

OILSEEDS LEVY COLLECTION AND RESEARCH ACT 1977

No. 113 of 1977

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation
4. Act to bind Crown

PART II—COLLECTION OF LEVY

5. Time for payment of levy
6. Liability of purchaser or receiver
7. Penalty for non-payment
8. Recovery of levy
9. Refund of levy

PART III—OILSEEDS RESEARCH TRUST ACCOUNT

10. Oilseeds Research Trust Account
11. Moneys to be paid into the Research Account
12. Application of the Research Account
13. Agreement for carrying out of research
14. Oilseeds Research Committee
15. Constitution of Committee
16. Chairman of the Committee
17. Deputy members
18. Remuneration and allowances
19. Termination of office of member or deputy member
20. Resignation of member or deputy member
21. Meetings of Committee
22. Appointment of advisors

PART IV—MISCELLANEOUS

23. Power to call for returns
24. Access to premises
25. Offences in relation to returns, &c.
26. Averments
27. Appointment of authorized persons
28. Annual report
29. Regulations

OILSEEDS LEVY COLLECTION AND RESEARCH ACT 1977

No. 113 of 1977

An Act to provide for the collection of levy imposed by the *Oilseeds Levy Act 1977* and to establish an Oilseeds Research Trust Account.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

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|---------------------|--|
| Short title | 1. This Act may be cited as the <i>Oilseeds Levy Collection and Research Act 1977</i> . ¹ |
| Commence-
ment | 2. This Act shall come into operation on the day on which the <i>Oilseeds Levy Act 1977</i> comes into operation. |
| Interpret-
ation | 3. (1) In this Act, unless the contrary intention appears—
“authorized person” means a person who is, by virtue of an appointment under section 27, an authorized person for the purposes of the provision in which the expression occurs;
“Committee” means the Oilseeds Research Committee established by this Act;
“deputy member” means a person appointed under section 17 as the deputy of a member;
“Levy Act” means the <i>Oilseeds Levy Act 1977</i> ;
“member” means a member of the Committee;
“month” means a month of the year;
“research” means scientific, technical or economic research in connexion with leviable oilseeds or products derived from leviable oilseeds, and includes—
(a) the training of persons for the purpose of any such research;
(b) the publication of reports, periodicals, books and papers in connexion with such research;
(c) the dissemination of information and advice in connexion with scientific, technical or economic matters related to the production, distribution, marketing or use of leviable oilseeds or products derived from leviable oilseeds; and |

- (d) any matter incidental to a matter referred to in this definition;
- “Research Account” means the Oilseeds Research Trust Account established by this Act.

(2) For the purposes of this Act—

- (a) a person is the purchaser of leviable oilseeds if he is liable to pay the grower of the oilseeds for the oilseeds; and
- (b) a person is the receiver of leviable oilseeds if the oilseeds are delivered to him by the grower of the oilseeds and no person is liable to pay the grower for the oilseeds.

4. This Act binds the Crown in right of a State.

Act to bind
Crown

PART II—COLLECTION OF LEVY

5. Levy on leviable oilseeds is due and payable upon the expiration of 28 days, or such longer period as is from time to time prescribed, after the last day of—

Time for
payment of
levy

- (a) in the case of leviable oilseeds delivered by the grower of the oilseeds to another person—the month in which they were so delivered or, if the weight of leviable oilseeds of all kinds delivered to that person by growers in the levy year in which that month occurs reaches the exempt weight in a later month, that later month; or
- (b) in the case of leviable oilseeds processed by the grower of the oilseeds—the month in which the oilseeds were so processed.

6. (1) For the better securing of the payment of levy, the purchaser or receiver of any leviable oilseeds (being a purchaser or receiver in Australia) is liable to pay to the Commonwealth, on behalf of the grower, an amount equal to any levy on the leviable oilseeds that has become payable by the grower that has not been paid to, or recovered by, the Commonwealth.

Liability of
purchaser or
receiver

(2) Notwithstanding any law of a State or Territory or any agreement to the contrary, the purchaser of any leviable oilseeds may, for the purpose of providing the purchaser with the funds necessary for the due payment by the purchaser, on behalf of the grower, of an amount (in this sub-section referred to as the “amount of the purchaser’s liability”) that may become payable by the purchaser under sub-section (1) in respect of levy payable on those leviable oilseeds, deduct from the amount payable by the purchaser for those leviable oilseeds an amount equal to the amount of, or the amount that may reasonably be expected to be the amount of, the purchaser’s liability and, if the amount is so deducted, the grower is, upon that levy becoming payable, discharged from liability to pay that levy to the extent of the amount so deducted, but the liability of the purchaser under sub-section (1) is not affected.

