

Chapter 2

Levy structure

2.1 This chapter considers the levy collection system across agricultural levies generally, with a primary focus on probity and transparency. In tracing the levy process, it explores the levy calculation and collection systems, requirements to approve and re-approve levies, modification of levy allocations and leakage issues.

Levy calculation and collection

2.2 The Department of Agriculture – Levies (formerly Levies Revenue Service) administers, collects and disburses levies and charges on rural commodities and products under the authority of Commonwealth legislation.¹ After recovering costs, it disburses levy funds to the relevant levy recipient body. These bodies include RDCs as well as AHA, PHA and NRS.

2.3 The Department of Agriculture (department) deals primarily with levy collection agents who lodge the levy returns and remit funds to the department. The department therefore has limited contact with levy payers themselves.² The vast majority of levy payments are collected through intermediaries such as processors.

2.4 There are approximately 18,000 agricultural levy collection points across the country of which 9,000 are discrete levy collection points.³ However, as R&D and marketing levies are captured at different points in agricultural production, the levy collection points vary considerably across the agricultural sector. Whereas there are only 15 collection points for the sugar levy, there are 2907 collection points for the wine levy and 5461 collection points for the horticulture levy.⁴

2.5 The department undertakes record inspections of levy collectors across the agricultural sector by way of regular audits undertaken on a random basis.⁵ Mr Noel Robson, Director, Levies Section, Industry Support Branch, Finance and Business Support at the department explained the process:

When we carry out, for example, record inspections of levy agents to ensure they pay correctly, we follow all of the transactions for the period we have chosen back to the original levy payer records—that is, the source documents for the levy—to ensure that that levy payer has been advised of

1 Department of Agriculture, Frequently asked questions, <http://www.agriculture.gov.au/ag-farm-food/levies/faqs> (accessed 7 April 2015).

2 Mr Noel Robson, Department of Agriculture, *Committee Hansard*, 28 November 2014, p. 2.

3 Mr Matthew Koval, Department of Agriculture, *Committee Hansard*, 28 November 2014, p. 6.

4 Department of Agriculture, *Submission 33*, p. 15.

5 Mr Matthew Ryan, Department of Agriculture, *Committee Hansard*, 28 November 2014, p. 6.

the levy collected and that there is a proper process to ensure that levy payer's levy has been passed on to the department. But we only deal with levy payers directly if they are also the person who has to lodge the return and make the payment.⁶

Departmental administrative charges and payment of levy collectors

2.6 As the agency responsible for administering agricultural levies, the department retains a portion of the levy to meet its administration expenses. As a case in point, the dairy industry contributes approximately \$34.5 million in levies annually, of which the department's levy unit retains \$96,000 per annum to cover its administrative costs.⁷

2.7 The department explained that its costs are based on the effort required to administer the levy rather than on the amount of revenue collected.⁸ It noted that the key driver of cost was the number of collection points. Other cost drivers include levy payer compliance, complexity of levy arrangements, frequency of returns, and uptake of electronic transactions.⁹

2.8 Cost recovery as a percentage of levies disbursed for each RDC varies considerably, therefore, from 0.1 per cent for SRA and CRDC to 7.7 per cent for FRDC.¹⁰ Some industries expressed satisfaction with the cost-effectiveness of their levy collection systems. For example, the Australian Macadamia Society noted that it is in a fortunate position, in that levy collection costs and administration charges for the macadamia R&D and marketing levies, represents less than one per cent of the value of the levies collected.¹¹

2.9 However, relatively high collection costs were highlighted by other industries. The wine industry raised concerns regarding the levy collection costs for the grape and wine levy. Mr Anthony Battaglione, General Manager of Strategy and International Affairs with the Winemakers' Federation of Australia (WFA) informed the committee that it pays over \$1 million a year in levy administration charges from levy revenue amounting to \$14 million.¹² The department noted that its cost recovery as a percentage of levy disbursed to that industry was 11 per cent.¹³ While WFA

6 Mr Noel Robson, Department of Agriculture, *Committee Hansard*, 28 November 2014, p. 2.

7 Dairy Australia, *Submission 124*, p. 8 and Mr Ross Joblin, Dairy Australia, *Committee Hansard*, 4 February 2015, p. 29.

8 Department of Agriculture, *Submission 33*, pp 19–20.

9 Department of Agriculture, *Submission 33*, p. 20.

10 Department of Agriculture, *Submission 33*, p. 20.

11 Australian Macadamia Society, *Submission 139*, p. [3].

12 Mr Anthony Battaglione, Winemakers' Federation of Australia, *Committee Hansard*, 5 February 2015, p. 31.

13 Department of Agriculture, *Submission 33*, p. 21.

acknowledged that a process was underway to lower the cost of levy collection (which would permit a greater portion of levy funds to be directed into R&D investment), it argued that for major cost savings to be realised, a complete review of the levy structure and collection mechanism was required.¹⁴

2.10 Concerns in relation to levy collection costs were also raised by producers in the horticultural sector and specifically cherry, apple and pear and pineapple growers. Cherry Growers Australia (CGA) explained that when the department implemented a cost recovery model, the Australian cherry industry experienced a 450 per cent increase in collection fees. CGA indicated that in the 2011–12 financial year, collection fees amounted to \$21,779 – a figure which rose to \$102,262 in the 2012–13 season. Since then, the industry has lobbied to have levy collection costs reduced for its 336 collection points. With the collection fees for the 2014–15 season forecast at \$47,800, the industry is engaged in efforts to reduce this figure to approximately \$40,000.¹⁵ CGA noted that a reduction should be achieved through the increased use of electronic platforms for levy declarations and payments. CGA has also raised with the department the possibility of having levies collected by one organisation.¹⁶

2.11 Apple and Pear Australia Ltd (APAL) also raised concern with the levy collection and administration costs in relation to the horticultural levy, noting that such costs for horticulture were comparatively high when compared with other agricultural commodities. According to APAL, 3.7 per cent of horticulture revenue was consumed in levy collection costs. It noted that, in comparison, the specific rate for apples of 1.73 per cent and pears at 2.88 per cent were considerably lower. Noting that the relatively higher costs of collection were related to factors such as the number of collection points, APAL proposed that HIAL negotiate with the department on ways to reduce these costs.¹⁷ Similarly, pineapple grower, Mr Les Williams informed the committee that collection costs were a concern to pineapple producer levy payers.¹⁸

2.12 Another matter on which there is variation across agricultural industries concerns the payment of collection agents. In the nursery and garden industry, whereby up to 90 per cent of the levy is collected by one provider, levy collection agents are paid.¹⁹ Such agents are paid at a rate of 2.5 per cent of levies collected while the department retains approximately 3 per cent for administering the levy.²⁰

14 Winemakers' Federation of Australia, *Submission 4*, p. 14.

15 Cherry Growers Australia Inc., *Submission 10*, p. 3.

16 Cherry Growers Australia Inc., *Submission 10*, p. 3.

17 Apple and Pear Australia, *Submission 95*, pp 5 and 16.

18 Mr Les Williams, *Submission 99*, p. [1].

19 Mr Robert Prince, Nursery & Garden Industry Australia, *Committee Hansard*, 3 February 2015, p. 8.

20 Mr Robert Prince, Nursery & Garden Industry Australia, *Committee Hansard*, 3 February 2015, p. 12.

2.13 For other industries, agents that collect agricultural levies are not paid. They can hold the levies and collect interest on them until they submit their levy returns to the department. The department noted that intermediaries have expressed concerns about the burden this responsibility places on them, particularly where the levies are complex, multiple levies have to be collected, and costs cannot be shifted back to producers or onto processors or those further along the supply chain.²¹

2.14 The Australian Chamber of Fruit and Vegetable Industries (Australian Chamber) also argued in favour of rationalising the levy collection and administration system. It raised concern that while businesses act as the first point of sale and collect levies, they are not reimbursed for the costs incurred. The Australian Chamber informed the committee that market wholesalers have continually argued that they should be paid for the work they perform, that the levies collection system should be made simpler or that levies should be collected in another way. Noting that approximately 15,000 growers supply central markets, the Australian Chamber concluded that the red tape burden on market wholesalers is significant, and it needs to be addressed.²²

2.15 To add to the complexity, there are different collection systems in place for state-based levies. Remittance for the agents also varies from state to state. As the agents responsible for the collection of livestock levies, the Australian Livestock & Property Agents Association (ALPA) informed the committee that in one state, agents who collect the state-based levy are paid a handling fee. In another, however, agents are fined if they do not remit the levy on specified days as required.²³ Mr Andrew Madigan, CEO of ALPA continued:

For a mum and dad business, which a lot of stock and station agents are, there is a lot of time spent doing the levies and for no benefit to the agent. We have also had different people at times saying, 'Yes, but you get to keep the money so you get the interest on the money.' Our reply is, 'If it is that good, you collect it.' So there is a little bit of work to be done on it.²⁴

2.16 Evidence suggested that the levy collection system was made even more complex when producers pay more than one levy, operate as producers and serve as the collection agent. Moraitis Group noted in regard to the Australian potato levy that it could, at any one time, serve as the producer, intermediary agent, exporter, retailer and processor in relation to the levy. It argued that:

The financial administration time required to reconcile levies on each transaction for each quarter and the requirement to then input these

