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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT
BILL 2016**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Deputy Prime Minister and Minister for Agriculture and
Water Resources, the Hon. Barnaby Joyce MP)

PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT BILL 2016

GENERAL OUTLINE

The Primary Industries Levies and Charges Collection Amendment Bill 2016 (the Bill) makes legislative changes to the *Primary Industries Levies and Charges Collection Act 1991* (the Act), which will allow the Department of Agriculture and Water Resources (the department) to provide levy and charge payer (levy payer) information to the rural research and development corporations (RDCs) for the purpose of developing levy payer registers.

As it stands, the Act only permits the distribution of levy payer information to the wool and dairy RDCs. This Bill remedies this by allowing the government to provide levy payer information to the thirteen other RDCs.

Levy payer registers allow RDCs to identify and consult directly with the levy payers who fund the research and development (R&D) system, and ensure accuracy in the allocation of voting entitlements. Through greater levy payer engagement in their work, RDCs will be better able to align research investments to industry priorities; improve returns to farmers, fishers and foresters; and contribute to a more profitable, competitive and sustainable agricultural sector.

The Bill removes the legislative impediment to the development of levy payer registers. However, recognising that a ‘one size fits all’ approach would not be appropriate given the diversity of Australian agricultural industries, the Bill allows for the distribution of levy payer information to an RDC to occur only where an RDC, in consultation with industry, requests it, and that request is approved by the Minister for Agriculture and Water Resources. The department would then work with RDCs on the administrative design and development of a register. This is consistent with the government’s approach to the broader R&D levy system, where levies can be introduced or amended at the request of industry.

The Bill allows an authorised person to provide levy payer contact information, and details of the levy paid or payable, to an eligible recipient. An authorised person is a person appointed by the Secretary of the Department of Agriculture and Water Resources (the Secretary) under section 26 of the Act and as defined in section 4. The Bill defines an eligible recipient as an RDC or the Australian Bureau of Statistics (ABS). As such, the Bill also provides for levy payer information to be distributed to the ABS to perform any of its functions under the *Australian Bureau of Statistics Act 1975*. This is consistent with the Australian Government’s Public Data Policy Statement, which commits to securely share data between Australian Government entities to improve efficiencies, and inform policy development and decision making.

The Bill sets out the purposes for which the information provided to the eligible recipient can be used. This includes matters relating to the development and maintenance of levy payer registers, the ability to make public any statistical, de-identified information, and for any functions required of the recipient under Commonwealth laws or under a funding agreement between the RDC and the Commonwealth. RDCs will also be able to use levy payer registers to allocate voting rights for industry polls more efficiently and accurately, without the need for paper-based statutory declarations.

The Bill also allows the Secretary to provide, by legislative instrument, for other information relating to the production or processing of a commodity to be given to an eligible recipient. This will allow additional industry-specific data, which may be collected by the department, to be distributed to the relevant RDC or the ABS. This could include information on the area

of production, inputs, or production or processing methods used in relation to a particular commodity.

The Bill does not permit secondary disclosure of information included in a levy payer register by an eligible recipient to a third party, except where expressly permitted by the Secretary in writing, and in line with subsection 27B(6). This aims to protect the integrity and security of levy payer personal information. Some examples could include an RDC disclosing information to a company engaged to manage its levy payer data, or to an industry representative body for consulting levy payers on a levy amendment proposal or another activity carried out by an RDC for the benefit of the industry it serves.

The administrative arrangements will enable levy payers to opt-out of receiving information from industry representative bodies, should they choose to do so. The Bill allows for the Secretary to delegate to a Senior Executive Service employee in the department the power to permit secondary disclosure, as the matter relates to the administrative operations of the rural RDCs.

Such limits do not apply to the disclosure of personal information to an individual to whom that personal information relates, as per the *Privacy Act 1988*. The RDCs and the ABS are considered Australian Privacy Principles entities and their use of personal information is therefore subject to the Australian Privacy Principles, which are outlined in Schedule 1 of the *Privacy Act 1988*.

The Bill maintains current practices for distribution of the name and address of the person or body that lodges levy returns with the department, to RDCs, industry representative bodies and others. In limited situations, the person that lodges returns is also the levy payer (e.g. in the turf industry).

The Bill makes consequential amendments to the *Australian Meat and Live-stock Industry Act 1997* and the *Dairy Produce Act 1986*. These amendments repeal similar limitations on the use of levy payer information by the dairy, and meat and livestock RDCs, as these are now captured in section 27(B) of the Bill. The consequential amendments also include savings provisions to ensure that these previous limitations on the use of levy payer information continue to apply to information provided before the commencement of the Bill. The Bill also makes consequential amendments to the *National Residue Survey Administration Act 1992* (NRS Act) to add the new section 27A to the parts of the Act that are not affected by section 11 of the NRS Act.

