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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT
BILL 2018**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture and Water Resources,
the Hon. David Littleproud MP)

PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION AMENDMENT BILL 2018

GENERAL OUTLINE

The Primary Industries Levies and Charges Collection Amendment Bill 2018 (the Bill) amends the *Primary Industries Levies and Charges Collection Act 1991* (the Act) to improve the collection and reporting of agricultural levies and charges, ensure consistency between legislation and industry changes, and further support the effective operation of levy payer registers.

Intermediaries

When the Act commenced in 1991 the concept of intermediaries was based on existing practices, for example a wool broker, which did not contemplate the adoption of modern buying and selling methods. Leviable commodities are now being traded using platforms, such as online marketplaces, and the way the legislation defines intermediaries needs to be updated to accurately reflect modern business practices.

The Bill will provide clarity for agricultural industries by allowing the Secretary of the Department of Agriculture and Water Resources (the Secretary) to determine certain acts which, when performed, would make a person liable to collect and report levies and charges. This will allow the efficient and effective collection of levies and charges at the optimal point in the supply chain, regardless of the arrangement used to facilitate the transaction. This will ensure the policy intention of the Act and industry needs continue to be met.

These amendments align with other powers already provided to the Secretary in the Act in relation to the administration and operation of the levy system. Further, the Minister for Agriculture and Water Resources (the Minister) may issue guidelines which must be published on the Department of Agriculture and Water Resources' website to which the Secretary must have regard in making a determination in relation to certain acts. These guidelines will include provisions that ensure that only relevant organisations are captured in such a determination.

Levy payer registers

The Act was amended in 2016 to remove the legislative impediments to establishing levy payer registers. These amendments allowed the rural research and development corporations (RDCs) that receive levy funds, to identify and consult directly with levy payers.

The Bill makes minor amendments to support the effective operation of levy payer registers, including to further protect the privacy of levy payer information. The Act currently allows an eligible recipient, with the written approval of the Secretary, to disclose information from a levy payer register to a third party. The Bill will allow the Secretary to impose conditions on the disclosure of this information and to revoke the approval where those conditions are breached. This will safeguard the proper use and protection of levy payer information while facilitating disclosures that may not have previously been possible, where appropriate. The amendments will also subject these decisions to reconsideration and review in accordance with the Act, in line with the government's policy of providing merits review for decisions that affect individuals' rights and interests.

The Bill allows the Secretary to provide, by legislative instrument, for commodity-specific information relating to the production or processing of a collection product to be collected for a levy payer register. This could include information about the area of production, inputs or processing methods. The legislative instrument will be subject to sunset provisions and disallowance. The Act already permits the Secretary to determine such details for the purposes of disclosure to an eligible recipient.

The Bill allows the publication of statistical information about levies and charges to inform agricultural industries and other stakeholders about the cost-benefit aspects of the levy and charge system.

The Bill makes minor technical amendments. These include adding the Australian Company Number (ACN) of a person who has paid, or is liable to pay, levy to an eligible recipient and adding notes referring to the *Acts Interpretation Act 1901*.

FINANCIAL IMPACT STATEMENT

This Bill will have no financial impact on the Australian Government Budget.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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*.

The full statement of compatibility with human rights is attached to this explanatory memorandum.

ACRONYMS, ABBREVIATIONS AND COMMONLY USED TERMS

the Act	<i>Primary Industries Levies and Charges Collection Act 1991</i>
the Department	the Department administered by the Minister administering the <i>Primary Industries Levies and Charges Collection Act 1991</i>
the Minister	the Minister administering the <i>Primary Industries Levies and Charges Collection Act 1991</i>
the Privacy Act	<i>Privacy Act 1988</i>
the Secretary	the Secretary of the Department administered by the Minister administering the <i>Primary Industries Levies and Charges Collection Act 1991</i>

NOTES ON AMENDMENTS

Preliminary

Clause 1 Short Title

Clause 1 of the Bill provides for the short title of this Act to be the *Primary Industries Levies and Charges Collection Amendment Act 2018*.

Clause 2 Commencement

Clause 2 of the Bill provides for the commencement of each provision in the Bill, as set out in the table.

Subclause 2(1) provides that each provision of the Bill specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Item 1 in the table provides that the whole of the Bill commences on the day after the Bill receives the Royal Assent.

