunity**);

(d) continuing, during the period after the imposition of the State Movement Restrictions, to farm prawns at a Prawn Farm:

(i) located in the Restricted Logan River Area; or

(ii) using prawn larvae or post-larval prawns supplied from Prawn Farms located in the Restricted Logan River Area,

without the constraints imposed by the State Movement Restrictions was a valuable commercial opportunity for the Prawn Farmer Group Members (**the Prawn Farming Opportunity**)

85. By reason of the matters set out in paragraphs 81, 82, 83 and 84:

(a) the Commercial Fishing Group Members:

(i) lost the whole of the Commercial Fishing Opportunity;

(ii) earned less net income than they otherwise would have earned, including due to:

(A) catching and landing a reduced volume of Moreton Bay Product;

(B) selling a reduced volume of Moreton Bay Product;

- (C) selling Moreton Bay Product at reduced prices;
 - (D) increased costs as a result of the Biosecurity Responses, including increased costs associated with switching to fishing for Domestic Species that were not Moreton Bay Product;
- (b) Tweed Bait and the Handling Group Members:
- (i) lost the whole of the Handling Opportunity; and
 - (ii) earned less net income than they otherwise would have earned, including due to:
 - (A) handling a lower volume of Moreton Bay Product and Imported Product;
 - (B) increased costs as a result of the Biosecurity Responses, including increased costs associated with:
 - (1) handling Carrier Species that were not Moreton Bay Product;
 - (2) additional processing of Carrier Species;
- (c) Tweed Bait and the Wholesaler Group Members:
- (i) lost the whole of the Wholesaling Opportunity; and
 - (ii) earned less net income than they otherwise would have earned, including due to:
 - (A) selling a reduced volume of Moreton Bay Product and Imported Product;
 - (B) selling Moreton Bay Product and Imported Product at reduced prices;
 - (C) increased costs as a result of the Biosecurity Responses, including increased costs associated with:
 - (1) obtaining Carrier Species that were not Moreton Bay Product;
 - (2) additional processing of Carrier Species.

Particulars

- (1) *Tweed Bait suffered:*
- (a) *reduced volumes of Moreton Bay Product, in particular bait prawns;*
 - (b) *increased costs of sourcing prawns for human consumption from areas other than the Moreton Bay area (Clear Areas), including costs resulting from increased prices for Clear Area stocks and increased shipping costs;*

- (c) *increased costs of processing prawns, including costs of irradiating green prawns prior to movement out of the Restricted Coastal Area;*
 - (d) *reduced sales, by reason of:*
 - (i) *lack of stock as described in (a) above and*
 - (ii) *adverse customer perceptions about stock from suppliers operating in the Moreton Bay area (whether the stock was Moreton Bay Product or simply brought into the said area for processing);*
 - (e) *reduced prices on remaining sales, in particular reduced prices in respect of bait prawns discoloured by irradiation, or known by customers to have been irradiated;*
 - (f) *increased costs of returned stock, in particular stocks of bait prawns returned by customers following discolouration associated with irradiation.*
- (2) *Further particulars of Tweed Bait's loss and damage will be provided following completion of discovery and receipt of expert reports.*
 - (3) *Particulars of loss and damage for individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.*

(d) TPF and the Prawn Farmer Group Members:

- (i) lost the whole of the Prawn Farming Opportunity; and
- (ii) suffered:
 - (A) loss of property as a result of:
 - (1) mortality among prawn stock, resulting from infection with WSSV;
 - (2) destruction of prawn stock, at the direction of or by arrangement with CDAWR or QDAF;
 - (B) eradication and clean-up costs associated with the destruction of prawn stock and the chemical or other treatment of hatchery facilities or grow-out ponds;

Particulars

- (1) *From around 7 December 2016, prawns farmed at the TPF Farm became infected with WSSV and developed WSD;*
- (2) *Between 10 and 15 December 2016, all ponds at the TPF Farm were chlorinated by Biosecurity Queensland;*
- (3) *As a result of the matters in paragraphs (1) and (2) above, all of the prawn stock at the TPF Farm as at 7 December 2016 perished and/or became permanently unfit for consumption or sale.*
- (4) *Further, all feedstock, chemical stock, packaging and other material used for or in connection with prawns at the TPF Farm had to be destroyed or specially cleaned.*

(iii) earned less net income than they otherwise would have earned, including due to:

- (A) reduced stock available for sale as a result of the destruction referred to in (i) above;
- (B) inability to restock or resume farming operations during the Fallow Period;
- (C) reduced market demand for Moreton Bay Product following the resumption of farming after the Fallow Period;
- (D) reduced prices as a result of:
 - (1) Moreton Bay Product being unable to be sold outside of the Restricted Coastal Area as an uncooked (green) product; and/or
 - (2) the Marketability Consequences;
- (E) increased costs as a result of the Biosecurity Responses, including increased costs associated with:
 - (1) decontamination of the affected Prawn Farms;
 - (2) testing of prawns; and
 - (3) upgrading plant and machinery in order to obtain permission from Biosecurity Queensland to resume farming operations;
- (F) decreased farming yield as a result of:
 - (1) density limits on the number of prawns permitted to be stocked per square metre, imposed as a result of the 2016 Outbreak; and/or

- (2) the conversion of prawn ponds to water treatment facilities or other infrastructure required as a result of the 2016 Outbreak;

Particulars

- (1) *TPF suffered:*
 - (a) *reduced volumes of Moreton Bay Product, in particular farmed prawns;*
 - (b) *reduced sales, by reason of:*
 - (i) *the lack of stock described in (a) above;*
 - (ii) *the inability to sell farmed prawns, in particular prawn larvae, outside of the Restricted Coastal Area;*
 - (c) *reduced prices on remaining sales, in particular reduced prices in respect of prawns sold as a cooked product, rather than an uncooked product, in order to eliminate the presence of WSSV;*
 - (d) *increased costs as a result of the Biosecurity Responses, including costs associated with:*
 - (i) *destocking and decontamination;*
 - (ii) *the Fallow Period;*
 - (iii) *the installation of water filtration and re-circulation systems;*
 - (iv) *the conversion of three (3) grow-out ponds into water treatment ponds;*
 - (v) *the purchase of additional chemicals for water treatment;*
 - (vi) *additional testing and testing equipment in order to meet post-2016 Outbreak testing requirements;*
 - (vii) *fencing;*
 - (e) *increased costs of sourcing prawn larvae as a result of losing the second plaintiff's hatchery due to the 2016 Outbreak.*
- (2) *Further particulars of loss and damage of TPF will be provided following completion of discovery and receipt of expert reports.*

(3) *Particulars of loss and damage for individual Prawn Farm Group Members may be provided following the trial of common questions or otherwise as the Court may direct.*

86. But for the Quarantine Failures:

- (a) every Batch imported during the Critical Failure Period would have been Batch Tested in accordance with the Import Protocol;
- (b) no Batch imported during the Critical Failure Period would have been cleared from Quarantine or released into the domestic supply chain unless and until it had been Batch Tested in accordance with the Import Protocol;
- (c) every Infected Batch imported during the Critical Failure Period would, more probably than not, have tested positive for WSSV or WSD when Batch Tested;
- (d) every Infected Batch would have been:
 - (i) isolated;
 - (ii) held in Quarantine pending re-export, destruction or further processing to neutralise WSSV in a facility approved by AQIS for that purpose; and
 - (iii) not otherwise released from Quarantine or released into the domestic supply chain;
- (e) in the premises:
 - (i) the infected imported prawn meat that caused the 2016 Outbreak would not have been released into the domestic supply chain;
 - (ii) the 2016 Outbreak would not have occurred; and
- (f) some or all of the Commercial Fishing Group Members would have continued, during the period after the imposition of the State Movement Restrictions and the State Fishing Restrictions, to:
 - (i) catch Carrier Species without the constraints imposed by the State Fishing Restrictions, in areas that were instead subject to the said Restrictions; or
 - (ii) move catches of Carrier Species without the constraints imposed by the State Movement Restrictions, by routes or using methods or practices that were instead subject to the said Restrictions;
- (g) Tweed Bait and some or all of the Handling Group Members would have continued, during the period after the imposition of the State Movement Restrictions, to:

(i) handle Imported Product; or

(ii) move Carrier Species;

without the constraints imposed by the State Movement Restrictions, using methods or practices that were instead subject to the said Restrictions;

(h) Tweed Bait and some or all of the Wholesaler Group Members would have continued, during the period after the imposition of the State Movement Restrictions, to wholesale Carrier Species without the constraints imposed by the State Movement Restrictions, using methods or practices that were instead subject to the said Restrictions;

(i) TPF and some or all of the Prawn Farmer Group Members would have continued, during the period after the imposition of the State Movement Restrictions, to farm prawns at a Prawn Farm:

(i) located in the Restricted Logan River Area; or

(ii) using prawn larvae or post-larval prawns supplied from Prawn Farms located in the Restricted Logan River Area,

without the constraints imposed by the State Movement Restrictions, using methods or practices that were instead subject to the said Restrictions; and

(j) in the premises in (f) to (i) respectively, the Claimants referred to therein would not have suffered the losses alleged in paragraph 85 above (**Claimants' losses**).

87. In the premises set out in the preceding paragraph:

(a) the Inspection Breaches; further or alternatively

(b) the Critical Response Breaches;

were a necessary condition for the Claimants' losses, within the meaning of s.11(1)(a) of the *CLA*.

Factual causation – CLA s.11(2)

88. In the alternative to paragraph 87:

(a) the 2016 Outbreak and the Claimants' losses were the types of event and losses respectively that were the subject of the Commonwealth's Biosecurity Duty;

- (b) the state of scientific knowledge prior to, during and since the 2016 Outbreak did not and does not permit the establishment (within the meaning of s.11(1)(a) of the *CLA*) of factual causation between the Breaches and the Contamination Effects (and accordingly the Claimants' loss and damage);

Particulars

- (1) *So far as the plaintiffs are able to say prior to discovery and receipt of experts' reports:*
- (a) *genomic testing permits identification of the strain of the WSSV infection that caused the 2016 Outbreak, and by implication the probable geographic source of the tissue that introduced the infection;*
 - (b) *genomic testing identifies that the relevant strain is associated with a precise region in China, known to the Commonwealth but not presently known to the plaintiffs;*
 - (c) *genomic testing does not establish the mechanism by which the said strain was introduced to Australian waters.*
- (2) *Further particulars may be provided following discovery and receipt of experts' reports.*

- (c) there were during the 2016 Outbreak and are no practical means available to the Claimants by which direct observation of factual causation between:
- (i) the Quarantine Failures and introduction of WSSV infection into the Logan River or the Farms; or
 - (ii) the introduction of WSSV infection into the Logan River or the Farms, and the subsequent spread of infection through the Logan River, Farms or Moreton Bay;
- could have been made or collected, so as to permit the establishment (within the meaning of s.11(1)(a) of the *CLA*) of factual causation;

Particulars

- (1) *The Claimants had no practical means of observing:*
- (a) *the conduct of Quarantine Participants prior to or during, or the conduct of Inspectors during inspections; or*

- (b) *the movement of infected prawns or prawn products through domestic supply chains to the point of introduction into Logan River or the Farms;*
 - (2) *There was no practical means of laboratory-style, controlled-variable testing for the physical mechanism by which WSSV-infected tissue deposited in Logan River or introduced to a Farm was able subsequently to:*
 - (a) *infect either wild or farmed Domestic Species; or*
 - (b) *pass between the River and any Farm or vice versa.*
 - (3) *Further particulars may be provided following discovery and receipt of experts' reports.*
- (d) the Quarantine Failures:
- (i) were systemic and longstanding;
 - (ii) were of a nature likely to increase materially the risk of an outbreak like the 2016 Outbreak;
- (e) the most natural, and overwhelmingly most probable explanation for the 2016 Outbreak is the sequence of events described in paragraph 82 ~~81~~ above;
- (f) in circumstances where:
- (i) the Claimants make allegations of contamination of Australian waterways by exotic pathogens that were the specific subject of Commonwealth biosecurity measures, including the Import Protocol; and
 - (ii) the matters in (a) to (e) above apply;
- the Claimants' claims are novel, out of the ordinary and not conventional;

Particulars

The plaintiffs will rely at trial upon the principles as to s.11(2) set out in Powney v. Kerang and District Health [2014] VSCA 221; (2014) 43 VR 506 and East Metropolitan Health Service v. Ellis [2020] WASCA 147.

- (g) in the circumstances in (a) to (f), the Claimants' case is an exceptional case within the meaning of s.11(2) of the *CLA*; and

- (h) in circumstances where:
 - (i) the matters in (g) apply; and
 - (ii) upon the grounds set out above the Quarantine Failures materially contributed to:
 - (A) the harm; alternatively
 - (B) the risk of the harm;
 that resulted in the Claimants' loss and damage; and
 - (iii) having regard to:
 - (A) the matters pleaded in (a) to (g) above, and
 - (B) the Commonwealth's Biosecurity Duty,
 responsibility for the Claimants' loss and damage should be imposed on the Commonwealth;
 causation should be accepted as satisfying s.11(1)(a) of the *CLA*, within the meaning of s.11(2) of the *CLA*.

Scope of liability – CLA s.11(1)(b)

89. The 2016 Outbreak and the Claimants' losses:
- (a) were the types of event and losses respectively that were the subject of the Commonwealth's Biosecurity Duty; and
 - (b) resulted from a failure of the Biosecurity Officers to exercise due care and skill in implementing biosecurity procedures already determined or prescribed by the Commonwealth as appropriate biosecurity procedures to address the Risks of Harm.
90. The imposition of tortious liability upon the Commonwealth for the Claimants' losses resulting from the Quarantine Failures promotes and does not counteract the policy objectives of the *Quarantine Act* and the *Biosecurity Act* respectively, being the objectives of protecting Australian flora, fauna, citizens and industry from exotic biosecurity hazards.

Particulars

The said objectives are described in inter alia:

- (1) *the Prawn IRA [PLF.001.001.0461] at [2.1],*

(2) *s.4 of the Quarantine Act and*

(3) *s.4 of the Biosecurity Act.*

91. By reason of the matters set out in the two preceding paragraphs, it is appropriate (within the meaning of s.11(1)(b) of the *CLA*) for the scope of the Commonwealth's liability in respect of the Quarantine Failures to extend to liability for the Claimants' losses.

Causation

92. In the premises set out in:

(a) paragraphs 81 to 87; alternatively

(b) paragraphs 88 above;

and paragraph 91, the breaches of duty comprising the Quarantine Failures were a cause of the Claimants' losses.

PART G NUISANCE

G.1. Right to Fish

93. Further or in the alternative, at all material times there existed a public right to fish in the Restricted Coastal Area and Restricted Logan River Area (**Right to Fish**).

94. At all material times the Commercial Fishing Group Members:

(a) exercised:

(i) the Right to Fish; alternatively

(ii) the Right to Fish:

(A) unencumbered by restrictions as to catch methods or volumes imposed by statute or regulation on unlicensed members of the public; but

(B) subject to restrictions as to catch methods or volumes imposed by statute or regulation on licensed commercial fishermen; and

- (b) did so for commercial purposes.

Particulars

- (1) *The restrictions referred to in paragraph 94(a)(ii)(B) as to catch methods or volumes in the Restricted Coastal Area and Restricted Logan River Area are those imposed under the Fisheries Act 1994 (Qld) and the Fisheries Regulation 2008 (Qld).*
- (2) *Queensland primary commercial fishing licences are leased or bought from an existing licence holder and allow the operation of a nominated primary boat and its associated tender boats for commercial fishing, in accordance with the fishery symbols appearing on the licence.*
- (3) *Further particulars may be provided following discovery and receipt of experts' reports.*

95. At all material times:

- (a) since 2007; further or alternatively
- (b) during the Critical Failure Period;

it was reasonably foreseeable to the Commonwealth that if the Commonwealth, by its Biosecurity Officers, authorised the release from Quarantine of prawn meat infected with WSSV then:

- (i) the prawn meat could be purchased by:
 - (A) commercial users for applications leading to the discharge of uncooked prawn tissue into waterways like the Logan River near Brisbane; and
 - (B) recreational fishermen for use as bait or berley in waterways like the Logan River or Moreton Bay;
- (ii) the activities in (i) could introduce infected tissue to Domestic Species in the said waterways;
- (iii) the infected tissue could be consumed or ingested by Domestic Species and cause WSSV infection in the said Species;
- (iv) an infection as described in (iii) could:
 - (A) spread throughout the waterways and into connected waters;
 - (B) cause widespread mortality among Domestic Species in the affected waters; and thereby

- (C) interfere with the use or enjoyment of the Right to Fish by persons lawfully able to exercise the said Right; and
 - (v) by reason of the matters in (iv), cause financial harm to persons entitled to exercise the Right to Fish for commercial purposes, including harm from:
 - (A) reduced catch of Domestic Species;
 - (B) increased costs associated with the implementation of additional biosecurity measures; and
 - (C) other economic losses to the said operators, including loss of future profits due to reduced sales volumes or prices caused by reduced marketability of the Domestic Species.
- (the matters in (i) to (v) being the **Fishing Nuisance Risks**).

Particulars

- (1) *The plaintiffs refer to the particulars as to foreseeability set out in paragraphs 58 to 60 above, but specifically excluding any reference to any duty of care or failure to take reasonable care.*
- (2) *Further, the foreseeability of harm to Domestic Species:*
 - (a) *in Moreton Bay and associated waters is to be inferred from the specific references to the wild prawn fishery ('capture fishery') in Moreton Bay in the Prawn IRA [PLF.001.001.0461]: see eg., at [2.1] (p.11), and (regarding the use of prawns as bait for recreational fishing in Moreton Bay) at [3.3] p.77.;*
 - (b) *in aquaculture facilities in Queensland is to be inferred from the references to same in the Prawn IRA [PLF.001.001.0461], eg., at p.13*
- (3) *Further particulars may be provided following discovery and receipt of experts' reports.*

G.2. Interference with Right to Fish – Commercial Fishing Group Members

96. During the Critical Failure Period the Commonwealth authorised or permitted the release from Quarantine of imported uncooked prawn meat infected with WSSV.

Particulars

- (1) *The plaintiffs refers to the particulars as to the conduct of the Biosecurity Officers set out in paragraphs 74 to 75 above, but specifically excluding any reference to any duty of care or failure to take reasonable care.*
- (2) *Further particulars may be provided following discovery and receipt of experts' reports.*

97. By reason of the matters set out in the preceding paragraph:

- (a) the Public Nuisance Risks eventuated;
- (b) the Commonwealth caused interference in the Commercial Fishing Group Members' enjoyment of their Right to Fish; and
- (c) the Commercial Fishing Group Members suffered loss and damage as pleaded in paragraph 85(a) above.

98. In the premises set out in the preceding paragraph, the Commercial Fishing Group Members have, as a result of the interference referred to in paragraph 95 above, suffered damage that was:

- (a) particular damage, being the damage to them in the conduct of their commercial activities;
- (b) different in kind and degree from the loss and damage suffered by other members of the public or the public at large; and
- (c) foreseeable to the Commonwealth.

Particulars

- (1) *The plaintiffs refer to and repeats the particulars as to the losses suffered by the Commercial Fishing Group Members set out under paragraph 85 above.*
- (2) *Further particulars may be provided following discovery and receipt of experts' reports.*

99. In the premises set out in paragraphs 93 to 98 above:

- (a) the Commonwealth caused public nuisance (**Fishing Nuisance**) to the Commercial Fishing Group Members;
- (b) the Commercial Fishing Group Members suffered foreseeable loss or damage from the said Fishing Nuisance.

G.3. Right to Waters – Logan Prawn Farms

100. Further or in the alternative, at all material times there existed a public right to draw waters from waterways in the Restricted Coastal Area and Restricted Logan River Area (**Right to Waters**).

101. TPF and certain Prawn Farmer Group Members:

- (a) were at all material times and are the registered proprietors, lessees or licensees of the lands on which their respective Prawn Farms operated during the Critical Failure Period;
- (b) as licensed operators of their Prawn Farms, had the right to draw, alternatively the practice of drawing, water from Logan River onto their Farms; and
- (c) until the 2016 Outbreak, customarily enjoyed the right or practice in (b) in circumstances where the said water was uninfected by WSSV,

(such Prawn Farmer Group Members being **Logan Prawn Farmer Group Members**).

102. At all material times TPF and the Logan Prawn Farmer Group Members:

- (a) exercised:
 - (i) the Right to Waters; alternatively
 - (ii) the Right to Waters:
 - (A) unencumbered by restrictions as to the volumes of water drawn from the said waterways, as imposed by statute or regulation on unlicensed members of the public; but
 - (B) subject to restrictions as to the treatment of water drawn from the said waterways imposed by statute or regulation on licensed aquaculture facilities; and
 - (iii) did so for commercial purposes, being the operation of their aquaculture facilities.

Particulars

- (1) *TPF and the Logan Prawn Farmer Group Members were required to be licensed under the Environmental Protection Act 1994 (Qld).*

- (2) *Further particulars may be provided following discovery and receipt of experts' reports.*

103. At all material times:

- (a) since 2007; further or alternatively
- (b) during the Critical Failure Period.

it was reasonably foreseeable to the Commonwealth that if the Commonwealth, by its Biosecurity Officers, authorised the release from quarantine of prawn meat infected with WSSV then:

- (i) the prawn meat could be purchased by:
 - (A) commercial users for applications leading to the discharge of uncooked prawn tissue into waterways like the Logan River near Brisbane; and
 - (B) recreational fishermen for use as bait or berley in waterways like the Logan River or Moreton Bay;
- (ii) the activities in (i)(A) or (B) could introduce infected tissue to Domestic Species in the said waterways;
- (iii) the infected tissue could be consumed or ingested by Domestic Species and cause WSSV infection in the said Species;
- (iv) an infection as described in (iii) could:
 - (A) spread throughout the waterways and into connected waters;
 - (B) cause widespread mortality among Domestic Species in the affected waters; and thereby
 - (C) interfere with the use or enjoyment, by the operators of the Logan Prawn Farms, of their Right to Waters, by rendering dangerous, injudicious or inconvenient their continued use of the infected waterways for their Farms' supplies of water; and
- (v) the infection or interference in (iv) could cause:
 - (A) loss of or damage to stocks of Domestic Species in the affected Prawn Farms;
 - (B) economic loss to the operators of the Logan Prawn Farms, associated with the implementation of additional biosecurity measures; and

(C) other economic losses to the said operators, including loss of future profits due to:

- (1) delayed resumption of production; and
- (2) reduced sales volumes or prices due to the adverse effects of publicity on the marketability of the farmed products;

(the matters in (i) to (v) being the **Farm Waters Nuisance Risks**).

