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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRIMARY INDUSTRIES (CUSTOMS) CHARGES AMENDMENT BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Joe Ludwig)
GENERAL OUTLINE

The Primary Industries (Customs) Charges Amendment Bill 2013 will make amendments to implement the government’s rural research and development (R&D) policy, along with two companion Bills - the Rural Research and Development Legislation Amendment Bill 2013 and the Primary Industries (Excise) Levies Amendment Bill 2013.

The Primary Industries (Customs) Charges Act 1999 (the Act) authorises the imposition of primary industries charges that are duties of customs. Charges are generally imposed at the request of an industry, to allow the relevant primary producers to manage their own investment in R&D and marketing. Each R&D and marketing charge is attached to one of the 15 rural research and development corporations (RDCs). The Act sets maximum rates, and provides for operative rates to be set through regulations (the Primary Industries (Customs) Charges Regulations 2000).

The Bill will amend the Act to remove product specific maximum rates for R&D charges and marketing charges. Charges are imposed at the request of the industry that pays the charge, and changing rates can be difficult, slow and expensive. The process involves significant industry consultation on the rationale for change, a vote of charge payers, and preparing a proposal for the government. The government must then approve the proposal and make the necessary legislative change to impose the new rate. On average, it takes about twelve months to prepare a new rate proposal, and the cost can be several hundreds of thousands of dollars. The process for proposing new or amended primary industries levies and charges is described in the Levy Principles and Guidelines published by the Department of Agriculture, Fisheries and Forestry.

Under the current process, if the government approves a change to a charge rate, the relevant regulations must be amended to impose the new rate. If the proposed charge is above the maximum rate, the Act must also be amended. As amending primary legislation is a lengthy process, the new rate may not come into effect until years after the industry has voted in favour of the change. The delay reduces the responsiveness of the industry and limits the ability of the RDC to provide the level of service needed by the industry.

The amendments in this Bill will mean that the Act no longer needs to be amended to change those rates. Changes to the operative charge rate will still require amendment of regulations.

Most schedules of the Act contain a requirement for the Minister to consult with industry bodies and take into account their recommendations when specifying operative charge rates in regulations. The Bill will strengthen these requirements. To safeguard against the arbitrary imposition of charges, each schedule is amended to restrict the regulations from setting an R&D or marketing charge rate higher than the rate recommended by the relevant industry body. In effect, the maximum charge rate that can be imposed will be the rate requested by the charge payers themselves, ensuring that the amounts charged are not increased in an excessive or undue manner.

There are other examples of Acts which allow levy and charge rates to be set in regulations, where this is appropriate in the circumstances and where the process for setting the rate is
transparent. For example, the *Fishing Levy Act 1991* imposes levies without specifying maximum levy rates, and allows the levy rates to be prescribed in regulations. This provides the flexibility for the levy rates to be changed annually and allows the levy rates to be responsive to changes in management costs, changes in priorities that alter the amount of resources required, and adjustments for prior year over or under collection.

Similarly the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* imposes levies on holders of offshore petroleum titles without specifying maximum levy rates and allows levy rates to be prescribed in regulations. The levies are imposed to recover the costs of the regulatory activities of the National Offshore Petroleum Safety Authority. Setting the levy rates in the regulations allows the rate to be varied as needed to ensure that sufficient funds are raised to meet the costs and expenses of the Authority.

The Department of Agriculture, Fisheries and Forestry consulted relevant Australian Government agencies and industry stakeholders on the policy changes. In 2011 the Productivity Commission and the Rural Research and Development Council each reviewed the rural research, development and extension system in Australia. Around the country, meetings were held with industry representative bodies, RDCs and other stakeholders and many submissions were received in response to the two reviews. The department has continued to consult with RDCs and industry representative bodies throughout the process leading to these legislative amendments.

The Bill includes several technical amendments to remove redundant provisions, and to improve consistency between schedules where possible.

**FINANCIAL IMPACT STATEMENT**

The proposed amendments have no financial impact on the Australian Government.
Statement of Compatibility with Human Rights

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

Primary Industries (Customs) Charges Amendment 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

Context

This Bill is one of a suite of three designed to improve the accountability, effectiveness and efficiency of rural research and development corporations (RDCs). The accompanying bills are the Rural Research and Development Legislation Amendment Bill 2013 and the Primary Industries (Excise) Levies Amendment Bill 2013.

