



Australian Government

**Department of Agriculture,
Fisheries and Forestry**

Inquiry into the Primary Industries (Excise) Levies Bill 2023 [and related bills]

December 2023



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Introduction

On 16 November 2023, the Senate referred the Primary Industries (Excise) Levies Bill 2023 and related bills (referred to from here on as the modernising agricultural levies Bills) to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 5 February 2024. This package consists of the following Bills:

- Primary Industries (Excise) Levies Bill 2023 (Excise Bill)
- Primary Industries (Customs) Charges Bill 2023 (Customs Bill)
- Primary Industries (Services) Levies Bill 2023 (Services Bill)
- Primary Industries Levies and Charges Collection Bill 2023 (Collection Bill)
- Primary Industries Levies and Charges Disbursement Bill 2023 (Disbursement Bill)
- Primary Industries (Consequential Amendments and Transitional Provisions) Bill 2023 (C&T Bill).

These Bills would provide the overarching legislative framework for the national agricultural levy system. This submission provides further information about the Bills package to assist the Committee with its inquiry.

Context

The agricultural levy system is a long-standing partnership between industry and the Australian Government to facilitate industry investment in strategic activities.

The levy system allows the collection of excise levies and customs charges to enable collective investment in research and development (R&D), marketing, biosecurity activities, biosecurity responses, and residue testing. The system in its current form has been in place since 1989.

These investments are managed by the 15 research and development corporations (RDCs), Plant Health Australia (PHA), Animal Health Australia (AHA), and the National Residue Survey (NRS) which sits in the Department of Agriculture, Fisheries and Forestry (the department).

Each year, the department disburses around \$600 million in levy amounts from farmers, producers, processors and exporters to these bodies. In addition, more than \$300 million is provided on average each year by the Australian Government to the RDCs in matching funding for R&D.

There are currently more than 110 levies collected on more than 70 commodities across the agriculture, fisheries, and forestry sectors. The levy system allows primary industries to fund priorities for that could not be effectively invested in by individual producers.

However, over time, the agricultural levies legislation has become unnecessarily complex, duplicative, and inconsistent. There are more than 50 pieces of legislation in the existing levies legislative framework. A 2018 review of the agricultural levies legislation found the legislative framework is necessary for a successful industry-government arrangement, but the current legislation is ineffective in meeting industries' needs now and in the future.

The Bills package would replace the existing agricultural levies legislative framework to provide contemporary, flexible and efficient legislation that better supports Australia's agricultural levy system. The new framework would support the sector now and as it evolves, for example by enabling levies on products not currently covered by the system such as algae and bush foods. The key features of the legislative framework would remain the same. The new framework would not change existing levy or charge rates and would continue to support the fundamental principles of the levy system.

Proposals to establish or amend levies would continue to be developed in accordance with the department's Levy Guidelines. The guidelines require consultation with levy payers about any proposal to establish or amend a levy, and would operate in addition to consultation requirements contained in the Bills.

This Bills package does not establish the biosecurity protection levy.

If the Bills are not passed, the existing complex and inefficient agricultural levies legislation will continue to operate. Approximately 17 legislative instruments would need to be remade before they sunset on 1 April 2025.

Overview of the Bills

Imposition Bills

The Excise, Customs and Services Bills (the Imposition Bills) would enable excise levies, customs charges and services levies to be imposed as part of the agricultural levy system.

The Imposition Bills would enable existing excise levies and customs charges in the agricultural levy system to be re-established in regulations. They will also enable levies to be imposed on certain agricultural services. All operative R&D, marketing, biosecurity activity, biosecurity response, and NRS levies are intended to be re-made in regulations under the relevant Bills.

The Bills would enable the following kinds of levies and charges to be imposed:

- The Excise and Customs Bills would enable excise levies and customs charges on products that are produce of a primary industry. Most existing agricultural levies fall within this category. They include levies and charges on grains and other crops, horticultural products, fibre products, red meat, poultry and eggs, pigs, game animals, forestry products, turf and farmed prawns.
- The Excise and Customs Bills would enable excise levies and customs charges on goods consumed by, or used in the maintenance or treatment of, animals, plants, fungi or algae. This would enable the horse disease response levy to be provided for in regulations under the Excise Bill, rather than remaining in stand-alone legislation.
- The Services Bill would enable levies on certain agricultural services. This is a new type of levy. For example, the Bill could enable a levy to be imposed on bee pollination services provided on a commercial basis to pollinate orchards and crops.
- The Excise Bill would also contain specific provisions to enable the existing nursery products excise levy to be remade.

The Imposition Bills would support participation of new and emerging industries in the agricultural levy system. For example, in addition to existing levies, the Imposition Bills would provide for the levy system to cover products such as:

- cultivation or harvest of algae and seaweed
- crops grown in controlled environment conditions and soilless growing systems (e.g. protected cropping, vertical farming, hydroponic and aeroponic systems)
- harvesting plants, fungi or algae from the wild (e.g. collection of bushfoods).