Particulars

- (1) *The plaintiffs refer to the particulars as to foreseeability set out in paragraphs 58 to 61 above, but specifically excluding references to any duty of care or failure to take reasonable care.*
- (2) *Further particulars may be provided following discovery and receipt of experts' reports.*

G.4. Interference with Right to Waters – Logan Prawn Farms

104. During the Critical Failure Period the Commonwealth, by its Biosecurity Officers, authorised or permitted the release from quarantine of prawn meat infected with WSSV.

Particulars

- (1) *The plaintiffs refer to the particulars as to the conduct of the Biosecurity Officers set out in paragraphs 74 to 82 above, but specifically excluding references to any duty of care or failure to take reasonable care.*
- (2) *Further particulars may be provided following discovery and receipt of experts' reports.*

105. By reason of the matters set out in the preceding paragraph:

- (a) the Farm Waters Nuisance Risks eventuated;
- (b) the introduction of WSSV infection to the Logan River and associated waterways rendered it dangerous, injudicious or inconvenient for TPF and the Logan Prawn Farmer Group Members to continue to use waters from the said waterways to service their Farms;

- (c) the Commonwealth caused interference in the enjoyment by TPF and the Logan Prawn Farmer Group Members of their Right to Waters; and
- (d) TPF and the Logan Prawn Farmer Group Members suffered loss and damage including from:
 - (i) loss of or damage to stocks of farmed Domestic Species;
 - (ii) economic loss associated with the implementation of additional biosecurity measures; and
 - (iii) other economic losses including loss of future profits due to:
 - (A) delayed resumption of production; and
 - (B) reduced sales volumes or prices due to the adverse effects of publicity on the marketability of the farmed products.

Particulars

- (1) *The plaintiffs refer to:*
 - (a) *the particulars as to the mechanism by which WSSV was carried out of quarantine and introduced to the Logan River and associated waterways, set out in paragraphs 81 and 82 above (but specifically excluding references to any duty of care or failure to take reasonable care by the Commonwealth); and*
 - (b) *the particulars as to the loss and damage suffered by TPF and the Logan Prawn Farmer Group Members set out under paragraph 85 above.*
- (2) *Further particulars may be provided following discovery and receipt of experts' reports.*

106. In the premises set out in the preceding paragraph, TPF and the Logan Prawn Farmer Group Members have, as a result of the interference referred to in the preceding paragraph, suffered damage that was:

- (a) particular damage, being the damage to them in the conduct of their commercial activities;
- (b) different in kind and degree from the loss and damage suffered by other members of the public or the public at large; and

- (c) foreseeable to the Commonwealth by reason of the matters pleaded in paragraphs 8 to 59 above.

107. In the premises set out in paragraphs 99 to 105:

- (a) the Commonwealth caused public nuisance (**Farm Waters Nuisance**) to TPF and the Logan Prawn Farmer Group Members;
- (b) TPF and the Logan Prawn Farmer Group Members suffered loss or damage from the Farm Waters Nuisance.

PART H PRIVATE NUISANCE – LOGAN PRAWN FARMS

108. At all material times:

- (a) since 2007; further or alternatively
- (b) during the Critical Failure Period;

it was reasonably foreseeable to the Commonwealth that if the Commonwealth, by its Biosecurity Officers, authorised the release from quarantine of prawn meat infected with WSSV then:

- (i) the prawn meat could be purchased by:
 - (A) commercial users for applications leading to the discharge of uncooked prawn tissue into waterways like the Logan River near Brisbane; and
 - (B) recreational fishermen for use as bait or berley in waterways like the Logan River or Moreton Bay;
- (ii) the activities in (i)(A) or (B) could introduce infected tissue to Domestic Species in the said waterways;
- (iii) the infected tissue could be consumed or ingested by Domestic Species and cause WSSV infection in the said Species;
- (iv) an infection as described in (iii) could:
 - (A) spread throughout the waterways and into connected waters, which waterways or waters might supply *inter alia* aquaculture facilities like those of TPF and the Logan Prawn Farmer Group Members; and
 - (B) enter into the said Prawn Farms; and thereby

- (C) interfere with the use or enjoyment, by the operators of the said Prawn Farms, of their interests in the lands on which the facilities were located; and
 - (v) the infection or interference in (iv) could cause:
 - (A) loss of or damage to stocks of Domestic Species in the affected Prawn Farms;
 - (B) economic loss to the operators of the Logan Prawn Farms, associated with the implementation of additional biosecurity measures; and
 - (C) other economic losses to the said operators, including loss of future profits due to:
 - (1) delayed resumption of production; and
 - (2) reduced sales volumes or prices due to the adverse effects of publicity on the marketability of the farmed products;
- (the matters in (i) to (v) being the **Farm Land Nuisance Risks**).

Particulars

- (1) *The plaintiffs refer to the particulars as to foreseeability set out in paragraphs 58 to 61 above, but specifically excluding reference to any duty of care or failure to take reasonable care.*
- (2) *Further particulars may be provided following discovery and receipt of experts' reports.*

109. During the Critical Failure Period the Commonwealth, by its Biosecurity Officers, authorised or permitted the release from quarantine of prawns or prawn products infected with WSSV.

Particulars

- (1) *The plaintiffs refer to the particulars as to the conduct of the Biosecurity Officers set out in paragraphs 74 to 82 above, but specifically excluding reference to any duty of care or failure to take reasonable care.*
- (2) *Further particulars may be provided following discovery and receipt of experts' reports.*

110. By reason of the matters set out in the preceding paragraph:

- (a) the Farm Land Nuisance Risks eventuated;

- (b) the WSSV infection introduced to the Logan River entered into the Prawn Farms;
- (c) in the premises in (b) – the Commonwealth caused interference in the enjoyment by TPF and the Logan Prawn Farmer Group Members of:
 - (i) their rights to draw, or practice of drawing, uninfected water from the Logan River; and thereby
 - (ii) their interests in the lands on which they operated their Prawn Farms; and
- (d) TPF and the Logan Prawn Farmer Group Members suffered loss and damage.

Particulars

(1) *The plaintiffs refer to:*

(a) *the particulars as to the mechanism by which WSSV was carried out of quarantine and introduced to the Logan River and associated waterways, set out in paragraphs 81 and 82 above (but specifically excluding any reference to any duty of care or failure to take reasonable care by the Commonwealth); and*

(b) *the particulars as to the loss and damage suffered by the Prawn Farmer Group Members set out under paragraph 85 above.*

(2) *Further particulars may be provided following discovery and receipt of experts' reports.*

111. In the premises set out in the preceding paragraph, TPF and the Logan Prawn Farmer Group Members have, as a result of the interference referred to in the preceding paragraph, suffered damage that was:

- (a) particular damage, being the damage to them in the conduct of their commercial activities;
- (b) different in kind and degree from the loss and damage suffered by other members of the public or the public at large;
- (c) not an ordinary incident of the holding of interests in land in those locations; and
- (d) foreseeable to the Commonwealth by reason of the matters pleaded in paragraphs 8 to 59 above.

112. In the premises set out in this Part H:

- (a) the Commonwealth caused private nuisance (**Farm Land Nuisance**) to TPF and the Logan Prawn Farmer Group Members; and
- (b) TPF and the Logan Prawn Farmer Group Members suffered loss or damage from the Farm Land Nuisance.

PART I COMMON QUESTIONS OF LAW OR FACT

113. The questions of law or fact common to the claims of the plaintiffs and ~~each of the~~ Group Members are:


- (a) whether the Commonwealth owed the Biosecurity Duty to a class of person including the Claimants or any subclass of the Claimants;
- (b) if the Commonwealth owed the Biosecurity Duty:
 - (i) whether the Duty required the Commonwealth to take any and if so which of the Available Precautions;
 - (ii) whether and if so how the Commonwealth failed to take any and if so which of the Available Precautions;
 - (iii) whether the Commonwealth's failure to take any and if so which of the Available Precautions amounted to a breach of the Duty;
- (c) if the Commonwealth breached the Biosecurity Duty –
 - (i) whether any breach was a factual cause of the 2016 Outbreak; and
 - (ii) whether it is appropriate that the Commonwealth's scope of liability for such breach should include liability for the Claimants' losses or any class of such losses;
- (d) what are the correct principles for identifying and measuring compensable losses suffered by the Claimants' losses or any of them as a result of the Commonwealth's negligence;
- (e) whether the Commonwealth (by its officers or agents) caused:
 - (i) the Fishing Nuisance;
 - (i) the Farm Waters Nuisance;
 - (ii) the Farm Land Nuisance;

- (f) if the Commonwealth caused a nuisance as set out in (e), what are the correct principles for identifying and measuring compensable losses suffered by the Claimants or any of them as a result of nuisance caused by the Commonwealth.

PART J RELIEF

114. The plaintiffs claim, on their behalf and on behalf of the Group Members:

- (a) Damages;
- (b) Interest pursuant to s.58(3) of the *Civil Proceedings Act 2011* (Qld);
- (c) Costs;
- (d) Such further or other orders as the Court may deem appropriate.

Signed: 

Description: Solicitors for the Plaintiffs

Dated: ~~8 September 2022~~ 21 November 2022

This amended pleading was prepared by Lachlan Armstrong of His Majesty's Counsel, and Michael May and Mei Ying Barnes of Counsel.

NOTICE AS TO DEFENCE

Your defence must be attached to your notice of intention to defend and defence.

PART K ANNEXURE A – BIOSECURITY RESPONSES

H.1. State Movement Restrictions

Item	Instrument	Period	Specified carriers	Specified area	Prohibition	Exceptions
1.	5 December Movement Control Order	05/12/16-11/12/16	Decapod crustaceans (except the larval stages) and polychaete worms used for bait or feed	Farm 1IP and Farm 3IP	A person must not move specified carriers out of the area	If the carriers are cooked If the carriers originated outside the area and are transiting through the area either in sealed unopened packages that pass through the area without stropping If the person has a Biosecurity Instrument Permit
2.	8 December Movement Control Order	08/12/16-11/12/16	Same as item 1	An area specified in the order comprised of five properties near the Logan River (including Farm 4IP) and prescribed areas within the Logan River	A person within the specified area must not move specified carriers out of the area	Same as item 1
3.	11 December Emergency Order	11/12/16-30/12/16	'regulated white spot syndrome virus carrier' (not defined, but,	An area specified in the order including parts of the Logan River and seven (7)	A person within the Biosecurity Emergency Area must	Same as item 1 save that the reference to Biosecurity Instrument

				properly construed, includes the same as item 1)	nearby properties (including Farms 1IP, 3IP and 4IP) (Biosecurity Emergency Area)	not move specified carriers out of the area	Permit becomes a reference to Biosecurity Emergency Permit
4.	30 December Emergency Order	30/12/16- 20/01/17	decapod crustaceans, polychaete worms and salt water	Biosecurity Emergency Area	A person within the Biosecurity Emergency Area must not move specified carriers out of the area	Same as item 3	
5.	20 January Movement Control Order	21/01/17- 16/03/17	decapod crustaceans or polychaete worms	an area specified in the order including the Logan and Albert Rivers	A person within the specified area must not move specified carriers out of the area	Same as item 1	
6.	16 March Movement Control Order	16/03/17- 16/06/17	Same as item 5	Restricted Coastal Area	A person within the Restricted Coastal Area must not move specified carriers out of the area	Same as item 1	
7.	Biosecurity Regulation 2016	16/06/17- 05/07/17	Same as item 5	Whole of Queensland other than biosecurity areas	A person must not move a specified carrier from a place inside the specified area to a place outside the specified area	The carrier is cooked The carrier is an 'excluded carrier' (being specified species of crab, bug and lobster) If there is a compliance agreement for the carrier, the other party to the agreement holds a compliance certificate under the agreement for	

						<p>the carrier; and, if the carrier is removed from the business premises of the other party to the agreement, the carrier is in a sealed container and the seal of the container is not broken when the container is in the regulated movement area.</p> <p>If the carrier is being transported between 2 places outside the regulated movement area through the regulated movement area; the carrier is transported in a sealed container; and the seal of the container is not broken when the container is in the regulated movement area.</p>
8.	Biosecurity Regulation 2016 as amended by the 5 July 2017 Biosecurity Regulation Notice	05/07/17	Same as item 5	Restricted Coastal Area	Same as item 7	Same as item 7

H.2. State Fishing Restrictions

Item	Instrument	Period	Specified area	Prohibition	Exceptions
1.	11 December Emergency Order	11/12/16- 30/12/16	Biosecurity Emergency Area	<p>A person must not carry out activities within the Biosecurity Emergency Area using:</p> <ul style="list-style-type: none"> (a) beam trawling, (b) pots, dillies, traps for catching crabs; (c) cast nets; (d) yabby pumps; (e) implements (i.e. spades, forks) for digging for worms. <p>A person must not take decapod crabs (including yabbies), prawns or polychaete worms from the Biosecurity Emergency Area</p>	N/a
2.	30 December Emergency Order	30/12/16- 20/01/17	Biosecurity Emergency Area	Same as item 1	N/a
3.	Biosecurity Regulation 2016	16/06/17- 05/07/17	Whole of Queensland	A person must not engage in fishing in a drainage channel, or an intake channel, used by a prawn facility or within 100m of such a channel	<p>If the fishing is with the consent of the owner of the facility</p> <p>If the person did not know, and could not reasonably have known, the facility was a prawn facility</p>

4.	Biosecurity Regulation 2016 as amended by the 5 July 2017 Biosecurity Regulation Notice	05/07/17-15/06/18	Restricted Logan River Area	Same as item 3	Same as item 3
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H.3. Import Suspension

Item	Instrument	Period	Prohibition	Exceptions
1.	Import Suspension Determination	07/01/17-03/04/17	All imports of uncooked prawns and uncooked prawn meat	N/a
2.	Import Suspension Determination and Import Suspension Exceptions Determination (No 1)	04/02/17-27/02/17	Same as item 1	Uncooked prawns or prawn meat: <ol style="list-style-type: none"> sourced from the exclusive economic zone; processed into dried prawns or a product that is shelf-stable; or processed into bait for aquatic use, pet-fish food or aquaculture feed.
3.	Import Suspension Determination and Import Suspension Exceptions Determination (No 1) and (No 2)	28/02/17-03/04/17	Same as item 1	Same as item 2 plus: <ol style="list-style-type: none"> prawns sourced from Australian territory other than the area covered by the 20 January 2017 Movement Control Order; uncooked prawns and prawn meat intended for use as laboratory or food samples for analysis transhipped uncooked prawns and prawn meat for outgoing passenger vessels engaged in international travels; and prawns harvested in Australia and exported to Thailand for import back to Australia

4.	Import Suspension Determination and Import Suspension Exceptions Determination (No 1), (No 2) and (No 3)	04/04/17-17/05/17	Same as item 1	Same as item 3 plus wild-caught prawns that had been processed overseas and re-exported to Australia
5.	Import Suspension Determination and Import Suspension Exceptions Determination (No 1), (No 2), (No 3) and (No 4)	18/05/17-06/07/17		Same as item 4 plus prawns marinated for human consumption and accompanied by a foreign country health certificate

PART L ANNEXURE B – DEFINED TERMS

Term	ASOC par.	Doc ID
1 December Movement Control Order	33(d)	
5 December Movement Control Order	34(b)	PLF.001.001.2368
5 July Biosecurity Regulation Notice	54	PLF.001.001.1308
8 December Movement Control Order	36	PLF.001.001.1002
11 December Emergency Order	37	PLF.001.001.2032
16 March Movement Control Order	50	PLF.001.001.1227
20 January Movement Control Order	44	PLF.001.001.1311
30 December Emergency Order	40	PLF.001.001.3060
2006 Draft Prawn IRA	9	
2007 Memorandum	12(a)	PLF.001.001.2636
2009 Final Prawn IRA	9	PLF.001.001.0461
2010 Biosecurity Advice	14	PLF.001.001.5144
2016 Outbreak	82	
2017 Biosecurity Advice	54	PLF.001.001.5260
AAHL	18, particulars (1)(a)	
Actual Sampling Practice	26	
Actual Testing Practice	27	
ALOP	11(j)	
Anti-Bait Labelling	54(b)(i)(D)	
Approved Laboratory	27	
AQIS	8	
AQUAVETPLAN	17, particulars (1)(b)	PLF.001.001.0001

Available Precautions	68	
Batch	12(b)(iv)(A) and see also 12, particulars (4)	
Batch Testing	12(b)(iv)(A)	
Biosecurity Act	3(b)(ii)	
biosecurity areas	53(b)(ii)	
Biosecurity Director	3(c)(iii)(B)	
Biosecurity Duty	65	
Biosecurity Emergency Area	37(c) and 40(c)	
Biosecurity Emergency Permit	37(d)(i)(A)	
Biosecurity Instrument Permit	34(b)(ii)	
Biosecurity Officers	3(d)	
Biosecurity Queensland	29	
Biosecurity Regulation Amendment	53(a)	
Biosecurity Responses	2(a)(iii)(B)	
BIPs	16(c)(v)	
BSL	30(b)	
Carrier Species	2(a)(i)	
Cartons	22	
CCEAD	17, particulars (1)(a)	
CDAWR	3(c)(i)	
CDAWR Interim Report	6, particulars (2)(a)	PLF.001.001.5074
CLA	60	
Claim Period	2(a)(i)	
Claimants	2	

Claimants' losses	86(j)	
clean product	24(a)	
Clear Areas	85(c), particulars (1)(b)	
Coated	12(b)(iii)	
Commercial Fishing Group Members	2(a)	
Commercial Fishing Opportunity	84(a)	
Commonwealth	3	
Commonwealth Director	3(d)(i)	
Consignments	22	
Critical Failure Period	22	
Critical Response Breaches	80	
Darwin Incident	17	
Doctored Cartons	24(a)	
Domestic Species	4(g)(iii)	
domestic supply chain	62(g)(iv)	
Duty Classes	65	
Fallow Period	83(a)(iv)	
Farm 1IP	29	
Farm 2IP	39	
Farm 3IP	34(a)	
Farm 4IP	35	
Farm 5IP	39	
Farm 7IP	47	
Farm 8IP	45	
Farm Land Nuisance	112(a)	

Farm Land Nuisance Risks	108	
Farm Waters Nuisance	107(a)	
Farm Waters Nuisance Risk	103	
Fishing Nuisance	99(a)	
Fishing Nuisance Risks	95	
FRDC	30, particulars (1)	
FRDC Report	30, particulars (1)	PLF.001.001.2430
Group Members	2	
Handling Group Members	2(b)	
Handling Opportunity	84(b)	
Highly Processed	12(b)(iii)	
IG Report	6, particulars (2)(b)	PLF.001.001.2871
IGAB	15	PLF.001.001.5114
import conditions	62(b)(ii)(B)	
Import Protocol	12	
Import Suspension	43(b)	
Import Suspension Determination	43(a)	PLF.001.001.2047
Import Suspension Exceptions Determination (No. 1)	46	PLF.001.001.1215
Import Suspension Exceptions Determination (No. 2)	48	PLF.001.001.4769
Import Suspension Exceptions Determination (No. 3)	51	PLF.001.001.0829
Import Suspension Exceptions Determination (No. 4)	52	PLF.001.001.1008
Imported Product	2(b)(ii)(B)	
Infected Batch	68(c)	
Inspection Breaches	76	

Inspectors	3(d)(iii)	
Logan Prawn Farmer Group Members	101	
Marketability Consequences	2(a)(iii)(C)	
Moreton Bay area	1, particulars (1)	
Moreton Bay Product	2(b)(ii)(A)	
movement control order	33(d)	
Notice of Tampering	25	
OIE	12, particulars (2)	
OIE Code	12, particulars (3)	PLF.001.001.0106
OIE Manual	12, particulars (2)	PLF.001.001.3197
Operation Cattai	20	
Other Biosecurity Responses	83(a)(v)	
PCR	12(b)(iv)(A)(1)	
prawn meat	9(b)(i)	
Prawn Farm	2(d)	
Prawn Farmer Group Members	2(d)	
Prawn Farming Opportunity	84(d)	
Prawn IRA	9 (and see 9, particulars (1), (2) and (4))	PLF.001.001.0461
QDAF	29	
Quarantine	62(d)	
Quarantine Act	3(b)(i)	
Quarantine Director	3(c)(iii)	
Quarantine Failures	<u>82</u> 81	
Restricted Coastal Area	50(b)	
Restricted Logan River Area	55(a)(i)	

Right to Fish	93	
Right to Waters	100	
Risks of Harm	59	
<u>Signatory Claimant</u>	<u>2(e)(i)</u>	
<i>State Biosecurity Act</i>	33(d)	
State Fishing Restrictions	83(a)(ii)	
State Movement Restrictions	83(a)(i)	
Tampering Practices	24	
TPF	1A	
TPF Farm	1A(c)	
TPF Cardwell	1A, particulars	
Unbatched Consignments	23	
unrestricted risk	11(i)	
vectors	10(a)	
Wholesaler Group Members	2(c)	
Wholesaling Opportunity	84(c)	
WSD	2(a)(iii)(A)	
WSSV	2(a)(iii)(A)	

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NO: 1010/21

First Plaintiff: **TWEED BAIT PTY LTD ACN 010 917 674**

AND

Second Plaintiff **TPF MANAGEMENT COMPANY PTY LTD ACN 065 200 268**

AND

Defendant: **COMMONWEALTH OF AUSTRALIA**

SECOND FURTHER AMENDED DEFENCE OF THE DEFENDANT

The defendant relies on the following facts in defence of the claim:

PART A PARTIES AND GROUP MEMBERS

A.1. Plaintiffs

1. As to paragraph 1 of the further amended statement of claim filed on ~~18 October 2021~~
8 September 2022 21 November 2022 (**statement of claim**), the defendant:

- (a) admits the allegation in sub-paragraph 1(a);
- (b) does not admit the allegation in sub-paragraph 1(b) because despite reasonable enquiry it remains uncertain as to whether it is true.

