



Primary Industries Levies and Charges Collection Act 1991

No. 25 of 1991

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Primary Industries Levies and Charges Collection Act 1991

No. 25 of 1991

**An Act relating to the collection of primary industries
levies and charges imposed by various Acts**

[Assented to 1 March 1991]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Primary Industries Levies and Charges Collection Act 1991*.

Commencement

2. This Act commences on 1 July 1991.

Objects

3. The objects of this Act are:

(a) to rationalise levy and charge collection; and

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- (b) to make provision for the efficient and effective collection of primary industry levies and charges.

Interpretation

- 4. (1)** In this Act, unless the contrary intention appears:
- “abattoir”** means a place where animals intended for human consumption are slaughtered;
- “associated Act”** means:
- (a) an Act specified in Schedule 1 or prescribed for the purposes of the definition of “charge” in this subsection; or
 - (b) an Act specified in Schedule 2 (other than the *Dairy Produce Levy (No. 2) Act 1986*) or prescribed for the purposes of the definition of “levy” in this subsection;
- “authorised person”** means a person who is, because of an appointment under section 26, an authorised person for the purposes of the provision in which the expression appears;
- “buying agent”** means a person who, in the course of carrying on a business, purchases products on behalf of the first purchaser, or the processor, of the products;
- “charge”** means charge imposed by an Act specified in Schedule 1 or by an Act prescribed for the purposes of this definition;
- “charge payer”** means a person who has paid, or is liable to pay, a charge;
- “collecting authority”** means a State, or an authority of a State, that, by reason of an agreement entered into under section 10, has agreed to collect on behalf of the Commonwealth money payable under this Act;
- “collecting organisation”** means an organisation with which the Secretary has entered into an agreement under section 11;
- “collection products”** means products on which levy or charge is imposed;
- “distribution Act”** means an Act that makes provision for the payment to any body, fund or account by the Commonwealth of amounts of money required by that Act to be equal to:
- (a) amounts of money received under this Act in respect of:
 - (i) charge; or
 - (ii) amounts paid under section 15 in relation to charge; or
 - (b) amounts of money received under this Act in respect of:
 - (i) levy; or
 - (ii) amounts paid under section 15 in relation to levy;
- “examinable documents”** means any books or documents relating to:
- (a) the producing of collection products, whether by:
 - (i) growing or harvesting; or
 - (ii) processing the products or other products; or

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- (b) the handling, storing, transporting, processing or marketing of collection products; or
- (c) the sale of prescribed goods or services in relation to collection products of any kind;

including, without limiting the generality of the foregoing, books or documents relating to financial dealings between any of the following persons:

- (d) producers of collection products;
- (e) selling agents;
- (f) first purchasers;
- (g) feedlot operators;
- (h) buying agents;
- (j) exporting agents;
- (k) processors of collection products;
- (m) receivers of collection products;
- (n) persons who handle, store, transport or market collection products;
- (p) persons who sell goods or services that, in relation to collection products of any kind, are prescribed goods or services;
- (q) persons who deal with by-products of collection goods;

“exporting agent” means a person who, in the course of carrying on a business, exports collection products from Australia on behalf of other persons (whether or not the other persons are the owners of the products);

“feedlot operator” means a person with control of premises where cattle within the meaning of the *Cattle Transaction Levy Act 1990*, *Beef Production Levy Act 1990* or the *Cattle Export Charge Act 1990* are confined in watered and serviced yards, with no access to pasture or crops, for a period of more than 60 days, and fed a protein based feed the components of which are intended to facilitate efficient live-stock growth;

“first purchaser” means a person who, in the course of carrying on a business, purchases collection products from the producers of the products (otherwise than through selling agents) but does not include prescribed persons who so purchase collection products for retail sale;

“harvest” includes the removal of honey from a hive;

“intermediary”, in relation to a producer, means a person required, under subsection 7 (1), (2) or (3), to pay an amount on behalf of that person;

“levy” means levy imposed by an Act specified in Schedule 2 or by an Act prescribed for the purposes of this definition;

“levy payer” means a person who has paid, or is liable to pay, levy;

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“levy year”, in relation to a collection product, means the period of whatever duration that is prescribed in relation to that product;

“magistrate” includes a justice of the peace;

“marketing law” means a law of a State relating to the marketing of a collection product or of primary products including a collection product;

“month” means a month of the year;

“order” means an order made under the regulations;

“organisation” includes an unincorporated body of persons;

“premises” includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises of the kind referred to in paragraph (a) or (b));

“prescribed” includes prescribed by an Order;

“prescribed goods or services”, in relation to collection products of a particular kind, means goods or services identified by the regulations as goods or services used in subjecting those products to a process in the course of their production or their preparation for sale or use in the production of other goods;

“process”, in relation to a collection product, means the performance of any operation in relation to the product but does not include the performance of an operation prescribed for the purposes of this definition, either generally or in relation to the product;

“processing establishment” means a place at which a process in relation to a product is performed by a processor and includes an abattoir;

“processor” means:

