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The Bills Digest at a glance

This Bills Digest relates to a suite of Bills which implement the recommendations of the Australian Sugar Industry Alliance (ASA) Review of research and development arrangements.

The recommendations were backed by an industry-wide vote—the Sugar Poll 2012—conducted by the Australian Electoral Commission, which resulted in an overwhelming ‘yes’ vote to the reforms.

The ASA Review recommended extensive reforms to sugar industry research and development arrangements. These reforms will result in the Sugar Research and Development Corporation (SRDC) and BSES Limited (BSES) being wound up. Their assets and their research and development functions, along with the research coordination activities of Sugar Research Limited will be transferred to an industry-owned company, Sugar Research Australia Limited (SRA Ltd).

These Bills provide the Minister for Agriculture, Fisheries and Forestry with the power to enter into a funding contract with an eligible company (proposed by the Government to be Sugar Research Australia Ltd) to enable it to receive and administer levies collected by the Commonwealth for research and development. It will also allow SRA Ltd to receive the Commonwealth’s matching funding for eligible research and development expenditure.

Date introduced: 5 June 2013

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Various dates outlined in the body of the Bills Digest.

Links: The links to the Bills, the Explanatory Memoranda and second reading speeches can be found on the Bills’ home pages for the Sugar Research and Development Services Bill 2013, the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013 and the Sugar Research and Development Services (Consequential Amendments—Excise) Bill 2013 or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose of the Bills

The purpose of the suite of Bills is as follows:

- the Sugar Research and Development Services Bill 2013 (the principle Bill) provides for a company to receive funding for research and development for the Australian sugar industry and to be declared as the industry services body for the Australian sugar industry
- the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013 (the Consequential Amendments Bill) amends various statutes to provide the mechanisms to implement elements of the reform to the sugar research and development arrangements and
- the Sugar Research and Development Services (Consequential Amendments—Excise) Bill 2013 (Consequential Amendments—Excise Bill) imposes a levy on sugar cane and sets out the amount of the levy.1

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1. The Sugar Research and Development Services Bill 2013 and the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013 were introduced on 5 June 2013. When introduced, the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013 contained the provisions that are now in the Sugar Research and Development Services (Consequential Amendments—Excise) Bill 2013. However, to ensure compliance with section 55 of the Constitution, which provides that ‘laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect’, the provisions imposing the sugar cane levy needed to be dealt with in a separate
Structure of the Bills

The principle Bill has four parts:

- Part 1 of the principle Bill contains preliminary matters such as relevant definitions
- Part 2 of the principle Bill deals with the funding contract between the Commonwealth Government and the industry services body (ISB)
- Part 3 of the principle Bill empowers the Minister to declare a company to be the new industry services body and to declare that a company ceases to be the current ISB and
- Part 4 of the principle Bill contains miscellaneous provisions including a power for the Ministerial to give directions to the ISB in an emergency.

The Consequential Amendments Bill contains two schedules:

- Schedule 1 makes consequential amendments to the *Primary Industries Levies and Charges Collection Act 1991 (Levies and Charges Collection Act)*\(^2\) and to the *Primary Industries Levies and Charges Collection Regulations 1991 (Levies and Charges Collection Regulations)*\(^3\) with commencement dates of 1 July 2013, 1 October 2013 and 1 March 2014 and
- Schedule 2 of the Consequential Amendments Bill contains transitional provisions.

The Consequential Amendment—Excise Bill amends the *Primary Industries (Excise) Levies Act 1999 (Excise Levies Act)*\(^4\) to impose the sugar cane levy.

Background

Research and development in the Australian sugar industry

Industry research and development (R&D) in the sugar industry, until now, has been provided through three organisations as well as in multiple sugar mills.\(^5\) The relevant organisations are:

- BSES Limited (BSES)\(^6\) which is a company limited by guarantee. It is primarily funded through a voluntary service fee (20 cents per tonne for growers) and Service Level Agreement fees with most millers (ranging from 12.5–20 cents per tonne)\(^7\)

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• the Sugar Research and Development Corporation (SRDC)\(^8\) which is a Commonwealth government entity, primarily funded by a statutory levy of seven cents per tonne paid by growers and seven cents per tonne paid by millers\(^9\) and

• Sugar Research Limited\(^10\) (SRL—trading as Sugar Research Institute) which is a company limited by guarantee and owned by all milling companies. It is privately funded and run out of Queensland University of Technology (QUT). Additional funding is provided by individual mills for R&D.\(^11\) SRL undertakes some research coordinating activities and employs staff through its strong affiliation with QUT.\(^12\)

Most growers and millers pay the BSES voluntary service fee or a Service Level Agreement fee and the SRDC industry levy.\(^13\) Millers also contribute towards SRL.