21 Department of Agriculture, *Submission 33*, p. 19.

22 Australian Chamber of Fruit and Vegetable Industries, *Submission 110*, p. 1.

23 Mr Andrew Madigan, Australian Livestock & Property Agents Association, *Committee Hansard*, 3 February 2015, p. 28.

24 Mr Andrew Madigan, Australian Livestock & Property Agents Association, *Committee Hansard*, 3 February 2015, p. 27.

transactions into the Levy Revenue Service's online submission system, DAFF "Levies", is both onerous, time consuming and requiring of significant manpower resource to input.²⁵

2.17 Moraitis Group argued in favour of streamlining departmental deductions, reconciliations and payments to facilitate a one-touch levy appropriation mechanism that could be applied across horticultural products. It favoured administration of such a mechanism through the Australian Taxation Office (ATO) as a government appropriation authority.²⁶

2.18 Another concern raised in relation to the collection of agricultural levies related to the situation whereby collection agents have gone into liquidation. Nursery & Garden Industry Australia (NGIA) raised concerns that on two separate occasions, collection agents had not paid the levy to the department, having gone into liquidation. The industry, through NGIA, was required to pay the department the outstanding \$500,000 on the grounds that it is the responsible body to the involved levy payers.²⁷ ALPA informed the committee that a similar incident occurred in the livestock sector whereby a collection agent failed to transfer collected levies to the department and then went into liquidation.²⁸

Identification of levy payers and a levy payer database

2.19 The department does not have records for all levy paying producers across the agricultural industry. For most industries, the department liaises with levy agents who remit to it a lump sum in levies payments. The department's levy unit will then disperse the funds to the respective RDC, AHA, PHA and the NRS, less the costs of administering the levy.²⁹ As noted previously, during this process, the department does not ordinarily come into contact with levy payers themselves.

2.20 Where the department has direct contact with producers in industries such as the turf industry, where there is no other point in the market chain to obtain levy returns, it knows who the levy payers are. It does not, however, systematically collect information directly from these levy payers beyond the provision of the returns by producers.³⁰ Furthermore, for the substantial majority of levy payers across

25 Moraitis Group, *Submission 108*, p. 4.

26 Moraitis Group, *Submission 108*, p. 4.

27 Mr Robert Prince, Nursery & Garden Industry Australia, *Committee Hansard*, 3 February 2015, p. 9.

28 Mr Andrew Madigan, Australian Livestock & Property Agents Association, *Committee Hansard*, 3 February 2015, p. 31.

29 Department of Agriculture, Collection and Administration of Levies and Charges, http://www.agriculture.gov.au/ag-farm-food/levies/publications/levies_explained (accessed 7 April 2015).

30 Department of Agriculture, *Submission 33*, p. 17.

agricultural commodities, the department cannot identify who pays the levies.³¹ Mr Robson explained the department's role:

Our legislation allows us to require information to be provided by a person in relation to our work to collect levies, and it is a compulsory provision of that information. However, the legislation prescribes that it is only in relation to our work in administering the levies. Every time we do that, the intermediaries have an additional cost in providing that information, and one of the concerns is the reg cost.³²

2.21 When a levy agent or intermediary deducts the levy from the proceeds of sale or recovers the levy from the producer, they must provide the producer with a receipt or written statement acknowledging the payment of the levy.³³ Under respective levy legislation, levy collectors are required to keep records of all levy payers they collect the levy from. The collection agents are required to provide these records to departmental officials during record inspections. The focus of the inspection is to ensure that the levy is collected correctly and remitted accordingly.³⁴

2.22 While the levy collection agents have their own lists of levy payers, such lists cannot serve as a point of comparison as no other list is retained by the department, RDC or representative industry body. It is at the collection point, therefore, where information regarding levy payers is diluted.³⁵ Some RDCs and representative bodies have databases of their own levy payer, producer members. However, respective membership does not comprise 100 per cent of all levy payers for each industry and there remains no comprehensive, valid record available of all agriculture levy payers.³⁶

2.23 In the few industries where levy payers are documented, some are very small industries. Levy payers of the agaricus mushroom levy are known to the respective grower representative organisation, the Australian Mushroom Growers' Association (AMGA). There are 57 growers who pay the levy and AMGA matched its membership data with the growers, having directly contacted each levy payer to put the numbers together.³⁷ In other industries where the levy payers are known, such as the chicken meat industry, levy payers also serve as the levy collection points.³⁸

31 Mr Noel Robson, Department of Agriculture, *Committee Hansard*, 28 November 2014, p. 3.

32 Mr Noel Robson, Department of Agriculture, *Committee Hansard*, 28 November 2014, p. 11.

33 Department of Agriculture, *Submission 33*, p. 14.

34 Mr Noel Robson, Department of Agriculture, *Committee Hansard*, 28 November 2014, p. 6.

35 Mr Selwyn Snell, Council of Rural Research and Development Corporations, *Committee Hansard*, 28 November 2014, p. 17.

36 Mr Richard Mulcahy, AUSVEG, *Committee Hansard*, 4 February 2015, p. 2.

37 Mr Gregory Seymour, Australian Mushroom Growers' Association, *Committee Hansard*, 3 February 2015, pp 42–43.

38 This is the case with regard to the chicken meat industry whereby the levy payers are the 12 hatcheries. Australian Chicken Meat Federation, *Submission 139*, p. 3.

2.24 In other instances, such as the nursery and garden industry, a confidential letter of agreement exists between the prescribed body and levy collectors whereby the latter provides the names and addresses of those who pay the levy.³⁹ This arrangement is made simpler for the nursery and garden industry as one provider collects up to 90 per cent of the levy.⁴⁰ Similarly, grain-fed cattle producer levy payers are known to their prescribed peak industry body through an approval from AUS-MEAT, which provides access to National Feedlot Accreditation Scheme information and enables ALFA to contact levy payers under certain circumstances.⁴¹ Dairy farmer levy payers are known to Dairy Australia Ltd (DA) because it has an agreement with the department's levies unit whereby it is provided the list of levy payers and their levy contributions.⁴²

2.25 The department explained that the only true visibility that it has in relation to levy payers is of producers engaged in the wool and dairy industries. The legislative framework for those two industries allows the department to collect levy payer information, including the levies paid, from the intermediaries and to pass it on to the respective RDC in order to conduct a poll. Specifically, subsection 27(3) of the *Primary Industries Levies and Charges Collection Act 1991* (PILCC Act) states that an authorised person (who is appointed by the secretary of the department to serve as a collection authority) may provide to an eligible recipient the following:

- the name, address and ABN of any person who has paid, or is liable to pay, the wool levy; and
- details relating to the amount of the wool or dairy levy that the person has paid, or is liable to pay.

2.26 Under this provision, the names and details of the 55,964 woolgrower levy payers are provided to Link Market Services (LMS). LMS collects their details from the department which collected and collated that information (from wool brokers who collect the levy). The department provides that information to LMS which is a corporate share registry company.⁴³ Mr Stuart McCullough, Chief Executive Officer (CEO) of Australia Wool Innovation (AWI) explained the role of LMS:

Their contribution is important because the data is collated, and certainly in terms of voter entitlement they are the group that we ask to go out and calculate the voter entitlement per eligible levy payer in the case of

39 Mr Robert Prince, Nursery & Garden Industry Australia, *Committee Hansard*, 3 February 2015, p. 8.

40 Mr Robert Prince, Nursery & Garden Industry Australia, *Committee Hansard*, 3 February 2015, p. 8.

41 Mr Dougal Gordon, Australian Lot Feeders' Association, *Committee Hansard*, 3 February 2015, p. 74.

42 Mr Ian Halliday, Dairy Australia, *Committee Hansard*, 4 February 2015, p. 31.

43 Mr Stuart McCullough, Australian Wool Innovation, *Committee Hansard*, 5 February 2015, p. 20.

WoolPoll, and per shareholder in the case of an AGM. They oversee the process of that information coming back and adjusting those entitlements if they are ever questioned.⁴⁴

2.27 Similarly, subsection 27(3A) of the Collection Act provides that an authorised person may provide the same details regarding dairy levy payers to the industry services body. Once a year, dairy processors as the intermediaries for the industry provide a return of information about all the producers that they have collected the levy from for that year. The department then passes that information on to DA.⁴⁵

2.28 The department informed the committee that in terms of the costs for the respective wool and dairy databases, the costs involved vary from one year to another. However, management of the wool database requires one full-time equivalent (FTE) officer. The dairy database requires less than 0.1 per cent of a FTE because the department do not do the data management reconciliation but rather pass on the information to DA.⁴⁶

2.29 However, there is no list or database of levy payers in the pork, sugar, grain, egg and cotton industries, to name a few.⁴⁷ Yet, the need to identify levy payers by way of establishing an electronic database (to facilitate industry feedback and increase accountability to levy payers) was recognised in a number of reviews and reports.⁴⁸ It was also raised as an issue by submitters to this inquiry, of whom some argued that such a database was the fundamental starting point on which to build effective levy structures.⁴⁹

2.30 Noting that identifying the levy payers is the foundation on which accountability in the levy system should be built, the NSW Farmers' Association (NSW Farmers) recommended that all RDC's develop mechanisms that identify levy payers and allocates to them rights applicable to that RDC.⁵⁰ Similarly, the National

44 Mr Stuart McCullough, Australian Wool Innovation, *Committee Hansard*, 5 February 2015, p. 21.

45 Mr Noel Robson, Department of Agriculture, *Committee Hansard*, 28 November 2014, p. 10.

46 Mr Noel Robson, Department of Agriculture, *Committee Hansard*, 15 May 2015, p. 33.

47 Mr Aeger Kingma, Australian Pork Limited, *Committee Hansard*, 28 November 2014, p. 30; Mr John Harvey, Grains Research and Development Corporation, *Committee Hansard*, 28 November 2014, p. 42; Mr James Kellaway, Australian Egg Corporation, *Committee Hansard*, 3 February 2015, p. 23 and Mr Adam Kay, Cotton Australia, *Committee Hansard*, 3 February 2015, p. 46.

