Rural Research and Development Legislation Amendment Bill 2013 [and] Primary Industries (Customs) Charges Amendment Bill 2013 [and] Primary Industries (Excise) Levies Amendment Bill 2013

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Rural Research and Development Legislation Amendment Bill 2013 [and] Primary Industries (Customs) Charges Amendment Bill 2013 [and] Primary Industries (Excise) Levies Amendment Bill 2013

Date introduced: 19 June 2013
House: House of Representatives
Portfolio: Agriculture, Fisheries and Forestry
Commencement: Various dates outlined in the body of the Bills Digest.

Links: links to the Bills, the Explanatory Memoranda and second reading speeches can be found on the Bills’ home pages for Primary Industries (Customs) Charges Amendment Bill 2013, the Primary Industries (Excise) Levies Amendment Bill 2013 and the Rural Research and Development Legislation Amendment Bill 2013, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose of the Bills

The Rural Research and Development Legislation Amendment Bill 2013 (the R&D Bill) changes arrangements to allow statutory research and development (R&D) corporations to undertake marketing activities—provided that the relevant funding levy in respect of the corporation includes a marketing component. It also changes the framework for selection committees to fill board positions for statutory R&D Corporations.

There are two companion Bills. The Primary Industries (Customs) Charges Amendment Bill 2013 (Primary Industries (Customs) Bill) allows primary industry charges, fees or duties to be changed without the need to amend legislation. Regulations will enable changes to the rate of charges, fees or duties provided the industry services body (generally the R&D Corporation), or a body declared by the Minister, recommends the change to the Minister.

The Primary Industries (Excise) Levies Amendment Bill 2013 (Primary Industry (Excise) Bill) also allows primary industry levy rates to be changed by regulations provided the industry services body, or a body declared by the Minister, recommends the change to the Minister.

Structure of the Bills

The R&D Bill contains the following schedules:

- Schedule 1—contains amendments to repeal provisions relating to R&D Councils and R&D Funds
• Schedule 2—amends the Primary Industries and Energy Research and Development Act 1989¹ to change the name to the Primary Industries Research and Development Act 1989

• Schedule 3—sets out the requirement for formal funding agreements

• Schedule 4—provides for separately levied fisheries

• Schedule 5—relates to matching voluntary payments

• Schedule 6—updates the processes to be followed by selection committees

• Schedule 7—contains delegations and directions

• Schedule 8—expands the objects of the Primary Industries and Energy Research and Development Act to include undertaking marketing activities

• Schedule 9—contains miscellaneous amendments

• Schedule 10—repeals spent transitional, consequential and amending provisions and

• Schedule 11—contains contingent amendments.

The Primary Industries (Customs) Bill consists of one schedule which makes various amendments to the Primary Industries (Customs) Charges Act 1999 (Customs Charges Act).²

The Primary Industries (Excise) Bill consists of two schedules:

• Schedule 1—amends the Primary Industries (Excise) Levies Act 1999 (Excise Levies Act)³ dealing with the imposition of levies and the setting of maximum rates of the R&D component of levies and

• Schedule 2—contains contingent amendments dealing with arrangements for the sugar industry.

Background

Rural research and development corporations

There are 15 rural research and development corporations (RDCs) in Australia.

Their focus is on expanding Australia’s rural R&D effort, improving industry effectiveness and efficiency by investing in high priority areas, and encouraging uptake of research results to improve international competitiveness and sustainability.

The RDCs commission and manage targeted research and foster uptake and adoption based on the identified needs and priorities of both industry and the Australian Government.

The Australian Government provides dollar for dollar matching of industry expenditure on R&D up to a limit

of 0.5 percent of each industry’s Gross Value of Production (GVP).