(3) Where, under sub-section (1), an amount in respect of levy payable by the grower of any leviable oilseeds is paid on behalf of the grower by, or is recovered by the Commonwealth from, the purchaser—

- (a) the grower is, to the extent of the amount so paid or recovered, discharged from so much of his liability to the Commonwealth to pay that levy as has not previously been discharged by virtue of sub-section (2); and
- (b) the purchaser may recover from the grower, by set-off or otherwise, an amount equal to the amount so paid by, or recovered from, the purchaser in respect of that levy to the extent that that amount exceeds the amount of moneys (if any) with which the purchaser has been provided for the purpose of providing the purchaser with funds for the payment by the purchaser, on behalf of the grower, of an amount in respect of the levy.

(4) Where, under sub-section (1), an amount in respect of levy payable by the grower of any leviable oilseeds is paid on behalf of the grower by, or is recovered by the Commonwealth from, the receiver of the oilseeds—

- (a) the grower is discharged from liability to pay that levy to the extent of the amount so paid or recovered; and
- (b) subject to any agreement between the receiver and the grower, the receiver may recover from the grower an amount equal to the amount so paid by, or recovered from, the receiver.

Penalty for
non-
payment

7. (1) Where the liability of the grower of any leviable oilseeds to pay levy is not discharged at or before the time when that levy is due and payable, there is payable to the Commonwealth by way of penalty, in addition to that levy, an amount calculated at the rate of 10 per centum per annum upon that levy or upon that part of that levy from time to time remaining unpaid, to be computed from the time when that levy became payable.

(2) A penalty under sub-section (1) is payable—

- (a) where the penalty relates to levy in respect of leviable oilseeds delivered by the grower of the oilseeds to another person—by that other person; or
- (b) where the penalty relates to levy in respect of leviable oilseeds processed by the grower of the oilseeds—by the grower.

(3) Where—

- (a) the purchaser of any leviable oilseeds has, in pursuance of sub-section 6 (2), made a deduction in respect of levy payable on the oilseeds from an amount payable by the purchaser for those oilseeds; and

- (b) the purchaser has not, at or before the time when, under section 5, the levy becomes due and payable by the grower, paid to the Commonwealth, on behalf of the grower, the whole or any part of the amount so deducted,

there is payable by the purchaser to the Commonwealth by way of penalty, in addition to the amount payable by the purchaser to the Commonwealth under sub-section 6 (1), an amount calculated at the rate of 10 per centum per annum upon the amount of the deduction, or so much of that amount as has not been paid to the Commonwealth, to be computed from the time when the levy became due and payable.

(4) The Minister or an authorized person may, in a particular case, for reasons that the Minister or the authorized person, as the case may be, in his discretion thinks sufficient remit the whole or a part of an amount payable under this section.

(5) A remission granted under sub-section (4) by an authorized person shall not exceed \$100.

8. The following amounts shall be deemed to be debts due to the Commonwealth: Recovery of levy

- (a) levy that is payable;
- (b) an amount that is payable to the Commonwealth under sub-section 6 (1); and
- (c) an amount that is payable by way of penalty under section 7.

9. (1) Where any levy or penalty under section 7 has been overpaid, the amount overpaid shall be refunded by the Commonwealth. Refund of levy

(2) Where—

- (a) an amount is to be refunded by the Commonwealth in accordance with sub-section (1) of this section; and
- (b) that amount has been taken into account in calculating an amount to be paid into the Research Account under paragraph 11 (1) (a),

the amount of the refund shall be paid from the Research Account.

PART III—OILSEEDS RESEARCH TRUST ACCOUNT

10. (1) An account is hereby established to be known as the Oilseeds Research Trust Account. Oilseeds Research Trust Account

(2) The Research Account is a Trust Account for the purposes of section 62A of the *Audit Act* 1901.

Moneys to
be paid into
the Research
Account

11. (1) There shall be paid into the Research Account—

- (a) amounts equal to the amounts from time to time received by the Commonwealth—
 - (i) as levy;
 - (ii) in discharge of the liability of a person under sub-section 6 (1); and
 - (iii) as penalty under section 7;
- (b) subject to sub-section (2), amounts equal to one-half of the amounts from time to time payable out of the Research Account in accordance with this Act;
- (c) moneys paid by any person to the Commonwealth for the purposes of the Research Account;
- (d) moneys received by the Commonwealth from the sale of any land or goods bought or produced, or in respect of work paid for, out of moneys paid out of the Research Account; and
- (e) interest from the investment of moneys standing to the credit of the Research Account.