48 Marsden Jacob Associates, *Grain Research and Development Corporation: Independent Strategic Governance Review: Final Report*, July 2014, p. 6.

49 Mr John Dunn, NSW Farmers' Association, *Committee Hansard*, 3 February 2015, p. 68; Mr Robert Prince, Nursery & Garden Industry Australia, *Committee Hansard*, 3 February 2015, p. 11; National Farmers' Federation, *Submission 143*, p. 28 and Raspberries and Blackberries Australia Inc, *Submission 70*, p. 5.

50 NSW Farmers' Association, *Submission 140*, p. 4.

Farmers' Federation (NFF) made the point that the development of a levy payer database could underpin a range of producer engagement strategies, particularly with the aim of improving accountability to levy payers in the investment of their levy contribution.⁵¹ NSW Farmers noted, however, that any levy payer identification system should be appropriate for the commodity the levy is paid upon.⁵²

2.31 ALPA is required under the *Primary Industries (Excise) Levies Act 1999* to serve as the levy collector for the livestock industry.⁵³ ALPA's CEO, Mr Andrew Madigan informed the committee that with a little 'jiggling of computer systems', it would not be hard to report the names of levy payers and how much they pay in levies.⁵⁴ He further noted that it would be straightforward to establish a computerised database of levy payers in relation to the livestock industry:

It can be done, because the accounting system has to work out how much it is going to take from your account sales based on the number of head—so that sits into that journal of account. We sell 500 cattle on the day, and there is the money there. We know exactly where it came from. It is the same as collecting the money from you as a vendor and paying the council for how many dollars a head they want for the weighing fee, the yard dues or whatever it is.⁵⁵

2.32 Some witnesses argued that leakage remained a sizeable problem, and that a levy payer database may assist in addressing leakage. According to the Australian Chamber, with the stated value of horticulture production at \$9 billion and levy receipts amounting to \$41 million (or less than 0.5 per cent of this total figure), the estimated level of levy leakage in the horticultural industry could be between 20 to 30 per cent.⁵⁶

2.33 Under its PigPass system, Australian Pork Limited (APL) is able to contact every pig producer (for purposes such as disease traceability) but not necessarily every levy payer.⁵⁷ Under the current arrangements, it has no way of knowing whether some small and backyard operators are paying the levy or not. At the same time, it does not know whether smaller producers such as hobby farmers are on its PigPass system.⁵⁸

51 National Farmers' Federation, *Submission 143*, p. 28.

52 NSW Farmers' Association, *Submission 140*, p. 4.

53 Mr Andrew Madigan, Australian Livestock & Property Agents Association, *Committee Hansard*, 3 February 2015, p. 30.

54 Mr Andrew Madigan, Australian Livestock & Property Agents Association, *Committee Hansard*, 3 February 2015, p. 28.

55 Mr Andrew Madigan, Australian Livestock & Property Agents Association, *Committee Hansard*, 3 February 2015, p. 28.

56 Australian Chamber of Fruit and Vegetable Industries Ltd, *Submission 110*, p. [1].

57 Ms Deb Kerr, Australian Pork Limited, *Committee Hansard*, 28 November 2014, p. 31.

58 Ms Deb Kerr, Australian Pork Limited, *Committee Hansard*, 28 November 2014, p. 31.

Challenges in establishing a levy payer database

2.34 While the need to establish a database of levy payers was recognised across most industries, the challenges in establishing such a system were also articulated.

2.35 Challenges include the reality that in some industries, such as that of rubus (cane berries including raspberries, blackberries and boysenberries), growers can be in the industry one day and out of it the next.⁵⁹ This is a particular challenge in the horticultural sector where HIAL is required to establish a register of horticulture levy payer members by November 2015.⁶⁰ The register is expected to provide information regarding a levy payer's ABN number, crop grown, levy history, name, address and property.⁶¹ While there are between 25,000 to 35,000 horticulture producers in Australia, HIAL has so far registered 1000 voting members and has set itself a target of registering 3000 voting members by the end of the year.⁶²

2.36 Another challenge raised in regard to identifying levy payers and the involved costs was exemplified in relation to the beef industry. Australian Bureau of Statistics (ABS) statistics reveal that there are 81,000 beef farms or operations in Australia, of which 34,000 or (42 per cent) have a value of output which is less than \$50,000, (amounting to less than 50 steers). Mr Michael Keogh, Executive Director of the Australian Farm Institute (AFI) explained that these farmers are effectively part-time operators as they are running small numbers of cattle. The ramifications for the establishment of a database were that:

...the effort of contacting all of those when they probably account, by estimate, for about four per cent of total levies paid, is quite a difficult challenge.⁶³

2.37 Mr Keogh noted that a similar situation applied in horticulture whereby 45 per cent of horticulture producers have less than \$50,000 worth of output a year. He explained that about half of these producers probably contribute about five per cent of total levies paid.⁶⁴ At the other end of the spectrum, the top four or five per cent of producers would produce nearly a third of the total levies paid.⁶⁵ The long tail effect of this and other industries also brought to the fore the question of representation with

59 Mr Jonathon Eccles, Raspberries and Blackberries Australia, *Committee Hansard*, 3 February 2015, p. 51.

60 Mr Selwyn Snell, Horticulture Innovation Australia Ltd, *Committee Hansard*, 4 February 2015, p. 46.

61 Mr Selwyn Snell, Horticulture Innovation Australia Ltd, *Committee Hansard*, 4 February 2015, p. 47.

62 Mr John Lloyd, Horticulture Innovation Australia Ltd, *Committee Hansard*, 15 May 2015, pp 16–17.

63 Mr Michael Keogh, Australian Farm Institute, *Committee Hansard*, 5 February 2015, p. 26.

64 Mr Michael Keogh, Australian Farm Institute, *Committee Hansard*, 5 February 2015, p. 26.

65 Mr Michael Keogh, Australian Farm Institute, *Committee Hansard*, 5 February 2015, p. 26.

some submitters arguing in favour of proportionate representation in regard to levy matters.

2.38 Notwithstanding these challenges, the committee recognised that without a comprehensive register of levy payers, it would remain unclear as to the extent to which producers (whether smaller or larger) are engaged in levy investment decision making processes. Further, the consolidation of many such industries simply exemplified the need for a cost-effective data collection method which utilises existing information at the point of levy collection.

2.39 The committee was informed that in the past, the industry considered a mechanism to identify all levy payers but found that the involved costs were too prohibitive. A number of bodies are currently investigating methods to cost-effectively generate such a list, taking into account privacy and other considerations. One such option is for levy collection agents, at least as a first step, to provide their lists of levy payers. This initiative would impose a cost burden on each collection agent but which would ultimately be passed on.⁶⁶ However, it would not place further onus on levy payers to register.

2.40 The Council of Rural Research and Development Corporations (CRRDC) noted that most RDCs had raised concerns regarding the difficulties in obtaining levy payers' details. Mr Selwyn Snell, Chairman of CRRDC noted in this regard that a mandatory system of property identification could be considered which would also serve biosecurity control and traceability purposes.⁶⁷ Mr Tim Lester, CRRDC Operations Manager highlighted that as service providers accountable to levy payers, the provision of levy payers' lists to RDCs would bolster their accountability requirements.⁶⁸

2.41 HIAL noted that, not only would government assistance be required to develop a database of all levy payers, but that ultimately, registration should be mandatory.⁶⁹ Similarly, AFI held the view that without a compulsory registration or mandatory system, participation in a levy payer register would reflect the modest levels of levy payer participation in levy decision making processes including polls, surveys and Annual General Meetings (AGMs).⁷⁰

2.42 Sugar Research Australia (SRA) noted that restrictions under the *Privacy Act 1988* prevented it from directly accessing levy payer details from the milling

66 Mr Matthew Ryan, Department of Agriculture, *Committee Hansard*, 28 November 2014, p. 7.

67 Mr Selwyn Snell, Council of Rural Research and Development Corporations, *Committee Hansard*, 28 November 2014, p. 16.

68 Mr Tim Lester, Council of Rural Research and Development Corporations, *Committee Hansard*, 28 November 2014, p. 16.

69 Mr Selwyn Snell, Horticulture Innovation Australia Ltd, *Committee Hansard*, 4 February 2015, p. 49.

70 Mr Michael Keogh, Australian Farm Institute, *Committee Hansard*, 5 February 2015, p. 27.

companies. SRA's inability to identify sugar levy payers and the amount of sugarcane produced or processed by levy payers was problematic when it came to undertaking a sugar poll in 2012. At that time, SRA could only identify those levy payers who registered for membership of SRA. The lack of direct access to levy payers was noted as a significant issue for SRA, particularly, its ability to:

- effectively consult with all levy payers on the appropriate investment of their levy payments;
- identify levy payers for voting in sugar polls; and
- identify new and current levy payers for issuing Plant Breeder's Rights Licences.⁷¹

2.43 Another challenge in relation to developing and maintaining a list of levy payers relates to the method by which the levy is collected. GRDC noted that the grain levy is collected at the first point of sale from the buyer, not the seller. While it is deducted from the seller, it is actually collected by the buyer.⁷²

2.44 Another consideration is the reality that many levies are collected by state governments for various purposes. Levies vary in value and remittance times from state to state and in relation to the way they are calculated. While some are calculated as a percentage of the value, others are on a per head value basis with some on a sliding scale associated with the value.