Rural industries fund RDCs by requesting government to impose a charge or charges to invest in research and development. There are two types of RDCs, statutory and industry-owned. Statutory RDCs receive charges and levies from primary producers to fund research, development and extension for the benefit of the industry, and for the benefit of the Australian community generally. Industry-owned RDCs do the same and can also carry out marketing functions, if a marketing charge or levy is in place.

The Commonwealth provides matching funding for research and development charges up to a cap. The cap is set by the Primary Industries and Energy Research and Development Act 1989 for statutory RDCs and the relevant ‘industry service provision act’ for each industry-owned RDC. No matching funding is provided for marketing charges.

This Bill

The Bill provides for the following changes to the existing system:

1. Product-specific maximum charges will be removed from charges attached to RDCs. An established process for increasing charge and levy rates has been in place for some years, which is driven by industry, rather than by government. The process requires industry consensus and an equitable charge or levy burden before it can be imposed.

2. The Bill standardises and clarifies the industry bodies which must be consulted by the Minister prior to setting new or changed rates. If an industry body has not been prescribed, the Bill sets out how the relevant industry should be consulted.
3. To safeguard against the arbitrary imposition of charges, the charge cannot exceed the industry body’s recommended rate.

**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.

Joe Ludwig, Minister for Agriculture, Fisheries and Forestry
PRIMARY INDUSTRIES (CUSTOMS) CHARGES AMENDMENT BILL 2013

NOTES ON ITEMS

Clause 1: Short Title

Clause 1 is a formal provision specifying that the Act may be cited as the Primary Industries (Customs) Charges Amendment Act 2013.

Clause 2: Commencement

Clause 2 provides for the commencement of the Act.

Clauses 1 to 3 of the Act will commence upon the Royal Assent.

Clause 3: Schedule(s)

Clause 3 provides that each Act specified in a schedule to the Act is amended or repealed as set out in the applicable items of the schedule concerned and that any other item in a schedule to the Act has effect according to its terms.

Schedule 1—Amendments

Primary Industries (Customs) Charges Act 1999

Item 1 (Section 3 – Simplified outline)

This item makes a minor amendment to the text in the simplified outline to reflect the fact that, as a result of the amendments made by Items 48 to 50 of Schedule 1 to this Bill, the amended Schedule 14 of the Act deals with the maximum charge rate that can be imposed by regulations, but does not set out the maximum rate for all levies imposed under that Schedule.

Item 2 (Paragraph 2(a) of Schedule 1 – Buffaloes)

This item removes the maximum charge rate for the R&D charge on Buffaloes. The operative charge rate, set out in Schedule 1 of the Act, remains unchanged.

Item 3 (Clause 2 of Schedule 1 (note 1) – Buffaloes)

This item removes the words “and Energy” from Note 1 of clause 2. This reflects the expected change in title of the Primary Industries and Energy Research and Development Act 1989, and is consequential on the passage of the Rural Research and Development Legislation Amendment Bill 2013.
Item 4  (After clause 3 of Schedule 1 – Buffaloes)

This item inserts a new clause to require the Minister to take into account recommendations from a declared body on the rate of the R&D charge imposed on buffaloes. The Minister may declare, in the Gazette, a body whose recommendation must be taken into account.

In the absence of a declared industry body, the Minister must take into account recommendations from the Rural Industries Research and Development Corporation (which is the R&D Corporation to which the R&D charge is attached) on the rate of the R&D charge. Before the Rural Industries Research and Development Corporation makes a recommendation to the Minister, it must consult with charge payers on the proposed charge rate.

Subclause 5 prevents the regulations from prescribing a charge rate for the R&D charge that is higher than the rate recommended by a declared body, or in the absence of a declared body, the Rural Industries Research and Development Corporation.

