Primary Industries Levies and Charges Collection Amendment Bill 2018

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Contents

Purpose of the Bill ................................................................. 3
Background ........................................................................... 3
About RDCs ............................................................................ 3
Legislative basis for levies and charges .............................. 3
Intermediaries ...................................................................... 4
Committee consideration ..................................................... 4
  Senate Rural and Regional Affairs and Transport Legislation Committee ........................................ 4
  Senate Standing Committee for the Scrutiny of Bills .................................................................... 4
  Secretary to make legislative instruments ..................... 5
  Government response .......................................................... 5
  Secretary may issue non-statutory guidelines ............... 5
  Government response .......................................................... 5
Position of major interest groups ........................................ 6
Financial implications .......................................................... 6
Statement of Compatibility with Human Rights .............. 6
  Parliament Joint Committee on Human Rights ............. 7
Key issues and provisions ................................................... 7
  Secretary’s determination of intermediaries ............... 7
  Publication and use of levy payer information ............... 8
  Publication of statistical information ....................... 9
  Review of decisions .......................................................... 9
  Returns ............................................................................. 9
  Delegation of powers ........................................................ 10

Date introduced: 28 March 2018
House: House of Representatives
Portfolio: Agriculture and Water Resources
Commencement: On 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 2018.
Purpose of the Bill

The purpose of the Primary Industries Levies and Charges Collection Amendment Bill 2018 (the Bill) is to amend the Primary Industries Levies and Charges Collection Act 1991 (the Act) to:

1. allow the Secretary of the Department of Agriculture and Water Resources (the Secretary) to determine where levies and charges are collected in the supply chain by allowing the Secretary to determine certain acts which, when performed, would make a person liable to collect and report levies and charges
2. support the effective operation of levy registers by facilitating Research and Development Corporations (RDCs) to engage directly with the levy payers
3. allow for the collection of commodity specific information in addition to basic levy payer information in limited circumstances and
4. allow the Department of Agriculture and Water Resources (the Department) to publish statistics about levies and their collection to inform industry about the cost effectiveness of individual levies and the system generally.

Background

About RDCs

Australia’s RDCs are the main way the Australian government and primary producers co-invest in research and development for industry and community benefits.

There are currently 15 RDCs—five Commonwealth statutory bodies and 10 industry-owned companies (IOCs). All the RDCs manage research and development services, with most IOCs also providing other industry services, mainly marketing.

The RDCs are funded primarily by statutory research and development levies (or charges) on various commodities, with matching funding from the Australian Government. To expand Australia’s rural research and development efforts, the government matches expenditure on eligible research and development, generally up to 0.5 per cent of the determined industry gross value of production. RDCs are accountable to both industry and government.

Legislative basis for levies and charges

The Act establishes the legal framework for the collection of levies and charges on primary products. The Minister’s second reading speech noted:

Levies are collected by the Department of Agriculture and Water Resources and disbursed to 18 levy recipient bodies. These bodies invest in research and development, marketing, residue testing and biosecurity for the benefit of levied industries and the broader economy. By value of production, about 92 per cent of agricultural industries have chosen to have a levy. There are currently 113 levies collected across 77 commodities.

In 2015, the Senate Rural and Regional Affairs and Transport References Committee tabled a report titled Industry structures and systems governing the imposition and disbursement of marketing and research and development (R&D) levies in the agriculture sector. The report

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2. Department of Agriculture and Water Resources (DAWR), ‘Rural research and development corporations’, DAWR website.
3. Ibid.
recommended a number of changes to the Act and the collection of levies.\(^5\) This included that the Act be amended to ‘enable the collection and distribution of levy payer information which will allow the creation of levy payer databases for all agricultural industries that pay agricultural levies’.\(^6\) The Australian Government response to the report was supportive of a number of the Committee’s recommendations.\(^7\)

