



Department of
Primary Industries

NEW SOUTH WALES
COMMERCIAL FISHERIES
BUSINESS ADJUSTMENT PROGRAM

Subsidised Share Trading Market
Market Rules

16 January 2017

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1. Introduction

1.1 Purpose

The objective of the Market is to facilitate the process of adjustment under the Business Adjustment Program by anonymously matching buyers and sellers of Shares, including subsidising the purchase of Shares by Active Businesses, as set out further in the definition of Market Objectives.

1.2 Application

These Market Rules will govern all transactions conducted by Shareholders (through their Participants) on the Market.

1.3 Amendment

DPI may amend these Market Rules, at any time and from time to time, by publication of written notice on the Website.

2. Participation

2.1 Participation Deed

To participate in the Market, a Shareholder must sign correctly and return to DPI the Participation Deed before the Registration Close Date.

2.2 Eligibility Criteria

DPI will enter into a Participation Deed with a Shareholder only if:

- 2.2.1 the Shareholder is recorded in the Share Register as the owner of Shares held by the Fishing Business(es) being registered for the Market;
- 2.2.2 the Shareholder is not subject to external administration (e.g. by a receiver, voluntary administrator or bankruptcy trustee);
- 2.2.3 the Shareholder is not prohibited from owning Shares under section 49(2) of the Act or clause 117 of the Fisheries General Regulation;
- 2.2.4 the Shares are free of all security interests, except a security interest held by RAA for the purposes of the Business Adjustment Program;
- 2.2.5 where the Shareholder is an executor or administrator appointed in respect of a deceased estate, probate or letters of administration have been granted in respect of the estate and a copy is provided to DPI;
- 2.2.6 there are no Court or Tribunal orders existing that affect the Shareholder's interest in the Shares or restrict their ability to transfer or surrender the Shares.

2.3 Continuing Eligibility

- 2.3.1 A Shareholder must advise DPI promptly in writing if it no longer satisfies any of the eligibility criteria in clause 2.2 of these Market Rules and in any event within 5 Business Days.
- 2.3.2 If requested in writing by DPI, Shareholders must demonstrate to DPI's reasonable satisfaction that they continue to satisfy the eligibility criteria detailed in clause 2.2 of these Market Rules.

2.4 Confirmation of Status

- 2.4.1 As part of the invitation to register, DPI will notify each Shareholder as to whether each of their Fishing Businesses is an Active Business or an Inactive Business in each Share Class.
- 2.4.2 If a Shareholder wishes to register a Fishing Business for the Market but considers that DPI has made an error in its assessment that the Fishing Business is either an Active Business or Inactive Business in a particular Share Class, the following applies:
 - (a) the Shareholder may request administrative review of this assessment, provided that such a request is lodged via email addressed to catch.records@dpi.nsw.gov.au no later than 14 days after the date on which DPI posted the notification of the assessment to the Shareholder; and
 - (b) such review is limited to DPI checking it has accurately interpreted mandatory catch records for the relevant five year period set out in the definition of Active Business which have been lodged with DPI on or before 31 May 2016, and no other grounds.

2.5 Registration of Participants

- 2.5.1 A Shareholder must complete the registration form provided by DPI to nominate a Participant for each Participating Business in the Market. Where a Participant for a particular Participating Business is legally separate from the Shareholder, the Shareholder acknowledges and agrees that the actions of the Participant in the Market are legally binding on the Shareholder.
- 2.5.2 After a Participant has been registered, DPI will confirm its registration by email.
- 2.5.3 On the Market Commencement Date, the Participant can access the Market Portal, use their email address to set a password, and then log on to the Market through the Market Portal.
- 2.5.4 Participants must not disclose their password to any other person.

3. Market

3.1 Access to Market

The Market is conducted through the Market Portal.

3.2 Restrictions on trading during operation of Market

After 30 January 2017, Shares in a Participating Business may only be dealt with through the Market until:

- 3.2.1 DPI declares that the Market has Closed; or
- 3.2.2 the Shareholder or its Participant is taken to have withdrawn from the Market pursuant to clause 3.3.5 of these Market Rules.

3.3 Rounds

- 3.3.1 DPI will determine the date for the commencement of the Market, subject to sufficient Participating Businesses registering in accordance with these Market Rules.
- 3.3.2 Subject to DPI's determination that the Market will commence, the Market will consist of a minimum of one Round and a maximum of three Rounds, as determined by the Director General.
- 3.3.3 The dates on which each Round will be conducted will be advised by email or SMS and published by DPI on the Website and the Market Portal at least 1 Business Day prior to the relevant Round commencing.
- 3.3.4 Each Participating Business must have at least one Confirmed Bid in the Market at the close of a Round in order to be able to participate in any subsequent Rounds announced by DPI.
- 3.3.5 A Participating Business without at least one Confirmed Bid at the end of a Round is deemed to have withdrawn from the Market and is not entitled to participate in any subsequent Round (if any such Round is held).

4. Bidding and Offering

4.1 Bidding and Offering Procedure

Each Bid or Offer must be submitted through the Market Portal as follows:

- 4.1.1 Where the Participant wishes to bid to buy Shares they must enter the relevant details for their Bid, which:
 - (a) must specify a maximum price per Share, together with a minimum and maximum number of Shares to be bought;
 - (b) must not specify a maximum number of Shares to be bought:
 - (i) that would result in the Shareholder owning more than the Maximum Shareholding; and
 - (ii) where DPI has notified Participants that there are applicable Share Caps in a Share Class, that is more than the applicable Share Cap; and
 - (c) is a minimum of \$0.50 per Share.
- 4.1.2 Where the Participant wishes to offer to sell Shares they must enter the relevant details for their Offer which, in the case of:
 - (a) a Package Sell Offer, must specify the minimum total price required by the Shareholder for the sale of all Shares across all Share Classes held by the Participating Business; and
 - (b) a Sell Offer for a specific Share Class, must specify a minimum price per Share, together with the number of Shares to be sold.
- 4.1.3 The Participant must confirm the Bid or Offer by entering their password.