Background

The development of levy payer registers has been identified in a number of reviews and inquiries as important to the ongoing strength of Australia's rural R&D system. The Senate Rural and Regional Affairs and Transport References Committee's inquiry into *Industry structures and systems governing the imposition of and disbursement of marketing and R&D levies in the agricultural sector* recommended legislative amendments to allow for the development of levy payer registers, to improve consultation with levy payers and ensure the accurate allocation of voting entitlements.

Financial impact statement

This Bill has no financial impact.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Primary Industries Levies and Charges Collection Amendment Bill 2016

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Primary Industries Levies and Charges Collection Amendment Bill 2016 (the Bill) makes amendments to sections 27 and 29 of the *Primary Industries Levies and Charges Collection Act 1991*, and adds sections 27A and 27B. It also makes consequential amendments to the *Australian Meat and Live-stock Industry Act 1997*, the *Dairy Produce Act 1986* and the *National Residue Survey Administration Act 1992*.

The Bill will allow the Department of Agriculture and Water Resources to provide levy payer information to the rural research and development corporations (RDCs) for the purpose of developing levy payer registers. As it stands, the Act only permits the department to distribute levy payer information to the wool and dairy RDCs. The Bill remedies this by allowing the government to provide levy payer information to the thirteen other RDCs (proposed section 27A).

Levy payer registers will allow RDCs to identify and consult directly with the levy payers who fund the research and development (R&D) system, and ensure accuracy in the allocation of voting entitlements. Improved consultation and voting systems were identified as critical for the ongoing strength of Australia's rural R&D system in the Senate Rural and Regional Affairs and Transport Committee's inquiry into *Industry structures and systems governing the imposition of and disbursement of marketing and R&D levies in the agricultural sector*. Through greater engagement with levy payers, RDCs will be better able to align research investments to industry priorities; improve returns to farmers, fishers and foresters; and contribute to a more profitable, competitive and sustainable agricultural sector.

The Bill also provides for levy payer information to be provided to the ABS. This is consistent with the Australian Government's Public Data Policy Statement, which commits to securely share data between Australian Government entities to improve efficiencies, and inform policy development and decision-making.

Human rights implications

The Bill engages the right to protection against arbitrary and unlawful interferences with privacy in Article 17 of the *International Covenant on Civil and Political Rights (ICCPR)*. This right may be subject to permissible limitations, provided they are authorised by law and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the provisions, aims and objectives of the ICCPR, and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted 'reasonableness' in this context to imply that any interference with privacy must be proportional to the end sought and be necessary in

the circumstances of any given case. The collection, use, storage and sharing of personal information engages this right.

The Bill provides for levy payer information to be disclosed to and used by an RDC and the ABS. Paragraph 27A(1) of the Bill sets out information to be distributed, including the name, address, contact details and Australian Business Number of a levy or charge payer. As primary producers are often family farms, levy payer information would sometimes be personal information, as defined by section 6(1) of the *Privacy Act 1988*, and would allow for an individual to be identified and contacted by an RDC. Such information may also be provided to the ABS in fulfilling its functions. The authorisation of the use and disclosure of this information is provided for under law.

The *Privacy Act 1988* regulates the handling of personal information about individuals and implements Australia's obligations, as a party to the ICCPR, regarding privacy. The RDCs and the ABS are considered Australian Privacy Principles entities and their use of personal information is therefore subject to the Australian Privacy Principles, which are outlined in Schedule 1 of the Privacy Act.

Further, section 27B of the Bill sets out the purposes for which levy payer information provided to eligible recipients can be used. This is limited to matters relating to the development and maintenance of levy payer registers; the ability to make public any statistical, de-identified information; and for any functions required of the recipient under Commonwealth law or under a funding agreement between the RDC and the Commonwealth. The Bill does not provide for levy payer information to be used for agri-political purposes. On this basis, the disclosure of personal information under the Bill is not arbitrary, as it is only permitted for specific uses which directly relate to improving consultation, voting systems and the operations of an RDC or allow the ABS to fulfil its functions.

In addition, subsection 27B(4) of the Bill does not permit secondary disclosure of information included in a levy payer register, except where expressly permitted by the Secretary in writing. This is to protect the integrity and security of levy payers' personal information, while still allowing some flexibility for information to be used for broader research and development, marketing, National Residue Survey, biosecurity purposes, or in connection with any activity carried out by the RDC for the benefit of the industry, under subsection 27B(6). For example, the Secretary may permit an RDC to employ an information technology company to manage levy payer information, or an industry representative body to access levy payer information to consult on amendments to a levy.

