

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

HORTICULTURAL LEVY BILL 1987

HORTICULTURAL LEVY COLLECTION BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
representing the Minister for Primary Industries
and Energy)

This memorandum takes account of amendments made by the House
of Representatives to the Bill as introduced.

OUTLINE

HORTICULTURAL LEVY BILL 1987

HORTICULTURAL LEVY COLLECTION BILL 1987

The Horticultural Levy Bill and the Horticultural Levy Collection Bill have similar provisions to levy Acts already in operation for a number of other rural industries. Initially, the legislation will apply to apples and pears, which are currently subject to levies under specific apple and pear legislation that will be repealed. There is a wide range of fresh and processed horticultural products including various kinds of fruits, vegetables, nuts, nursery products and cut flowers, and these Horticultural Levy Bills will provide for the imposition and collection of a levy on any horticultural product produced and sold or used in Australia when that product is prescribed at some future date.

The levy monies are intended to provide separate funds to assist the operation of the Australian Horticultural Corporation and the Horticultural Research and Development Corporation.

For administrative ease and better securing the payment of levy, the legislation also provides that first purchasers of horticultural products from producers and agents who sell horticultural products on behalf of producers will be liable to pay the levy to the Commonwealth on behalf of producers.

FINANCIAL IMPACT STATEMENT

Funds from apple and pear levies currently amount to around \$1.3 million per year and will continue under the new levy legislation. Funding from levies on other products will be added as various industries of the horticultural sector decide to join in the activities of one or both Corporations.

Thus, levy funding is expected to increase, particularly over the next decade. In the more immediate future, the Commonwealth will help speed up the establishment period of the two Corporations by:

- firstly, its commitment of \$5.85 million over five years to assist the Australian Horticultural Corporation; beyond that period, all of that Corporation's costs will be met by contributions from industry, with levies expected to be the main element; and
- secondly, its commitment of \$1.25 million over five years to the Horticultural Research and Development Corporation.

(ii)

The Commonwealth will match expenditure of the industry moneys - based on levies, export charges and eligible voluntary contributions and identified for the Research and Development Corporation - dollar for dollar, up to a limit of 0.5% of the average annual gross value of production of groups of products, the groupings to be specified by regulation. The extent of the Commonwealth contribution to research will thus depend on the number of industries which agree to participate and the rates at which the individual industries are prepared to fund Corporation research activities.

HORTICULTURAL LEVY BILL 1987

NOTES ON CLAUSES

<u>No of Clause</u>	<u>Explanation</u>
1	<u>Short title</u>
2	<u>Commencement</u>
3	<u>Principal object</u> The principal object of the Act is to provide funds for the operations of the Australian Horticultural Corporation and the Horticultural Research and Development Corporation.
4	<u>Collection Act to be read with this Act</u>
5	<u>Act binds Crown</u>
6	<u>Imposition of levy</u> The Act provides for a levy on prescribed horticultural products produced in Australia that are, after the commencement of this Act, <ul style="list-style-type: none">- sold in Australia by the grower or other producer or- used by the grower or other producer in the production in Australia of other goods.
7	<u>Rates of levy</u> Provides for the rate of levy to be the sum of the amounts fixed by regulations under Clauses 8, 9 and 10 and also provides for maximum rates of levy. The regulations may fix a rate of levy in relation to a class of leviable horticultural products ; examples of a class are (a) fruit, (b) oranges (which could include a number of varieties), (c) oranges for processing, (d) dried fruit and (e) processed nuts.
8	<u>Rates of levy destined for the Australian Horticultural Corporation</u> Provides for a rate of levy destined for the Australian Horticultural Corporation to be fixed by regulations.

<u>No of Clause</u>	<u>Explanation</u>
9	<p data-bbox="409 281 1065 331"><u>Rates of levy destined for the Horticultural Research and Development Corporation</u></p> <p data-bbox="409 357 1065 434">Provides for a rate of levy destined for the Horticultural Research and Development Corporation to be fixed by regulations.</p>
10	<p data-bbox="409 458 1021 483"><u>Rates of levy destined for other purposes</u></p> <p data-bbox="409 510 1093 559">Provides for a rate of levy destined for other purposes to be fixed by regulations</p> <p data-bbox="409 586 1078 634">- there are no other purposes envisaged at present.</p>
11	<p data-bbox="409 658 1005 683"><u>Flexibility in relation to rates of levy</u></p> <p data-bbox="409 710 1139 887">This Clause provides for flexibility in rates of levy in that different rates may be imposed, for the purposes of Clauses 8, 9 or 10, for different classes of products or for a particular class of product; and that it is not necessary for rates to be struck for all three clauses for any one product.</p>
12	<p data-bbox="409 912 706 936"><u>By whom levy payable</u></p> <p data-bbox="409 963 1151 988">Provides that the levy is payable by the producer.</p>
13	<p data-bbox="409 1012 706 1037"><u>Exemptions from levy</u></p> <p data-bbox="409 1064 1139 1138">Provides that exports are not subject to levy and that regulations may exempt certain producers or products from levy.</p>
14	<p data-bbox="409 1163 574 1188"><u>Regulations</u></p> <p data-bbox="409 1214 1139 1717">Provides for the making of regulations by the Governor-General to help give effect to the Act. Before making regulations concerning a proposed levy destined for the Australian Horticultural Corporation or the Horticultural Research and Development Corporation, the Governor-General shall consider any relevant recommendations with respect to that levy made to the Minister by either the Australian Horticultural Corporation or the Horticultural Research and Development Corporation. In passing those recommendations to the Minister, the Corporations are to provide the written views of the eligible industry bodies. In addition, provision is made for industry consultation in the fixing of levies destined for other purposes, and, before making regulations concerning such levies, the Governor-General shall consider any relevant recommendations with respect to that proposed levies made to the Minister by the eligible industry body.</p>