4.2 Validity of Bids and Offers

- 4.2.1 Once a Participant has submitted a Bid or Offer in accordance with these Market Rules, the Bid or Offer is legally binding on the Participant (and the relevant Shareholder) until amended or removed by the Participant during a Round.
- 4.2.2 A Package Sell Offer is deemed to include the offer to surrender any Southern Fish Trawl Endorsement of the Participating Business to the Minister for cancellation.
- 4.2.3 A Participant may amend or remove a Bid or Offer prior to the end of a Round.
- 4.2.4 Once a Round ends, a Participant may not change or remove a Bid or Offer until a subsequent Round opens (which may not occur). Where an additional Round commences, any Confirmed Bid or Confirmed Offer remaining from the end of the previous Round will continue as a Confirmed Bid or Confirmed Offer in the new Round, which is legally binding on the Participant (and the relevant Shareholder) until amended or removed by the Participant.

4.3 Restrictions

- 4.3.1 In making Bids or Offers, Participants are subject to the restrictions in this clause 4.3.
- 4.3.2 If a Participant has a Package Sell Offer as a Confirmed Offer, the Participant cannot also have either a Bid as a Confirmed Bid or a Sell Offer as a Confirmed Offer in respect of any Share Class.
- 4.3.3 In each Share Class, a Participant can only Bid or make a Sell Offer, but not both.

4.4 GST

All Bids and Offers are taken to be made exclusive of GST (and if payable, GST is payable in accordance with clause 9 of these Market Rules).

5. Round Determination

5.1 Matching of Bids and Offers by Determination Model

- 5.1.1 After a Round has closed, DPI will arrange for all Confirmed Bids and Confirmed Offers standing at the end of a Round to be analysed using the Determination Model.
- 5.1.2 The Determination Model will seek to achieve the Market Objectives based on the Confirmed Bids and Confirmed Offers at the close of the Round, by applying the following priorities:
 - (a) matching of Bids of Active Businesses (based on price and quantity) up to the level of their Share Deficit, to Sell Offers;
 - (b) maximising the number of successful Bids of Active Businesses, subject to the constraint in clause 5.1.2(a) of these Market Rules;
 - (c) maximising the number of successful Package Sell Offers, subject to the constraints in clauses 5.1.2(a) and 5.1.2(b) of these Market Rules;
 - (d) maximising the number of successful Bids of Inactive Businesses, subject to the constraints in clauses 5.1.2(a), 5.1.2(b) and 5.1.2(c) of these Market Rules.

- 5.1.3 In analysing the Confirmed Bids and Confirmed Offers through the Determination Model:
- (a) in any Share Class, the Determination Model will endeavour to prefer the Sell Offers with the lowest nominated Sale Prices; and
 - (b) where, in any Share Class, there are two or more Bids that are otherwise identical in quantity and priority, the Determination Model will endeavour to prefer the Bid with the highest nominated Purchase Price.
- 5.1.4 The Determination Model may apply the Subsidy to any Shares forming part of Sell Offers not satisfied by the priorities in clause 5.1.2, and those Shares may be subject to a Deemed Surrender to DPI under section 74 of the Act.

5.2 Evaluation of round against Market Objectives

- 5.2.1 The Evaluation Panel will consider the results provided by the Determination Model in accordance with its evaluation criteria, to determine a recommendation for the Director-General as to whether the Market Objectives have been sufficiently achieved.
- 5.2.2 For the avoidance of doubt, the Market Objectives are to be assessed having regard to all Share Classes in aggregate. As a result, the Evaluation Panel may determine that:
- (a) the Market Objectives have not been sufficiently achieved, even if for any one particular Share Class, there were sufficient Bids and Offers to enable successful transfers to take place; or
 - (b) the Market Objectives have been sufficiently achieved, even if in respect of any one particular Share Class, there were insufficient Bids and Offers to enable successful transfers to take place.
- 5.2.3 In respect of its evaluation of a Round, the Evaluation Panel will make one of the following recommendations to the Director-General:
- (a) that the Market Objectives have been sufficiently achieved, such that the Director General should consider approving each proposed transfer under clause 114 of the Fisheries General Regulation and approving each Deemed Surrender of Shares, and that the Market should be Closed and all identified successful Bids and Offers proceed to settlement; or
 - (b) in the case of the first Round (and second Round, if held), that the Market Objectives have not been sufficiently achieved but that there is potential for them to be sufficiently achieved, and thus a further Round should be held; or
 - (c) that the Market Objectives have not been sufficiently achieved and there is no potential for them to be sufficiently achieved, and thus the Market should be Closed and all Bids and Offers rejected.
- 5.2.4 If the Evaluation Panel considers that the Market should be Closed (and all successful Bids and Offers proceed to settlement) or a further Round should be held, the Evaluation Panel will also recommend:
- (a) the amount of Total Subsidy to be used for subsidising Bids of Active Businesses and Deemed Surrenders of Shares forming part of Sell Offers or Package Sell Offers, which could have been successful based on price; and
 - (b) the amount of Total Subsidy required for Buyout Payments for successful Package Sell Offers,
- taking into account the need to ensure value for money in the expenditure of the Total Subsidy.
- 5.2.5 If the Evaluation Panel considers that a further Round should be held, the Evaluation Panel will also recommend whether Share Caps should apply to the subsequent Round or should be amended for the subsequent Round (as applicable).