1A As to paragraph 1A of the statement of claim, the defendant:

- (a) admits the allegation in sub-paragraph 1A(a);
- (b) does not admit the allegations in sub-paragraphs 1A(b) and (c) because despite reasonable enquiry it remains uncertain as to whether they are true.



SECOND FURTHER AMENDED DEFENCE

Filed on Behalf of the Defendant

Form 17 Version 2

Uniform Civil Procedure Rules 1999, Rule 146

KING & WOOD MALLESONS

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A.2. Group Members

2. As to paragraph 2 of the statement of claim, the defendant:
- (a) adopts the definitions set out in that paragraph;
 - (b) admits that the plaintiffs brings this proceeding on its their own behalf and, pursuant to Part 13A of the *Civil Proceedings Act 2011* (Qld) on behalf of the Group Members;
 - (c) admits that the Group Members allege they suffered loss and damage as pleaded in sub-paragraph 2(a)(iii), 2(b)(iii), 2(c)(iii) and 2(d)(ii);
 - (d) otherwise does not admit the allegations because despite reasonable enquiry it remains uncertain as to whether they are true.

A.3. The Commonwealth

3. As to paragraph 3 of the statement of claim, the defendant:
- (a) adopts the definitions used in that paragraph;
 - (b) admits the allegation in sub-paragraph 3(a);
 - (c) as to sub-paragraph 3(b):
 - i. ~~denies admits (3)(b)(i) because the *Quarantine Act 1908* (Cth) was in force until 15 June 2016;~~
 - ii. admits the *Biosecurity Act 2015* (Cth) has been in force since 16 June 2016;
 - iii. otherwise denies the allegation because:
 - (A) the defendant managed rather than regulated biosecurity risks to, and biosecurity emergencies in, Australia;
 - (B) the defendant managed biosecurity risks to, and biosecurity emergencies in, Australia:

- (a) at all material times until 15 June 2016, under the *Quarantine Act* and the regulations and proclamations made under the *Quarantine Act* (as in force from time to time);
- (b) from 16 June 2016, under the *Biosecurity Act* and the regulations and proclamations made under the *Biosecurity Act* (as in force from time to time);

iv. says further that:

- (A) the defendant managed biosecurity risks and biosecurity emergencies in Australia in accordance with its rights and obligations as a World Trade Organisation (**WTO**) Member country under the Agreement on the Application of Sanitary and Phytosanitary Measures 1994 at Annexure 1A to the WTO Agreement (**SPS Agreement**) which came into effect on 1 January 1995;
- (B) by Article 5 of the SPS Agreement:
 - (a) sanitary and phytosanitary measures must be based on science, take into account risk assessment techniques developed by relevant international organisations and be applied only to the extent necessary to protect human, animal or plant life or health;
 - (b) Australia may determine the appropriate level of sanitary and phytosanitary protection (**ALOP**) necessary to protect human, animal or plant life or health;
 - (c) sanitary and phytosanitary measures must not be more trade restrictive than required to achieve an importing Member's ALOP taking into account technical and economic feasibility;

- (C) the ALOP for Australia is a high level of sanitary and phytosanitary protection aimed at reducing biosecurity risks to a very low level, but not zero;
 - (D) at no material time did the defendant have exclusive legislative power under s. 51(ix) of the *Constitution* to make laws to manage biosecurity risks to, and biosecurity emergencies in, Australia; and
 - (E) at all material times, the State of Queensland managed biosecurity risks to, and biosecurity emergencies in, Queensland under the *Biosecurity Act 2014 (Qld)* (*Biosecurity Act (Qld)*); and
- v. otherwise relies on the provisions of the SPS Agreement and the legislation referred to in sub-paragraphs 3(c)(iii) and 3(c)(iv)(D) above as in force at the material times for their full meaning and effect;
- (d) as to sub-paragraph 3(c), subject to sub-paragraph 3(e)(ii) below, admits the allegations in sub-paragraphs 3(c)(i), 3(c)(ii) and 3(c)(iii)(A); denies the allegation in sub-paragraph 3(c)(iii)(B) because pursuant to s. 540 of the *Biosecurity Act* the Agriculture Secretary is the Biosecurity Director;
- (e) as to sub-paragraph 3(d):
- i. subject to the matters pleaded in (3)(e)(ii) below, admits that at material times it was vicariously liable for the acts and omissions of Biosecurity Officers done or omitted to be done in the course of their employment;
 - (i) says that:
 - (A) by s. 8B of the *Quarantine Act*, the Quarantine Director:
 - (a) was, under the Minister, charged with the execution of the *Quarantine Act* and any regulations and proclamations in force under the *Quarantine Act*, in relation to animal and plant quarantine (s. 8B(1)); and

- (b) had all the functions and powers of a Chief Quarantine Officer (Animals), a Chief Quarantine Officer (Plants), a Quarantine Officer (Animals) and a Quarantine Officer (Plants) under the *Quarantine Act*, and the regulations and proclamations in force under the *Quarantine Act*, in relation to animal and plant quarantine (s. 8(4)(b));
- (B) by s. 541 of the *Biosecurity Act*, the Biosecurity Director:
- (a) subject to its terms, has the general administration of the *Biosecurity Act* (s. 541(1));
 - (b) may do anything incidental or conducive to the performance of his or her functions or the exercise of his or her powers (s. 541(3));
 - (c) in performing functions or exercising powers under the *Biosecurity Act*:
 - (i) must have regard to the objects of the *Biosecurity Act* (s. 541(4)(a));
 - (ii) must comply with any general direction given by the Minister under s. 543 of the *Biosecurity Act* (s. 541(4)(b)(i));
 - (iii) must comply with any direction given by the Minister under s. 168 of the *Biosecurity Act* to commence a Biosecurity Import Risk Analysis (**BIRA**) (s. 541(4)(b)(ii));
- (C) by s. 543(3) of the *Biosecurity Act*, subject to s. 168, the Minister must not give directions to the Biosecurity Director:
- (a) in relation to the conduct of a BIRA in relation to particular goods; or

(b) a decision in relation to a permit to bring or import goods, or a class of goods, into Australian territory;

(D) in the premises:

(a) at all material times, the Quarantine Director exercised independent discretion with respect to the imposition of conditions on the import into Australian territory of specified classes of goods;

(b) at all material times, the Biosecurity Director exercised independent discretion with respect to:

(i) the conduct of a BIRA; and

(ii) the imposition of conditions on the import into Australian territory of specified classes of goods;

(c) in those premises, denies the allegation insofar as it relates to the Quarantine Director and the Biosecurity Director and the matters pleaded in sub-paragraph 3(e)(ii) above.

PART B WSSV AND WSD

4. As to paragraph 4 of the statement of claim, the defendant:

(a) admits the allegations in sub-paragraphs 4(a) and 4(c)-(f);

(b) does not admit the allegation in sub-paragraph 4(b) because despite reasonable enquiry it remains uncertain as to whether it is true;

(c) as to sub-paragraph 4(g):

i. says that some scientific enquiry is consistent with the likelihood that, prior to 2016, a dormant, latent, longstanding, wild strain of WSSV existed in Australian waters including Moreton Bay and the Logan River and may have been present in Carrier Species;

- ii. in those premises, does not admit the allegation because despite reasonable enquiry it remains uncertain as to whether it is true.

Particulars

The term 'scientific enquiry' includes:

- (a) Jane Oakey and Craig Smith, 'Complete Genome Sequence of White Spot Syndrome Virus Associated with a Disease Incursion in Australia' (2018) 484 Aquiculture 152;
- (b) Jane Oakey et al, 'Global Distribution of White Spot Syndrome Virus Genotypes Determined Using a Novel Genotyping Assay' (2019) 164(8) Arch Virol 2061; and
- (c) Nick Moody, ACDP Fish Diseases Laboratory, 'Whole Genome Sequencing of WSSV Isolates' (Final Report, 8 August 2020).

5. As to paragraph 5 of the statement of claim, the defendant:

- (a) as to sub-paragraph 5(a):
- (i) admits the allegation so far as it is directed to farmed prawns;
- (ii) otherwise denies the allegation because WSD is not typically lethal to other decapod crustaceans (including crabs, crayfish, yabbies and polychaete worms);
- (b) admits the allegations in sub-paragraphs 5(b) and 5(c).

6. As to paragraph 6 of the statement of claim, the defendant:

- (a) insofar as it concerns the period before 2009, says that the allegation is vague and embarrassing because the plaintiffs have not provided particulars as to the material times at which it is alleged that the Commonwealth knew of the matters pleaded in paragraphs 4 and 5;
- (b) repeats and relies on the matters pleaded in paragraphs 4 and 5 above;

- (c) in those premises, admits, denies or does not admit the allegation so far as the matters pleaded in paragraphs 4 and 5 of the statement of claim are admitted, denied or not admitted.

PART C COMMONWEALTH BIOSECURITY REGULATION AND KNOWLEDGE

C.1. Period to 15 June 2016 – *Quarantine Act 1908 (Cth)*

7. As to paragraph 7 of the statement of claim, the defendant:

~~(a) says that the *Quarantine Act* applied at all material times prior to and including 15 June 2016;~~

(a) admits the allegations in-as-to sub-paragraph 7(a);

~~i. denies the allegations in sub-paragraph 7(a)(i):~~

~~(A) for the reasons pleaded in sub-paragraph 7(a) above;~~

~~(B) because s. 8B of the *Quarantine Act* provided that the Director of Quarantine was responsible for execution of the *Quarantine Act*, and any regulations and proclamations in force under the *Quarantine Act*, but only in relation to animal and plant quarantine;~~

~~ii. denies the allegation in subparagraph 7(a)(ii):~~

~~(A) for the reasons pleaded in sub-paragraph 7(a) above; and~~

~~(B) because s. 9AA(3) of the *Quarantine Act* provided that the Director of Quarantine may appoint a quarantine officer (animals or plants);~~

~~subject to the matter pleaded in 7(a) above;~~

(b) admits the allegations in sub-paragraphs 7(b), (c) and 7(d)-(f), (g);

(d) as to subparagraph 7(c):

~~i. says that the power to retain goods in quarantine under s. 19A(1) was subject to s. 19(1)(w) to 19(A)(4) in relation to pratique granted to an installation or vessel;~~

~~ii. subject to the matter pleaded in 7(a) above, otherwise admits the allegation;~~

~~(e) as to sub-paragraph 7(g), subject to the matter pleaded in 7(a) above;~~

~~i. admits the allegation in sub-paragraph 7(g)(i) save that the power to grant such an approval under s. 46A may only be exercised on application by the owner or occupier of a place and upon payment of a prescribed fee;~~

~~ii. admits the allegation in sub-paragraph 7(g)(ii) on the assumption that the reference in sub-paragraph 7(g)(ii) to s. 48(a) and (c) is intended to be s. 48(1)(a) and (c) of the *Quarantine Act*;~~

~~iii. admits the allegation in sub-paragraph 7(g)(iii);~~

~~iv. admits the allegation in 7(g)(iv) on the assumption that the reference in (iv) to s. 6AB(1)(a) and (b) is intended to be to s. 66AB(1)(a) and (b) of the *Quarantine Act*;~~

(c) as to sub-paragraph 7(h):

(i) repeats and relies on the matters pleaded in sub-paragraphs 3(c), 12(b) and (c), 62(f) and 64(d) below;

~~ii. subject to the matter pleaded in sub-paragraph 7(a) above;~~

(A) admits that at material times it had a system of quarantine which it was implementing in respect of, amongst other things, animals and animal products imported into Australia;

(B) admits that the powers pleaded in sub-paragraphs 7(a)-(g) were, from time to time, exercised in the course of the implementation of that system of quarantine;

(ii) denies, if it is alleged, that its system of quarantine was implemented solely by exercise of the powers pleaded in sub-paragraphs 7(a)-(g) because that is untrue as a matter of fact;

(d) says further that:

(i) the *Quarantine Act*, the *Quarantine Regulations 2000* (Cth) (*Quarantine Regulations*) and the *Quarantine Proclamation 1998* (Cth) (*Quarantine Proclamation*) additionally provided for the management of biosecurity risks to, and biosecurity emergencies in, Australia through measures including:

(A) the prohibition of the importation into Australia of prawn meat (as defined in in sub-paragraph 9(b)(i) of the statement of claim) for human consumption unless a Director of Quarantine granted a permit to import the animal under s. 13(1) of the *Quarantine Act* and s. 38(1) of the *Quarantine Proclamation*; and

(B) the regulation of the importation of prawn meat for human consumption under s. 5(1) and 13(1)(d), 13(1)(e) and 13(1)(f) of the *Quarantine Act*, by s. 39 of the *Quarantine Proclamation* (via table 13);

(C) the matters identified in Part 8 of the *Quarantine Proclamation* that the Director of Quarantine must consider when deciding whether to grant a permit;

(D) the power under s. 6C of the *Quarantine Act* and s. 38(1) and 70 of the *Quarantine Proclamation* for the Director of Quarantine to impose conditions on a permit to import an animal or part thereof into Australia, having regard to the level of quarantine risk as defined by s. 5D of the *Quarantine Act*;

(E) the power of the Chief Executive of Biosecurity Australia to make an administrative decision to conduct an import risk analysis under part 6A of the *Quarantine Regulations*;

~~ii. — three core principles underpinned Australia’s quarantine and biosecurity regime:~~

~~(A) — an integrated biosecurity continuum involving risk assessment and monitoring, surveillance and response pre-border, at border and post border;~~

~~(B) — risk assessment reflecting scientific evidence and rigorous analysis;~~

~~(C) — shared government responsibility, between the defendant and State and Territory governments, industry, natural resources managers, custodians or users and the community.~~

C.2. 2006-2009 Prawn IRA

8. The defendant admits the allegations in ~~As to~~ paragraph 8 of the statement of claim, the defendant:

~~(a) — adopts the definition used in that paragraph;~~

~~(b) — says that:~~

~~(i) — between 1998 and September 2013, CDAWR was called the Department of Agriculture, Fisheries and Forestry;~~

~~(ii) — between September 2013 and September 2015, CDAWR was called the Department of Agriculture;~~

~~(iii) — from October 2015 until 2019, CDAWR was called the Department of Agriculture and Water Resources; and~~

~~(iv) — from 2019 until the present, CDAWR has been called the Department of Agriculture, Water and the Environment;~~

~~(c) — says that, in the premises, in November 2006 CDWAR was called the Department of Agriculture, Fisheries and Forestry;~~

~~(d) — otherwise admits the allegations.~~

9. As to paragraph 9 of the statement of claim, the defendant:

(a) repeats and relies on paragraphs 3, 4 and 7 above;

- (b) says that under the *Quarantine Act*, the *Quarantine Regulations*, and the *Quarantine Proclamation*:
- (i) the Chief Executive of Biosecurity Australia could, at its discretion, undertake an import risk analysis (**IRA**) if there were no relevant existing biosecurity measure/s for the commodity or a variation in established policy was considered desirable because pests or diseases or the likelihood and consequence of entry, establishment or spread of pests or diseases could differ significantly from those previously assessed;
 - (ii) the IRA process involved:
 - (A) an initiation phase in which the need for an IRA was revealed;
 - (B) a phase of scheduling and scoping during which Biosecurity Australia was to consider all the factors that affect scheduling, consult with States, Territories and other Commonwealth agencies and address appeals by stakeholders;
 - (C) a phase of reporting in which:
 - (a) the results of the IRA are communicated formally and provided to, and consulted about, with States, Territories; and
 - (b) referred to the Eminent Scientists Group being independent persons appointed by the Secretary of Biosecurity Australia (**Secretary**) to examine and comment on drafts of IRA reports before they are published;
 - (c) the biosecurity policy recommendations arising from the IRA are provided by Biosecurity Australia to the Quarantine Director and appeals from stakeholders are addressed; and

(A) a phase in which the Quarantine Director makes the policy determination and notifies it publicly;

(c) says further that:

(i) in 1997, the Chief Executive of Biosecurity Australia initiated a generic IRA for prawn meat (as defined in the statement of claim) for human consumption which:

(A) focused on biosecurity risks associated with imports of prawn meat for human consumption and the potential use of imported prawn meat for human consumption as bait or aquaculture feed;

(B) was carried out by aquatic disease experts from around Australia;

(C) was produced under the *Quarantine Act* and *Quarantine Regulations* in accordance with the process referred to at subparagraph 9(b) above; and

(D) involved:

(a) an initiation phase in which the need for an IRA was revealed;

(b) a phase of scheduling and scoping during which Biosecurity Australia considered all the factors that affected scheduling, consulted with States, Territories and other Commonwealth agencies and addressed appeals by stakeholders;

(c) a phase of risk assessment and risk management involving the performance of major scientific and technical work relating to risk assessment and detailed consultation with stakeholders;

(d) a phase of reporting in which:

- (i) the results of the IRA were communicated formally and provided to, and consulted about, with States and Territories;
 - (ii) a draft final IRA was referred to the Eminent Scientists Group being the Chief Executive of Biosecurity Australia appointed by the Secretary and Dr John Radcliffe AM, Emeritus Professor Malcolm Nairn AM, Dr Mark Lonsdale, Dr TJ Higgins and Dr Mark Crane for examination and comment;
 - (iii) the Eminent Scientists Group provided a report on the draft final IRA to the Quarantine Director;
- (e) a phase in which biosecurity policy recommendations arising from the IRA were provided by Biosecurity Australia to the Quarantine Director and appeals from stakeholders were addressed; and
- (f) a phase in which the Quarantine Director made the policy determination and notified it publicly;

Particulars

As to subparagraph 9(c)(i)(D)(c), the major scientific and technical work is particularised in the Prawn IRA, including in Sections 3, 4 and 6.

As to subparagraph 9(c)(i)(D)(c), the detailed consultation with stakeholders is particularised in Appendix 1 of the Prawn IRA and included:

- (a) publication of the 'Biosecurity Australia Policy Memorandum 2006/35' dated 23 November 2006 (BAPM 2006/35):
- (i). on the CDAWR website; and
 - (ii). to stakeholders who were registered to receive Biosecurity Australia Policy Memorandums; and

- (b) inviting, as part of BAPM2006/35, provision of technical comments, supported by published references where available, on the draft IRA by 21 February 2007;
- (c) receipt and consideration of stakeholder comments (if any) provided in response to the invitation referred to at 4(b) above.

As to subparagraph 9(c)(i)(D)(d)(i), the results of the IRA:

- (a) were communicated formally and in writing and provided to the States and Territories by provision of BAPM 2006/35 on or about 23 November 2006;
- (b) were consulted about with States and Territories by:
 - (i). receipt and consideration of State and Territory comments (if any) in response to BAPM2006/35;
 - (ii). meetings with State and Territory representatives from Queensland, New South Wales and Western Australia in response to BAPM2006/35.

As to subparagraph 9(c)(i)(D)(d)(ii), the best particulars that can presently be provided are that the draft final IRA (DAW.302.045.0001) was referred to the Eminent Scientists Group for examination and comment on or about 22 April 2009.

As to subparagraph 9(c)(i)(D)(e), the best particulars that can presently be provided of the communications are that they included the following:

- (a) on 20 July 2007, a Minute from Biosecurity Australia to the Director of Quarantine;
- (b) on 11 September 2008, a Minute from Biosecurity Australia to the Director of Quarantine.

As to subparagraph 9(c)(i)(D)(f), the policy determination made by the Quarantine Director is entitled 'Biosecurity policy determination on the importation of prawns and prawn products, April 2010' and was notified to the public on 22 April 2010.

(E) resulted:

- (a) on 25 August 2000, in the release of a first draft report of the IRA for the Import of Prawns and Prawn Products (AQIS2000-AQPM 2004/41) (**2000 draft IRA**);

- (b) in December 2000, with the imposition under the *Quarantine Proclamation* by the Director of Quarantine and AQIS of interim import conditions for prawn meat for human consumption recommended by the 2000 draft IRA including post-arrival testing for WSSV of all imported batches of uncooked whole prawns or unpeeled headless prawns;

Particulars

As to subparagraph 9(c)(i)(E)(b), the interim import conditions for prawn meat for human consumption recommended by the 2000 draft IRA and imposed in December 2000 are particularised on page 2 of the Prawn IRA and included size limitation, Competent Authority health certification and post-arrival AQIS inspection.

- (c) in or about May or June 2002, with the imposition under the *Quarantine Proclamation* by the Director of Quarantine and AQIS of additional import conditions permitting the import, without post-arrival testing for WSSV, of highly processed uncooked prawns (peeled to at least the last tail segment, breaded or battered, with a finished product grade size count of at least 55 per kilogram and packaged in lots of not more than 3 kg in weight);

Particulars

As to subparagraph 9(c)(i)(E)(c), the additional import conditions imposed in June 2002 are contained in a document entitled 'Interim Import Conditions for Highly Processed Prawns' and comprised the following:

- (a) *The Competent Authority in the exporting country must certify that the uncooked prawns:*
- (i) *have been processed, inspected and graded in premises approved by and under the control of the Competent Authority;*

- (ii) are free from visible signs of infectious disease and are fit for human consumption;
- (iii) have been peeled to at least the last tail segment;
- (iv) are breaded or battered;
- (v) have a finished product grade size count of, at least, 21/25 per pound (or 55 per kilo); and
- (vi) are packaged in lots of no more than 3kg in weight;
- (b) The Certificate must be presented on official letterhead, be signed by a person authorised by the Competent Authority and bear an impression of the official stamp on each page;
- (c) Importers must:
 - (i) declare for all consignments that the imported product will not be sold for use as bait or for commercial processing except as defined in (d) below;
 - (ii) keep records for all consignments of imported prawns; and
 - (iii) which records must be available to AQIS for audit and traceback purposes;
- (d) Imported green prawns must not be subjected to commercial processing (this includes repackaging) except by commercial processors who have entered into a compliance agreement with AQIS.
 - (d) in or about November 2006, in the release of a revised draft IRA for the Import of Prawns and Prawn Products **(2006 draft IRA)**;
 - (e) in or about 24 July 2007, in the variation by the Quarantine Director of the import conditions referred to at sub-paragraph 9(c)(i)(E)(c) above, in response to stakeholder submissions on the 2006 draft IRA, by expanding the definition of ‘highly processed’ to include marinated prawns;

Particulars

As to subparagraph 9(c)(i)(E)(e), the following variations were made on or about 24 July 2007: variations which permitted the importation of prawns that

were sourced from a country or zone recognised by Australia to be free of certain viruses (including WSSV), have the head and shell removed (the last shell segment and tail fans permitted) and batch tested on arrival with negative results for relevantly, WSSV and which have been processed to a minimum standard or were cooked.

