



Australian Government
Department of Agriculture
and Water Resources

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Dr Jane Thomson
Committee Secretary
Senate Rural and Regional Affairs and Transport Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

via email: rrat.sen@aph.gov.au

Dear Dr Thomson

The Australian Government Department of Agriculture and Water Resources welcomes the opportunity to provide the attached submission on the Primary Industries Levies and Charges Collection Amendment Bill 2018 to the Senate Rural and Regional Affairs and Transport Legislation Committee.

Yours sincerely

Cindy Briscoe
Deputy Secretary

25 May 2018

Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry into the Primary Industries Levies and Charges Collection Amendment Bill 2018

Submission by the Department of Agriculture and Water Resources

On 10 May 2018, the Senate referred the provisions of the Primary Industries Levies and Charges Collection Amendment Bill 2018 (the bill) to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 13 June 2018.

This submission provides further information about the bill and the context in which it would operate.

Levy payer registers

In 2014–15 the Senate Rural and Regional Affairs and Transport References Committee conducted an inquiry into the levy system. In June 2015, the committee published its report *Industry structures and systems governing the imposition of and disbursement of marketing and research and development levies in the agricultural sector*, following wide consultation.

The committee recommended that the *Primary Industries Levies and Charges Collection Act 1991* (Collection Act) be amended to allow the creation of levy payer registers, and suggested the type of data that should be collected. In its response to the committee's report, the Australian Government committed to introduce amending legislation to allow the Department of Agriculture and Water Resources (the department) to provide levy payer information to the rural research and development corporations (RDCs) for the purpose of establishing levy payer registers.

In 2016 the Australian Parliament passed amendments to the Collection Act to allow the creation of levy payer registers.

The aim of levy payer registers is to enable the RDCs, as key levy recipient bodies, to identify and consult directly with the levy payers that fund their activities. A levy payer register is a database of the details of individuals and organisations who pay levies. With two exceptions, this information has not previously been required because levies are collected and forwarded to the department by collection agents who aggregate levy payments.

Before the 2016 amendments there was no requirement to pass individual levy payer details onto the department except for wool and dairy producers, under the wool and dairy-specific regulations. The RDCs linked to the dairy and wool industries, Dairy Australia Limited and Australian Wool Innovation, have had levy payer registers for many years to support their legislated polls, and the current model is based on that foundation.

The department conducted a successful pilot levy payer register with the grains industry in 2017, which has informed the development of the infrastructure necessary to support levy payer registers. This is expected to be in place by July 2018.

It will be a matter for each RDC, in consultation with its industry/ies, to decide whether to establish and pay for a levy payer register, and seek the approval of the Minister for Agriculture and Water Resources (the Minister) to do so. An RDC may use its register only for the purposes set out in subsections 27B(1) and 27B(2) of the Collection Act:

- to maintain a register of levy payers or charge payers
- to maintain a register of those persons eligible to vote in any poll conducted by, or on behalf of, the body
- to make public any information of a statistical nature

- in performing any of its functions under a law or contract between the body and the Commonwealth.

An RDC may also disclose information from its levy payer register to another person or body with the permission of the Secretary of the Department of Agriculture and Water Resources (the Secretary) under section 27B(4) of the Collection Act. The purposes for which information from the register may be disclosed to a third party are:

- for a research and development (R&D) activity (within the meaning of the *Primary Industries Research and Development Act 1989* (Cth)(PIRD Act)
- for marketing activities (within the meaning of the PIRD Act)
- for biosecurity purposes
- for National Residue Survey purposes
- in connection with any activity carried out, or proposed to be carried out, by the disclosing RDC for the benefit of producers in the relevant industry.

How levy payer registers will work

An RDC would decide, in consultation with its industry/ies, to seek approval to establish a levy payer register. The Minister may give his or her approval to establish a register in writing. The cost of establishing and maintaining levy payer registers will be recovered from those RDCs for which registers are established.

The department will collect the information by requiring it to be included as part of the levy returns submitted to the department for that commodity. Levy returns are forms completed by collection agents ('intermediaries') under the Collection Act that accompany levies and charges. An industry sets the return period (e.g., monthly, quarterly, annually) when the levy is established and so these vary by commodity. Where a levy payer register is approved for an RDC, the levy return form will require the information necessary to populate a register. As required by the Collection Act, that information is: the levy payer's name, address, contact details, ABN; details relating to the amount of levy paid or liable to be paid; and details relating to the production or processing of a collection product (as determined by the Secretary in a legislative instrument).

Levy payer information will be held centrally by the department. RDCs that have approval to establish a register will access the information through a portal.

Protection and privacy of levy payer information

The RDCs and the department are Australian Privacy Principles (APP) entities and so will be required to hold and manage levy payer information in line with their existing obligations under the *Privacy Act 1988* (Privacy Act).

The APPs are legally-binding principles that apply to the department and to the RDCs when dealing with personal information such as that held in levy payer registers. Any third party granted approval to access levy payer information from a register will also have to act in accordance with these principles whether it is an APP entity or not. This requirement is intended to be set out in the binding agreement that the department expects the RDC to establish with third parties around access, use and protection of levy payer information. The Australian Information Commissioner has power to investigate possible interferences with privacy.

As noted above, levy payer information will be collected for the purposes of establishing levy payer registers and the Collection Act limits the purposes for which the RDCs can use and disclose levy payer information, all of which relate directly to the operations of RDCs.

Information can only be disclosed to a third party with the written approval of the Secretary, who has the power to impose conditions on the approval. The bill also enables the Secretary to revoke an approval where there has been a breach of these conditions. As a result, the proposed amendments are intended to further safeguard the proper use and protection of levy payer information. Further information is provided on this in the following section.