- (a) in relation to a collection product declared by the regulations to be a product to which this paragraph applies—the person, association, co-operative society, board or authority that produces the product; or
- (b) in relation to a collection product declared by the regulations to be a product to which this paragraph applies—the proprietor of the processing establishment that processes the product unless, immediately prior to delivery to that establishment, the product is owned by the proprietor of another processing establishment, in which case the proprietor of that other establishment;

“producer” means:

- (a) in the case of honey on which levy is imposed by the *Honey Levy Act (No. 1) 1962* or a product prescribed for the purposes of this paragraph—the person who owned the product immediately before sale; or
- (b) in the case of barley, leviable grain legumes, leviable oil seeds or leviable grain on which, in each case, levy is imposed or in

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the case of a product prescribed for the purposes of this paragraph:

- (i) where a marketing law vests the product in a person or body or in the Crown in right of a State at or before the time the product is harvested—the person who would have owned the product but for that marketing law; or
- (ii) where subparagraph (i) does not apply—the person who owns the product immediately after it is harvested; or
- (c) in the case of relevant dairy produce or leviable cotton on which, in each case, levy is imposed or in the case of a product prescribed for the purposes of this paragraph:
 - (i) where a marketing law vests the product in a person or body or in the Crown in right of a State at or before the time the product is produced—the person who would have owned the product but for that marketing law; or
 - (ii) where subparagraph (i) does not apply—the person who, immediately before the product is produced, owns the prescribed thing from which the product is produced; or
- (d) in the case of juicing fruit or processing fruit on which, in each case, levy is imposed or in the case of a product prescribed for the purposes of this paragraph—the person who produced the product by processing the product or another product; or
- (e) in the case of a product prescribed for the purposes of this paragraph—the person who, under the regulations, is to be taken to be the producer of the product; or
- (f) in the case of live-stock within the meaning of the *Live-stock Slaughter Levy Act 1964* (in so far as the collection of levy imposed under that Act is concerned) or pigs in relation to which, in each case, levy is imposed or in the case of such other animals as are prescribed for the purposes of this paragraph—the person who owns the animals at the time when the slaughter takes place; or
- (g) in the case of honey, live-stock within the meaning of the *Live-stock Export Charge Act 1977* (in so far as the collection of charge imposed under that Act is concerned) or chargeable horticultural products on which, in each case, charge is imposed or in the case of a product prescribed for the purposes of this paragraph—the person who exports the product from Australia; or
- (h) in the case of fresh grapes, dried grapes or grape juice on which, in each case, levy is imposed or in the case of a product prescribed for the purposes of this paragraph:
 - (i) where a person is the grower of the product and the proprietor of the processing establishment at which the product is processed—that person; or

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- (ii) where the owner of the product immediately before delivery to a processing establishment at which the product is processed is the proprietor of another processing establishment—the proprietor of the first-mentioned processing establishment; or
- (iii) where neither subparagraph (i) nor (ii) apply—the person who was the owner of the product immediately before delivery to a processing establishment; or

(j) except where subsection (2) applies, in the case of any other product—the grower or breeder of the product;

“product” includes a thing occurring naturally;

“proprietor”, in relation to a processing establishment, means the person who processes prescribed products at that establishment;

“receiver”, in relation to a collection product, means the person who:

(a) takes delivery of the product, personally or through a person acting on his or her behalf, from the producer otherwise than for storage on behalf of the producer where no person is liable to pay the producer for the product; or

(b) takes the product out of the control of the producer under a marketing law;

“regulations” includes orders;

“Secretary” means the Secretary to the Department;

“selling agent” means a person who, in the course of carrying on a business, sells collection products on behalf of the producers of the products but does not include a prescribed person who sells collection products by retail sale;

“State” includes the Australian Capital Territory and the Northern Territory;

“this Act” includes the regulations.

(2) For the purposes of this Act:

(a) a person who, under subsection 7 (1), (2) or (3) of the *Cattle Transaction Levy Act 1990*, is liable to pay levy in relation to cattle is taken to be the producer of the cattle, and a feedlot operator who buys the cattle from such a person is taken to be a first purchaser of the cattle; and

(b) a person who, under section 7 of the *Beef Production Levy Act 1990*, is liable to pay levy in relation to cattle is taken to be the producer of the cattle; and

(c) a person who, under section 7 of the *Cattle Export Charge Act 1990*, is liable to pay charge in relation to cattle is taken to be the producer of the cattle.

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(3) A reference in this Act to a contravention of a provision of this Act includes a reference to an offence against section 6, 7 or 7A, or paragraph 86 (1) (a) of the *Crimes Act 1914* that relates to that provision.

(4) Unless the contrary intention appears, a word or expression contained in this Act that is not defined for the purposes of this Act but is defined in an associated Act for the purposes of that Act has the same meaning in this Act as in the associated Act.