By enabling services levies on certain agricultural services, the Services Bill could also allow the bee industry to pursue a long-standing request for a bee pollination services levy.

The nature of the levy system as a partnership between industry and government would be supported by provisions that require consultation with industry before rates are set for levies. The Imposition Bills would enable the Minister to nominate industry representative bodies (IRBs) that represent levy or charge payers, for the purposes of consultation on levy rates. The nominated IRB would need to be consulted before regulations are made setting or amending the relevant rate. The Minister would not be able to set or amend the levy rate higher than that proposed by a nominated IRB. These provisions would also enable the existing dairy poll and wool poll to be re-enacted.

The 'nominated industry representative body' term in the Bills is intended to consolidate multiple existing roles under the existing imposition Acts, including 'a body declared in the Gazette', 'eligible industry body' and 'designated industry body'. The concept of 'nominated industry representative body' is not intended to cover other roles that industry bodies fulfil outside of the agricultural levies legislation.

It is intended that industry bodies named under the existing legislation would be declared as nominated IRBs under the Imposition Bills. Where a body no longer exists or performs the role, or has changed its name, it is intended that updates would be made to match current industry arrangements. However, the declaration of any particular body would remain a matter for the Minister.

The Bills would enable all current biosecurity levies that are imposed under the agricultural levy system to be remade. The existing Acts generally do not name these levies, but they are colloquially known as AHA, PHA, emergency animal disease response (EADR) and emergency plant pest response (EPPR) levies. Existing AHA and PHA levies are intended to be remade in regulations under the Bills and would be called the 'biosecurity activity' components of a levy. Existing EADR and EPPR levies are also intended to be remade in regulations under the Bills and would be called 'biosecurity response' components of a levy. The renaming of AHA, PHA, EADR and EPPR levies would not change that they would continue to be disbursed to AHA and PHA.

The new terminology would create consistency within the draft framework for how these levies are named and improve the future flexibility of the legislation. Naming the levies after their intended purpose, rather than specific organisations, or specific response deeds, allows the legislation to be more responsive to evolving industry needs, such as the establishment of an aquatics emergency response deed. The Bills have also been drafted broadly enough to enable existing biosecurity response arrangements to continue, including some responses that are managed 'off deed' or through 'deed-like' arrangements (e.g. red witchweed).

Collection Bill

The Collection Bill would set up the framework for the collection of levies and charges under the agricultural levy system. The Collection Bill would establish a streamlined and modernised collection framework that is easier for participants to understand and comply with. The Collection Bill would enable the collection details for each levy and charge to be set out in rules made by the Secretary. This would have significant benefits, including increased flexibility for when collection settings change in response to a levy proposal.

The Collection Bill would also set out offences and penalties for non-compliance. A change from the existing legislation would be that the Collection Bill would provide access to more modern and flexible compliance and enforcement tools by triggering the *Regulatory Powers (Standard Provisions) Act 2014*. This would ensure that agricultural levies and charges are collected effectively and compliance costs are kept as low as possible. This would make the department's compliance and enforcement powers consistent with other Commonwealth regulatory schemes that levy payers, charge payers and collection agents participate in.

The Collection Bill would also set out how information collected through the payment of levy or charge could be used by the department and other participants in the agricultural levy system, including information collected for the purposes of levy payer registers. The Bill also sets out permitted uses or disclosures to other entities, and contains offences and penalties for the unauthorised use or disclosure of levy payer information.

Disbursement Bill

The Disbursement Bill would enable the disbursement of amounts of levies and charges to RDCs, AHA and PHA, and the crediting of levies and charges to the NRS Special Account.

The Bill would provide that the amounts disbursed must be invested by the relevant bodies in strategic activities for the benefit of levied industries:

- Levies and charges raised for R&D and marketing would be paid to RDCs for investment in R&D activities and marketing activities.
- Levies and charges raised for biosecurity activities and biosecurity responses would be paid to AHA and PHA for investment in animal and plant health and responding to disease and pest outbreaks.
- Levies and charges raised for residue testing would be credited to the NRS Special Account for the monitoring, testing and reporting of contaminants and chemical residues.

The Disbursement Bill would also set out requirements for the spending of levy and charge amounts. These spending requirements have been streamlined and modernised but continue to allow RDCs, AHA, PHA and the NRS to fund the same activities as they do now.

The Disbursement Bill would also provide a mechanism for the Commonwealth to make matching payments for R&D investments to RDCs. The Bill would provide for the Commonwealth to continue matching industry investment in R&D through RDCs, to an upper limit of 0.5 per cent of an industry's gross value of production (GVP).

