

Chapter 2

Key issues

Introduction

2.1 This chapter outlines the key issues identified by submitters. Overall, submitters to the inquiry welcomed the bill and supported the key elements of the bill. As discussed in Chapter 1, many of these submitters also participated in the references committee's inquiry into levies tabled in 2015, and through that inquiry called for the establishment of a levy payer register for each agricultural industry.¹ The references committee responded to the evidence provided by submitters and recommended the establishment of a levy payer register of the kind contained in the bill. A small number of submitters raised concerns about aspects of the bill. The committee has listened to these concerns and addressed them below.

General support for the bill

Benefits of creating a levy payer register

2.2 A large number of submitters outlined to the committee the many benefits that would arise from the creation of a levy payer register. Support came from both Research and Development Corporations and peak industry groups.

2.3 The Council for Rural Research and Development Corporations offered strong support for the bill, submitting that:

The Council of Rural RDCs fully supports the principles of open, transparent and accountable processes for informing and engaging with levy payers. This Bill enables the establishment and use of levy-payer registers which in turn will mean the RDCs can have accurate, up-to-date information about levy payers. The Council supports the Bill being passed.²

2.4 NSW Canegrowers Council and Sunshine Sugar explained how the changes proposed by the bill would benefit the sugar industry. While Sunshine Sugar and all sugar cane growers in NSW pay a mandatory levy to Sugar Research Australia (SRC), less than a third of these have membership in the SRC. The current legislative framework permits SRC to deal only with its members. As a consequence SRC is not able to share information directly with the majority of levy payers. NSW Canegrowers Council Inc. and Sunshine Sugar submitted that:

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 Council for Rural Research and Development Corporations, *Submission 14*, p. 2.

This, in our view, significantly impedes their capacity to effectively engage with their levy payers and to align research and investment to industry priorities. We believe that the amendments as proposed would allow SRA to better achieve its overall objectives resulting in improved returns to our growers and contribute to a more profitable, competitive and sustainable sugar cane industry in NSW.³

2.5 Sugar Research Australia (SRA) offered full support for the bill and noted that the proposed reforms would enable SRA to properly consult with levy payers and ensure that its planning and investment decisions align with the needs of the industry.⁴

2.6 Grain Producers Australia, who have called for the measures contained in the bill since 2013, described the proposed reforms as a 'key to providing grain producers with a strong link' with the RDC.⁵ The Grains Research & Development Corporation also supported the bill in general terms.⁶

2.7 The Cotton Research and Development Corporation (CRDC) explained that a levy payer register would:

[S]trengthen CRDC's capacity to consult with cotton farmers on their R&D priorities, improve the distribution and extension of research results as well as receiving feedback on CRDC's performance.⁷

2.8 The Tasmanian Farmers and Graziers Association welcomed the bill, submitting that giving 'RDCs access to producer information will increase the ability of these bodies to distribute information in a more efficient and timely manner'.⁸

2.9 Many other submitters provided similar praise for the measures contained in the bill.⁹

3 NSW Caingrowers Council Inc. and Sunshine Sugar, *Submission 9*, p. 1.

4 Sugar Research Australia, *Submission 2*, p. 1. See also Richmond River Cane Growers Association, *Submission 1*, p. 1.

5 Grains Producers, *Submission 25*, p. 1.

6 Grains Research & Development Corporation, *Submission 17*, p. 1.

7 Cotton Research and Development Corporation, *Submission 19*, p. 1.

8 Tasmanian Farmers & Graziers Association, *Submission 18*, p. 1.

9 For example, Sheepmeat Council of Australia, *Submission 8* Australian Pork, *Submission 11*; Agforce, *Submission 20*, p. 1; Cattle Council of Australia, *Submission 33*; The Australian Wine Research Institute, *Submission 22*; WA Grains Group Inc, *Submission 28*; Horticulture Innovation Australia, *Submission 29*.