Item 5  (Paragraph 3(1)(a) of Schedule 2 – Cattle (exporters))

This item removes the maximum charge rate for the marketing charge on exported cattle (paid by the exporter). The operative charge rate, set in Schedule 2 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 6  (Paragraph 3(1)(b) of Schedule 2 – Cattle (exporters))

This item removes the maximum charge rate for the R&D charge on exported cattle (paid by the exporter). The operative charge rate, set in Schedule 2 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 7  (At the end of clause 5 of Schedule 2 – Cattle (exporters))

This item inserts additional subclauses to require the Minister, in the absence of a declared industry body, to take into account recommendations from the live-stock export marketing body and the live-stock export research body on the rate of the marketing and R&D charges (respectively) on exported cattle. Before these bodies make a recommendation to the Minister, they must consult with charge payers on the proposed charge rate. At the present time, the Australian Livestock Export Corporation Limited is both the live-stock export marketing and research body.

Subclause 5 prevents the regulations from prescribing a charge rate for marketing and R&D that is higher than the rate recommended by a declared body, or in the absence of a declared body, the live-stock export marketing body or the live-stock export research body.

Item 8  (Paragraph 3(1)(a) of Schedule 3 – Cattle (producers))

This item removes the maximum charge rate for the marketing charge on the export of cattle (paid by the producer). The operative charge rate, set in Schedule 3 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.
Item 9  (Paragraph 3(1)(b) of Schedule 3 – Cattle (producers))

This item removes the maximum charge rate for the R&D charge on the export of cattle (paid by the producer). The operative charge rate, set in Schedule 3 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 10  (Paragraph 3(2)(a) of Schedule 3 – Cattle (producers))

This item removes the maximum charge rate for the marketing charge on bobby calves. The operative charge rate, set in Schedule 3 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 11  (Paragraph 3(2)(b) of Schedule 3 – Cattle (producers))

This item removes the maximum charge rate for the R&D charge on bobby calves. The operative charge rate, set in Schedule 3 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 12  (At the end of clause 5 of Schedule 3 – Cattle (producers))

This item inserts additional subclauses to require the Minister, in the absence of a declared industry body, to take into account recommendations from the industry marketing body and the industry research body on the rate of the marketing and R&D charges (respectively) on exported cattle. Before these bodies make a recommendation to the Minister, they must consult with charge payers on the proposed charge rate. At the present time, Meat and Livestock Australia is both the industry marketing and research body.

Subclause 5 prevents the regulations from prescribing a charge rate for the marketing and R&D charges that is higher than the rate recommended by a declared body, or in the absence of a declared body, the industry marketing body or the industry research body.

Item 13  (Subclause 3(1) of Schedule 5 – Deer)

Subclause 3(1) of Schedule 5 is re-numbered.

Item 14  (Subclause 3(2) of Schedule 5 – Deer)

This item repeals the maximum charge rate for the R&D charge on exported deer. The operative charge rate, set in Schedule 5 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 15  (Clause 5 of Schedule 5 – Deer)

Clause 5 of Schedule 5 is re-numbered.

Item 16  (Clause 5 of Schedule 5 – Deer)

The reference to a subclause is amended from “3(1)(a)” to “3(a)” to reflect the change made by Item 13 of this Schedule.
Item 17  (At the end of clause 5 of Schedule 5 – Deer)

This item inserts additional subclauses to require the Minister, in the absence of a representative industry organisation, to take into account recommendations from the industry services body on the rate of the R&D charge on exported deer. Before the industry services body makes a recommendation to the Minister, it must consult with charge payers on the proposed charge rate. The Rural Industries Research and Development Corporation is the industry services body.

Subclause 4 prevents the regulations from prescribing a charge rate for the R&D charge that is higher than the rate recommended by a representative industry organisation, or in the absence of a representative industry organisation, the industry services body.

Item 18  (Subclause 3(5) of Schedule 6 – Deer velvet)

This item repeals the subclause setting the maximum rate for the R&D charge on exported deer velvet. The operative charge rate, set in Schedule 6 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 19  (Clause 5 of Schedule 6 – Deer velvet)

Clause 5 of Schedule 6 is re-numbered.

