THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Sugar Research and Development Services
(Consequential Amendments—Excise) Bill 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Joseph Ludwig)
SUGAR RESEARCH AND DEVELOPMENT SERVICES (CONSEQUENTIAL AMENDMENTS—EXCISE) BILL 2013

OUTLINE

This bill, the Sugar Research and Development Services Bill 2013 and the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013 provide the mechanism to implement key elements of reforms to sugar research and development (R&D) arrangements.

Under the reforms, the Sugar Research and Development Corporation (SRDC) and BSES Limited will be wound-up and their assets and R&D functions, along with the research coordination activities of Sugar Research Limited, transferred to the industry owned company, Sugar Research Australia Limited (SRA). SRA is a company limited by guarantee operating under the Corporations Act 2001.

The industry owned company will be funded by a statutory levy of 70 cents per tonne of sugar cane that is processed, or sold for processing, to be paid equally (35 cents per tonne each) by growing and milling businesses. The new levy will replace the existing sugar R&D statutory levy of 14 cents per tonne and incorporate existing voluntary contributions that fund the industry owned BSES Limited.

The Sugar Research and Development Services Bill 2013, which comes into effect the day after it receives Royal Assent, provides the Minister for Agriculture, Fisheries and Forestry with the power to enter into a funding contract with an eligible company to enable it to receive and administer levies collected by the Commonwealth for R&D. It will also allow it to receive the Commonwealth’s matching funding for eligible R&D expenditure. Once the company has entered into the contract, and the minister is satisfied that the company will comply with its contractual and statutory obligations, the minister can declare the company to be the industry services body.

The Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013 makes consequential amendments to the Primary Industries Levies and Charges Collection Act 1991 and a number of regulations to ensure the new arrangements operate as intended in respect of the collection of the levy. It also covers matters arising from the transition to a new industry services body such as the transfer of assets and liabilities from SRDC to the industry services body.

The R&D activities of SRDC, and 75 per cent of its assets, will be transferred to the industry services body on the date it is declared as such. The remaining assets will be held by SRDC to cover wind-up costs until it is abolished on 30 September 2013. Any remaining SRDC assets and liabilities will be transferred to the industry services body on 1 October 2013. The last amendments to come into effect relate to the introduction of an instalment system for payment of the levy. This will occur on 1 March 2014 so that all levy payers are treated equitably during the current harvesting season.
This bill amends the imposition of the levy to ensure that all future uses of processed sugar cane will be captured by the levy, and the possibility of avoiding payment of the levy will be eliminated. It also increases the levy rate.

To implement these changes, the bill provides for consequential amendments to the Primary Industries (Excise) Levies Act 1999, and the Primary Industries (Excise) Levies Regulations 1999.

The amendments will start taking effect from 1 July 2013 so that industry will be provided with certainty about the imposition of the levy and when the increase to the levy rate will come into effect.

FINANCIAL IMPACT STATEMENT

There will be a small financial impact with Commonwealth matching contributions to R&D expected to increase because of the higher levy rate. The financial impact over the financial years to 2016/17 is estimated at $3.6 million.

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Industry owned assets, including proceeds of the statutory levy held by SRDC, will be transferred to the new industry services body.
HUMAN RIGHTS STATEMENT

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Sugar Research and Development Services (Consequential Amendments—Excise) Bill 2013

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

This Bill, the Sugar Research and Development Services Bill 2013 and the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013 provide the mechanism to reform sugar research and development (R&D) arrangements.

Under the reforms, the Sugar Research and Development Corporation (SRDC) and BSES Limited will be wound-up and their R&D functions, along with the research coordination activities of Sugar Research Limited, transferred to the industry owned company, Sugar Research Australia Limited (SRA). SRA is a company limited by guarantee operating under the Corporations Act 2001.

This bill amends the imposition of the sugar cane levy to ensure that all future uses of processed sugar cane will be captured by the levy, and the possibility of avoiding payment of the levy will be eliminated. It also increases the levy rate from 14 cents per tonne to 70 cents per tonne.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

Minister for Agriculture, Fisheries and Forestry,
Senator the Hon. Joseph Ludwig
NOTES ON CLAUSES

Section 1: Short title

This section provides for the Act to be called the Sugar Research and Development Services (Consequential Amendments—Excise) Act 2013.

