

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Primary Industries Levies and Charges
Collection Amendment Bill 2018 [Provisions]

June 2018

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Dr Jane Thomson, Secretary
Ms Sarah Redden, Principal Research Officer
Ms Trish Carling, Senior Research Officer
Ms Lillian Tern, Senior Research Officer
Ms Helen Ulcoq, Research Officer
Mr Michael Fisher, Administrative Officer

PO Box 6100
Parliament House
Canberra ACT 2600
Ph: 02 6277 3511
Fax: 02 6277 5811
E-mail: rrat.sen@aph.gov.au
Internet: www.aph.gov.au/senate_rrat

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Abbreviations

ABS	Australian Bureau of Statistics
ACFA	Australian Cane Farmers Association
ACN	Australian Company Number
Act	<i>Primary Industries Levies and Charges Collection Act 1991</i>
APP	Australian Privacy Principles
ASA	Australian Sugar Research Alliance
Bill	Primary Industries Levies and Charges Collection Amendment Bill 2018
Committee	Senate Rural and Regional Affairs and Transport Legislation Committee
CRRDC	Council of Rural Research and Development Corporations
Department	Department of Agriculture and Water Resources
EM	Explanatory memorandum
Industry-owned RDC	Industry-owned Research Development Corporation
Minister	Minister of the Department of Agriculture and Water Resources
NFF	National Farmers' Federation
RDC	Research Development Corporation
Regulations	Primary Industries Levies and Charges Collection Regulations 1991
References Committee	Senate Rural and Regional Affairs and Transport References Committee
Scrutiny Committee	Senate Standing Committee for the Scrutiny of Bills
Secretary	Secretary of the Department of Agriculture and Water Resources
SRA	Sugar Research Australia
Statutory RDC	Statutory Research Development Corporation

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.

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.

Chapter 3

Issues raised in evidence

Support for the bill

3.1 The bill will amend the Act to allow for the establishment of levy payer registers, and implement recommendations of the Reference Committee's report on *Industry structures and systems governing the imposition and disbursement of marketing and research and development (R&D) levies in the agricultural sector*.

3.2 In light of growing recognition of the need for levy payer registers, the committee's previous inquiries, and the ongoing development work to trial levy payer registers, the bill was supported by numerous submitters, including Sugar Research Australia (SRA), the Australian Cane Farmers Association (ACFA), and the Council of Rural Research and Development Corporations (CRRDC).¹

3.3 Many submitters highlighted the overarching need to access levy payer information. The National Farmers' Federation (NFF) argued that the bill builds further transparency into the levy system and presents an opportunity for representative organisations to 'more effectively engage and consult with the levy payers they represent'.²

3.4 The CRRDC noted that the lack of readily-available levy payer information has 'hampered' the efforts of RDCs to undertake 'extensive communication and consultation programs to reach out and engage with producers who are responsible for paying the levy'. It argued that the establishment of accessible levy payer registers would therefore 'enable more targeted approaches to report on activities and seek feedback'.³

3.5 In this regard, the ACFA noted that access to levy payer contact details is 'a necessity for SRA to operate effectively and deliver on its role'.⁴ The ACFA further explained that:

...access to information on the size of levy paid by individual levy payers, in terms of volume (tonnage) and quantum of levy (dollars), will assist SRA

1 Sugar Research Australia, *Submission 1*, [p. 1]; Australian Cane Farmers, *Submission 4*, [p. 1]; Council of Rural Research and Development Corporations, *Submission 3*, p. 2.

2 National Farmers' Federation, *Submission 7*, [p. 1].

3 Council of Rural Research and Development Corporations, *Submission 3*, p. 2.

4 Australian Cane Farmers Association, *Submission 4*, [p. 1]. Sugar Research Australia (SRA) are an industry-owned research and development corporation (and levy payer recipient) for the sugar industry.

to tailor, where appropriate, its communications and RD&A activities to suit small, medium and large cane farmers.⁵

3.6 A number of stakeholders in the sugar industry voiced their support for the establishment of a sugar levy payer register. SRA expressed its full support for the proposed amendments while the Australian Sugar Research Alliance (ASA) noted that:

...providing there are no privacy issues involved, contact details required to establish a sugar levy payer register should be made available to SRA via the Department of Agriculture and Water Resources.⁶

3.7 Submitters also supported the publication of anonymised statistical information which would 'give further insights into rural industries in Australia'.⁷ The NFF noted that the publication of such information will be a valuable asset for industry.⁸

Intermediaries

3.8 The bill seeks to expand the definition of 'intermediaries' within the agricultural levy system.

3.9 The CRRDC expressed support for the legislative amendments which expand the definition of 'intermediaries'. It noted that the changes would 'more accurately reflect modern business practices'.⁹

3.10 Concerns were raised by Mr Rob Moore in relation to the expanded definition. He suggested that the bill would include farmers 'not currently defined and prescribed as an 'Intermediary' – that sell to other farmers that might not be paying the allocated commodity levy'.¹⁰

3.11 However, the department explained the need for the expanded definition. It noted that as Australia is a high-cost agricultural producer, participants in rural industries have continued to 'innovate how their produce is bought and sold to remain competitive in the global market'. It emphasised the point that the definition has been expanded under the bill to take into account these innovations, new business types and

5 Australian Cane Farmers Association, *Submission 4*, [p. 1].

6 Sugar Research Australia, *Submission 1*, [p. 1]; The Australian Sugar Research Alliance, *Submission 2*, [p. 1].

7 Council of Rural Research and Development Corporations, *Submission 3*, p. 2. Also see: The Australian Sugar Industry Alliance, *Submission 2*, [p. 1].