- (f) in April 2009, in the Eminent Scientists Group publishing the Draft Final IRA Report for Prawns and Prawn Products to the Quarantine Director;
 - (g) in October 2009, in the publication of the Generic Import Risk Analysis Report for Prawns and Prawn Products (**Prawn IRA**);
- (ii) the Prawn IRA recommended the imposition of the following requirements under the *Quarantine Proclamation* on the importation of prawn meat for human consumption (other than shelf stable prawn-based food products) (**the Prawn IRA Recommendations**):
- (A) the importer must obtain a permit to import all prawn meat for human consumption from the AQIS before the goods are imported;
 - (B) conditions must be imposed on the import of all prawn meat for human consumption which materially include that all prawn meat for human consumption must:
 - (a) be sourced from a country or zone that is recognised by Australia to be free of WSSV; or
 - (b) be highly processed, that is with the head and shell removed (the last shell segment and tail fans permitted) and coated for human consumption by being breaded (crumbed) or battered, or being marinated or processed into a dumpling, spring roll, samosa, roll, ball or dim sum-type product; or

- (c) have had the head and shell removed (the last shell segment and tail fans permitted), be frozen and each batch tested on arrival in Australia and found to be free of WSSV unless sourced from a country or zone recognised by Australia to be free of that agent;
- (d) be accompanied by health certification issued by the relevant Competent Authority in the exporting country, certifying that the prawn meat for human consumption:
 - (i) has been inspected, processed and graded in premises approved by and under the control of the Competent Authority;
 - (ii) is free from visible lesions associated with infectious disease;
 - (iii) is fit for human consumption;
 - (iv) in the case of prawn meat that is not highly processed and coated, that each package is marked with the words ‘for human consumption only’ and ‘not to be used as bait or feed for aquatic animals’; and
 - (v) be batch tested on arrival in Australia and found to be free of WSSV;
- (C) with respect to batch testing as referred to in the preceding subparagraph, that:
 - (a) testing be based on the polymerase chain reaction (**PCR**) tests in the current version of the World Organisation for Animal Health *Manual of Diagnostic Tests for Aquatic Animals* or equivalent, and a sampling regimen that would provide 95% confidence of detecting the agent if present at 5% prevalence (**OIE Standard**);

- (b) all consignments of prawn meat for human consumption to be tested be held under quarantine control where they will be sampled for testing and remain under quarantine control until the results of the tests are available;
- (c) batches that return a positive test must be re-exported, destroyed or further processed (cooked) in a facility approved by AQIS for that purpose;
- (d) for the purpose of testing, batch is defined as a population from a different pond population or fishing period population (**IRA batch definition**); and
- (e) documentation from the exporter, supplier or competent authority verifying the number of batches in the consignment must be provided to AQIS.

10. As to paragraph 10 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraph 9 above;
- (b) says that it will rely on the full terms of the Prawn IRA for their true meaning and effect;
- (c) subject to the matters pleaded at sub-paragraphs 10(a) and (b) above, admits the allegations in sub-paragraphs 10(a), 10(c), 10(e) and 10(f)-(i);
- (d) admits the allegation in sub-paragraph 10(b) but says further that the Prawn IRA stated that not all of the increases identified were statistically significant;
- (e) admits the allegation in sub-paragraph 10(d) but says further that the Prawn IRA stated that the risk associated with the identified potential was limited as much of the relevant recreational bait would be taken by non-susceptible finfish species;
- ~~(f) denies the allegation in sub-paragraph 10(e) because the Prawn IRA stated that in the aquatic environment, if a disease does establish in a population following exposure it is generally not possible to prevent its spread by natural means;~~

- (f) subject to the matters in sub-paragraphs 10(a) and 10(b) above, admits the allegation in subparagraph 10(j) but says further that the Prawn IRA stated that there is no clear documented evidence that the pathogenic agents under consideration had adversely affected wild prawn fisheries.
11. As to paragraph 11 of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded at paragraphs 9 and 10 above;
 - (b) admits the allegations in sub-paragraphs 11(a)-(h) and 11(j);
 - (c) says further that the Prawn IRA concluded that:
 - (i) in the event index cases of WSSV infection were to occur, virus establishment or spread to other susceptible animals would be unlikely in the case of wild crustaceans because infected animals, particularly those clinically affected, were likely to be predated by non-susceptible finfish;
 - (ii) the likelihood of the spread of WSSV from farms to neighbouring farms or wild prawn populations through waterborne virus in effluent water would be moderated by dilution effects;
 - (iii) the likelihood of spread of WSSV from farms and hatcheries was likely to be reduced by farm and hatchery level control measures that were likely to be implemented upon detection of WSSV;
 - (d) as to sub-paragraph 11(i):
 - (i) says that the Prawn IRA identified, for two separate exposure groups, the likelihood of release (**LR**) of WSSV and the partial likelihood of exposure (**PLE**);
 - (ii) by multiplying the LR by the PLE ascertained the partial annual likelihood of entry and exposure (**PALEE**);

- (iii) by combining the PALEE with the corresponding (for the relevant exposure group) likely consequences, determined the partial annual risk for each exposure group;
- (iv) thereafter, by combining the three partial annual risks associated with each exposure group, determined the ‘unrestricted risk’ being a risk estimate derived in the absence of specific risk management measures; and
- (v) otherwise admits the allegations.

C.3. Import Protocol and other guidelines

12. As to paragraph 12 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded in paragraphs 9 to 11 above;
- (b) says that:
 - (i) the *Biosecurity Australia Policy Memorandum 2007/16 (2007 Memorandum)* and the Prawn IRA materially provided that:
 - (A) management measures were needed to manage the risk associated with WSSV to an acceptable level before importation could be permitted;
 - (B) such management measures were to be the least trade restrictive risk management measures that could be applied to achieve Australia’s ALOP;
 - (C) such possible management measures were to be selected from a range of measures considered practicable;
 - (D) such management measures were intended to reduce quarantine risks to a very low level in order to achieve the ALOP determined by Australian Government policy in line with Australia’s conservative approach to quarantine;

- (ii) the Prawn IRA materially provided that its authors had selected the appropriate management measures upon consideration of a range of pre-import and post-import measures that might be applied including recommendations in the international standard for trade in aquatic animal products;
 - (iii) in the premises of subparagraph 12(b)(i)(A) to (D) and 12(b)(ii) above, the 2007 Memorandum and the Prawn IRA provided that the Prawn IRA Recommendations would each reduce the overall WSSV risk to at least very low and thereby achieve Australia's ALOP;
 - (iv) it will rely on the terms of the Prawn IRA and 2007 Memorandum for their full meaning and effect;
- (c) says further that:
- (i) in April 2010, the Director of Quarantine made a policy determination under the *Quarantine Proclamation* that the import of prawn meat for human consumption (other than shelf-stable prawn-based food products) be subject to the *Quarantine Act* and the conditions recommended by the Prawn IRA Recommendations (**Prawn Import Policy**);
 - (ii) under s 7 of the *Acts Interpretation Act 1901* (Cth), the Prawn Import Policy remained in force following the repeal of the *Quarantine Act*;
 - (iii) each of the import conditions pleaded at sub-paragraphs 9(c)(i)(E)(b), 9(c)(i)(E)(c) and 9(c)(i)(E)(e) above (**Interim Conditions**) and the Prawn Import Policy comprised the exercise by the defendant, by the Director of Quarantine and AQIS of policy-making powers and functions of a quasi-legislative character, which policy, when formulated:
 - (A) was consistent with Australia's rights and obligations under the SPS Agreement;

- (B) was believed by the defendant to be characterised by sound science, transparency, fairness and consistency;
 - (C) reflected a proper assessment of, and response to, the import risk associated with prawn meat for human consumption as prescribed by the *Quarantine Act*, *Quarantine Regulations* and *Quarantine Proclamation*; and
 - (D) is not justiciable in negligence;
- (d) in the premises and subject to the matters pleaded at sub-paragraphs 12(a) to (c) above, admits the allegations.
13. As to paragraph 13 of the statement of claim, the defendant:
- (a) says that:
 - (i) in the premises as pleaded paragraphs 9 to 12 above, at all material times from December 2000:
 - (A) the importation of prawn meat for human consumption was subject to a condition that, in the circumstances indicated in the Interim Conditions or the Prawn Import Policy (as they applied from time to time) it be batch tested for, relevantly, WSSV;
 - (B) batch testing as required by the Interim Conditions and the Prawn Import Policy:
 - (a) had technical parameters, which were developed by reference to highly skilled epidemiological and laboratory technical expertise;

Particulars

The 'technical parameters' referred to are particularised on page 191 of the Prawn IRA and include the following:

- (a) *Testing is based on the polymerase chain reaction (PCR) tests in the current version of the World Organisation for Animal Health (OIE)*

Manual of Diagnostic Tests for Aquatic Animals or equivalent, and a sampling regimen that would provide 95% confidence of detecting the agent if present at 5% prevalence;

- (b) For the purpose of this testing, a batch is defined as a population from a different pond population or fishing period population;
- (c) Documentation from the exporter, supplier or the Competent Authority verifying the number of batches in the consignment must be provided to AOIS and must clearly detail the labelling of each batch in the consignment.

The 'technical parameters' were developed by reference to highly skilled epidemiological and laboratory technical expertise in that the 'technical parameters' were developed by reference to:

- (d) then current version of the World Organisation for Animal Health (OIE) Manual of Diagnostic Tests for Aquatic Animals or equivalent; and
- (e) a report authored by Greg Hood and prepared by the Bureau of Rural Sciences on behalf of Biosecurity Australia entitled 'Risk analysis of a pooled sampling scheme, designed to detect viruses in prawns imported into Australia'.

- (b) was adopted on the basis it would be implemented according to its terms, including that each batch (adopting the IRA batch definition) would be accurately identified for the purpose of testing;

Particulars

The 'terms' are the 'technical parameters' referred to at 13(a)(i)(B)(a) and further particularised above and as were set out in guidelines published from time to time as particularised below.

- (c) was reliant for its accuracy on being implemented in accordance with its terms;

Particulars

The 'terms' referred to are the 'technical parameters' referred to at 13(a)(i)(B)(a) and further particularised above and as were set out in guidelines published from time to time as particularised below.

- (ii) the IRA batch definition reflected an assumption that within a group of prawns harvested from the same pond or caught at sea on the same day, diseased prawns were likely to be reasonably evenly distributed within that batch (**distribution assumption**);
- (iii) batch testing as required by the Prawn Import Policy (**Batch Testing**):
 - (A) on the distribution assumption;
 - (B) applying the IRA batch definition; and
 - (C) in order to achieve the OIE Standard;

applied a statistical calculation to the effect that by sampling 65 prawns, being 5 from each of 13 cartons, for testing using a PCR test, the OIE Standard would be met;
- (b) subject to the matters pleaded in sub-paragraph 13(a) above, admits the allegation;
- (c) says that it will rely on ~~guidelines~~ ~~issued~~ issued by certain officers of CDAWR (~~better particulars of whom cannot presently be provided~~) from time to time for their true meaning and effect.

Particulars

The best particulars of the guidelines issued by certain officers of CDAWR from time to time are that they comprise the following 'prawn sampling guidelines':

- (a) *'Work Instruction: Prawn Sampling for Disease Testing' (updated) dated October 2007;*
- (b) *'Work Instruction: Prawn Sampling for Disease Testing' dated 14 November 2011;*

(c) 'Instruction & Guideline: Prawn Sampling for Disease Testing' dated 28 May 2013;

(d) 'Work Instruction: Raw Prawn Inspection and Sampling for Disease Testing' dated 15 August 2016.

14. As to paragraph 14 of the statement of claim, subject to the matters pleaded at paragraphs 9 to 13 above, the defendant admits the allegations.

C.4. 2012 Intergovernmental Agreement on Security

15. As to paragraph 15 of the statement of claim, the defendant:

(a) adopts the defined term used in that paragraph;

(b) repeats and relies on sub-paragraphs 3(c)(iv)(D) and 3(c)(iv)(E) above;

(c) admits the allegations;

(d) says further that the IGAB:

(i) recognised that:

(A) biosecurity is a shared responsibility between all governments, industry, natural resource managers, custodians or users, and the community (cl 4.1(i));

(B) in practical terms, zero biosecurity risk is unattainable (cl 4.1(ii));

(C) the pre-border, border and post-border elements of the biosecurity continuum are managed to minimise the likelihood of biosecurity incidents and minimise their impacts (cl 4.1(iii));

(D) the biosecurity continuum is managed through a nationally integrated system that recognises and defines the roles and responsibilities of all sectors and sets out cooperative activities (cl 4.1(iv));

- (ii) provided that States and Territories shall not apply sanitary or phytosanitary measures within their jurisdictions which would not comply with the provisions of the SPS Agreement but left the manner of compliance with those measures as a matter for each party to the IGAB (cl 7.8).

C.5. Period from 15 June 2016 – *Biosecurity Act 2015 (Cth)*

16. As to paragraph 16 of the statement of claim, the defendant:

~~(a) says that the *Biosecurity Act* took effect from 16 June 2016;~~

~~repeats and relies on the matters pleaded in sub-paragraph 3(d) above;~~

(a) ~~in those premises, denies the allegations in~~ as to sub-paragraph 16(a) because:

(i) admits the allegation in sub-paragraph (a) ~~by operation of s. 540 of the *Biosecurity Act* the Agriculture Secretary is the Biosecurity Director;~~

(ii) denies the allegation in sub-paragraph (b), the true position is that by operation of s. 545(1) of the *Biosecurity Act*, the power to authorise persons to be biosecurity officers is granted to the Biosecurity Director;

(b) admits the allegation in sub-paragraph 16(b);

(c) as to sub-paragraph 16(c):

(i) admits the allegations in sub-paragraphs 16(c)(i), ~~and (ii), (on the assumption that reference to s. 128(a)(b) is intended to be a reference to s. 128(1)(b) of the *Biosecurity Act*)~~ and (iii) and (v)-(ix);

(ii) admits the allegation in sub-paragraph 16(c)(iv) and says further that the power to release goods from biosecurity control pursuant to s. 162 of the *Biosecurity Act* could only be exercised if certain conditions were satisfied;

(d) as to sub-paragraph 16(d):

- (i) repeats and relies on the matters pleaded in sub-paragraphs 3(c), 7(f) and 12 above;
- (ii) admits that at material times it had a system of quarantine which it was implementing in respect of, amongst other things, animals and animal products imported into Australia;
- (iii) admits that the powers pleaded in sub-paragraphs 16(a)-(c) were, from time to time, exercised in the course of the implementation of that system of quarantine;
- (iv) denies, if it is alleged, that its system of quarantine was implemented solely by exercise of the powers pleaded in sub-paragraphs 16(a)-(c) because that is untrue as a matter of fact.

PART D 2016 OUTBREAK

D.1. Lead-up to 2016 Outbreak

17. As to paragraph 17 of the statement of claim, the defendant:

- (a) admits the allegation;
- (b) repeats and relies on the matters pleaded in paragraphs 13 above and ~~102~~ 117 below;
- (c) says that:
 - (i) from 2009-10 until 2015-16, the Prawn Import Policy underpinned the annual import of between 10,000 to 17,000 tonnes of shelled and headless uncooked prawns, 6,000-7,000 tonnes of marinated uncooked prawns and 2,000-3,000 tonnes of highly processed uncooked prawns from more than 40 countries, the mix of which varied from year to year;
 - (ii) between 2009-10 and 2015-16, the volume of frozen prawns (cooked and uncooked) imported by Australia rose only slightly from 34,000 tonnes to 38,000 tonnes;

- (iii) in July 2010 the Interim Inspector-General of Biosecurity investigated the release of a consignment of raw peeled prawns for human consumption that had tested positive for WSSV and determined that it had occurred as a result of human error and that there was a negligible likelihood that WSSV would have established in Australia as a result of it;
- (iv) in May 2013, certain officers of CDAWR (better particulars of whom cannot presently be provided):
 - (A) learned that three batches of imported prawns purchased at three different Geelong supermarkets had tested positive for WSSV; and
 - (B) thereafter determined:
 - (a) that the prawns had likely been imported as marinated prawns (which did not require testing) and the marinade had subsequently been washed off; and
 - (b) therefore it was unlikely that the relevant source batches had passed the mandatory post-arrival batch testing program.
- (v) in 2014, CDAWR implemented Operation East Leichardt, which investigation:
 - (A) was designed to determine if particular importers of marinated prawns were complying with the relevant parts of the Prawn Import Policy;
 - (B) determined that the issue pleaded at 17(c)(iv) above arose by reason of specific non-compliances by specific importers and was not a wider problem;
- (vi) between 2013-14 and 2015-16, certain officers of CDAWR (better particulars of whom cannot presently be provided) identified that

of a total of 2,712 prawn consignments directed for inspection, 439 had failed the inspection related requirements of the Prawn Import Policy;

Particulars

The investigations, findings or determinations in respect of each of the investigations referred to at subparagraphs 17(c)(iii)- 17(c)(vi) were recorded in writing in at least the following documents:

- (a) as to the investigation referred to at subparagraph 17(c)(iii), the IGB Report (PLF.001.001.2871) at paragraph 7.1 and the Interim Inspector General of Biosecurity Incident Review of November 2010;
- (b) as to the investigation referred to at subparagraph 17(c)(iv), the May 2013 Memorandum from Aquatic Animal Health Laboratory;
- (c) as to the investigation referred to at subparagraph 17(c)(v), the Post Operation Assessment;
- (d) as to the matter referred to at subparagraph 17(c)(vi), the IGB Report (PLF.001.001.2871) at paragraph 7.4.

Further documents revealing investigations, findings and determinations may be provided in disclosure if directly relevant to a matter in issue in this proceeding.

(vii) on or about 16 March 2016, CDAWR commenced Operation Cattai to identify importers deliberately avoiding prawn import controls and thereafter as necessary, to take action to address and deter that behaviour to reduce the level of risk of prawn imports (**Operation Cattai**);

(viii) Operation Cattai:

- (A) was finalised in December 2016;
- (B) was the biggest and most complex compliance campaign CDAWR had ever undertaken;
- (C) identified for the first time that the defendant's testing as contemplated by the Prawn Import Policy was affected by:
 - (a) difficulty in the identification of batches for testing;

- (b) some Importers misdeclaring prawn shipments or falsely presenting prawn consignments for inspection to foil the random sampling and batch testing stipulated by the Prawn Import Policy; and
- (c) practical difficulties for Inspectors in verifying whether a consignment contained one or more batches for testing.

Particulars

The Inspector-General of Biosecurity titled 'Uncooked prawn imports: Effectiveness of biosecurity controls' (Review report no. 2017-18/01) (IGB Report) (pages 15-16 and 98-102).

- 18. As to paragraph 18 of the statement of claim, the defendant:
 - (a) repeats and relies on the matters pleaded in paragraphs 12, 13 and sub-paragraphs 17(c)(iv) and 17(c)(v) above;
 - (b) in those premises:
 - (i) admits the matters in sub-paragraphs (a) and (b);
 - (ii) does not admit that CDAWR was aware of such matters because despite reasonable inquiry it remains uncertain as to whether it is true.
- 19. As to paragraph 19 of the statement of claim, the defendant:
 - (a) repeats and relies on the matters pleaded at paragraphs 12 and 17(c)(vi) above;
 - (b) in those premises admits that between 2013-14 and 2015-16 certain officers of CDAWR (better particulars of whom cannot presently be provided) identified (and so became aware of) 2,048 instances of potential or actual non-compliance with the import conditions imposed by the Prawn Import Policy;
 - (c) says that the identified potential or actual non-compliance reflected non-conformances:

- (i) in 867 instances, with entry level requirements in which the relevant broker or importer did not comply with import requirements imposed by the Prawn Import Policy;
- (ii) in 662 instances, with document requirements in which accompanying documentation did not fulfil CDAWR's Minimum Documentary and Import Declaration Requirements Policy;
- (iii) in 439 instances, with inspection related requirements in which imported products did not meet mandatory import requirements;
- (iv) in 80 instances other non-compliances;

Particulars

The identified instances of potential or actual non-compliance with the import conditions imposed by the Prawn Import Policy are recorded in writing, copies of which documents will, to the extent they are directly relevant to a matter in issue in this proceeding, be provided as part of disclosure.

- (d) says that such officers of CDAWR (better particulars of whom cannot presently be provided) determined that it was likely some of the consignments had multiple faults;
 - (e) denies the allegations because the true position is as pleaded at sub-paragraphs 19(a)-(d) above.
20. As to paragraph 20 of the statement of claim, the defendant denies the allegations because the true position is as pleaded at sub-paragraph 17(c)(vii) above.
21. As to paragraph 21 of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded at paragraphs 12 and 17 above;
 - (b) in those premises, admits the allegations.

D.2. Critical Failure Period

22. As to paragraph 22 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 12 and 17 above;
- (b) admits the allegation;
- (c) says further that at material times the retail supply chain in Australia was such that prawn meat for human consumption released from quarantine took between 2 and 18 months to be sold from a retail outlet.

