

To Senate Standing Committees on Rural and Regional Affairs and Transport

## “Levy Bills do not comply with the Constitution, human rights, or law”

### Inquiry into Primary Industries (Excise) Levy Bill 2023 [Provisions] and related bills

1<sup>st</sup> submission, 12 December 2023, 3pm (WA),  
Extension granted till 24.1.24 to include more legal detail.  
By Julie Newman.

#### *About the author:*

*Retired family farmer and active member in agricultural politics, including on policy council of Grains Council of Australia, and Vice President on WA Grains Council, where I held the GRDC portfolio for many years. Completed degree specialising in politics and law as driven to investigate why and how Governments exploit farmers. Commissioned by WA Grains Group to voluntarily investigate GRDC in detail on behalf of members and my own family. Spent Covid preparing evidence for High Court challenge re abuse of GRDC levies. Tried to be involved in submission process but producers' concerns have been denied. Tried to warn farm lobby groups and media, but their response is that there is “no change” due to misleading information in the short version most read.*

Relevant Bills (Bills): ([Link to Bills](#))

1. Primary Industries (Customs) Charges Bill 2023 (Bill 1);
2. Primary Industries (Excise) Levies Bill 2023 (Bill 2);
3. Primary Industries (Services) Levies Bill 2023 (Bill 3);
4. Primary Industries Levies and Charges Collection Bill 2023 (Bill 4);
5. Primary Industries Levies and Charges Disbursement Bill 2023 (Bill 5); and,
6. Primary Industries (Consequential Amendments and Transitional Provisions) Bill 2023 (Bill 6).

If not familiar with what a legal levy should be, please refer to pg 13.  
I am willing to provide ample evidence by request to further back claims.

### **Content:**

Summary... pg 2

- 1.1 Bills are not constitutionally legal as tax rates are secret till imposed... pg 3
- 1.2 Bills are well beyond the constitutional power of taxation laws ... pg 4
- 1.3 Unconstitutional conflict of interest ... pg 5
- 1.4. Producers denied consultation and false information provided ... pg 6
- 1.5 Human Rights statements are deceptively based on information received by levy recipients, not those funding the levies...10
- 1.6 Failure to comply with Procedural and Constitutional Guidelines ... pg 13
- 1.7 Bills do not comply with law and agreements regarding a “Levy” Tax... pg 13
- 1.8 Emergency biosecurity levy tax loophole... pg 15
- 1.9 R&D levies are to illegally fund anyone and any purpose... pg 16
- 1.10 Levy Bills expand levies beyond production to a tax on products used... pg 19
- 1.11 Legal compliance must be demanded... pg 19
  - i. criminal activity... pg 20
  - ii ASIC is body to promote compliance in GRDC... pg 20
  - iii Preparation of illegal Bills... pg 22
  - iv other applicable laws... pg 23
- 1.12 Questions... pg 25
- 1.13 Resolutions... pg 26

### Summary:

Bills must not progress to final Senate vote. The package of Primary Industries Levies Legislation presented to Senate under false pretences, fail to comply with the constitution, multiple laws and is a major Human Rights issue. Senate cannot accept these Bills as they are well beyond the power granted in the Constitution and support the communist doctrine of dictatorship, not democracy. These are Bills to break laws, not make laws, and multiple laws and procedures have been broken to prepare them.

- These tax laws are not constitutionally valid as tax Bills must be presented with rates. Bills illegally give the Minister the power to set rates, yet rate changes remain confidential;
- Bills are constitutionally invalid as those adversely affected have not been consulted or involved in preparation of these Bills and few know about it. Producers who fund the levies, have been excluded from consultation. Consultation is deferred until after Bills are imposed when rates will be revealed. Parliament has been misled by the misuse of the term “levy payer”, which refers to those that deduct levies from producers’ payments, not those funding the levies;
- Constitutionally, a levy tax cannot be imposed to charge for services, therefore the service Bill is invalid;
- Parliament and producers have been deliberately misled;
- Required procedural guidelines have been ignored in preparation of these Bills. Procedural fairness has been denied to producers, and procedural guidelines have not been complied with;
- Human Rights obligations have been deceptively presented as representing the human rights applicable to levy recipients, not those funding the levies. All statements have avoided the fact that levies are deducted from gross farm-gate incomes, and the most recent GRDC annual reports misleadingly claim levies are deducted from net income. The compulsory Human Rights compliance documentation contains claim levies are similar to taxes which are based on net income, and imply levies will be minimal and affordable. However, levies are based on gross farm gate value of the product (which excludes all on-farm costs) and can exceed net profit. Denying income is a major human rights issue and the intention is to increase levies during adverse seasonal conditions when producers make a loss and levies exceed net income. Statements of benefits to human rights refer to the wish-list of levy recipients that were involved in consultation as they will have a more reliable income if not based on fluctuations of produce prices;
- These taxes are an extreme overstep of the constitutional powers of Government. Bills permit the Minister to support levy recipients and beneficiaries setting the rate and purpose of a tax which is to be regarded as “free money” with no purpose to benefit those funding the levy. The required Constitution compliance documentation is inadequate and misleading as the Minister has a direct conflict of interest leading to biased decision making;
- Law has been ignored. There have been inexplicable errors in preparing and presenting these Bills. Bills fail to comply with tax laws and parliamentary procedures. Multiple people, including Ministers have breached multiple laws and should be considered for jailable offences; and,
- Ministers have misled parliament. As a consequence of being misled, it is highly unlikely politicians in either house of Parliament would be aware of the detail or implications prior to voting. Very few, if any, are interested in agricultural issues, much less rushed complex issues when misled to believe there will be “no change”. Lack of political representation is also a major Human Rights issue to be addressed.

The fact that these Bills have progressed to this stage prove political dictatorship is alive and well in Australia’s constitutional democracy. Producers are politically represented by an authoritarian Minister for Agriculture with an agenda to profit from producers. These Bills are well beyond the constitutional power of parliament to approve and must be refused. Bills can not proceed to vote as politicians have been misled by false information provided and failure to consult with affected parties.

**Accordingly, under s75 (v), an injunction must be sought**, and the High Court should have jurisdiction to make a Constitutional ruling regarding these illegal levies. All misleading information must be denied, and I request to be invited to provide evidence, as farm lobby groups have been disempowered.

## 1.1 Bills are not constitutionally legal as tax rate changes are secret till imposed

The vote in the House of Representatives, and any potential vote in Senate is constitutionally invalid as any tax Bill must be presented with rates. Rates are not yet available for major commodities. Bills imply rates are to be set by levy recipients and beneficiaries, not those that fund the levy.

Section 53 of the Constitution prevents the Senate from proposing or amending any taxation bills, as the House of Representatives, then Senate must approve all tax Bills, and any amendments of rates. These Bills propose that the Minister of Agriculture, Fisheries and Forestry (the Minister) can set rates in order to evade political scrutiny. This is simply well beyond the constitutional power of any politician.

There has been no compliance with s83 of the Constitution, as taxation Bills stating the specific rate and the specific purpose must be approved in Parliament at the same time. Rates are intended to be released with the transition Bill and the Minister is to impose any uncapped rates for any purpose with no parliamentary scrutiny. The Minister cannot exceed his constitutional power to be permitted to have control to manage and set tax rates in instruments that have not yet been released. Therefore, these Bills are invalid.

Levy rates will not be set until the transition phase. The Minister can delegate any group to represent "industry" and "industry support" and these groups are intended to be dominated by levy recipients. The Minister will be able to remove existing producer groups and delegate the consultation requirement to the levy recipients who will support maximum levy rates, rather than those funding the levies who will object strongly. s8 of the current *Primary Industries (Excise) Levies Act 1999*. Making laws to break laws is not legal. The Bills propose to give the Minister total power to set uncapped rates *Ibid*, Section 27 (2). Regulations are made to approve new levies, and set and amend the rate of levy, and although the Minister is to consult with representative groups and should not exceed recommended rates, the Minister is invited to ignore the rules.

(3) The fact that consultation referred to in subsection (2) does not occur does not affect the validity or enforceability of the regulations.

*Primary Industries (Excise) Levies Bill 2023*

Approving Bills to allow the Minister to impose a tax, yet be exempt from laws surrounding a tax, is well beyond being not constitutionally compliant. Providing misleading information to support Bills and denying consultation with those affected is not compliant with law. Only inviting consultation after the Bills are approved is not legal procedure.

The Bills were introduced into Parliament on 18 October 2023. The Bills were passed by the House of Representatives on 15 November 2023 and were introduced in the Senate on 16 November 2023.

Draft regulations and rules, including for those levies and charges that were not available at the time of the 2023 exposure draft consultation will be exposed for industry and public consultation in early 2024.

DAFF (1)

DAFF: "Limited feedback was received on the draft regulations and rules, most

*likely because draft levies and charges were not available for all commodities. There will be a further opportunity for stakeholders to provide feedback on the draft regulations and rules when more comprehensive versions are published for consultation in 2024."* (2)

(1) DAFF "Have your Say", Modernising the agricultural levies legislation. Pg 3.

<https://haveyoursay.agriculture.gov.au/modernising-agricultural-levies/widgets/403569/documents>

<https://haveyoursay.agriculture.gov.au/84038/widgets/403569/documents/275760>

(2) DAFF 2023, *Impact analysis – Modernising the agricultural levies legislation*, Department of Agriculture, Fisheries and Forestry, Canberra, July. CC BY 4.0. DAFF: "Summary of 2023 Exposure Draft Consultation. Pg 23.

<https://oia.pmc.gov.au/sites/default/files/posts/2023/10/Impact%20Analysis.docx>

Current regulations are not compliant with levy laws but not considered legal. Yet multiple entities have been encouraged to apply to impose levies for their own purpose using these regulations. The regulations related to these multiple new rates imposed on major commodities, are not yet released. There appears little power from preventing the Minister immediately preparing regulations to impose any levy for any purpose at any rate, including an excessive biosecurity levy that can be changed to multiple uncapped levies for multiple purposes, with no purpose to benefit producers.

## **1.2 Bills are well beyond the constitutional power of taxation laws:**

**Senate cannot accept these Bills as it is well beyond the Constitutional power to do so.**

Constitution s51 (ii): it has been well established that a tax of any kind cannot be charged for services rendered, as any tax must be for “public good”. (3)

Bills are not compliant with S53 of the Constitution, which stipulates that a taxation Act cannot operate as a penalty. A levy must not be a discriminatory tax. A levy cannot be imposed on those that are unable to pass the cost to the general public for a specific purpose to reduce use of a product (eg cigarettes, fuel, alcohol). Therefore, an open-ended tax imposed to benefit the multitudes of industries profiting from producers, is constitutionally invalid. The Bills permit the Minister to make his own tax rules through regulations, which is well beyond the Ministers constitutional power. Allowing the Minister to fund his portfolio by deciding the rate and the purpose of levies, fails to comply with s56 of the Constitution regarding appropriation of a hypothecated levy tax. If all levies are to be regarded as a general tax, any levy relating to a purpose to benefit producers who fund it must be ceased. Alternative methods of investment can be encouraged and producers should be treated like any other industry and provided an avenue to invest in entities providing the best returns.