Act binds Crown

5. (1) This Act binds the Crown in right of each of the States and of Norfolk Island.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

When levy or charge due for payment

6. Amounts of levy or charge are due for payment as required by the regulations.

Liability of intermediaries

7. (1) Except where subsection (2) applies, for better securing the payment of levy:

- (a) a selling agent who sells products, being products on or in relation to which levy is imposed, on behalf of the producer of the products; and
- (b) a first purchaser of such products (otherwise than such products purchased through a selling agent or a buying agent); and
- (c) a buying agent who purchases such products on behalf of the first purchaser, or the processor, of the products, otherwise than from a selling agent;

is liable to pay in accordance with subsection (4), on behalf of the producer, an amount equal to the sum of:

- (d) the amount of any levy due for payment on or in relation to the products that remains unpaid by the producer; and
- (e) any amount payable by the producer under subsection 15 (1) in relation to that levy.

(2) For better securing the payment of levy:

- (a) a receiver of a product on or in relation to which levy is imposed, being a product declared by the regulations to be a product to which this paragraph applies; and
- (b) a processor who processes a product on or in relation to which levy is imposed, being a product declared by the regulations to be a product to which this paragraph applies;

is liable to pay in accordance with subsection (4), on behalf of the producer, an amount equal to the sum of:

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- (c) the amount of any levy due for payment on or in relation to the product that remains unpaid by the producer; and
 - (d) any amount payable by the producer under subsection 15 (1) in relation to that levy.
- (3) For better securing the payment of charge, an exporting agent who exports prescribed products on which charge is imposed is liable to pay in accordance with subsection (4), on behalf of the producer, an amount equal to the sum of:
- (a) the amount of any charge due for payment on or in relation to the products that remains unpaid by the producer; and
 - (b) any amount payable by the producer under subsection 15 (1) in relation to that charge.
- (4) Amounts required to be paid under subsection (1), (2) or (3) in respect of products of a particular kind must be paid:
- (a) unless paragraph (b) or (c) applies—to the Commonwealth; or
 - (b) if an agreement has been entered into under section 10 between the Commonwealth and a State concerning the collection of such amounts in respect of products of that kind and the agreement does not provide otherwise—to the collecting authority under that agreement; or
 - (c) if an agreement has been entered into under section 11 between the Commonwealth and a collecting organisation concerning the collection of such amounts in respect of products of that kind and the agreement does not provide otherwise—to the collecting organisation.
- (5) Where an amount is paid by an intermediary under subsection (1), (2) or (3):
- (a) the producer is, to the extent of that amount, discharged from so much of his or her liability to the Commonwealth in relation to the products as has not previously been discharged under subsection 8 (2); and
 - (b) the intermediary may recover from the producer, by set-off or otherwise, an amount equal to the amount by which the first-mentioned amount exceeds the amount (if any) deducted by the intermediary under subsection 8 (1).
- (6) Where a person who is an intermediary in relation to a producer:
- (a) sells collection products; or
 - (b) purchases collection products; or
 - (c) receives collection products; or
 - (d) exports collection products; or
 - (e) processes collection products;

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on which an amount of levy or charge, or an amount on account of levy or charge, has been paid to the Commonwealth, this section does not apply to that intermediary in respect of those products to the extent of that amount.

(7) The regulations may provide that this section does not apply in relation to specified intermediaries or specified products.

Liability of intermediaries—ancillary provisions

8. (1) Despite any law of a State or any agreement (whether entered into before or after the commencement of this Act) to the contrary, an intermediary referred to in subsection 7 (1), (2) or (3) may, for the purpose of ensuring that the intermediary is provided with the funds necessary for the due payment by the intermediary, on behalf of the producer, of levy or charge on the products, deduct from any money received by the intermediary on behalf of the producer, or payable by the intermediary, in relation to the products an amount equal to, or that may reasonably be expected to be equal to, the unpaid levy or charge on the products.

(2) Where the intermediary deducts an amount under subsection (1), the producer is, on the levy or charge becoming due for payment, discharged from liability to pay the levy or charge to the extent of the amount deducted, but the liability of the intermediary under subsection 7 (1), (2) or (3), as the case may be, is not affected.

(3) The proprietor of an abattoir may, despite any law of a State or Territory or any contract entered into before the commencement of this Act, refuse to slaughter, or to permit the slaughter of, live-stock (being live-stock within the meaning of the *Live-stock Slaughter Levy Act 1964*) owned by another person at the abattoir unless that other person first provides the proprietor with the funds necessary for the due payment, on behalf of that other person, of levy on the slaughter of the live-stock.

(4) The proprietor of an abattoir may, despite any law of a State or Territory or any contract entered into before the commencement of this Act, refuse to slaughter or to permit the slaughter of cattle (being cattle within the meaning of the *Beef Production Levy Act 1990* or the *Cattle Transaction Levy Act 1990*) owned by another person at the abattoir unless that other person first provides the proprietor with the funds necessary for the due payment, on behalf of that other person, of levy on or in relation to the cattle.

(5) Where a contract is made, whether at auction or otherwise, by which a person sells or agrees to sell pigs to another person, the amount that would, but for this section, be the price payable under the contract is taken to be reduced for all purposes (including, in the case of a contract made through an agent of the seller, the settlement of accounts

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between an agent and the seller) by an amount ascertained by multiplying an amount equal to the amount per pig that is the rate of the levy in force at the date of the contract by the number of the pigs comprised in the contract.