5.3 Determination by the Director-General

- 5.3.1 After each Round, the Director-General will consider the recommendations of the Evaluation Panel in relation to Closing the Market or holding another Round, whether the Share Caps should be amended for subsequent Rounds, and the amounts of Subsidy to be used, and make a determination:
- as to whether to accept or reject the recommendations of the Evaluation Panel; and
 - as to whether the Market Objectives could be sufficiently achieved at a level of Total Subsidy that provides value for money.
- 5.3.2 If, at the conclusion of a Round, the Director-General considers that the Market Objectives could be sufficiently achieved, the Director-General will consider approving each transfer under clause 114 of the Fisheries General Regulation. If satisfied that sufficient transfers could be approved in accordance with clause 114 of the Fisheries General Regulation, the Director-General will:
- declare the Market is Closed;
 - consider each transfer for approval in accordance with clause 114 of the Fisheries General Regulation and each Deemed Surrender of Shares under section 74 of the Act; and
 - determine the amounts of Subsidy to be used for the purposes outlined in clause 6.1.
- 5.3.3 Once the Director-General declares the Market is Closed, DPI will notify each Shareholder (and Participant) of the following:
- whether each Bid or Offer of a Participating Business was successful or not;
 - the Market Price in each Share Class relevant to the Shareholder;
 - in respect of Sellers, the amount of Sale Price and any Buyout Payment payable to the Seller;
 - in respect of Buyers, the Purchase Price(s) payable by the Buyer; and
 - whether the transfer has been approved under clause 114 of the Fisheries General Regulation.
- 5.3.4 If, at the conclusion of the first round (and second round, if held), the Director-General determines that the Market Objectives have not been sufficiently achieved but that there is potential for them to be sufficiently achieved, DPI will notify each Participant of the following:
- that the Round was not successful and if a further Round will be held;
 - for each Share Class applicable to that Participant, the Market Price Estimate for that Round (if available), and whether their Bid or Offer in that Round would have been matched or unmatched for that Share Class based on that Market Price Estimate; and
 - if new Share Caps will apply in the further Round.
- 5.3.5 If, at the conclusion of any round, the Director-General determines that the Market Objectives have not been sufficiently achieved and they cannot be sufficiently achieved, DPI will notify each Shareholder (and Participant) that the Market is Closed and all Bids and Offers rejected.

6. Subsidy and Market Price

6.1 Subsidy

The Subsidy to be applied in respect of the Market consists of:

- 6.1.1 the Buyout Payment, for each successful Package Sell Offer;
- 6.1.2 the Buyer Subsidy Amount, in respect of successful Bids of Active Businesses; and
- 6.1.3 where it is determined that Shares in respect of a Sell Offer are to be surrendered as a Deemed Surrender, the Sale Price paid to the Seller in respect of those Shares.

6.2 Amount of Subsidy

- 6.2.1 DPI reserves the right to:
 - (a) apply any amount of Subsidy in respect of successful Bids and Offers, up to the Total Subsidy Amount; and
 - (b) apply different amounts of Subsidy to different Share Classes, having regard to the circumstances of the different Share Classes or to meet the Market Objectives.
- 6.2.2 Nothing obliges DPI to apply the Total Subsidy Amount if the Director-General determines that the Market Objective has been sufficiently achieved without applying all of the Total Subsidy Amount, or that spending the Total Subsidy Amount would not provide value for money.

6.3 Market Price

- 6.3.1 In each Share Class, there will be one Market Price for all successful Bids and Offers, which means:
 - (a) each Seller will receive the Market Price, irrespective of whether the price per Share in respect of its Sell Offer or Package Sell Offer was equal to or less than the Market Price; and
 - (b) each Buyer will pay the Market Price (but in the case of an Active Business, subject to clause 6.4 of these Market Rules), irrespective of whether the price per Share in its Bid was equal to or greater than the Market Price.
- 6.3.2 Market Prices may vary across Share Classes.
- 6.3.3 The minimum Market Price for a Share is \$0.50.

6.4 Buyer Subsidy Amount

- 6.4.1 In each Share Class, the Buyer Subsidy Amount applied to successful Bids of an Active Business will be the same amount per Share.
- 6.4.2 The Buyer Subsidy Amount applied to successful Bids of Active Businesses may vary across Share Classes.
- 6.4.3 A Buyer Subsidy Amount will be applied in respect of all Share Classes where Active Businesses have successful Bids.
- 6.4.4 An Inactive Business is not entitled to any Buyer Subsidy Amount.

6.5 Buyout Payment

Each successful Package Sell Offer is entitled to receive the Buyout Payment, to be paid:

- 6.5.1 in respect of paragraph (a) of the definition of Buyout Payment, after cancellation of the Fishing Business Number; and
- 6.5.2 in respect of paragraph (b) of the definition of Buyout Payment, after surrender of its Southern Fish Trawl Endorsement.

