

Chapter 1

Overview of the bill

Referral of the inquiry

1.1 On 17 March 2016, the Senate referred the Primary Industries Levies and Charges Collection Amendment Bill 2016 (the bill) to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 12 May 2016.

1.2 The bill would amend the *Primary Industries Levies and Charges Collection Act 1991* (the Act) to allow the Department of Agriculture and Water Resources to provide levy and charge payer information to additional rural research and development corporations and industry service bodies (RDCs) and to the Australian Bureau of Statistics (ABS). Recipients would be able to use the information for purposes including developing levy payer registers, publishing statistics and performing their functions.

1.3 The bill would make consequential amendments to the *Dairy Produce Act 1986* (Cth) and the *Australian Meat and Live-stock Industry Act 1997* (Cth) to repeal limitations on the use of levy payer information by dairy and meat and livestock RDCs.

Conduct of the inquiry

1.4 The committee advertised the inquiry on its webpage calling for submissions by 8 April 2016. The committee also wrote to a range of organisations and individuals likely to have an interest in the matters covered by the bills, drawing their attention to the inquiry and inviting them to make written submissions.

1.5 The committee received 35 submissions, as listed in Appendix 1. Submissions were published on the committee's inquiry webpage. The majority of submissions offered full or broad support for the bill.

Acknowledgement

1.6 The committee thanks the organisations and individuals that made submissions to the inquiry. This work has informed the committee's deliberations.

Structure of report

1.7 This report consists of two chapters. This chapter provides background information and an overview of the bill. Chapter 2 discusses key issues raised by submitters.

Background

Senate inquiry

1.8 The Senate Rural and Regional Affairs and Transport References Committee (references committee) conducted an inquiry into the industry structures and systems

governing the imposition and disbursement of marketing and research and development levies in the agriculture sector, and tabled its report in June 2015.¹

1.9 The references committee heard that the current legislative framework provided by the Act only permits the collection of levy payer information in relation to the dairy and wool industries.²

1.10 The Act permits the department to collect levy payer information, including the amount of levies paid, from the intermediaries and to pass it on to the relevant RDC to conduct a poll. Under subsection 27(3) of the Act an authorised person (who is appointed by the Secretary of the department to serve as a collection authority) may provide the following to an eligible recipient:

- 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.³

1.11 Many submitters and witnesses to that inquiry called for a database of levy payers in other agricultural industries, and the committee was referred to a number of reports recommending the establishment of an electronic database.⁴

1.12 The references committee discussed a number of challenges that would be encountered if a levy payer database were established. This included that:

- in some industries growers' involvement is often sporadic or short-term (for example raspberry, black berry and boysenberry growers); and
- a very large proportion of beef industry farms have an annual value output of less than \$50 000, which accounts for about 4 per cent of all levies paid.

1.13 Nevertheless, the references committee formed the view, based on evidence from submitters, that a levy database should be pursued in order to promote accountability in the levy system. The committee also considered a range of other issues and made seven recommendations. Most relevant to this bill is the first recommendation:

1 Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into the industry structures and systems governing the imposition and disbursement of marketing and research and development levies in the agriculture sector*, June 2015.

2 This section draws upon the committee's work in the Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into the industry structures and systems governing the imposition and disbursement of marketing and research and development levies in the agriculture sector*, June 2015, pp 21-23.

3 See also subsection 27(3A) of the *Primary Industries Levies and Charges Collection Act 1991* (Cth).

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

The committee recommends that the *Primary Industry Levies and Charges Collections Act 1991* be amended, consistent with subsections 27(3) and 27(3A), to enable the collection and distribution of levy payer information which will allow the creation of levy payer databases for all agricultural industries that pay agricultural levies. The committee further recommends that levy payer databases be established within two years of legislative amendment.⁵

1.14 The committee welcomes the government's proposal to implement the references committee's recommendation.

Overview of provisions

1.15 The bill would amend the Act to permit the department to provide levy and levy payer information to the rural research and development RDCs for the purpose of developing levy payer registers.⁶

1.16 The bill comprises two parts within Schedule 1: the first contains the main amendments and the second contains consequential amendments. The significant amendments are discussed below.

Part 1: Items 1 – 6

Item 1

1.17 Item 1 proposes to amend paragraph 27(1)(a) of the Act to permit the continued distribution, upon request, of the name and address of the person or body that lodges levy returns with the department to RDCs and industry representative bodies. The department notes in the Explanatory Memorandum that it does not hold the contact details of all levy or charge payers. Indeed, it only receives the contact details of those who lodge levy returns with the department: often corporations or other intermediaries.⁷

Item 2

1.18 Item 2 repeals subsections 27(3), (3A) and (4) of the Act. These subsections relate specifically to the wool and dairy industries and it is proposed that they be superseded by the amendments outlined below.⁸

Item 3

1.19 Item 3 proposes to insert two new clauses in the Act: 27A and 27B. Clause 27A describes the types of information that may be given to an eligible recipient by an authorised person. This includes:

5 Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into the industry structures and systems governing the imposition and disbursement of marketing and research and development levies in the agriculture sector*, June 2015, p. 74.

6 *Explanatory Memorandum*, Primary Industries Levies and Charges Collection Amendment Bill 2016, p. 2. (Hereafter, 'Explanatory Memorandum'),

7 *Explanatory Memorandum*, p. 7.

8 For a detailed discussion see *Explanatory Memorandum*, p. 8, paragraphs 11- 14.

- the name, address, contact details and Australian Business Number of any person who has paid, or is liable to pay, levy or charge on an agricultural product: and
- details relating to the amount of levy or charge that the person has paid, or is liable to pay in relation to an agricultural product.