Subsequently, the *Primary Industries Levies and Charges Collection Amendment Act 2016* amended the Act to establish levy payer registers by allowing the Department to disclose levy payer information to the Council of Rural Research and Development Corporations (the Council) and the Australian Bureau of Statistics (ABS).\(^8\) The amendments allowed the RDCs which receive levy funds to identify and consult with levy payers.\(^9\) The purpose of those amendments was to give primary producers a greater say in how levies are used. In this regard, a pilot project was successfully completed in partnership with the Grains Research and Development Corporation.\(^10\)

**Intermediaries**

Currently, the Act refers to **intermediaries** who are required to pay levy or charge amounts on behalf of producers. The Explanatory Memorandum states that the Act needs to be updated to reflect ‘modern business practices’ including leviable commodities being traded on online marketplaces:

> The Bill will provide clarity for agricultural industries by allowing the Secretary of the Department of Agriculture and Water Resources (the Secretary) to determine certain acts which, when performed, would make a person liable to collect and report levies and charges. This will allow the efficient and effective collection of levies and charges at the optimal point in the supply chain, regardless of the arrangement used to facilitate the transaction. This will ensure the policy intention of the Act and industry needs continue to be met.\(^11\)

**Committee consideration**

**Senate Rural and Regional Affairs and Transport Legislation Committee**

The Bill was referred to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 13 June 2018. The Committee recommended that the Bill be passed. Details of the inquiry are at the [Committee website](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural/Agriculture/Reports_17-18/primaryindustriesleviesandchargescollectionamendmentbill2018).

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

The Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee) considered the Bill in *Scrutiny Digest 5 of 2018*.

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6. Ibid., p. 74.
7. B Joyce (Minister for Agriculture and Water Resources), *Australian Government response* to the Senate Rural and Regional Affairs and Transport References Committee, *Inquiry on industry structures and systems governing the imposition and disbursement of marketing and research and development (R&D) levies in the agriculture sector*, May 2016.
Secretary to make legislative instruments
The Scrutiny Committee raised concerns regarding the insertion of a proposed section 7A which would allow the Secretary to determine, by legislative instrument, additional acts that, when performed, would make a person liable to collect levies and charges. The Scrutiny Committee’s view was that ‘… significant matters, such as the types of acts in relation to which a person will be liable to collect a levy or charge, should be included in primary legislation unless a sound justification for the use of delegated legislation is provided’. 12

Further, it considered that ‘… if the secretary is to be granted the power to determine additional acts by legislative instrument, the committee considers it would be appropriate for consideration to be given to including specific consultation requirements on the face of the bill’. 13 The Scrutiny Committee sought Minister’s advice on these matters.

Government response
The Minister responded to the Scrutiny Committee stating:

Since the Act was introduced in 1991, levies and charges have been collected on behalf of Australian producers at the most efficient point in the supply chain ...

Australian producers continue to be liable for levy and charge under the Act, however, the intermediaries they now deal with were not contemplated in 1991. Those intermediaries may therefore not be clearly described in the legislation, or aware of the requirement to collect levy and submit levy returns on the Australian producer’s behalf. Without the proposed amendments to the Act, Australian producers will face additional red-tape, as they will have to submit their own returns. This will mean that as new business practices continue to emerge, collection and reporting of levies and charges will become less efficient and cost effective ...

Delegated legislation is necessary to allow the collection mechanisms, which are unique to each industry, to be agile to realise the benefits of increased efficiency and reduced cost recovery charges. 14

Secretary may issue non-statutory guidelines
The Scrutiny Committee also noted that proposed section 7A provides that the Minister ‘may’ issue guidelines (which must be ‘put’ on the Department’s website) to which the Secretary must have regard in exercising the power to determine intermediaries. It sought the Minister’s advice as to:

• why the bill does not positively require the Minister to issue guidelines with respect to the secretary’s power and
• why it is considered appropriate to state that these guidelines will not be legislative instruments (and therefore not subject to any Parliamentary scrutiny). 15

Government response
According to the Minister, the guidelines:

... should not have legislative character because the material in the guidelines will not determine or alter the content of the law or create or affect a privilege, interest or right. The guidelines would be specific

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13. Ibid., p. 45.
15. Senate Standing Committee for the Scrutiny of Bills, Scrutiny digest, 5, op. cit., p. 46.
operational guidance material, designed to assist the Secretary to make a legislative instrument that determines which acts are those of intermediaries.  