Particulars

- (a) *the expression 'retail supply chain in Australia' has its ordinary and natural meaning namely the sequence of processes involved in the distribution of a commodity from the point of release from quarantine to the point of retail sale, including any intermediate wholesale or distribution functions;*
- (b) *the best particulars that the Defendant can presently provide of the features of the 'retail supply chain in Australia' that had the effect that prawn meat for human consumption released from quarantine took between 2 and 18 months to be sold from a retail outlet are those described in paragraph 9.2.1 of the IGB Report (PLF.001.001.2871).*

23. As to paragraph 23 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded in paragraphs 12, 17 and 22 above;
- (b) says that Operation Cattai found evidence consistent with each of the matters pleaded in sub-paragraphs (a)-(c); and
- (c) otherwise does not admit the allegation because despite reasonable inquiry it remains uncertain as to whether it is true.

24. As to paragraph 24 of the statement of claim, the defendant:

- (a) adopts the defined terms used in that paragraph;
- (b) repeats and relies on the matters pleaded in paragraphs 12, 13 17, 22 and 23 above;
- (c) says that Operation Cattai found evidence consistent with each of the matters pleaded in sub-paragraphs (a)-(e);

- (d) otherwise does not admit the allegations because despite reasonable enquiry it remains uncertain as to whether they are true.
25. As to paragraph 25 of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded in paragraphs 12, 13 17, 22 and 23 above;
 - (b) otherwise does not admit the allegation because despite reasonable inquiry it remains uncertain as to whether it is true.
26. As to paragraph 26 of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded in paragraphs 12, 13 17, 22 to 25 above;
 - (b) admits the allegation in sub-paragraph 26(a);
 - (c) does not admit the allegations in sub-paragraphs 26(b)(i) to (b)(iii) because despite reasonable inquiry it remains uncertain as to whether they are true;
 - (d) as to sub-paragraph 26(b)(iv):
 - (i) does not admit the allegation because despite reasonable inquiry it remains uncertain as to whether it is true;
 - (ii) if (which is not admitted) samples were taken from Consignments tainted by the Tampering Practices, denies, as a matter of fact, that this occurred having Notice of Tampering.
27. As to paragraph 27 of the statement of claim, the defendant:
- (a) adopts the defined terms used in that paragraph;
 - (b) repeats and relies on the matters pleaded at paragraphs 12, 13 and 22-26 above;
 - (c) says that to the extent the Prawn Import Policy involved testing of samples such testing was conducted by an Approved Laboratory using the Actual Testing Practice;

- (d) otherwise does not admit the allegations because despite reasonable enquiry it remains uncertain as to whether it is true.

28. As to paragraph 28 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded in paragraphs 12, 13, 17 and 22-27 above;
- (b) admits that since the implementation of the Prawn Import Policy, including during the said Critical Failure Period:
 - (i) some samples of prawn meat for human consumption from Consignments did not test positive for WSSV or WSD; and
 - (ii) as a result, the Consignments from which such samples were taken were treated as is pleaded in sub-paragraph (b)(i)-(iii);
- (c) otherwise does not admit the allegations because despite reasonable enquiry it remains uncertain as to whether it is true.

D.3. The 2016 Outbreak

29. As to paragraph 29 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded in paragraphs 12, 13, 17 and 22-27 above;
- (b) in those premises, admits the allegations.

30. The defendant admits the allegations in paragraph 30 of the statement of claim.

31. The defendant admits the allegations in paragraph 31 of the statement of claim.

32. The defendant admits the allegations in paragraph 32 of the statement of claim.

33. The defendant admits the allegations in paragraph 33 of the statement of claim.

34. The defendant admits the allegations in paragraph 34 of the statement of claim.

35. The defendant admits the allegations in paragraph 35 of the statement of claim.

36. The defendant admits the allegations in paragraph 36 of the statement of claim.
37. As to paragraph 37 of the statement of claim, the defendant:
- (a) admits the allegations in sub-paragraphs 37(a)-(d);
 - (b) does not admit the allegation in sub-paragraph 37(e) because despite reasonable enquiry it remains uncertain as to whether it is true.
38. The defendant admits the allegations in paragraph 38 of the statement of claim.
39. The defendant admits the allegations in paragraph 39 of the statement of claim.
40. The defendant admits the allegations in paragraph 40 of the statement of claim.
41. ~~The defendant admits the allegations in~~ As to paragraph 41 of the statement of claim,
~~the defendant:~~
- ~~(a) denies the allegation because it is untrue;~~
 - ~~(b) says that the true position is that QDAF sampling conducted between 1 December 2016 and 11 February 2017, detected WSSV-infected prawns and crabs in southern Moreton Bay.~~
42. The defendant admits the allegation in paragraph 42 of the statement of claim.
43. As to paragraph 43 of the statement of claim, the defendant:
- (a) admits the allegation in sub-paragraph 43(a);
 - (b) denies the allegation in sub-paragraph 43(b) because the true position is that:
 - (i) the Import Suspension took effect on 7 January 2017; and
 - (ii) the Import Suspension did not apply to:
 - (A) prawn meat for human consumption sourced from New Caledonia;
 - (B) prawn meat for human consumption processed into dumplings;

(C) spring rolls, samosas, other dim sum-type products and other similar products; or

(D) prawn meat for human consumption which had been coated for human consumption by being breaded, crumbed or battered.

44. The defendant admits the allegation in paragraph 44 of the statement of claim.

45. The defendant admits the allegation in paragraph 45 of the statement of claim.

46. The defendant admits the allegations in paragraph 46 of the statement of claim.

47. The defendant admits the allegation in paragraph 47 of the statement of claim.

48. ~~The defendant admits the allegations in~~ As to paragraph 48 of the statement of claim,
~~the defendant:~~

(a) ~~admits the allegations in sub-paragraphs 48(a) (c);~~

~~49. denies the allegation in sub-paragraph 48(d) because the true position is that *Import Suspension Exceptions Determination (No.2)* relevantly excluded from the Import Suspension prawn meat for human consumption deriving from prawns that, in accordance with the secure supply chain, were exported to Thailand, either in the form of prawn meat for human consumption, for processing in Thai Union Group Public Company Limited, 79/223 Moo 7, Sethakit 1 Road, Tambon Tarsai, Amphur Muang, Samutsakom 7400 Thailand.~~

49. The defendant admits the allegation in paragraph 49 of the statement of claim.

50. The defendant admits the allegations in paragraph 50 of the statement of claim.

51. As to paragraph 51 of the statement of claim, the defendant:

(a) admits that on 3 April 2017 the Commonwealth Director issued the *Import Suspension Exceptions Declaration (No.3)*;

(b) says that the *Import Suspension Exceptions Declaration (No.3)* took effect on 4 April 2017 except for Schedule 2 thereof which took effect on 7 May 2017;

- (c) says that it will rely on the full terms of the *Import Suspension Exceptions Declaration (No.3)* for their true meaning and effect;
- (d) ~~otherwise admits the allegations~~says that the *Import Suspension Exceptions Declaration (No.3)* ~~relevantly excluded prawn meat for human consumption in a processed form if it:~~
 - (i) ~~was derived from prawns that were wild caught in Australian territory and exported to another country, either in the form of uncooked prawns or uncooked prawn meat, for processing;~~
 - (ii) ~~was accompanied by a relevant foreign country processing declaration and a foreign country health certificate;~~
 - (iii) ~~is not covered by sub-paragraph (i) above.~~

- 52. The defendant admits the allegation in paragraph 52 of the statement of claim.
- 53. The defendant admits the allegations in paragraph 53 of the statement of claim.
- 54. The defendant admits the allegations in paragraph 54 of the statement of claim.
- 55. The defendant admits the allegations in paragraph 55 of the statement of claim.
- 56. The defendant admits the allegation in paragraph 56 of the statement of claim.
- 57. The defendant admits the allegation in paragraph 57 of the statement of claim.

PART E COMMONWEALTH DUTY OF CARE

E.1. Foreseeable risk of harm

- 58. As to paragraph 58 of the statement of claim, the defendant:
 - (a) admits the allegation in sub-paragraph 56(a);
 - (b) as to sub-paragraph 56(b):
 - (i) denies the allegation insofar as it concerns the period before 1998 because:

(A) the levy system was introduced in or about 1998 with the enactment of the *Primary Industries (Customs) Charges Act 1999*, *Primary Industries (Excise) Levies Act 1999*, *National Residue Survey (Customs) Levy Act 1998* and the *National Residue Survey (Excise) Levy Act 1998* (**levy system**);

(B) in the premises, CDWAR did not, as a result of its operation of the levy system, have knowledge of the matters alleged in that sub-paragraph;

(ii) otherwise admits the allegation.

59. As to paragraph 59 of the statement of claim, the defendant:

(a) adopts the defined terms used in that paragraph;

(b) repeats and relies on the matters pleaded in paragraphs 3 to 6, 9 and 12 to 28 above;

(c) as to subparagraphs 59(a)-(i):

(i) admits that the 2009 Prawn IRA identified each of the matters in subparagraphs (a)-(i) as risks of varying likelihood save that so far as it spoke of things such as dispersal of WSSV in Domestic Species and widespread mortality of Domestic Species it did so in the context of there being geographic limits to such things having regard to the region in which infection of Domestic Species had occurred;

(ii) says further that under the *Biosecurity Act (Qld)* the State of Queensland was solely responsible for the imposition of:

(A) movement controls; and

(B) fishing bans in or near areas where WSSV infection had been detected;

(d) as to subparagraphs 59(j) and (k):

(i) says that:

- (A) the Domestic Species were not the property of the persons who carried on commercial fishing because they are res nullius until they are caught;
 - (B) the 2009 IRA stated that there was no clear documented evidence that the pathogenic agents under consideration in the report, including WSSV, had adversely affected wild prawn fisheries;
 - (C) the 2009 IRA identified that in an unrestricted marine environment the seriousness of a WSSV incursion as determined in relation to the total value of the industry in 1999 was a 2% loss attributed mainly to increased production costs;
 - (D) in the premises of sub-paragraph 59(i) of the statement of claim, commercial fishing for Domestic Species could occur in areas not the subject of a fishing ban;
- (ii) does not admit the allegations because, including in the premises as pleaded in 59(d)(i) above, despite reasonable enquiry it remains uncertain as to whether they are true;
- (e) says further that:
- (i) commencing in or about December 2000, the Director of Quarantine and AQIS took steps to address the risks referred to in sub-paragraphs 59(a)-(i) by imposing the Interim Conditions under the Prawn Import Policy;
 - (ii) in the premises as pleaded in subparagraphs 7(g) and 9(b) above, each of the Import Conditions and the Prawn Import Policy comprised the exercise by the Director of Quarantine and AQIS of policy making powers of a quasi-legislative character, the merits of which are not justiciable in negligence;
- (f) otherwise does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true.

60. As to paragraph 60 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at 3 to 6, 9, 12 to 28 and 59 above;
- (b) says that the 2009 Prawn IRA stated that:
 - (i) the matters pleaded in paragraph 59(a)-(i) of the statement of claim were things that could occur in an unrestricted quarantine environment;
 - (ii) if the matters pleaded in paragraph 59(a)-(i) of the statement of claim eventuated together or severally they could involve, together or severally, the matters pleaded in sub-paragraphs 60(a)(i)-(iii);
 - (iii) each of the matters pleaded in paragraph 59(a)-(i) of the statement of claim were complex and interdependent;
- (c) does not admit the allegations in sub-paragraph 60(a)(iv) because despite reasonable inquiry it remains uncertain as to whether they are true;
- (d) denies that, considered severally, the matters pleaded in sub-paragraph 59(a)-(i) of the statement of claim were each serious or not insignificant within the meaning of s 9(1)(b) of the *Civil Liability Act 2003 (Qld)* (CLA) for the reasons pleaded in subparagraph 60(b) above;
- (e) otherwise does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true.

61. As to paragraph 61 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded in paragraphs 3 to 6, 9, 12 to 28, 59 and 60 above and paragraph 64 below; ~~says that the plaintiff does not allege that the Group Members carried on businesses farming Carrier Speci~~
- (b) says that the allegation is vague and embarrassing and liable to be struck out because the plaintiffs hasve failed to plead precisely what ~~it~~they alleges was required of a reasonable person in the position of the defendant to avoid the Risks of Harm;

- (c) does not admit the allegation because, including in the premises as pleaded in the (a) and (b) above, despite reasonable enquiry, it remains uncertain as to whether it is true.

E.2. Control

62. As to paragraph 62 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded in paragraphs 3 to 6, 9, 12 to 28, 59 to 61 above;
- (b) subject to the matters pleaded in subparagraph 3(c)(iv) above, admits the allegations in sub-paragraphs 62(a)(i) and (iii);
- (c) denies the allegation in sub-paragraph 62(a)(ii) because in the premises as pleaded in sub-paragraph 3(c)(iv)(D) and (E) above, it did not have exclusive power in respect of those matters;
- (d) admits the allegations in sub-paragraphs 62(b), (c), (e) and (f);
- (e) as to sub-paragraph (d), admits that the Commonwealth had powers of direction as alleged but otherwise denies the allegation because it is untrue;
- (f) as to the allegation in sub-paragraph 62(g):
 - (i) repeats and relies on the matters pleaded at (a) to (e) above;
 - (ii) denies the allegation so far as the matters pleaded in subparagraphs 62(a) to (e) are denied; and
 - (iii) otherwise does not admit the allegation, including in the premises of sub-paragraphs (b) and (e) above, because despite reasonable inquiry it remains uncertain as to whether it is true;
- (g) as to the allegations in sub-paragraph 62(h):
 - (i) repeats and relies on the matters pleaded at (a)-(f) above;

- (ii) in those premises, admits, denies or does not admit the allegation so far as the matters pleaded in subparagraphs 62(a) to (g) are admitted, denied or not admitted;
- (h) says further that the powers alleged in sub-paragraphs (a) to (f) to the extent admitted above, are policy making powers of a quasi-legislative character, the merits of which are not justiciable in negligence.

E.3. Vulnerability

63. As to paragraph 63 of the statement of claim, the defendant:

- (a) repeats and relies on sub-paragraph 59(c) above and, in the premises, does not admit the allegations in (a)(i); ~~says that the plaintiff does not allege that the Group Members carried on businesses farming Carrier Species~~
- (b) subject to the matters pleaded at sub-paragraphs 63(a) ~~and (b)~~ above, admits that at all material times persons who in Australia carried on businesses catching, farming, processing, transporting or dealing in Carrier Species (including the Group Members if they are such persons, which the defendant does not admit) were likely to be affected as to the matters pleaded in sub-paragraph 63(a)(i)-(v) by:
 - (i) the matter pleaded in sub-paragraph 63(a)(v)(A); and
 - (ii) Biosecurity Responses thereto;
- (c) says further that not all Biosecurity Responses would affect all or any of the matters pleaded in sub-paragraphs 63(a)(i)-(v);
- (d) denies the allegations in sub-paragraph 63(a) so far as they are said to be the result of the things pleaded in sub-paragraph 63(a)(v)(B) because the implication or detection of systemic problems with extant Commonwealth biosecurity procedures or practices in respect of prawn meat for human consumption (which the defendant denies) are irrelevant to the Biosecurity Responses;

- (e) denies the allegations in sub-paragraph 63(a) so far as they are said to be the result of the things pleaded in sub-paragraph 63(a) (v) (C) because:
 - (i) of the matters pleaded at sub-paragraph 63(d) above; and
 - (ii) those matters were not likely to have the pleaded affect;
- (f) does not not admit the allegation in sub-paragraph 63(b) because despite reasonable inquiry it remains uncertain as to whether it is true;
- (g) as to the allegation in sub-paragraph 63(c), says that at all material times the Prawn Farmer Group Members (including TPF) had measures available to them to prevent, or reduce the likelihood, of prawns within their prawn farms becoming infected with WSSV (On-Farm Biosecurity Measures) including:
 - (i) filtration of water entering the farm to a level of approximately 50 microns or less;
 - (ii) chemical treatment for disinfection of water entering the farm;
 - (iii) installation of crab fencing to prevent crabs entering ponds;
 - (iv) installation of bird netting over ponds and open channels;
 - (v) lining of grow-out ponds with plastic to isolate them from the earth;
 - (vi) annual removal of waste at the bottom of ponds;
 - (vii) use of central drainage of ponds to continuously remove waste from the bottom of ponds;
 - (viii) use of domesticated disease free broodstock, instead of wild-caught broodstock;
 - (ix) testing broodstock for WSSV; and
 - (x) use of feeds that are irradiated or certified disease free;

- (h) in the premises pleaded at 63(g) above, denies the allegations in sub-paragraph 63(c) and 63(d) to the extent they relate to Prawn Farmer Group Members, including TPF; and
- (i) otherwise does not admit the allegation in sub-paragraph 63(c) because, in the premises of the matters pleaded at 63(a)-(d), despite reasonable enquiry it remains uncertain as to whether it is true;
- (j) in the premises of the matters pleaded above in this paragraph, otherwise does not admit the allegation in sub-paragraph 63(d) because despite reasonable enquiry it remains uncertain as to whether it is true.

64. As to paragraph 64 of the statement of claim, the defendant:

- (a) repeats and relies on sub-paragraph 59(c) above;
- (b) does not admit the allegation in sub-paragraph (a) because that allegation is insufficiently particularised as to the quantitative meaning of ‘loss of Domestic Species caused by WSSV or WSD’;
- (c) repeats and relies upon the matters pleaded at 63(g) above;
- (d) in the premises pleaded at 64(c) above, denies the allegations in paragraph 64 to the extent they relate to to Prawn Farmer Group Members, including TPF; and
- (e) otherwise does not admit the allegations in sub-paragraphs (b)-(d) because despite reasonable enquiry it remains uncertain as to whether they are true.

E.4. Duty of Care

65. As to paragraph 64⁵ of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28, 59 to 63–64 above;
- (b) says that the allegation is vague and embarrassing and liable to be struck out:
 - (i) in the premises as pleaded in sub-paragraph 61(b) above; and further

- (ii) because the plaintiff impermissibly seeks to use retrospective reasoning to allege the said Biosecurity Duty;
- (c) in the premises as pleaded in the preceding subparagraph, denies the allegation;
- (d) further, and in the alternative, denies the allegation because:
 - (i) the defendant's relevant statutory powers and obligations under the *Quarantine Act* and the *Biosecurity Act* being those pleaded at paragraphs 120-124 below were directed to:
 - (A) the protection of the public at large; and
 - (B) giving effect to Australia's international rights and obligations, including under the SPS Agreement being those matters pleaded at paragraph 3(c)(iv) above;
 - (ii) in those premises:
 - (A) even if the defendant was required to take reasonable care to avoid the matters pleaded in paragraph 59(a)-(i) of the statement of claim (which is not admitted), the class of persons in whose interests it would do that was the public at large;
 - (B) the defendant's powers and responsibilities under the *Quarantine Act* and the *Biosecurity Act* including the making and application of the Interim Conditions and Prawn Import Policy, comprise the exercise of policy making powers of a quasi-legislative character, the merits of which are not justiciable in negligence;
 - (C) the terms, scope and purpose of the *Quarantine Act* and the *Biosecurity Act* mean there is no appropriate foundation for a common law duty of care;
 - (D) the statutory regime does not erect or facilitate a relationship between the defendant and the Group Members (or any of them) that, in all the circumstances, displays sufficient characteristics,

whether those pleaded in the statement of claim or otherwise, answering the criteria for intervention by the tort of negligence;

- (E) says further that recognition of a duty to take reasonable care to avoid the risk of matters pleaded in paragraph 59(a)-(i) of the statement of claim would expose the defendant to an immense obligation and no such duty would be found on that basis; and
 - (F) the matters pleaded in paragraph 59(a)-(i) of the statement of claim were not created by the defendant and the Biosecurity Duty or any other relevant obligation to take reasonable care to avoid matters pleaded in paragraph 59(a)-(i) of the statement of claim would be denied on that basis;
- (iii) for those reasons, and in the premises of sub-paragraph 59(e) above; and further or alternatively sub-paragraph 62(f) above, the defendant did not owe the Biosecurity Duty and, alternatively did not owe a duty to take reasonable care to avoid the matters pleaded in paragraph 59(a)-(i) of the statement of claim;
- (e) further, and alternatively, even if the defendant was required to take reasonable care to avoid the matters pleaded in paragraph 59(a)-(i) of the statement of claim (which is denied) that standard of care was discharged by the Interim Conditions and the Prawn IRA;
 - (f) further, says that even if it did owe the Biosecurity Duty or a duty to take reasonable care to avoid the matters pleaded in paragraph 59(a)-(i) of the statement of claim (which is not admitted), denies that it would correctly be described as a non-delegable duty because in the premises as pleaded in sub-paragraph 59(c) and 59(j) above the defendant did not on the matters pleaded in the statement of claim or otherwise assume a particular responsibility for the economic safety of the Group Members or any of them;
 - (g) says further that the loss claimed in this proceeding has the character of pure economic loss, and in those premises the defendant owed no duty of care by reason of the following matters:

- (i) in the premises as pleaded in 59(d)(i)(A) above, the claim in respect of commercial fishing is not consequential upon injury to property or person; and further
- (ii) whether by reference to any established category, or any other circumstances, no duty of care is grounded;
- (iii) the circumstances are not such that either the plaintiffs or the Group Members ~~was an~~ were identified persons to whom the defendant would owe a duty of care;
- (iv) the class of persons who would be owed the duty of care pleaded or any relevant duty of care was indeterminate in character.

66. As to paragraph ~~66~~5 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 58-64 above;
- (b) in those premises, denies the allegation.

67. As to paragraph ~~67~~6 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to ~~65~~4 above and the matters at paragraphs ~~117~~02 and ~~118~~03 below;
- (b) in those premises, denies the allegation.