2.45 ALPA voiced its support for a mechanism to identify levy payers which incorporated all levies paid both on a state and federal basis in order to ascertain a true picture of how many livestock are sold.⁷³ It argued in favour of a register of all levies paid which would include information such as vendor identification, number of livestock sold, type of livestock sold and the amount of levy paid. In relation to the livestock sector, ALPA stated that:

This information is presently required to calculate and deduct levies, but is not reported. This valuable statistical information will aid with MLA voting rights amongst other beneficial possibilities for the entire livestock industry.⁷⁴

2.46 Notwithstanding the various challenges to establishing meaningful lists of levy payers, many submitters to the inquiry supported efforts to establish and maintain such lists.⁷⁵ NGIA argued that if levies are a tax then it should be lodged with the GST

71 Sugar Research Australia, *Submission 15*, p. 16.

72 Mr John Harvey, Grains Research and Development Corporation, *Committee Hansard*, 28 November 2014, p. 42.

73 Mr Andrew Madigan, Australian Livestock & Property Agents Association, *Committee Hansard*, 3 February 2015, p. 27.

74 Australian Livestock & Property Agents Association, *Submission 11*, p. 4.

75 Mr Selwyn Snell, Council of Rural Research and Development Corporations, *Committee Hansard*, 28 November 2014, p. 19 and United Stockowners of Australia, *Submission 118*, p. 2.

return.⁷⁶ Another view was that lodgement of levies should be attached to business activity statement returns, which would also mean compliance through the ATO.⁷⁷

2.47 In terms of responsibility, some submitters argued that it was the role of the department to identify levy payers. Mr Robert Prince, CEO of NGIA made the point that as the secretary of the department assigns the responsibility to levy agents to collect the levy, that responsibility should also include keeping all relevant details including: who pays the levy, where they are from and the value of the levy that is collected.⁷⁸ Similarly, ALPA argued that a levy payer register should be maintained by the department's levies unit and that a nationally-based register include vendor identification, number of livestock sold, type of livestock sold and amount of levy paid for each levy payer. It noted that all this information is 'presently required to calculate and deduct levies, but is not reported'.⁷⁹ United Stockowners of Australia made the following observation:

The 'Levies Collection Unit' assumes an administrative role similar to that of the Australian Taxation Office (ATO) in the collection of taxation revenue. Given that the ATO use an identification number – Tax File Number (TFN) – to identify and record individual(s) and business(es) in relation to their activities and obligations under the Tax Act it is therefore inconceivable that the 'Levies Collection Unit' has no such mechanism or process in place that would achieve the same outcome as the ATO. This apparent and discernible system flaw, we would argue, is in urgent need of correction.⁸⁰

2.48 The need for a levy payer database was identified across many industries not only as a fundamental mechanism to provide for accountability, but also to assist in establishing membership and voting rights of relevant RDCs. The latter is further considered in the following chapter.

Levy rates and arrangements

2.49 While many levies are set at a percentage of farm gate value, others are flat dollar rates. While some are based on weight, a few are calculated on the basis of

76 Mr Robert Prince, Nursery & Garden Industry Australia, *Committee Hansard*, 3 February 2015, p. 12.

77 Mr Richard Mulcahy, AUSVEG, *Committee Hansard*, 4 February 2015, p. 2; J Toohey and Associates Pty Ltd, *Submission 105*, p. 6 and Australian Chamber of Fruit and Vegetable Industries, *Submission 110*, p. 2.

78 Mr Robert Prince, Nursery & Garden Industry Australia, *Committee Hansard*, 3 February 2015, p. 9.

79 Australian Livestock & Property Agents Association, *Submission 11*, pp 4–5.

80 United Stockowners of Australia, *Submission 119*, p. 2.

boxes or cartons, runners and square centimetres.⁸¹ The way in which agricultural levies are applied, therefore, varies across commodities as indicated below:

- the pork levy is calculated at \$3.125 per head;⁸²
- the coarse grain levy is calculated as a percentage of farm gate value;⁸³
- the stone fruits levy is calculated at 1 cent per kilo;⁸⁴
- the mushroom levy is set at \$4.32 per kilogram of mushroom spawn;⁸⁵
- the cotton levy is calculated at \$2.25 per 227-kilogram bale;⁸⁶
- the turf levy is applied on square metres of turf;⁸⁷
- the sugar levy is applied on tonnage (70 cents per tonne) with both grower and milling businesses each contributing 35 cents per tonne of cane;⁸⁸ and
- the cattle levy is paid on a per head basis while the sheep levy is paid on a percentage basis.⁸⁹

2.50 ALPA informed the committee that as levy agents for the livestock industry, the fact that there are different collection methods across livestock make the current system expensive, cumbersome and at times, frustrating.⁹⁰ Mr Andrew Madigan, CEO of ALPA, noted that in addition to the cattle levy being calculated on a per-head basis and sheep on a percentage basis, state levies also vary. While some state-based levies

81 ACIL Allen Consulting, *Better Value for Growers – A future for HAL: Independent Review of HAL and Horticulture Levy System*, May 2014, 84.

82 Ms Deb Kerr, Australian Pork Limited, *Committee Hansard*, 28 November 2014, p. 31 and Australian Pork Limited, About, <http://australianpork.com.au/about-us/australian-pork-limited/> (accessed 7 April 2015).

83 Department of Agriculture, Leviable Commodities, <http://www.agriculture.gov.au/ag-farm-food/levies/categories/> (accessed 7 April 2015).

84 Mr John Moore, Summerfruit Australia, *Committee Hansard*, 4 February 2015, p. 60.

85 Mr Gregory Seymour, Australian Mushroom Growers Association, *Committee Hansard*, 3 February 2015, p. 34.

86 Department of Agriculture, Leviable Commodities, <http://www.agriculture.gov.au/ag-farm-food/levies/categories/> (accessed 7 April 2015) and Mr Adam Kay, Cotton Australia, *Committee Hansard*, 3 February 2015, p. 46.

87 Mr Noel Robson, Department of Agriculture, *Committee Hansard*, 28 November 2014, p. 8.

88 Sugar Research Australia, Statutory levy, http://www.sugarresearch.com.au/page/About_SRA/Statutory_levy/ (accessed 9 April 2015).

89 Mr Andrew Madigan, Australian Livestock & Property Agents Association, *Committee Hansard*, 3 February 2015, p. 27.

90 Mr Andrew Madigan, Australian Livestock & Property Agents Association, *Committee Hansard*, 3 February 2015, p. 27.

are calculated on a percentage basis and some on a per-head basis, others are calculated on a certain amount of value basis.⁹¹

2.51 Mr Madigan held the view that a review into levies collection needs to take place across the livestock sector. He suggested a system whereby the states and federal agencies establish one levy, which is transmitted to a central agency from which the states can obtain their portion. To make his point regarding the complexity of the current arrangements, Mr Madigan informed the committee that:

If sheep or cattle are sold out of Victoria or New South Wales there is no levy to be paid in New South Wales. But if someone from New South Wales sells sheep in Victoria they have to pay the Victorian levy for no benefit to them, so they can claim it back. It is just a red-tape disaster.⁹²

2.52 APAL argued that the high cost burden imposed upon the horticultural sector in terms of substantial levy collection costs reflected the complexity of the horticulture levy system whereby there are at least 40 different bases or rates used in relation to each of the 50 horticultural levies varying from a cents per kilogram method, to per square meter to an *ad valorem* rate.⁹³ The ACIL Allen review of Horticulture Australia Ltd (HAL) also highlighted the complex levy arrangements in the horticulture industry resulting from levies applied to nine different units (including cents/kg, \$/tonne, cents/box, *ad valorem*) and in excess of 40 different active rates being applied. The ACIL Allen review further noted that the complexities were in part a function of the number of peak industry body/HAL members making decisions about the levies and the administrative process by which levies were conceived, implemented and collected.⁹⁴

2.53 Evidence to the committee suggested that the complexity in levy rates and arrangements, particularly where state and federal levies are paid, led to confusion on the part of growers regarding levies paid. According to WA Grains Group, some farmers are not receiving statements of their levies to reconcile what they have paid and recorded, and complex arrangements had led to concerns regarding overcharging. Mr Douglas Clarke, Chairman of WA Grains Group, suggested that the overcharge had arisen because farm gate prices were not taken into account by the traders when determining levy charges.⁹⁵ Mr Duncan Young, President of the WA Farmers Grain

91 Mr Andrew Madigan, Australian Livestock & Property Agents Association, *Committee Hansard*, 3 February 2015, p. 27.

92 Mr Andrew Madigan, Australian Livestock & Property Agents Association, *Committee Hansard*, 3 February 2015, p. 27.

93 Apple and Pear Australia Ltd, *Submission 95*, p. 17. *Ad valorem* is a method for charging a duty, fee or tax according to the value of goods and services instead of by a fixed rate, or by weight or quantity.

94 ACIL Allen Consulting, *Better Value for Growers – A future for HAL: Independent Review of HAL and Horticulture Levy System*, May 2014, p. 50.

