



1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Primary Industries and Energy,
the Honourable John Kerin MP)

PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION BILL 1990

GENERAL OUTLINE

1. The Primary Industries Levies and Charges Collection Bill has, as its main purpose, measures which will allow more cost effective and efficient levy collection techniques. The legislation will provide a single Act which will deal with all levy and export charge collection. This will enable a uniformity of collection methods and permit a consistency of approach to procedural matters previously embodied in more than 30 Acts.
2. The main provisions will allow for rationalization of the administrative processes used in the collection of levies and charges through intermediaries on behalf of producers, and for collection arrangements to be made with States, Territories and other organizations specifically aimed at reducing costs to Industry. The Act brings together similar provisions in operation in a multitude of legislation as well as updating penalties for breaches.
3. New levies and export charges may be brought under the auspices of the Act by regulation, after consultation with appropriate industry groups.
4. There has been no change to the rationale for which moneys collected are applied. The use of funds varies significantly according to industry but market support, product promotion and research are common usages.
5. Two other Bills, namely the Primary Industries Levies and Charges (Consequential Provisions) Bill 1990 and the National Cattle Disease Eradication Trust Account Bill 1990, are complementary to this Bill.

FINANCIAL IMPACT STATEMENT

6. As this legislation does not change the operative rate of any levy or export charge imposed on primary industries there will be no change to revenue.
7. Since the introduction of cost recovery for levy and charge collection in 1988 the Commonwealth is reimbursed for expenses incurred. Consequently there will be no net effect to revenue in the implementation of this legislation.

PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION BILL 1990

NOTES ON CLAUSES

No of
Clause

1 Short Title

8. The Bill is to be called the Primary Industries Levies and Charges Collection Act 1990.

2 Commencement

9. Provides for the Act to commence on 1 July 1991.

3 Objects

10. This Bill aims to provide for the rationalisation of levy and charge collection, and also to allow for the effective and efficient collection of primary industry levies and charges.

4 Interpretation

11. In this clause are listed definitions of terms used in the Bill. For example:-

. a "buying agent" means a person who purchases products on behalf of the first purchaser or processor of the products. This category could include a person who acts as a 'commission agent' on behalf of a grain producer.

. an "intermediary" is defined to include a wide range of persons who would have dealings with the producer of 'collection products'.

. "levy year" is expressed in broad terms to permit different collection periods to be set for the vast array of products for which levy or charge may be collected. In most cases the levy year will be a financial year (ie 1 July - 30 June) but others may need to be set according to special seasonal requirements.

. "magistrate" has been defined to include a justice of the peace. This is necessary as in some States and Territories a justice of the peace may perform equal judicial functions to a magistrate, particularly for the purpose of issuing search warrants in the more remote areas of northern and western Australia. However, it is intended that in all cases a magistrate should be sought first in preference to a justice of the peace.

4 (cont)

. "prescribed goods or services" are to be identified by regulation. For example, the containers in which nursery products are placed in a growing medium are goods or services used in subjecting those products to a process to prepare them for sale or use in the production of other goods.

. "process" means the performance of any operation in relation to a product; but, if required, specific operations for a particular product may be excluded by regulation. This latter situation may be necessary in the case of some seed grain products where there are many varieties of process to which that product may be subjected in the course of processing prior to storage.

. "producer" is defined for various types of product and examples are included: such as, in the case of juicing fruit or processing fruit on which levy is imposed the producer is taken to be the person who processed the fruit.

. "receiver" as defined includes the situation, where because of State marketing laws, when a product is delivered to a particular body the product is deemed to be vested in that body. For example in the grain industry.

12. Sub-clause 4(2) provides that offences against this Act include references to inchoate offences such as those included in the Crimes Act 1914 involving conspiracy, accessories after the fact, and inciting or urging to commit an offence.

13. Sub-clause 4(3) provides for the interpretation of words and expressions contained in other Acts but not included in this one. The intention is to replace the previous method of incorporating collection Acts with the relevant levy Acts. A corresponding provision is included in each of the Levy and Charge Acts contained in the Primary Industry Levies and Charges (Consequential Provisions) Bill 1990.

5

Act binds Crown

14. This is the standard provision to bind the Crown in the right of each of the States and of the Norfolk Island.

6 When levy or charge due for payment

15. The due dates for levy or charge are to be prescribed by regulation. Given the diversity of the types of collection products to be covered by this Act it is probable that some products could have different due dates for payment. For example some levies are collected both on a monthly and annual basis depending on the magnitude of the amounts involved.

7 Liability of intermediaries

16. This clause sets out the responsibilities of intermediaries such as receivers, processors, selling agents, first purchasers, exporting agents and buying agents who, for the better securing of the payment of levy, will pay money to the Commonwealth on behalf of producers. Provision is also made so that the regulations may exclude specific intermediaries or specified products.