Clause 3 Schedules

Clause 3 of the Bill provides that legislation specified in a Schedule to the Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Bill has effect according to its terms.

Schedule 1—Amendments

Primary Industries Levies and Charges Collection Act 1991

Item 1 After paragraph 7(1)(c)

Item 1 inserts paragraph 7(1)(ca), which provides for additional acts determined by the Secretary, under item 5, as those of intermediaries. Subsection 7(1) relates to intermediaries that buy or sell products on behalf of a producer and of those that buy products from a producer other than through a buying or selling agent.

Item 2 After paragraph 7(2)(b)

Item 2 inserts paragraph 7(2)(ba), which provides for additional acts determined by the Secretary, under item 5, as those of intermediaries that process products, declared by the Regulations, into higher value products (processing intermediaries).

Item 3 Subsections 7(3) and (3A)

Item 3 repeals and substitutes subsections 7(3) and (3A).

Subsections 7(3) and (3A) have been redrafted for consistency with subsections 7(1) and (2). The new subsections also provides for additional acts determined by the Secretary, under item 5, as those of intermediaries. Subsection 7(3) will enable the capture of entities that act like exporting intermediaries, where their actions are not already prescribed by the Act. Subsection 7(3A) will apply in the same way to importing intermediaries.

Item 4 **After paragraph 7(6)(e)**

Item 4 includes a person who does an act as determined by the Secretary in an instrument under subsection 7A(1), in a list of intermediaries that are not liable to pay levy or charge if the levy or charge has already been paid.

Item 5 **After section 7**

Item 5 inserts a new section 7A *Secretary's determination of intermediaries*.

The introduction of section 7A will enable the Secretary to, by legislative instrument, determine acts as those of intermediaries. Section 7 of the Act does not describe all modern methods for buying, selling, importing or exporting agricultural produce as being relevant acts of intermediaries. This item will ensure that these acts can be covered by the legislative framework and ensure levies and charges can continue to be collected at the most efficient point in the supply chain. Legislative instruments made under subsection 7A(1) will be subject to disallowance and sunseting in accordance with the *Legislation Act 2003*.

The Secretary, in determining acts of intermediaries, must have regard to any guidelines that may be issued by the Minister under subsection 7A(3). These guidelines will include considerations such as Australia's obligations as a Member of the World Trade Organization relating to importation and exportation.

Subsection 7A(4) is included to assist readers in understanding that the Minister's guidelines are not legislative instruments within the meaning of subsection 8(1) of the *Legislation Act 2003*.

Subsection 7A(5) requires the Minister, having made any such guidelines relating to the determination of acts of intermediaries, must cause the guidelines to be published on the Department's website. This is to provide transparency and accountability for participants in the levy and charge system.

Item 6 **Section 27 (heading)**

Item 6 repeals and substitutes the heading *Publishing of information*.

The substituted heading 27 *Giving of information about returns, intermediaries and receipt of levy or charge* will assist readers in understanding that the original intent is to give, rather than to make public, levy and charge payer information to eligible bodies or persons.

The heading also provides more detail on the type of information to be given, and distinguishes itself from information given in section 27A *Giving of information about levy payers and charge payers*.

Item 7 **Subsection 27(1)**

Item 7 omits "may publish" and substitutes this with "may give the following information" to reflect the original intent of section 27 to give information to eligible bodies or persons.

Item 8 **Paragraph 27(1)(a)**

Item 8 omits "or" between paragraph (a) and (b) to enable an authorised person to give both sets of information prescribed by paragraphs 27(1)(a) and (b), rather than one or the other. It is often necessary to give the information provided by paragraphs 27(1)(a) and (b) to those entities listed in paragraphs 27(1)(c),(d) and (e). Omitting the 'or' removes the limitation of

either one set of information or the other being given and now allows, where necessary, both sets of information being provided.

The information in paragraphs 27(1)(a) and (b) relates to identifying information about people who submit levy and charge returns and the amount of levy or charge paid, including by state or region.

Item 9 Subsection 27(2)

Item 9 omits “publication” and substitutes this with “giving” to reflect the original intent of section 27 to give information to eligible bodies or persons.