The RDC model today is a mix of statutory and industry-owned companies. The industry-owned R&D companies are independent corporate entities with expertise-based boards. They were formed in response to an industry desire to have more control over their affairs and increased flexibility, industry representation and to foster market driven R&D that will be widely adopted by industry.4

Productivity Commission review

The Productivity Commission (PC) has recently reviewed the rural research and development (R&D) framework.5 At this stage, the Government has only made a preliminary response to the PC review. Importantly, the Government did not accept the recommendation to halve the matched levy contribution, from 0.5 per cent to 0.25 per cent,6 noting that ‘strong support for the [current] model overall was evident throughout the Commission’s inquiry’.7

In addition, the R&D framework was evaluated by the Rural Research and Development Council (RRDC) which resulted in the National Strategic Rural Research and Development Investment Plan.8

Subsequently, in July 2012, the Rural Research and Development Policy Statement (the policy statement) was released by the Government. The policy statement is the Government’s response to both the PC and the RRDC recommendations. It is intended to:

... ensure the effectiveness of the [Research and Development Corporation] model and the wider rural [Research, Development and Extension] system into the future, provide clarity to system participants on government priorities and expectations, and outline the government’s role in system oversight to ensure rural R&D results in optimal outcomes and provides a strong return on investment.9

The policy statement is also closely linked to the Government’s National Food Plan (NFP), which was released in May 2013. The NFP outlines the Government’s commitment to continuing to invest approximately $700 million annually in rural R&D.10

Policy position of non-government parties

The Opposition is said to be continuing to work through the detail of the proposal and to meet with industry to gauge their views.11

6. Ibid.
Position of major interest groups

Industry appears to have shown little interest in the proposed changes. A blogger on The Conversation website has criticised the Government’s approach, claiming that what is needed in rural R&D organisations is a greater focus on cross-sectoral issues and more national collaboration and coordination. The National Farmers Federation (NFF), on the other hand, is in favour of the approach put forward in the policy statement, stating in a media release that ‘the NFF has today welcomed the Government’s announcement of improvements to Australia’s rural research, development and extension efforts’ and ‘R&D is of fundamental importance to Australian farmers and the future of our agricultural sector.’

Committee consideration

Senate Selection of Bills Committee

The Senate Selection of Bills Committee determined at its meeting of 20 June 2013 that the Bills not be referred to a Committee for inquiry and report.

Senate Standing Committee for the Scrutiny of Bills

At the time of writing this Bills Digest, the Senate Standing Committee for the Scrutiny of Bills had not made any comments in relation to the Bills.

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 Bills’ 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 Bills are compatible.

The Parliamentary Joint Committee on Human Rights is of the view that the Bills ‘do not give rise to human rights concerns’.

15. The Statement of Compatibility with Human Rights can be found at pages 6–8 of the Explanatory Memorandum for the R&D Bill and on pages 4–5 of the Explanatory Memoranda for the Primary Industries (Customs) Bill and Primary Industries (Excise) Bill.

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Financial implications

According to the Explanatory Memoranda, the Bills have no financial impact on the Australian Government.17

Key issues and provisions

The R&D Bill

Schedule 1—repeal of provisions relating to R&D councils and R&D funds

The provisions contained in Schedule 1 of the R&D Bill commence on the day of Royal Assent.

Schedule 1 of the R&D Bill amends the Plant Health Australia (Plant Industries) Funding Act 200218 and the Primary Industries and Energy Research and Development Act to remove references to R&D Councils and R&D Funds. These references are removed ‘as these councils and funds no longer exist’.19

Schedule 2—change of Act name

The provisions contained in Schedule 2 of the R&D Bill commence on the day of Royal Assent.

Items 12 and 13 of Schedule 2 of the R&D Bill will change the name of the Primary Industries and Energy Research and Development Act 1989 to the Primary Industries Research and Development Act 1989. According to the Explanatory Memorandum for the R&D Bill ‘energy research is now a part of the Resources, Energy and Tourism portfolio’.20

Schedule 2 also updates references to the Primary Industries Research and Development Act 1989 in the Dairy Produce Act 1986,21 the Fisheries Administration Act 1991,22 the Pig Industry Act 2001,23 the Plant Health Australia (Plant Industries) Funding Act 200224 and the Primary Industries Levies and Charges Collection Act 1991.25

Schedule 3—funding agreements

The provisions contained in Schedule 3 of the R&D Bill commence on the day of Royal Assent.