Levy taxes imposed on producers are a hypothecated tax with the specific purpose to benefit those funding it. Levy Bills are a discriminatory tax, rather than the agreed contract between producers and government to fund market failure. Government contributions to levies were to be used for “public good” while producers’ contributions were to be directed by producers to benefit producers. If Government are unable to comply with their obligation to use levies to benefit producers, levies must cease, as they are a discriminatory tax. It is beyond the power of Parliament to follow General Policy Orders (GPO) from executive Government to effectively force producers to fund budget deficiencies and unprofitable entities.

Due to patents and intellectual property rights, Research & Development (R&D) is no longer a market failure. Producers are currently being denied the rights of every other Australian business to invest in R&D, own the resulting intellectual property, and receive major tax benefits for doing so. Instead, grain producers have funded \$3.5billion to Grains Research and Development Corporation which own the resulting patents, and focus on profiting from sharing resulting IP internationally, which has reduced grain prices, and the competitive edge of the Australian farmers that fund GRDC.

These Bills fail to comply with the Constitution, human rights and multiple laws. Accordingly, Bills should not have progressed, but the Minister, with a clear unconstitutional conflict of interest, is responsible for providing misleading information in order to deceive both houses of parliament, the Governor General and producers. Taxation cannot be discriminatory, and must be on just terms and within the power to make laws (Constitution s51ii).

**These Bills do not comply with the Constitution, accordingly, under s75 (v), an injunction must be sought, and the High Court should have jurisdiction to make a Constitutional ruling regarding these illegal levies.**

(3) Hon Justice Michelle Gordon, “The Commonwealth’s taxing power and its limits – are we there yet?” Melbourne University Law Review, “ Vol 36, 1027. 29<sup>th</sup> August, 2012.

[https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0013/1700122/36\\_3\\_7.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0013/1700122/36_3_7.pdf)

### 1.3 Unconstitutional conflict of interest:

*"The validity of a law, or of an administrative act done under a law, cannot be made to depend on the opinion of the law-maker, or the person who is to do the act, that the law or the consequence of the act is within the constitutional power upon which the law in question itself depends for its validity."*

Justice Fullagar, High Court (4)

Constitution S44 (iv): *"a person cannot hold two offices in relation to which their duties or obligations conflict, such as when a person has a duty to serve the interests of two different groups and those interests are different."*

Australian Law Reform Commission: (5)

*"A claim of actual bias requires proof that a decision-maker in fact approached the issues with a closed mind or had prejudged them such that he or she was "so committed to a particular outcome that he or she will not alter that outcome, regardless of what evidence or arguments are presented"."*

Bills attempt to permit the Minister to break existing laws in order to force producers to fund multiple Government non-profit entities, most within his own portfolio. The Minister has a clear unconstitutional conflict of interest affecting decision making. Levies are a hypothecated tax that must benefit producers, not a tax to benefit the Ministers portfolio. Preparation for these Bills include abuse of Grains Research and Development Corporation (GRDC) levies to fund "Single Vision" with the primary objective to disempower producer lobby groups to ensure levy recipients dominate levy policy decisions, not those funding the levies.

The Department of Agriculture, Forestry and Fisheries (DAFF) also have a serious conflict of interest as they are a major beneficiary of levies. DAFF is responsible for failing to comply with standard requirements for preparation of a Bill, mismanagement in preparation of these Bills and preparing previous instruments.

Legal Requirement of GRDC levy is the *Primary Industries Research and Development Act (PIRD Act)*: *"GRDC Purpose, To Invest in research, development and extension to create enduring profitability for Australian Grain Growers."* GRDC's stated purpose complies (6):

#### GRDC's purpose

To invest in research, development and extension to create enduring profitability for Australian grain growers.

DAFF have a clear conflict of interest as a levy recipient, and primarily involved in preparing Bills. The Bills amend the purpose to support levy recipients, not levy payers. DAFF "Strategic Risks" Annual Report 2018-19 proves DAFF has no regard for law, or GRDC's purpose.

*"We continued to review our risk appetite. This refers to the level of risk that we are willing to accept in carrying out our work. The department faces a range of risks that reflects its responsibilities, and we recognise that it is not possible, or necessarily desirable, to eliminate all of the risks inherent in our work."* (7)



(4) Justice Wilfred Fullagar, *Australian Communist Party v Commonwealth* ("Communist Party case") [1951] HCA 5; (1951) 83 CLR 1 (9 March 1951), High Court of Australia, 259 <http://www7.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1951/5.html>

(5) Australian Law Reform Commission, "Judicial Impartiality", <https://www.alrc.gov.au/inquiry/review-of-judicial-impartiality/>

(6) GRDC Annual Report, 2022-2023, pg 5 [https://grdc.com.au/\\_\\_data/assets/pdf\\_file/0025/593260/GRDC\\_AnnualReport2022-23\\_Accessible-2.pdf](https://grdc.com.au/__data/assets/pdf_file/0025/593260/GRDC_AnnualReport2022-23_Accessible-2.pdf)

[https://grdc.com.au/\\_\\_data/assets/pdf\\_file/0025/593260/GRDC\\_AnnualReport2022-23\\_Accessible-2.pdf](https://grdc.com.au/__data/assets/pdf_file/0025/593260/GRDC_AnnualReport2022-23_Accessible-2.pdf)

(7) Department of Agriculture, Annual Report 2018-19, "Managing Our Risk", Figure 16, Strategic Risks 2019-20.

<https://www.transparency.gov.au/annual-reports/department-agriculture/reporting-year/2018-2019-16>

The Minister and DAFF, claim to have required approval by those adversely affected by these Bills, but no consultation has occurred related to the majority of producers that will be adversely affected. The Minister is deceptively referring to “levy payers” as if they are those funding payments, while referring to “levy payers” as the industries deducting levies from producers’ payments, not those funding it. Deception regarding “industry approval” relate to the industries dominated by levy recipients, not those industries funding the levies.

Australian Law Reform Commission (8):

*“In Kioa v West, Gibbs CJ said that the ‘fundamental rule is that a statutory authority having power to affect the rights of a person is bound to hear him before exercising the power’. The rule against bias ensures that the decision maker can be objectively considered to be impartial and not to have pre-judged a decision.”*

Senate cannot accept these Bills due to the lack of constitutional power to impose such a discriminatory tax that is to be controlled by a Minister who has a clear conflict of interest, and providing false information.

### 1.4 Producers denied consultation and false information provided

Consultation has been limited to “How much free money do you want?” with levy recipients and beneficiaries. Constitutionally those adversely impacted must be consulted and rigorous assessment should surround any adverse impact on producers. Consultation has been denied and documentation is deliberately misleading. This is not legal, not constitutionally permitted, and a major human rights issue. Rather than be satisfied with the existing \$600m/yr, Government demand more. The answer is to get unlimited free money from a disempowered sector of the community that cannot afford it, in order to prop up the budget deficit and improve the profit of multitudes of government entities and corporate sponsors.

It is a constitutional requirement to ensure those that will be negatively impacted have an opportunity to address their concerns prior to Bills being prepared. Documents and debate presented to Parliament falsely claim producers support the Bills, when it is highly unlikely any single producer would agree to such irrational Bills. Attorney Generals Department: (9)

#### 4.1.4 Procedural fairness

Decision makers should act in a manner which affords people affected by decisions procedural fairness (or natural justice), and explain those decisions in a manner which people can understand. Procedural fairness forms the basis for a ground of judicial review under the common law and the ADJR Act, and requires certain standards and procedures to be observed in administrative decision making. Broadly, procedural fairness requires that the decision maker be, and appear to be, free from bias and/or that the person receives a fair hearing.<sup>18</sup> ‘The precise contents of the requirements... may vary according to the statutory context; and may be governed by express statutory provision’.<sup>19</sup>

If Bills and regulations are to be approved by the Attorney General (s17 of the Legislation Act), consultation can not be considered adequate if only levy recipients have been consulted.

Producers that will be adversely affected have been misled, denied standard consultation and no detail has been provided to explain that the major changes regarding increasing rates and denying the purpose to benefit those funding the levies will be in the regulations, not legislation.

(8) Australian Law Reform Commission, “Procedural Fairness”

<https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/14-procedural-fairness-2/procedural-fairness-the-duty-and-its-content/>

relating to references: Kioa v West (1985) 159 CLR 550, 563, quoting Mason J in FAI Insurances Ltd v Winneke (1982) 151 CLR 342, 360.

Aronson and Groves, above n 1, 399; Westlaw AU, The Laws of Australia (at 1 March 2014) 2 Administrative Law, ‘2.5 Judicial Review of Administrative Action: Procedural Fairness’ [2.5.20].

(9) Attorney Generals Department, “Australian Administrative Law Policy Guide”, 2011, Pg 12

<https://www.ag.gov.au/sites/default/files/2020-03/Australian-administrative-law-policy-guide.pdf>

I have not used the word “LIE”, unduly as the legal definition of “*Lying means the misrepresentation of one or more facts in order to gain a benefit or harm another person, where the actor knows or should know that the misrepresentation will be relied upon by another person.*” (10)

The primary explanatory memorandum explains producers support the maximum levy rates to be abolished allowing the Minister open access to producers’ gross income.

104. This section does not provide a maximum levy rate. This approach is consistent with recommendations made by the Productivity Commission in its report *Rural Research and Development Corporations* (2011) that maximum levy rates should be abolished from the agricultural levies legislation. Consultation with industry stakeholders has shown they are largely supportive of removing maximum rates from the legislation.

**LIE!**

No producer in their right mind approves of unlimited access to their gross incomes. When referring to “industry stakeholders” this refers to levy recipients wanting more free-money, not those producers forced to fund it. The misleading information provided states the necessary extensive consultation with “industry”. However, “Industry” refers to the levy recipients and beneficiaries rather than the relevant industry that is to fund and supposedly benefit from these levies.

### What is not changing

We will not be changing individual levy settings.

**LIE!** (11)

Levies are intended to increase, but will be done in regulations, not legislation.