PART F PRECAUTIONS, BREACHES AND CAUSATION

F.1. Available Precautions

68. As to paragraph ~~68~~7 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to 64 above;
- (b) says that:

- (i) in light of the risks identified in the 2009 Prawn IRA, it, by the Director of Quarantine and AQIS, promulgated and thereafter enacted the Prawn Import Policy which included, in certain circumstances, Batch Testing;
- (ii) the risks identified in the 2009 Prawn IRA:
 - (A) were likely to be materially reduced by the Prawn Import Policy being applied in accordance with its terms;
 - (B) were likely to be materially reduced by the Available Precautions;
- (iii) as a result of Operation Cattai, officers of CDAWR first became aware in or about August 2016 of difficulties in the accurate identification of batches within consignments as contemplated by the 2009 Prawn IRA (**Batch Testing Issue**);

Particulars

The officers of CDAWR included David Cammiss and Andrew Patterson. The difficulties in the accurate identification of batches within consignments are those identified in paragraph 23 of the Statement of Claim.

- (iv) to the extent that batch testing in accordance with the Prawn Import Policy was not reflecting a valid random sample or was not operating reasonably reliably to provide 95% confidence of detecting WSSV, if WSSV were present at 5% prevalence within a batch, this was as a result of the Batch Testing Issue and the conduct of specific importers;
- (c) otherwise does not admit the allegation because despite reasonable enquiry it remains uncertain as to whether it is true.

69. As to paragraph 698 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to 687 above;

- (b) otherwise does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true.

- 70. As to paragraph 7069 of the statement of claim, the defendant:
 - (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to 698 above;
 - (b) admits the allegations in sub-paragraphs 7069(a) and (b) insofar as they concern the matters pleaded in sub-paragraphs 687(a) to 687(d) of the statement of claim;
 - (c) otherwise does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true.

- 71. As to paragraph 710 of the statement of claim, the defendant:
 - (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to 7069 above;
 - (b) otherwise does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true.

- 72. As to paragraph 724 of the statement of claim, the defendant:
 - (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to 710 above;
 - (b) otherwise does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true.

- 73. As to paragraph 732 of the statement of claim, the defendant:
 - (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to 724 above;
 - (b) otherwise, does not admit the allegations because despite reasonable enquiry it remains uncertain as to whether they are true.

F.2. Breach of duty – inadequate inspections

74. As to paragraph ~~743~~ of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to ~~732~~ above;
 - (b) otherwise does not admit the allegation because despite reasonable inquiry it remains uncertain as to whether it is true.
75. As to paragraph ~~754~~ of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to ~~743~~ above;
 - (b) otherwise does not admit the allegation because despite reasonable inquiry it remains uncertain as to whether it is true .
76. As to paragraph ~~765~~ of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to ~~754~~ above and paragraphs ~~11702~~ and ~~11803~~ below;
 - (b) otherwise does not admit the allegation because despite reasonable inquiry it remains uncertain as to whether it is true.

F.3. Breach of duty – inadequate response to earlier quarantine failures

77. As to paragraph ~~776~~ of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded at 3 to 6, 9, 12 to 28 and 58 to ~~756~~ above;
 - (b) otherwise does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true.
78. As to paragraph ~~787~~ of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to ~~776~~ above;

- (b) otherwise does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true.

79. As to paragraph 798 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to 787 above;
- (b) says that the allegations are vague and embarrassing because the plaintiff has failed to provide particulars as to what constitutes 'adequate steps' in respect of each of the matters alleged at sub-paragraphs 798 (b) to (d);
- (c) says that:
 - (i) planning for Operation Cattai commenced in or around March 2015;
 - (ii) Operation Cattai commenced on 16 March 2016;
 - (iii) Operation Cattai concluded in December 2016;

Particulars

The conduct comprising planning for Operation Cattai is recorded in writing. Copies of such documents relating to the entities listed at Attachment 1A of the PTE Target Assessment advice, dated 25 February 2016 [DAW.501.001.0004], that are directly relevant to a matter in issue in this proceeding will be provided as part of disclosure.

- (d) in the premises, denies the allegations that it had any occasion or basis to take the steps pleaded in sub-paragraph (b)-(d) before the conclusion of Operation Cattai as pleaded above;
- (e) in those premises, denies the allegation.

80. As to paragraph 79-80 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 3 to 6, 9, 12 to 28 and 58 to 798 above and paragraphs 11702 and 11803 below;
- (b) in those premises, denies the allegations.

F.4. Causation

81. As to paragraph ~~81~~θ of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at sub-paragraph 22(c) and paragraphs ~~687-79~~80 above;
- (b) in those premises, does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true.

82. As to paragraph ~~82~~± of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at sub-paragraph 22(c) and paragraphs ~~687-80~~84 above;
- (b) in those premises, does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true;
- (c) says further that the 2016 Outbreak (being the events pleaded in paragraphs 29-57 of the statement of claim and this defence) commenced when prawns in Pond 12 at Farm 1IP were infected with WSSV;
- (d) says that the cause of the 2016 Outbreak is unknown but may have been by one of the following:
 - (i) prawn meat for human consumption infected with WSSV or WSD being purchased by recreational fishers for use as bait or berley in the Logan River or alternatively in the intake canals of one or more of the prawn farms on the Logan River;
 - (ii) a latent or dormant, longstanding wild strain of WSSV that existed in Queensland Waters (as pleaded at paragraph 4(c) above) becoming active;
 - (iii) WSSV being introduced to Farm 1IP via broodstock in which WSSV was endemic;

- (iv) WSSV being introduced to Farm 1IP via imported feed or other products fed to or used in connection with farmed Domestic Species in the Logan River;
- (v) WSSV being introduced to Farm 1IP by way of illegal human activity including the importation of aquaculture equipment or deliberate sabotage.

83. As to paragraph 832 of the statement of claim, the defendant:

- (a) adopts the defined terms used in that paragraph;
- (b) repeats and relies on the matters pleaded at paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and 687-812 above;
- (c) admits that the State Movement Restrictions were imposed;
- (d) admits that the State Fishing Restrictions were imposed;
- (e) admits that the Import Suspension was imposed;
- (f) does not admit that the Fallow Period was imposed or incurred (it being unclear which of those is alleged) or that the Other Biosecurity Responses were imposed or that the Marketability Consequences occurred because despite reasonable enquiry it remains uncertain as to whether they were;
- (g) in those premises, does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true.

84. As to paragraph 84 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and 68-84 above;
- (b) in those premises, does not admit the allegations because despite reasonable inquiry it remains uncertain as to whether they are true.

85. As to paragraph 853 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57, 63 and 67-84 above;
- (b) says that:
- (i) at all material times, TPF failed to implement, or implement adequately, On-farm Biosecurity Measures (as pleaded at sub-paragraph 63(g) above) in order to address the risk of prawns on its farm becoming infected with WSSV;
- (ii) the omission pleaded at 85(b)(i) above was a negligent omission by TPF;
- (iii) but for the omission pleaded at 85(b)(i) WSSV would likely not have entered TPF's farm; and
- (iv) such negligent omission by TPF caused or contributed to the loss and damage pleaded at sub-paragraph 85(d) of the statement of claim;
- (c) in those premises denies that the opportunities or the losses pleaded in sub-paragraphs (a)-(ed), if it was they were lost or suffered, or, if any opportunities were lost or any loss was suffered, such opportunities were lost or loss was suffered by reason of the matters pleaded in paragraphs 810, 821 and 832 of the statement of claim;
- (d) says further that having regard to the matters pleaded in paragraphs 29-57 of the statement of claim to the extent they are admitted by the defendant, does not admit that the opportunities or losses pleaded in sub-paragraphs (a)-(de) were lost or were suffered by reason of the matters there pleaded because despite reasonable enquiry it remains uncertain as to whether that is true;
- (e) otherwise does not admit the allegations because despite reasonable enquiry it remains uncertain as to whether they are true.

86. As to paragraph 864 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at sub-paragraph 22(c) and paragraphs 9, 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and ~~687-821~~ and 85 above;
- (b) says further that in the premises as pleaded in subparagraph 9(c)(ii)(C) and 13(a)(iii) above, importation contemplated a 95% confidence interval such that in 5% of cases, the risk alleged in subparagraph ~~864~~(c) of the statement of claim would have materialised in any event;
- (c) in those premises, denies the allegations.

87. As to paragraph ~~875~~ of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and ~~687-864~~ above;
- (b) in those premises, denies the allegations.

88. As to paragraph ~~886~~ of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and ~~687-875~~ above;
- (b) in those premises, denies the allegation in sub-paragraph (a);
- (c) as to the allegations in sub-paragraph (b):
 - (i) repeats and relies on the matters pleaded at ~~821~~(d) above;
 - (ii) admits that the state of scientific knowledge prior to, during and since the 2016 Outbreak did not and does not establish factual causation between the 2016 Outbreak and the loss alleged to have been suffered by the plaintiff, the Commercial Fishing Group Members, the Handling Group Members, ~~and the Wholesaler Group Members~~ and the Prawn Farmer Group Members (which the defendant does not admit was suffered);
 - (iii) otherwise, in the premises of sub-paragraph (a) above denies the allegations;

- (d) as to sub-paragraph (c):
 - (i) says that, as pleaded herein, the 2016 Outbreak was not caused by the Quarantine Failures;
 - (ii) may not have been caused by the introduction of WSSV infection into the Logan River or the Farms and the subsequent spread of infection;
 - (iii) otherwise, does not admit the allegation because despite reasonable enquiry it does not know if it is true;
- (e) in the premises of sub-paragraph (a) above, denies the allegations in sub-paragraphs (d)-(h).

89. As to paragraph ~~89~~7 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and ~~678-897~~ above;
- (b) in those premises, denies the allegations.

90. As to paragraph ~~88-90~~ of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs ~~654~~ and ~~879~~ above;
- (b) in the premises, denies the allegations.

91. The defendant denies the allegation in paragraph ~~89-91~~ of the statement of claim by reason of the matters pleaded herein.

92. The defendant denies the allegation in paragraph ~~90-92~~ of the statement of claim by reason of the matters pleaded herein.

PART G PUBLIC NUISANCE

G.1 Right to Fish

93. As to paragraph ~~93~~4 of the statement of claim, the defendant:

- (a) says that:

- (i) the Fisheries Act 1994 (Qld) (Fisheries Act):
 - (A) applies to persons, things, acts and omissions on or within land within the limits of the State of Queensland and Queensland waters (s 11);
 - (B) empowers the chief executive to make declarations including in relation to:
 - (a) regulating the taking, purchase, sale, possession, or use of particular fish (s 33 and 34);
 - (b) regulating the taking or possession of fish in particular waters (ss 33 and 35); and
 - (C) makes it unlawful for a person to do an act prescribed by regulation or declared by a declaration as an act that must only be done by the holder of an authority (s 82);
 - (D) permits the chief executive to issue an authority under the Fisheries Act to authorise the holder of the authority to do the things permitted under a regulation or declaration stated in the authority (ss 49 and 52);
 - (E) permits the Governor in Council to make regulations under the Fisheries Act including to prescribe matters for the management of fisheries resources (s 223);
- (ii) the Fisheries (General) Regulation 2019 (Qld):
 - A. permits a person to carry out recreational fishing without an authority (s 6);
 - B. prescribes acts for which authority is required, and the condition of, an authority including the taking of fish for trade or commerce (s 20 and Schedule 1);
- (iii) the Fisheries (Commercial Fisheries) Regulation 2019 (Qld) provides for the authorisation, under, and conditions of, authorities that authorise activities to be carried out in particular commercial fisheries;

- (iv) the Fisheries Declaration 2019 (Qld) imposes restrictions on the carrying out of particular activities, including within the Restricted Coastal Area and Restricted Logan River Area, which generally speaking override any authorisation under, or condition of, an authority referred to in (iii);
 - (v) the Fisheries Quota Declaration 2019 (Qld) provides for quota entitlements for particular commercial fisheries, which, generally speaking, restrict activities that may be carried out in the commercial fisheries under authority;
- (b) in the premises as pleaded in subparagraph 93(a), denies the allegation because:
- a. there was a restricted right to fish for recreataional purposes in some parts of the Restricted Coastal Area being those areas in which recreational fishing was not prohibited;
 - b. the common law public right to fish in the Restricted Coastal Area and Restricted Logan River Area was abrogated by the statutory regulation of fishing provided for by the Fisheries Act.
- ~~(a) denies that at material times there was a public right to fish in the Restricted Coastal Area or the Restricted Logan River Area because there was a restricted right to fish for recreational purposes in some parts of the Restricted Coastal Area or the Restricted Logan River Area being those areas in which recreational fishing was not prohibited;~~
- ~~(b) denies that at material times there was a public right to fish commercially in the Restricted Coastal Area or the Restricted Logan River Area because as a matter of fact there was not. TT~~

94. As to paragraph 94~~2~~ of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded in paragraph 93~~1~~;
- (b) in those premises, denies that to the extent the Commercial Fishing Group Members fished in the Restricted Coastal Area or the Restricted Logan River Area as pleaded in sub-paragraphs (a) and (b) or otherwise they were exercising the pleaded, or any, public right to fish.

95. As to paragraph 953 of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded at paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and 687-942 and sub-paragraph 59(d) above;
 - (c) in those premises denies the allegations.

G.2. Interference with right to fish

96. As to paragraph 964 of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded in sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and 687-953 above;
 - (b) in those premises, and subject to the matters there pleaded, admits the allegation;
 - (c) says further, in the premises of the matters pleaded herein, that the defendant did not do so knowingly.
97. As to paragraph 975 of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded in sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and 687-897 and 934-964 above;
 - (b) in those premises, denies the allegations;
 - (c) says further that, even if, which the defendant denies, there were a Right to Fish, an interference with the enjoyment of such a right does not constitute an actionable public nuisance as alleged because such a right (if it existed) is not a liberty or privilege, interference with which constitutes an actionable public nuisance.

98. As to paragraph 986 of the statement of claim, the defendant:
- (a) repeats and relies on the matters pleaded in sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and 687-897 and 934-986 above;
 - (b) in those premises, and subject to the matters there pleaded:
 - (i) denies that the Commercial Fishing Group Members have suffered any loss as a result of the matters pleaded in paragraph 953 of the statement of claim;
 - (ii) denies that any loss suffered by the Commercial Fishing Group Members as a result of the 2016 Outbreak was:
 - (A) particular damage;
 - (B) different in kind and degree from the loss and damage suffered by other members of the public or the public at large;
 - (C) foreseeable to the defendant.
99. The defendant denies the allegation in paragraph 997 of the statement of claim by reason of the matters pleaded herein.

G.3. Right to Waters-Logan Prawn Farms

100. As to paragraph 100 of the statement of claim, the defendant:
- (a) says that:
 - (i) at common law:
 - (A) a riparian owner had the right to the undiminished flow of the water on the banks of their property;
 - (B) the public had a limited right to reasonable use of water to which there was a right of way or access;
 - (ii) the *Water Act 2000* (Qld) (*2000 Water Act*):

- (A) vests all rights to the use, flow, and control of all water in the State of Queensland (s 26);
 - (B) empowers the State to authorise persons to take water through legislation and statutory instruments or authorisations issued under the 2000 Water Act (s 27); and
 - (C) provides a limited right for an owner of land adjoining a watercourse, lake, or spring to take water from the watercourse, lake or spring for stock or domestic purposes (s 96(2));
- (iii) the provisions of the 2000 Water Act referred to at 100(a)(ii) above substantively replicate the:
- (A) Rights in Water and Water Conservation Utilization Act 1910 (Qld);
 - (B) Water Act 1926 (Qld); and
 - (C) Water Resources Act 1989 (Qld);
- (b) in the premises pleaded in subparagraph 100(a) denies the allegation because:
- (i) at common law there was no unrestricted public right to take water from waterways in the Restricted Coastal Area and Restricted Logan River Area; and further and in any event;
 - (ii) any common law public right to take water from the Restricted Coastal Area and Restricted Logan River Area was abrogated by the legislation referred to at 100(a)(ii) and (iii) above.

The defendant denies the allegation in paragraph 100 of the statement of claim because it is untrue as a matter of fact.

101. As to paragraph 101 of the statement of claim, the defendant:

- (a) does not admit the allegation in sub-paragraph (a) because despite reasonable enquiry it does not know if it is true;

- (b) as to sub-paragraph (b):
 - (i) admits that at material times to this proceeding some operators of prawn farms on the Logan River, (the defendant cannot presently better particularise which operators or whether TPF was one of them) were in the practice of drawing water from the Logan River onto their farms;
 - (ii) denies that such practice was lawful because as a matter of fact it was not;
- (c) as to sub-paragraph (c):
 - (i) repeats and relies on the matters pleaded at sub-paragraph (b);
 - (ii) otherwise admits the allegation.

102. As to paragraph 102 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 100 and 101 above;
- (b) in those premises denies TPF and the Logan Prawn Farmer Group Members had the Right to Waters as alleged or at all.

103. As to paragraph 103 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded at paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57, 59(d), 63(g) and 68-102 above;
- (b) in those premises, denies the allegations.

104. As to paragraph 104 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded in sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57, 59 and 68-102 above;
- (b) in those premises, and subject to the matters there pleaded, admits the allegation;

- (c) says further, in the premises of the matters pleaded herein, that the defendant did not do so knowingly.

105. As to paragraph 105 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded in sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and 68-89 and 100-104 above;
- (b) further says that at all material times TPF and Prawn Farmer Group Members had implemented no adequate measures to filter and treat water drawn from the Logan River for their purposes and otherwise repeats and relies upon the matters pleaded at sub-paragraphs 63(g) and 85(b) above;
- (c) in those premises, denies the allegations;
- (d) says further that, even if, which the defendant denies, there were a Right to Waters, an interference with the enjoyment of such a right does not constitute an actionable public nuisance as alleged because such a right (if it existed) is not a liberty or privilege, interference with which constitutes an actionable public nuisance.

106. As to paragraph 106 of the statement of claim, the defendant:

- (a) repeats and relies on the matters pleaded in sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and 68-89 and 100-105 above;
- (b) in those premises, and subject to the matters there pleaded:
 - (i) denies that TPF and the Logan Prawn Farmer Group Members have suffered any loss as a result of the matters pleaded in paragraph 105 of the statement of claim;
 - (ii) denies that any loss suffered by TPF and the Logan Prawn Farmer Group Members as a result of the 2016 Outbreak was:
 - (A) particular damage;

(B) different in kind and degree from the loss and damage suffered by other members of the public or the public at large;

(C) foreseeable to the defendant.

107. The defendant denies the allegations in paragraph 107 of the statement of claim for the reasons pleaded herein.

PART H PRIVATE NUISANCE – LOGAL PRAWN FARMS

108. As to paragraph 108 of the statement of claim, the defendant:

(a) repeats and relies on the matters pleaded at paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57, 59(d) and 68-107 above;

(b) further says that operators of Logan Prawn Farms ought to have had effective On-farm Biosecurity Measures in place in any event, as pleaded at sub-paragraphs 63(g) and 85(b) above;

(c) in those premises, denies the allegations.

109. As to paragraph 109 of the statement of claim, the defendant:

(a) repeats and relies on the matters pleaded in sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57, 59 and 68-108 above;

(b) in those premises, and subject to the matters there pleaded, admits the allegation;

(c) says further, in the premises of the matters pleaded herein, that the defendant did not do so knowingly.

110. As to paragraph 110 of the statement of claim, the defendant:

(a) repeats and relies on the matters pleaded in sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and 68-89 and 100-109 above;

(b) in those premises, denies the allegations.

111. As to paragraph 111 of the statement of claim, the defendant:

(a) repeats and relies on the matters pleaded in sub-paragraph 22(c) and paragraphs 33, 34, 36, 37, 40, 43, 44, 46, 48, 50, 51, 52, 54, 55, 56, 57 and 68-89 and 100-110 above;

(b) in those premises, and subject to the matters there pleaded:

(i) denies that TPF and the Logan Prawn Farmer Group Members have suffered any loss as a result of the matters pleaded in paragraph 105 of the statement of claim;

(ii) denies that any loss suffered by TPF and the Logan Prawn Farmer Group Members as a result of the 2016 Outbreak was:

(A) particular damage;

(B) different in kind and degree from the loss and damage suffered by other members of the public or the public at large;

(C) not an ordinary incident of the holding of interests in land in those locations;

(D) foreseeable to the defendant.

112. The defendant denies the allegations in paragraph 112 of the statement of claim for the reasons pleaded herein.

PART III COMMON QUESTIONS OF LAW OR FACT

113. The defendant does not plead to the allegation in paragraph 98-113 of the statement of claim because it does not comprise an allegation of fact.

PART I-J RELIEF

114. The defendant admits that the plaintiffs claims on ~~its~~their behalf and on behalf of other persons the relief pleaded in paragraph ~~99~~114 of the statement of claim but denies, for the reasons pleaded herein, that it is entitled to any such relief.

PART K LOSSES TOO REMOTE

115. The defendant says further that some or all of the losses sought to be recovered in this proceeding are too remote.

PART L FAILURE TO MITIGATE

116. The defendant says further that if, which is denied, it owed a duty to the plaintiffs or any other relevant person and if, which it is denied, it breached such duty and if, which is denied:

- (a) such breach resulted in loss to the Group Members or any of them (other than the Prawn Farmer Group Members), the plaintiffs haves failed to mitigate ~~its~~their loss by reason of the following matters:
 - (i) not, or alternatively, not sufficiently engaging in commercial fishing for Domestic Species outside of the areas the subject of fishing bans, being the waterways surrounding prawn farms in Alberton, Coomera, Gilberton, Helensvale, Hope Island, Jacobs Well, Norwell, Ormeau, Pimpama, Southern Moreton Bay Islands, Stapylton, Steiglitz and Woongoolba;
 - (ii) not, or alternatively, not sufficiently processing, storing, transporting or otherwise handling Carrier Species from locations in Australia other than the white spot disease restricted area, being the area that extends from Caloundra to the New South Wales border and west to Ipswich **(WSD Restricted Area)**;
 - (iii) not, or alternatively, not sufficiently sourcing Carrier Species for wholesale in Australia from locations other than the WSD Restricted Area; and

- (b) such breach resulted in loss to the Prawn Farmer Group Members or any of them, TPF failed to mitigate its loss by reason of the failure to implement On-Farm Biosecurity Measures as pleaded at sub-paragraphs 85(b)(i) above.