(6) Where a contract mentioned in subsection (5) makes specific provision for a deduction by, or allowance to, the purchaser in respect of levy, so much of the reduction provided for in that subsection as does not exceed the amount of that deduction or allowance is not to be made.

Liability of sellers of prescribed goods or services

9. (1) For better securing the payment of levy or charge, a person who has been paid an amount on account of levy or charge or in relation to penalty under subsection (2), must, within a prescribed period after the receipt of that amount, pay that amount to the Commonwealth.

(2) Subject to this section, a person to whom prescribed goods or services in relation to collection products of a particular kind are sold must, within a prescribed period after the purchase of those goods or services, pay to the person selling those goods or services:

- (a) an amount on account of:
 - (i) in the case of leviable products—the levy that would be payable by that first-mentioned person on products of that kind on their sale or use in the production of other goods after being subjected to the process facilitated by those goods or services; or
 - (ii) in the case of chargeable products that are not also leviable products—the charge that would be payable by that first-mentioned person on products of that kind on their exportation from Australia after being subjected to the process facilitated by those goods or services; and
- (b) an amount equal to the amount of any penalty payable by that first-mentioned person under section 15 in relation to levy or charge, as the case may be, because of a previous purchase of such prescribed goods or services.

(3) A person is not required to make a payment under paragraph (2)(a) because of the purchase of prescribed goods or services in relation to collection products of a particular kind if he or she informs the person selling those goods or services, in writing:

- (a) where leviable products of that kind are not also chargeable products:
 - (i) that he or she does not intend to use those goods or services in producing leviable products of that kind; or
 - (ii) that he or she does intend to use those goods or services

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in producing leviable products of that kind but does not intend to sell those products or use them in the production of other goods; and

(b) where chargeable products of that kind are not also leviable products:

(i) that he or she does not intend to use those goods or services in producing chargeable products of that kind; or

(ii) that he or she does intend to use those goods or services in producing chargeable products of that kind but does not intend to sell those products or use them in the production of other goods; and

(c) where leviable products of that kind are also chargeable products:

(i) that he or she does not intend to use those goods or services in producing leviable products, or chargeable products, of that kind; or

(ii) that he or she does intend to use those goods and services in producing leviable products, or chargeable products, of that kind but does not intend, in the case of leviable products, to sell those products or use them in the production of other goods, or, in the case of chargeable products, to export those products from Australia.

(4) Where a person makes a payment to a seller of prescribed goods or services in relation to collection products of a particular kind on account of levy or charge that would be payable on products of that kind if they were sold, or used in the production of other goods, after being subjected to the process facilitated by those goods or services, the first-mentioned person is, on making that payment, discharged from liability to pay levy or charge on collection products of that kind that are so sold or used after being subjected to the process facilitated by those goods or services but the liability of the seller under subsection (1) is not affected.

(5) Where a person makes a payment of an amount of penalty to a seller of prescribed goods or services in relation to collection products of a particular kind, being penalty payable by reason of a previous purchase of such goods or services, the person is, on making that payment, discharged from liability to pay that penalty to the Commonwealth but the liability of the seller under subsection (1) is not affected.

(6) If, after payment of an amount on account of levy under this Act to the seller of prescribed goods or services, those goods or services are used in the production, or preparation for export from Australia, of chargeable products:

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- (a) the amount paid to the seller is taken to have been paid on account of charge; and
- (b) any payment by the seller to the Commonwealth of an amount equal to the amount referred to in paragraph (a) is taken to have been made by the seller to the Commonwealth on account of charge.

(7) Where a person has paid levy or charge in respect of collection products, that person is not liable to pay an amount on account of levy or charge, as the case may be, in respect of those products under this section.

(8) In this section:

“chargeable products” means a collection product in respect of which charge is imposed;

“leviable products” means a collection product in respect of which levy is imposed.

Collection agreements with States and Territories

10. (1) The Commonwealth may enter into an agreement with a State with respect to the collection in that State, on behalf of the Commonwealth:

- (a) of levy or charge from a producer of collection products of a particular kind; or
- (b) of amounts payable under subsection 7 (1), (2) or (3) (in this section called the **“related amounts”**) by a person who is an intermediary in relation to a producer of such products;

by that State or by an authority of that State that is specified in the agreement.

(2) Without limiting the generality of the matters that may be provided for in an agreement entered into with a State, such an agreement may provide for:

- (a) the person from whom amounts of levy, charges or related amounts are to be collected; and
- (b) the keeping by the collecting authority in respect of the agreement of accounts and records in relation to amounts of levy, charge or related amounts collected by the collecting authority; and
- (c) the payment by the collecting authority to the Commonwealth of amounts of levy, charge or related amounts collected by the collecting authority; and
- (d) the giving by the collecting authority to the Minister of information with respect to amounts of levy, charge or related amounts collected by the collecting authority and of amounts paid by the collecting authority to the Commonwealth; and

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(e) the inspection and audit of accounts and records kept by the collecting authority with respect to amounts of levy, charge or related amounts collected by the collecting authority.