### Will levy costs go up? Will farmers have to pay more?

No. Rates are not being changed as part of this work. Levy rates are only changed at the request of industry.

**LIE!** (12)

**Truth:** The Bills change the definition of the relevant industry empowered to request levies to levy recipients, not producers that fund the levy. Therefore, the Minister can approve new levies, or increase rates at the request of levy recipients wanting more money for whatever purpose they request.

### Will levy recipient bodies continue to use the levies for the same purposes?

Yes. There would be no changes to what levies can be spent on.

**LIE!** (13)

**Truth = No.** Bills state the multiple changes of purpose, primarily changing the purpose from benefitting those that fund the levies. The Minister will have the power to change the purpose to remove the obligation to benefit those producers funding levies. GRDC levies will change their purpose from benefitting grain producers, to benefitting the multitudes of industries profiting from grain producer.

(10) Law Insider “definition of lying”

<https://www.lawinsider.com/dictionary/lying#:~:text=Lying%20means%20the%20misrepresentation%20of,relied%20upon%20by%20another%20person.>

(11) DAFF, “Streamlining and Modernising Levies Legislation.” <https://www.agriculture.gov.au/agriculture-land/farm-food-drought/levies/levies-process-reform>

(12) Australian Government Department of Agriculture, “1.2 Frequently Asked Questions”, May 2023.

<https://haveyoursay.agriculture.gov.au/84038/widgets/403569/documents/257895>

More: <https://haveyoursay.agriculture.gov.au/modernising-agricultural-levies/widgets/403569/documents>

(13) Ibid

**Have stakeholders been engaged in developing the draft levies legislation?**

The draft levies legislation has been informed by industry groups, levy payers, collection agents, and levy recipient bodies:

- 2017-18: The department reviewed the levies legislative framework and did targeted consultation with 70 stakeholder groups.
- 2019-20: The department released the 'Streamlining and modernising agricultural levies legislation - early assessment regulation impact statement' for public consultation.
- 2021-22: The department conducted further consultation with industry representatives and RDCs.

**LIE!** (14)

**Truth = No! The major stakeholder to be consulted, should be producers that fund the levies, not the multitudes benefitting from levy funds. The misleading term "levy**

**payer" refers to purchasers who deduct levies from payments, and forward levies to DAFF.**

**Initial consultation was a call to support 2 options to increase levies, but producers groups were not notified. The terms of reference for next consultation excluded any concerns of producers and aimed at levy recipients. "To help us modernise levies legislation, it is important for us to hear from people who interact with: levies legislation; activities that the levies fund." (15a)**

The project does not include any consideration of the RDC model, the government's commitment to matching funding for eligible R&D, or how levy funds are invested by RDCs.

In addition to streamlining the legislation, we are updating the *Levy principles and guidelines* and will release the updated guidance on the department's website. This will support industries in establishing and changing levies.

**Producers concerns were denied in terms of reference. (15b)**

**The first public consultation on the draft agricultural levy legislation was between 1 May 2023 and 5 June 2023 (16) (seeding for grain farmers), but no farm lobby groups appeared to know anything about it. Terms of reference were limited to questions asked and no information regarding rates was available.**

**No submissions were published regarding producers' concerns. (17)**

**DAFF explains consultation is to occur after the Bills are approved, not before as required.**

The Bills were introduced into Parliament on 18 October 2023. The Bills were passed by the House of Representatives on 15 November 2023 and were introduced in the Senate on 16 November 2023.

Draft regulations and rules, including for those levies and charges that were not available at the time of the 2023 exposure draft consultation will be exposed for industry and public consultation in early 2024.

**(18) The Bills were**

**rushed through the House of Representatives with no comment, as very few producers were aware of the detail of the Bills. As detail is in regulations and rules, these were not supplied for major commodities.**

**Producers have not been consulted, few are aware of these Bills, and the few that are, have been falsely reassured there will be "no change". Therefore, Bills have been prepared based on consultation with levy recipients and beneficiaries, not those funding levies. With consultation being mismanaged, Bills are a wish list of how market failure can be caused by imposing illegal levies to support multitudes of "free riders".**

(14) Ibid

(15a) DAFF, Streamlining and Modernising Levies Legislation, accessed 2022.

<https://www.agriculture.gov.au/agriculture-land/farm-food-drought/levies/levies-process-reform>

(15b) Levies Revenue Service, Department of Agriculture, Water and the Environment Report to levies stakeholders 2018–19, streamlining and modernising agricultural levies legislation, pg 21

[https://www.agriculture.gov.au/sites/default/files/documents/report-levies-stakeholders-2018-19\\_0.pdf](https://www.agriculture.gov.au/sites/default/files/documents/report-levies-stakeholders-2018-19_0.pdf)

(16) DAFF, "Modernising the agricultural levies legislation."

<https://haveyoursay.agriculture.gov.au/modernising-agricultural-levies>

(17) Department of Parliamentary Services "Primary Industries (Excise) Levies Bill 2023 [and associated Bills]" Pg 7.

[https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/9458872/upload\\_binary/9458872.pdf;fileType=application/pdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/9458872/upload_binary/9458872.pdf;fileType=application/pdf)

(18) DAFF, "Have your Say", Modernising the agricultural levies legislation. Pg 3.

<https://haveyoursay.agriculture.gov.au/modernising-agricultural-levies/widgets/403569/documents>

<https://haveyoursay.agriculture.gov.au/84038/widgets/403569/documents/275760>



No producer will accept these Bills if they were aware that the Minister can have open access to producers' gross incomes. Due to misleading information and definitions, lack of consultation with affected parties, and multitudes of paperwork involved, very few producers and media have been involved.

While there is no way to cancel a levy, the "industry" of levy recipients is encouraged to impose and increase levies.

**Can an industry change an existing levy or create a new levy through the agricultural levies legislation modernisation process?**

No. If an industry would like to change or create a new levy, existing processes must be followed.

Industry must submit a levy proposal that demonstrates industry support for the proposal.

If an industry would like to amend or create a new levy, they should consult the [Levy Guidelines](#) for step-by-step instructions on preparing a proposal.

(19) **MISLEADING**  
An "industry" relates to any of the multitudes of industries profiting from producers. The

Levy Guidelines fail to comply with the legal requirement of creating or amending a levy. It must be noted, DAFF has been collecting applications in preparation for this Bill using these illegal guidelines and recommending the appropriate compliant "industry" for support.

These Bills should not have progressed to Senate as there has been false and insufficient information provided. Politicians have been misled to believe producers have been extensively consulted, when producers have been denied consultation. This has illegally influenced voting in the House of Representatives, and will influence the vote in Senate. It has also influenced statements regarding human rights and constitutional issues as human rights issues presented relate to the improvements gained by levy recipients.

These Bills should be treated with the same disrespect as if producers presented Bills to impose an uncapped tax on the gross incomes of all politicians and public servants, to fund whatever unrestricted purpose producers would like to benefit from. What is the goal? The outcome will be to force producers to sell to multinational investors, to raise the GDP and allow Government to loan more. That is not a valid tax, nor a viable outcome.

*"Investment, including foreign investment, can play an important role in meeting agriculture's growth challenges through access to capital and alternative business models, exposure to new technologies, commercialisation of Australia's agricultural expertise and links to global value chains."* (20)

*"In an interview with The Australian Financial Review, Mr Littleproud vowed to push for corporate Australia and superannuation funds to boost investment in farming as part of a drive to double the sector's exports... We shouldn't be afraid of foreign investment.... There will be less family farms but they will be bigger," he said."* (21)

This must be a private joke as Australian farmers are the best in the world and any farmer near farms owned by multinationals report deterioration of farmland and far worse yields. If Australian farmers cannot make a profit due to Government imposing unreasonable costs, no investor will retain this investment.



**As the constitution requires consultation to be valid and not denied, any vote in either House of parliament is not valid.**

(19) Australian Government Department of Agriculture, "1.2 Frequently Asked Questions", May 2023.

<https://haveyoursay.agriculture.gov.au/84038/widgets/403569/documents/257895>

More: <https://haveyoursay.agriculture.gov.au/modernising-agricultural-levies/widgets/403569/documents>

(20) Australian Government, "Agricultural Competitiveness White Paper", Canberra, July 2015, pg 6

[https://www.agriculture.gov.au/sites/default/files/documents/ag-competitiveness-white-paper\\_0.pdf](https://www.agriculture.gov.au/sites/default/files/documents/ag-competitiveness-white-paper_0.pdf)

(21) Andrew Tillett, Financial Review, "'We shouldn't be afraid of foreign investment': David Littleproud" 16<sup>th</sup> January, 2021

<https://www.afr.com/politics/we-shouldnt-be-afraid-of-foreign-investment-david-littleproud-20180116-h0itiz>

## 1.5 Human Rights statements are deceptively based on information received by levy recipients, not those funding the levies:

Due to deliberate misleading human rights statements, these Bills cannot be validated by Senate.

The Ministers explanatory memorandum falsely claims:

*“The imposition of levies represents a reasonable and proportionate tax on an individual levy payer.” LIE!*

Levy Bills are not a reasonable and proportionate tax! Human Rights statements are well beyond being truthful and those preparing these Bills have ignored the checklist to assess human rights. Bills have an unfair affect causing discrimination with a high risk of imposing poverty. Statements are based on consultation which has excluded those that will be adversely impacted. In order to gain approval, statements must have been supported by extremely misleading information. An unlimited tax on gross income is not reasonable or proportionate. Bills permit levy recipients to rubber stamp the “industry approval” required to progress, and any requirement to benefit the levy payer has been removed.

Such an imposition on human rights could only have been accepted if explained as a minimal tax on net income. No mention has been made on levies being deducted from gross income. However, GRDC appears to have been directed to falsely claim levies are deducted from net income.

### Sources of funds

We are funded through an industry levy and matching Commonwealth contributions. Levies are collected at the first point of sale and based on a percentage of the net value of the following crops:

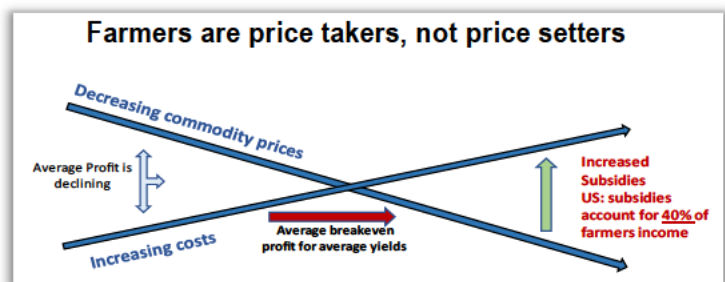
**LIE!** GRDC levies have always been deducted from the gross farm gate value of grain, meaning no on-farm costs are deducted. **GRDC now falsely claim levies are deducted from net income, not gross income.** (22)

ABARES:“...the gross value of production is calculated using gross prices realised at the point(s) of valuation where ownership of the commodity is relinquished by the agricultural sector...”(23)

DAFF’s own website has the required rates stating clearly that levies are deducted from a “percent of the sale value”. (24)

### Gross income vs net profit is a major difference:

While every other OECD country is subsidised by Government, Australian farmers are discriminatorily forced to subsidise Government. Farmers profits are declining due to higher costs encouraged by levy recipients, and lower prices paid because any resulting intellectual property is shared internationally to competitors and customers, which decreases market demand of Australian produce. Levy impositions cannot be passed on as farmers are not price setters.