8 National Farmers' Federation, *Submission 7*, [p. 1].

9 Council of Rural Research and Development Corporations, *Submission 3*, p. 2.

10 Mr Rob Moore, *Submission 6*, [p. 3].

modern ways of buying and selling agricultural produce, which do not clearly fit within the legislative framework created in 1991.¹¹

Privacy concerns

3.12 The issue of data privacy was raised by a number of submitters. Concerns were raised with regard to the security of levy payer information, and in particular, financial information, within a proposed levy payer database. Some submitters were also concerned about the extent to which private levy payer information could be disclosed to a third party.

3.13 Mr Rob Moore argued that the availability of levy payer information to third parties could amount to 'a clear breach of our privacy' with regard to personal and corporate data.¹² The ACFA made the point that farmers should be in control of their personal information and how it can be used. Noting the importance of maintaining the privacy of individuals and their business, ACFA did not support the provision of a farmer's personal or business information to parties other than SRA, without the permission of the farmer.¹³

3.14 In relation to protecting levy payer data, the CRRDC expressed concern that the responsibility to protect this sensitive data could place a substantial burden on the RDCs. However, it assured the committee that the RDCs were:

...working to ensure appropriate levels of data security and management are in place to maintain integrity in our use of levy payer register data, and responsible release, use and management by third parties.¹⁴

3.15 However, other submitters such as the NFF recognised that the proposed amendments will further protect the privacy of levy payer information.¹⁵

3.16 The department highlighted the various safeguards within the bill to protect levy payer information. Firstly, section 27B of the Act sets out the purposes for which levy payer information provided to eligible recipients under that section can be used. The EM lists the purposes as follows:

This is limited to matters relating to the development and maintenance of levy payer registers; the ability to publish information of a statistical nature; and for any functions required of the recipient under Commonwealth law or under an agreement that eligible recipients have with the Commonwealth.

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

12 Mr Rob Moore, *Submission 6*, [p. 3].

13 Australian Cane Farmers Association, *Submission 4*, [p. 1].

14 Council of Rural Research Development Corporations, *Submission 3*, p. 2.

15 National Farmers' Federation, *Submission 7*.

3.17 To this end, the EM highlighted that the disclosure of personal information as provided for in the bill is 'not arbitrary, as it is only permitted for specific uses', which directly relate to the operations of eligible recipients. In addition, the bill provides that information can only be disclosed to a third party with the written approval of the Secretary, who has the power to impose conditions on the approval, and revoke an approval where there has been a breach of the conditions.¹⁶

3.18 Furthermore, as the RDCs and the department are Australian Privacy Principles (APP) entities, they will be required to hold and manage levy payer information in line with their existing obligations under the *Privacy Act 1988*. The department explained the obligations on the involved parties:

The APPs are legally-binding principles that apply to the department and to the RDCs when dealing with personal information such as that held in levy payer registers. Any third party granted approval to access levy payer information from a register will also have to act in accordance with these principles whether it is an APP entity or not. This requirement is intended to be set out in the binding agreement that the department expects the RDC to establish with third parties around access, use and protection of levy payer information. The Australian Information Commissioner has power to investigate possible interferences with privacy.¹⁷

3.19 The department further explained the restrictions on information disclosure. It noted that the financial information of levy payers will not be released to industry representative bodies.

3.20 Under the proposed arrangements, levy payers would only be able to access their own information on the levy database and RDCs will only be able to access the data that relates to their operations. In terms of the physical security of the levy databases, the committee was informed that all access to the portal would be subject to a number of security measures including a two-factor authentication process.¹⁸

3.21 The department added that the proposed safeguards provide superior protections when compared to the existing wool and dairy levy database systems. Mr Jason Lucas, Acting Assistant Secretary, Industry Support Branch at the department explained:

That infrastructure that's been developed is an enhanced piece of technology over and above what we currently run through our levy system. That system will include a web portal that levy recipient bodies will be able to access through a number of security measures... We would expect that, in order to have an efficient running of the system, the dairy and wool commodities may choose to move onto that platform. There are a lot of benefits to that: they can control a lot more of their information through that

16 Explanatory Memorandum, p. 8.

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

18 Department of Agriculture and Water Resources, *Submission 5*, p. 3.

portal rather than the existing system, which is a little bit more manual in the way it operates.¹⁹

3.22 The department emphasised the point that the proposed amendments are intended to 'further safeguard the proper use and protection of levy payer information'.²⁰

Committee view

3.23 The establishment of levy payer registers is an important and essential next step in the Australian levy payer system. Numerous parliamentary committee inquiries have brought to light the importance of such systems to agricultural industries while involved stakeholders have highlighted the need for levy recipient bodies to understand who their levy payers are, and to communicate and consult with them directly about relevant industry business.

3.24 Whilst the committee acknowledges the concerns raised in evidence with regard to data privacy, it recognises that the bill seeks to introduce a range of measures explicitly designed to provide additional safeguards for the proper use and protection of levy payer information.

3.25 The committee is of the view that by enabling RDCs to better communicate with their levy payers, an efficient and securely managed levy payer system will bring significant gains to Australia's agricultural industries.

Recommendation 1

3.26 The committee recommends that the bill be passed.

Senator Barry O'Sullivan

Chair

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

20 Department of Agriculture and Water Resources, *Submission 5*, p. 3.

Appendix 1

Submissions received

Submission Number	Submitter
1	Sugar Research Australia
2	Australian Sugar Industry Alliance
3	Council of Rural Research and Development Corporations
4	Australian Cane Farmers Association
5	Department of Agriculture and Water Resources
6	Mr Rob Moore
7	National Farmers' Federation