95 Mr Douglas Clarke, WA Grains Group, *Committee Hansard*, 20 February 2015, p. 2.

Council within the WA Farmers Federation, made the point that the complexities of the system should be addressed by way of identifying the simplest way to predetermine where the farm gate price is.⁹⁶

2.54 NSW Farmers noted that ACIL Allen's review of HAL had recognised the benefits of moving some commodities which attract the horticulture levy to an *ad valorem* rate, on the grounds of reduced collection costs through simpler administration processes. NSW Farmers further argued that application of the *ad valorem* rate would also provide an automatic stabiliser, whereby the rate of levy contributions – and therefore levy revenue – was maintained, given that prices fluctuate in relation to production. However, evidence to the committee was divided on the efficiency of an *ad valorem* rate with submitters such as the NGIA suggesting that the application of such a rate for the nursery industry would result in a significant increase in collection costs from the current three to four per cent to that of 40 per cent.⁹⁷

2.55 NSW Farmers maintained that further consultation with relevant peak industry bodies should be undertaken before any amendments to specific horticultural levies were considered. Similarly, APAL raised several concerns, including the need for industry consensus for such reform. It also cautioned that a move to an *ad valorem* rate for horticultural levies may disadvantage some industries within the sector and fail to reduce levy collection costs.⁹⁸

2.56 Another issue raised in evidence was the confusion regarding levy application in the red meat sector. ALFA argued that amendment of the *Primary Industries (Excise Levies) Act 1999* was required to provide greater clarity in relation to the payment of grain-fed cattle transaction levies. The association described the current arrangements as 'ambiguous, confusing, inconsistent with industry practice and inequitable'. ALFA also told the committee that the matter had been raised with the department, which had acknowledged the flaws in the current statute.⁹⁹

2.57 The point was also made that the diverse systems and means by which levies are paid have implications for the capacity of industries to undertake levy payer identification. NSW Farmers argued that this reality made it more important that all RDCs develop levy payer identification mechanisms 'with a preference for the automated recognition and grading of applicable rights from the point of levy payment'.¹⁰⁰ The establishment of such a mechanism could provide the opportunity to

96 Mr Duncan Young, WA Farmers Federation, *Committee Hansard*, 20 February 2015, p. 58.

97 Mr Robert Prince, Nursery & Garden Industry Australia, *Committee Hansard*, 3 February 2015, p. 10.

98 NSW Farmers' Association, *Submission 140*, p. 7; Apple and Pear Australia Ltd, *Submission 95*, pp 17–18.

99 Australian Lot Feeders' Association, *Submission 29*, p. 8.

100 NSW Farmers' Association, *Submission 140*, p. 24.

review levy collection with a view to streamlining the process and reducing duplication, particularly in relation to state-based levies.

Approval and modification of levies

2.58 The government assesses all proposals to increase a levy against the same principles applicable to a new levy.¹⁰¹ The Levy Principles and Guidelines require industry bodies to demonstrate that a proposed levy addresses a market failure and is equitable, efficient and supported by the industry involved. Principle 2 concerns the introduction of a new levy while Principle 12 details the process to amend an existing levy.

2.59 Beyond meeting the principles laid out in the guidelines, the manner in which an industry works together to agree on the need for a levy or a change to an existing one is a matter for each industry. In some industries including the cattle, sheep and goat industries (and others operating under an industry-owned RDC structure) levies can only be imposed or changed under legislation at the request of industry, with a significant majority of producer votes in favour of change, and approval by the minister.¹⁰²

2.60 Under SRA's constitution, levy changes require a majority positive vote obtained through a formal Sugar Poll. Under its system, a poll is conducted when the SRA board and/or member delegates recommend a change to the sugarcane levy on the basis of an independence performance review.¹⁰³ The first such poll was undertaken in August 2012 to form SRA and fund it by way of a single statutory sugarcane levy. The wool and dairy industries also utilise a poll as the means to approve and re-approve respective levies.

2.61 One of the key roles of the representative bodies such as the prescribed industry body (PIB) in relation to agricultural levies is that they make recommendations regarding levy rates to levy payers in advance of levy payer ballots. It was emphasised in evidence to the committee that this role cannot be undertaken by RDCs as there would be a considerable conflict of interest if RDCs were required to make recommendations about their own future revenue to levy payers.¹⁰⁴

2.62 While all industries must meet the requirements under the levy guidelines, levy changes are a matter for each industry. Therefore, there is no consistently applied means of engaging levy payers across agricultural commodities in the approval or re-approval of levies.¹⁰⁵ Similarly, while the responsibility for improving efficiency of

101 Department of Agriculture Levies Revenue Service, *Levy Principles and Guidelines*, January 2009, p. 11.

102 Meat and Livestock Australia, *Submission 116*, p. 7.

103 Sugar Research Australia, *Submission 15*, p. 15.

104 Australian Farm Institute, *Submission 129*, p. 25.

105 NSW Farmers' Association, *Submission 140*, p. 13.

the levy system rests with the prescribed industry bodies and the Australian Government, there is no regular mechanism to review levies individually or as a whole.¹⁰⁶ The opportunities for levy payers to engage in these various mechanisms are considered further in the following chapter, in the context of accountability to levy payers.

Demonstrating industry support

2.63 Under the levy guidelines, industries must demonstrate that there is producer support for a new or modified levy. An industry must prove that it engaged in consultation with as many potential or existing levy payers and intermediaries involved in the collection of the levy as possible.¹⁰⁷ For a levy proposal to be considered by government, industry must show that there is majority support from actual and/or potential levy payers. Further, Principle 5 requires the initiator of the proposal to demonstrate that there is majority agreement on the levy imposition/collection mechanism or that despite objections, the proposed mechanism is equitable.

2.64 In regard to demonstrating industry support, the guidelines that that:

At present the Government interprets 'demonstrated industry support' as support from those who choose to participate in a ballot and/or consultation process.

A majority is defined as follows:

- 50% plus one of the voting allocations of those producers who choose to vote in a levy ballot
- 50% plus one of producers who choose to vote in a one vote per producer ballot
- 50% plus one of production of producers who vote in a production based ballot
- 50% plus one of those who vote for all other types of voting.¹⁰⁸

2.65 In terms of industry support, the primary factor is whether more than 50 per cent of levy payers vote in favour of a levy or levy change. When asked how this was possible for industries that did not know who their levy payers were, Mr Peter Otterson, Assistant Secretary at the department explained:

They have to be able to demonstrate that they have been out there to identify potential levy payers and they can prove to us, through the evidence they provide, that they know what the population is, that they have

106 ACIL Allen Consulting, *Better Value for Growers – A future for HAL: Independent Review of HAL and Horticulture Levy System*, May 2014, 25.

107 Department of Agriculture, *Submission 28*, p. 6.

108 Department of Agriculture Levies Revenue Service, *Levy Principles and Guidelines*, January 2009, p. 6.

contacted those people, that they have consulted with them and have had the opportunity to have a say, that an independent voting process has been undertaken and that the numbers they put forward demonstrate support. The question about this is: how much more than 50 per cent is important? That is always the question.¹⁰⁹

2.66 Mr Otterson continued that while the 50 per cent related in the first instance to enterprise, other matters that would be taken into consideration included the amount of production represented by that 50 per cent of producers.¹¹⁰

2.67 The levy guidelines state, however, that where an industry elects to conduct a ballot for a new levy or levy amendment, voting allocation can be based on either one vote per producer (business entity system) or that votes can be allocated based on the amount of levy paid (or payable). It is for an industry body to determine the type of voting most appropriate to its industry. The guidelines further note that:

Historically, most industries that have conducted a ballot to show acceptance for a new levy have opted to use the ‘one vote per producer’ option. The production-based model is generally not recommended for new levies because it can be difficult to reliably identify levels of production and producers are sometimes reluctant to reveal their production details.

To ensure that a ballot is representative of all potential or actual levy payers, the Government will consider:

- if all producers have the opportunity to participate in the ballot
- if a levy proposal has sufficient support from a reasonable proportion of the industry’s production.

Sufficient support would be achieved by ensuring there is a strong, participative consultation process.¹¹¹

2.68 The consultation process itself can be a complex one given the many stakeholders that may be involved in the development and imposition of a levy. An industry may have one or multiple peak industry councils. There may be one or several recipient bodies for the levy. The producers of the product subject to the levy can be widely disbursed and there may be a range of intermediaries responsible to collect the levy.¹¹²

2.69 Determining adequate industry support and how it is measured was a reoccurring theme throughout the inquiry. It was exemplified in the mango industry. At the 2011 poll to determine whether to increase the mango levy, questions were

109 Mr Peter Otterson, Department of Agriculture, *Committee Hansard*, 15 May 2015, p. 34.

110 Mr Peter Otterson, Department of Agriculture, *Committee Hansard*, 15 May 2015, p. 34.

111 Department of Agriculture Levies Revenue Service, *Levy Principles and Guidelines*, January 2009, p. 12.

112 Department of Agriculture, *Submission 28*, p. 6.

raised in relation to the voting weightage. This was highlighted in relation to the Emergency Plant Pest Response (EPPR) component of the mango levy:

For the EPPR component of the levy/charge, of the 135 mango grower enterprises which voted, 74 were in favour, and 61 were opposed. On a production-weighted basis (capped at 20 votes per enterprise) out of the total 380 votes, 285 were in favour and 95 were opposed to the change to the EPPR component of the levy/charge.