7. Transfer Agreements and Deemed Surrenders

7.1 Formation of Transfer Agreement or Deemed Surrender

- 7.1.1 If:
 - (a) the Director-General determines that the Market Objectives have been sufficiently achieved for the purposes of the Market Rules; and
 - (b) the Director-General under delegation approves the transfer under clause 114 of the Fisheries Regulation,each Shareholder who has been notified in a Confirmation of a successful Bid or Offer will be deemed to have entered into, as applicable:
 - (a) a Transfer Agreement;
 - (b) a Deemed Surrender to the Minister;
 - (c) a Transfer for Surrender to the Minister; or
 - (d) any combination of paragraphs (a) to (c).
- 7.1.2 Where the Shareholder has been notified of more than one successful Bid or Offer, the Shareholder will be deemed to have entered into a separate Transfer Agreement in respect of each successful Bid or Offer.
- 7.1.3 The Shareholder acknowledges that DPI and RAA are not required to disclose the identity of the Other Party to the Shareholder or its Participant.
- 7.1.4 The Shareholder irrevocably grants a power of attorney to DPI and RAA severally (each an **“Attorney”**) to do in the name of the Shareholder any thing which in the opinion of the Attorney is necessary or expedient for the purposes of entering into or performing any Transfer Agreement, a Deemed Surrender, or a Transfer for Surrender, including but not limited to:
 - (a) applying for an approval of a transfer under clause 114(3) of the Fisheries General Regulation;
 - (b) the signing of any necessary forms or notifications for the purpose of recording the transfer in the Share Register under section 91B of the Act;
 - (c) applying to surrender the Shares under section 74 of the Act; or
 - (d) applying for a Transfer for Surrender; or
 - (e) the rendering of tax invoices or invoices under clause 9 of this document.

8. Payment and Settlement

8.1 Issuing of Confirmations

For each Participating Business with a successful Bid or Offer, DPI will issue the Shareholder with a Confirmation providing details of:

- (a) in the case of a Buyer, the amount of Purchase Price payable for each successful Bid; or
- (b) in the case of a Seller, the amount of Sale Price (and Buyout Payment, if applicable) receivable for each successful Offer.

8.2 Settlements management by RAA

- 8.2.1 RAA will facilitate the settlement of Transfers and payment of Subsidy in accordance with this clause 8.
- 8.2.2 In making payments to Sellers pursuant to these Market Rules in respect of a Transfer to a Buyer, RAA is acting as agent of the relevant Buyer.
- 8.2.3 Where a Buyer is entitled to any Buyer Subsidy Amount in accordance with these Market Rules, the Buyer acknowledges that payment by RAA of the Sale Price to the Seller constitutes satisfaction of DPI's obligations to apply the Buyer Subsidy Amount to the benefit of the Buyer.

8.3 Settlement with Sellers

- 8.3.1 RAA will pay to each Seller the Sale Price, together with any Buyout Payment, if applicable, and GST, within 45 days after the issue of a Confirmation by DPI.
- 8.3.2 RAA will make payments to the bank account nominated by the Shareholder in their Participation Deed.
- 8.3.3 Where a Shareholder is a Seller under a Transfer Agreement and also a Buyer under a separate Transfer Agreement, RAA is entitled to:
 - (a) where the amount due to the Shareholder as a Seller is less than the amount owing by the Shareholder as a Buyer, withhold payment of any Sale Price until it has received all amounts due from the Shareholder as a Buyer; or
 - (b) where the amount due to the Shareholder as a Seller exceeds the amount owing by the Shareholder as Buyer, set-off any amount of Sale Price payable against the Purchase Price owing and pay only the net amount to the Seller.
- 8.3.4 If a Seller owes any amount to DPI in respect of charges, fees, contributions or other amounts payable by the Seller pursuant to the Act or the Fisheries Regulation, the Seller agrees that RAA may apply such amount of Sale Price and Buyout Payment (as applicable) owing to the Seller in order to satisfy the amount owing to DPI and only pay the residual amount (if any) to the Seller.

8.4 Settlement with Buyers

- 8.4.1 Each Shareholder who is a Buyer must pay the Purchase Price to the RAA Account for each relevant Transfer Agreement within 30 days after the issue of a Confirmation by DPI.
- 8.4.2 Where the Shareholder is a Buyer under a Transfer Agreement and a Seller under a separate Transfer Agreement, the Shareholder is not entitled to set-off its payment obligations.

- 8.4.3 DPI will enter the Buyer as the owner of the Shares in the Share Register within 30 days after the issue of a Confirmation by DPI. If any portion of the Purchase Price remains outstanding as of the date which is 30 days after the issue of the Confirmation, the Buyer will be taken to have granted a security interest by way of equitable mortgage in the Shares to RAA, as security for the obligation to pay the Purchase Price, and DPI may annotate the Share Register to note the interest of RAA as mortgagee.
- 8.4.4 If a Buyer does not pay the Purchase Price in accordance with these Market Rules, the Buyer must pay interest at the Interest Rate, commencing on the day that the Buyer is entered into the Share Register as the owner of the Shares and the date of actual receipt by RAA of the amount due and owing.
- 8.4.5 The obligation of the Buyer to pay the Purchase Price is a debt due and owing by the Buyer to RAA on behalf of the Seller, which may be legally enforced by RAA in its own right against the Buyer. To the extent that RAA has already paid the Purchase Price to a Seller pursuant to a Transfer Agreement, RAA will be taken to be subrogated to the rights of the Seller under the Transfer Agreement and will be entitled to enforce such rights against the Buyer as a debt due and owing to RAA in its own capacity.
- 8.4.6 If a Buyer fails to pay the Purchase Price within the period specified by these Market Rules and the Participation Deed, RAA may by written notice demand that the Buyer pay such amount within 10 Business Days. If the Buyer fails to comply with the written notice:
- (a) DPI may commence legal proceedings against the Buyer to recover the amount due and owing; and
 - (b) if the amount of Purchase Price has been outstanding for a period greater than three months after the due date, the Buyer acknowledges that it will be deemed to have surrendered the Shares to the Minister for the purposes of section 74 of the Act and the Buyer agrees the Minister may take such action in relation to the Shares as allowed under the Act (including cancellation or re-sale of the Shares).
- 8.4.7 If the Minister sells any Shares surrendered under clause 8.4.6(b) of these Market Rules, any entitlement of the Shareholder to receive up to 85% of the proceeds of such sale (as provided for under section 74 of the Act) will be credited firstly against amounts owing to RAA in respect of the Purchase Price, with the remainder (if any) paid to the Shareholder.