Item 20  (At the end of clause 5 of Schedule 6 – Deer velvet)

This item inserts additional subclauses to require the Minister, in the absence of a representative industry organisation, to take into account recommendations from the industry services body on the rate of the R&D charge on exported deer velvet. Before the industry services body makes a recommendation to the Minister, it must consult with charge payers on the proposed rate. The Rural Industries Research and Development Corporation is the industry services body.

Subclause 4 prevents the regulations from prescribing a charge rate for the R&D charge that is higher than the rate recommended by a representative industry organisation, or in the absence of a representative industry organisation, the industry services body.

Item 21  (Clause 1 of Schedule 9 (definition of R&D authority) – Honey)

This item removes references to obsolete R&D Councils and R&D Funds from the definition of “R&D authority” in Schedule 9. “R&D authority” now refers to an R&D Corporation to which the charge is attached.

Item 22  (Clause 1 of Schedule 9 (definition of R&D Corporation) – Honey)

This item removes the words “and Energy” from the definition of “R&D Corporation” in Schedule 9. This reflects the expected change in title of the Primary Industries and Energy Research and Development Act 1989, and is consequential on the passage of the Rural Research and Development Legislation Amendment Bill 2013.
Item 23 (Clause 1 of Schedule 9 (definition of R&D Council) – Honey)

The definition of R&D Council is repealed as it is obsolete.

Item 24 (Clause 1 of Schedule 9 (definition of R&D Fund) – Honey)

The definition of R&D Fund is repealed as it is obsolete.

Item 25 (Paragraph 3(b) of Schedule 9 – Honey)

This item repeals the maximum charge rate for the R&D charge on exported honey. The operative charge rate, set in Schedule 9 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 26 (At the end of clause 5 of Schedule 9 – Honey)

This item inserts a requirement of the relevant R&D Authority (the RDC) that before the R&D Authority may recommend a charge rate to the Minister, it must consult charge-payers. This item limits the charge rate to the highest rate recommended by a declared industry body or R&D Authority. At the present time, the Rural Industries Research and Development Corporation is the R&D Authority.

Item 27 (Subclause 3(1) of Schedule 10 – Horticultural products)

This item corrects an error in clause 3(1) of Schedule 10 by removing a reference to a subclause that does not exist.

Item 28 (Subclause 3(2) of Schedule 10 – Horticultural products)

This item repeals the subclause setting the maximum charge rate for the charge on exported horticultural products. This charge has components for R&D, marketing and other purposes, although the regulations do not currently set any charge for “other purposes”. The operative charge rates, set in Schedule 10 of the Primary Industries (Customs) Charges Regulations 2000, remain unchanged.

Item 29 (Paragraphs 5(9)(a) and (b) of Schedule 10 – Horticultural products)

This item corrects an error in terminology by replacing ‘leviable’ with ‘chargeable’.

Item 30 (At the end of clause 5 of Schedule 10 – Horticultural products)

This item inserts an additional subclause to prevent the regulations from prescribing a charge rate that is higher than the rate recommended by the industry services body (for the R&D and marketing components of the charge) or an industry body (for the “other purposes” component). At the present time, the industry services body is Horticulture Australia Limited.

Item 31 (Paragraph 3(a) of Schedule 11 – Live-stock (exporters))

This item removes the maximum charge rate for the marketing charge on exported sheep (paid by the exporter). The operative charge rate, set in Schedule 11 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.
Item 32  (Paragraph 3(b) of Schedule 11 – Live-stock (exporters))

This item removes the maximum charge rate for the R&D charge on exported sheep (paid by the exporter). The operative charge rate, set in Schedule 11 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 33  (Paragraph 4(a) of Schedule 11 – Live-stock (exporters))

This item removes the maximum charge rate for the marketing charge on exported lambs (paid by the exporter). The operative charge rate, set in Schedule 11 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 34  (Paragraph 4(b) of Schedule 11 – Live-stock (exporters))

This item removes the maximum charge rate for the R&D charge on exported lambs (paid by the exporter). The operative charge rate, set in Schedule 11 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 35  (Paragraph 5(a) of Schedule 11 – Live-stock (exporters))

This item removes the maximum charge rate for the marketing charge on exported goats (paid by the exporter). The operative charge rate, set in Schedule 11 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 36  (Paragraph 5(b) of Schedule 11 – Live-stock (exporters))