(3) While an agreement entered into under subsection (1) with a State is in force in relation to collection products of a particular kind:

(a) payment of levy, charge or related amounts in respect of products of that kind that are sold in that State or used in that State in the production of other goods is to be made to the collecting authority in respect of the agreement; and

(b) where the agreement provides that an authority of that State is to be the collecting authority in respect of the agreement—that authority may retain out of any money payable by it to any person an amount not exceeding an amount of levy, charge or related amount that the person is liable to pay.

(4) Where a person pays an amount of levy, charge or a related amount in accordance with paragraph (3) (a), or an amount in respect of levy, charge or of a related amount is deducted in accordance with paragraph (3) (b) from money payable to the person, the person is, to the extent of the amount so paid or deducted, discharged from liability to pay levy, charge or a related amount, as the case requires, to the Commonwealth.

(5) The Secretary must give notice in the *Gazette* of the entering into an agreement under subsection (1) within 21 days of the making of the agreement.

(6) A failure to comply with subsection (5) does not invalidate the agreement.

Collection agreements with collecting organisations

11. (1) The Secretary may enter into an agreement with an organisation with respect to the collection, on behalf of the Commonwealth:

(a) of levy or charge from a producer of prescribed products of a particular kind; or

(b) of amounts payable under subsection 7 (1), (2) or (3) (in this section called the “**related amounts**”) from an intermediary in relation to a producer of such products;

by that organisation.

(2) Without limiting the generality of the matters that may be provided for in an agreement entered into with a collecting organisation, such an agreement may provide for:

(a) the State or region in which amounts of levy, charge or related amounts are to be collected by the collecting organisation; and

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- (b) the person from whom amounts of levy, charge or related amounts are to be collected by the collecting organisation; and
- (c) the keeping by the collecting organisation in respect of the agreement of accounts and records in relation to amounts of levy, charge or related amounts collected by the organisation; and
- (d) the payment by the collecting organisation to the Commonwealth of amounts of levy, charge or related amounts collected by the organisation; and
- (e) the giving by the collecting organisation to the Minister of information with respect to amounts of levy, charge or related amounts collected by the organisation and of amounts paid by the organisation to the Commonwealth; and
- (f) the inspection and audit of accounts and records kept by the collecting organisation with respect to amounts of levy, charge or related amounts collected by the organisation.

(3) While an agreement entered into under subsection (1) with a collecting organisation is in force in relation to a particular State or a particular region in relation to collection products of a particular kind, payment of levy, charge or related amounts in respect of products of that kind that were sold in that State or region or used in that State or region in the production of other goods is to be made to the organisation in accordance with the terms of the agreement.

(4) While an agreement entered into under subsection (1) with a collecting organisation is in force in relation to a particular producer or a particular intermediary in relation to collection products of a particular kind, payment of levy, charge or related amounts in respect of products of that kind by the producer or intermediary must be made to that organisation in respect of the agreement.

(5) Where a person pays an amount of levy or charge, or a related amount, in accordance with subsection (3) or (4), the person is, to the extent of the amount so paid, discharged from liability to pay levy, charge or a related amount, as the case requires, to the Commonwealth.

(6) The Secretary must give notice in the *Gazette* of the entering into of an agreement under subsection (1) within 21 days of the making of the agreement.

(7) A failure to comply with subsection (6) does not invalidate the agreement.

Industry consultation

12. (1) Before entering into an agreement under subsection 10 (1) or 11 (1), the Secretary is to consult with any industry body that is representative of producers of collection products, or intermediaries in

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relation to producers of collection products, who have an interest in relation to the proposed agreement.

(2) A failure to comply with subsection (1) does not invalidate the agreement.

Application of Audit Act

13. (1) The *Audit Act 1901* does not apply in relation to levy, charge or related amounts collected by a collecting authority or collecting organisation but the operation of that Act in relation to money paid by a collecting authority or a collecting organisation to the Commonwealth is not affected.

(2) In this section:
“related amount” has the same meaning as in section 10 or 11, as the case may be.

Commonwealth not to discriminate or give preference

14. The Commonwealth must not, in exercising its powers under subsection 10 (1) or 11 (1):

- (a) discriminate between States or parts of States within the meaning of subparagraph 51 (ii) of the Constitution; or
- (b) give preference to one State or any part thereof within the meaning of section 99 of the Constitution.

Penalty for non-payment

15. (1) If any levy or charge in relation to collection products remains unpaid after the time when it became due for payment, there is payable by the producer to the Commonwealth, by way of penalty accruing from the time the levy or charge became due for payment until it is paid in full, an amount worked out as follows:

- (a) during the month in which the levy or charge became due for payment the amount of penalty accrues at the rate of 2% per month on the levy or charge due;
- (b) during the next and each subsequent month the amount of penalty consists of the sum of each amount that accrued during a previous month and the amount accruing during that month at the rate of 2% per month on the sum of the amount of levy or charge then payable and penalty payable at the end of the previous month.