9. Goods and Services Tax

9.1 Definitions

In this clause:

- 9.1.1 words and expressions that are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 9.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- 9.1.3 **RCTI Agreement** means the agreement regarding the creation of recipient created tax invoices, the terms of which are set out in clause 9.7.

9.2 GST exclusive

Except as otherwise provided in these Market Rules, all consideration payable in relation to any supply is exclusive of GST.

9.3 GST Registration

- 9.3.1 The Shareholder represents that its GST registration status as indicated in its Participation Deed is and remains true and correct.
- 9.3.2 The Shareholder undertakes to notify DPI and RAA immediately if its GST registration status changes, and in any event within 10 Business Days.

9.4 GST Invoicing – Intermediary Arrangements

- 9.4.1 For the purposes of Subdivision 153B of the GST Act, the Shareholder and RAA agree that:
- (a) RAA is appointed by the Shareholder as its agent and intermediary to facilitate supplies to the Other Party (for a sale of Shares) and make acquisitions from the Other Party (for a purchase of Shares);
 - (b) the supplies and acquisition the subject of the intermediary arrangements are the sale of Shares and/or the purchase of Shares (as applicable) pursuant to a Transfer Agreement;
 - (c) for the purposes of the GST Law:
 - (i) RAA will be treated as making the supplies to the Other Parties and acquisitions from the Other Parties (as applicable); and
 - (ii) the Shareholder will be treated as making corresponding supplies to RAA and corresponding acquisitions from RAA (as applicable);
 - (d) in the case of supplies to the Other Parties:
 - (i) RAA will issue to the Shareholder a recipient created tax invoice in the name of RAA, pursuant to the terms of the RCTI Agreement;
 - (ii) RAA will issue to the Other Party, in RAA's own name, all tax invoices and adjustment notes relating to those supplies; and
 - (iii) the Shareholder will not issue to the Other Party any tax invoices and adjustment notes relating to those supplies;
 - (e) in the case of acquisitions from the Other Parties, RAA will issue to the Shareholder, in RAA's own name all tax invoices and adjustment notices.
- 9.4.2 Where the Shareholder is not registered for GST purposes, RAA will issue an invoice (but not a tax invoice).

9.5 GST Invoicing – Buyout Payment

- 9.5.1 In respect of any Buyout Payment payable by RAA, RAA will issue a tax invoice in respect of the supply made in respect of any sale of Shares made by the Shareholder.

9.6 GST Invoicing – Purchase of Shares

- 9.6.1 In respect of any purchase of Shares by a Shareholder, RAA will provide the Shareholder with a tax invoice in respect of the Purchase Price payable.

9.7 RCTI Agreement

- 9.7.1 The recipient created tax invoice (**RCTI**) is a tax invoice belonging to the class of invoices that the Commissioner of Taxation has determined in writing in Goods and Services Tax Ruling GSTR 2000/10 may be issued by the Recipient of the Supplies.
- 9.7.2 The Recipient can issue tax invoices in respect of the Supplies.
- 9.7.3 The Supplier must provide its Australian Business Number to the Recipient and this must be disclosed on the RCTI.
- 9.7.4 The Recipient shall issue the original or a copy of the RCTI to the Supplier within 28 days of the making, or determining the value, of the taxable supply and retain the original or a copy.
- 9.7.5 The Recipient shall issue the original or a copy of a recipient created adjustment note to the Supplier and shall retain the original or a copy.
- 9.7.6 The Recipient shall reasonably comply with its obligations under Australian taxation laws.
- 9.7.7 The Supplier shall not issue tax invoices in respect of the Supplies for which a RCTI was, or will be, issued.
- 9.7.8 The Supplier acknowledges that it is a Registered Enterprise in accordance with the GST Law and agrees that it shall notify the Recipient if it ceases to be Registered.
- 9.7.9 The Recipient acknowledges that it is a Registered Enterprise in accordance with the GST Law and agrees that it will notify the Supplier if it ceases to be Registered.

9.8 Increase in consideration

If GST is payable in respect of any supply made by a Supplier under this document (**GST Amount**), the Recipient must pay to the Supplier an amount equal to the GST payable on the supply. Subject to issue of a tax invoice (where required), the Recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this document in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in this document).

10. Rural Assistance Authority

10.1 Role of RAA

RAA has been appointed by DPI to undertake the following roles in connection with the Market:

- 10.1.1 make and receive payments in respect of Transfer Agreements, Deemed Surrenders and payment of Buyout Payments and subsidies;
- 10.1.2 provide GST tax invoices (including recipient-created tax invoices);
- 10.1.3 notify DPI in relation to the receipt of payments from Buyers and the failure of any Buyer to pay any Purchase Price in accordance with these Market Rules;
- 10.1.4 take security over the Shares of a Buyer if the Buyer fails to pay the Purchase Price in accordance with these Market Rules and assist DPI to take any enforcement action in relation to such payment.

