Primary Industries Research and Development Amendment Bill 2017

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Law and Bills Digest Section

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Date introduced: 29 March 2017
House: House of Representatives
Portfolio: Agriculture and Water Resources
Commencement: The day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at August 2017.
Purpose of the Bill
The purpose of the Primary Industries Research and Development Amendment Bill 2017 (the Bill) is to amend the Primary Industries Research and Development Act 1989 (the Act) to allow Research and Development Corporations (RDCs) regulated by the Act to undertake marketing functions with funds raised by voluntary contributions such as gifts, grants or bequests. In doing so, it removes a current restriction which limits the funding of marketing activities to money raised by a statutory marketing levy.

Structure of the Bill
The Bill comprises one schedule with nine items: eight which amend the Act and one which clarifies the application of the amending provisions on and after commencement.

Background

Primary Industries Research and Development Act 1989
The Primary Industries Research and Development Act 1989 (known until 2013 as the Primary Industries and Energy Research and Development Act 1989) authorises and regulates four rural research and development corporations (RDCs): Fisheries, Cotton, Grains and Rural Industries. These statutory RDCs are considered government agencies and must comply with government regulation and policy in areas such as finance and administration. The Act stipulates the allowable functions of RDCs, reporting requirements such as the production of an annual report, and puts restrictions on the use of funds.

There are eleven other RDCs: the Australian Grape and Wine Authority, which has its own constitutive Act; and ten industry-owned RDCs governed by the Corporations Act 2001, their own enabling legislation which allows them to raise and disburse levies and other industry contributions, and subject to government oversight through Statutory Funding Agreements (SFAs). Once all RDCs were subject to the Act, but these ten have since become independent not-for-profit companies owned by industry members. The rationale behind the privatisation of the RDCs was to give industry members more say in the running of the organisations, and to extend the range of functions the organisations could undertake. All RDCs, both statutory and industry-owned, are members of the Council of Rural and Development Corporations which meets twice yearly.

Marketing function
Statutory RDCs have only been permitted to undertake marketing activities since 2013. The Rural Research and Development Legislation Amendment Act 2013 enlarged the scope of activities that statutory RDCs could undertake, including marketing. While all RDCs (other than Sugar Research Australia) are now permitted to undertake marketing activities, it is important to note that this is not obligatory.

The 2013 reforms were intended to match the competencies of statutory RDCs with industry-owned RDCs and allow them to promote the benefits of their respective products. The reforms implemented a 2011 Productivity Commission recommendation that statutory RDCs be permitted to additionally perform marketing functions. However, in adding the marketing function, the ability to raise funds was limited to a special marketing levy additional to the research and development levy. Section 33A of the Act also explicitly rules out the use of research and development funds for marketing purposes.

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1. Fisheries Research and Development Corporation (FRDC) website.
2. Cotton Research and Development Corporation website.
3. Grains Research and Development Corporation website.
4. Rural Industries Research and Development Corporation website.
8. Senate Standing Committee on Rural and Regional Affairs and Transport, Industry structures and systems governing the imposition of and disbursement of marketing and research and development (RD) levies in the agricultural sector, The Senate, Canberra, June 2015.
11. Productivity Commission (PC), Rural research and development corporations, Inquiry report, 52, PC, Canberra, 10 February 2011, recommendation 9.3.
In his second reading speech for the current Bill, Luke Hartsuyker has justified the reform on the grounds of efficiency and cost, noting ‘the process to impose a statutory levy is often time consuming and its collection can be expensive’. This aligns with the Government’s stated intention in the 2015 Agricultural Competitiveness White Paper to improve the efficiency of the research and development system. The inefficiency of a marketing levy was perhaps foreshadowed by the findings in the Productivity Commission’s 2011 report which identified the costs of establishing marketing levies. The report stated:

As many participants noted, introducing or changing a levy can be very expensive. The process typically requires significant advertising and mail out campaigns articulating the various arguments for the levy or change in its rate, as well as extensive consultation with the relevant industry constituencies. Engaging an electoral commission or other provider to conduct the ballot can also be costly — the most recent review of the wool levy (WoolPoll 2009) cost $680 000, while direct costs associated with the vote to retain a temporary increase in the beef marketing levy exceeded $340 000. As well as being expensive, preparing a levy proposal is time consuming. On average, it takes industries around twelve months to put together a proposal for a new or changed levy that complies with the Levy Principles. (References removed.)

A 2015 Senate Committee inquiry into the imposition of and disbursement of marketing and R&D levies raised similar concerns about the costs and inefficiencies relating to levies. While the recommendations do not relate to this Bill, it shows that industry has had concerns surrounding the levy system for some time.

This Bill may help avoid these inefficiencies by allowing RDCs to collect funds for marketing purposes directly from members. Nevertheless, the marketing levy remains an option available to these corporations if it is considered the better mechanism in the particular circumstances.

Committee consideration

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

The Scrutiny of Bills Committee had no comment on the Bill.