(2) Where:

- (a) an intermediary deducts an amount under subsection 8 (1) in relation to the unpaid levy or charge on any collection products; and
- (b) the intermediary does not pay the amount deducted to the Commonwealth, a collecting authority or a collecting

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organisation at or before the time when the levy or charge became due for payment;

there is payable by the intermediary to the Commonwealth, by way of penalty accruing from the time the levy or charge became due for payment until the amount deducted is paid to the Commonwealth, an amount worked out as follows:

- (c) during the month in which the levy or charge became due for payment the amount of penalty accrues at the rate of 2% per month on the amount deducted;
- (d) during the next and each subsequent month the amount of penalty consists of the sum of each amount that accrued during a previous month and the amount accruing during that month at the rate of 2% per month on the sum of the unpaid amount deducted and penalty payable at the end of the previous month.

(3) Where:

- (a) a person purchases collection goods or services in respect of a prescribed product of a particular kind; and
- (b) a person fails to pay to the seller of those goods or services an amount on account of levy or charge (in this subsection called the “unpaid amount”) in accordance with subsection 9 (2) within the period prescribed for the purposes of that subsection;

there is payable to the Commonwealth by the person, by way of penalty accruing from the end of that period until the unpaid amount is paid to the seller, an amount worked out as follows:

- (c) during the month in which that period ends the amount of penalty accrues at the rate of 2% per month on the unpaid amount;
- (d) during the next and each subsequent month the amount of penalty consists of the sum of each amount that accrued during a previous month and the amount accruing during that month at the rate of 2% per month on the sum of the unpaid amount and penalty payable at the end of the previous month.

(4) Where:

- (a) a person who sells collection goods and services has received an amount on account of levy or charge; and
- (b) that person does not pay the amount received to the Commonwealth before the end of the period within which, under subsection 9 (1), it should have been so paid;

there is payable to the Commonwealth by that person, by way of penalty accruing from the end of that period until the amount is so paid to the Commonwealth, an amount worked out as follows:

- (c) during the month in which that period ends the amount of penalty accrues at the rate of 2% per month on the amount received;

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- (d) during the next and each subsequent month the amount of penalty consists of the sum of each amount that accrued during a previous month and the amount accruing during that month at the rate of 2% per month on the sum of the amount received and penalty payable at the end of the previous month.

Remission of penalty

16. (1) Where an amount of penalty becomes payable under section 15 because an amount of levy or charge in respect of particular collection products remains unpaid after the time when it becomes due for payment, the Minister or an authorised person may, subject to subsection (2), remit the whole or a part of that amount of penalty.

(2) An amount remitted by an authorised person under subsection (1) is not to exceed \$2,000 or such lower amount as is specified in the authorisation.

Recovery of levy, charge and other amounts

17. The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) amounts of levy or charge that are due for payment;
- (b) amounts payable under section 7;
- (c) amounts payable under subsection 9 (1);
- (d) amounts payable under section 15.

Refund of levy, charge etc.

18. (1) Subject to subsection (2) or (3), where an amount referred to in section 17 has been overpaid, the amount overpaid must be refunded by the Commonwealth.

(2) Subject to subsection (3), where an amount has been paid to the Commonwealth on account of levy, or as penalty, under subsection 9 because of the sale of prescribed goods or services in relation to collection products to a person and, on application in writing made to the Secretary by that person, the Secretary is satisfied that, for any reason:

- (a) those goods or services will not be used by that person in subjecting any collection products to a process in the course of their production or of their preparation for sale or use in the production of other goods; or
- (b) if those goods or services have been used by that person in subjecting any collection products to a process in the course of their production or of their preparation for sale or use in the production of other goods, those products will not be sold by that person or used by that person in the production of other goods;

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the Secretary must, by determination in writing, order the amount paid to be refunded and, upon the Secretary so doing, the amount paid must be refunded by the Commonwealth.

(3) Where, in purported compliance with a distribution Act, an amount equal to the amount overpaid, or part of that amount, has been paid to a body, fund or account, then:

- (a) if the Commonwealth has not, under subsection (1), refunded the amount overpaid—that amount must be refunded by the body, or out of the fund or account, as the case may be; or
- (b) if the Commonwealth has so refunded the amount payable—the Commonwealth is entitled to recover from the body, fund or account, as the case may be, by set-off or otherwise, the amount so refunded.

Powers of authorised person in relation to premises

19. (1) An authorised person may, with the consent of the occupier of premises or in accordance with a warrant issued under section 20, enter the premises for the purpose of ascertaining whether a person has contravened or is contravening a provision of this Act.

(2) Where an authorised person enters any premises under subsection (1), the authorised person may:

- (a) search the premises for, examine and take stock of, any products used to produce collection products; and
- (b) search the premises for, inspect, take extracts from, and make copies of, any examinable documents; and
- (c) seize anything found during the course of the search that he or she believes, on reasonable grounds, will afford evidence of the contravention of this Act.

Warrant to enter premises

20. (1) If a magistrate, on application by an authorised person, is satisfied, by information on oath:

- (a) that there are reasonable grounds for believing:
 - (i) that collection products are produced on particular premises, whether by growing or harvesting, or by processing the product or other products; or
 - (ii) that collection products are handled, stored or processed on particular premises; or
 - (iii) that prescribed goods or services in relation to collection products of a particular kind are sold or provided on particular premises; or
 - (iv) that goods produced from collection products are handled, stored or processed on particular premises; or

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- (v) that there are examinable documents on particular premises; and
 - (b) that the issue of the warrant is reasonably required for the purpose of ascertaining whether a person has contravened or is contravening a provision of this Act;
- the magistrate may issue a warrant authorising the authorised person to enter the premises:
- (c) with such assistance, and by such force, as is necessary and reasonable; and
 - (d) during such hours as the warrant specifies, or, if the warrant so specifies, at any time.
- (2) A warrant must specify:
- (a) the powers exercisable under subsection 19 (2) by the authorised person to whom the warrant is issued; and
 - (b) the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect.