11. Collusive Conduct

11.1 Collusive Arrangements

- 11.1.1 Shareholders (and their Participants) must not enter into any improper or anti-competitive contract, arrangement or understanding with any other person in connection with participation in the Market, any Bid or Offer, the Shares or any Transfer Agreement.
- 11.1.2 DPI may, in its absolute discretion, reject any Bid, Offer or Transfer Agreement where DPI reasonably believes that the Shareholder (or their Participant) engaged in any collusive tendering, anti-competitive conduct or any other similar conduct with any other Shareholder or Participant or any other person in relation to participation in the Market, any Bid or Offer, the Shares or any Transfer Agreement.
- 11.1.3 Each Shareholder represents and warrants and, in consideration of being permitted to participate in the Market, promises as a fundamental condition, that:
- (a) except as set out in (b), it has no knowledge of the Bid, Sell Offer or Package Sell Offer (as applicable) of any other Shareholder or Participant;
 - (b) where the Shareholder is the person to whom Shares are issued, a partner in any other Shareholder which is a partnership, or a director in a company which is a Shareholder, the Shareholder has no knowledge of the Bid, Sell Offer or Package Sell Offer (as applicable) of any Participant or other Shareholder in which it is not a partner, a director or the person to whom the Shares are issued;
 - (c) it has not entered into any contract, arrangement or understanding to receive any money directly or indirectly from or on behalf of any other Shareholder or Participant;
 - (d) it has not received any money or allowance from or on behalf of any other Shareholder or Participant in relation to the Market, any Bid or Offer, the Shares or any Transfer Agreement, nor will the Shareholder or Participant receive any such money;
 - (e) it has not entered into any contract, arrangement or understanding to pay any money directly or indirectly to or on behalf of any other Shareholder or Participant; and
 - (f) it has not paid any money or allowance to or on behalf of any other Shareholder or Participant in relation to the Market, any Bid or Offer, the Shares or any Transfer Agreement, nor will the Shareholder or Participant pay any such money.
- 11.1.4 Each Participant (other than a Professional Participant) represents and warrants and, in consideration of being permitted to participate in the Market, promises as a fundamental condition, that:
- (a) except as set out in (b), it has no knowledge of the Bid, Sell Offer or Package Sell Offer (as applicable) of any other Shareholder or Participant;
 - (b) where the Participant is the person to whom Shares are issued, a partner in any other Shareholder which is a partnership, or a director in a company which is a Shareholder, the Participant has no knowledge of the Bid, Sell Offer or Package Sell Offer (as applicable) of any other Participant or any Shareholder in which it is not a partner, a director or the person to whom the Shares are issued;
 - (c) it has not entered into any contract, arrangement or understanding to receive any money directly or indirectly from or on behalf of any other Shareholder or Participant;
 - (d) it has not received any money or allowance from or on behalf of any other Shareholder or Participant in relation to the Market, any Bid or Offer, the Shares or any Transfer Agreement, nor will the Shareholder or Participant receive any such money;
 - (e) it has not entered into any contract, arrangement or understanding to pay any money directly or indirectly to or on behalf of any other Shareholder or Participant; and
 - (f) it has not paid any money or allowance to or on behalf of any other Shareholder or Participant in relation to the Market, any Bid or Offer, the Shares or any Transfer Agreement, nor will the Shareholder or Participant pay any such money.

- 11.1.5 Each Professional Participant represents and warrants and, in consideration of being permitted to participate in the Market, promises as a fundamental condition, that:
- (a) it has not disclosed any Bid, Sell Offer or Package Sell Offer (as applicable) of a Shareholder it is acting on behalf of to any other Shareholder or Participant;
 - (b) in respect of a Shareholder that it has been engaged to act on behalf of, it has not entered into any contract, arrangement or understanding to receive any money directly or indirectly from or on behalf of any other Shareholder or Participant (however, for the avoidance of doubt, such restriction does not prevent a Professional Participant from being engaged by more than one Shareholder);
 - (c) in respect of a Shareholder that it has been engaged to act on behalf of, it has not received any money or allowance from or on behalf of any other Shareholder or Participant in relation to the Market, any Bid or Offer, the Shares or any Transfer Agreement, nor will the Shareholder or Participant receive any such money;
 - (d) in respect of a Shareholder that it has been engaged to act on behalf of, it has not entered into any contract, arrangement or understanding to pay any money directly or indirectly to or on behalf of any other Shareholder or Participant; and
 - (e) in respect of a Shareholder that it has been engaged to act on behalf of, it has not paid any money or allowance to or on behalf of any other Shareholder or Participant in relation to the Market, any Bid or Offer, the Shares or any Transfer Agreement, nor will the Shareholder or Participant pay any such money.

12. Confidentiality and Privacy

12.1 Obligations of Shareholders and Participants

Each Shareholder and Participant will not, except:

- (a) as required by law; or
- (b) in connection with any relevant judicial or administrative proceedings,

divulge to third parties not otherwise entitled to receive the same, any information concerning the Market, including a Participant's or Shareholder's participation in the Market.

12.2 Obligations of DPI and RAA

12.2.1 DPI and RAA will not, except:

- (a) as required by law;
- (b) in connection with any relevant judicial or administrative proceedings;
- (c) in response to a request from the responsible Minister or a House or Committee of the NSW Parliament;
- (d) as otherwise authorised by these Market Rules (including, but not limited to, in connection with the evaluation of Bids); or
- (e) with the consent of the Shareholder or Participant concerned,

divulge to third parties not otherwise entitled to receive the same, any information concerning how a Shareholder or Participant participated in the Market.