As farmers do not make a profit in below average seasons, GRDC levies alone often exceed net income. effectively denying farmers the profit from their business, a major human rights issue.

(22) GRDC, Annual Report 2022-23, pg 23.

[https://grdc.com.au/\\_\\_data/assets/pdf\\_file/0025/593260/GRDC\\_AnnualReport2022-23\\_Accessible-2.pdf](https://grdc.com.au/__data/assets/pdf_file/0025/593260/GRDC_AnnualReport2022-23_Accessible-2.pdf)

(23) Government ABARES” definitions” <https://www.agriculture.gov.au/abares/research-topics/agricultural-outlook/definitions>

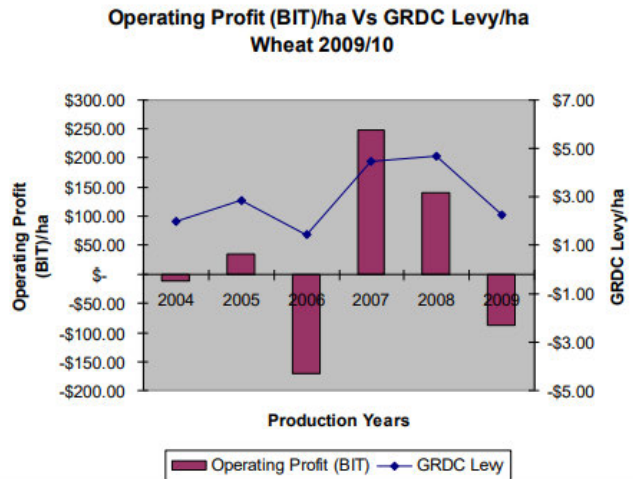
(24) Department of Agriculture, “Levy and Rate charge”, Accessed 9.1.24.

<https://www.agriculture.gov.au/agriculture-land/farm-food-drought/levies/rates>

Governments avoid statistics regarding levies related to those that fund them. WA Grains Group members presented a summary of wheat growing actuals between 2004 and 2009 proving levies are a human rights issue denying farmers an income. **The 0.99% GRDC levy alone exceeded farmers net income** in all but one year and yet little was spent to benefit wheat growers.

GRDC no longer invest in wheat breeding (their market failure purpose) as levy funds were allocated to introduce an additional patent style cost called End Point Royalty (EPR) costs for farmers using new varieties which now exceed the cost of levies and GRDC receive a significant profit from EPR's. GRDC also funded the system for grain buyers to pay farmers less for older varieties. Older varieties have expired plant breeder patents and many farmers preferred to grow older varieties. GRDC is creating market failure by encouraging multiple freeloaders and actively reducing the profitability of levy payers.

*"The GRDC levy is perceived as a tax on production and not profitability. If a farm makes a loss, it still has to pay the GRDC levy and the EPR. Effectively the farm has to mortgage its assets, to pay the compulsory levy and EPR."* <sup>25</sup>



The intention of providing the Minister freedom to increase levies without parliamentary scrutiny is to provide levy recipients security that during adverse seasonal conditions or reduced market prices, levies can be increased to uncapped amounts. This is a major human rights issue as farmers will be required to increase loans to fund levies.

Australia is signatory to the United Nations Universal Declaration of Human Rights (1948) <sup>(26)</sup>

Relevant extracts indicating these Bills breach of human rights:

Article 1: "All human beings are born free and equal in dignity and rights." Forcing producers to pay the costs of other occupations is not an equal right.

Article 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...," such as ... social origin, property, birth or other status."

Article 3: "Everyone has the right to life, liberty and security of person." Producers are to lose the security of their own business incomes, their homes and their communities.

Article 4: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." Modern day slavery includes withholding funds from hard working people.

Article 7: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." Bills are designed to make laws to break laws preventing discrimination.

Article 8: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." The remedy must be to prevent these Bills progressing, and to remedy existing corruption within the levy system.

<sup>(25)</sup> WA Grains Group (Inc), Submission to Australian Government Productivity Commission Government Investment into Research Development Corporations Submission, June 2010, pg 9. <https://wagrainsgroup.files.wordpress.com/2013/01/wagg-submission-to-productivity-commission-inquiry-into-grdc.pdf>

<sup>(26)</sup> United Nations, "Universal Declaration of Human Rights", 10 December 1948. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

Article 25: The Ministers response regarding article 25 (1) cynically claims those losing their livelihoods would not be denied welfare.

Article 27(2) is very relevant regarding the information producers are expected to supply to levy recipients such as GRDC.

Article 29: *"In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms*

*of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."*

Article 30: *"Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."*

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Equality and Human Rights Commission:

*"Discrimination occurs when you are treated less favourably than another person in a similar situation and this treatment cannot be objectively and reasonably justified."* (27)

*"Indirect discrimination - The courts have also ruled that the human rights protection from discrimination includes indirect discrimination. This occurs when a rule or policy, supposedly applying to everyone equally, actually works to the disadvantage of one or more groups."* (28)

(29)

**Occupational discrimination**

*"refers to practices that have the effect of placing certain individuals in a position of subordination or disadvantage in the labour market or the workplace... Direct discrimination arises when an explicit distinction, preference or exclusion is made on one or more grounds... Indirect discrimination refers to situations, measures or practices that are apparently neutral but which in fact have a negative impact on persons from a certain group."*

These Bills and some existing levies, are a major human rights issue including denying income from property and hard work, occupational discrimination, invasion of privacy and lack of political representation and voice. As a direct result from ignoring consultation with consultation with levy recipients, human rights statement claims improvements due to having unlimited funding provided. However, no mention is given to those producers who fund the levies who have not been consulted, but have levies increased beyond net incomes. Statements claim no interference with privacy, yet Bills state producers must provide unlimited information regarding their business that can be patented and shared.

(27) Equality and Human Rights Commission, "Article 14, Protection from Discrimination", Last updated 3, June, 2021.  
<https://www.equalityhumanrights.com/human-rights/human-rights-act/article-14-protection-discrimination>

(28) Ibid

(29) United Nations Human Rights Office, International Labour Organization, Q&As on business, discrimination and equality, Occupational discrimination. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

## 1.6 Failure to comply with Procedural and Constitutional Guidelines:

Guidelines regarding human rights and constitutional compliance have not been followed. The guidelines to preparing an Act referring to regulations, specifically warn not to include regulations in an Act, as they could easily become incorrect, *“but as guidelines are an “instrument...courts will find that any subordinate legislation is invalid if not compliant with any law.”* (30)

The obvious intention appears to ensure guidelines are deceptive, as the explanatory memorandum of the transitional Bill (6) explains the intention to use a biosecurity levy for a broad spectrum of levies and the name, purpose, rate and purpose will be immediately changed.

There appears to be a misunderstanding that instruments have the power of law, but any instrument, legislative or not, must comply with law. *Acts Interpretation Act 1901 (1A) and Legislation Act 2003*. Rules regarding compliance with the Constitution and human rights relate to any instrument, funding agreement, regulation, guidelines etc. Any clause “not an instrument” in a Bill does not exempt an instrument from any law, not just the relevant laws related to these vague Bills. Any instrument cannot contravene the constitution or human rights obligations.

**These Bills are constitutionally invalid as power cannot be delegated to the Minister to prepare regulations to evade compliance with the required assessment for legal, human rights and constitutional validity.**

## 1.7 Bills do not comply with law and agreements regarding a “Levy” Tax

The current unofficial levy principles and guidelines that were introduced when official instruments sunset, do not comply with the legal requirements of levies in multiple areas and “industry” relates primarily to levy recipients, not those funding the levy and “levy payers” relate to those collecting the levies when purchasing products. These guidelines have been used to invite multiple industries to impose a levy in preparation for these Bills to enact them if the Minister approves.

### Amendments to existing levies

12. The proposed change must be supported by industry bodies or by levy payers or by the Government in the public interest. The initiator of the change must establish the case for change and where an increase is involved, must estimate the additional amount which would be raised. The initiator must indicate how the increase would be spent and must demonstrate the benefit of this expenditure for levy players.

Levies are not to be requested by those funding the levies, but those receiving them. The industry must demonstrate the benefits they, and others, will gain from receiving levy funds. DAFF recommend compliant producers to meet the required consultancy.

DAFF Levy Guidelines and Principles. (31)

**A levy is a temporary “hypothecated” excise tax imposed on specific products sold, and can only be allocated for a particular purpose to benefit the levy payer, by funding correction of an identified market failure. It is a mutual agreement between levy payers and the Government to jointly address the market failure to benefit the levy payer.**

*“Hypothecated Taxes - money collected from a particular tax, which can only be spent for one particular purpose”* (32)

There are conditions attached to levies, and that is in line with a joint agreement to benefit those funding the service. Those providing funding are to control the funds they provide in order to benefit those providing the funding.

(30) Parliamentary Council, “Drafting Direction No. 3.8

Subordinate legislation”, Dec 2021, s23 and 144.

<https://www.pmc.gov.au/sites/default/files/foi-logs/foi-2021-017.pdf>

(31) DAFF, Levy Principles and Guidelines. Pg 3. Accessed 19.1.24.

<https://www.dcceew.gov.au/sites/default/files/documents/levy-principles-guidelines.pdf>

(32) Cambridge Business English Dictionary, “hypothecated taxes”, Cambridge University Press.

