

Chapter 1

Introduction

Referral of the inquiry

1.1 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 (committee) for inquiry and report by 13 June 2018.¹

1.2 The bill seeks to amend the *Primary Industries Levies and Charges Collection Act 1991* (the Act) to improve the collection and reporting of agricultural levies and charges, ensure consistency between legislation and industry changes, and further support the effective operation of levy payer registers. The bill makes minor amendments to support the effective operation of levy payer registers, including measures to further protect the privacy of levy payer information.

Conduct of the inquiry

1.3 The committee advertised the inquiry on its website, and wrote to a range of stakeholders inviting submissions by 25 May 2018.

1.4 The committee received 7 submissions, as listed in Appendix 1. The submissions were published on the committee's inquiry webpage.

Acknowledgement

1.5 The committee thanks the organisations and individuals that made submissions to the inquiry.

Structure of the report

1.6 The report consists of three chapters. The remainder of this chapter sets out the purpose of the bill and provides background information on the operation of levies in the agricultural sector. This chapter also discusses the issues and recommendations made in previous committee reports.

1.7 Chapter 2 provides an overview of the bill, and Chapter 3 discusses the concerns raised in evidence, concluding with the committee's views and recommendations.

1 *Journals of the Senate*, No. 97–10 May 2018, p. 3093.

Purpose of the bill

1.8 The purpose of the bill is to amend the Act to improve the collection and reporting of agricultural levies and charges. The amendments would enable:

- the Secretary of the Department of Agriculture and Water Resources (the Secretary) to determine certain acts which, when performed, would make a person liable to collect and report on levies and charges;
- an authorised person (appointed by the Secretary under section 26 of the Act to serve as a collection authority) to publish statistical information collected under the Primary Industries Levies and Charges Collection Regulations 1991 (the Regulations);
- the Secretary to, by legislative instrument, provide for the collection of production or processing information relating to a collection product;
- the Australian Company Number of a person who has paid, or is liable to pay, levies or charges in respect of a collection product to be disclosed by an authorised person under section 27A of the Act to an eligible recipient;²
- the Secretary to impose conditions on the disclosure of information about levy and charge payers by eligible recipients to third parties under section 27B of the Act;
- the Secretary to revoke the approval for an eligible recipient to disclose information about levy and charge payers to a third party under section 27B of the Act if conditions of the approval are breached;
- a person dissatisfied with a decision of the Secretary regarding the provision of levy payer information to seek review of that decision under section 28 of the Act.³

Background

Levies in the agricultural sector

1.9 The Department of Agriculture and Water Resources (department) collects, administers and disburses agricultural levies and charges on behalf of Australia's primary industries.⁴ Revenue collected from a levy or charge is directed to a range of

2 The definition of an 'eligible recipient' is set out in subsection 27A(2) of the Act, and includes both statutory and industry-owned RDCs established under legislation, as well as the Australian Bureau of Statistics.

3 *Explanatory Memorandum*, Primary Industries Levies and Charges Collection Amendment Bill 2018, p. 11. (Hereafter, 'Explanatory Memorandum').

4 Levies and charges are taxes imposed on producers. The term 'levies' applies to taxes imposed on domestic products. The term 'charge' applies to taxes imposed on imported and exported products. Source: Department of Agriculture and Water Resources, *Levies explained*, http://www.agriculture.gov.au/ag-farm-food/levies/publications/levies_explained (accessed 21 May 2018).

research and development activities. In many cases, the Australian Government matches the research and development component of levies on a dollar for dollar basis. In 2016–17, the department disbursed \$790.8 million in levies, charges and Commonwealth-matched payments to 18 levy recipient bodies.⁵

1.10 There are four key participants in the Australian levy system: levy payers, intermediaries, levy recipient bodies, and the Department. These participants, and their respective roles, are set out in Table 1.1 below:

Table 1.1—Levy system participants⁶

Participant	Role
Levy payers	Producers of agriculture products who are responsible, usually through representative bodies, for proposing the establishment of a levy.
Intermediaries	Agents usually responsible for lodging levy returns and passing on the levy to the Department on behalf of levy payers.
Levy recipient bodies	The 15 research and development corporations, Animal Health Australia, Plant Health Australia and the National Residue Survey, who are responsible for investing levies in line with the purpose for which the levy was collected.
Department of Agriculture and Water Resources	Government department responsible for processing levy returns, inspecting collection agents' records, and providing levy disbursements to levy recipient bodies.