**Review of research and development arrangements**

In 2010 and 2011 the R&D arrangements were closely reviewed by the Australian Sugar Industry Alliance (ASA).\(^14\)

The ASA review assessed the R&D arrangements, in the context of duplication and sustainability of funding. This was particularly important as BSES claimed that it had been underfunded for some years.\(^15\) The ASA review was undertaken by Dr Sandra Welsman, the reform project leader, who consequently developed the Sugar RD&E [Research Development and Extension] Reform package. The Sugar RD&E Reform package was agreed to by Canegrowers (peak industry body for the Australian sugarcane growers)\(^16\) and the Australian Sugar Milling Council (ASMC)\(^17\) boards and then by the ASA in October 2011.

The main elements of the Sugar RD&E Reform package are:

• forming a single industry-owned research company – Sugar Research Australia (SRA)
• creating a SRA Research Funding Panel and

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12. Ibid.
13. Ibid., p. 69.
14. The Australian Sugar Industry Alliance (ASA) was formed late in 2007. The focus of ASA is to promote and advance the development of a commercially vibrant, sustainable and self-reliant raw sugar and sugar cane derived products industry: *Australian Sugar Milling Council website*, accessed 11 June 2013.

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• increasing the sugar levy to 35 cents per tonne for both growers and millers.\textsuperscript{18}

**Industry-wide vote**

The final Sugar RD&E Reform package was voted on by sugar growers and millers in 2012 (the *Sugar Poll 2012*).\textsuperscript{19} The Sugar Poll 2012 achieved an overwhelming ‘yes’ response at almost 64 per cent of total sugar growers and over 84 per cent of growers who voted. The package was supported by seven of the eight milling businesses, representing about 99 per cent of the cane processed in 2011.\textsuperscript{20}

The ASA subsequently forwarded an application to the Minister to establish a new industry owned company, SRA, which would be supported by a new statutory levy.

The Minister received the application on 20 September 2012 and consistent with the provisions of the Department of Agriculture, Fisheries and Forestry’s (DAFF) *Levy Principles and Guidelines*, allowed a six week period during which objections could be submitted.\textsuperscript{21} One of the central requirements for any levy proposal, whether for a new or changed levy, is to have demonstrated industry support from those who choose to participate in a ballot and/or consultation process. The objections period closed on 1 November 2012. Eight objections were received and considered. After the reviewing the objections however, the Government deemed the proposed reforms most suitable.\textsuperscript{22}

On 8 May 2013 SRA was established.\textsuperscript{23}

**Committee consideration**

**Senate Standing Committee on Rural and Regional Affairs and Transport**

The principle Bill and the Consequential Amendments Bill were referred to the Senate Standing Committee on Rural and Regional Affairs and Transport on 5 June 2013 for inquiry and report by

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\textsuperscript{19} Ibid.

\textsuperscript{20} Explanatory Memorandum, Sugar Research and Development Services Bill 2013, p. 2


\textsuperscript{23} Ibid.
17 June 2013. The Committee met on 6 June 2013 and unanimously decided that there were no substantive matters that required examination for both Bills.

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) reported on the Bills on 19 June 2013. The Scrutiny of Bills Committee noted that the principle Bill ‘creates a complex funding mechanism with the purpose of delivering increased research and development efficiencies for the benefit of the sugar industry and the nation’ and that the mechanism for directing government money to sugar R&D ‘means that the normal accountability arrangements which attend the expenditure of money by commonwealth bodies will not apply to decisions and actions taken by the industry-owned company responsible for the R&D functions’.

The Scrutiny of Bills Committee expressed its concern that:

> The reliance on an industry-owned company to deliver outcomes for the benefit of the industry as a whole and the nation also raises issues as to the appropriateness of governance within that company. The bill does not contain provisions which deal with the question of ensuring that the company board is appropriately qualified and independent or how to ensure that any conflicts of interests are appropriately dealt with (given the expenditure of public money).

Despite the assurances in the Minister’s second reading speech that governance arrangements for the new organisation will satisfy transparency and accountability requirements, the Scrutiny of Bills Committee ‘requested the Minister’s advice as to whether the Bill can include a general requirement that the funding contract deal with accountability and governance issues’.

**Statement of Compatibility with Human Rights**

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bills’ compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bills are compatible as they do not raise any human rights issues.