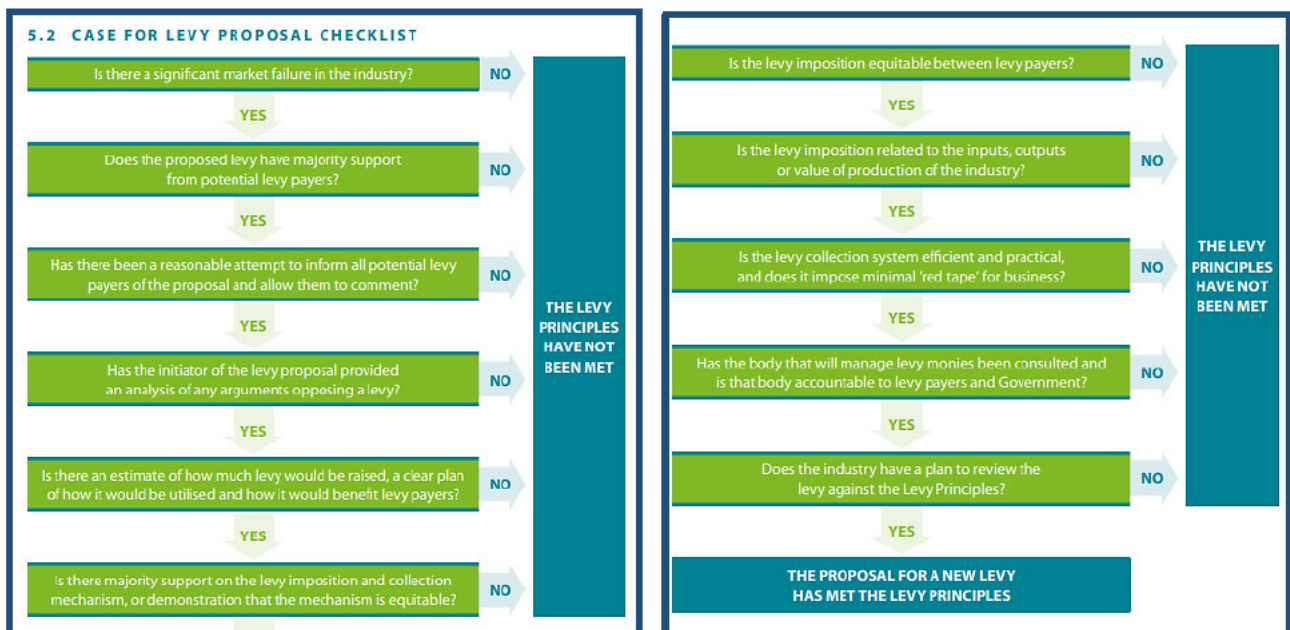
<https://dictionary.cambridge.org/dictionary/english/hypothecated-taxes>

*“A levy is defined as a **temporary measure** to raise revenue and provide for a social purpose or mitigate a crisis which is generally supported and understood by society.” (33)*

Senate stated the original agreed market failure to impose GRDC levies:

*“Market failure was defined by witnesses as the inability of a single business, a single producer or grower, to invest and get an adequate return. That means that individual producers have no incentive to invest in the development of new varieties, new methods or new systems, because they cannot achieve an adequate return operating on their own.” (34)*

Levies cannot be regarded as a standard “tax”. Levies need to be individually checked for constitutional compliance prior to the introduction, and it is the Ministers responsibility to ensure this is complied with. The 2009 checklist below (35) complies with laws regarding levy taxes.



35

The recent Productivity Commission report explains the restrictions on levy taxes:

*“Deviating from the general principles of efficient tax system design by imposing an industry levy is potentially justifiable in four scenarios – so long as certain conditions are met...” (36)*

It was noted *“No guidelines exist for assessing the policy value of individual industry levy proposals.” (37)*

(33) Paul Kenny, Australian Tax 2013, Lexis Nexis Butterworths, 2013, accessed by Taylor, Madeline (2012) "Is it a levy, or is it a tax, or both?," Revenue Law Journal: Vol. 22: Iss. 1, Article 7, pg 1. <http://www.austlii.edu.au/au/journals/RevenueLawJl/2012/7.pdf> (34) Parliament of Australia, Senate standing committee on rural and regional affairs, “Systems Governing the imposition of and disbursement of marketing and research and development (R&D) levies in the agricultural sector. Report 24<sup>th</sup> November, 2014. Chapter 1, Market failure 1.24 [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Rural\\_and\\_Regional\\_Affairs\\_and\\_Transport/Agriculture\\_levies/Report/c01](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Agriculture_levies/Report/c01) referencing (28) Mr Tony Mahar, National Farmers' Federation, Committee Hansard, 5 February 2015, p. 4. (35) Department of Agriculture, Levy Publications “Levy Principles and Guidelines.” pg 16,17, January 2009. <https://www.awe.gov.au/sites/default/files/documents/levy-principles-guidelines.pdf> (36) Productivity Commission 2023, Towards Levyan? Industry levies in Australia, Research paper, Canberra, December, 2023, pg 3 <https://www.pc.gov.au/research/completed/industry-levies/industry-levies.pdf> (37) Ibid

When GRDC instruments reached their sunset clause, under the *Primary Industries Levies and Charges Collection Act 1991*, s7A, DAFF, ex Minister Littleproud and DAFF prepared guidelines (38) that fail to comply with law. They have since encouraged multiple industries to apply for new levies, or increased levies using these illegal guidelines in preparation for Bills being passed.

Prior to instruments expiring, Government levy recipient entities have transformed to profitable corporate entities with an obligation to increase their own profits, with no accountability in funding agreements to comply with their sole purpose to benefit producers funding levies.

Levy Bills, and draft guidelines fail to comply on all counts of ensuring levies comply with the constitutional powers of Government.

Recent Productivity Commission report:

*“...that individual agricultural sectors requested that levies be imposed upon them and continue to vote for their maintenance over time – they judge that they are receiving something in return for their levy payments.”* (39)

*“Industry levies generally appear to be at odds with the features of efficient tax system design. They are definitionally narrow in their application, often levied on inefficient tax bases, and can come with high collection costs.”* (40)

Checklists provided by the Productivity Commission prove Levy Bills do not comply with levy laws. (41)

**Senate cannot accept these Bills as there is a lack of constitutional power to change existing levies with a hypothecated purpose, to a discriminatory tax.**

## 1.8 Emergency Biosecurity Levy Tax Loophole

In order to minimize scrutiny for Human Rights and the Constitution, Bills permit the Minister to introduce a specific purpose emergency biosecurity levy set at a zero value as this “emergency” provides constitutional power to prioritise “public good” taxes over legitimate major human rights issues. Once legislated, the Bills appear to permit the Minister to then prepare regulations that escape the scrutiny and obligations of legislative instruments. The Minister appears to have the power to change the biosecurity levy to multiple levies for multiple purposes, not related to biosecurity. There will be no requirement to benefit levy paying producers, and Government funding can be reduced.

117. Biosecurity response levies are often first imposed with a nil rate. This allows for a quick activation of the levy, by setting a positive rate, in the event of a relevant biosecurity response. This provides certainty for the industry and the Commonwealth that a payment (including repayment) mechanism is in place if required.

(42)

**Major groups representing producers' interests have already opposed a \$50 million/yr increase in biosecurity levies that is likely to increase as levies are not capped.** (43)

A report by the Productivity Commission has backed the National Farmers' Federation's view that the proposed Biosecurity Protection Levy is a deeply flawed policy littered with a suite of issues.

(38) DAFF 2020, Levy guidelines: How to establish or amend agricultural levies, Department of Agriculture, Fisheries and Forestry, Canberra, CC BY 4.0. <https://www.agriculture.gov.au/sites/default/files/documents/levy-guidelines.pdf>

(39) Productivity Commission “Towards Levyyathon”, Dec 2023, Pg 10 <https://www.pc.gov.au/research/completed/industry-levies>

(40) Ibid pg 12

(41) Ibid, pg 22

(42) Authorised by Minister for Agriculture, Fisheries and Forestry, Murray Watt, “Explanatory memorandum”, The Primary Industries (Excise) Levies Bill 2023, the Primary Industries (Customs) Charges Bill 2023 and the Primary Industries (Services) Levies Bill 2023 Section 16, rate of levy. [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r7091](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7091)

(43) National Farmers Federation, “PC report confirms industry position that biosecurity levy is bad policy” Press Release, 13.12.23. <https://nff.org.au/media-release/pc-report-confirms-industry-position-that-biosecurity-levy-is-bad-policy/>

However, the Federal Government's proposed 'Biosecurity Protection Levy' is a fundamentally flawed policy proposal which fails to deliver better biosecurity protections. It also undermines fundamental trust and confidence in the long-standing partnerships created through existing compulsory levies.

More than 50 agricultural representative groups have signed a joint letter to Prime Minister, Anthony Albanese, expressing unified opposition and concerns about this flawed proposal.

Grain Producers Australia (44)

Proposed biosecurity levies are based on gross incomes of an above average season:

*"This levy will collect an amount equivalent to 10 per cent of 2020-21 levy rates or another comparable metric where such levies are not in place. The Biosecurity Protection Levy is separate to, and does not change, existing industry-led agricultural levies supporting R&D, marketing, residue testing, and Animal Health Australia and Plant Health Australia membership levies."* (45)

**Senate cannot approve these Bills as it is not constitutional to make laws to break laws, particularly laws that uphold the Constitution and human rights.**

## 1.9 Research and Development (R&D) levies are to illegally fund anyone and any purpose

The Minister will have the right to misappropriate all producer research levy funds to any undefined emergencies, which could simply include a deficient budget. Producers' businesses are not Government assets to cash out.

*"The minister could give a written direction to an industry-owned RDC if:*

- *satisfied it would be in Australia's national interest due to exceptional and urgent circumstances*
- *satisfied it would not impose expenses for the RDC that exceed their remaining funds and future payments for the relevant period, and*
- *the directors of the RDC have been given an adequate opportunity to discuss with the minister the need for the direction and the impact on the RDC's commercial activities.*

*The RDC would have to comply with the direction."* (46)

During transition (Bill 6) The Minister can *"establish a research and development corporation with the name prescribed by the regulations."* Bill 6, (87 Subsection 149(2)) permits the Minister to consider any recommendations from any primary industry sector he chooses before approval.

(44) Grain Producers Australia, "Scrap the Biosecurity Tax Now!"

<https://www.grainproducers.com.au/biosecurity/scrapthetax>

[https://www.grainproducers.com.au/\\_files/ugd/3f7330\\_614443d425a84b9582aa43845260ad67.pdf](https://www.grainproducers.com.au/_files/ugd/3f7330_614443d425a84b9582aa43845260ad67.pdf)

(45) DAFF, "Biosecurity Protection Levy", August 2023.