1.11 Before levies and charges can be invested by levy recipient bodies, they must first be collected by an intermediary. An intermediary is an individual or organisation that is regulated through the 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' through which most, if not all, levied products flow. Examples include stock and station agents, fruit and vegetable market operators, abattoirs, exporters, or grain pools.⁷

1.12 Once collected and reported, levies and charges are provided to levy recipient bodies. As levy recipient bodies, research and development corporations (RDCs) derive the majority of their funding from statutory levies. RDCs are either statutory bodies (statutory RDCs) established under the *Primary Industries Research and Development Act 1989* (with the exception of Wine Australia), or industry-owned

5 Department of Agriculture and Water Resources, *Levies and charges*, May 2018, <http://www.agriculture.gov.au/ag-farm-food/levies> (accessed 18 May 2018).

6 Department of Agriculture and Water Resources, *Submission 5*, pp. 4–5.

7 Department of Agriculture and Water Resources, *Submission 5*, p. 4.

corporations (industry-owned RDCs) declared as industry services bodies under specific legislation.

1.13 Statutory RDCs are government entities with a board of directors appointed by the Minister of the Department of Agriculture and Water Resources (minister) based on recommendations from a selection committee. Since 2013, statutory RDCs have also been able to undertake marketing activities at the request of industry, where supported by a statutory marketing levy.⁸

1.14 Industry-owned RDCs are independent corporate entities with expertise-based boards. While established under specific legislation, they must also comply with provisions of the *Corporations Act 2001*, which sets out the obligations on companies and their boards of directors.⁹

1.15 RDCs facilitate and fund scientific research for Australian rural industries to improve the profitability, productivity, competitiveness and long-term sustainability of Australia's primary industries.¹⁰

1.16 A list of the current statutory and industry-owned RDCs, and their enabling legislation, is provided in Table 1.2 below:

Table 1.2—Research and Development Corporations¹¹

Statutory RDCs	
Wine Australia	<i>Wine Australia Act 2013</i>
Cotton Research and Development Corporation	<i>Primary Industries Research and Development Act 1989</i>
Fisheries Research and Development Corporation	<i>Primary Industries Research and Development Act 1989</i>
Grains Research and Development Corporation	<i>Primary Industries Research and Development Act 1989</i>

8 Department of Agriculture and Water Resources, *Rural Research and Development Corporations*, http://www.agriculture.gov.au/ag-farm-food/innovation/research_and_development_corporations_and_companies#industryowned-companies (accessed 10 May 2018).

9 Department of Agriculture and Water Resources, *Rural Research and Development Corporations*, accessed 21 May 2018.

10 Council of Rural Research and Development Corporations Chairs, *Impact of investment in rural research and development by the rural research and development corporations: Year 2 results*, January 2010, pp. 3–6.

11 Department of Agriculture and Water Resources, *Rural Research and Development Corporations*, accessed 21 May 2018.

Rural Industries Research and Development Corporation (AgriFutures Australia)	<i>Primary Industries Research and Development Act 1989</i>
Industry-owned RDCs	
Australian Egg Corporation Limited	<i>Egg Industry Service Provision Act 2002</i>
Australian Livestock Export Corporation Limited (LiveCorp)	<i>Australian Meat and Live-stock Industry Act 1997</i>
Australian Meat Processor Corporation	<i>Australian Meat and Live-stock Industry Act 1997</i>
Australian Pork Limited	<i>Pig Industry Act 2001</i>
Australian Wool Innovation Limited	<i>Wool Services Privatisation Act 2000</i>
Dairy Australia Limited	<i>Dairy Produce Act 1986</i>
Forest and Wood Products Australia	<i>Forestry Marketing and Research and Development Services Act 2007</i>
Horticulture Innovation Australia Limited	<i>Horticulture Marketing and Research and Development Services Act 2000</i>
Meat and Livestock Australia	<i>Australian Meat and Live-stock Industry Act 1997</i>
Sugar Research Australia Limited	<i>Sugar Research and Development Services Act 2013</i>