PART M CONCURRENT WRONGDOERS

117. The defendant says further that:

- (a) in the premises of the matters pleaded at paragraph 24 of the statement of claim and paragraph 17(c)(vii) and 24 above;
- (b) if, which is not admitted, the Tampering Practices were undertaken, each of Aqua Star Pty Ltd (ACN 074 614 538), HTC Trading Pty Ltd (ACN 102 463 847), Oriental Merchant Pty Ltd (ACN 007 368 925) and Fung Lea Food Pty Ltd (ACN 069 482 159) were importers (**Importers**) who, at material times prior to November 2016, engaged in the Tampering Practices and otherwise acted to subvert the conditions imposed by the Prawn Import Policy;

Particulars

In respect of Aqua Star Pty Ltd (ACN 074 614 538), the result of investigations conducted by CDAWR were consistent with it, between August and November 2016, in respect of 12 consignments of prawn meat for human consumption, taking deliberate steps, including in relation to the packing of containers, to circumvent Batch Testing;

In respect of HTC Trading Pty Ltd (ACN 102 463 847), the result of investigations conducted by CDAWR were consistent with it, between October 2014 and September 2016, having produced false import documentation;

In respect of Oriental Merchant Pty Ltd (ACN 007 368 925), the result of investigations conducted by CDAWR were consistent with it, during 2016, having produced false import documentation and, or alternatively, failing to produce import documentation;

In respect of Fung Lea Food Pty Ltd (ACN 069 482 159), the results of investigations conducted by CDAWR were consistent with it, between May 2013 and August 2016,

having produced different species of prawns for testing than was indicated on import documentation.

- (c) in the premises of the matters pleaded at (a) and (b):
 - (i) if, (which the defendant does not admit) prawn meat for human consumption, infected with WSSV and used by recreational fishers as bait or berley was the, or a, cause of the 2016 Outbreak;
 - (ii) then, the Importers' conduct as pleaded at paragraph 24 of the statement of claim and paragraphs 17(c)(vii) and 24 above was the, or a, cause of the 2016 Outbreak and any loss which resulted from it.

- 118. The defendant says further that if there was a breach of duty by it which is found to have caused the Group Members or any of them any loss or damage (which the defendant denies) the Group Members' claims are, or include claims for, economic loss arising from a failure to take reasonable care and are therefore apportionable claims within the meaning of s.28(1) of the CLA.

- 119. To the extent the defendant is liable to the Group Members or any of them (which is denied):
 - (a) the defendant is a concurrent wrongdoer within the meaning of s. 30 of the CLA;
 - (b) the persons referred to in paragraphs ~~63(g)~~, and 11702(b) above, by reason of the matters pleaded in those paragraphs, caused or contributed to the loss and damage that is the subject of the plaintiff's claim against the defendant;
 - (c) in the premises those persons are concurrent wrongdoers within the meaning of s. 30 of the CLA in relation to an apportionable claim;
 - (d) in the premises the defendant's liability is limited to an amount reflecting that proportion of loss or damage that the Court considers just and equitable having regards to the extent of the defendant's responsibility for the loss and damage, pursuant to s. 31(1)(a) of the CLA.

~~105. Further, in answer to the whole of the claims pleaded in the statement of claim, the defendant says that:~~

~~(a) — these proceedings are in relation to an act done or omitted to be done, by a protected person within the meaning of the *Biosecurity Act*;~~

~~(b) — the acts or omissions alleged against the defendant were in the performance or purported performance of a function or exercise or purported exercise of a power conferred by the *Biosecurity Act*;~~

~~(c) — all material acts or omissions were done in good faith;~~

~~(d) — by operation of s. 644 of the *Biosecurity Act*, the defendant is not liable to any action, suit, or other civil proceeding in relation to that act or omission.~~

~~106. In further answer to the whole of the claims pleaded in the statement of claim, the defendant says that:~~

~~(a) — these proceedings are in relation to an act done or omitted to be done, by a minister, director or officer of the defendant;~~

~~(b) — the acts or omissions alleged against the defendant were in the performance or purported performance of a function or exercise or purported exercise of a power conferred by the *Quarantine Act*;~~

~~(c) — all material acts or omissions were done in good faith whether negligently or not;~~

~~(d) — by operation of s. 82(1) of the *Quarantine Act*, neither the Minister, the Director nor any officer (as defined in the *Quarantine Act*) is liable to any action, suit or other civil proceeding in relation to that act or omission and in those premises the defendant cannot be liable for any such act or omission.~~

~~107. In further answer to the whole of the claims pleaded in the statement of claim, the defendant says that if the claims pleaded in the statement of claim are made out:~~

~~(e) — the plaintiff has suffered loss by reason of the wrongful acts or omissions of one or more public officers and/or protected persons;~~

~~(f) any such wrongful acts or omissions occurred in the course of that officer acting in the performance or purported performance of an independent legal duty or duties imposed on that officer by the *Quarantine Act* and, or alternatively, the *Biosecurity Act*; and~~

~~(g) the defendant cannot be liable for such acts or omissions.~~

PART N STATUTORY IMMUNITIES

Statutory context and functions before 16 June 2016

120. The defendant says that if (which is denied) acts or omissions of any Biosecurity Officer before 16 June 2016, constituted a failure to take, or failure to adequately take, the Available Precautions alleged in subparagraphs 68(a) to ~~68(e)~~ and ~~68(e)~~ of the statement of claim, resulting in the Inspection Breaches alleged in subparagraphs 74(a) to 74(f), 74(h), 75(a), 75(b), 75(d), 75(e) and 76 of the statement of claim, the Fishing Nuisance alleged in paragraph 99 of the statement of claim, the Farm Waters Nuisance alleged in paragraph 107 of the statement of claim or the Farm Land Nuisance alleged in subparagraph 112 of the statement of claim, such acts or omissions were done or omitted to be done by Biosecurity Officers:

(a) in the performance or purported performance of:

- (i) the power in s 44C(1) of the *Quarantine Act* to examine a Consignment that had not been released from quarantine, which includes carrying out Bach Testing; and
- (ii) the function or duty in s 44C(2) of the *Quarantine Act* to release a Consignment from quarantine because the Biosecurity Officer was not of the opinion that there was an unacceptably high level of quarantine risk in respect of the Consignment;
- (iii) the power in s 48(2) of the *Quarantine Act* to cause goods ordered into quarantine to be treated in such manner as a Biosecurity Officer determines;

(iv) the power in s 48AA(2) of the *Quarantine Act* to destroy goods that a Biosecurity Officer believes on reasonable grounds cannot be effectively treated;

(b) in the context of:

(i) section 4 of the *Quarantine Act* which provides that quarantine includes but is not limited to, measures for, or in relation to, the examination, exclusion, detention, observation, segregation, isolation, protection, treatment and regulation of animals (which includes dead animals or parts of animals), other goods or things;

(ii) section 13 of the *Quarantine Act* by which the Governor-General could, by proclamation, prohibit the importation of certain goods into Australia;

(iii) the *Quarantine Proclamation* (made under section 13 of the *Quarantine Act*) which:

I. prohibited the importation of dead animals or their parts, except as expressly excepted;

II. did not expressly except prawn meat for human consumption from the prohibition;

(iv) sections 13(1), (2A) and (2AA) of the *Quarantine Act* and s 38 of the *Quarantine Proclamation*, by which the Quarantine Director could grant permits for the importation of matter that was otherwise prohibited by the *Quarantine Proclamation* (**Quarantine Act Importation Permit**);

(v) section 70 of the *Quarantine Proclamation*, which identified the matters that the Quarantine Director must take into account when deciding whether to grant a Quarantine Act Importation Permit;

(vi) sub-section 13(2B) of the *Quarantine Act* which provided that Quarantine Act Importation Permits could be issued subject to conditions;

(vii) from 22 April 2010, the policy published by the Quarantine Director (PLF.001.001.5144) which:

I. provided that Quarantine Act Importation Permits in respect of the importation of prawn meat for human consumption would be subject to the application of sanitary measures specified in the Prawn IRA;

II. stated inter alia that the measures it required be imposed on importation of prawn meat for human consumption were designed to limit quarantine risk to a level that is acceptably low in order to achieve ALOP.

121. The defendant says that if (which is denied) acts or omissions of any Biosecurity Officer before 16 June 2016, constituted a failure to take, or failure to adequately take, the Available Precautions alleged in subparagraphs 68(d) and 68(f) of the statement of claim, resulting in the Inspection Breaches alleged in subparagraphs 74(g) or 75(c) or the Critical Response Breaches alleged in paragraph 80 of the statement of claim, the Fishing Nuisance alleged in paragraph 99 of the statement of claim, the Farm Waters Nuisance alleged in paragraph 107 of the statement of claim or the Farm Land Nuisance alleged in subparagraph 112 of the statement of claim, such acts or omissions were done or omitted to be done by Biosecurity Officers:

(a) in the performance or purported performance of:

(i) the powers and functions pleaded in sub-paragraphs 120(a)(i) above;

(ii) further and in the alternative, the ancillary power or function that arises by necessary implication from the powers and functions pleaded in subparagraph 120(a) above and the context pleaded at 120(b) above to detect and report about, any non-compliance with or attempt to circumvent a condition or conditions applying to a Quarantine Act Importation Permit and to determine if the *Quarantine Act* is being complied with;

(b) in the context of the matters pleaded at 120(b) above.

Statutory context and functions from 16 June 2016

122. The defendant says that if (which is denied) acts or omissions of any Biosecurity Officer after 16 June 2016, constituted a failure to take, or failure to adequately take, the Available Precautions alleged in subparagraphs 68(a) to ~~68(c)~~ and 68(e) of the statement of claim resulting in the Inspection Breaches alleged in subparagraphs 74(a) to 74(f), 74(h), 75(a), 75(b), 75(d), 75(e) and 76 of the statement of claim, the Fishing Nuisance alleged in paragraph 99 of the statement of claim, the Farm Waters Nuisance alleged in paragraph 107 of the statement of claim or the Farm Land Nuisance alleged in subparagraph 112 of the statement of claim, such acts were done, or omitted to be done, by Biosecurity Officers:

(a) in the performance or purported performance of:

(i) the power in s 125 of the *Biosecurity Act* to:

I. inspect a Consignment;

II. take, direct or arrange for the taking of samples from each Batch in a Consignment; and

III. carry out, or arrange for another person with appropriate qualifications, to carry out Batch Testing;

(ii) the power in s 128(1)(a) of the *Biosecurity Act* of a Biosecurity Officer to give a direction to a person in charge of goods not to move, deal with or interfere with the goods, to move the goods to a place specified by the Biosecurity Officer and give other directions in relation to the movement of goods;

(iii) the power in s 132 of the *Biosecurity Act* to require goods to be moved to a specified place, or left at a specified place or to require any other action to be taken in relation to the movement of goods;

(iv) the power in s 133(1) of the *Biosecurity Act* to require goods to be treated in a manner specified by a Biosecurity Officer;

- (v) the power in s 135 of the *Biosecurity Act* to require any Infected Batch to be exported from Australian territory;
 - (vi) the power in s 136 of the *Biosecurity Act* to destroy any Infected Batch that could not be treated;
 - (vii) the power in s 138(1) of the *Biosecurity Act* to direct and supervise the taking of biosecurity measures in relation to goods under ss 132, 133 or 136 of the *Biosecurity Act*;
 - (viii) the power in s 162(1) and 163 of the *Biosecurity Act* to release a Consignment from quarantine;
- (b) in the context of:
- (i) section 174 of the *Biosecurity Act*, by which the Director of Biosecurity and the Director of Human Biosecurity may jointly determine that specified classes of goods must not be brought or imported into Australian territory unless specified conditions are complied with, being a reference to conditionally non-prohibited goods as that term is defined in section 174(2) of the *Biosecurity Act*;
 - (ii) the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016 (Cth) (Biosecurity Determination)* which came into force on 16 June 2016, and, by Part 2, Division 1, had the effect that prawn meat for human consumption is conditionally non-prohibited goods;
 - (iii) section 179 of the *Biosecurity Act* which:
 - I. gave the Director of Biosecurity power to grant permits (**Biosecurity Importation Permit**) for the importation of conditionally non-prohibited goods;
 - II. identifies mandatory considerations for the Director of Biosecurity in deciding whether to grant such permits which include the application of ALOP in conducting risk

assessments for the purpose of deciding whether to grant a Biosecurity Importation Permit;

- (iv) the *Biosecurity (Consequential Amendments and Transitional Provisions) Act* 2015 (Cth) at Schedule 4, Part 2, Division 2 by which any Quarantine Act Importation Permit has effect under the *Biosecurity Act* subject to the same conditions and term;
- (v) section 180 of the *Biosecurity Act* which provided that Biosecurity Importation Permits could be issued subject to conditions and that the Director of Biosecurity could, in accordance with regulation, vary or revoke a condition or impose further conditions on a Biosecurity Importation Permit;
- (vi) section 181 of the *Biosecurity Act* which confers on the Biosecurity Director a power to vary, suspend or revoke a Biosecurity Importation Permit;
- (vii) the policy of the Director of Quarantine pleaded at paragraph 120(b)(vii) above applying to conditions imposed under a Biosecurity Importation Permit at all material times from and after 16 June 2016.

123. The defendant says that if (which is denied) acts or omissions of any Biosecurity Officer after 16 June 2016, constituted a failure to take, or failure to adequately take, the Available Precautions alleged in subparagraphs 68(d) and 68(f) of the statement of claim resulting in the Inspection Breaches alleged in subparagraphs 74(g) or 75(c) or the Critical response Breaches alleged in paragraph 80 of the statement of claim, the Fishing Nuisance alleged in paragraph 99 of the statement of claim, the Farm Waters Nuisance alleged in paragraph 107 of the statement of claim or the Farm Land Nuisance alleged in subparagraph 112 of the statement of claim, such acts were done, or omitted to be done, by such Biosecurity Officers:

- (a) in the performance or purported performance of:
 - (i) the powers and functions pleaded in sub-paragraphs 122(a) above;

- (ii) further and in the alternative the ancillary power or function that arises by necessary implication from the powers and functions pleaded in subparagraphs 122(a) and the context pleaded at 122(b) above to detect and report about, any non-compliance or attempted non-compliance with a condition or conditions applying to a Biosecurity Importation Permit and to determine if the *Biosecurity Act* is being complied with;
- (iii) in the context of the matters pleaded at 122(b) above.

The statutory context permitted the relevant operation of the system of quarantine

124. In the premises of the matters pleaded at 120-123 above, in the absence of the provisions of the *Quarantine Act* pleaded in 120 and 121 above and the provisions of the *Biosecurity Act* pleaded in 122 and 123 above the defendant could not lawfully have conducted the system of quarantine pleaded at paragraphs 7(f)(ii) and 16(f)(ii) above or performed the functions and exercised the powers those statutory provisions authorise or compel including those pleaded in paragraphs 120(a), 121(a), 122(a) and 123(a) above.

The defendant's conduct and the conduct of Biosecurity Officers was done in good faith

125. If, which it denies, the defendant or any Biosecurity Officer failed to take or failed to adequately take, the Available Precautions and so committed the Inspection Breaches or the Critical Response Breaches or caused the Fishing Nuisance, the Farm Waters Nuisance or the Farm Land Nuisance, its relevant acts or omissions, or those of a Biosecurity Officer, were done:
- (a) in good faith in that, at all material times, such Biosecurity Officers acted honestly even if carelessly;
 - (b) in the performance or purported performance of the functions or duties or the exercise or purported exercise of the powers conferred on them as pleaded at 120 and 121 above;
 - (c) in the exercise of the functions and powers pleaded at 122 and 123 above.

The defendant is not liable

126. In the premises of the matters pleaded in 120-125 above:

- (a) these proceedings are in relation to an act done or omitted to be done, by the Minister, Director of Quarantine or an officer of the defendant;
- (b) alternatively, these proceedings are in relation to an act done or omitted to be done, by a protected person within the meaning of the *Biosecurity Act*;
- (c) as pleaded herein the acts or omissions alleged against the defendant were:
 - (i) in the performance or purported performance of a function or duty or exercise or purported exercise of a power conferred by the *Quarantine Act*;
 - (ii) alternatively, in the performance or purported performance of a function or exercise or purported exercise of a power conferred by the *Biosecurity Act*;
- (d) as pleaded herein, all such acts or omissions were done or not done in good faith whether negligently or not;
- (e) in the premises:
 - (i) by operation of s. 82(1) of the *Quarantine Act*, neither the defendant nor any Biosecurity Officer is liable to any action, suit or other civil proceeding in relation to those acts or omissions and in those premises the defendant cannot be liable for any such acts or omissions;
 - (ii) by operation of s. 644 of the *Biosecurity Act*, the defendant is not liable to any civil proceeding in relation to such acts or omissions.

Signed:



Description: Solicitor for the Defendant

This second further amended pleading was settled by Erin Longbottom QKC, Christopher Rogers of Counsel and Douglas Quayle of Counsel.

NOTICE AS TO REPLY

You have fourteen days within which to file and serve a reply to this defence. If you do not do so, you may be prevented from adducing evidence in relation to allegations of fact made in this defence.

SECOND FURTHER AMENDED DEFENCE

Filed on Behalf of the Defendant

Form 17 Version 2

Uniform Civil Procedure Rules 1999, Rule 146

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Amended pursuant to rule 378 of the Uniform Civil Procedure Rules 1999.
Dated this 1 December 2023.
Clyde & Co
Clyde & Co



SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS1010/21

First Plaintiff: **TWEED BAIT PTY LTD ACN 010 917 674**

AND

Second Plaintiff: **TPF MANAGEMENT COMPANY PTY LTD ACN 065 200 268**

AND

Defendant: **COMMONWEALTH OF AUSTRALIA**

REPLY TO 2FAD

The plaintiffs reply to the allegations contained in the second further amended defence dated 13 December 2022 13 October 2023 (the **defence or 2FAD**) as follows:

PART A PARTIES AND GROUP MEMBERS

A.3. The Commonwealth

1. As to paragraph 3(c)(iv) of the defence, the plaintiffs:

(a) in respect of paragraph 3(c)(iv)(A):

- (i) admit that the Commonwealth had rights and obligations under the SPS Agreement as alleged in paragraph 3(c)(iv)(A);
- (ii) do not admit that the Commonwealth managed biosecurity risks and biosecurity emergencies in Australia in accordance with those rights and obligations because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegation;

Reply
Filed on behalf of the Plaintiffs
Form 1
Uniform Civil Procedure Rules 1999
Rule 146

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- (b) in respect of paragraph 3(c)(iv)(B):
 - (i) say that the obligation to ensure any sanitary or phytosanitary measures are applied only to the extent necessary to protect human, animal or plant life or health is contained in Article 2, and not Article 5, of the SPS Agreement;
 - (ii) otherwise admit the allegations in paragraph 3(c)(iv)(B);
 - (c) admit the allegations in paragraph 3(c)(iv)(C);
 - (d) as to paragraph 3(c)(iv)(D):
 - (i) admit the allegations in paragraph 3(c)(iv)(D);
 - (ii) say that further that, at all material times:
 - (A) by section 51 of the *Constitution*, the Commonwealth had legislative power to make laws for the peace, order, and good government of the Commonwealth with respect to:
 - (1) trade and commerce with other countries (s 51(i));
 - (2) quarantine (s 51(ix));
 - (3) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth (s 51(xx)); and
 - (4) external affairs (s 51(xxix));
 - (B) by section 109 of the *Constitution*, a law of the Commonwealth prevails over an inconsistent law of a State;
 - (C) in the premises, the Commonwealth had the power to make laws to manage biosecurity risks to, and biosecurity emergencies in, Australia, to the exclusion of laws of any State; and
 - (D) there is no material difference for the purposes of this proceeding between the Commonwealth having exclusive legislative power to make laws to manage biosecurity risks to, and biosecurity emergencies in, Australia, and the power pleaded in subparagraph (C) above; and
 - (e) admit the allegations in paragraph 3(c)(iv)(E).
2. In respect of the second paragraph which is numbered paragraph 3(e)(i) of the defence, the plaintiffs:
- (a) admit the allegations in paragraph 3(e)(i)(A)-(C);

- (b) say that the allegations in paragraph 3(e)(i)(D)(a) and (b) are vexatious and irrelevant because the powers and discretions (if any) of:
 - (i) the Quarantine Director in respect of the matters referred to in paragraph 3(e)(i)(D)(a) (being import conditions); and
 - (ii) the Biosecurity Director in respect of the matters referred to in paragraph 3(e)(i)(D)(b) (being the conduct of BIRAs and the imposition of import conditions),are not in issue in this proceeding, and they refer to and repeat the matters set out in paragraph 79 of the further amended statement of claim (**FASOC**);

PART B WSSV and WSD

- 3. As to paragraph 4(c) of the defence, the plaintiffs:
 - (a) admit that the reports particularised to paragraph 4(c) do not exclude the hypothesis that, prior to 2016, a dormant, latent, longstanding, wild strain of WSSV may have existed in Australian waters including Moreton Bay and the Logan River and may have been present in Carrier Species (**Wild Strain Hypothesis**);
 - (b) do not admit that the said reports are consistent with a 'likelihood' that the Wild Strain Hypothesis is correct, because the said reports do not make any conclusions concerning the likelihood that the Wild Strain Hypothesis is correct; and
 - (c) say that the true position is as pleaded in paragraph 4(g) of the FASOC.

PART C COMMONWEALTH BIOSECURITY REGULATION AND KNOWLEDGE

C.1 Period to 15 June 2016 – *Quarantine Act 1908 (Cth)*

- 4. The plaintiffs admit the allegations in paragraph 7(d)(i) of the defence.