**Policy position of non-government parties/independents**

No policy position has been publically stated by a non-government party or any of the independents. The 2013 legislation which gave RDCs the ability to undertake marketing activities was introduced by the Labor Government before the 2013 election, and passed afterwards without controversy.

**Position of major interest groups**

The reform is supported by the Fisheries Research and Development Corporation (FRDC). The FRDC is an important stakeholder campaigning for the change. Luke Hartsuyker in the second reading speech cited the difficulties encountered by the FRDC and its industry bodies in meeting the ‘costs of establishing and collecting a statutory levy’. In its March 2017 ‘Stakeholder Briefing’ the FRDC stated that it:

> ... continues to work with the Department of Agriculture and Water Resources to amend the Primary Industry Research and Development Act to allow for voluntary collection of marketing funds. Discussions with the

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15. Senate Standing Committee on Rural and Regional Affairs and Transport, *Industry structures and systems governing the imposition of and disbursement of marketing and research and development (R&D) levies in the agricultural sector*, op. cit.


17. The *Rural Research and Development Legislation Amendment Bill 2013* was first introduced in the 43rd Parliament, and lapsed when the Parliament was prorogued in 2013. The Bill was reintroduced by the Abbott Government in November 2013 with only minor changes. For more information, see: R Dossor, *Rural Research and Development Legislation Amendment Bill 2013 [and] Primary Industries (Customs) Charges Amendment Bill 2013 [and] Primary Industries (Excise) Levies Amendment Bill 2013*, Bills digest, 13, 2013–14, Parliamentary Library, Canberra, 2013.

Recent statements by any of the other three statutory RDCs on this matter have not been identified.

**Financial implications**
The Explanatory Memorandum states that the Bill will have no financial implications for the Commonwealth.\(^{20}\)

**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 Bill’s 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 Bill is compatible.\(^{21}\)

**Parliamentary Joint Committee on Human Rights**
The Parliamentary Joint Committee on Human Rights considers that the Bill does not raise any human rights concerns.\(^{22}\)

**Key issues and provisions**

**Expenditure for marketing activities**
*Item 2* of the Bill inserts **proposed paragraph 11(eb)** into section 11 of the Act, which lists the functions of RDCs. Reflecting the new source of funding for marketing activities being established by this Bill, the proposed paragraph makes the use of such voluntary contributions for marketing activities a listed function of RDCs. *Items 3 and 4* insert references to **proposed paragraph 11(eb)** into sections 13 and 14 of the Act dealing with agreements for carrying out research and development activities and marketing activities. *Item 9* provides that the amendments made by items 3 and 4 will apply to agreements entered into on and after the day the Act commences.

Because of the high level of Government funding that RDCs receive, restrictions have been placed on their expenditure. This is to ensure that funding derived from statutory levies for research and development and matched funds from the Government are spent on core functions. Subsection 33(1) of the Act provides a list of the purposes for which an RDC’s money can be spent. *Item 7* inserts **proposed subsection 33(1A)** which specifies that such restrictions do not apply to funds received through voluntary contributions for marketing activities as provided for in the Bill.

Section 33A of the Act stipulates that only money received by RDCs as the marketing component of a statutory levy, and not money received as the research component of the levy or any matching Government payments can be spent on marketing activities. *Item 8* inserts a note at the end of this section stating that some voluntary contributions received by an RDC must be used for marketing activities. This reiterates the distinction made elsewhere in the Act between funds received for research and development purposes, and those raised or received for marketing.

The changes outlined in this amending Bill do not alter the ability of statutory RDCs to undertake marketing activities. Rather, the purpose and effect of this Bill is to give RDCs the additional ability to raise funds for marketing activities through voluntary contributions such as a gift, grant or bequest.

**Reporting requirements**
*Item 5* inserts a requirement for RDCs to detail in their annual report all information about any marketing activities they have undertaken in a given reporting period. This substituted provision remains consistent with its original purpose to make RDCs accountable for all their functions, including marketing. *Item 6* adds a clarifying note to the end of section 28, which sets out requirements for annual reports. The note makes clear that marketing activities must be accounted for in the annual report regardless of whether they are funded by levy or

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21. The Statement of Compatibility with Human Rights can be found at page 4 of the Explanatory Memorandum to the Bill.
voluntary contribution. **Item 9** provides that this amendment will apply to annual reports prepared on and after the day the Act commences.

**Definition of marketing activities**

**Item 1** expands the definition of ‘marketing activities’ in subsection 4(1) by adding the words ‘or an activity incidental to such marketing, advertising or promotion’. This widens the scope of the definition by explicitly including the gamut of activities required for effective marketing, such as consulting and planning. This change will likely have no material effect other than to remove possible ambiguity about what activities may be funded by the new mechanism introduced by the Bill. The change also makes the text more similar to that used in the definition of R&D activity and should improve the application and understanding of the Act because of the consistency it introduces.\(^\text{23}\)

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\(^{23}\) L Hartsuyker, *“Second reading speech: Primary Industries Research and Development Amendment Bill 2017”*, op. cit., p. 3564.