12.2.2 If DPI or RAA is compelled by law or proposes in connection with any relevant judicial or administrative proceeding to divulge any such information, DPI and RAA must prior to such divulgence inform the Shareholder or Participant concerned.

12.3 Privacy

Participation in the Market is subject to the terms of DPI's privacy policy, located at <http://www.industry.nsw.gov.au/privacy>.

13. Interpretation

13.1 Definitions

Act means the *Fisheries Management Act 1994 (NSW)*.

Active Business means, in respect to a particular Share Class:

- (a) a Fishing Business that has reported fishing activity (at least 1 kg of fish (as that term is defined in the Act)) in that Share Class over the 5 year period from 1 May 2011 to 30 April 2016, according to mandatory catch records received by DPI before 31 May 2016; or
- (b) a Fishing Business that has acquired all of the Shares in that Share Class held by an Active Business who disposed of the Shares under the Business Adjustment Program Fishing Business Buyouts prior to the Buyouts Closing Date.

Agent means a person nominated by a Shareholder on the registration form to be its Participant for the purposes of the Market, but excluding any director or partner of the Shareholder.

Bid means a bid by a Participant to acquire Shares in a Share Class in which the Participating Business already holds Shares prior to the commencement of the first Round.

Business Adjustment Program means the NSW Government Commercial Fisheries Business Adjustment Program.

Business Adjustment Program Fishing Business Buyouts means a surrender or transfer of all Shares in respect of a Fishing Business under the Fishing Business Buyout incentive option provided by DPI and RAA.

Business Days means each day banks are open for business in New South Wales, excluding any Saturday, Sunday or public holiday.

Buyer means, following the closure of the Market, a Shareholder who has a successful Bid in a Share Class.

Buyer Subsidy Amount means, for each Share Class, the amount of Subsidy to be applied per Share, as determined by the Director-General under clause 5.

Buyouts Closing Date means 30 January 2017.

Buyout Payment means, in respect of each Package Sell Offer which is successful:

- (a) an amount of \$20,000 upon cancellation of the Fishing Business Number; and
- (b) where the Fishing Business has a Southern Fish Trawl Endorsement, an additional \$20,000 upon surrender of the Southern Fish Trawl Endorsement.

Close means:

- (a) in respect of the first Round and second Round (if held), the determination by the Director-General that the Market Objectives have been sufficiently achieved; and
- (b) in respect of the third Round, if held, the end of that Round.

Confirmation means a confirmation sent to the Shareholder by DPI in accordance with clause 8.1 of these Market Rules.

Confirmed Bid means a Bid confirmed by the Participant's entry of his or her password on the Market Portal in accordance with clause 4.1.3 of these Market Rules.

Confirmed Offer means an Offer confirmed by the Participant's entry of his or her password on the Market Portal in accordance with clause 4.1.3 of these Market Rules.

Deemed Surrender means a determination by the Director-General under these Market Rules that particular Shares are to be surrendered to the Minister under section 74 of the Act.

Department means the Crown in right of the State of New South Wales acting through the Department of Industry, Skills and Regional Development.

Determination Model means the computational model used by DPI to solve for the Market Objectives.

Director-General means the Director-General of DPI.

DPI means the Department of Primary Industries, operating as part of the Department.

Evaluation Panel means the committee formed by DPI, containing representatives of DPI and other NSW government agencies, for the purpose of evaluating completed Rounds and making a recommendation to the Director General in accordance with clause 5.2 of these Market Rules.

Fisheries General Regulation means the *Fisheries Management (General) Regulation 2010* (NSW).

Fisheries Regulation means all regulations and subordinate legislation made under the Act.

Fishing Business has the meaning as defined in the Act.

GST has the meaning as defined in the GST Law.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Inactive Business means, in respect of a particular Share Class, a Fishing Business that is not an Active Business in that Share Class.

Independent Allocation Panel means the panel established to advise the NSW Government on the criteria for allocating new shares in a Share Class.

Interest Rate means the Westpac Banking Corporation "overdraft business rate" (or such replacement rate) plus a margin of 3%.

Market means the Share trading market established by DPI for the purposes of facilitating business adjustment.

Market Commencement Date means the date notified by DPI to Participants as the commencement date for the Market.

Market Objectives means, in order of priority:

- (a) the greatest possible satisfaction of Bids by Active Businesses with Share Deficits such that the overall Share Deficit (across all Share Classes) in shareholdings of Active Businesses is reduced;
- (b) the greatest possible satisfaction of Bids by Active Businesses without Share Deficits;
- (c) the greatest possible satisfaction of Package Sell Offers; and

- (d) the greatest possible satisfaction of any remaining Bids and Sell Offers once all the above have been met,

subject to constraints of the Confirmed Bids and Confirmed Offers and the available Total Subsidy Amount.

Market Portal means the online portal, accessible from the Website, through which the Market is accessed.

Market Price means for each Share Class, the price per Share following the determination of the Director-General under clause 5.3 of these Market Rules.

Market Price Estimate means, following a determination by the Director-General that the Market Objectives have not been sufficiently achieved in a Round, the estimated market price in each Share Class for that Round (but excluding any amount of Subsidy).

Maximum Shareholding means, for a Share Class, the maximum number of Shares that may be held by a Shareholder permitted by the Act and the relevant Share Management Plan.

Offer means a Package Sell Offer or Sell Offer.

Other Party means, in respect of a Transfer Agreement, the party to whom the Shareholder is buying or selling (as applicable) the Shares the subject of that Transfer Agreement.