The department's policy is that a levy payer's financial information will not be released to industry representative bodies. Additionally, levy payer information will not be used for departmental compliance purposes, in accordance with the Privacy Act and the APPs.

Levy payers will only be able to access their own data and RDCs will only be able to access data that relates to their operations. Access to this information will be via a two-factor authentication process.

Overview of the bill

The bill makes amendments to support the operation of levy payer registers and to the intermediary-related aspects of the Collection Act. It makes an amendment to allow the publication of statistical information, and other minor technical amendments.

Amendments relating to levy payer registers

The amendments relating to levy payer registers will support the operation of registers in several ways:

- by allowing the Secretary to impose conditions on the release of levy payer information from an RDC's levy payer register to a third party and to revoke that approval where those conditions are breached
- by making the Secretary's decisions to approve, impose conditions or to revoke an approval subject to ministerial reconsideration and review
- by allowing the Secretary to determine that additional industry-specific information be collected for a levy payer register in limited circumstances and where it will be of clear benefit to levy payers.

Power to impose conditions and to revoke an approval for breach of conditions

The bill would allow the Secretary to impose conditions on an approval to disclose levy payer information to further protect that information, or to allow the partial release of information where appropriate. Only the information necessary to complete the activity for which the Secretary approves disclosure under section 27B(6) of the Collection Act should be disclosed. For example, the Secretary's approval for an RDC to release levy payer register information to a third party could be conditional on levy payers' financial information being withheld.

Breach of the Secretary's conditions on an approval to release information will allow the Secretary to advise the RDC that it may no longer disclose that information to the third party.

Making the Secretary's approval, approval subject to conditions, or decision to revoke, subject to Ministerial reconsideration and review

The Secretary's decisions to approve the release of levy payer information to a third party, or approve the release subject to conditions, or to revoke such an approval will be subject to the reconsideration and review provisions already set out under the Collection Act. This aligns with government policy that where individuals' rights and interests are affected by a decision, merits review should be provided.

Power to determine details relating to the production or processing of a collection product

In limited cases, commodity-specific information—in addition to the levy payer's name, address, contact details, ABN/ACN and amount of levy or charge for which the levy payer is liable or has paid—may be required to be included in a return for a levy payer register. The Secretary may

make a legislative instrument setting out additional details that must be included in a return. Examples may include the area or location of production, the number of inputs or the processing methods used in relation to a particular commodity.

Amendments relating to intermediaries

An intermediary is an organisation that is regulated in the Collection Act to collect and report levies and charges from levy payers and pass them on to the department. They are identified as narrow points in the supply chain that most, if not all, the leviable product flows through. They are generally the most cost-effective way to collect levies and charges. Examples of intermediaries that currently exist include: stock and station agents, fruit and vegetable market operators, abattoirs, exporters, or grain pools.

As Australia is a high-cost agricultural producer, participants in rural industries have continued to innovate how their produce is bought and sold to remain competitive in the global market. Understandably, these innovations, new business types and modern ways of buying and selling agricultural produce, do not clearly fit within the legislative framework created in 1991.

Australian producers continue to be liable for levy and charge under the Act; however, some of the intermediaries they now deal with were not contemplated in 1991. Those intermediaries may therefore not be clearly described in the legislation or be aware of the requirement to collect levy and submit levy returns on behalf of levy payers.

The amendments proposed in the bill will allow the Secretary to clarify in a determination that certain acts in relation to collection of products will make a person an intermediary for the purposes of the Act. Such a determination would be a legislative instrument under the *Legislation Act 2003* (the Legislation Act). The amendments will not affect existing intermediaries. Some organisations that perform intermediary-like functions may be affected if the Secretary determines their acts to be those of intermediaries. They would then be required to collect and report levies and charges to the department as current intermediaries do. In accordance with section 17 of the Legislation Act, appropriate consultation would be undertaken with affected organisations before and after a determination is made, to ensure that they are aware of their obligations.

Background

The levy system

There are currently 113 levies on 77 commodities, with 92 per cent of farm production by value covered by a levy of some kind.

At the request of industry, the government collects and distributes levies from primary producers to collaboratively fund R&D, marketing, biosecurity measures and the National Residue Survey. It is rural industries that decide if they want a levy, how much it will be, how it will be collected, and what it will be used for.

The levy system has four key participants: levy payers, intermediaries, the department, and levy recipient bodies.

- Levy payers are producers (and sometimes processors and exporters) and they are responsible, usually through representative bodies, for proposing the establishment of a levy and any subsequent changes, such as to a levy rate.
- Intermediaries are the agents usually responsible for lodging levy returns and passing on the levy to the department on behalf of producers.
- The department provides assistance to industries developing proposals, advises the minister about proposals, implements proposals, processes levy returns, inspects collection agents' records and makes levy disbursements to levy recipient bodies.

- There are 18 levy recipient bodies—the 15 RDCs, Animal Health Australia, Plant Health Australia and the National Residue Survey—which invest levies in line with the purpose for which the levy was collected and agreed strategic investment plans.

Consultation is a key component of the levy system, one which levy payer registers are designed to further promote. Levy payer registers will allow the RDCs, as key levy recipient and investment bodies, to identify and engage directly with the primary producers who pay the levies that fund their activities.

The legislative framework

The levies legislative scheme comprises 21 acts and more than 30 legislative instruments that cover collection, imposition and payment of levy funds to levy recipient bodies. The *Primary Industries Levies and Charges Collection Act 1991*, the *Primary Industries (Excise) Levies Act 1999* and the *Primary Industries (Customs) Charges Act 1999* together impose and regulate the collection of the bulk of levies and charges on Australian primary production. The *National Residue Survey (Excise) Levy Act 1998* and the *National Residue Survey (Customs) Levy Act 1998* and two further horse disease levy acts also exist in this legislative regime.