20. Ibid.
Schedule 3 of the R&D Bill amends the *Primary Industries and Energy Research and Development Act*. Existing subsection 33(1) of that Act limits the purposes for which an R&D Corporation’s money may be spent. Item 2 of Schedule 3 of the R&D Bill inserts proposed subsections 33(3)–33(5) into the *Primary Industries and Energy Research and Development Act* so that, after 30 June 2014, an R&D Corporation must not spend money that it has received from the Commonwealth unless it does so in accordance with a written *funding agreement*. According to proposed subsection 33(4) of the *Primary Industries and Energy Research and Development Act*, the Minister may enter into a funding agreement with an R&D Corporation which must specify the terms and conditions under which Commonwealth money will be spent.

Item 1 of Schedule 3 of the R&D Bill inserts the definition of the term *funding agreement* into subsection 4(1) of the *Primary Industries and Energy Research and Development Act*, being an agreement under subsection 33(4).

**Schedule 4—separately levied fisheries**

The provisions contained in Schedule 4 of the R&D Bill commence on the day of Royal Assent.

Items 1 and 2 of Schedule 4 of the R&D Bill amend the *Primary Industries and Energy Research and Development Act* to provide that regulations may declare that part of the fishing industry is a *separately levied fishery*. This will allow ‘the farmed prawn industry … to be considered a separately levied fishery’.26 Most other fisheries pay levies and/or fees and charges to state and territory governments which then make contributions to the Fisheries Research and Development Corporation. If other fisheries wish to become separately levied fisheries, they could be declared so by regulations and a statutory levy established.

Items 4–11 of Schedule 4 of the R&D Bill amend section 30A of the *Primary Industries and Energy Research and Development Act* so that section 30A will not apply to separately levied fisheries. If a levy is attached to an R&D Corporation, proposed subsection 30A(1A) then allows the marketing component of a levy to be paid to that corporation. However, marketing expenditure by the R&D Corporation will not be matched by the Commonwealth.

**Item 12** of Schedule 4 of the R&D Bill inserts proposed section 30B into the *Primary Industries and Energy Research and Development Act* so that if a separately levied fishery is declared by regulations, then the gross value of production (GVP) for that fishery will no longer be included in the calculation of the GVP for Commonwealth fisheries under section 30A. This means that if a separate fishery (for example the farmed prawn industry) is declared, then the GVP for that fishery will be counted separately. The sum of all GVPs in relation to fisheries will however remain the same, so that the overall matching funding that is available for the fishing industry does not change.

**Proposed subsection 30B(2)** specifies that a levy will be paid to a separately levied fishing industry R&D Corporation if a levy is attached to the Corporation. The levy payments are comprised of the

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research component, the marketing component and certain matching payments which are calculated in accordance with the formula set out in **proposed subsection 30B(3)**.

The matching payments to be paid to the R&D Corporation in respect of the separately levied fishery, during a financial year will be:

- if the amount spent, or required to be spent (in accordance with section 33) is:
  - 0.5 per cent of interim GVP, then the matching payments will be equal to 0.5 per cent of GVP
  - less than 0.5 per cent of interim GVP, then the matching payments will be equal to this amount
  - greater than 0.5 per cent but less than 1 per cent of GVP, then the matching payments will be 0.5 per cent of GVP and half of the difference between the amount and the percentage of GVP more than 0.5 per cent (for example, if 0.7 per cent of GVP was spent or required to be spent, the matching contribution would be 0.5 per cent and $0.2 \div 2 = 0.1$ per cent for a total of 0.6 per cent of GVP) or
  - greater than 1 per cent of GVP, then the matching payments will be 0.5 per cent plus 0.25 per cent of GVP (for example, if 1.5 per cent of GVP was spent or required to be spent, the matched contribution would be 0.5 per cent and $1 \times 0.25 = 0.25$ per cent for a total of 0.75 per cent of GVP).

- the amount paid will be reduced by the amount refunded to levy payers for overpayment.

**Proposed subsection 30B(4)** of the *Primary Industries and Energy Research and Development Act* specifies that payments made to the R&D Corporation are based on interim GVP. Final GVP rates are set by the Minister before 31 October the following financial year. If the total amount paid to the R&D Corporation exceeds the amount that would have been paid under the final GVP rate, then the R&D Corporation will repay the Commonwealth an equal amount.