**Position of major interest groups**

The submissions made to the Senate inquiry into the Bill indicate major interest groups are largely supportive of the proposed amendments. For example, the Council stated:

The Council of Rural RDCs supports the intent behind this Bill to improve the collection and reporting and agricultural levies and charges, ensure consistency between the legislation and industry changes, and the effective operation of levy payer registers …

The Council of Rural RDCs supports the intent behind this Bill to improve the collection and reporting and agricultural levies and charges, ensure consistency between the legislation and industry changes, and the effective operation of levy payer registers …

We understand that over time, as the dataset become more robust and comprehensive, that there may be some potential for the information collected to be used for statistical analysis to give further insights into rural industries in Australia. This would be a positive outcome, and one which is allowed under the legislation.  

The National Farmers Federation also expressed its support for the Bill on the grounds that ‘it builds further transparency into the levy system and presents an opportunity for representative organisations to more effectively engage and consult with the levy payers they represent’.  

Of concern to the Council, however, was the potential burden on RDCs in complying with privacy requirements including for the potential disclosure of information from a register to third parties. It noted that there was ‘limited advice to date from the Department regarding third party data release’.  

**Financial implications**

The Explanatory Memorandum states that the Bill will have no financial impact on the Australian Government Budget.  

**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.  

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20. Explanatory Memorandum, op. cit., p. 3.  
21. The Statement of Compatibility with Human Rights can be found at page 11 of the Explanatory Memorandum to the Bill.
**Parliament Joint Committee on Human Rights**
The Parliament Joint Committee on Human Rights considered the Bill did not raise human rights concerns.  

**Key issues and provisions**

**Secretary’s determination of intermediaries**
Currently section 7 of the Act sets out the circumstances in which an intermediary is liable to pay an amount of levy or charge.

The Bill does not amend the formal definition of intermediary in section 4 of the Act. Instead, item 5 inserts proposed section 7A so that the Secretary may, by legislative instrument, determine certain acts ‘which, when performed, would make a person liable to collect and report levies’. The legislative instruments, made under proposed subsection 7A(1), will be subject to disallowance and sunsetting in accordance with the *Legislation Act 2003*. The Explanatory Memorandum states:

> Section 7 of the Act does not describe all modern methods for buying, selling, importing or exporting agricultural produce as being relevant acts of intermediaries. This item will ensure that these acts can be covered by the legislative framework and ensure levies and charges can continue to be collected at the most efficient point in the supply chain.

**Proposed subsection 7A(3)** of the Act provides that the Minister may, by written instrument, issue guidelines for the purposes of the section. The Secretary, in determining certain acts of intermediaries under proposed section 7A, must have regard to any guidelines issued by the Minister. The guidelines are not legislative instruments and so are not disallowable or subject to sunsetting. According to the Explanatory Memorandum, the guidelines will ‘include provisions that ensure that only relevant organisations’ are captured in determinations. In addition, the guidelines will include ‘considerations such as Australia’s obligations as a Member of the World Trade Organization relating to importation and exportation’.

The guidelines must be put on the Department’s website. That requirement is intended ‘to provide transparency and accountability for participants in the levy and charge system’.