There was a low rate of participation in the ballot of 17.0 per cent (135 valid grower votes versus an estimated 793 eligible voters).¹¹³

Industry poll

2.70 The levy guidelines state that where no formalised industry voting arrangements exist, 'it is the Government's intention' that the initiator should conduct a vote of the relevant actual or potential levy payers to demonstrate that a majority of the industry support the proposal.¹¹⁴ Further, Principle 11 states that a review of levies should be conducted after a specified period of time 'in the manner determined by the Government and the industry when the levy was first imposed'.¹¹⁵

2.71 The PC noted that the department had strongly encouraged industry representative bodies to use electoral commissions and to conduct producer polls in order to demonstrate support for a proposed new levy or a changed levy rate.¹¹⁶ However, only two industries are currently required to conduct a regular review by way of a poll on levy rates – the wool industry must engage in a wool poll every three years, while the dairy industry must review the dairy services levy every five years. Both industries are required to provide three to five options with regard to the future rate of the levy, one of which must be the capacity to approve a zero levy.¹¹⁷

2.72 Some submitters supported the introduction of a poll to introduce or modify a levy. NSW Farmers argued that as levies take the 'form of a tax that has been voluntarily consented to by a majority of the industry', producers impacted by the imposition of a new or amended levy should have to demonstrate support for or against the levy by way of a poll.¹¹⁸ Notwithstanding this position, it also clarified that

113 Department of Agriculture, Answer to Questions on Notice take at Budget Estimates May 2014, Senate Rural and Regional Affairs and Transport Legislation Committee, Question 13.

114 Department of Agriculture Levies Revenue Service, *Levy Principles and Guidelines*, January 2009, p. 6.

115 Department of Agriculture Levies Revenue Service, *Levy Principles and Guidelines*, January 2009, p. 3.

116 Productivity Commission, Rural Research and Development Corporations, Inquiry Report, No. 52, 10 February 2011, p. 261.

117 Section 32, *Wool Services Privatisation Act 2000* and Wool Services Privatisation (Wool Levy Poll) Regulations 2003 and section 9, *Dairy Produce Act 1986* (and Dairy Produce (Dairy Service Levy Poll) Regulations 2006.

118 NSW Farmers' Association, *Submission 140*, p. 13.

a balance should be struck to ensure that the review processes associated with levy rates remain an effective use of levy funds.¹¹⁹

2.73 The point was made that, without a comprehensive list of levy payers, there was considerable risk of such a process being discredited and of the industry involved being brought into disrepute.¹²⁰ This threat applies to both industries which engage in a poll as well as those for which a poll is prohibitively expensive and must, therefore, demonstrate majority industry support in other ways. Evidence suggested that, either way, the starting point to strengthen any such process and thereby alleviate the risk of it being discredited, was that of the establishment of a grower or producer database. The provision of such a database would enable industry bodies to actually understand who and where levy payers are.¹²¹

2.74 According to Australian Pork Limited (APL), employing the Australian Electoral Commission (AEC) to conduct the poll was the most expensive aspect of the process aside from the related costs of advertising, mail outs and campaigning.¹²² AMGA highlighted that polls amount to the diversion of valuable levy funds from more useful investment which was outside the financial capacity of all but the largest industries.¹²³ Furthermore, on top of the expenses in running a poll, evidence to the committee indicated that preparing a levy proposal is time consuming. The PC noted that on average, it takes industries around twelve months to put together a proposal for a new or changed levy that complies with the Levy Principles.¹²⁴

2.75 WoolPoll costs \$718,000 a year in actual project costs. The cost to AWI totals \$1.4 million per year, including the time and energy involved in managing the poll. To put these costs in context: according to a 2014 audit, AWI expended \$82.7 million that year with levies received amounting to \$43.3 million.¹²⁵

2.76 AWI noted a series of downsides in relation to WoolPoll, including the fact that it is a significant resource burden on AWI, in terms of costs and demands on staff. It also submitted that the timeframe between polls was too frequent and that discussions had been initiated with government to reduce the frequency from every three years to every four or five.¹²⁶ WoolProducers Australia made the point that WoolPoll had been in place for 14 years and was due for specific review; to ensure

119 NSW Farmers' Association, *Submission 140*, p. 13.

120 Mr Adam Kay, Cotton Australia, *Committee Hansard*, 3 February 2015, p. 47.

121 Mr David McKeon, GrainGrowers Ltd, *Committee Hansard*, 5 February 2015, p. 17.

122 Ms Deb Kerr, Australian Pork Limited, *Committee Hansard*, 28 November 2014, p. 34.

123 Australian Mushroom Growers' Association, *Submission 115*, p. 23.

124 Productivity Commission, Rural Research and Development Corporations, Inquiry Report, No. 52, 10 February 2011, p. 261.

125 Mr Stuart McCullough, Australian Wool Innovation, *Committee Hansard*, 5 February 2015, p. 21.

126 Australian Wool Innovation, *Submission 123*, p. 15.

that it is in line with best practice principles, the expectations of growers, and provides an efficient spend of levy funds. It noted in this regard that as wool growers continued to express a strong desire for a more cost-effective and robust consultation process, it was time for a specific and targeted review of WoolPoll.¹²⁷

2.77 DA held polls in 2007 and 2012 with the next due in early 2017.¹²⁸ The 2012 poll and independent performance review (required to be completed six months prior to the poll) cost DA \$720,000.¹²⁹ Of the total, the poll roadshow comprised \$140,000 and the independent review \$110,000.¹³⁰

2.78 Following its 2012 levy poll, in response to feedback that the poll process was 'costly, inefficient, time consuming and could have been done better', DA set up an independent panel to review the poll process.¹³¹ Some industry members raised concerns during the inquiry that the dairy poll process was cumbersome and inflexible; requiring a considerable investment of time and resources by both DA and levy payers.¹³² Mr Ian Halliday, Managing Director of DA, informed the committee that the RDC was required to send out a paper-based information memorandum, a paper-based ballot paper, and demonstrate that levy payers had been consulted. He noted that the consultation process with levy payers, which included 52 presentations around the country and on-farm regional visits, took approximately six months. Mr Halliday explained that, while there was a requirement to demonstrate that DA had consulted levy payers, the level of farmer participation in relation to some activities was very low. At one roadshow, for example, DA presented to only one person.¹³³

2.79 A number of submitters raised concern with the cost of the dairy poll and wool poll, and offered alternative solutions. Australian Dairy Industry Council (ADIC) argued that a regular review of the dairy levy should be mandated with five year intervals but that a poll should only be conducted when the review recommended a change to the levy.¹³⁴ The South Australia Dairyfarmers' Association (SADA) suggested that as a cost-effective alternative to the dairy poll, a vote could be conducted at DA's AGM to confirm that the levy rate remain unchanged. If the vote were lost, a full poll could then be taken within 18 months of the AGM. SADA further argued in favour of a poll conducted by way of both electronic means and mail.¹³⁵ A similar proposition was made by the Western Australian Farmers Federation (WAFF)

127 WoolProducers Australia, *Submission 132*, p. 11.

128 Mr Ian Halliday, Dairy Australia, *Committee Hansard*, 4 February 2015, p. 29.

129 Mr Ian Halliday, Dairy Australia, *Committee Hansard*, 4 February 2015, p. 30.

130 Mr Ian Halliday, Dairy Australia, *Committee Hansard*, 4 February 2015, p. 32.

131 Mr Ian Halliday, Dairy Australia, *Committee Hansard*, 4 February 2015, p. 26.

132 Dairy Australia, *Submission 124*, p. 19.

133 Mr Ian Halliday, Dairy Australia, *Committee Hansard*, 4 February 2015, p. 30.

134 Australian Dairy Industry Council, *Submission 137*, p. 12.

135 South Australia Dairyfarmers' Association, *Submission 104*.

in relation to Woolpoll. WAFF took the view that voting on the rate of the wool levy could be undertaken by way of a special resolution at the AGM at the same time as separate votes on R&D and marketing.¹³⁶ The use of AGMs raised questions regarding the distinction between members and levy payers which is further explored in the following chapter.

2.80 Another matter raised in relation to the prospect of a regular poll was the fluid nature of some industries which sees producers dip in and out of production. AUSVEG made the point that the fluid nature of horticulture farming meant that while a grower may produce leviable vegetables one year, they may rotate to a non-leviable crop the next season or the following year. Therefore, any list of levy payers produced in the horticulture sector may be redundant within a single voting cycle. Efforts to engage them in a poll may also be futile, given that they may not be levy payers by the time the poll is conducted.¹³⁷ Mr Richard Mulcahy, AUSVEG CEO concluded that:

Whilst we have historically supported, and continue to support, a democratic and open process for levy imposition and investment, the time and resources required to administer regular plebiscites would be onerous, expensive and unlikely to receive a high voter turnout from growers. Given the government does not have a definitive list of levy payers, the results would also be difficult to validate or verify.¹³⁸

2.81 Notwithstanding the logistical complexities in managing a levy poll, other concerns were raised regarding the appropriateness of a poll as a mechanism of RDC accountability. AMGA made the point that a mandatory (three-year or five-year) poll imposed on industries or RDCs amounted to a 'blunt instrument' that could do more damage than good as levy management should not be reduced to a matter of turning the funding on or off.¹³⁹ It emphasised that polls are generally focused on past performance rather than on the objectives of the new strategic plan and its potential impact. It suggested that poor performance of RDCs should not be dealt with via a poll but rather was a matter for government in conjunction with PIBs, on behalf of levy payers.¹⁴⁰ Similarly, the Victorian Farmers Federation (VFF) made the point that a poll is a mechanism to set the levy amount and that it does not actually set the objectives of the RDC or its KPIs, to which an RDC should be held accountable.¹⁴¹

2.82 AWI noted that wool growers could potentially respond to a negative independent review of its performance by voting in favour of a zero levy and thereby closing down the RDC. It stated that this occurred in 2009 when the independent

136 Western Australian Farmers Federation, *Submission 117*, p. 6.

137 Mr Richard Mulcahy, AUSVEG, *Committee Hansard*, 4 February 2015, p. 2.

138 Mr Richard Mulcahy, AUSVEG, *Committee Hansard*, 4 February 2015, p. 2.

139 Australian Mushroom Growers' Association, *Submission 115*, p. 23.

140 Australian Mushroom Growers' Association, *Submission 115*, p. 23.

141 Mr David Jochinke, Victorian Farmers Federation, *Committee Hansard*, 4 February 2015, pp 24–25.

review was 'extremely negative' about AWI's performance. However, at the 2009 Woolpoll, growers chose not to vote zero but rather 'there was wholesale change of the AWI Board'.¹⁴²

Periodic levy review

2.83 As previously noted, industries are obliged to periodically review their levies. Principle 11 of the levy principles and guidelines requires that after a specified period, 'levies must be reviewed against these principles in the manner determined by the Government and the industry when the levy was first imposed'.¹⁴³

2.84 One of the key discussions in relation to levies was that of the regularity of levy reviews, the method of review with particular focus on polls, and complementarity with the R&D cycle.