This item removes the maximum charge rate for the R&D charge on exported goats (paid by the exporter). The operative charge rate, set in Schedule 11 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 37  (At the end of clause 7 of Schedule 11 – Live-stock (exporters))

This item inserts additional subclauses to require the Minister, in the absence of a declared industry body, to take into account recommendations from the live-stock export marketing body and the live-stock export research body on the rate of the marketing and R&D charges (respectively) on exported sheep, lambs and goats. Before these bodies make a recommendation to the Minister, they must consult with charge payers on the proposed charge rate. The Australian Livestock Export Corporation Limited is presently both the live-stock export marketing and research body.

Subclause 5 prevents the regulations from prescribing a charge rate for the marketing and R&D charges that is higher than the rate recommended by a declared body, or in the absence of a declared body, the live-stock export marketing body or the live-stock export research body.
Item 38  (Paragraph 3(a) of Schedule 12 – Live-stock (producers))

This item removes the maximum charge rate for the marketing charge on exported sheep (paid by the producer). The operative charge rate, set in Schedule 12 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 39  (Paragraph 3(b) of Schedule 12 – Live-stock (producers))

This item removes the maximum charge rate for the R&D charge on exported sheep (paid by the producer). The operative charge rate, set in Schedule 12 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 40  (Paragraph 4(a) of Schedule 12 – Live-stock (producers))

This item removes the maximum charge rate for the marketing charge on exported lambs (paid by the producer). The operative charge rate, set in Schedule 12 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 41  (Paragraph 4(b) of Schedule 12 – Live-stock (producers))

This item removes the maximum charge rate for the R&D charge on exported lambs (paid by the producer). The operative charge rate, set in Schedule 12 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 42  (Paragraph 5(a) of Schedule 12 – Live-stock (producers))

This item removes the maximum charge rate for the marketing charge on exported goats (paid by the producer). The operative charge rate, set in Schedule 12 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 43  (Paragraph 5(b) of Schedule 12 – Live-stock (producers))

This item removes the maximum charge rate for the R&D charge on exported goats (paid by the producer). The operative charge rate, set in Schedule 12 of the Primary Industries (Customs) Charges Regulations 2000, remains unchanged.

Item 44  (At the end of clause 7 of Schedule 12 – Live-stock (producers))

This item inserts additional subclauses to require the Minister, in the absence of a declared industry body, to take into account recommendations from the industry marketing body and the industry research body on the rate of the marketing and R&D charges (respectively) on exported sheep, lambs and goats. Before these bodies make a recommendation to the Minister, they must consult with charge payers on the proposed charge rate. Meat and Livestock Australia is presently both the industry marketing and research body.

Subclause 5 prevents the regulations from prescribing a charge rate for the marketing and R&D charges that is higher than the rate recommended by a declared body, or in the absence of a declared body, the industry marketing body or the industry research body.
Item 45   (Subclause 3(1) of Schedule 13 – Wine)

This item re-numbers Clause 3 of Schedule 13.

Item 46   (Subclause 3(2) of Schedule 13 – Wine)

This item repeals the subclause setting the maximum rate for the R&D charge on exported wine. The operative charge rates, set in Schedule 13 of the *Primary Industries (Customs) Charges Regulations 2000*, remain unchanged.

Item 47   (At the end of clause 5 of Schedule 13 – Wine)

This item inserts a new subclause 4 to prevent the regulations from prescribing a rate for the R&D charge that is higher than the rate recommended by the Wine Australia Corporation.

Item 48   (At the end of clause 8 of Schedule 14 – Regulations may impose primary industries charges)

This item provides that the maximum charge rates in subclause 8(1) do not apply to R&D or marketing charges for animal products imposed under Schedule 14.

Item 49   (At the end of clause 9 of Schedule 14 – Regulations may impose primary industries charges)

This item provides that the maximum charge rates in subclause 9(1) do not apply to R&D or marketing charges for plant products imposed under Schedule 14.

Item 50   (At the end of clause 13 of Schedule 14 – Regulations may impose primary industries charges)

This item limits the animal or plant charge rate for R&D and marketing charges to the highest rate recommended by a declared industry body or bodies.