Committee inquiries 2015–16

1.17 On 30 June 2015, the Senate Rural and Regional Affairs and Transport References Committee (References Committee) tabled its inquiry report on *Industry structures and systems governing the imposition and disbursement of marketing and research and development levies in the agriculture sector*. In its report, the committee made several recommendations pertaining to the establishment of a cost-effective, automated agricultural levy system in which levy payer information could be collected for the purpose of levy payer engagement.¹² The References Committee noted that the introduction of an automated levy collection system would:

- provide for transparency in terms of levy collection;
- provide an accurate mechanism to record levy payers' details;

12 Senate Rural and Regional Affairs and Transport References Committee, *Industry structures and systems governing the imposition and disbursement of marketing and research and development (R&D) levies in the agricultural sector*, June 2015, pp. 71–77.

- enable the rapid settlement of levy payment and timely transfer of levy revenue to the department;
- provide a mechanism to determine voting entitlements;
- be subject to regular independent auditing and verification; and
- provide an accurate audit trail.¹³

1.18 In March 2016, the committee was referred the Primary Industries Levies and Charges Collection Amendment Bill 2016 for inquiry and report. The purpose of the bill was to enable the collection and distribution of levy payer information. The committee conducted an inquiry into the bill, noting that it sought to implement the 2015 Reference Committee's first recommendation to amend the Act in order to:

...enable the collection and distribution of levy payer information to allow the creation of levy payer databases for all agricultural industries that pay agricultural levies.¹⁴

1.19 The committee endorsed the bill and further recommended that the department continue to consult with RDCs on implementing the regulatory and administrative framework associated with the measures contained in the bill.¹⁵ The bill was passed by both houses of Parliament in September 2016.¹⁶

Levy Payer Registers

1.20 Australian Wool Innovation Limited and Dairy Australia Limited have mechanisms in place under their respective legislation to allow for the collection and distribution of levy payer information.

1.21 The 2016 amendments to the Act allowed the department to provide levy and charge payer information to additional RDCs and to the Australian Bureau of Statistics (ABS). The changes enabled these recipients to use the information for purposes including developing levy payer registers and publishing statistics.

13 Senate Rural and Regional Affairs and Transport References Committee, *Industry structures and systems governing the imposition and disbursement of marketing and research and development (R&D) levies in the agricultural sector*, June 2015, p. 73.

14 Senate Rural and Regional Affairs and Transport References Committee, *Industry structures and systems governing the imposition and disbursement of marketing and research and development (R&D) levies in the agricultural sector*, June 2015, pp. 71–77.

15 Senate Rural and Regional Affairs and Transport Legislation Committee, *Primary Industries Levies and Charges Collection Amendment Bill 2016 [Provisions]*, April 2016, pp. 7–17.

16 Department of Agriculture and Water Resources, *Levy Payer Registers*, <http://www.agriculture.gov.au/ag-farm-food/levies/levy-payer-registers> (accessed 18 May 2018).

1.22 Consequential changes were also made to the *Australian Meat and Live-stock Industry Act 1997* and the *Dairy Produce Act 1986* to repeal equivalent limitations on the use of levy payer information by the dairy and meat and livestock RDCs.¹⁷

1.23 Under the 2016 provisions, registers can hold information about individuals and organisations who pay levies and/or charges, including:

- the levy payer's name, address, contact details;
- Australian business or company number;
- the amount of levy or charge paid; and
- the commodity that the levy or charge was paid against.¹⁸

1.24 A pilot levy payer register was conducted with the Grains Research and Development Corporation in 2017. In March 2018, the department noted that the pilot program was successful, and confirmed that it could build on its existing levy collection system to collect grain levy payer data through 'system enhancements'.¹⁹