Section 7 of the Act deals with the liability of intermediaries. Items 1 and 2 insert proposed paragraphs 7(1)(ca) and 7(2)(ba) of the Act respectively to insert references to ‘a person who does an act, determined in an instrument under subsection 7A(1)...’. Existing subsection 7(1) relates to intermediaries that buy or sell products on behalf of a producer and those which buy products

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**Notes**


23. D Littleproud, ‘Second reading speech: Primary Industries Levies and Charges Collection Amendment Bill 2018’, op. cit. Note that item 17 of the Bill inserts a reference to section 7A into subsection 29(1) of the Act so that the Secretary cannot delegate this power to a person who holds an office in the Department.

24. Section 42 of the *Legislation Act* allows for the disallowance of legislative instruments by Parliament. A legislative instrument can be subject to disallowance if either a Senator or Member of the House of Representatives moves a motion of disallowance within 15 sitting days of the day that the legislative instrument is tabled. The motion to disallow must be resolved or withdrawn within a further 15 sitting days of the day that the notice of motion is given. However, it should be noted that if there is no notice of motion to disallow a legislative instrument, then there is no debate about its contents.


29. Ibid., p. 6.


31. Ibid., p. 6.
from a producer other than through a buying or selling agent. Subsection 7(2) relates to processing intermediaries. The amendments operate to allow the Secretary to determine that additional acts are the acts of those intermediaries in order to better secure the payment of levy.

Item 3 of the Bill repeals and replaces subsections 7(3) and 7(3A) of the Act which deal with the liability of intermediaries who are exporting agents and importing agents respectively. Under the Bill, the relevant subsections incorporate references to the ‘a person who does an act, determined in an instrument under subsection 7A(1)...’ and ‘have been redrafted for consistency’ with subsections 7(1) and 7(2).  

Currently, subsection 7(6) of the Act provides a list of intermediaries who are not liable for a levy or charge to the extent it has already been paid. Item 4 of the Bill inserts proposed paragraph 7(6)(f) into the Act so that the Secretary may determine that a person who does an act determined in an instrument made under proposed subsection 7A(1) is not liable to pay a levy or charge.

Publication and use of levy payer information

Currently sections 27–27B of the Act set out the legal framework for the giving of levy payer information to RDCs and the use of that information as follows:

• an authorised person is empowered to provide levy payer contact information, and details of the levy paid or payable, to an eligible recipient

• an eligible recipient is an RDC or the Australian Bureau of Statistics (ABS)

• the information provided to the eligible recipient can be used for, amongst other things:
  – the development and maintenance of levy payer or charge payer registers
  – making public any statistical information
  – allocating voting rights for industry polls more efficiently and accurately and
  – any functions required of the recipient under Commonwealth laws or under a funding agreement between the RDC and the Commonwealth.

Importantly, the Act limits secondary disclosure of the information included in a levy payer register, except in limited circumstances and where expressly permitted by the Secretary in writing.

Items 6, 7 and 9 of the Bill make minor changes to the heading and text of section 27 of the Act to ensure consistency in terminology so that references to publishing of information become references to the giving of information.

Item 8 of the Bill omits the ‘or’ between paragraphs 27(1)(a) and (b) to enable an authorised person to give both sets of information prescribed by those paragraphs rather than one or the other.

Item 14 of the Bill inserts proposed subsections 27B(4A)–(4D) which aim to further protect the privacy and security of levy payer information. In particular, proposed subsection 27B(4A) provides that the Secretary may make a secondary disclosure approval subject to conditions.

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32. Explanatory Memorandum, op. cit., p. 5.
33. An authorised person is a person appointed by the Secretary of the Department of Agriculture and Water Resources under section 26 of the Act.
34. Primary Industries Levies and Charges Collection Act, subsection 27A(1).
35. Primary Industries Levies and Charges Collection Act, subsection 27A(2).
36. Primary Industries Levies and Charges Collection Act, subsection 27B(1).
37. Primary Industries Levies and Charges Collection Act, subsection 27B(4).
that case, **proposed subsection 27B(4B)** permits the Secretary to revoke an approval if he, or she, is satisfied that the holder of the approval has breached a condition. Where the Secretary revokes an approval, **proposed subsection 27B(4C)** requires the Secretary to give notice of the revocation to the holder.  