Benefit of sharing de-identified information with the Australian Bureau of Statistics

2.10 The Australian Bureau of Statistics (ABS) welcomed the bill, observing that it 'has the potential to open up new opportunities for improving the quality and availability of agricultural statistical information for the benefit of both government and industry' and would support the Government's Public Sector Data agenda.¹⁰

2.11 The Council for Rural Research and Development Corporations supported the proposal to share information with the ABS, observing that:

High quality statistical information about agricultural production in Australia and the number of active enterprises has also been an issue of concern for some time. Making information available as appropriate to support the functions of the Australian Bureau of Statistics, consistent with the government's Public Data Policy Statement, is also expected to help improve this situation.¹¹

2.12 Dr Lindsay Campbell of the Faculty of Agriculture and Environment at the University of Sydney also supported the proposal to share information with the ABS.¹²

Key issues

2.13 While the majority of submitters supported the changes proposed by the bill, some submitters expressed concern with aspects of the bill, and a small number rejected the bill altogether.

Request for further detail

2.14 Some submitters, while generally supportive of the bill, asked for further detail. For example, more information was requested about: how the information about levy payers might be shared by peak industry bodies and councils; the degree of consultation required by RDCs; and the method by which levy payer information would be collected.¹³

2.15 The department advised that it is working closely with RDCs and industry representative bodies to develop detailed guidance so that the agricultural industry

10 Australian Bureau of Statistics, *Submission 10*, p. 1.

11 *Submission 14*, p. 2.

12 Dr Lindsay Campbell (private capacity), Faculty of Agriculture and Environment, the University of Sydney, *Submission 3*, p. 1.

13 See, for example, Australian Macadamia Society, *Submission 23*, p. 2; Apple and Pear Australia Limited, *Submission 21*, p. 2; Grains Research & Development Corporation, *Submission 17*, p. 2; Voice of Horticulture, *Submission 27*.

would have explicit guidance on how the levy payer database can be used, how the data should be stored and protections that should be in place.¹⁴

2.16 The committee considers that these details that would be worked through by the department with stakeholders as the administrative arrangements are established following passage of the bill through the parliament.

Expansion of the scope of the bill

2.17 Dr Lindsay Campbell suggested that the bill could go further and enable RDCs to share levy payer information with each other and the ABS. This would be particularly useful given that most farms in South Australia are mixed enterprise farms.¹⁵

2.18 Grain Producers Australia and Australian Macadamia Society, among others, called for levy payer information to be shared on an ongoing basis, to ensure that the levy payer register is always up-to-date.¹⁶ This would be particularly useful in the case of a biosecurity emergency.

2.19 The department advised that it anticipates levy payer information would be distributed to eligible recipients annually. However, the timing would 'be negotiated with each of the RDCs as a levy payer register is established'.¹⁷ The bill in its current form does not anticipate sharing data between RDCs, however the ABS would be able to disaggregate data between different RDCs.

Privacy concerns

2.20 Some submitters expressed concern at the impact the bill could have on personal privacy.¹⁸ FLAG Australia submitted that disclosure of personal or corporate levy payer information should not occur without the prior permission of the levy payer.¹⁹ WA Farmers similarly called for levy payers to be able to opt out of disclosure to the ABS.²⁰

2.21 The department advised the committee that it has commenced consultation with RDCs and industry representative bodies to develop detailed guidance to provide

14 Department of Agriculture and Water Resources, *Submission 31*, p. 1.

15 Dr Lindsay Campbell (private capacity), Faculty of Agriculture and Environment, the University of Sydney, *Submission 3*, p. 1.

16 Grain Producers Australia, *Submission 25*, p. 1. Australian Macadamia Society, *Submission 23*, p. 2; Apple and Pear Australia Limited, *Submission 21*, p. 2.

