

Chapter 2

Overview of the bill

Provisions of the bill

2.1 The bill comprises a schedule of amendments to the Act, including the addition of two new sections: 7A – *Secretary's determination of intermediaries*, and 32 – *Returns under the regulations*.

Secretary's determination of intermediaries

2.2 Items 1 to 5 of the bill relate to the determination of intermediaries.

2.3 An intermediary is liable to collect and report levies on behalf of a producer. They may buy or sell products on behalf of a producer, or buy products from a producer other than through a buying or selling agent.¹ Items 1 and 2 of the bill insert a new section 7A which seeks to allow the Secretary to determine, by legislative instrument, additional acts that, when performed, would recognise a person as an intermediary.

2.4 Item 3 allows the Secretary the same powers as those contained in items 1 and 2, this time capturing entities that act like exporting or importing intermediaries, where their actions are not already prescribed by the Act. Subsections 7(3) and 7(3A) are amended accordingly, for the purpose of achieving consistency.

2.5 Item 4 relates to persons not liable to pay a levy or charge, if the levy or charge has already been paid by another intermediary. The amendment recognises a person who 'does an act, determined in an instrument under subsection 7A(1), in relation to collection products' as an intermediary who is not liable to pay an additional levy in relation to a producer.²

2.6 Item 5 inserts a new section which would allow the Secretary, by legislative instrument, to determine certain acts as those of intermediaries. The explanatory memorandum (EM) states that the implementation of this new section will ensure that all modern methods for buying, selling, importing or exporting agricultural produce can be covered under the legislative framework. This provision will allow for the continued collection of levies and charges 'at the most efficient point in the supply chain'.

2.7 When determining the acts of intermediaries, the Secretary must have regard to any guidelines issued by the minister under subsection 7A(3). These guidelines are

1 *Primary Industries Levies and Charges Collection Act 1991*, s. 7.

2 *Primary Industries Levies and Charges Collection Amendment Bill 2018*, item 4.

expected to take into account matters such as Australia's obligations as a member of the World Trade Organization relating to importation and exportation. Guidelines issued by the minister must be published on the department's website.³

Publication and use of levy payer information

2.8 Items 6 to 9 relate to the publication and use of levy payer information as provided for under section 27 of the Act.

2.9 Item 6 deletes the heading *Publishing of information* and substitutes it with *Giving of information about returns, intermediaries and receipt of levy or charge*. The EM states that the new title will better reflect the original intent of the provision which is 'to give, rather than to make public, levy and charge payer information to eligible bodies or persons'.⁴ Complementary amendments are also made in items 7 and 9.

2.10 Item 8 removes 'or' between paragraphs 27(1)(a) and 27(1)(b) to allow an authorised person to give both sets of information prescribed in the paragraphs, rather than one or the other. These provisions relate to identifying information about people who submit levy and charge returns, and the amount of levy or charge paid, including by state or region.⁵

Collection of information

2.11 Items 10 to 13 clarify details relating to the collection of information. Item 10 enables an authorised person to give the Australian Company Number (ACN) of any levy payer to an eligible recipient (an RDC). The EM notes that this information is already collected in line with the Regulations.⁶ Items 12 and 13 insert the definition of an ACN.

2.12 Item 11 introduces a note to clarify that the Secretary may, by legislative instrument, determine different 'details' relating to the production or processing of a collection product. These details may be collected by an authorised person, and then provided to an eligible recipient upon request. Required details may include commodity-specific information such as the quantity and quality of agricultural products, mode of product delivery, and purchase arrangements.⁷

3 Explanatory Memorandum, p. 6.

4 Explanatory Memorandum, p. 6.

5 Explanatory Memorandum, p. 7.

6 Explanatory Memorandum, p. 7.

7 Explanatory Memorandum, p. 7. Also see: Primary Industries Levies and Charges Collection Regulations 1991, Schedules 2–27.