On this basis, the proposed measures in the Bill are consistent with the right to protection against arbitrary and unlawful interferences with privacy under Article 17 of the ICCPR.

Conclusion

This Bill is compatible with human rights because the limitations outlined above are reasonable, necessary and proportionate.

The Hon. Barnaby Joyce MP, Deputy Prime Minister and Minister for Agriculture and Water Resources

PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT BILL 2016

Notes on items

Clause 1 Short title

1. Clause 1 titles the Act the *Primary Industries Levies and Charges Collection Amendment Act 2016*.

Clause 2 Commencement

2. Clause 2 provides a schedule for commencement.
3. All items in the Bill that are not covered under Schedule 1 commence on the day this Act receives Royal Assent.
4. Items included under Schedule 1 will commence on the day after this Act receives Royal Assent.

Clause 3 Schedules

5. Clause 3 enables Schedule 1 to have effect.

Schedule 1—Amendments

Part 1—Main amendments

Primary Industries Levies and Charges Collection Act 1991

Item 1 Paragraph 27(1)(a)

6. Item 1 amends the text of paragraph 27(1)(a) of the Act to allow for the continued distribution, on request, of the name and address of the person or body that lodges levy returns with the department to RDCs and industry representative bodies.
7. Section 27(1)(a) of the Act currently allows the department to provide the contact details of levy or charge payers (levy payers) to RDCs, industry representative bodies, and others granted access by the Secretary of the Department of Agriculture and Water Resources (the Secretary). For example, the department provides the apple and pear industry representative body with information on apple and pear levy collection agents on a monthly basis.
8. The department does not currently hold the contact details of all levy or charge payers. Under present arrangements, the department receives only the contact details of those who lodge levy returns with the department. These are often corporations or intermediaries, rather than individual levy payers.
9. It has therefore been the department's practice to provide the contact details of the person or body that lodges levy returns with the department to RDCs, industry

representative bodies and other interested parties, on a case-by-case basis, under section 27(1)(a) of the Act.

10. The amendments proposed in this Bill will mean the department may receive the contact details of individual levy payers. It is not the intention of this Bill to allow individual levy payer contact details to be provided to any interested party. The amendments to the text of paragraph 27(1)(a) of the Act therefore maintain current arrangements for the provision of information to interested parties.

Item 2 Subsections 27(3), (3A) and (4)

11. Item 2 repeals subsections 27(3), (3A) and (4) of the Act.
12. Subsections 27(3) and (3A) of the Act allowed for levy payer information to be distributed to RDCs in the wool and dairy industries respectively. The effect of these subsections will be incorporated into section 27A of the Bill at Item 3.
13. The repeal of these subsections will not impact on the ability of the wool and dairy industries to receive levy payer information, as is currently set out in subsections 27(3) and 27(3A) of the Act.
14. The repeal of subsection 27(4) of the Act removes definitions that are no longer required, or replaced by new definitions of eligible recipient and Australian Business Number (ABN) in Item 3. An eligible recipient is defined as an RDC or the ABS, as outlined at paragraph 18 and 19 below. An ABN is as defined in section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

Item 3 After section 27

15. Item 3 introduces two new sections, 27A and 27B, after section 27.
16. Subsection 27A(1) of the Bill outlines the information that can be provided to an eligible recipient. Paragraph 27A(1)(a) of the Bill enables the name, address, contact details and ABN of any person who has paid, or is liable to pay, a levy or charge on an agricultural product to be given to an eligible recipient. Paragraph 27(1)(b) of the Bill enables information relating to the amount of levy or charge that each levy or charge payer has paid, or is liable to pay, for each leviable commodity to be given to an eligible recipient.
17. This section of the Bill provides for the separate amounts of several different levies or charges paid, or payable, by a single levy or charge payer to be provided to an eligible recipient. For example, where a single grower produces and pays a levy on potatoes and onions, the relevant RDC would receive information on the separate amounts of levy paid on the potatoes and onions, rather than the total amount of levy paid for both commodities.
18. Paragraph 27A(1)(c) of the Bill provides for the authorised person to also give production or processing information about a collection product to an eligible recipient. This allows additional industry-specific data which may be collected by the department to be distributed to the relevant RDC or the ABS. For example, this could include information on the area of production, inputs or production or processing methods used in relation to a particular commodity.

