2016-2017

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRIMARY INDUSTRIES RESEARCH AND DEVELOPMENT AMENDMENT BILL
2017

EXPLANATORY MEMORANDUM

(Circulated by authority of the Deputy Prime Minister and Minister for Agriculture and Water Resources, the Hon. Barnaby Joyce MP)
GENERAL OUTLINE

The Primary Industries Research and Development Amendment Bill 2017 will make amendments to one act – the *Primary Industries Research and Development Act 1989* (the PIRD Act).

The PIRD Act provides for the establishment and governance of research and development corporations (R&D Corporations). Four R&D Corporations are currently established under this Act: the Cotton, Grains, Fisheries and Rural Industries R&D Corporations. There are a further 11 rural research and development corporations, including the Australian Grape and Wine Authority and ten established as industry-owned companies.

The Bill affects only the four R&D Corporations established under the PIRD Act. The amendments will allow these R&D Corporations to use voluntary contributions to conduct marketing activities. The principal functions of these corporations is, and will remain, investing in research and development (R&D) on behalf of industry and government.

The *Rural Research and Development Legislation Amendment Act 2013* (‘the 2013 amendments’) expanded the functions of the R&D Corporations to include conducting marketing on behalf of industry if a marketing levy were attached to the R&D Corporation. Following the passage of the 2013 amendments some small industries indicated that the cost of establishing and collecting a statutory levy is too high. As a more efficient option, these industries would prefer to contribute marketing funds on a voluntary basis to their R&D Corporation.

Of the other 11 rural research and development corporations, nine of the ten industry-owned research and development corporations and the Australian Grape and Wine Authority can conduct marketing without reference to the source of the funding. They are governed by industry-specific legislation. The sugar industry has elected that its industry-owned research and development corporation, Sugar Research Australia, will not conduct marketing.

The Bill will:

- allow statutory R&D Corporations governed by the PIRD Act to undertake marketing activities funded by voluntary contributions
- remove the requirement that the statutory R&D Corporations can undertake marketing only where a marketing levy is attached to the corporation
- expand the definition of ‘marketing activities’ to allow incidental activities such as consulting about or planning marketing activities.

**Allowing marketing for statutory R&D Corporations using voluntary industry contributions**

Schedule 1 of the Bill expands the definition of ‘marketing activities’ to include activities incidental to marketing and to align the definition with the definition of R&D activities. This will allow the R&D Corporations to consult about, plan, scope and organise marketing on behalf of industry as well as to commission marketing activities.
The amendments in this Bill will not alter the current process by which industry establishes a new levy, but will instead remove the requirement to have a formal levy in order to undertake marketing activities. The amendments will not permit R&D Corporations to use research and development levy funds or matching Commonwealth funding for marketing activities.

**Adding to the functions of the R&D Corporations**

The Bill expands the functions of R&D Corporations to include the conduct of marketing using a gift, grant, bequest or devise for marketing for the benefit of industry. There is no limitation on who can make a contribution to the R&D Corporation for marketing or on the source of the gift, grant, bequest or devise. An industry representative body can provide funds, as can a company, a state government, an individual or other legal person.

**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 RESEARCH AND DEVELOPMENT BILL 2017

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 is designed to extend the ability of certain rural research and development corporations (R&D Corporations) to conduct marketing activities on behalf of industry.

There are two types of R&D Corporations, statutory and industry-owned. Industry-owned R&D Corporations are Corporations Act 2001 companies with which the Commonwealth has entered a statutory funding agreement under an Act specific to an industry sector.

Statutory R&D Corporations are established under the Primary Industries Research and Development Act 1989 (the PIRD Act) and the Australian Grape and Wine Authority Act 2013, and their respective regulations. Their functions are to conduct research, development and extension, and marketing activities. These functions are undertaken to benefit both the primary industry that funds the R&D Corporation through a statutory levy or charge, and the Australian community generally.

The Australian Government matches industry research and development levies with funding provided under the Acts which relate to each R&D Corporation.

This Bill will:

- allow statutory R&D Corporations governed by the PIRD Act to undertake marketing activities funded by voluntary contributions
- remove the requirement that the statutory R&D Corporations can undertake marketing only where a marketing levy is attached to the corporation
- expand the definition of ‘marketing activities’ to allow incidental activities such as consulting about or planning marketing activities.

Human rights implications

This Bill increases the ability of small primary industries to collectively fund marketing and incidental activities. This aligns with Article 1 of the International Covenant on Economic, Social and Cultural Rights 1966.

Conclusion

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

The Hon. Barnaby Joyce MP, Deputy Prime Minister and Minister for Agriculture and Water Resources
NOTES ON ITEMS

Clause 1: Short Title

Clause 1 provides for the short title of the Act to be the Primary Industries Research and Development Amendment Act 2017.

Clause 2: Commencement

Clause 2 provides for commencement of the Act the day after the Act receives the Royal Assent.

Clause 3: Schedules

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

Schedule 1—Amendments

Primary Industries Research and Development Act 1989

Item 1: Subsection 4(1) (at the end of the definition of marketing activities)

Item 1 adds ‘or an activity incidental to such marketing, advertising or promotion’ to the definition of ‘marketing activities’ in subsection 4(1).

The expanded definition adds to the R&D Corporation’s ability to conduct marketing by allowing incidental activities such as consulting, planning and scoping activities. This makes the wording of the definitions of R&D activities and marketing activities consistent with each other.

Item 2: After paragraph 11(ea)

Item 2 adds to the functions of an R&D Corporation the ability to use a gift, grant, bequest or devise to carry out marketing activities for the benefit of a primary industry.

Items 3 and 4: Paragraphs 13(1)(b) and 14(1)(b)

Items 3 and 4 amend paragraphs 13(1)(b) and 14(1)(b) to extend the matters for which the R&D Corporation is allowed to enter into agreements. These amendments align paragraphs 13(1)(b) and 14(1)(b) with the amendment made at item 2.

These items replace the current requirement that a levy with a marketing component must be attached to the R&D Corporation in order for it to enter into an agreement to carry out marketing activities.

Item 5: Subparagraph 28(a)(ia)

Item 5 amends subparagraph 28(a)(ia) to include in the annual report of the R&D Corporation particulars of all marketing activities it coordinates or funds, partly or fully, over a financial year. This is to take account of the changes to the Act to enable marketing activities to be
undertaken and ensures that the same standards of accountability and transparency will apply to R&D activities and marketing activities.

**Item 6: At the end of section 28**

Item 6 inserts a note at the end of section 28 which explains that for subparagraph (a)(ia), an R&D Corporation is permitted to carry out marketing activities as mentioned in paragraph 11(ea) and the new paragraph 11(eb). This note makes plain the link between the requirement to report on marketing activities and the new power to carry out marketing activities.

**Item 7: After subsection 33(1)**

Item 7 inserts a provision that the restrictions on expenditure of an R&D Corporation’s money in subsection 33(1) of the Act do not apply to a gift, grant, bequest or devise made for marketing activities. Subsection 33(1) relates to the expenditure of money provided to an R&D Corporation from research and development levies and matching Commonwealth funding.

**Item 8: At the end of section 33A**

Item 8 adds a note to clarify that, although section 33A provides an R&D Corporation may only spend money from a levy with a marketing component on marketing activities, a gift, grant, bequest or devise to fund marketing activities may be used for that purpose.

**Item 9: Application provisions**

Sub-item 9(1) provides that the amendments made in items 3 and 4 apply in relation to agreements entered into on or after commencement of this item.

Sub-item 9(2) provides that the amendments made in Items 5 and 6 apply in relation to annual reports prepared on or after commencement of this item.