C.2 2006-2009 Prawn IRA

- 5. As to paragraphs 9(b) and 9(c) of the defence, the plaintiffs:
 - (a) in respect of paragraph 9(b):
 - (i) admit that the Chief Executive could undertake an IRA under Part 6A of the Quarantine Regulations (as defined in the defence);
 - (ii) admit the allegations in paragraphs 9(b)(ii)(C);

- (iii) otherwise do not admit the allegations in paragraphs 9(b) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations;
 - (b) save that they admit the allegations in paragraph 9(c)(i)(C), (D)(d)(ii) and (D)(f), they do not admit the allegations in paragraph 9 because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations;
- 6. As to paragraph 10 of the defence, the plaintiffs:
 - (a) admit the allegations in paragraphs 10(d);
 - (b) admit the allegations in paragraph 10(e), but say that the Prawn IRA also stated that prawns, freshwater crayfish and other crustaceans were common in freshwater and marine environments throughout Australia, and were likely to encounter uncooked prawns used as bait;
 - (c) admit the allegations in paragraphs 10(f); and
 - (d) otherwise joins issue with the matters pleaded in paragraph 10 of the defence on the basis of the matters pleaded in the FASOC and in this reply.
- 7. As to paragraph 11 of the defence, the plaintiffs:
 - (a) admit the allegations in paragraph 11(c), but say that the Prawn IRA also concluded that the likelihood of WSSV spread from farms to wild populations or neighbouring farms via escaped prawns may be higher, especially if large numbers of prawns escape *en masse*;
 - (b) as to paragraph 11(d):
 - (i) deny the allegations in paragraph 11(d)(i), because the Prawn IRA identified the likelihood of release of WSSV and the partial likelihood of exposure for three separate exposure groups (being farm crustaceans, hatchery crustaceans and wild crustaceans);
 - (ii) otherwise admit the allegations in paragraph 11(d).
 - (c) otherwise joins issue with the matters pleaded in paragraph 11 of the defence on the basis of the matters pleaded in the FASOC and in this reply.

C.3. Import Protocol and other guidelines

- 8. As to paragraphs 12(b) and 12(c) of the defence, the plaintiffs:
 - (a) in respect of paragraph 12(b):

- (i) deny that the 2007 Memorandum provided to the effect pleaded in paragraphs 12(b)(i)(B) and 12(b)(i)(C) of the defence, because it did not;
 - (ii) otherwise admit the allegations in paragraph 12(b)(i);
 - (iii) admit the allegations in paragraph 12(b)(ii) and (iii);
- (b) in respect of paragraph 12(c):
- (i) admit the allegation in paragraph 12(c)(i);
 - (ii) deny the allegations in paragraph 12(c)(ii) because they do not agree that that is the effect of the said statutory provision;
 - (iii) in relation to paragraph 12(c)(iii):
 - (A) deny, if it is alleged, that the implementation of the Interim Conditions and Prawn Import Policy involved policy-making powers of a quasi-legislative character, because it did not;
 - (B) say that the pleading is vexatious and irrelevant, because the plaintiffs do not raise the justiciability of the exercise by the Commonwealth, by the Director of Quarantine and AQIS, of policy-making powers and functions of a quasi-legislative character, and they refer to paragraph 79 of the FASOC.

9. As to paragraph 13(a) of the defence, the plaintiffs:

- (a) admit the allegations in paragraph 13(a)(i)(A);
- (b) do not admit the allegations in paragraphs 13(a)(i)(B)(a),(b) and (c) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations;
- (c) admit the allegations in paragraph 13(a)(ii);
- (d) do not admit the allegations in paragraph 13(a)(iii) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.

C.4. 2012 Intergovernmental Agreement on Security

10. The plaintiffs admit the allegations in paragraph 15(d) of the defence.

C.5 Period from 15 June 2016 – *Biosecurity Act 2015 (Cth)*

11. The plaintiffs admit the allegations in paragraph 16(c)(ii) of the defence.

PART D 2016 OUTBREAK

D.1. Lead-up to 2016 Outbreak

12. As to paragraph 17(c) of the defence, the plaintiffs:
- (a) do not admit the allegations in paragraphs 17(c)(i) and 17(c)(ii) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations;
 - (b) as to paragraph 17(c)(iii):
 - (i) say that the Interim Inspector-General of Biosecurity concluded that there was a negligible likelihood that WSSV would have established in Australia as a result of the release of that consignment of prawns, principally because there was an extremely low likelihood that significant numbers of infected prawns from that consignment had entered high-risk pathways;
 - (ii) otherwise admit the allegations in paragraph 17(c)(iii);
 - (c) do not admit the allegations in paragraph 17(c)(iv) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations;
 - (d) admit the allegations in paragraph 17(c)(v)(A);
 - (e) do not admit the allegations in paragraph 17(c)(v)(B) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations;
 - (f) admit the allegations in paragraph 17(c)(vi), (vii) and (viii)(A) and (B);
 - (g) do not admit the allegations in paragraph 17(c)(viii)(C) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.
13. The plaintiffs do not admit the allegations in paragraphs 19(c) and 19(d) of the defence because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.

D.2. Critical Failure Period

14. The plaintiffs do not admit the allegations in paragraph 22(c) of the defence because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.
15. The plaintiffs do not admit the allegations in paragraph 23(b) of the defence because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.
16. The plaintiffs do not admit the allegations in paragraph 24(c) of the defence because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.

17. The plaintiffs admit the allegations in paragraph 27(c) of the defence.

D.3. The 2016 Outbreak

18. As to paragraph 51(b) of the defence, and on the basis that the reference to the “*Import Suspension Exceptions Declaration (No.3)*” is intended to be a reference to the “*Import Suspension Exceptions Determination (No.3)*” (as defined in the FASOC), the plaintiffs:

- (a) admit that the Import Suspension Exceptions Determination (No.3) took effect, other than Schedule 2 thereof, on 4 April 2017;
- (b) deny that Schedule 2 of the Import Suspension Exceptions Determination (No.3) took effect on 7 May 2017, because it took effect on 3 May 2017.

PART E COMMONWEALTH DUTY OF CARE

E.1. Foreseeable risk of harm

19. As to paragraph 59 of the defence, the plaintiffs:

- (a) admit the allegation in paragraph 59(c)(ii), but say that the said controls and bans were foreseeable responses to the 2016 Outbreak (as defined in the FASOC);
- (b) in respect of paragraph 59(d)(i):
 - (i) admit the allegations in paragraph 59(d)(i)(A) and 59(d)(i)(B);
 - (ii) say that the Prawn IRA stated that in 1999, Alliance Resource Economics had determined that the ‘seriousness’ of WSSV incursion as determined in relation to the total value of the industry at the time was determined to be a 2% loss, attributed mainly to increased production costs;
 - (iii) otherwise deny the allegation in paragraph 59(d)(i)(C), because the Prawn IRA was to the effect pleaded in paragraph 19(b)(ii) above;
 - (iv) admit the allegation in paragraph 59(d)(i)(D), but say that such fishing would require commercial fishers to travel further to fish than they would otherwise if the ban were not in place, and therefore incur higher operating costs;
- (c) in respect of paragraph 59(e):
 - (i) admit the allegation in paragraph 59(e)(i);
 - (ii) deny the allegation at paragraph 59(e)(ii) for the reasons pleaded at paragraph 8(b)(iii) above.

20. As to paragraph 60(b) of the defence, the plaintiffs admit the 2009 Prawn IRA stated to the effects alleged.

E.2. Control

21. As to paragraph 62(h) of the defence, the plaintiffs say the paragraph is vexatious and refer to and repeat paragraph 2(b) above.

E.3. Vulnerability

22. As to paragraph 63(c) of the defence, the plaintiffs:

- (a) admit that not every Biosecurity Response would have all of the effects pleaded in paragraph 63(a)(i) to (v) of the FASOC;
- (b) say that each of the Biosecurity Responses would have at least one of the effects pleaded in paragraph 63(a)(i) to (v) of the FASOC;
- (c) deny, if it is alleged, that any of the Biosecurity Responses would be ineffectual in respect of all of the matters pleaded in paragraph 63(a)(i) to (v) of the FASOC, because the true position is as set out above.

22A. As to paragraph 63(g) of the defence, the plaintiffs do not admit the allegations because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.

E.4. Duty of Care

23. As to paragraph 65 of the defence, the plaintiffs join issue.

PART F PRECAUTIONS, BREACHES AND CAUSATION

F.1. Available Precautions

24. As to paragraph 68(b) of the defence, the plaintiffs:

- (a) admit the allegations in paragraph 68(b)(i) and 68(b)(ii);
- (b) do not admit the allegations in paragraph 68(b)(iii) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations;

- (c) deny the allegations in paragraph 68(b)(iv) and say that the Commonwealth's batch testing was not reflecting a valid random sample, or was not operating reasonably reliably to provide 95% confidence of detecting WSSV, because Inspectors failed to:
 - (i) identify and address the Batch Testing Issue; and
 - (ii) address the Tampering Practices, despite the Notice of Tampering as pleaded in paragraphs 23 to 25 of the FASOC.

F.3. Breach of duty – inadequate response to earlier quarantine failures

25. As to paragraph 79(c) of the defence, the plaintiffs:

- (a) do not admit the allegation in paragraph 79(c)(i) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegation;
- (b) admit the allegation in paragraph 79(c)(ii);
- (c) do not admit the allegation in paragraph 79(c)(iii) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegation.

F.4. Causation

26. As to paragraph 82 of the defence, the plaintiffs:

- (a) rely upon the matters pleaded above in response to sub-paragraph 22(c) and paragraphs 68 to 81 of the defence;
- (b) in respect of paragraph 82(c) of the defence:
 - (i) admit that the detection of the 2016 Outbreak pleaded in paragraphs 29 to 57 of the FASOC commenced with the detection of WSSV-infected prawns in Pond 12 of Farm 11P;
 - (ii) otherwise deny the allegations, because the 2016 Outbreak commenced when Domestic Species in the Logan River and Moreton Bay became infected with WSSV;
- (c) deny the allegations in paragraph 82(d) of the defence, because:
 - (i) of the matters pleaded in paragraph 3(c) above; and
 - (ii) the 2016 Outbreak was caused by the matters pleaded in paragraph 81 of the FASOC.

26A. As to paragraph 85(b) of the defence, the plaintiffs:

- (a) repeat and rely on the matters pleaded at paragraph 22A; and
- (b) do not admit the allegations because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.

27. As to paragraph 86(b) of the defence, the plaintiffs:

- (a) admit that the Import Protocol required Batch Testing (as defined in paragraph 12 of the FASOC), involving a sampling regimen that would provide 95% confidence of detecting WSSV if present at 5% prevalence;
- (b) otherwise deny the allegations in paragraph 86(b), because:
 - (i) paragraph 86(c) of the FASOC does not refer to a risk, but to a probability (that every Infected Batch imported during the Critical Failure Period would, more probably than not, have tested positive for WSSV or WSD when Batch Tested);
 - (ii) the presence of the risk referred to in paragraph (i) above was not of a sufficient magnitude that the Risks of Harm pleaded in paragraph 59 of the FASOC would, more probably than not, have materialised even if the Available Precautions had been taken with due care and skill.

PART G PUBLIC NUISANCE

Part G.1. Right to Fish

28. As to paragraph 93 of the defence, the plaintiffs:

- (a) admit the allegations in paragraph 93(a);
- (b) deny the allegations in paragraph 93(b) and say that the said statute regulated, but did not abrogate, the public's common law right to fish.

Part G.2. Interference with right to Fish

29. As to paragraph 96(c) of the defence, the plaintiffs:

- (a) deny the allegations because in the premises set out in paragraphs 77 to 79 of the FASOC, the Commonwealth during the Critical Failure Period knew that it had or had probably, by its Inspectors, authorised or permitted the release from Quarantine of imported uncooked prawn meat infected with WSSV; and
- (b) further, say that in the premises set out in paragraphs 77 to 79 of the FASOC, the Commonwealth during the Critical Failure Period should have known that it had or had

probably, by its Inspectors, authorised or permitted the release from Quarantine of imported uncooked prawn meat infected with WSSV.

30. As to paragraph 97(c) of the defence, the plaintiffs join issue.

Part G.3. Right to Waters – Logan River Farms

31. As to paragraph 100 of the defence, the plaintiffs:

- (a) admit the allegations in paragraph 100(a)(i);
- (b) as to paragraph 100(a)(ii) of the defence, the plaintiffs:
 - (i) admit the allegations in paragraph 100(a)(ii)(A) and 100(a)(ii)(B);
 - (ii) in relation to paragraph 100(a)(ii)(C):
 - (A) admit that s 96(2) of the *2000 Water Act* provides a right for an owner of land adjoining a watercourse, lake, or spring to take water from the watercourse, lake or spring for stock or domestic purposes;
 - (B) deny that the right described in the preceding sub-paragraph is ‘limited’, because it is not expressed to be ‘limited’;
 - (iii) in relation to paragraph 100(a)(iii), do not admit that the provisions of the *2000 Water Act* ‘substantively replicate’ the legislation stated at paragraph 100(a)(iii)(A)-(C) because the meaning of the term ‘substantively replicate’ is not clear and is unparticularised.

32. As to paragraph 104(c) of the defence, the plaintiffs deny the allegations because of the matters pleaded above at paragraph 29(a) and 29(b).

32A. As to paragraph 105(b) of the defence, the plaintiffs:

- (a) repeat and rely on the matters pleaded at paragraph 22A; and
- (b) do not admit the allegations because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.

33. As to paragraph 105(ed) of the defence, the plaintiffs deny the allegations because interference with the enjoyment of the Right to Waters is the interference with a right which is both a liberty and privilege.

PART H – PRIVATE NUISANCE – LOGAN PRAWN FARMS

33A. As to paragraph 108(b) of the defence, the plaintiffs:

- (a) repeat and rely on the matters pleaded at paragraph 22A; and
- (b) do not admit the allegations because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.

34. As to paragraph 109(c) of the defence, the plaintiffs deny the allegations because of the matters pleaded above at paragraph 29(a) and 29(b).

PART K – LOSSES TOO REMOTE

35. As to paragraph 115 of the defence, the plaintiffs:

- (a) are not required to plead to the allegations therein, because they are properly allegations of law rather than material fact;
- (b) in any event, deny the allegations because they are untrue.

PART L – FAILURE TO MITIGATE

36. As to paragraph 116 of the defence, the plaintiffs:

- (a) deny the allegation in paragraph 116(a)(i) because:
 - (i) Domestic Species caught in the areas pleaded in paragraph 116(a)(i) of the defence were subject to the Marketability Consequences pleaded in the FASOC;
 - (ii) engaging in commercial fishing for Domestic Species in the areas pleaded in paragraph 116(a)(i) of the defence required Group Members to incur higher costs than they otherwise would have incurred;
 - (iii) in the premises of paragraph 36(a)(i) and (ii) above, engaging in commercial fishing for Domestic Species in the areas pleaded in paragraph 116(a)(i) of the defence would not have mitigated the Group Members' losses;
- (b) deny the allegation in paragraph ~~116(b)~~ 116(a)(ii) because processing, storing, transporting or otherwise handling Carrier Species from locations in Australia other than the WSD Restricted Area (as defined in the defence):
 - (i) required Group Members to incur higher costs than they would have incurred in processing, storing, transporting or otherwise handling Moreton Bay Product (as defined in the FASOC); and

- (ii) in the premises of paragraph 36(b)(i) above, were not effective means of mitigating the Group Members' losses;
- (c) deny the allegation in paragraph ~~116(e)~~ 116(a)(iii) because sourcing Carrier Species for wholesale in Australia from locations other than the WSD Restricted Area:
 - (i) required Group Members to incur higher costs than they would have incurred sourcing Moreton Bay Product (as defined in the FASOC) for wholesale in Australia; and
 - (ii) in the premises of paragraph 36(c)(i) above, was not an effective means of mitigating the Group Members' losses;
- (d) do not admit the allegation in paragraph 116(b) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.

PART M – CONCURRENT WRONGDOERS

37. As to paragraph 117 of the defence, the plaintiffs:
- (a) as to paragraph 117(a), rely upon the matters pleaded above in response to sub-paragraph 17(c)(vii) and paragraph 24 of the defence;
 - (b) do not admit the allegations in paragraph 117(b) and 117(c) because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.
38. The plaintiffs admit the allegations in paragraph 118 of the defence.
39. As to paragraph 119 of the defence, the plaintiffs:
- (a) say that the Commonwealth has not pleaded a sufficient factual basis for its claim against the alleged concurrent wrongdoers, including:
 - (i) the basis upon which a duty of care was allegedly owed;
 - (ii) the risk of harm the alleged concurrent wrongdoers ought to have guarded against;
 - (iii) the precautions that were available to the alleged concurrent wrongdoers; and
 - (iv) the manner in which those precautions were breached;
 - (b) otherwise:
 - (i) deny paragraph 119(a) of the defence because of the matters pleaded in paragraph 39(a) above;

- (ii) do not admit the allegation in 119(b) of the defence because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegation;
- (iii) deny the allegations in paragraphs 119(c) and (d) because of the matters pleaded in paragraph 39(a) above.

PART N – STATUTORY IMMUNITIES

40. As to paragraph 120 of the defence, the plaintiffs:

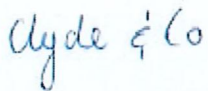
- (a) admit paragraph 120(a)(i) (assuming the reference to ‘Bach Testing’ to be intended as ‘Batch Testing’), 120(a)(ii), 120(a)(iii) and 120(a)(iv);
- (b) as to paragraph 120(b):
 - (i) save that they will rely at trial upon the full terms of the pleaded provisions for their proper force and effect – admit that the legislative provisions and other documents pleaded in paragraph 120(b)(i)-(vii) include those terms and effects;
 - (ii) do not admit that the acts and omissions of the Biosecurity Officers were done ‘in the context of’ the legislative provisions and other documents pleaded in paragraph 120(b) because:
 - (A) the meaning of the term ‘in the context of’ is vague and not understood;
 - (B) the said legislative provisions do not confer any immunity in the circumstances pleaded in the FASOC.

41. As to paragraph 121 of the defence, the plaintiffs:

- (a) deny the allegations in paragraph 121(a)(i) and say the Critical Response Breaches were failures to perform rather than acts or omissions done in the performance or purported performance of powers or functions pleaded in sub-paragraph 120(a)(i) of the defence;
- (b) as to paragraph 121(a)(ii) – do not admit the allegations in paragraph 121(a)(ii) because the reasons why the alleged ancillary power or function is said to arise by necessary implication are not particularised and the plaintiffs do not understand the allegation;
- (c) as to paragraph 121(b) – do not admit the acts and omissions of the Biosecurity Officers were done ‘in the context of’ the matters pleaded at paragraph 120(b) because:
 - (i) the meaning of the phrase ‘in the context of’ is vague and not understood; and
 - (ii) the said legislative provisions do not confer any immunity in the circumstances pleaded in the FASOC.

42. As to paragraph 122 of the defence, the plaintiffs:
- (a) admit the allegations at paragraph 122(a);
 - (b) as to paragraph 122(b):
 - (i) save that they will rely at trial upon the full terms of the pleaded provisions for their proper force and effect – admit that the legislative provisions and other documents pleaded in paragraph 122(b)(i)-(vii) include those terms and effects;
 - (ii) do not admit that the acts and omissions of the Biosecurity Officers were done ‘in the context of’ the legislative provisions and other documents pleaded in paragraph 122(b) because:
 - (A) the meaning of the term ‘in the context of’ is vague and not understood;
 - (B) the said legislative provisions do not confer any immunity in the circumstances pleaded in the FASOC.
43. As to paragraph 123 of the defence:
- (a) the plaintiffs deny the allegations in paragraph 123(a)(i) and say the Critical Response Breaches were failures to perform rather than acts or omissions done in the performance or purported performance of powers or functions pleaded in sub-paragraph 122(a) of the defence;
 - (b) as to paragraph 123(a)(ii) – do not admit the allegations in paragraph 123(a)(ii) because the reasons why the alleged ancillary power or function is said to arise by necessary implication are not particularised and the plaintiffs do not understand the allegation;
 - (c) as to paragraph 123(a)(iii) – do not admit that the acts and omissions of the Biosecurity Officers were done ‘in the context of’ the matters pleaded at paragraph 122(b) because:
 - (i) that term is vague and not understood; and
 - (ii) the said legislative provisions do not confer any immunity in the circumstances pleaded in the FASOC.
44. The plaintiffs do not admit the allegations in paragraph 124 of the defence because, having made reasonable enquiries, they remain uncertain as to the truth or otherwise of the allegations.
45. As to paragraph 125 of the defence, the plaintiffs:
- (a) in respect of paragraph 125(a):
 - (i) rely upon the matters pleaded in paragraphs 25 to 28 and 74 to 80 of the FASOC;

- (ii) say that in the premises referred to in paragraph (i) hereof, the Biosecurity Officers did not act in good faith when committing the Inspection Breaches and the Critical Response Breaches;
 - (iii) deny the allegations by reason of the matters pleaded in paragraph (i) and (ii) above;
 - (b) in respect of paragraph 125(b), repeat the matters pleaded at paragraphs 40 and 41 above;
 - (c) in respect of paragraph 125(c), repeat the matters pleaded at paragraphs 42 and 43 above.
46. As to paragraph 126 of the defence, the plaintiffs:
- (a) admit paragraphs 126(a) and 126(b);
 - (b) as to paragraph 126(c), deny the allegation because, as pleaded at paragraphs 40, 41, 42 and 43 above, the Critical Response Breaches were not done in the performance or purported performance of powers, functions or duties pleaded at paragraph 126(c);
 - (c) as to paragraph 126(d), deny the allegations by reasons of the matters pleaded at paragraph 45(a)(i) and 45(a)(ii) above;
 - (d) as to paragraph 126(e)(i):
 - (i) deny the allegations by reason of the matters pleaded at paragraph 45(a)(i) and 45(a)(ii) above;
 - (ii) says that s. 82 of the *Quarantine Act* did not from 16 June 2016 apply to acts done or omitted to be done by a minister, director or officer of the Commonwealth;
 - (e) as to paragraph 126(e)(ii), deny the allegations by reason of the matters pleaded at paragraph 45(a)(i) and 45(a)(ii) above.
47. Except where specifically admitted, denied or not admitted above, the plaintiffs join issue with the matters alleged in the defence.

Signed: 

Description: Solicitors for the plaintiffs

Dated: ~~3 May 2023~~ 1 December 2023

This pleading was prepared by Michael May and James Penrose of Counsel and settled by Lachlan Armstrong of His Majesty's Counsel.