Under **proposed subsection 30B(5)** if the amount paid to the R&D Corporation is less than what would have been paid under the final GVP rate, then the Commonwealth will pay the R&D Corporation the amount of the shortfall.

**Proposed subsection 30B(6)** of the *Primary Industries and Energy Research and Development Act* deems the Minister to have made a determination of the amount of a final GVP for a financial year to be equal to the final GVP for the previous year in the event that the Minister does not determine the GVP by 31 October in the next financial year.

**Item 14** of Schedule 4 of the R&D Bill inserts **proposed section 33B** into the *Primary Industries and Energy Research and Development Act* which specifies that where an R&D Corporation receives a payment in respect of research and development in respect of the fishing industry from a state or territory, the R&D Corporation must within five years, spend an equal amount on R&D activities which are of relevance to the state or territory. **Proposed section 33C** provides that money received
by an R&D Corporation for R&D in the fishing industry with respect to a separately levied fishery may only be spent for purposes relating to that separately levied fishery.

Schedule 5—matching voluntary payments

The provisions contained in Schedule 5 of the R&D Bill commence on the day of Royal Assent except for those relating to the Primary Industries and Energy Research and Development Act (that is, items 8–11) which commence immediately after the commencement of items 1–7 of Schedule 5 of the Bill.

Schedule 5 of the R&D Bill inserts provisions into a number of statutes so that regulations can provide matching funding by the Commonwealth for voluntary contributions for R&D related activities. The relevant statutes are the Dairy Produce Act, Egg Industry Service Provision Act 2002,27 the Forestry Marketing and Research and Development Services Act 2007,28 the Pig Industry Act, the Primary Industries and Energy Research and Development Act and the Wool Services Privatisation Act 2000.29 Matching funding amounts are limited by retention limits, which are capped at the lesser of 0.5 per cent of GVP and 50 per cent of eligible expenditure except for the Primary Industries and Energy Research and Development Act (which has its own retention rates at section 32).

Schedule 6—selection committees

The provisions contained in Schedule 6 of the R&D Bill commence on the day of Royal Assent.

Schedule 6 of the R&D Bill amends the Primary Industries and Energy Research and Development Act to make the process for selecting board members for statutory R&D Corporations ‘more efficient and transparent’.30

Item 1 amends existing subsection 17(3) of the Primary Industries and Energy Research and Development Act to allow a person to be appointed as a director of an R&D Corporation from a list of suitable nominees that was provided to the Minister within the previous 12 months as a result of a selection process.

Item 4 repeals paragraphs 123(1)(c) and (ca) and inserts proposed paragraph 123(1)(c) to remove the requirement that the Presiding Member of the selection committee ask each organisation that is represented by the R&D Corporation to take into account, when nominating a person as a member of the selection committee, the benefits of ensuring that the selection committee has a diversity of experience, expertise and gender. The need to consider the range of experience, expertise and gender of selection committee nominees will instead be addressed under amended sections 124 and 125.

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30. Explanatory Memorandum, Rural Research and Development Legislation Amendment Bill 2013, op. cit., p. 3.
**Item 5** repeals existing subsections 124(1) and (2) and inserts **proposed subsections 124(1)–(2A)** into the *Primary Industries and Energy Research and Development Act* to amend the process for establishing selection committees. If no selection committee is in existence (the proposed arrangements will allow a selection committee to be established for up to three years—see **item 9**, below) then the Presiding Member must establish a new selection committee which will consist of the Presiding Member, and up to four other members, appointed by the Minister and nominated by the Presiding Member. Before nominating the other members, the Presiding Member will consult with each organisation that is represented by the R&D Corporation and have regard to the desirability of the committee reflecting diversity, including in experience, expertise and gender. **Item 6** amends existing subsection 124(3) of the *Primary Industries and Energy Research and Development Act* so that selection committee members are nominated by the Presiding Member, rather than representative organisations of the R&D Corporation.

At present, section 129 of the *Primary Industries and Energy Research and Development Act* operates so that a selection committee is abolished at the end of a selection process. **Item 9** repeals and replaces **section 129** so that the Presiding Member of a Selection Committee is required to abolish the Committee when the term of office of the Presiding Member ends—or, if the Selection Committee is part way through a selection process when the term of office ends, when the process is complete.