HORTICULTURAL LEVY COLLECTION BILL 1987NOTES ON CLAUSESNo of
ClauseExplanation

- | | |
|---|--|
| 1 | <u>Short title</u> |
| 2 | <u>Commencement</u> |
| 3 | <u>Object</u>

Provides for efficient and effective collection of levies imposed by the Horticultural Levy Act 1987. |
| 4 | <u>Interpretation</u>

Provides an interpretation and definition of various words and expressions used in the Bill. |

In particular, the word 'producer' is defined. Examples of the various types of producer defined are as follows

INTERPRETATIONEXAMPLE

The word 'producer' means

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|-----|---|---|--|
| (a) | in the case of a product in a class of products prescribed for the purposes of this paragraph - the person who owned the product immediately after harvesting; | . | a merchant who enters into a commercial arrangement with a grower to pick, cut and sell (as owner) flowers grown by the growers; |
| (b) | in the case of a product in a class of products prescribed for the purposes of this paragraph - the person who produced the product by processing the product or another product; | . | a processor eg a person who produces juice by processing oranges; |

INTERPRETATION

EXAMPLE

- (c) in the case of a product in a class of products, prescribed for the purposes of this paragraph - the person who, under the regulations, is to be taken to be the producer of the product and;
- (d) in any other case - the grower of the product.
- . a person, such as a nurseryman who purchases very young trees and 'grows them on' for one or two seasons before selling them commercially; the paragraph is needed to cover instances such as this example to identify by means of regulations that the levy is imposed on the second and not the first grower.
 - . an orchardist who cultivates and sells fruit
 - . a person who sows seed, cultivates and sells vegetables.

No of
ClauseExplanation

- 5 Act binds Crown
- 6 When levy due for payment
- 7 Liability of selling agents and first purchasers
- Provides that, for better securing the payment of levy, a first purchaser or selling agent is liable to pay to the Commonwealth the amount of any levy due for payment that remains unpaid by the grower and is authorised to deduct amounts from proceeds due to the grower. Where a first purchaser or selling agent deducts such amounts, the grower is discharged from liability to pay the levy to the extent of the amount deducted and paid to the Commonwealth.
- 8 Penalty for non-payment
- Sets the penalty for late payment of levy.
- 9 Remission of amounts
- Provides that the Minister or an authorised person may remit a penalty. An authorised person may not remit an amount greater than \$500.
- 10 Recovery of levy and other amounts
- Provides for the recovery of levies and penalties as debts due to the Commonwealth.

No of
ClauseExplanation

- 11 Refund of levy
- Provides, in cases of overpayment of levies or penalties, for refunds by the Commonwealth or the Corporations.
- 12 Powers of authorised person in relation to premises
- Details powers of and constraints on an authorised person in relation to entering premises to inspect documents and goods.
- 13 Warrant to enter premises
- Enables an authorised person to seek and obtain a warrant to enter premises in certain circumstances.
- 14 Identity cards
- Provides for issue of identity cards to, and use by, authorised persons.
- 15 Power to require returns etc
- Provides that an authorised person may write to a wholesaler, agent or other person requiring, within a certain period, information or returns needed to give effect to the Act.
- Increasingly, business data are being stored in a form such as on computer tape that is only machine-readable, and therefore in a form that is not immediately intelligible. Section 25A of the Acts Interpretation Act provides that, if records are kept in this way, then any request for information from them under an Act requires the information to be supplied in writing that is capable of being understood.
- The time needed for converting the records into a form which can be understood readily will depend on the particular circumstances, including the volume of information required, where the records are stored and availability of machines to read and print the records. Clause 15 takes account of this by providing for the authorised person to nominate in the notice a reasonable time within which the information is to be provided. This provision would enable an authorised person, when visiting the premises where records are kept, to request in writing that understandable information be provided very quickly if that is appropriate in all the circumstances.

<u>No of Clause</u>	<u>Explanation</u>
16	<p><u>Offences in relation to returns etc</u></p> <p>Details offences for failing to submit a return or information required under the Act.</p>
17	<p><u>Conduct of directors, servants and agents</u></p> <p>Provides that, subject to certain conditions, (i) conduct of directors, servants or agents of a body corporate can be taken as that of the body corporate and (ii) conduct of agents acting for a person other than a body corporate can be taken as that of the other person.</p>
18	<p><u>Appointment of authorised persons</u></p> <p>Provides that the Secretary to the Department may appoint a person to be an authorised person for the purposes of a specified provision of this legislation.</p>
19	<p><u>Review of decisions</u></p> <p>Provides that application may be made to the Administrative Appeals Tribunal for review of a decision to refuse to remit penalty.</p>
20	<p><u>Delegation by Secretary</u></p> <p>Provides that the Secretary of the Department may delegate any or all of his or her powers under this legislation, other than this power of delegation, to an officer of the Department.</p>
21	<p><u>Regulations</u></p> <p>Makes provision that Governor-General may make regulations under the Act: providing for the manner of payment of levy and other monies; requiring persons to keep accounts and other records in relation to leviable horticultural products; requiring persons to furnish returns or information; and setting maximum penalties for offences against the regulations.</p>
22	<p><u>Orders</u></p> <p>Makes provision that the Minister may make orders.</p>