<https://haveyoursay.agriculture.gov.au/87458/widgets/412970/documents/265210>

(46) DAFF, "Modernising the agricultural levies legislation" 4.11 Ministerial directions, May 2023

<https://haveyoursay.agriculture.gov.au/84038/widgets/403569/documents/257625>



S8 of transmission Bill 6, permits the Minister to start new R&D corporations by regulations. Rather than the obligation to benefit those that fund R&D levies, the obligation is to be deliberately detrimental to producers by forcing producers to pay costs of any entity, and any individual, for an extremely wide range of purposes including:

- R & D that is related to the whole industry sector;
- Any “...*experimentation or analysis in any field of science, technology, economics or business carried out with the object of ... acquiring knowledge that may be useful... or applying knowledge...*” relating to any objective that may be to acquire knowledge for any upstream or downstream industry sector.
- Extension to “... *educating, informing, or providing assistance to persons or bodies if... they are engaged in aspects of that sector (including producing, processing, storing, transporting or marketing goods that are the produce, or that are derived from the produce, of that sector)*” and “*to encourage or develop the capacity of the persons or bodies to adopt technical developments, innovations or technology arising from...*” R&D. The concept is deliberately broad and “*is intended to include any type of extension activity that would benefit the relevant industry sector.*” The relevant industry sector is not necessarily those that fund the levies.
- Development of persons to carry out or adopt R&D;
- Communication or publication in any form, including electronic communication; and,
- Incidental activities including any operating costs and overheads of anything to do with R&D and approved activities.

#### **GRDC levies are no longer compliant.**

Levies, such as Research and Development (R&D) levies, are a financial agreement, and those producers providing the majority of funding, must have the choice of ceasing funding if there is a breach of contractual agreement if producers are no longer the beneficiary. Existing legislation fails to differentiate between a levy and a tax, and a “public benefit” to Government entities should not be considered an acceptable benefit.

When imposing GRDC levies, the legal reason for imposing an additional excise tax was:

*“Market failure was defined by witnesses as the inability of a single business, a single producer or grower, to invest and get an adequate return. That means that individual producers have no incentive to invest in the development of new varieties, new methods or new systems, because they cannot achieve an adequate return operating on their own.”* Senate Enquiry (47)

Therefore, GRDC levies should be an illegal tax if not providing an adequate return for farmers investment when the other means currently available deny this. Grain farmers have paid \$3.5billion (CPI indexed) to GRDC, and \$1.2billion in the last 8 years. Although the stated aim is “...*to create enduring profitability for Australian grain growers*”, Government institutes own the resulting intellectual property, and they and their corporate partners are the primary beneficiaries, rather than the farmers that fund the levies.

GRDC funded the “Single Vision 2005-2025” to incorporate industries profiting from farmers, to dominate decisions affecting farmers. The first priority was to “*create a burning platform of farm leadership*”, and consolidate industry representative groups to dilute the voice of growers. (48)

(47) Senate Rural and Regional Affairs and Transport References Committee (committee) inquiry, “The industry structures and systems governing the imposition of and disbursement of marketing and research and development (R&D) levies in the agricultural sector”, 24 November 2014, pg 7  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Rural\\_and\\_Regional\\_Affairs\\_and\\_Transport/Agriculture\\_levies/~media/Committees/rrat\\_ctte/Agriculture\\_levies/c01.pdf](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Agriculture_levies/~media/Committees/rrat_ctte/Agriculture_levies/c01.pdf)

(48) Grains Research & Development Corporation and Grains Council of Australia 2004, “Towards a Single Vision for the Australian Grains Industry 2005-2025” pg 9,10  
[https://grdc.com.au/\\_\\_data/assets/pdf\\_file/0020/75035/grdcstrategicplan20052025pdf.pdf](https://grdc.com.au/__data/assets/pdf_file/0020/75035/grdcstrategicplan20052025pdf.pdf)

GRDC’s annual report reveals a rare cash withdrawal of \$925,290 was contributed to Single Vision.

GCA00015	Hong Kong Ministerial—World Trade Organisation	17,950
GCA00016	Geneva Ministerial—World Trade Organisation	10,300
GCA00017	Seed Industry Consultation and Seed Industry Reference Group	17,500
GRD172	Global Crop Diversity Trust	1,182,529
GRD199	Single Vision Grains Australia	1,107,241*
GRD201	Graingene III	(1,030,918)
VRS3	Graingene III	2,061,835
	<b>TOTAL ENHANCED MANAGEMENT</b>	<b>3,410,757</b>
	<b>GRAND TOTAL</b>	<b>115,329,404</b>

\*Cash payments for the year—\$925,290

GRDC Annual Report 2006/07 (49) Note Ministers international obligations also imposed on farmers

Grains Council of Australia folded soon after and multiple amends to the PIRD Act disempowered grain farmers from decision making roles. As a result, it was considered legal to deny industry representative bodies being responsible for ensuring levies paid by grain producers (historically 64% of total levy funding) should have been invested to benefit grain producers, while remaining Government funding was for public benefit.

In 2020, after expiry of instruments, Ex Minister Littleproud changed the funding agreement to direct 100% of levy funds to Government priorities. (50)

DAFF’s annual reports incorrectly state GRDC levies collected are

*“Considered departmental for all purposes”.* (51)

2021, DAFF admits R&D levies relate to governments priorities, not levy payers priorities:

*“Levy recipient bodies (LRBs) LRBs are responsible for managing and investing levies in line with levy payer priorities, and government’s priorities where the investment is for R&D...”* (52)

This funding agreement effectively directs GRDC to prioritise Governments profitability, not grain growers profitability. GRDC needed to juggle the legal requirement to comply with the funding agreement with their legal objective to benefit grain farmers who fund the majority of levies.

GRDC only purpose: (53)

#### GRDC’s purpose

To invest in research, development and extension to create enduring profitability for Australian grain growers.

*PIRD Act: “GRDC Purpose, To Invest in research, development and extension to create enduring profitability for Australian Grain Growers.”*

2022: Yet all documentation related to these Bills still claim those funding a levy choose to fund the levy, choose the amount of levy or charge, and determine the purpose of levies.

(49) GRDC Annual Report 2006/07 pg 158. The only “cash” payment marked in financials.

(50) Minister Littleproud and GRDC, “2020-2030 Grains RDC Funding Agreement.

[https://grdc.com.au/\\_\\_data/assets/pdf\\_file/0021/437223/2020-2030-Grains-RDC-Funding-Agreement.pdf](https://grdc.com.au/__data/assets/pdf_file/0021/437223/2020-2030-Grains-RDC-Funding-Agreement.pdf)

(51) Department of Agriculture, Annual Report, 2018-19. Table 20: Entity resource statement, 2018-19 for special appropriations under the Primary Industries Research and Development Act 1989, s30(3), pg 75, 162, 170.

<https://www.awe.gov.au/sites/default/files/2020-01/annual-report-2018-19-agriculture.pdf>

(52) Department of Agriculture 2019, Streamlining and modernising agricultural levies legislation: Early assessment regulation impact statement, Canberra, October. CC BY 4.0. 22<sup>nd</sup> July, 2021, pg 21 <https://www.agriculture.gov.au/ag-farm-food/levies/levies-process-reform>

(53) GRDC Annual Report, 2022-2023,pg 5 <https://grdc.com.au/about/who-we-are/corporate-governance/annual-reports>

(54) Department of Agriculture, Fisheries and Forestry, “Levy and charge rates”, accessed 14.8.2022.

<https://www.agriculture.gov.au/agriculture-land/farm-food-drought/levies/rates>

These Bills contravene that legal requirement of levy taxes and any ability to cease levies has been removed. Farmers are no longer willing to support levies unless there is evidence of a benefit exceeding levies.

*“It is rarely recognised that farmers are responsible for paying the levies that have positioned the research sector at such a high level internationally. Compulsory levies paid by farmers are recognised as “Industry support” which could well be interpreted as willing investors.”* (55)

Levy paying producers are no longer “willing investors” as levies are increasingly being misappropriated. There will be uproar if these Bills go through and producers are finally aware of them as levies will no longer be accepted.

Multiple amendments in Bill 6 change the purpose of levies as Bills delete the requirement to benefit levy payers, and replace it with benefitting multitudes of industries that the Minister would like to designate to benefit. Bill 6 constantly repeats changing the purpose of who to benefit:

*Omit “in relation to the primary industry or class of primary industries in respect of which it was established”, substitute “for each designated primary industry sector in relation to the Corporation”.*

This effectively changes a levy to a tax which is not constitutionally compliant. These Bills should not apply to levies, as they are more applicable to entities receiving a general tax that is appropriated from consolidated revenue from treasury. Those that fund the levies should be responsible for directing their proportion of funds for the agreed purpose of the levy. The Minister enters into a funding agreement with levy recipients specifying terms and conditions regarding money paid by the Commonwealth will be spent. While only a Minister can introduce a Bill to appropriate money with the Governors consent, this should relate to public money, not hypothecated taxes.

Accountability only relate to government taxes once they have been received by Government, but accountability should extend to document the precise levies collected and the precise allocation specified by those funding levies. These Bills are a major extension of the abuse currently occurring with levies that escape the standard accountability obligations applicable to government entities and businesses.

**R&D levies fail to comply with law now. Senate cannot approve these Bills as they are a discriminatory, unlimited tax and well beyond the power of the Constitution.**

### **1.10 Levy Bills expand levies beyond production to a tax on products used:**

Levies will be extended to apply beyond production, to products used, and can include paying costs of multitudes of upstream and downstream industries and individuals. These Bills extend beyond a production business as they apply to a gardener simply growing their own food for their own use, or the underprivileged collecting their own wild mushrooms, rabbits, fish etc. for food. An addition legal imposition on producers is to provide any information requested which could include precise detail of how to manage the producer’s business, as this information can be marketable intellectual property if producers are forced to sell their business. Producers will be forced to permit free access to their property for enforcement.

**Senate cannot approve Bills that deny such basic human rights.**

### **1.11 Legal compliance must be demanded**

Constitution s75(v) states Commonwealth must uphold the rule of law. Courts are the defence to departmental aggression by bringing unlawful executive action under control. (56)

(55) Ernst & Young, Agricultural Innovation — A National Approach to Grow Australia’s Future Summary report March 2019, pg 3. <https://www.agriculture.gov.au/sites/default/files/sitecollectiondocuments/agriculture-food/innovation/summary-report-agricultural-innovation.PDF>

(56) John McMillan, The Ombudsman and the Rule of Law, AIAL Forum, No. 44. <https://www8.austlii.edu.au/au/journals/AIAdminLawF/2005/1.pdf>

Government employees, politicians and companies are not exempt from law.

Please forward this submission and your comments to relevant legal departments in the process to ensure those responsible for criminal offences are prosecuted.