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24. As explained at footnote 1, the principle Bill and the Consequential Amendments Bill were introduced on 5 June 2013. The Consequential Amendments – Excise Bill was introduced on 18 June 2013 to ensure compliance with Constitutional requirements. The provisions of the Consequential Amendments – Excise Bill were originally contained in the Consequential Amendments Bill.


27. Ibid., p. 72.

28. Ibid., p. 73.

29. Ibid.

30. Statements of Compatibility with Human Rights can be found at page 5 of the Explanatory Memorandum to the principle Bill; page 4 of the Explanatory Memorandum to the Consequential Amendments Bill; and page 4 of the Explanatory Memorandum to the Consequential Amendments – Excise Bill.
The Parliamentary Joint Committee on Human Rights has expressed its view that the Bills do not give rise to any human rights concerns.\(^{31}\)

**Position of major interest groups**

Extensive public consultation was carried out by the ASA when reviewing the R&D arrangements of the sugar industry. Agreement was sought from all major interest groups including the ASA, Canegrowers and ASMC before the Sugar RD&E Reform package was finalised.

Prior to the package being submitted to the Minister for Agriculture, Fisheries and Forestry, Senator Ludwig for approval, all growers and millers were invited to vote in a poll conducted by the Australian Electoral Commission, on the proposed changes. The Sugar Poll 2012, resulted in 3,373 growers voting, of whom 2,842 (84.3 per cent) voted in favour of the package. These ‘yes’ votes represented almost 64 per cent of the whole sugar growing industry and so demonstrated strong support for the reforms. Eight milling companies voted, seven of which also voted in the affirmative.\(^{32}\)

Prior to the Sugar Poll 2012, there was some criticism of the speed of the reform. The Australian Cane Farmers Association (ACFA) supported a ‘no’ vote, because it considered that confusion had been created and that the reform process was being rushed through.\(^{33}\) The ASA disputed these claims, especially concerning confusion, claiming that the reform process had been on-going for some 18 months, and that they had consulted with farmers since the establishment of ASA.\(^{34}\) The ACFC submitted an objection to DAFF which was considered.\(^{35}\) No further action has been taken by the ACFC however.

**Financial implications**

There are financial implications arising from the proposal as the Commonwealth will continue to match payments made to the ISB based on the amount spent by ISB on activities that qualify under the funding contract as R&D activities, or 0.5 per cent of industry gross value, whichever is lesser. The increased levy (discussed below) will provide the ISB with more funds and it is expected to increase R&D activities. It is therefore expected that the Commonwealth matching payments will increase by $3.6 million over the forward estimates.\(^{36}\)

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34. Ibid.
35. Information provided to the Author by the Department of Agriculture, Fisheries and Forestry on 6 June 2013.

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Special appropriations

The Bills include special appropriation arrangements which are used to draw directly from the Consolidated Revenue Fund (CRF). It also creates arrangements for how the Commonwealth will forward the industry levy and the matching funding to the ISB.

Key issues and provisions

Principle Bill

The provisions of the principle Bill commence on the day after Royal Assent.

Clause 6 of the principle Bill provides that the Minister, on behalf of the Commonwealth may make a contract (the funding contract) with a company to deliver two types of payments—R&D payments and matching payments.

Subclause 6(2) requires the Minister to be satisfied that the terms of the contract ensure certain matters. First, that R&D payments are spent by the company on R&D activities for the benefit of the Australian sugar industry and/or to pay the administration expenses incurred by the Commonwealth in relation to collection of the levy, administration of the contract and payment of refunds of R&D amounts. Second, that matching payments are spent by the company on R&D activities for the benefit of the Australian sugar industry and the Australian community generally, administrative expenses and any excessive amounts received by the company from the Commonwealth (under subclause 7(4) of the principle Bill). The contract must also specify how administration expenses are to be met.

Subclause 6(3) outlines that the Commonwealth is not obliged to pay the full amounts that could be paid under the payment types. According to the Explanatory Memorandum, ‘this will allow the Commonwealth to make deductions prior to payment to cover the costs of collecting the levy and to make adjustments to cover refunds and payments made in error’.

Subclauses 6(6)–6(7) require the Minister to table a copy of the contract in each House of Parliament within 15 sitting days of that House after the contracted was entered into or if it is varied.