(2) The sum of the amounts paid into the Research Account by virtue of paragraph (1) (b) shall not exceed the sum of the amounts paid into the Research Account by virtue of paragraph (1) (a) (other than amounts related to amounts received by the Commonwealth by way of penalty) less the amount of any refunds of levy paid under sub-section 9 (2).

(3) Amounts payable into the Research Account by virtue of paragraph (1) (a) or (b) are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

Application
of the
Research
Account

12. (1) Subject to this section, moneys standing to the credit of the Research Account may be expended—

- (a) with the approval of the Minister, for the purpose of research;
- (b) in payment of the expenses incurred by the Committee in the performance of its functions;
- (c) in payment of remuneration, expenses and allowances payable to a member, or a deputy member, under section 18; and
- (d) in payment of fees, expenses and allowances payable to persons appointed under section 22.

(2) The Minister shall not exercise his power under paragraph (1) (a) to approve the expenditure of moneys from the Research Account unless—

- (a) the Committee has recommended the expenditure of those moneys; and

- (b) the Minister is satisfied that any research to be undertaken as a result of the payment is not to be undertaken by the Commonwealth Scientific and Industrial Research Organization, the Department of Primary Industry through the Bureau of Agricultural Economics, a Department of Agriculture of a State or a university in Australia or, if it is to be so undertaken, is to be so undertaken only by reason of the payment.

13. (1) The Minister, or an officer of the Australian Public Service for the time being authorized by the Minister, in writing, to act under this section, may, on behalf of the Commonwealth, enter into agreements for the purposes of, or for purposes in connexion with, any research to be done or performed with moneys provided in whole or in part out of the Research Account.

Agreement
for carrying
out of
research

(2) Without limiting the generality of sub-section (1), an agreement made with a person under that sub-section in relation to moneys provided out of the Research Account may—

- (a) provide for the moneys to which the agreement relates and any property acquired with those moneys or with moneys that include those moneys to be used only for purposes specified in the agreement and for the payment by the person to the Commonwealth for the purpose of the Research Account, in the event of any of those moneys or any of that property being used for a purpose not specified in the agreement, of an amount equal to the whole, or such part as the Minister determines, of those moneys;
- (b) provide for the payment by the person to the Commonwealth for the purposes of the Research Account of an amount equal to the whole, or such part as the Minister determines, of any net income derived by the person from—
 - (i) property acquired with moneys to which the agreement relates or with moneys that include those moneys; or
 - (ii) patents for inventions made, or any other property acquired, in the course of carrying out research or doing any other act or thing with those moneys or with moneys that include those moneys,

or for the assignment by the person to the Commonwealth of any property referred to in sub-paragraph (i), of any patents for inventions or other property referred to in sub-paragraph (ii) or of any such invention or any interest that he may have in any such invention; and

- (c) provide for the payment by the person to the Commonwealth for the purposes of the Research Account, in the event of the disposal otherwise than to the Commonwealth of any property of a kind referred to in paragraph (b), of an amount equal to the whole, or such part as the Minister determines—

- (i) in the case of a disposal by way of a sale or assignment for value—of the net proceeds of the sale or assignments; and
- (ii) in any other case—of the value of the property as determined by the Minister.

Oilseeds
Research
Committee

14. (1) For the purposes of this Act, there shall be an Oilseeds Research Committee.

(2) The function of the Committee is to make recommendations to the Minister with respect to the expenditure of moneys standing to the credit of the Research Account.

Constitution
of
Committee

15. (1) The Committee shall consist of—

- (a) one member to represent the oilseed growers of New South Wales;
 - (b) one member to represent the oilseed growers of Victoria;
 - (c) one member to represent the oilseed growers of Queensland;
 - (d) one member to represent the oilseed growers of South Australia;
 - (e) one member to represent the oilseed growers of Western Australia;
 - (f) one member to represent the organization known as the Australian Agricultural Council;
 - (g) one member to represent the Commonwealth Scientific and Industrial Research Organization;
 - (h) one member to represent Australian universities; and
 - (j) one member to represent the Department of Primary Industry.
- (2) The members shall be appointed by the Minister.

(3) A member referred to in paragraphs (1) (a) to (e) (inclusive) shall be appointed on the nomination of the growers' organizations.

(4) A member referred to in paragraphs (1) (f) to (j) (inclusive) shall be appointed on the nomination of the organization or of the organizations, as the case may be, that he is to represent.