17 Department of Agriculture and Water Resources, *Submission 31*, p. 2.

18 See, for example, Office of the Privacy Commissioner New South Wales, *Submission 35*, p. 1.

19 FLAG Australia, *Submission 6*.

20 WA Farmers, *Submission 16*.

clarity on 'how the data can be used, who can use it and for what purpose'.²¹ In particular, this guidance would:

...set out the governance arrangements for how the data is stored, used and protected in line with the Australian Privacy Principles. It will also be informed by the existing arrangements and experience from the two RDCs (Australian Wool Innovation and Dairy Australia) that already have levy registers in place.²²

2.22 The department informed the committee that it is working on governance principles to ensure that personal information is protected. These principles are likely to include:

- protection of commercial-in-confidence information and personal information in accordance with the Australian Privacy Principles and common law confidentiality;
- provision of data to recipients only for permitted purposes on a case-by-case basis;
- information provided to an industry representative body must be stored separately to the membership contact list (to prevent the use of the list for non-permitted purposes); and
- levy payers who are contacted by industry representative bodies must have the option to easily opt out of receiving further communications.²³

2.23 The ABS specifically addressed privacy concerns, explaining its established track-record of protecting personal information:

In accessing and using the levy data to generate agricultural statistics, ABS will draw on its strong established culture of protecting the data that it holds, which is further supplemented by legislative obligations under the *Privacy Act 1988* and the *Census Statistics Act 1905* to protect information from misuse and unauthorised access or disclosure.

In conclusion, the ABS supports the proposed amendments to the legislation. As an organisation with significant expertise in working with administrative data and a long history of protecting the confidentiality and privacy of respondent's data, ABS is well-positioned to draw the value out of this data in a safe way for both government and industry.²⁴

2.24 The explanatory memorandum states that where the Secretary has approved secondary disclosure of levy payer information to an industry representative body, the

21 Department of Agriculture and Water Resources, *Submission 31*, p. 1.

22 Department of Agriculture and Water Resources, *Submission 31*, p. 1.

23 Department of Agriculture and Water Resources, *Submission 31*, p. 2.

24 Australian Bureau of Statistics, *Submission 10*, p. 1.

'administrative arrangements will enable levy payers to choose to opt-out and not receive information'.²⁵

2.25 The committee considers that the measures proposed by the department and the ABS's experiences in handling personal information are an adequate response to the privacy concerns raised. While it is reasonable to allow levy payers to opt out of communications from industry representative bodies, it would defeat the purpose of the bill to enable levy payers to opt out of communications from the relevant RDC.

Use of levy payer information for political purposes

2.26 A few submitters rejected the proposal for the Secretary to authorise disclosure of levy payer information to third parties, particularly to peak industry bodies. These submitters feared that levy payer information may be used by peak industry bodies for the purpose of conducting political campaigns. For example, FLAGS Australia expressed concern that peak industry bodies could misuse the levy payer register for this purpose.²⁶ United Stockowners of Australia expressed similar concerns, specifically about the Cattle Council of Australia.²⁷

2.27 As discussed in Chapter 1, clause 27B of the bill sets out the purposes for which an eligible recipient would be able to use levy payer information provided to it under clause 27(1) of the bill. This clause does not include political purposes. Any use of levy payer information would be in contravention of the proposed clause. The explanatory memorandum specifically states that the bill 'does not provide for levy payer information to be used for agri-political purposes'.²⁸

Cost of creating a levy payer register

2.28 Voice of Horticulture and others sought further information about the costs of establishing a levy payer register.²⁹

2.29 The department noted that each RDC would need to consider the potential benefits against the 'significant investment that is required'.³⁰ Evidence presented to the References Committee earlier in this Parliament suggested that for some RDCs the creation of a levy payer register would be relatively inexpensive and straight

25 *Explanatory Memorandum*, Primary Industries Levies and Charges Collection Amendment Bill 2016, p. 3 (Hereafter 'Explanatory memorandum')

26 *Submission 6*.

27 *Submission 4*.

28 *Explanatory Memorandum, Statement of compatibility with human rights*, p. 6.

29 Voice of Horticulture, *Submission 27*, p. 2.

30 Department of Agriculture and Water Resources, *Submission 31*, p. 2.

forward.³¹ Of course this would not be the case for all RDCs, the proposals contained in the bill offer RDCs the opportunity to create a levy payer register. There is no obligation to do so.