**Items 10 and 11** of Schedule 6 of the R&D Bill require the selection committee to have regard to the desirability of reflecting diversity when nominating a person to the Minister for the position of director of an R&D Corporation. The selection committee must also provide the Minister with a list of any other candidates considered suitable for the position.

**Item 15** inserts **proposed subsection 131(4)** into the *Primary Industries and Energy Research and Development Act* so that the selection committee must, before advertising for a board vacancy, consider whether a person who was included on the list of persons who were considered suitable for nomination within the last 12 months is suitable for nomination. However, if the person’s name has been included in a list of persons given to the Minister in relation to the appointment, it is not to be put forward again.

**Item 17** inserts **proposed subsection 132(2)** into the *Primary Industries and Energy Research and Development Act* which requires the selection committee to provide details about the expertise and experience of the nominees to the Minister. The selection committee must also provide the Minister with a list of persons suitable for nomination, along with details of the expertise and experience of each person on the list. This will allow the Minister to appoint a person on the list if the Minister rejects the person nominated by the selection committee.

**Items 18–19** amend subsection 134(1) of the *Primary Industries and Energy Research and Development Act* to allow the Minister to request another nomination from the selection committee if the Minister rejects the initial nomination as well as all other persons on the list of suitable candidates.
Item 26 is an application provision which operates so that, despite the amendments made by Schedule 6 of the Bill, any current selection processes will continue running according to existing arrangements. Any selection process that is begun after Schedule 6 commences will follow the new arrangements.

Schedule 7—delegations and directions

The provisions contained in Schedule 7 of the R&D Bill commence on the day of Royal Assent.

Part 1 of Schedule 7 of the R&D Bill amends a number of statutes to allow the Minister to delegate certain of his or her powers and functions under those statutes.

Item 1 of Part 1 of Schedule 7 repeals and replaces section 70 of the Australian Meat and Live-stock Industry Act 1997. At present section 70 allows the Minister to delegate all or any of his or her powers (excluding powers under section 69 of that Act) to the Secretary—and for the Secretary to delegate all or any of his or her powers (excluding the power to appoint authorised officers under section 49) to an SES employee in the Department.

Under proposed section 70 of the Australian Meat and Live-stock Industry Act, the delegation powers are expressed more precisely. The Minister will be able to delegate all or any of his or her powers (excluding powers under section 69) to the Secretary or to an APS employee who holds or performs the duties of an SES Band 1 position, or an equivalent or higher position in the Department. Similarly, the Secretary may delegate all or any or his or her powers to an APS employee who holds or performs the duties of an SES Band 1 position, or an equivalent or higher position in the Department. The requirement that the Secretary not delegate the power to appoint authorised officers under section 49 is retained.

Item 2 of Part 1 of Schedule 7 repeals and replaces section 32 of the Horticulture Marketing and Research and Development Services Act 2000 so that the delegations under that Act are in equivalent terms to those in proposed section 70 of the Australian Meat and Live-stock Industry Act as discussed above.

Item 3 of Part 1 of Schedule 7 inserts proposed section 143A into the Primary Industries and Energy Research and Development Act. At present the Minister has extensive powers under that Act (for example the establishment of a selection committee under section 123). Proposed section 143A will empower the Minister to delegate all or any of his or her powers and functions under the Primary Industries and Energy Research and Development Act (excluding the power under section 143 to give directions to an R&D Corporation) to the Secretary or to an APS employee who holds or performs the duties of an SES Band 1 position, or an equivalent or higher position in the Department.

Item 4 of Part 1 of Schedule 7 of the Bill repeals and replaces section 38 of the Wool Services Privatisation Act. At present, section 38 empowers the Minister to delegate all or any of his or her

powers and functions under the Act to an SES employee, or acting SES employee, in the Department. The amendment expresses the power to delegate more precisely so that, consistent with the delegation powers in the proposed section 143A of the Primary Industries and Energy Research and Development Act, proposed section 38 will empower the Minister to delegate all or any of his or her powers and functions under the Wool Services Privatisation Act (excluding the power under section 33A) to the Secretary or to an APS employee who holds or performs the duties of an SES Band 1 position, or an equivalent or higher position in the Department.