The Bill would make some minor changes to matching funding to reduce complexity and increase funding certainty for RDCs:

- The Bill would remove the total levies limit as one of the limits on matching payments. This existing limit on matching funding relates to the amounts of certain levies and charges disbursed. This limit is being removed as it is complex and inconsistently applied across industries. The two other limits on matching funding remain: 50% of an RDC's qualifying expenditure and 0.5 per cent of an industry's GVP.
- The Bill would also enable an earlier determination of the GVP limit. This limit would be based on data for the three previous financial years rather than the existing arrangement where it is based on the current and two previous financial years. This would provide funding certainty to RDCs at the beginning of the financial year.

The Bill would consolidate provisions from 13 existing funding Acts. Two of these Acts, the *Primary Industries Research and Development Act 1989* and *Wine Australia Act 2013*, would be retained under the new framework and all governance-related provisions in those Acts would continue to apply to statutory RDCs. Most of the other funding Acts would be repealed under the Primary Industries (Consequential Amendments and Transitional Provisions) Bill 2023. Some need to be retained as they contain transitional provisions that are not spent yet. Provisions covering disbursement of levy and charge amounts and matching funds, as well as expenditure requirements, would be removed from those Acts.

The Disbursement Bill would also provide requirements relating to funding agreements with RDCs, the declaration of industry-owned RDCs and Ministerial directions to industry-owned RDCs. Funding agreements between RDCs and the Commonwealth would continue to operate to complement legislative requirements. These set clear expectations for performance, administration of expenses and claims for matching funding.

Consequential Amendments and Transitional Provisions (C&T) Bill

The C&T Bill would facilitate the transition to the new agricultural levies legislation, including for levy collection, compliance and disbursement arrangements and payment of matching funding to RDCs. This Bill would repeal 23 existing Acts that are, or would become, redundant upon commencement of the Bills package. It would also make consequential amendments to a number of other Acts.

The transition from the current agricultural levies legislation to the modernised legislation would be managed to ensure that levy payers, collection agents, the RDCs, AHA and PHA experience minimal impacts, and the levy system continues to operate uninterrupted under the modernised legislative framework.

Implications of the legislation

The agricultural levy system would remain a partnership between industry and government. The Bills would improve the legislation supporting the levy system to better meet industry needs now and in the future. These improvements include:

- reducing complexity and inconsistencies, making it easier for industry representatives to pursue amendments to existing levies and seek new levies
- enabling more flexible and proportionate compliance measures supporting efficient and effective levy collection

- standardising the disbursement of levy funds and clarifying matching funding arrangements, giving RDCs more investment certainty.

The Impact Analysis for the Bills estimated that the new legislation would involve one-off transition costs associated with implementing and understanding the modernised legislation of approximately \$1.82 million (net present value over 10 years) on the economy. Of these costs approximately \$570,000 is likely to be borne by industry for compliance and \$1.25 million borne by government for administration.

However, the reduction in regulatory burden that the new framework would deliver is expected to outweigh these costs. The Impact Analysis found that the break-even point for the reforms is only 1%. This would mean a 1% reduction in the quantity of compliance and administrative activities or a 1% reduction in the average cost of those activities would be enough to outweigh the economy-wide costs.

Consultation on the legislation

Extensive stakeholder consultation has been a key feature of the development of the new legislation. Consultation began in 2017 and has been ongoing since then.

The department has engaged with IRBs, RDCs, AHA, PHA, state and territory governments, Commonwealth agencies, levy payers, collection agents and the general public:

- In 2017–18, IRBs, RDCs, AHA and PHA were consulted to inform the thematic review of the levies legislative framework, triggered by the impending sunset of multiple levies related instruments.
- In 2019–20, public consultation was undertaken on the early assessment regulation impact statement. The department received 66 submissions from levy payers, IRBs and collection agents, and held targeted discussions with RDCs, AHA and PHA.
- In 2021–22, the department consulted with IRBs, RDCs, AHA and PHA to understand their needs and indicate how we were proposing to modernise the legislation. This included targeted consultation with IRBs about their levies and charges. The department spoke to approximately 70 IRBs in relation to the intended approach to translating their existing excise levies and customs charges into the draft legislation. The department also wrote to around 7,500 collection agents to provide information about the proposed approach to the new legislative framework.
- An exposure draft consultation was held between 1 May 2023 and 5 June 2023. It gave stakeholders and the public an opportunity to see and provide feedback on the draft legislation. This included 5 draft Bills as well as draft regulations and rules, which included levy and charge details for 21 commodities. A summary of the consultation outcomes is available on the department's website.
- A second exposure draft consultation is planned for early 2024. This will give stakeholders and the public an opportunity to see and provide feedback on the draft regulations and rules containing imposition, collection and disbursement details for levies and charges that were not available at the time of the 2023 exposure draft consultation.