1.25 The department further informed the committee that the infrastructure for levy payer registers will be in place by 1 July 2018. Levy recipient bodies (RDCs) will be able to utilise the platform to establish their own levy payer register, following consultation with industry and government. Once the platform is operational, the RDCs will be able to access levy payer information and data of relevance to them through the web-based portal. The 'enhanced' system will also be open to both the wool and dairy industries to use, to replace their existing levy payer databases.²⁰

Collection and use of levy payer information

1.26 According to the department, only eligible recipients (statutory and industry-owned RDCs) may request the establishment of an automated levy payer register. Once established, only the eligible recipient body may receive levy payer information on the register. Eligible recipients can use levy payer information for the purpose of:

- maintaining a register of who has paid a levy and/or charge;
- maintaining a register of persons eligible to vote in a poll conducted by the eligible recipient;

17 *Explanatory Memorandum, Primary Industries Levies and Charges Collection Amendment Bill 2016*, pp. 2–3.

18 Department of Agriculture and Water Resources, *Levy Payer Registers*, <http://www.agriculture.gov.au/ag-farm-food/levies/levy-payer-registers#what-is-a-levy-payer-register> (accessed 11 May 2018).

19 Department of Agriculture and Water Resources, *Mid-year report to levies stakeholders 2017-18*, March 2018, p. 1.

20 Mr Jason Lucas, Department of Agriculture and Water Resources, *Estimates Hansard*, 23 May 2018, p. 108.

- publishing aggregated and de-identified data of a statistical nature;
- determining whether a person is, or remains eligible to be, a member or shareholder of an eligible recipient; and
- performing its functions under a law of the Commonwealth or under contract/agreement with the Commonwealth.

1.27 As the department is bound by the Australian Privacy Principles, it will introduce protocols to ensure that any personal information is kept confidential and used only for the purposes specified in legislation.²¹ This includes the implementation of a number of security measures which will limit access to the information retained in the portal.

1.28 Third parties may at times be granted access to levy payer register information. However, this access is subject to written approval from the Secretary, who also has the power to impose conditions on the approval. This is a practice already in place in the dairy industry, whereby Dairy Australia engages a third party service provider to calculate the levy payer voting entitlements for its dairy poll which takes place every five years.²² The department advised the committee that the purposes for which information from the register may be disclosed to a third party are:

- for a research and development activity (within the meaning defined in the Act);
- for marketing purposes (within the meaning contained in the Act);
- for biosecurity reasons;
- for National Residue Survey purposes; and
- in connection with any activity carried out, or proposed to be carried out, by an RDC for the benefit of producers in the relevant industry.²³

1.29 Any third party that is granted approval to access levy payer information from a register must also act in accordance with Australian Privacy Principles. The department informed the committee that this requirement would be set out in a binding agreement between the RDC and the nominated third party relating to the access, use and protection of levy payer information.²⁴

21 Department of Agriculture and Water Resources, *Levy Payer Registers*, <http://www.agriculture.gov.au/ag-farm-food/levies/levy-payer-registers#what-is-a-levy-payer-register> (accessed 11 May 2018).

22 Ms Anna Willock, Department of Agriculture and Water Resources, *Estimates Hansard*, 23 May 2018, p. 110. Also see: Mr Jason Lucas, Department of Agriculture and Water Resources, *Estimates Hansard*, 23 May 2018, p. 110.

23 Department of Agriculture and Water Resources, *Submission 5*, p. 2.

24 Department of Agriculture and Water Resources, *Submission 5*, p. 2.

1.30 In addition to third parties that may be granted access to levy payer information, the Australian Government's Public Data Policy permits the government to securely share data between Australian Government entities in order to:

...improve efficiencies, and inform policy development and decision-making; and uphold the highest standards of security and privacy for the individual, national security and commercial confidentiality.²⁵

1.31 Under the current legislation, levy payer information can only be shared with the Australian Bureau of Statistics, for the purpose of statistical analysis.²⁶

25 Australian Government, *Australian Government response to the Senate Rural and Regional Affairs and Transport References Committee report*, May 2016, p. 5.

26 Robert Dolamore and Rob Dossor, Primary Industries Levies and Charges Collection Amendment Bill 2016, *Bills Digest No. 6*, 2016–17, Parliamentary Library, Canberra, 2016, p. 2.