Package Sell Offer means a sell offer for a Participating Business' entire holding of Shares across all Share Classes and, where held, is deemed to include the offer to surrender a Southern Fish Trawl Endorsement to the Minister for cancellation.

Participant means, for each Participating Business, the person noted on the registration form who is registered to participate on the Market, which may be:

- (a) the Shareholder of Shares held by that Fishing Business who has signed a Participation Deed (including, where the Shareholder is a partnership, one of the partners and, where the Shareholder is a company, a director of the Shareholder); or
- (b) the nominated Agent of such Shareholder.

Participating Business means a Fishing Business that has been registered for the Market by the Shareholder of the Shares held in that business.

Participation Deed means the deed entered into between a Shareholder, a Participant, DPI and RAA, in relation to participation in the Market.

Professional Participant means a Participant who is:

- (a) a solicitor or barrister holding a practising certificate entitling them to practise in NSW;
- (b) an accountant who is a member of the Institute of Public Accountants, CPA Australia or Chartered Accountants Australia and New Zealand;
- (c) a financial adviser who holds an Australian financial services licence; or
- (d) a licensed stock and station agent or business agent under the *Property, Stock and Business Agents Act 2002* (NSW).

Purchase Price means:

- (a) for an Active Business, the Market Price less the Buyer Subsidy Amount, multiplied by the number of Shares to be purchased, for each relevant Share Class; and
- (b) for an Inactive Business, the Market Price multiplied by the number of Shares to be purchased, for each Relevant Share Class.

RAA means the New South Wales Rural Assistance Authority, constituted pursuant to the *Rural Assistance Act 1989 (NSW)*.

Registration Close Date means the date published by DPI on the Website, after which a Shareholder cannot enter into a Participation Deed, and cannot apply to participate in the Market.

Round means a Share bidding round undertaken on the Market.

Sale Price means, for a Seller, the Market Price of the relevant Shares multiplied by the number of Shares sold or surrendered (as applicable).

Sell Offer means an offer to sell a quantity of Shares in a Share Class, but for the avoidance of doubt excludes a Package Sell Offer.

Seller means, following closure of the Market, a Shareholder who has a successful Package Sell Offer or Sell Offer.

Settlement Account means the bank account notified by RAA to a Buyer for the purpose of remitting any Purchase Price payable.

Share means a share issued to or held by a Shareholder in a Share Class in a Share Management Fishery.

Share Cap means:

- (a) for Share Classes with Share Class Linkage Decisions imposing catch or effort quotas, the highest level of Share Deficit of a Participating Business in that Share Class (rounded up to the nearest five);
- (b) for Share Classes with Share Class Linkage Decisions imposing an increase to the minimum shareholding, the new minimum shareholding minus the previous minimum shareholding;
- (c) for Share Classes where allocation will be determined by the Independent Allocation Panel or that will have no change to their Share Class Linkage arrangements, there are no Share Transfer Caps.

Share Class means the specific class of Shares held by a Shareholder in a Share Management Fishery, as recorded in the Share Register.

Share Class Linkage Decisions means the policy decisions of DPI concerning linkage of Shares held to access rights in respect of relevant Share Classes in Share Management Fisheries, as published on DPI's website.

Share Deficit means, in respect of an Active Business in a Share Class, the difference between the number of Shares held prior to the Market Commencement Date and:

- (a) for Share Classes with Share Class Linkage Decisions imposing catch or effort quotas, the number of Shares that would be required following commencement of the Share Class Linkage Decisions, in order to fish at a level equivalent to the maximum annual catch or effort reported in that share class by the Active Business in the five years to April 2016; or
- (b) for share classes with Share Class Linkage Decisions imposing an increase to the minimum shareholding, the new minimum shareholding.

Share Management Fishery has the meaning as defined in the Act.

Share Management Plan has the meaning as defined in the Act.

Share Register has the meaning as defined in the Act.

Shareholder means the legal person recorded in the Share Register as the owner of Shares in a Share Class.

Southern Fish Trawl Endorsement has the meaning as defined in the Fisheries General Regulation.

Subsidy means the subsidy to be applied following the closure of the Market.

Total Subsidy Amount means the \$16 million Adjustment Subsidy Package announced by the NSW Government, less any funds committed for Buyout Payments prior to the Market Commencement Date.

Transfer means a transfer of Shares approved by the Director-General under clause 114 of the Fisheries General Regulation and made pursuant to a Transfer Agreement.

Transfer Agreement means the agreement deemed to arise between a Buyer and Seller under these Market Rules in respect of Shares in a particular Share Class.

Transfer for Surrender means, in respect of a Southern Fish Trawl Endorsement, the transfer arrangement deemed to arise between a Seller and the Minister, whereby the Southern Fish Trawl Endorsement is surrendered to the Minister for cancellation.

Website means www.dpi.nsw.gov.au/commfish

13.2 Interpretation

13.2.1 In these Market Rules, unless expressed to the contrary:

- (a) words denoting the singular include the plural and vice versa;
- (b) the word 'includes' in any form is not a word of limitation;
- (c) where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) headings and sub-headings are for ease of reference only and do not affect the interpretation of this document; and
- (e) no rule of construction applies to the disadvantage of the party preparing this document on the basis that it prepared or put forward this document or any part of it.

13.2.2 In these Market Rules, unless expressed to the contrary, a reference to:

- (a) any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- (b) any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- (c) writing includes writing in digital form;
- (d) 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- (e) any property or assets of a person includes the legal and beneficial interest of that person of those assets or property;
- (f) a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- (g) a person includes the legal personal representatives, successors and permitted assigns of that person; and
- (h) any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.



Department of
Primary Industries