Section 2: Commencement

This section provides that the bill commences upon Royal Assent with the following exception:
- Schedule 1 of the Act will come into effect on 1 July 2013. This provides industry with certainty about the imposition of the levy and when the increase to the levy rate will come into effect.

Section 3: Schedules(s)

This section is the formal enabling provision for the Schedule to the bill, providing that each Act specified in a Schedule is amended in accordance with the applicable items of the Schedule. In this bill, the Act being amended is the Primary Industries (Excise) Levies Act 1999.

This section also provides for each set of regulations specified in a Schedule to be amended or repealed in accordance with the applicable items of the Schedule. The amendment of any regulation does not prevent it (as amended) from being amended or repealed by the Governor-General. In this bill, the regulations being amended are the Primary Industries (Excise) Levies Regulations 1999.

Schedule 1 – Consequential amendments

Primary Industries (Excise) Levies Act 1999

Item 1: Clause 1 of Schedule 24 (definition of accepted sugar cane)

This item repeals the definition of ‘accepted sugar cane’ in Clause 1 of Schedule 24 to the Primary Industries (Excise) Levies Act 1999 (the Excise Levies Act). This repeal is necessary as ‘accepted sugar cane’ does not cover all potential scenarios under which the levy will be imposed and retaining it may allow for avoidance of the levy.
Item 2: Clause 1 of Schedule 24 (definition of processing)

This item repeals the definition of ‘processing’ in Clause 1 of Schedule 24 to the Excise Levies Act. This definition is no longer relevant in this Schedule.

Item 3: Clause 1 of Schedule 24

This item provides that the new definition of a ‘season’ in the Excise Levies Act means the period from 1 March to 28 February in the following year. This is relevant for the definition of processing establishment in Clause 2 of Schedule 24 to the Excise Levies Act, as amended by this bill.

Item 4: Clause 1 of Schedule 24 (definition of sugar cane)

This item provides for the definition of ‘sugar cane’ in the Excise Levies Act to include sugar cane stalks or sugar cane stalks and leaves. The levy would not be imposed on sugar cane leaves purchased or processed on their own.

Item 5: Clause 1 of Schedule 24 (definition of sugar mill)

This item provides for the definition of ‘sugar mill’ to be repealed from the Excise Levies Act, as this has been replaced by the concept of a ‘processing establishment’.

Item 6: Clauses 2 and 3 of Schedule 24

This item repeals Clauses 2 and 3 of Schedule 24 to the Excise Levies Act and substitutes new clauses.

Clause 2 will be repealed as it provides for a definition of ‘grower’ which will no longer be used in this Schedule. The new Clause 2, as substituted by this bill, provides that the definition of a ‘processing establishment’ is a premises in Australia that processes 3 000 tonnes or more of sugar cane during a season. ‘Season’ is defined in Clause 1 of Schedule 24 to the Excise Levies Act, as amended by this bill. This threshold was determined by industry because a facility with processing capacity lower than 3 000 tonnes would be in the developmental stages or a small experimental facility and therefore should not be subject to the levy.

The new Clause 3 provides for the imposition of the levy and details three specific circumstances in which levy will be imposed. This new imposition clause will ensure that all future uses of processed sugar cane will be captured by the levy and eliminates the possibility of avoiding payment of the levy. The three circumstances in which levy will be imposed are described below.

The first circumstance is when sugar cane is sold to a processing establishment. This is the standard practice in the industry and will capture the majority of sugar cane. Subsection (2) of the clause provides that sugar cane is taken to be sold when the first payment (whether whole or part of the purchase price) for the sugar cane is made.

The second circumstance is when sugar cane is grown and processed by a processing establishment. This will capture those situations where there is no sale because the
processing establishment is both the producer and the processor (see also the definition of producer in paragraph 4(1)(hc) of the *Primary Industries Levies and Charges Collection Act 1991*, as inserted by the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013).