Concerns by some peak industry groups

2.30 While many peak industry supported the bill³², others rejected the measures proposed and submitted that if passed, the changes would diminish the important role that peak organisations perform as a conduit between levy payers and RDCs.

2.31 For example, in the view of Onions Australia, organisations like itself have been elected as representatives by levy payers who do not wish to deal with RDCs. Onions Australia reported that it was 'extremely concerned' by the proposed amendments to permit the department to provide levy and charge payer information to RDCs for the purposes of developing levy payer registers.³³ Similar concerns were expressed by the Voice of Horticulture and AusVeg.³⁴

2.32 The committee recognises the important role that peak organisations perform, particularly in providing a link between levy payers and RDCs. However, the purpose of the bill is not to diminish the role of peak organisations. Rather, the bill is directed at giving levy payers more of a say about how their levy funds are spent. To achieve this goal, RDCs need to know who their levy payers are.³⁵

Concerns of the Australian Dairy Farmers and Dairy Australia

2.33 Australian Dairy Farmers and Dairy Australia supported the general policy objective of the bill. However, both organisations rejected the proposed constraints on the Dairy Australia's disclosure of levy payer information.³⁶ The *Dairy Produce Act 1986* (Cth) does not currently contain any restrictions on the secondary disclosure of information. The submission called for amendments to the proposed secondary disclosure provisions to 'avoid introducing inefficiencies and restrictions in current operational activities'.³⁷ The submission identified two circumstances where Dairy Australia does not currently need to request permission from the Secretary, disclosure to:

31 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. 23.

32 For example, Woolproducers Australia, *Submission 15*.

33 Onions Australia, *Submission 5*, p. 1

34 Voice of Horticulture, *Submission 26* and AusVeg, *Submission 27*.

35 Explanatory memorandum, p. 2.

36 *Submission 12*, p. 2. Australian Dairy Farmers Ltd is the peak advocacy body for the dairy industry. Dairy Australia Ltd is the industry's RDC.

37 Australian Dairy Farmers and Dairy Australia, *Submission 12*, p. 2.

- a share registry in order to compile voting entitlements for an Annual General Meeting; and
- a third party for an operational purposes, such as to a mailhouse, in order to update levy payers.³⁸

2.34 The dairy industry was also concerned that clause 27B(6) of the bill might limit the Secretary's ability to authorise disclosure:

Under the new regime it would not be possible for Dairy Australia to disclose information to third parties without the consent of the Secretary of the Department. If consented to, a third party could then use the information for one of the purposes permitted under new section 27B(6). There is no provision for the Secretary to permit additional uses not listed in section 27B(6), for example a share registry using the information for the purposes of determining voting entitlements for an AGM.³⁹

2.35 The Explanatory Memorandum explicitly deals with the dairy industry's concern about secondary disclosure in relation to clause 27B(6), noting that the secretary may permit disclosure: 'of information to an information technology company engaged by an RDC for data management services, or to an industry representative body for consulting levy payers on R&D plans or demonstrating industry support for a levy proposal'.⁴⁰ The explanation suggests that it would be open to the Secretary to approve disclosure for the purposes of a kind that Dairy Australia is likely to want to disclose to a third party.

2.36 The committee considers that that the proposed changes do not impose an unreasonable limitation on Dairy Australia's disclosure of levy payer information. Dairy Australia would simply be required to request approval from the Secretary in order to disclose levy payer information to a third party. This is a reasonable limitation and would ensure that all RDCs are subject to the same constraints in relation to the use of levy payer information.