Item 10 Paragraph 27A(1)(a)

Item 10 omits “and ABN” and substitutes this with “ABN (if any) and ACN (if any)”, which, under subsection 27A(1) of the Act, will enable an authorised person in the Department to give the Australian Company Number (ACN) of a levy or charge payer to an eligible recipient listed under subsection 27A(2) of the Act.

This amendment corrects an inconsistency between information that is already collected in line with the Regulations and information permitted to be given under subsection 27A(1) of the Act.

Item 11 At the end of subsection 27A(3)

Item 11 introduces a note at the end of subsection 27A(3) of the Act.

The note will assist readers in understanding that the information the Secretary may determine in a legislative instrument, and that may then be given by an authorised person to an eligible recipient, may differ between collection products, in line with subsection 33(3A) of the *Acts Interpretation Act 1901*.

Item 12 Subsection 27A(4) (heading)

Item 12 repeals the heading *Definition* and substitutes this with *Definitions* to reflect the addition of a second term to this subsection.

This addition is to define a new term introduced at item 10, which adds ACN as levy payer information that, under subsection 27A(1) of the Act, may be disclosed to an eligible recipient listed in subsection 27A(2) of the Act.

Item 13 Subsection 27A(4)

Item 13 inserts a definition for ACN, a new term introduced at item 10, which adds ACN as levy payer information that, under subsection 27A(1) of the Act, may be disclosed to an eligible recipient listed in subsection 27A(2) of the Act.

Item 14 After subsection 27B(4)

Item 14 inserts subsections 27B(4A), (4B), (4C) and (4D) after subsection 27B(4) of the Act.

Subsection 27B(4) of the Act prohibits disclosure of levy payer information provided to an eligible recipient under subsection 27A(1) of the Act to another party without the written approval of the Secretary.

Subsection 27B(4A) allows the Secretary to make an approval in writing under subsection 27B(4) of the Act subject to conditions. An eligible recipient would be required to comply with those conditions in releasing levy payer information to a third party.

Including the Secretary's decisions under subsection 27B(4) of the Act in the decisions subject to review under section 28 of the Act aligns with the government's policy of providing merits review for decisions that affect individuals' rights and interests.

Item 17 Subsection 29(1)

Item 17 inserts "7A" after "section".

The amendment will include the Secretary's power to make a legislative instrument under section 7A *Secretary's determination of intermediaries* in the powers that the Secretary cannot delegate to a person who holds an office in the Department.

Item 18 Subsection 29(1)

Item 18 omits "or 27B" and substitutes this with "27B or 32".

The amendment will include the Secretary's power to make a legislative instrument under section 32 of the Act, *Returns under the regulations*, in the powers that the Secretary cannot delegate to a person who holds an office in the Department.

Item 19 Subsection 29(1A)

Item 19 omits "power under subsection 27B(4)" and substitutes this with "powers under section 27B".

This amendment enables the Secretary to delegate the powers under section 27B of the Act to a Senior Executive Service employee at, or acting at, a Band 1 or 2 level in the Department.

This will allow the Secretary to delegate the powers introduced at Item 14 to impose conditions on an approval and to revoke that approval if conditions are breached. It maintains the Secretary's ability to delegate the existing power in the Act to give an approval to an eligible recipient to disclose levy payer information to a third party. This further supports the efficient operation of levy payer registers.

The Bill allows for the Secretary to delegate powers under section 27B as these matters relate to the administrative operation of eligible recipients.

Item 20 After section 31

Item 20 inserts a new section 32 *Returns under the regulations*.

In some limited cases, additional commodity-specific information may be required to be collected in a return lodged under the Regulations for the purposes of levy payer registers. For example, this could include information on the area of production, inputs or processing methods used in relation to a particular commodity.

Subsection 32(1) requires the provision of that additional information in a levy or charge return if the Secretary makes a legislative instrument under subsection 32(3).

Subsection 32(2) provides that the additional details required in a return under the Secretary's determination in subsection 32(3) should be in addition to the information already required to be included in a return under the Regulations.

Subsection 32(3) empowers the Secretary to make a legislative instrument, which determines the additional information to be included in a levy or charge return.

The note refers readers to subsection 33(3A) of the *Acts Interpretation Act 1901* to clarify that a legislative instrument made under subsection 32(3) of the Bill may include different details for each collection product for which a determination is made under subsection 32(3).