8 Liabilities of intermediaries - ancillary provisions

17. This clause allows for intermediaries to deduct amounts from proceeds that would otherwise be available to be paid to the producer. This is to ensure that funds are provided to the intermediary for levy or charge payments to be made on behalf of the producer. In the case of an abattoir proprietor for example, if funds are not provided prior to slaughter, in certain circumstances the proprietor may refuse to slaughter or permit the slaughter of live-stock by someone else unless that other person first provides the funds necessary to cover the levy payable.

9 Liabilities of sellers of prescribed goods or services

18. This clause provides for a person who purchases prescribed goods or services, which are used in the production of particular collection products, to pay to the seller, an amount on account of levy or charge that would be payable if the products were sold or used in the production of other goods or exported.

19. In general, this could mean that the amounts on account of levy or charge may be payable before the collection products are actually produced or exported. Any late payment penalty payable by the purchaser shall also be paid to the seller. Amounts received by the seller of the goods or services must, in turn, be paid to the Commonwealth.

20. It will be possible for a purchaser of the goods or services to seek an exemption from making a payment on account of levy or charge if he or she notifies the seller, in writing, if it is their intention that:

(a) the goods and services will not be used in producing collection products; or

(b) collection products produced with the aid of the goods or services will not be sold, used in the production of other goods, or exported.

10

Collection agreements with States and Territories

21. Sub-clause 10(1) provides that the Commonwealth may enter into agreements with a State for the purposes of collection in that State on behalf of the Commonwealth.

22. Sub-clause 10(2) outlines what may constitute such an agreement.

23. Sub-clause 10(3) provides that whilst an agreement is in force payments of amounts of levy or charge in respect of products in that State are to be made through the appropriate collecting authority.

24. Sub-clause 10(4) stipulates that where amounts of levy or charge are deducted or paid from moneys payable to a person, that person is discharged from further liability to pay levy or charge to the extent of the amount paid or deducted.

25. Sub-clause 10(5) requires that the Secretary give notice, within 21 days, in the Gazette of agreements entered into.

26. Sub-clause 10(6) allows that failure to give notice in the Gazette will not invalidate the agreement.

11

Collection agreements with collecting organisations

27. Sub-clause 11(1) provides that the Secretary may enter into agreements with an organisation for the purposes of collection of levy or charge from intermediaries or in relation to prescribed products on behalf of the Commonwealth.

28. Sub-clause 11(2) outlines what may be included in such an agreement.

29. Sub-clause 11(3) provides that whilst an agreement is in force in relation to particular products, payments of amounts of levy or charge in respect of those products in that State or region are to be made through the appropriate collecting authority.

30. Sub-clause 11(4) provides that whilst an agreement is in force in relation to a particular producer or intermediary and in respect of particular products, payments of levy, charge or related amounts are to be made through the appropriate collecting authority.

31. Sub-clause 11(5) stipulates that where amounts of levy or charge are deducted or paid from moneys payable to a person, that person is discharged from further liability to pay levy or charge to the extent of the amount paid or deducted.

32. Sub-clause 11(6) requires that the Secretary give notice, within 21 days, in the Gazette of agreements entered into.

33. Sub-clause 11(7) allows that failure to give notice in the Gazette will not invalidate the agreement.

12 Industry consultation

34. This clause provides that the Secretary is to consult with any representative industry body before entering into an agreement with a State or Territory for the collection of levy or charge.

13 Application of the Audit Act

35. The clause provides that the Audit Act 1901 does not apply to amounts collected by collecting authorities or organisations.

14 Commonwealth not to discriminate or give preference

36. The Commonwealth in making agreements with States, Territories, or collecting organisations shall ensure that it does not discriminate nor give preference to one State or part of a State within the meaning of the Constitution.

15 Penalty for non-payment

37. This clause sets the penalty to apply to late payment of levy or charge.

38. Previously penalty was calculated at 20% per annum; however with the updating of provisions the new rate is to be set at 2% per month.

39. Penalty is to be calculated at the end of a month on the amount of levy or charge outstanding during that month, and for each subsequent month calculations are to be made on the sum of levy or charge then payable plus penalty already accrued at the end of the previous month. If a partial payment is made during a month, the penalty calculation is made in two parts for that particular month. Thus if the principal part of the debt is extinguished the 'penalty calculation clock' is suspended.

16 Remission of penalty

40. Provides that the Minister or an authorised person may remit the whole or part of an amount of penalty.

41. An authorised person may not remit an amount greater than \$2000, or such lower figure as is specified in the authorisation.

17 Recovery of levy, charge and other amounts

42. This clause provides for the recovery of levy, charge, penalties, and other amounts as debts due to the Commonwealth.