Clause 7 provides that the Consolidated Revenue Fund (CRF) is appropriated so that the Commonwealth can make two types of payments specified in subclause 6(1)—that is, R&D

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37. The term sugar industry is defined in clause 4 of the principle Bill as the industry concerned with growing, harvesting and processing sugar cane for any purpose.
38. Paragraph 6(2)(a) of the principle Bill.
39. Paragraph 6(2)(b) of the principle Bill.
40. Paragraph 6(2)(c) of the principle Bill.
payments and matching payments. Under subclause 7(2) the total R&D payments are limited to the total funds collected as part of the industry levy. 42

Similarly, subclause 7(3) of the principle Bill imposes a limit on the appropriations for matching payments. Subclause 7(4) provides for a retention limit. The amount is worked out having regard to the determination by the Minister, by 31 October the next financial year, of the amount of gross value of the sugar cane produced in Australia in the relevant financial year. The retention limit during a particular financial year must be the lesser of either 0.5 per cent of the amount of the gross value of sugar cane produced in Australia in the financial year, determined by the Minister, or 50 per cent of the amount spent by the company in the financial year on activities that qualify under the funding contract as R&D activities. Any amount in excess of the limit is to be repaid to the Commonwealth. 43

Where the Minister has not, by 31 October in the subsequent financial year, determined the gross value of sugar cane produced in Australia in a financial year, then, according to subclause 7(5), if the Minister has made a determination as to the gross value of sugar cane produced in Australia in the previous financial year, the Minister is deemed to have made the relevant determination that the amount is equal to that previous amount.

Subclause 7(8) of the principle Bill provides that the Minister may make rules which prescribe how the Minister is to determine the gross value of sugar cane.

Subclauses 7(9)–7(11) relate to matching payments and unmatched R&D excess. If the company spends more on activities that relate to R&D than twice what it receives as part of the Commonwealth R&D payment, than there is an unmatched R&D excess. This unmatched R&D excess can be carried forward into future years.

The term net matching payments is defined in subclause 7(12) as being the total of the matching payments made to a company during a financial year less the amount the company owes the Commonwealth as a result of the retention limit in subclause 7(4).

Clause 9 of the principle Bill provides that once there is a funding contract between the Commonwealth and a company (in accordance with clause 6), the Minister may declare that the company is the industry services body—this will be Sugar Research Australia Limited. 44

Although the Minister must table a copy of this declaration in Parliament within 15 days of it being made, subclause 9(4) of the principle Bill provides that the declaration is not a legislative instrument. That being the case, the declaration is not subject to disallowance by the Parliament.

42. The industry levy is referred to as the R&D amounts in the principle Bill. Clause 4 sets out what amounts comprise the R&D amounts.
43. The term sugar cane is defined in clause 4 of the principle Bill as being stalks (whether whole or not) of the sugar cane plant or stalks (whether whole or not) and leaves of the sugar cane plant.
The Minister may declare in writing that the company ceases to be an industry services body in a range of circumstance, including, for example, when the company requests it, where the Minister has reasonable grounds to believe that the company has contravened the Sugar Research and Development Services Act [when enacted], or when an administrator for the company is appointed. As with a declaration that a company is an industry services body, the Minister must table a declaration that a company ceases to be an industry services body in the Parliament within 15 days of the declaration being made.\footnote{\textbf{45} Clause 10 of the principle Bill.}

\textbf{Consequential Amendments Bill}

\textbf{Items 1–14} of Schedule 1 of the Consequential Amendments Bill as originally introduced were excised and inserted into a separate Bill, the Sugar Research and Development Services (Consequential Amendments—Excise) Bill 2013 in accordance with the requirements of the Constitution. The remaining items in the Consequential Amendments Bill have retained the original numbering.

\textbf{Items 15–28} of Schedule 1 of the Consequential Amendments Bill commence on 1 July 2013.

The \textit{Levies and Charges Collection Act} sets out the basic reporting and levy collection arrangements for all levies and charges on primary products.

\textbf{Item 15–17} of Schedule 1 of the Consequential Amendments Bill amend the \textit{Levies and Charges Collection Act}. \textbf{Item 15} amends the definition of \textit{producer} in subsection 4(1) of \textit{Levies and Charges Collection Act} to ensure that the owner of the sugar cane and a processing establishment which processes sugar cane it has grown itself are identified as \textit{producers} who are liable to pay the levy. This also ensures that the full levy is imposed on a processor if the processor is also the grower.

Existing section 15 of the \textit{Levies and Charges Collection Act} provides for a late payment penalty where a levy or charge remains unpaid after the time it was due. \textbf{Item 17} of Schedule 1 of the Consequential Amendments Bill inserts \textit{proposed subsection 15(5)} into the \textit{Levies and Charges Collection Act}.