Item 5 of Part 2 of Schedule 7 of the R&D Bill amends the Dairy Produce Act by inserting proposed section 126A to allow the Minister to give written direction to the industry services body in certain circumstances. The Minister may give directions when it is in Australia’s national interest, because of exceptional and urgent circumstances, provided that the direction will not cause the body to incur expenses greater than the amounts it is paid. The Minister must give the directors of the body suitable time to discuss the direction with the Minister. This discussion must be in accordance with the funding contract, which is expected to outline the details of this discussion process. The purpose of the direction must be within the Commonwealth’s legislative powers and the industry service body must comply with the direction. Where the Minister gives such a direction the Minister must ensure that a copy is published in the Gazette as soon as practicable after giving the direction and must table a copy of the direction in each House of the Parliament within five sitting days of that House after giving the direction. Proposed subsection 126A(4) of the Dairy Produce Act contains an exception to the requirement to publish the particulars of the direction in circumstances where the industry services body has recommended to the Minister that it would prejudice the commercial activities of the body or where the Minister has determined, in writing, that it would be contrary to the public interest.

Item 7 of Part 2 of Schedule 7 of the Bill inserts proposed section 33A into the Wool Services Privatisation Act in equivalent terms.

The inclusion of this power for the Minister to give directions is consistent with the power given to the Minister under section 12 of the Pig Industry Act, section 9 of the Egg Industry Service Provision Act and section 29 of the Horticulture Marketing and Research and Development Services Act.

Schedule 8—marketing activities

The provisions contained in Schedule 8 of the R&D Bill commence on the day of Royal Assent.

Items 1–21 of Schedule 8 of the R&D Bill amend the Primary Industries and Energy Research and Development Act to extend the role of R&D Corporations to include undertaking marketing activities

in regard to products of primary industry. The existing framework does not allow statutory R&D Corporations to undertake marketing activities. Item 1 repeals and replaces section 3 which sets out the objects of the Primary Industries and Energy Research and Development Act. Importantly, proposed section 3 expands the objects to reflect the interest of the R&D Corporation in developing and maintaining its research workforce and examining whether research is achieving outcomes for primary producers.

Item 3 of Schedule 8 of the R&D Bill inserts proposed paragraph 5(3)(aa) into the Primary Industries and Energy Research and Development Act to provide that, if a levy exists, a regulation is required to declare whether that levy has a marketing component and if so, the proportion of that levy that is the marketing component.

Item 4 inserts proposed paragraph 11(ea) into the Primary Industries and Energy Research and Development Act so that it, if a regulation has declared that a levy attached to the R&D Corporation has a marketing component, it is a function of the R&D Corporation to undertake marketing activities.

Items 11 and 12 amend paragraph 25(2)(a) and subsection 25(3) to require an R&D Corporation to include details of its marketing activities in its annual operation plan. Similarly, item 13 inserts proposed subparagraph 28(1)(a)(ia) into the Primary Industries and Energy Research and Development Act requiring details of marketing activities that the R&D Corporation coordinated or funded to be included in the Corporation’s annual report.

Importantly, item 17 inserts proposed section 33A to provide that R&D money must not be spent on marketing activities. Consistent with proposed section 33A, item 18 amends paragraph 40(1)(a) to allow regulations to be made which require an R&D Corporation to keep separate accounts for separate classes of activities, including marketing.

Items 22 and 23 of Schedule 8 of the R&D Bill amend the Wool Services Privatisation Act. In particular, item 22 amends paragraph 31(2)(a) of the Wool Services Privatisation Act to allow Category A payments (that is, payments in relation to wool levy) to be spent on marketing activities. Currently, Category A payments can be spent on R&D and ‘other activities’ which includes marketing. According to the Explanatory Memorandum, ‘the amendment will better reflect the fact that both R&D and marketing activities are major components of the research body’s responsibilities’.