19. Subsection 27A(2) of the Bill provides a definition for eligible recipients, which includes all current rural RDCs (paragraphs 27A(2)(a)–(k) of the Bill) and the ABS (paragraph 27A(2)(l) of the Bill).
20. Providing levy payer information and production or processing data to the ABS aligns with the government's commitment in its Public Data Policy Statement to securely share data between Australian Government entities to improve and inform policy development and decision-making.
21. The authorised officer will only provide levy payer information to the RDC which is relevant to the leviable commodity. This is in line with current arrangements for providing information under 27(1) of the Act.
22. Section 27B of the Bill describes the purposes for which an eligible recipient can use levy payer information provided to it under subsection 27A(1) of the Bill.
23. Under subsection 27B(1), uses of this information by an RDC relate to the maintenance of a levy payer register, the publication of statistical, de-identified information (for example, within research papers) and in performing any of an RDCs' functions under a law of the Commonwealth or a contract (or similar) between the Commonwealth and an RDC.
24. Subsection 27B(2) allows an RDC to use levy payer information to determine eligibility to be a member or a shareholder of the RDC.
25. Subsection 27B(3) allows the ABS to use levy payer information in performing any of its functions under the *Australian Bureau of Statistics Act 1975*.
26. This item also expressly prohibits secondary disclosure of any levy payer information provided under subsection 27A(1) of the Bill. This aims to protect the integrity and security of levy payers' personal information. This does not limit the disclosure of an individual's information to the person to whom it relates.
27. In limited circumstances, the Secretary can permit, in writing, secondary disclosure of this information. Such circumstances could include provision of information to an information technology company engaged by an RDC to manage levy payer information. The Secretary could also allow an industry representative body to access levy payer information to consult on amendments to a levy or to consult on an RDC's R&D plan, for example.
28. Subsection 27B(6) restricts the purposes for which a third party could use levy payer information disclosed to it under subsection 27B(4). A third party may use the information for purposes relating to R&D, marketing, the National Residue Survey, or in relation to any activity carried out by an RDC for the benefit of the industry.
29. Subsection 27B(7) of the Bill states that an approval by the Secretary of secondary disclosure is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This provision is included to assist readers.

Item 4 At the end of subsection 29(1)

30. Subsection 29(1) of the Act allows for the Secretary to delegate any of his or her powers under the Act, except for the powers under section 26 (Appointment of authorised

persons). Item 4 adds the powers under sections 27A and 27B of the Bill to the list of powers that the Secretary cannot delegate.

Item 5 After subsection 29(1)

31. Item 5 allows for the Secretary to delegate his or her powers under subsection 27B(4) of the Bill to a departmental officer at, or acting at, an SES Band 1 or 2 level. The power provided for under subsection 27B(4) of the Bill relates to the Secretary being able to permit secondary disclosure of levy payer information. This is included as the matter relates to the administrative operations of the rural RDCs.

Item 6 Application provisions

32. The application provisions set out under Item 6 provide for information given to eligible recipients under paragraphs 27A(1)(a)–(c) of the Bill to include information in relation to the financial year in which Schedule 1 commences or in a later financial year.

Part 2—Consequential amendments

Australian Meat and Live-stock Industry Act 1997

Item 7 Division 5 of Part 3

33. Item 7 repeals Division 5 of Part 3 to the *Australian Meat and Live-stock Industry Act 1997* (AMLI Act). Division 5 of Part 3 sets out the uses for which a body declared under section 60 of the AMLI Act could use information provided to them under subsection 27(1) of the Act. The purposes for which such information can be used are now included under the new section 27B of the Bill.

Item 8 Saving provision

34. Item 8 ensures that any information provided to a body declared under section 60 of the AMLI Act prior to the commencement of Schedule 1, will continue to be subject to Division 5 of Part 3 of the AMLI Act.

Dairy Produce Act 1986

Item 9 Section 8

35. Item 9 repeals section 8 of the *Dairy Produce Act 1986*. Section 8 sets out the uses for which the dairy industry services body (currently declared as Dairy Australia) could use information provided to it under subsection 27(3A) of the Act. The purposes for which such information can be used are now included under the new section 27B of the Bill.

Item 10 Saving provision

36. Item 10 ensures that any information provided to the declared dairy industry services body (Dairy Australia) prior to the commencement of Schedule 1, will continue to be subject to section 8 of the *Dairy Produce Act 1986*.

National Residue Survey Administration Act 1992

Item 11 Subsection 11(6)

37. Item 11 amends the *National Residue Survey Administration Act 1992* (NRS Act) to add the words ‘or 27A’ to the parts of the *Primary Industries Levies and Charges Collection Act 1991* that are not affected by section 11 of the NRS Act.
38. Section 11 of the NRS Act is not designed to impact on the operation of section 27 or section 27A with this amendment of the *Primary Industries Levies and Charges Collection Act 1991*.