**Publication of statistical information**

**Item 15** of the Bill inserts **proposed section 27C** to clarify that an authorised person may publish statistics that relate to levies or charges received or receivable by the Commonwealth. According to the Explanatory Memorandum:

... [d]ata is anonymised and individual levy payers are not identified in statistical publications

The publishing of this information to industry stakeholders, representative organisations, levy and charge payers and the Australian taxpayer will facilitate an assessment of the cost-benefit aspects of the levy and charge system, and provide an overview of the effectiveness, use and scale of the system.  

**Review of decisions**

Existing subsection 28(1) of the Act provides that a person affected by a **relevant decision** who is dissatisfied with the decision may, within 28 days after the day on which the decision first comes to the notice of the person (or within such further period as the Minister allows), request the Minister to reconsider the decision. Subsection 28(9) of the Act lists those decisions which are **relevant decisions**.

**Item 16** of the Bill inserts **proposed paragraphs 28(9)(b), (c) and (ca)** into the Act to expand the existing list to include decisions made by the Secretary in relation to giving approvals, specifying conditions in an approval and revoking an approval under subsection 27B(4). This applies the reconsideration and review process in section 28 to those decisions by the Secretary.

**Returns**

Section 30 of the Act contains Regulation making powers. In particular subsection 30(2) provides for the making of Regulations:

- requiring producers of **collection products**, 40 intermediaries in relation to such producers and any other persons prescribed, to **give returns** or information for the purposes of the Act 41
- requiring persons who produce prescribed goods or provide prescribed services, and any other persons prescribed in relation to such goods or services, to **give returns** or information for the purposes of the Act. 42

**Item 20** of the Bill inserts **proposed section 32** into the Act. **Proposed subsection 32(1)** provides that, where a return is required to be lodged under the Regulations in relation to a collection product, the return must contain details relating to the production or processing of that collection product that have been determined in an instrument under **proposed subsection 32(3)**. **Proposed subsection 32(3)** empowers the Secretary to make a legislative instrument, which determines the additional information to be included in a levy or charge return. **Proposed subsection 32(2)** clarifies that the additional details required in a return under the Secretary’s determination are in addition to the information already required to be included in a return under the Regulations.

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39. Ibid.
40. Under section 4 of the *Primary Industries Levies and Charges Collection Act*, **collection products** means products on which levy or charge is imposed.
42. *Primary Industries Levies and Charges Collection Act*, paragraph 30(2)(c).
The Explanatory Memorandum elaborates on the additional details which may be required in returns:

In some limited cases, additional commodity-specific information may be required to be collected in a return lodged under the Regulations for the purposes of levy payer registers. For example, this could include information on the area of production, inputs or processing methods used in relation to a particular commodity.\(^{43}\)

**Delegation of powers**

Subsection 29(1) allows the Secretary to delegate his, or her, powers under the Act to other departmental officers except for certain specific sections.

**Item 18** of the Bill inserts a reference to **proposed section 32** (discussed above) to the list of powers in subsection 29(1) which the Secretary cannot delegate.

Existing subsection 29(1A) of the Act allows the Secretary to delegate his or her power under subsection 27B(4) to senior departmental officers. **Item 19** extends this power to delegate to the whole of section 27B. The Explanatory Memorandum states:

This will allow the Secretary to delegate the powers introduced at Item 14 to impose conditions on an approval and to revoke that approval if conditions are breached. It maintains the Secretary’s ability to delegate the existing power in the Act to give an approval to an eligible recipient to disclose levy payer information to a third party. This further supports the efficient operation of levy payer registers.\(^{44}\)

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\(^{43}\) Ibid., p. 9.

\(^{44}\) Ibid., p. 9.