Other provisions

39. Item 2 of Schedule 8 of the R&D Bill inserts the definition of marketing component, being, in relation to a levy, so much of the levy as the regulations declare to be the marketing component of the levy under paragraph 5(3)(aa).
40. Item 2 of Schedule 8 of the R&D Bill inserts the definition of marketing activities being the marketing, advertising or promotion of products of primary industries.
41. Explanatory Memorandum, Rural Research and Development Legislation Amendment Bill 2013, p. 28.
The provisions contained in Schedule 9 of the R&D Bill commence on the day of Royal Assent. Schedule 9 of the R&D Bill deals with minor and technical amendments to the Egg Industry Service Provision Act and the Primary Industries and Energy Research and Development Act. In particular, it amends the Primary Industries and Energy Research and Development Act so that the Minister is no longer required to approve R&D Corporations’ annual operational plans.

Schedule 11 of the R&D Bill contains contingent amendments to the Sugar Research and Development Services Act 2013 (Sugar Research and Development Services Act). Relevant to this Schedule, another suite of Bills relating to R&D in the sugar industry (the Sugar Bills) was introduced into the House of Representatives on 5 June 2013. These Bills were passed by the Parliament and received Royal Assent on 29 June 2013. The Sugar Research and Development Services Act, which is amended by Schedule 11 of the R&D Bill, commenced on 30 June 2013. The amendments proposed to the Sugar Research and Development Services Act by Schedule 11 of the R&D Bill reflect the amendments proposed in Schedule 5 of the R&D Bill, to allow voluntary contributions for R&D activities to be matched by the Commonwealth.

**Primary Industries (Customs) Bill**

The provisions of the Primary Industries (Customs) Bill will commence on Royal Assent.

The Customs Charges Act authorises the imposition of primary industries charges that are duties of customs—that is a monetary fee imposed on exported goods by government. 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 RDCs. The Customs Charges Act sets maximum rates and provides for the operative rates to be set through regulations.

Each industry makes recommendations to increase the charge, but if this increase will take the charge above the maximum charge set out in the Customs Charges Act, then that Act needs to be amended, along with the regulations, which can take a long time. Under the proposals in the Primary Industries (Customs) Bill a maximum will not be set out in the Customs Charges Act. That being the case, it will not need to be amended when the charge is increased. In order to ensure that increases in charges are controlled, the regulations will state that a charge cannot be imposed that is higher than the rate requested by industry.

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43. The reforms to the sugar industry R&D framework were introduced to parliament in three separate Bills, the Sugar Research and Development Services Bill 2013, the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013 and the Sugar Research and Development Services (Consequential Amendments—Excise) Bill 2013.
45. Explanatory Memorandum, Primary Industries (Customs) Charges Amendment Bill 2013, p. 2.

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The Primary Industries (Customs) Bill amends various schedules to the *Customs Charges Act* to:

- allow the Minister to declare (and *Gazette* this declaration) a specified body (if one does not already exist) whose recommendations about the rate of charges must be considered by the Minister
- introduce requirements that the Minister must take into account recommendations made by the declared body, when setting the charge rate
- introduce requirements that if there is no declared body then the Minister must take into account the recommendation made by the industry service body
- introduce requirements that charge payers must be consulted by the declared body or the industry service body before a recommendation to increase charges can be made to the Minister and
- prevent regulations being made that set a charge rate for the R&D component that is greater than the amount recommended to the Minister.

There are a number of variations of these provisions which take into consideration whether a current industry service body exists (such as Meat and Livestock Australia).\(^{47}\) If such a body exists the Minister will have to consider its recommendations about charge rates, unless the Minister has declared another body to be the specified body. In some circumstances, however, the Minister is not provided with the power to declare a specified body where the *Customs Charges Act* already requires the Minister to take the recommendations of the representative industry organisation into account.

The Primary Industries (Customs) Bill also contains a number of provisions which remove any reference to maximum charge rates which relate to the R&D charge component – but not the total charge (the non-R&D component) (such as *item 2*) as charge rates no longer need to be included in the *Customs Charges Act*. Instead the rates can be set by regulation.

*Items 3–27* include other technical provisions relating to specific product arrangements.