Legal Departments include, but not limited to:

- ASIC
- Office of Constitutional Law Branch
- Office of Parliamentary Counsel
- Attorney General's Department
- Criminal Justice Division
- Ministerial Standard Ethics
- Criminal Law Liason Officer of the Office of Parliamentary Council (OPC).
- International Law and Human Rights Division
- Human Rights Branch
- Modern Slavery Branch
- Privileges Committee regarding contempt related to disregard for something that should be considered.

Reasons include, but not limited to:

1. Parliament and producers have been deliberately misled;
2. Procedural fairness has been denied;
3. Bills fail to comply with human rights and statement is misleading;
4. Bills fail to comply with the constitution and statement is misleading;
5. Bills fail to comply with existing laws;
6. Existing levies fail to comply with law; and,
7. Levies have been misappropriated.

Accused include, but not limited to:

- The Minister for Agriculture, Senator Murray Watt;
- the Shadow Minister for Agriculture, MP David Littleproud, House of Representatives;
- secretary and staff of Department of Agriculture, Fisheries and Forestry;
- management of Grains Research and Development Corporation (GRDC); and,
- GRDC and other levy recipient bodies.

#### Relevant Sections of specific laws:

In a case in which an offence may be adjudged a breach of privilege or a contempt but also an offence at law, or in which penalties available to the House are considered inadequate, or for some other reason, the House may choose not to exercise its power of punishment. Alternatively, it is a recognised right of a House to request government law officers to prosecute an alleged offender and it would also be possible to initiate a private prosecution. Section 10 of the *Parliamentary Precincts Act 1988* provides that the functions of the Director of Public Prosecutions in respect of offences committed in the precincts shall be performed in accordance with general arrangements agreed between the Presiding Officers and the Director of Public Prosecutions.

(57)

(57) Parliament of Australia, "Penal Jurisdiction of the House", House of Representatives Practice (5<sup>th</sup> edition), Chapter 19 Parliamentary Privilege,

[https://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/practice5/chapter19#for](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/practice5/chapter19#for)

**i. Criminal Activity:**

*Criminal Code Act 1995:*

Multiple sections of the Criminal Code Act 1995 appear to be very applicable. For example, can the current funding agreement be considered conspiracy to fraudulently misappropriate millions of dollars of levies every year? *Criminal Code Act 1995, 131.1, 132.8, 134.1*

<b>Criminal Code Act 1995</b>					
S134.2	S135	S135.4	S136 & 137	S141 & 142	S142
obtaining a financial advantage by deception	General dishonestly that may cause a loss or a gain	Conspiring to defraud to obtain a gain, or cause a loss	False or misleading statements	Commonwealth public official being involved in giving or receiving bribes.	Abuse of position in public office
10 yrs Prison	10 yrs prison	10 yrs prison	1 yr prison	5 yrs prison	5 yrs prison

“ 5.4 Recklessness

- (1) A person is reckless with respect to a circumstance if:
  - (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and
  - (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.
- (2) A person is reckless with respect to a result if:
  - (a) he or she is aware of a substantial risk that the result will occur; and
  - (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.
- (3) The question whether taking a risk is unjustifiable is one of fact.
- (4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element.

5.5 Negligence

A person is negligent with respect to a physical element of an offence if his or her conduct involves:

- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
- (b) such a high risk that the physical element exists or will exist; that the conduct merits criminal punishment for the offence.”

**Crimes Act 1900:** Multiple sections are applicable, including: fraud and embezzlement.

**Misappropriation of Levy Funds:**

GRDC is a Corporate Commonwealth entity established by regulation under an Act and/or by a rule under the PGPA Act, subject to the requirements of the Commonwealth Procurement Rules (CPR's); and, do not engage staff under the Public Service Act 1999. (58)

**ii. Who is the body to promote compliance in GRDC?:**

Imagine any other business offering investors the opportunity to invest in a research project that has short term losses but long-term benefits. Once established, the investment company then uses those funds to profit his own businesses who use funds to support the opposition of the investor. It would be well beyond logic if this company was still permitted to force investors to not only continue to fund the investment, but is permitted full access to the investors’ gross income.

(58) Australian Government Department of Finance, “Flipchart of PGPA Act Commonwealth entities and companies (190)”, 15 November 2022. [https://www.finance.gov.au/sites/default/files/2022-11/Flipchart%2015%20November%202022%20-%20FINAL\\_0.pdf](https://www.finance.gov.au/sites/default/files/2022-11/Flipchart%2015%20November%202022%20-%20FINAL_0.pdf)

A good investment deal was offered to grain farmers to invest in GRDC providing the sole purpose was to increase the profitability of grain farmers. The Minister was to be the solution to ensure GRDC complied with the purpose to benefit investors. Instead, the Minister directed funding to improve profitability of his portfolio. Bills allow the Minister to increase rates, change the purpose of levies enabling GRDC to form partnerships where grain farmers pay the costs and losses and liabilities of multiple entities. Grain producers are not aware the Minister is the problem, not the solution.

GRDC levies fail to comply with law. GRDC, it is a corporate company that is regulated by Corporations Law. It should not be inappropriate to deny reimbursing any misappropriated funds back to producers. These uncapped levy Bills should certainly not be accepted.

### iii. Preparation of illegal Bills:

Parliament can't make laws to break laws. The underpinning fault of Bills is allowing the Minister to be exempt from standard laws, in order to prepare his own unrestricted laws by instruments. This includes imposing taxes, increasing rates and misappropriating levy funds which is well beyond the power of the Constitution. These Bills relate to a tax, yet every tax and every rate change must be approved by both houses of parliament, must involve those that will be adversely affected, and must comply with law. This is well beyond the power of a Minister.

### **Legislation Act 2003**

#### **8** Definition of *legislative instrument*

Example 1: A primary law provides that "The Minister may, by legislative instrument, determine licence conditions for the purposes of this section."

(4) An instrument is a *legislative instrument* if:

- (a) the instrument is made under a power delegated by the Parliament; and
- (b) any provision of the instrument:

(i) determines the law or alters the content of the law, rather than determining particular cases or particular circumstances in which the law, as set out in an Act or another legislative instrument or provision, is to apply, or is not to apply; and

(ii) has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

#### **13** Construction of legislative instruments and notifiable instruments

(1) If enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then, unless the contrary intention appears:

- (a) the *Acts Interpretation Act 1901* applies to any instrument so made as if it were an Act and as if each provision of the instrument were a section of an Act; and
- (b) expressions used in any instrument so made have the same meaning as in the enabling legislation as in force from time to time; and
- (c) any instrument so made is to be read and construed subject to the enabling legislation as in force from time to time, and **so as not to exceed the power of the person to make the instrument.**

(2) If the making of a legislative instrument or notifiable instrument would, apart from this subsection, be construed as being in excess of the power to make the instrument, it is to be taken to be a valid instrument to the extent to which it is not in excess of that power.

Procedural fairness has been denied:

*"A fair procedure for decision making is an important component of the rule of law. The common law recognises a duty to accord a person procedural fairness—a term often used interchangeably with natural justice—before a decision that affects them is made."* (59)

*"In 2015, the High Court succinctly stated that, in 'the absence of a clear, contrary legislative intention, administrative decision-makers must accord procedural fairness to those affected by their decisions'."* (60)

(59) Australian Law Reform Commission, "Procedural Fairness" 14.1, 2019.

[https://www.alrc.gov.au/wp-content/uploads/2019/08/fr\\_129ch\\_14.\\_procedural\\_fairness.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/fr_129ch_14._procedural_fairness.pdf)

(60) Ibid

The first priority on the OECD Principles for Transparency and Integrity in Lobbying is:

*"1. Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies."* (61)

#### **Constitutional compliance when preparing Bills:**

It should be a major offence to not only mislead the Attorney General and Ombudsman, but to impose conditions in Bills to continue to mislead them to deliberately evade constitutional obligations.

The definition of an "excise" tax has been clearly defined by many High Court decisions. A tax cannot be charged for services rendered, or imposed as punishment for the "crime" of being a producer. All excise taxes must be paid to consolidated revenue and distributed for the purpose they were intended. As the Primary Industry Bills involve legislation proposals and administrative law, the Attorney General and Commonwealth Ombudsman should have been provided accurate information in support of these Bills. (62)

The Governor General's primary role claims to ensure the law is applied equally and fairly to ensure no-one is above the law, and includes the assurance that:

- the law and its administration should be subject to laws being made in an open and transparent way with open and free criticism;
- financial punishment should only be used for breaking the law, not for others making a discriminatory law; and,
- to uphold the separation of powers between legislature, executive and judiciary. (63)

#### **iv. Other applicable laws:**

**Acts Interpretation Act 1901:** Section 2 B, 32. Any instruments, rules, guidelines, must have the same definition of relevant acts. Therefore, it is not legal for guidelines to have different definitions. Changing the definition of "levy payer" is not legal as it is deceptive to claim the industry deducting levies from farmers payments is the "levy payer" that should be prioritised in decision making. Changing the definition of the relevant "industry" public from farmers to the levy recipient is certainly not legal. The "relevant public" that should be the beneficiary of levies is the farmers that pay the levies, not levy recipients.

#### **Appropriation Act (No 2) 2010-2011**

#### **Australian Human Rights Commission Act, 1986**

**Australian Securities and Investment Commission Act 2001:** Multiple sections are applicable regarding the contracted commitment between farmers and Government to self-impose a tax to benefit farmers. This Act is also very relevant in the imposition of end point royalties and downgrading of grain varieties.

**Constitution** Every law must comply with the constitution, including section: s44 (iv), s51 (ii) ;51 (xxxi); 81; 83; 99; 117 are relevant. S117 is relevant regarding discrimination, particularly discrimination against WA farmers evident in GRDC levy expenditure .

**Commonwealth of Australia Constitution Act Section:** 44 (iv); 51(ii); 51 (xxxi); 75 (v); 81; 83; 90; 99; and, 117.

**Commonwealth Procurement Rules:** Section: 4.2; 5; 6.1; 6.5; 6.6; 105 IB1) Discrimination, dishonest and unethical decisions can not be made from an improper use of an individuals position.

**Corporations Act 2001:** multiple sections are applicable. An "investment contract" also refers to people contributing money to acquire rights to benefits produced.