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Collection Act to ensure that the processor will still be subject to penalty for late payments of their half of the levy.\(^{46}\)

The Levies and Charges Collection Regulations set out the collection details for levies and charges on a range of commodities. The details in relation to sugar cane are contained in Schedule 33 of the Levies and Charges Collection Regulations. Items 19–26 of Schedule 1 of the Bill amend various clauses of Schedule 33 of the Levies and Charges Collection Regulations to clarify that the levy is payable by a processor—consistent with the amended definition of that term in the Levies and Charges Collection Act.

Item 29 of Schedule 1 of the Consequential Amendments Bill commences on 1 October 2013. The item repeals the whole of the Sugar Research and Development Corporation Regulations 1990 as it is proposed that the SRDC will cease to exist from 1 July 2013.\(^{47}\)

Items 30–31 of Schedule 1 of the Consequential Amendments Bill commence on 1 March 2014.

Items 30–31 make additional amendments to Schedule 33 of the Levies and Charges Collection Regulations in relation to when the levy payment is due. Item 30 repeals and replaces clause 7 of Schedule 33 so that the levy can be paid in two instalments, with 60 per cent of the levy payable for a month due for payment on the last day that the return for the month must be lodged—that is, no later than 28 days after end of the month in which the transaction took place.\(^{48}\) The remaining 40 per cent is due on 28 February the following calendar year.

Items 1–15 of Schedule 2 of the Consequential Amendments Bill commence immediately after the commencement of section 2 of the Sugar Research and Development Services Act 2013.

Schedule 2 of the Consequential Amendments Bill contains transitional provisions. Items 2–3 deal with the wind-up of the SRDC operations and its final reporting requirements.

Items 4–8 of Schedule 2 of the Consequential Amendments Bill deal with transfers of property, money and liabilities from the SRDC to the new industry services body. In particular, subitem 4(1) requires the SRDC to pay 75 per cent of the money it holds in any bank account to the ISB, or near, the day a company is declared the ISB. Item 6 provides exemptions from stamp duty and other State or Territory taxes if the Minister certifies in writing that a specific matter is exempt. Item 7 provides that any instrument that applies to the SRDC prior to 1 October 2013 that meets any of the criteria specified in paragraph 7(1)(b) will continue to have the same effect on the ISB after 1 October 2013. Item 8 provides for dealing with assets that are transferred from the SRDC to the ISB.

Items 9–15 are miscellaneous provisions. Item 9 of Schedule 2 of the Consequential Amendments Bill relates to levy payments owed to the Commonwealth by the SRDC, which are transferred to the

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46. Item 18 inserts proposed regulation 3A into the Primary Industries Levies and Charges Collection Regulations 1991 to ensure that the processor is subject to the penalty for late payment of their half of the levy.


48. Clause 9 of Schedule 33 of the Primary Industries Levies and Charges Collection Regulations 1991 sets out when a return must be lodged.
new ISB. It provides for the Commonwealth to recover from the ISB any expenses related to the administration of the levy, owed by the SRDC before a company is declared the ISB.

**Consequential Amendments—Excise Bill**

Items 1–12 of the Consequential Amendments—Excise Bill amend Schedule 24 of *Excise Levies Act*, which relates to sugar cane.\(^{49}\)

**Item 6** repeals and replaces clauses 2 and 3 of Schedule 24. **Proposed clause 2** defines a processing establishment as premises which, during a season, processes 3,000 tonnes of sugar cane or more.\(^{50}\) **Proposed clause 3** imposes a levy on sugar cane in each of the following circumstances:

- sugar cane is sold to a processing establishment
- sugar cane is grown by a processing establishment and is processed by the establishment and
- sugar cane is processed by a processing establishment on behalf of the owner of the sugar cane.

Under **proposed subclause 3(2)**, sugar cane is taken to be sold to a processing establishment when the first payment for the sugar cane is made—whether the payments represents the whole or only part of the purchase price. **Item 7** of the Consequential Amendments—Excise Bill amends clause 4 of Schedule 24 to increase the rate of the levy from 15 cents per tonne to 70 cents per tonne or such other rate. **Item 9** of the Consequential Amendments—Excise Bill amends clause 5 of Schedule 24 so that the levy is paid equally by the producer and the grower. Relevant transitional provisions are set out in **item 12**.

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50. **Item 3** of the Consequential Amendments—Excise Bill inserts the definition of *season* into Schedule 24 of the *Excise Levies Act* being the period beginning on 1 March in a year and ending on 28 February in the following year.
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