Lack of penalties within the bill

2.37 Some concern was expressed about the absence of penalties in the bill for misuse of levy payer information. For example, if the database were used for a political campaign.⁴¹

2.38 The department submitted that compliance with the limitations on the use of levy payer data contained in the bill could be achieved by a robust governance

38 Australian Dairy Farmers and Dairy Australia, *Submission 12*, pp 3-4.

39 Australian Dairy Farmers and Dairy Australia, *Submission 12*, p. 4.

40 Explanatory Memorandum, p. 3. See also, p. 9, paragraph 27.

41 FLAGS Australia, *Submission 6*; United Stockowners of Australia, *Submission 4*.

framework. The department provided two examples of 'alternative mechanisms' to encourage compliance:

This could include, for example, incorporating requirements in the government's individual RDC funding agreements or, in the case of misuse by an industry representative body, the option of pursuing legislative and regulatory change to remove the body's legislated role in the research and development system.⁴²

Consultation

2.39 Some submitters were dissatisfied with the level of consultation undertaken by the department.⁴³ For example, Cotton Australia submitted that:

The levy system is built on a strong partnership between the Australian Government and our levy paying growers, so we are disappointed that this Bill which introduces significant, although not unwelcome changes to our industry, was not subject to consultation with ROs [Representative Organisations].⁴⁴

2.40 The department's submission does not outline the consultation process it followed in developing the bill. However, the proposed measures enjoy widespread support, and were considered by the references committee during its earlier inquiry. The bill provides a high level framework to enable the establishment of levy payer registers and most of the detail would be in the administrative arrangements. The department has advised that it 'has started consulting with RDCs and industry bodies' in relation to the development of detailed guidance for these organisations.⁴⁵ The committee trusts that the department would continue to focus on consultation with relevant stakeholders as it works to implement the bill – if passed – and associated administrative arrangements.

Committee view

2.41 The changes proposed by the bill would enable Research and Development Corporations (RDCs) to better communicate with all levy payers in a particular industry, not just those growers who are members of the RDC. The ABS would also have access to de-identified data. This bill is the first step toward improving the systems governing levies in the agriculture sector.

2.42 The committee is pleased to see that the government has given close attention to the Senate Rural and Regional Affairs References Committee report into the industry structures and systems governing the imposition and disbursement of

42 Department of Agriculture and Water Resources, *Submission 31*, p. 2.

43 See, for example, Grain Producers Australia, *Submission 25*, p. 1; Grain Growers, *Submission 32*.

44 Cotton Australia, *Submission 34*, p. 2.

45 Department of Agriculture and Water Resources, *Submission 31*, p. 1.

marketing and research and development levies in the agriculture sector, tabled in June 2015.⁴⁶ In particular, the committee is delighted that recommendation 1 of that report is encapsulated by the bill.

2.43 That report was presented to the Senate on 30 June 2015. The government is required to table a response to parliamentary reports of this kind within three months of presentation. The government still has not responded to the references committee's report. The committee looks forward to further action by the government in response to the references committee's six other recommendations.⁴⁷

2.44 The committee notes that submitters to this inquiry overwhelmingly support the bill. Some issues of concern have been raised by some submitters, for the reasons outlined above, the committee accepts the evidence of the department that they will be resolved in due course. The committee also notes the department's undertaking to continue to consult with stakeholders. The committee welcomes this assurance and will monitor the department's implementation of the new administrative and legislative framework, if the bill is passed.

Recommendation 1

2.45 The committee recommends that the Senate pass the bill.

Recommendation 2

2.46 The committee recommends that the Department of Agriculture and Water Resources continue to consult with Research and Development Corporations and representatives of the agricultural industry as it implements the regulatory and administrative framework associated with the measures contained in the bill.

Recommendation 3

2.47 The committee recommends that the Minister for Agriculture and Water Resources table a response to the Senate Rural and Regional Affairs and Transport References Committee's report tabled in June 2015: *Inquiry into the industry structures and systems governing the imposition and disbursement of marketing and research and development levies in the agriculture sector*.

46 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.

47 President's report to the Senate on government responses outstanding to Parliamentary Committee reports as at 1 December 2015, available online: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Government_responses (accessed 14 April 2016). This document also provides a history of the President's practice of presenting a list of outstanding committee reports to the Senate on p. 2.

Senator Bill Heffernan
Chair