#### **Crimes Act 1900**

#### **Criminal Code Act 1995**

(61) OECD, "Lobbying in the 21st Century : Transparency, Integrity and Access", Box 1.1. OECD Principles for Transparency and Integrity in Lobbying (extract), I. Building an effective and fair framework for openness and access Source: For the full text, see OECD/LEGAL/0379 and C/M(2010)3/PROV. [https://www.oecd-ilibrary.org/sites/c6d8eff8-en/1/3/1/index.html?itemId=/content/publication/c6d8eff8-en&\\_csp\\_=381daa981c42f6b279b070444f653f78&itemIGO=oecd&itemContentType=book](https://www.oecd-ilibrary.org/sites/c6d8eff8-en/1/3/1/index.html?itemId=/content/publication/c6d8eff8-en&_csp_=381daa981c42f6b279b070444f653f78&itemIGO=oecd&itemContentType=book)

(62) Department of the Prime Minister and Cabinet, "Cabinet Handbook", 15<sup>th</sup> edition. Pg 36.  
<https://www.pmc.gov.au/sites/default/files/resource/download/cabinet-handbook-15th-edition.pdf>

(63) Rule of law education centre, "Role of the Attorney General" <https://www.ruleoflaw.org.au/proper-role-attorney-general-australia/>

**Excise Act 1901:** 4AAA. This Act ensures all Acts, rules, regulations, or by laws made regarding excise taxes, remain valid and within Commonwealth powers.

**Grains Research and Development Corporation Regulations 1990** regulation 4

**Human Rights and Equal Opportunity Commission Act 1986**

**Human Rights (Parliamentary Scrutiny) Act, 2011**

**Human Rights Commission Act 1981**

**Human Rights and Equal Opportunity Commission Act 1986,** s3

**Human Rights (Parliamentary Scrutiny) Act, 2011,** s4, 7, 8

**Legislation Act 2003:** Section: 3 (g); 19; 42, 44. Rule makers must abide with law, and any rules made by anyone in a position of management, must comply with law.

**Parliamentary Secretaries Act 1980**

**Primary Industries (Excise) Levies Act 1999**

**Primary Industries (Excise) Levies Regulations 1999**

**Primary Industries Levies and Charges Collection Act 1991:** Section 7A (4). *“The Minister may... only issue guidelines that will not alter law or create privilege, interest, or right”*; 11- 14. Both the Minister for Agriculture, and the Secretary of the Department of Agriculture must comply to ensure levy guidelines and funding agreements comply with law.

**Primary Industries Research and Development Act 1989:** Multiple sections are applicable. Section: 1; 3; 8, 11, 28, 33, 150. Note, changing the definition of the relevant “industry”, or “levy payer”, does not comply with law. Note, s3 is only valid if the beneficiary is the farmers who pay the levy.

**Public Governance, Performance and Accountability Act 2013:** Section: 15; 26; 27; 37; 51; 52; 69; 70; 71; 86; 89. A Minister can only use farmers contributions to levies to benefit farmers.

Part 2-4—Use and management of public resources

s69 Relates to Misconduct and the liability for loss

*“(1) A Minister or an official of a non-corporate Commonwealth entity is liable to pay an amount to the Commonwealth if:...*

*(b) the Minister or official caused or contributed to the loss by misconduct, or by a deliberate or serious disregard of reasonable standards of care...*

*(2) The amount the Minister or official is liable to pay under subsection (1) is so much of the loss as is just and equitable having regard to the Minister’s or official’s share of the responsibility for the loss.”*

70, 71. Relates to the Liability of Ministers and officials.

**Ministerial Standard Ethics:** section 1; 3; 5; 7.2; 7.3. Ensures corrupt behavior is not tolerated by any Minister, and Ministers must comply with law, and ensure all public servants comply with law. *“Ministers will be required to resign if convicted of a criminal offence, and may be required to resign if the Prime Minister is satisfied that they have breached or failed to comply with these standards...”*

**Public Interest Disclosure Act 2013:** Section 29. This Act relates to wrongdoing by public officials or contracted service if this conduct contravenes law, corrupt, unreasonable, unjust, fabrication, deception regarding scientific research, wastage of prescribed money etc. *“An Act to facilitate disclosure and investigation of wrongdoing and maladministration in the Commonwealth public sector, and for other purposes.”*

**Public Service Act 1999**

Agency Minister means:

*(a) in relation to a Department—the Minister who administers the Department; ...*

*“...14 Agency Heads and statutory office holders bound by Code of Conduct*

*(1) Agency Heads are bound by the Code of Conduct in the same way as APS employees...”*

*“s13 The APS Code of Conduct*

*(4) An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:*

*(a) any Act (including this Act), or any instrument made under an Act; or*

*(b) any law of a State or Territory, including any instrument made under such a law...*



(8) *An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.*

(9) *An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment...*

**United Nations International Covenant on Economic, Social and Cultural Rights 1966.**

**UN International Covenant on Civil and Political Rights.**

There are multiple laws that the Minister and DAFF and levy recipient bodies must comply with. Preparing wish-list Bills and presenting false and misleading information in order to permit the Minister to make his own laws, is illegal. Legal action will be required to be taken in order for producers to remain viable.

## 1.12 Questions:

The main question is how could these Bills get this far without adequate scrutiny before being passed in the House of Representatives? They are a waste of parliaments time and those that prepared these Bills must be held accountable. All Bills presented permit the Minister the legal power to impose a tax of any amount on gross incomes, and control the appropriation of this tax while denying objection by those that fund it.

Primary Industries (Services) Levies Bill 2023:

Why is this Bill presented? A Service Tax is not legal as it is a breach of Constitution s51 (ii), it has been well established that a tax of any kind cannot be charged for services rendered at Federal level (64)

It is certainly not legal to allow the Minister to set the rates (s8) and deny consultation (s21) *"the fact that consultation... does not occur does not affect the validity or enforceability of the regulations."*

Are producers expected to fund financial losses of levy recipient bodies AND their associated partners due to poor investment partner management (s18)?

Primary Industries (Consequential Amendments and Transitional Provisions) Bill 2023:

1 (3) Does this mean that if levy payers of levy-payer owned entities vote to remove or reduce a levy, the Minister can override this vote?

Schedule 3 s8: How can the first set of regulations escape scrutiny when they are setting tax amounts, and purposes, and therefore must legally be presented with Bills with evidence of support from producers, not those receiving levies?

If existing illegal instruments are adopted after Bills have passed, how can the instrument be accepted by making a law to escape the necessary consultation with producers, compliance with human rights, compliance with the Constitution, and political scrutiny by House of Representatives and Senate?

Primary Industries Levies and Charges Collection Bill 2023:

Under s31, Government is refusing to honour their promise to keep levy payer information confidential.

Under this Bill, confidential information of all producers is to be provided to "an entrusted person" in all levy recipient bodies, and any industry body the Minister decides is representative. DAFF can profit by distributing this information, plus demand more information when requested which can be enforced. These Bills are evidence DAFF should not be the relevant "trusted person", and already GRDC are contacting growers to milk them for information on how they farm. It is an imposition to expect producers to write to the DAFF Secretary if they find out the reason why multiple mobile phone marketers are contacting them, and why DAFF is in their home demanding compliance and issuing penalties for not complying.

Explanatory Memorandum pg 31 Does this permit Government access to the multi-million dollar reserves to falsely prop up the budget?

(64) Hon Justice Michelle Gordon, "The Commonwealth's taxing power and its limits – are we there yet?" Melbourne University Law Review, " Vol 36, 1027. 29<sup>th</sup> August, 2012.

[https://law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0013/1700122/36\\_3\\_7.pdf](https://law.unimelb.edu.au/__data/assets/pdf_file/0013/1700122/36_3_7.pdf)

## 1.13 Resolutions

Under Senate standing order 24 related to scrutiny of Bills:

- These levy and charge Bills trespass unduly on personal rights and liberties;
- make rights, liberties and obligations unduly dependent upon insufficiently defined administrative powers;
- make rights, liberties or obligations unduly dependent upon nonreviewable decisions;
- inappropriately delegate legislative powers; and
- insufficiently subject the exercise of legislative power to parliamentary scrutiny.

I respectfully request your committee return these Bills to the house of representatives for failure to comply with process, law, the constitution and human rights as they have not complied with any of the legislated compliance requirements your committee must assess.

1. As these Bills do not comply with the Constitution, accordingly, under s75 (v), an injunction must be sought, and the High Court should have jurisdiction to make a Constitutional ruling regarding these illegal levies;
2. Under S53 & s57 of the Constitution the Senate can reject these Bills to be returned to House of Representatives claiming misleading documentation, failure to comply with human rights and law, and lack of constitutional power to allow a Minister with a conflict of interest to make taxation laws including setting rates in unscrutinised legislated instruments, and appropriations in regulations that can escape parliamentary scrutiny;
3. This submission and further findings by your committee, be forwarded for legal review, and associated legal penalties administered;
4. Senate review on producers' issues with levies, and to include escalating End Point Royalties to fund plant breeding, which is what GRDC were set up to fund. These costs now exceed GRDC levies and GRDC profit from owning shares in these companies;
5. Under s75 (v), an injunction must be sought. The High Court should have jurisdiction to make a Constitutional ruling to correct existing and future illegal abuse of levies;
6. All misleading information must be corrected, with a public apology to producers;
7. Existing levies should be thoroughly checked for compliance with all laws;
8. Documentation must be improved and wheat levy rate to drop in line with other grains. Documentation does not ensure levies collected match levies appropriated. The wheat levy rate is set at 3% from gross farm gate value, not 1% in line with other grains or in documentation of levies deducted. This was in place to provide "matching" funding for Government owned AWB<sup>(65)</sup>, and funds were deducted before forwarding levies to Government <sup>(66)</sup>. This is an avenue for abuse as wheat levies may be currently abused to fund grain buyers who may fund political parties without documentation;
9. Due to Government ignoring producers' contributions, ABARES should provide detail of exactly how much farmers have historically, and are currently, forced to fund Government <sup>(67)</sup>.; and,
10. Ministers must ensure any funds appropriated for producers, are used for the purposes they are appropriated for. As the Minister representing agriculture, fisheries and forestry, has such an unconstitutional conflict of interest, producers need a Minister that can represent their interests.

(65) Questions were left unanswered as Vice President of WA farmers grains council, when AWB delayed payments, then refused to pay wheat farmers final wheat pool payment (mainly WA) as farmers were forced to fund AWB's liabilities, which included 1million tonne (approx \$250m) of wheat missing from Queensland. AWB also funded farm lobby groups.

(66) Wheat Tax Act, 1979 (s4)

(67) My request was denied when I sent detail of all associated laws and the limited information available. Continual excessive additional taxes based on gross incomes have been imposed on wheat and wool producers since 1813, and provided the primary funding for both State and Federal Governments. Additional levy taxes were imposed to fund the establishment of the diverse Ministers portfolio until illegal discriminatory taxes were finally ceased after Constitutional review. Abuse of levies, and these Bills regress back to illegal discriminatory taxes.