*Items 48–50* introduce provisions similar to those in relation to specific products (as above) to ensure that an equivalent process is conducted when a regulation is made that will impose charges on other primary industry products.

### Primary Industries (Excise) Bill

All provisions of the Primary Industries (Excise) Bill will commence on Royal Assent, unless otherwise specified.

The *Excise Levies Act* authorises the imposition of primary industries levies that are duties of excise—that is, a tax on goods levied at some point in their production or distribution which has the

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\(^{47}\) Explanatory Memorandum, Primary Industries (Customs) Charges Amendment Bill 2013, p. 8.

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effect of increasing the price of goods supplied to the consumer.\textsuperscript{48} Levies 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 levy is attached to one of the 15 RDCs.\textsuperscript{49}

The Excise Levies Act sets maximum rates and provides for the operative rates to be set through regulations.\textsuperscript{50}

The process to change a levy rate involves significant industry consultation, including the requirement that there is a vote of levy payers and the preparation of a proposal to the government containing a recommendation on the preferred levy rate.\textsuperscript{51} This is a lengthy and expensive process.\textsuperscript{52}

At present, if the government approves a change in a levy rate the relevant regulations must be amended to specify the new rate. If the proposed change increases the levy rate above the maximum rate specified in the Excise Levies Act, that Act must also be amended.

Schedule 1 of the Primary Industries (Excise) Bill contains provisions which will operate so that the Excise Levies Act will no longer need to be amended to change levy rates. However, changes to the operative levy rate will still require amendment of regulations.\textsuperscript{53} This Bill (with some variations) will:

- require the Minister to consult with industry bodies and require the Minister to take into account recommendations made by the declared body when changing the levy rate and
- amend each schedule of the Excise Levies Act to specify that the regulations cannot set an R&D or marketing levy rate that is higher than the rate recommended by the relevant industry body.

The amendments will operate so that the maximum levy rate that can be imposed will be the rate that is requested by the levy payers.

Provisions for all product types are amended so that a variation of these provisions is included. An exception is that the requirement to consult with the levy payers does not exist for all products (for example, coarse grains and laying and meat chickens). Another slight variation stipulates in some cases what organisation is the industry body in the absence of a declared body (for example Dairy Australia for dairy produce).

The Primary Industries (Excise) Bill also removes any reference to maximum rates which relate to the R&D levy component—but not the total levy (that is, the non R&D component).\textsuperscript{54}

Items 122–124 provide that regulations may impose primary industry levies.

\textsuperscript{48} Butterworths Concise Australian Legal Dictionary, op. cit., p. 159.
\textsuperscript{49} Explanatory Memorandum, Primary Industries (Excise) Levies Amendment Bill 2013, p. 2.
\textsuperscript{50} Primary Industries (Excise) Levies Regulations 1999, accessed 25 July 2013.
\textsuperscript{51} The process for industry to decide on a charge or variation of a levy is set out in Department of Agriculture, Fisheries and Forestry, \textit{Levies revenue service: levy principles and guidelines}, January 2009, accessed 25 July 2013.
\textsuperscript{52} Ibid., p. 15.
\textsuperscript{53} Explanatory Memorandum, Primary Industries (Excise) Levies Amendment Bill 2013, p. 2.
\textsuperscript{54} For example, item 3 of Schedule 1 of the Excise Levies Bill.
Other provisions

Schedule 2 of the Primary Industries (Excise) Bill contains contingent amendments which will align the sugar industry with the arrangements proposed in Schedule 1 of that Bill. As set out above, a package of Bills to transform arrangements for sugar industry research was recently passed by the Parliament and received Royal Assent on 29 June 2013. The amendments made by Schedule 2 of the Primary Industries (Excise) Bill are contingent on the commencement of Schedule 1 of the Sugar Research and Development Services (Consequential Amendments—Excise) Act 2013. That Schedule commenced on 1 July 2013.

As Schedule 1 of the Sugar Research and Development Services (Consequential Amendments—Excise) Act 2013 has already commenced, items in Part 1 of Schedule 2 of the Excise Levies Bill will commence on Royal Assent (if the Bill is passed by Parliament) and the items in Part 2 of Schedule 2 of the Excise Levies Bill will not come into effect at all.


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