Retention and return of seized property

21. (1) The authorised person may retain anything seized under section 19:

- (a) for 60 days after seizure; or
- (b) if proceedings in which the thing may afford evidence are commenced within that period, until the proceedings (including any appeal) are completed or terminated.

(2) The Minister may authorise anything seized under section 19 to be released to the owner, or to the person from whose possession the thing was seized, either unconditionally or on such conditions as are specified in the authority.

(3) Subsection (2) does not apply to anything while it is being held by a court as evidence in proceedings.

(4) Where anything seized is a book, record or document, the authorised person must, while the authorised person has possession of the book, record or document, allow it to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the authorised person's possession.

Identity cards

22. (1) The Secretary may cause an identity card to be issued to an authorised person.

(2) An identity card must:

- (a) contain a recent photograph of the authorised person to whom it is issued; and

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(b) be in a form approved, in writing, by the Secretary.

(3) Where a person to whom an identity card has been issued ceases to be an authorised person, the person must immediately return the identity card to a person occupying such office in the Department as is designated, in writing, by the Secretary.

(4) A person who, without reasonable excuse, contravenes subsection (3) is guilty of an offence punishable upon conviction by a fine not exceeding \$100.

(5) Where an authorised person proposes to enter premises otherwise than in accordance with a warrant issued under section 20, the authorised person must produce his or her identity card to the occupier of the premises for the occupier's inspection and, if the authorised person fails to do so, the authorised person is not entitled to enter the premises under section 19.

Power to call for information

23. An authorised person may, by notice in writing given to a person, require the person:

- (a) to give the authorised person, within such reasonable time as is specified in the notice, such return of information in relation to matters relevant to the operation of this Act as is specified in the notice; and
- (b) to verify any such return or information by statutory declaration.

Offences in relation to returns etc.

24. (1) A person must not, without reasonable excuse, refuse or fail to give a return or information that the person is required to give by or under this Act.

Penalty: \$6,000.

(2) A person is not excused from submitting a return or information on the ground that the return or information might tend to incriminate the person, but any return or information given, and any information or thing (including any document) obtained as a direct or indirect consequence of the giving of the return or information, is not admissible in evidence against the person in:

- (a) criminal proceedings other than proceedings for an offence against subsection (1) or (3); or
- (b) proceedings for recovery of an amount payable by way of penalty under section 11.

(3) A person must not knowingly present a document, make a statement or give a return or information, that is false or misleading in a material particular, to a person performing duties under this Act.

Penalty: Imprisonment for 12 months.

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Conduct of directors, servants and agents

25. (1) Where it is necessary to establish, for the purposes of this Act, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by:

- (a) a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) Where it is necessary to establish, for the purposes of this Act, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by:

- (a) a servant or agent of the person within the scope of his or her actual or apparent authority; or
- (b) any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

is to be taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

(5) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

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(6) Where:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for the offence.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of an external Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Appointment of authorised persons

26. The Secretary may, in writing:

- (a) appoint a person employed by, or in the service of, a collecting authority or a collecting organisation to be an authorised person for the purposes of section 23; and
- (b) appoint an officer of the Australian Public Service to be an authorised person for the purposes of a specified provision of this Act including section 23.

Publishing of information

27. (1) An authorised person may publish:

- (a) the name and address of a levy payer or charge payer or an intermediary in relation to a producer; or
- (b) information relating to amounts of levy or charge received or receivable by the Commonwealth in any period including such information relating to a particular State or region;

to any of the following:

- (c) a body that receives money under a distribution Act;
- (d) an industry body that is representative of producers of collection products or is representative of intermediaries in relation to producers of collection products;
- (e) a person to whom the Secretary has granted access to such information.

(2) Except for the purposes of regulations made under the *Wheat Marketing Act 1989* in relation to the issue to wheat growers of certificates of equity in the Wheat Industry Fund established by that Act, nothing in subsection (1) permits the publication of information in a manner that enables an amount of levy or charge paid or payable to be identified with a person (including a deceased person).

Reconsideration and review of decisions

28. (1) A person affected by a relevant decision who is dissatisfied with the decision may, within 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Minister (either before or after the end of the period) by notice in writing served on the person allows, by notice in writing given to the Minister, request the Minister to reconsider the decision.

(2) A request under subsection (1) must set out the reasons for making the request.

(3) The Minister must, within 45 days after receiving a request under subsection (2), reconsider the relevant decision and may make a decision:

- (a)** in substitution for the relevant decision, whether in the same terms as the relevant decision or not; or
- (b)** revoking the relevant decision.