2.85 Some submitters were in favour of a review undertaken every five years.¹⁴⁴ Of them, submitters such as Citrus Australia specified that the review should comprise a ballot where the vote is counted as a proportion of production.¹⁴⁵ APAL made the point that as research projects are generally about five years in duration, if levies were subject to sunset at five years, the challenge would be to address concerns that research projects which begin later in the cycle would only have guaranteed funding for some, but not all, of the research period.¹⁴⁶

2.86 AWI argued that a business cycle longer than three years would be more conducive to the investment and delivery of strategic R&D.¹⁴⁷ AWI continued:

This three year or 'triennial business cycle'... in which AWI is required to operate also creates an ongoing tension between balancing AWI's responsiveness to its industry and government stakeholders, with its reason for being – to invest in strategic RD&M. A three year business cycle is very short and vulnerable to the winds of change which can invariably occur.¹⁴⁸

2.87 Others supported a review every six to nine years.¹⁴⁹

142 Australian Wool Innovation, *Submission 123*, p. 16.

143 Department of Agriculture Levies Revenue Service, *Levy Principles and Guidelines*, p. 3.

144 Nursery & Garden Industry Australia, *Submission 92*, p. 6 and Mr David McKeon, GrainGrowers Ltd, *Committee Hansard*, 5 February 2015, p. 13 and Citrus Australia, *Submission 126*, p. [3].

145 Citrus Australia, *Submission 126*, p. [4].

146 Ms Annie Farrow, Apple and Pear Australia Ltd, *Committee Hansard*, 4 February 2015, p. 63.

147 Australian Wool Innovation, *Submission 123*, p. 16.

148 Australian Wool Innovation, *Submission 123*, p. 15.

149 Mr William Hamilton, Ag Institute Australia, *Committee Hansard*, 3 February 2015, p. 15.

2.88 Mr Les Williams, a pineapple grower, argued that greater flexibility would allow industry to be more efficient and responsive. He suggested that levies should be subject to periodic review at least every five years as long as the review did not require a full voting procedure without a clear desire to do so.¹⁵⁰ Similarly, AECL and ALFA argued that there should not be an imposed and mandated levy review and poll timeframe, on the grounds that such a review was not necessary if it was not called for by levy payers, or because of the involved costs.¹⁵¹ In light of these concerns, AECL made the following recommendation:

That the Government does not automatically mandate the need for RDCs to commission a poll among levy payers at set time intervals with zero being an option unless a large proportion of levy payers has formally and expressly requested this to occur.¹⁵²

2.89 However, during the lead up to its 2011 levy increase, the APL Board recognised there would never be a 'right' time to go to the industry regarding a levy increase. APL explained that:

The process takes time, during which attitudes, confidence and unseen circumstances can always shift priorities. Cost pressures on producers make it hard for some to see the value of further cost increases. An affordable, staged approach to a levy increase was presented as an option and this staged approach was supported by the Australian pork industry.¹⁵³

2.90 APAL argued that a call for a reduced or zero levy should only be introduced at least five years subsequent to the previous vote with reserves maintained to ensure that contracted projects are funded to their completion. Otherwise:

...research agencies and service providers would be very reluctant to commit resources and effort to any project that has a life span that exceeds the timing of a periodic election. They would perceive financial flows to be tenuous at best, with real possibilities that funding could "disappear" mid-way through a project. This would be especially detrimental to agencies that engage new PhD students and post-doctorate researchers as well as those that attempt to attract and maintain high calibre agricultural and scientific expertise, both nationally and internationally. This would be to the disadvantage of Australia's horticultural sector which already suffers from skilled labour shortages, especially in agronomy and scientific research.¹⁵⁴

150 Mr Les Williams, *Submission 99*, p. [2].

151 Mr James Kellaway, Australian Egg Corporation Ltd, *Committee Hansard*, 3 February 2015, p. 21; Mr Douglas Gordon, Australian Lot Feeders' Association, *Committee Hansard*, 3 February 2015, p. 79.

152 Australian Egg Corporation Ltd, *Submission 147*, p. 7.

153 Australian Pork Limited, *Submission 31*, p. 8.

154 Apple and Pear Australia Ltd, *Submission 95*, p. 25.

2.91 While some submitters supported the introduction of a mandatory poll, others urged caution. NFF argued that the time and costs involved in polling can detract from the level of funding that is available for use, and otherwise invested in R&D. In this regard, Mr Tony Mahar, NFF Deputy CEO, made the point that if you are 'constantly navel gazing and looking at how things are being done then perhaps you are not having enough of a longer-term view to be a bit more strategic about the investment in R&D that you are making'.¹⁵⁵

Modification of levy allocations

2.92 Revenue generated through levies can vary considerably. As a case in point, CRDC noted that it was dependent upon annual cotton production which is highly variable. In the last ten years CRDC has managed its operations through cycles in annual revenue that varied from \$8 to \$31 million.¹⁵⁶ CRDC made the point that the ability to respond to these financial circumstances, whilst continuing to drive R&D led industry improvements, has been in no small part due to the flexibility enabled by the RDC model for accountable but independent governance arrangements.

2.93 ALFA informed the committee that the current legislative framework makes it extremely difficult to adjust and transfer levies between one or more of the four grass- or grain-fed cattle levy streams (AHA, NRS, R&D and marketing). It explained that as each levy is enshrined in several pieces of regulation, any adjustment or transfer requires regulatory change. ALFA noted in this regard:

For any regulatory amendment process to be successful, peak industry councils must embark on an arduous, exhaustive and expensive consultation process as set out in the Levies Revenue Service's Levy Principles and Guidelines document.¹⁵⁷

2.94 ALFA made the point that there was limited flexibility under the legislation that would otherwise allow levies to be more effectively managed. This lack of flexibility is demonstrated by the fact that some levy streams have high reserves while others have 'dangerously' low reserve levels, and yet funds cannot be readily transferred between them.¹⁵⁸ Similarly, AFI noted that greater flexibility was required when some industries still have a levy on the statutes but don't want to collect it and are not sure what to do with the funds while others want to make modifications but are stymied in making those changes.¹⁵⁹

155 Mr John Mahar, National Farmers' Federation, *Committee Hansard*, 5 February 2015, p. 4.

156 Cotton Research and Development Corporation, Answer to questions taken on notice at 3 February 2015 hearing, received 20 February 2015.

157 Australian Lot Feeders' Association, *Submission 29*, p. 13.

158 Australian Lot Feeders' Association, *Submission 29*, p. 13.

159 Mr Michael Keogh, Australian Farm Institute, *Committee Hansard*, 5 February 2015, p. 28.

2.95 The Cattle Council of Australia (CCA) focused on the National Livestock Identification System (NLIS) and Cattle Disease Contingency Fund (CDCF) to highlight the need for greater flexibility in relation to levy allocations. It informed the committee that the red meat industry had agreed that NLIS should be transferred to AHA from MLA as AHA is viewed as a more appropriate organisation for the system for reasons including its disease management responsibilities. However, the transfer was complicated by the need to continue funding NLIS with the simplest method available being a reappportionment of the levy funds. However, under the current arrangements, the industry cannot do this without undergoing an extensive consultation process – despite the fact that the levy amount and usage has not changed.¹⁶⁰

2.96 The Sheepmeat Council of Australia (SCA) argued in favour of greater legislative flexibility to allow for adjustment of levy allocations between AHA, NRS and MLA (including both the R&D and marketing components). It noted that under the current legislative framework, it was extremely difficult to adjust and transfer levies between their streams because 'each levy is enshrined in several pieces of regulation and hence any adjustment or transfer requires regulatory change'. Further:

For any regulatory amendment process to be successful, peak industry councils must embark on an arduous, exhaustive and expensive consultation process as set out in the Levies Revenue Service's Levy Principles and Guidelines document. The lack of flexibility is readily demonstrated when one levy stream has imprudently high reserves whilst another has dangerously low levy reserve levels, yet funds cannot be readily transferred between them (even when the 'purpose' or use of funds is extremely similar or identical).¹⁶¹

2.97 A primary case which exemplified the fundamental question of representation (and whether it should be based on production or democratic means) and the need to demonstrate adequate support for a levy change was that concerning chicken meat levy. The Australian Chicken Meat Federation (ACMF) informed the committee of the complexities involved in efforts to raise a component of the levy from zero to pay back the chicken meat industry's share of an emergency animal disease response. Dr Andreas Dubs, Executive Director of ACMF, explained that the industry wanted to increase the zero-based levy to 3 cents per 100 birds to pay back the costs for the last three avian influenza outbreaks (in the layer industry and the duck industry). However, as he detailed:

We have been really surprised at the red tape that had to be cut through to do this. Here we have a levy which is pre-agreed by all concerned as a condition of entering into the EADRA, which is the agreement with the Commonwealth—the Emergency Animal Disease Response Agreement. However, when we want to make it operational, the guidelines currently in place for levies require us to provide the same type of submission and go

160 Cattle Council of Australia, *Submission 61*, p. [2].

161 Sheepmeat Council of Australia, *Submission 128*, p. 14.

through the same type of consultation as is required for a brand-new levy to be put in place. We believe that this is absolutely unnecessary and should be changed.¹⁶²

2.98 Dr Dubs made the point that meeting the guidelines in relation to modifying a pre-existing levy included demonstrating industry support. The point was made that this was an understandable requirement in relation to a new levy, but that it appeared to be a cumbersome process when it comes to a pre-existing levy which entails paying back a debt.¹⁶³ He argued that the only question should be whether levy payers have been consulted in relation to the length of time of the spread of the payback and supported a system in relation to the emergency disease response whereby demonstrating the existence of the emergency disease should be sufficient to trigger the levy.¹⁶⁴ Dr Dubs concluded that one such solution would be to have a special case in the guidelines for an increase of a levy that relates to EADRA.

2.99 When it came before the committee on 15 May 2015, the department gave its assurance that the chicken meat case had been resolved and that efforts were underway to reduce the requirements in relation to biosecurity levies. According to the department, the levy guidelines are undergoing revision to streamline work around biosecurity levies in order to reduce the compliance burden on industries.¹⁶⁵

2.100 Notwithstanding these efforts, the point remains that the underlying principle of the guidelines is that changes to levies cannot take place without demonstrated levy payer support. Therefore, the biosecurity levy raised important questions regarding the balance between accountability and representation with that of flexibility and responsiveness as Mr Peter Otterson, Assistant Secretary at the department explained:

It raises an interesting question, because part of this reasoning is that levy payers must have a say around striking a levy—in this case it is striking it at zero—because it is very important; it is a tax. The next thing is: what role should they have in the decision of raising it from zero to some other number? What level of say should they have? Do you go back and have the same test as the level of say or do you have a diminished say?¹⁶⁶

Challenges in achieving levy changes

2.101 In its 2011 report, the PC noted that whilst in a general sense, periodic review is encouraged by Principle 11, in practice, the department:

162 Dr Andreas Dubs, Australian Chicken Meat Federation, *Committee Hansard*, 3 February 2015, p. 2.

163 Dr Andreas Dubs, Australian Chicken Meat Federation, *Committee Hansard*, 3 February 2015, p. 2.

164 Dr Andreas Dubs, Australian Chicken Meat Federation, *Committee Hansard*, 3 February 2015, pp 2 and 5.

165 Mr Noel Robson, Department of Agriculture, *Committee Hansard*, 15 May 2015, p. 36.

166 Mr Peter Otterson, Department of Agriculture, *Committee Hansard*, 15 May 2015, p. 36.

... does not appear to monitor whether industries adhere to their stated levy review plans, and the effectiveness and adequacy of most levies has not been formally reviewed for many years.¹⁶⁷

2.102 Further, the PC suggested that as part of a proposed new annual monitoring report – and to ensure that levy rates are adjusted if changing circumstances dictate – the department be explicitly required to comment on levy review plan matters.¹⁶⁸

2.103 Concerns were raised across a number of industries regarding the flexibility of levy arrangements, in terms of changing the quantum of levies, establishing a new levy, or changing the respective allocations across a single levy.¹⁶⁹ The complexities and cumbersome administrative process involved in seeking such changes, particularly with regard to departmental involvement, was raised as a specific concern. Similarly, the ACIL Allen review of HAL noted of the levy changes:

The associated processes are perceived to be cumbersome, burdensome and risky. This means opportunities to rationalise levies, reduce collection costs and confirm who the appropriate prescribed industry body should be are not realised.¹⁷⁰

2.104 In its 2011 inquiry report on RRDCs, the PC observed that the relative rarity of changes to levy rates was possibly due to the time and effort required to adjust the levy rates.¹⁷¹ It noted that some rates had not changed since the current levy system was introduced in 1989. In its report on RRDCs, the PC noted the experience of industries in seeking to change a levy rate or introduce a new levy as one in which the process was slow, difficult and costly.¹⁷² It recommended (recommendation 10.2) the introduction of an indicative time limit of six months for the implementation of new levies, and changes to the rates of existing levies, following receipt of a complying proposal. It further recommended that as part of a proposed annual monitoring report on RRDCs, the department should report on its performance against this requirement.¹⁷³

167 Productivity Commission, Rural Research and Development Corporations, Inquiry Report, No. 52, 10 February 2011, p. 262.

168 Productivity Commission, Rural Research and Development Corporations, Inquiry Report, No. 52, 10 February 2011, p. 263.

169 Winemakers Federation of Australia and Wine Grape Growers Association, *Submission 4*, p. 14.

170 ACIL Allen Consulting, *Better Value for Growers – A future for HAL: Independent Review of HAL and Horticulture Levy System*, May 2014, 25.

171 Productivity Commission, Rural Research and Development Corporations, Inquiry Report, No. 52, 10 February 2011, p. 262.

172 Productivity Commission, Rural Research and Development Corporations, Inquiry Report, No. 52, 10 February 2011, p. 266.

173 Productivity Commission, Rural Research and Development Corporations, Inquiry Report, No. 52, 10 February 2011, p. 269.

2.105 The PC's observations and recommendations were supported in evidence. For instance, the levy rate for the grains industry has not been changed in 16 years.¹⁷⁴ Mr Selwyn Snell, Chairman of Horticulture Innovation Australia Ltd (HIAL) told the committee that changing the horticulture levy rate was difficult, and made the point that upholding the 12 principles was demanding:

Actually I think it is so arduous that it puts people off going to increase or decrease their levies, because sometimes it can be a two-year process, and that is even before it gets to the minister's office.¹⁷⁵

2.106 Similarly, ALFA noted that while it is more easily able to adjust the R&D and marketing levy allocations compared to the grass-fed cattle sector (because of its direct membership model), the levy principles and guidelines process 'makes this a costly and burdensome process'.¹⁷⁶

2.107 AMGA submitted that while the levy principles and guidelines provided a useful framework for the imposition of levies, time constraints should be imposed around the decision making process once levy applications are submitted to the department. In the case of the process to increase the Agaricus Mushroom levy, the process from development of the strategic plan through to final government approval took over four years. AMGA noted that in its final administrative review stage, the proposal was in the hands of the department, two governments and three ministers over a period of two-and-a-half years.¹⁷⁷

2.108 AMGA's General Manager, Mr Gregory Seymour argued that in order to keep industries informed, the decision making process should be more transparent.¹⁷⁸ He surmised that there were probably other industries which wanted to increase their levy rates and enjoy higher R&D investment levels but which were not prepared to endure the cost and invest the time required to undertake the lengthy process.¹⁷⁹

2.109 In July 2013, members of Thoroughbred Breeders Australia voted to support the introduction of a statutory levy. The industry's formal request for a levy was provided to government in November 2013. According to the Rural Industries Research and Development Corporation (RIRDC):

Unfortunately, despite appearing to have met the requirements for introducing a levy, the Thoroughbred industry is still waiting for final

174 GrainGrowers Ltd, *Submission 36*, p. 3.

175 Mr Selwyn Snell, Horticulture Innovation Australia Ltd, *Committee Hansard*, 4 February 2015, p. 46.

176 Australian Lot Feeders' Association, *Submission 29*, p. 6.

177 Australian Mushroom Growers' Association, *Submission 115*, p. 14.

178 Mr Gregory Seymour, Australian Mushroom Growers' Association, *Committee Hansard*, 3 February 2015, pp 34 & 37.

179 Mr Gregory Seymour, Australian Mushroom Growers' Association, *Committee Hansard*, 3 February 2015, p. 37.

approval and the required legislation. There is no indication of when this might be forthcoming and until it occurs, the industry is unable to progress its R&D investment plans. It is likely that there will be no horse-related R&D funded during 2014-15 and it is unclear when they will be in a position to move forward.¹⁸⁰

2.110 According to RIRDC, the difficulties experienced by the thoroughbred industry were 'flowing through to the decisions of other industries'. It noted that the fodder and tea tree industries were interested in moving towards a statutory levy. However, they were reluctant to invest the time and energy into developing a proposal while uncertainty remained as to whether it would be approved.¹⁸¹ RIRDC noted that certainty was required about the current R&D model, not only for existing levy-paying industries but also for potential-paying industries.¹⁸²

2.111 The Australian Fodder Industry Association (AFIA) noted in this regard that while there was general agreement across its industry for a dedicated fodder levy, there was a need for a system to create or impose a levy which is thorough, yet simple enough to ensure that it is not an 'inhibiting factor to an industry'. Further, it argued that the system should be simple and cost-effective with the exact process reflective of the size and needs of the industry.¹⁸³

180 Rural Industries Research and Development Corporation, *Submission 89*, p. [2].

181 Rural Industries Research and Development Corporation, *Submission 89*, p. [2].

182 Rural Industries Research and Development Corporation, *Submission 89*, p. [3.]

183 Australian Fodder Industry Association, *Submission 90*, p. 4.