18 Refund of levy, charge etc.

43. Provides, in the case of overpayments of levy, charge and other amounts, for refunds to be made.

19 Powers of authorised persons to enter, search and seize

44. This clause sets out the powers of and constraints on an authorised person undertaking duties to determine compliance with the Act.

20 Warrant to enter premises

45. Enables the provision of a warrant to an authorised person to enter and search premises and to seize anything which will afford evidence of a contravention of the Act. The magistrate must be satisfied that the issue of the warrant is based on reasonable grounds before issuing it. The warrant must state its purpose, date of expiry, and the times during which entry may be effected. The maximum period for a warrant to be in force is set as 14 days.

21 Retention and return of seized property

46. Details the conditions under which property seized may be retained. Provision is also made to allow for inspection, under certain circumstances, whilst the property is held.

22 Identity cards

47. Provides for the issue of identity cards to, and use by, authorised persons.

23 Power to call for information

48. Provides that an authorised person may write to a person requiring, within a specified time, information or returns needed to give effect to the Act.

49. Increasingly, data are being stored in forms that are machine-readable only, and thus, not in forms that are 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.

50. The need for converting the records into a form which can be readily understood will depend on the particular circumstances, including the volume of information to be obtained, where the records are stored and the availability of machinery to convert the records. Clause 23 recognises this and provides for a reasonable time to be specified in the notice requiring the information. This provision would enable an authorised person, when visiting premises for example, to request in writing that understandable information be supplied quickly if that is appropriate in the circumstances. It is also provided that a notice requesting information may require the information to be verified by statutory declaration.

24 Offences in relation to returns etc.

51. This clause details offences for failing to submit or provide a return or information as required under the Act. In addition penalties are prescribed for presenting false or misleading information.

25 Conduct of directors, servants and agents

52. This clause stipulates that, subject to certain conditions:-

- (a) conduct of directors, servants and agents of a body corporate may be taken as that of the body corporate, and
- (b) conduct of agents acting for a person other than a body corporate may be taken to be that of the other person.

26 Appointment of authorised persons

53. Provides that the Secretary may appoint a person employed by, or in the service of, a collecting authority or collecting organisation to be an authorised person for the purposes of seeking returns or information under section 23.

54. In addition, the Secretary may appoint an officer of the Australian Public Service to be an authorised person for a specific provision of the Act, including section 23. Any appointment made under this section must be in writing.

27 Publishing of information

55. In order to permit the efficient operation of the Act and to allow bodies who receive the moneys adequate means of reporting their operations, it is necessary for the Department to have the ability to release certain information for publication. The Privacy Act requires adherence to certain principles which would preclude such information being released unless this provision was available.

56. Sub-clause 27(2) specifically permits identification of levy payers and amounts for the purposes of the Wheat Marketing Act 1989, as that Act requires growers' equity in the Wheat Industry Fund (the Fund) to be determined. This would not be possible unless the data could be released to Australian Wheat Board who are charged with the responsibility for management of the Fund.

28 Reconsideration and review of decisions

57. Sub-clause 28(1) allows for a person who is dissatisfied with a "relevant decision" to request the Minister, within 28 days of the decision coming to his or her notice, to reconsider the decision.

58. Sub-clause 28(2) stipulates that such a request must set out the reasons for making the request.

59. Sub-clause 28(3) requires the Minister, within 45 days of receiving the request, to reconsider the relevant decision and make a decision either in place of the original decision (whether in the same terms or not) or to revoke it.

60. Sub-clause 28(4) provides that after reconsidering a relevant decision the Minister must inform, in writing, the person requesting the review of the result.

61. Sub-clauses 28(5), (6), & (7) provide that application may be to the Administrative Appeals Tribunal (AAT) for a review of a relevant decision. Any notice advising a person of a relevant decision must include reference to the fact that a review by the AAT is available to that person if desired.

62. Sub-clause 28(8) provides that failure to include advice that AAT review is available to a person will not invalidate the decision.

63. Sub-clause 28(9) defines "relevant decision" to mean a decision involving the remission of penalty for late payment, or the granting of certificates for the purposes of specific sections of the Dairy Produce Levy (No. 1) Act 1986 or the Dried Vine Fruits Equalization Levy Act 1978.

29 Delegation by Secretary

64. This clause provides that the Secretary may delegate any or all of his or her powers under this legislation, other than the power of delegation, to an officer of the Department. A delegate when exercising a delegated power is subject to the direction of the Secretary.

30 Regulations

66. This clause makes provision for the Governor-General to make regulations under the Act: providing for, but not limited to, the manner and payment of levy or charge, and other moneys payable; requiring persons to keep accounts and other records in respect of prescribed products; requiring persons to furnish returns and information; and setting penalty limits for breaches of the regulations.

31 Orders

67. Provides for the Minister to have power to make Orders consistent with this Act.