(4) Where, as a result of a reconsideration under subsection (3), the Minister makes a decision in substitution for or revoking a relevant decision, the Minister must, by notice in writing served on the person who made the request under subsection (1) for the reconsideration, inform the person of the result of the reconsideration and give the reasons for his or her decision.

(5) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister under subsection (3).

(6) A person who makes a relevant decision must give to a person affected by the decision a statement in writing to the effect that a person affected by the decision:

- (a)** may, if the person is dissatisfied with the decision, seek a reconsideration of the decision in accordance with this section; and
- (b)** may, subject to the *Administrative Appeals Tribunal Act 1975*, if the person is dissatisfied with a decision made upon that reconsideration, make application to the Administrative Appeals Tribunal for review of that decision.

(7) Where the Minister makes a decision under subsection (3) and gives to a person affected by the decision notice in writing of the making of the decision, that notice must include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person affected by the decision.

(8) A failure to comply with the requirements of subsection (6) or (7) in relation to a decision does not affect the validity of the decision.

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(9) In this section:

“relevant decision” means:

- (a) a decision to refuse to remit, under subsection 16 (1), the whole or part of an amount; or
- (b) a decision by a person who is an authorised person for the purposes of the *Dairy Produce Levy (No. 1) Act 1986* to refuse to give a certificate under subsection 9 (2) of that Act; or
- (c) a decision by a person who is an authorised person for the purposes of subsection 5 (2) of the *Dried Vine Fruits Equalization Levy Act 1978* to refuse to issue a certificate under that subsection.

Delegation by Secretary

29. (1) The Secretary may, in writing, delegate to the person occupying an office in the Department all or any of his or her powers under this Act other than his or her powers under section 26.

(2) A delegate is, in the exercise of a delegated power, subject to the directions of the Secretary.

Regulations

30. (1) The Governor-General may make regulations not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The matters that may be prescribed under subsection (1) include, but are not limited to:

- (a) making provision in relation to the payment of levy or charge, of amounts on account of levy or charge and of other amounts payable to the Commonwealth under this Act; and
- (b) requiring producers of collection products, intermediaries in relation to such producers, and any other person prescribed, to make and keep accounts and other records in respect of prescribed products; and
- (c) requiring producers of collection products, intermediaries in relation to such producers, and any other persons prescribed, to give returns or information for the purposes of this Act; and
- (d) prescribing penalties, not exceeding a fine of \$1,000, for offences against the regulations.

(3) Without limiting the manner in which products may be described in the regulations, the regulations may describe them by reference to:

- (a) the use for which the products are sold by the producer; or
- (b) the use to which the products are put by the producer; or

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- (c) the state, form or condition of the products, whether by reference to a process or otherwise; or
- (d) the variety or other scientific classification, whether by general description or by taxonomic description.

Orders

31. (1) Subject to subsection (2), the regulations may make provision for or in relation to empowering the Minister to make orders, not inconsistent with this Act, with respect to any matter for or in relation to which provision may be made by the regulations.

(2) An order must not be made prescribing any penalty.

(3) Sections 48, 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to orders as if references to regulations were references to orders and references to an Act were references to regulations.

(4) An order is not to be taken to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5 (3) to (3C) (inclusive) of that Act apply in relation to an order in like manner as they apply in relation to a statutory rule.

(5) For the purposes of the application of subsection 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (4), the reference in the first-mentioned subsection to the Minister specified in that subsection is to be read as a reference to a Minister administering this Act.

(6) An order is an enactment for the purposes of the *Administrative Appeals Tribunal Act 1975*.

SCHEDULE 1

Section 4

ACTS THAT IMPOSE A CHARGE

Apple and Pear Export Charge Act 1976
Cattle Export Charge Act 1990
Honey Export Charge Act 1973
Horticultural Export Charge Act 1987
Live-stock Export Charge Act 1977

SCHEDULE 2

Section 4

ACTS THAT IMPOSE A LEVY

Apple and Pear Levy Act 1976
Barley Research Levy Act 1980
Beef Production Levy Act 1990
Cattle Transaction Levy Act 1990
Cotton Levy Act 1982
Dairying Industry Research and Promotion Levy Act 1972
Dairy Produce Levy (No. 1) Act 1986
Dairy Produce Levy (No. 2) Act 1986
Dried Fruits Levy Act 1971
Dried Vine Fruits Equalization Levy Act 1978
Goat Fibre Levy Act 1989
Grain Legumes Levy Act 1985
Grape Research Levy Act 1986
Honey Levy Act (No. 1) 1962
Honey Levy Act (No. 2) 1962
Horticultural Levy Act 1987
Laying Chickens Levy Act 1988
Live-stock Slaughter Levy Act 1964
Meat Chicken Levy Act 1969
Oilseeds Levy Act 1977
Pasture Seed Levy Act 1989
Pig Slaughter Levy Act 1971
Poultry Industry Levy Act 1965
Sugar Cane Levy Act 1987

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SCHEDULE 2—continued

Triticale Levy Act 1988

Wheat Industry Fund Levy Act 1989

Wine Grapes Levy Act 1979

[*Minister's second reading speech made in—*
House of Representatives on 5 December 1990
Senate on 18 February 1991]