Approvals for information disclosure

2.13 Item 14 provides a mechanism by which the Secretary can issue an approval for the disclosure of levy payer information. The Secretary may revoke an approval if he/she is satisfied that the holder of the approval has breached its conditions by exceeding a limited timeframe in which the disclosure is permitted; contravened the type of information that may be disclosed; or failed to set and adhere to administrative arrangements as agreed to by a third party. Disclosure of levy payer information without the Secretary's written approval is also prohibited.

2.14 The EM states that the amendments 'aim to further protect the privacy and security of levy payer information', without limiting the information that an individual levy payer can obtain about him/herself.⁸

Publication of statistical information

2.15 Item 15 inserts a new section to allow for the publication of anonymised statistical information related to levies or charges received or receivable by the Commonwealth.

Review of decisions

2.16 Item 16 relates to section 28 of the Act, *Reconsideration and review of decisions*. Proposed new paragraphs 28(9)(b), (c) and (ca) seek to expand the meaning of a 'relevant decision' to include decisions made by the Secretary regarding approvals to disclose levy payer information.

2.17 These decisions will be subject to the reconsideration and review processes in the Act. The EM states that this 'aligns' with the government's policy of providing merits review for decisions that affect an individual's rights and interests.⁹

Delegation of powers

2.18 Items 17 and 18 prevent the delegation of certain powers. These amendments provide that the Secretary cannot delegate certain powers to a person who holds an office in the department, including the power to determine certain acts as those of intermediaries (section 7A). It also includes powers under the new section 32, *Returns under the regulations*.

2.19 Item 19 enables the Secretary to delegate his/her powers to make an approval for the disclosure of levy payer information, impose conditions on an approval, and revoke an approval. These powers may be delegated to a Senior Executive Service employee at, or acting at, a Band 1 or 2 level in the department.

8 Explanatory Memorandum, p. 8.

9 Explanatory Memorandum, p. 9.

Collection of commodity-specific information

2.20 Item 20 inserts a new section to allow for the collection of commodity-specific information through a return lodged under the Regulations for the purpose of levy payer registers.

2.21 Commodity-specific information may include information on the area of production, inputs or processing methods used in relation to a particular commodity. New subsection 32(3) provides that the Secretary can determine what additional information can be included in a levy or charge return by legislative instrument.

Application and saving provisions

2.22 Item 21 provides details about the commencement of certain sections of the Act.

Consideration by Parliamentary legislative scrutiny committees

2.23 The bill was assessed by both the Parliamentary Joint Committee on Human Rights and the Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee).

Consideration by the Parliamentary Joint Committee on Human Rights

2.24 The Statement of Compatibility with Human Rights states that the bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

2.25 This statement was supported by the Parliamentary Joint Committee on Human Rights, which assessed the bill and noted that it did not raise human rights concerns.¹⁰

Consideration by the Senate Standing Committee for the Scrutiny of Bills

2.26 In Scrutiny Digest 5 of 2018, the Scrutiny Committee raised concern that the bill places significant matters in delegated legislation and non-statutory guidelines. It drew attention to proposed subsection 7A(1), which seeks to allow the Secretary to determine, by legislative instrument, additional acts that, when performed, would make a person liable to collect levies and charges. This subsection would have the effect of expanding the scope of activities in relation to which intermediaries would be required to collect levies or charges. The Scrutiny Committee expressed the view that such matters should be included in primary legislation to enable the full range of parliamentary scrutiny to be applied, unless sound justification for the use of delegated legislation is provided.

10 Parliamentary Joint Committee on Human Rights, *Report 4 of 2018*, p. 96.

2.27 The Scrutiny Committee additionally noted that, although the bill allows the minister to issue guidelines under subsection 7A(3) for the purpose of determining intermediaries eligible to collect levies or charges, there is no requirement that guidelines must be issued. Therefore, if the minister chose not to issue such guidelines, the Secretary's determination of additional acts would not be subject to any specific directions.

2.28 The Scrutiny Committee requested the minister's detailed advice on these matters by 30 May 2018.¹¹

¹¹ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 5 of 2018*, p. 44–46.