Item 21 Application and saving provisions

Paragraph (1) indicates that the amendments to section 7 of the Act relate to the liability of intermediaries determined in an instrument made under subsection 7A(1). The liability of such intermediaries to pay levy or charge in accordance with section 7 begins on or after the day the instrument determining that they are intermediaries commences.

Paragraph (2) indicates that until this Act has commenced on the day after the Royal Assent, any regulations enabled by subsections 7(3) and (3A) of the Act as repealed by this Bill remain valid and in force. This means that relevant levy or charge returns submitted before the Royal Assent will also meet the requirements of the substituted subsections 7(3) and (3A).

Paragraph (3) indicates that the amendments to sections 27 and 27A apply in relation to the giving of information on or after the commencement of this item (whether the information was obtained before, on or after that commencement), being the day after the Royal Assent.

Paragraph (4) indicates that the new subsections 27B(4A) to (4D) apply in relation to approvals given on or after the commencement of this item, being the day after the Royal Assent.

Paragraph (5) indicates that the new section 27C, relating to the publishing of information of a statistical nature, applies to information obtained before, on or after the commencement of this item, being the day after the Royal Assent.

Paragraph (6) indicates that the amendment of section 28 relating to reconsideration and review of decisions made under subsection 27B(4) applies in relation to decisions made on or after the commencement of this item, being the day after the Royal Assent.

Paragraph (7) indicates that subsection 32(1) applies to a return that is required to be lodged under the Regulations in relation to a collection product for a period beginning on or after the day on which the first instrument made under subsection 32(3) of that Act in relation to that collection product commences.

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 2018

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 2018 (the Bill) amends the *Primary Industries Levies and Charges Collection Act 1991* (the Act), to improve the collection and reporting of levies and charges, ensure consistency between legislation and current industry practices, and further support the effective operation of levy payer registers.

The Bill will enable:

- the Secretary of the Department of Agriculture and Water Resources (the Secretary) to determine certain acts which, when performed, would make a person liable to collect and report levies and charges;
- an authorised person appointed under section 26 of the Act to publish statistical information collected under the *Primary Industries Levies and Charges Collection Regulations 1991* (the Regulations);
- the Secretary to, by legislative instrument, provide for the collection of production or processing information relating to a collection product;
- the Australian Company Number (ACN) of a person who has paid, or is liable to pay, levies or charges in respect of a collection product to be disclosed by an authorised person under section 27A of the Act to an eligible recipient;
- the Secretary to impose conditions on the approval of the disclosure of information about levy and charge payers by eligible recipients to third parties in section 27B of the Act;
- the Secretary to revoke the approval for an eligible recipient to disclose information about levy and charge payers to a third party under section 27B of the Act if conditions of the approval are breached;
- a person affected and dissatisfied by a decision of the Secretary to approve the release of, impose conditions on the release of, or to revoke access to, levy payer information to seek review and reconsideration of that decision under section 28 of the Act.

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.

Subsection 27A(1) of the Act sets out information that may be disclosed by an authorised person to an eligible recipient including the name, address, contact details and Australian Business Number of a levy or charge payer. This amendment will allow disclosure of a levy payer’s ACN in addition to the information which may be disclosed under subsection 27A(1).

As primary producers are often family farms, levy payer information would sometimes be personal information, as defined by subsection 6(1) of the *Privacy Act 1988*, and would allow for an individual to be identified and contacted by eligible recipients.

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. As Australian Privacy Principles entities, eligible recipients must use personal information in accordance with Schedule 1 of the Privacy Act.

Further, section 27B of the Act sets out the purposes for which levy payer information provided to eligible recipients under section 27A of the Act can be used. This is limited to matters relating to the development and maintenance of levy payer registers; the ability to publish information of a statistical nature; and for any functions required of the recipient under Commonwealth law or under an agreement that eligible recipients have with the Commonwealth. 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 the operations of eligible recipients.

Subsection 27B(4A) of the Bill enables the Secretary to impose conditions on approvals to disclose information, about levy and charge payers, by eligible recipients to third parties. The Bill also enables the Secretary to revoke an approval where there has been a breach of these conditions. The proposed amendments will further safeguard the proper use and protection of levy and charge payer information. The Bill will also allow the review of a decision made by the Secretary under section 28 of the Act.

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

The Bill is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**(Circulated by authority of the Minister for Agriculture and Water Resources,
the Hon. David Littleproud MP)**