1.20 The Secretary of the department may also determine, by legislative instrument, that other details relating to the production or processing of a collection product may be released to an authorised person.⁹

1.21 The Explanatory Memorandum clarifies that:

This section of the Bill provides for the separate amounts of several different levies or charges paid, or payable, but a single levy or charge payer to be provided to an eligible recipient. For example, where a single grower produces and pays a levy on potatoes and onions, the relevant RDC would receive information on the separate amounts of levy paid for both commodities.¹⁰

1.22 Under proposed subclause 27A(2) current rural RDCs and the ABS would meet the definition of 'eligible recipient'. Levy payer information could only be given to the relevant RDC in relation to the particular agricultural product upon which a levy had been paid.¹¹

1.23 Clause 27B sets out the circumstances where this information may be used by a RDC. In broad terms, an RDC would only be able to use the information it received under Clause 27A for a prescribed purpose. These would include to:

- maintain a register of levy payers or charge payers;
- maintain a register of those who are entitled to vote;
- publish de-identified information of a statistical nature;
- perform its functions under a law of the Commonwealth;
- perform its functions under a contract or other agreement between the Commonwealth and a RDC; or
- determine whether a person is eligible to be a member or shareholder or a RDC.

1.24 The ABS would be authorised to use levy payer information to perform any of its functions under its enabling legislation.¹²

1.25 Subclauses 27B(4), (5) and (6) would limit the secondary disclosure of levy payer information. Such disclosure would only be permitted where approval is

9 Clause 27A(3).

10 Explanatory Memorandum, p. 8.

11 Explanatory Memorandum, p. 9.

12 *Australian Bureau of Statistics Act 1975 (Cth)*; *Explanatory Memorandum*, p. 9.

granted, in writing, by the Secretary of the department. If approval is granted, that information would only be permitted to be used for one of the following:

- an R&D [Research and Development] activity;
- marketing activities¹³;
- biosecurity purposes; or
- National Residue Survey Purposes.

1.26 In the Explanatory Memorandum the department provided two examples of circumstances where the Secretary might permit secondary disclosure of information:

Such circumstances could include provision of information to an information technology company engaged by an RDC for data management services. The Secretary could also allow an industry representative body to access levy payer information to consult on amendments to a levy or consult on an RDC's R&D plan, for example.¹⁴

1.27 These provisions would not prevent the disclosure of personal information to an individual to whom that personal information relates, as provided for in the *Privacy Act 1988* (Cth).

Items 4, 5 and 6

1.28 Item 4 would amend the Act to state that the powers discussed above in clauses 27A and 27B of the bill are powers that the Secretary cannot delegate.

1.29 Item 5 proposes to insert subclause 29(1A). This amendment would permit the Secretary to delegate the power to approve secondary disclosure of levy payer information (under subclause s27B(4)) to a departmental officer at or acting at SES Band 1 or 2 level.

1.30 Item 6 contains application provisions. Information given to eligible recipients under subclauses 27A(1)(a)-(c) of the bill must include information given in relation to the financial year in which the bill commences, or in a later year.¹⁵

Part 2

1.31 Part 2 proposes consequential amendments to the *Dairy Produce Act 1986* (Cth) and the *Australian Meat and Live-stock Industry Act 1997* (Cth) to repeal limitations on the use of levy payer information by these RDCs.

1.32 Item 8 contains a savings provision to ensure that a body declared under section 60 of the *Australian Meat and Live-stock Industry Act* prior to the

13 Both 'R&D activity' and 'marketing activities' have the meaning found in the *Primary Industries Research and Development Act 1989* (Cth).

14 *Explanatory Memorandum*, p. 9.

15 *Explanatory Memorandum*, p. 10.

commencement of Schedule 1 will continue to be subject to Division 5 of Part 3 of that Act.¹⁶

1.33 In relation to the dairy industry, item 10 would ensure that any information provided to Dairy Australia prior to the commencement of Schedule 1, will continue to be subject to section 8 of the *Dairy Produce Act 1986*.¹⁷

Statement of compatibility with human rights

1.34 The Explanatory Memorandum contains a statement of compatibility with human rights.¹⁸ The statement advises that the bill engages the right to protection against arbitrary and unlawful interferences with privacy articulated in Article 17 of the *International Covenant on Civil and Political Rights*. This right is subject to permissible limitations where they are authorised by law and not arbitrary.

1.35 The statement argues that the limitations on the right to privacy are lawful and are not arbitrary. This is because:

- both the RDCs and the ABS are subject to the Australian Privacy Principles.¹⁹
- the bill would not provide for levy payer information to be used for political purposes, and, indeed, sets out limited circumstances where this information can be used; and
- the bill would only permit secondary disclosure of information contained on a levy payer register where permission is granted in writing by the Secretary of the department.²⁰

1.36 The department concludes that the bill is compatible with the right to privacy because 'the limitations' provided in the bill 'are reasonable, necessary and proportionate'.²¹ The committee agrees with this conclusion.

Consideration by Parliamentary legislative scrutiny committees

1.37 The committee recognises the important work undertaken by other Parliamentary committees responsible for considering draft legislation.

1.38 Neither the Parliamentary Joint Committee on Human Rights or the Senate Standing Committee for the Scrutiny of Bills has reported any concerns in relation to the bill.

16 *Explanatory Memorandum*, p. 10.

17 *Explanatory Memorandum*, p. 10.

18 *Explanatory Memorandum*, Statement of Compatibility with Human Rights, p. 5.

19 *Privacy Act 1988* (Cth), Schedule 1.

20 *Explanatory Memorandum*, Statement of Compatibility with Human Rights, p. 6.

21 *Explanatory Memorandum*, Statement of Compatibility with Human Rights, p. 6.