The third circumstance is where the sugar cane is processed by a processing establishment on behalf of the owner of the sugar cane. This will capture those situations where there is a contract in place between the owner and the processing establishment but no actual ‘sale’. In this circumstance, the owner would be considered the producer (see the definition of producer in paragraph 4(1)(hc) of the *Primary Industries Levies and Charges Collection Act 1991*, as inserted by the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013) but the processing establishment would still be the processor and would therefore be liable for 50 per cent of the levy, (see the definition of processor in Clause 4 of Schedule 33 to the Primary Industries Levies and Charges Collection Regulations 1991, as amended by the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013).

**Item 7: Clause 4 of Schedule 24**

This item provides for Clause 4 of Schedule 24 to the Excise Levies Act to be amended so that there is no maximum levy rate. This is consistent with the government’s Rural R&D Policy Statement released on 23 July 2012.

It also sets the new levy rate at 70 cents per tonne of sugar cane that is processed, or sold for processing, but allows for this rate to be changed by regulations. The regulations can set a rate either higher or lower than 70 cents per tonne.

**Item 8: Clause 5 of Schedule 24**

This item provides for the first reference to the term ‘accepted’ under this section of the Excise Levies Act to be removed. This is consistent with the removal of the definition of ‘accepted sugar cane’, as outlined in Schedule 1, Item 1 of this bill.

**Item 9: Paragraph 5(a) of Schedule 24**

This item provides that the 50/50 split of the levy between the producer and the processor cannot be changed by regulations. This reflects industry’s desire to make this split permanent and to ensure that all beneficiaries of research and development contribute equally to its funding.

This item also removes the ability for the ‘producer’ to be prescribed for the purposes of this paragraph. This is because the definition of producer will no longer appear in the regulations but in paragraph 4(1)(hc) of the *Primary Industries Levies and Charges Collection Act 1991*, as inserted by the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013.
Item 10: Paragraph 5(b) of Schedule 24

This item provides for the second reference to the term ‘accepted’ under this section of the Excise Levies Act to be removed. This is consistent with the removal of the definition of ‘accepted sugar cane’ as outlined in Schedule 1, Item 2 of this bill.

Item 11: Clauses 6 and 7 of Schedule 24

This item substitutes a new Clause 6 into Schedule 24 to the Excise Levies Act. This is a consequential amendment caused by the removal of the ability to change the 50/50 levy payment split between the producer and processor. This clause previously required the minister to consult with these bodies if a change to the split was proposed.

Clause 7 of Schedule 24 is repealed as it deals with a transitional matter that was only relevant when the clause commenced.

Item 12: Transitional provision—period of season for first year

This item provides that for the definition of ‘processing establishment’ in Clause 2 of Schedule 24 to the Excise Levies Act (as inserted by this bill), the period beginning on 1 July 2013 and ending on 28 February 2014 is taken to be a season.

This is to ensure that the new definition of ‘processing establishment’ (a premise that must process more than 3 000 tonnes of sugar cane, as outlined in Clause 2 of Schedule 24), only takes effect from the start of the new arrangements. This means that any sugar cane processed or sold before 1 July 2013 will not be counted in the calculation of the 3 000 tonnes limit. This should have limited or no practical effect as the majority of sugar cane is processed after 1 July 2013.

**Primary Industries (Excise) Levies Regulations 1999**

Item 13: Clause 2 of Schedule 24

This item repeals Clause 2 of Schedule 24 to the Primary Industries (Excise) Levies Regulations 1999 which sets the levy rate at 14 cents per tonne. The new levy rate will be 70 cents per tonne and will appear in Clause 4 of Schedule 24 to the Excise Levies Act, as amended by this bill.

Item 14: Part 6 of Schedule 27

This item repeals Part 6 of Schedule 27 to the Primary Industries (Excise) Levies Regulations 1999. This part is no longer required as it relates to a levy for retail-packaged sugar which ceased to have effect from 30 November 2006.