(5) A member holds office, subject to this Act, for such period, not exceeding 3 years, as the Minister specifies in the instrument of his appointment, but is eligible for re-appointment.

(6) The appointment of a member is not invalidated and shall not be called in question by reason of a defect or irregularity in connexion with his nomination.

(7) The exercise of a power or the performance of a function by the Committee is not invalidated by reason only of there being a vacancy or vacancies in the membership of the Committee.

16. The member representing the Department of Primary Industry shall be the Chairman of the Committee.

Chairman of
the
Committee

17. (1) A member may, with the approval of the Minister, appoint a person to be his deputy.

Deputy
members

(2) A member may revoke the appointment of a person as his deputy, but the revocation is not effective until the member has given notice of it in writing to the Minister.

(3) The deputy of a member is entitled in the event of the absence of the member from a meeting of the Committee to attend that meeting and, when so attending, shall be deemed to be a member and, if he is the deputy of the Chairman of the Committee, shall be deemed to be the Chairman.

18. (1) Subject to this section, a member or a deputy member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

Remuner-
ation and
allowances

(2) Subject to this section, a member and a deputy member shall be paid such allowances as are prescribed.

(3) Sub-sections (1) and (2) do not apply to a member referred to in paragraph 15 (1) (g) or (j) or to the deputy of such a member.

(4) If a member or a deputy member is also a member of, or a candidate for election to, the Parliament of the Commonwealth or a State, he shall not be paid any remuneration under sub-section (1) or allowances under sub-section (2) but shall be reimbursed such expenses as he reasonably incurs in respect of his holding his office of member or deputy member.

(5) This section has effect subject to the *Remuneration Tribunals Act* 1973.

19. (1) The Minister may terminate the appointment of a member or deputy member by reason of the misbehaviour, incompetence or the physical or mental incapacity of the member or deputy member.

Termination
of office of
member or
deputy
member

(2) The Minister may, at the request of the organization or organizations that a member represents, terminate the appointment of that person as a member.

20. A member or a deputy member may resign his office by writing under his hand delivered to the Minister.

Resignation
of member
or deputy
member

21. (1) The Committee shall hold such meetings as are necessary for the performance of its functions.

Meetings of
Committee

(2) At a meeting of the Committee the Chairman and 4 other members constitute a quorum.

(3) The Chairman shall preside at all meetings of the Committee.

(4) Questions arising at a meeting of the Committee shall be determined by a majority of the votes of the members present and voting.

(5) The Chairman has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Appoint-
ment of
advisors

22. (1) The Minister, or an officer of the Australian Public Service for the time being authorized by the Minister, in writing, to act under this section, may, upon the recommendation of the Committee, appoint persons to advise the Committee in relation to any purpose in respect of which moneys may be expended from the Research Account.

(2) A person appointed under sub-section (1) shall be paid fees, expenses and allowances at such rates as are approved by the Minister.

PART IV—MISCELLANEOUS

Power to call
for returns

23. An authorized person may, by notice in writing, require a person to furnish to him, within the time specified in the notice, such return or information in relation to matters relevant to the operation of this Act as is specified in the notice, including a return or information verified by statutory declaration.

Access to
premises

24. (1) An authorized person may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an authorized person under this section.

(2) Where an authorized person has reason to believe that—

(a) premises are premises at which leviable oilseeds are produced, stored or processed; or

(b) there are on premises examinable documents,

the authorized person may make application to a Justice of the Peace for a warrant authorizing the authorized person to enter the premises for the purpose of exercising the functions of an authorized person under this section.

(3) If, on an application under sub-section (2), the Justice of the Peace is satisfied, by information on oath or affirmation—

(a) that there is reasonable ground for believing that—

(i) the premises to which the application relates are premises at which leviable oilseeds are produced, stored or processed; or

(ii) there are on those premises any examinable documents; and

- (b) that the issue of the warrant is reasonably required for the purposes of this Act,

the Justice of the Peace may grant a warrant authorizing the authorized person, with such assistance as he thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an authorized person under this section.

(4) Where an authorized person has entered any premises in pursuance of sub-section (1) or in pursuance of a warrant granted under sub-section (3), he may exercise the functions of an authorized person under this section.

(5) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting in pursuance of sub-section (1) or in pursuance of a warrant granted under sub-section (3).

Penalty: \$1,000.

(6) The functions of an authorized person under this section are—

- (a) to search for, examine and take stock of any leviable oilseeds; and
- (b) to search for, inspect, take extracts from and make copies of any examinable documents.

(7) In this section, “examinable documents” means—

- (a) any books, documents or papers relating to financial dealings between persons who deliver leviable oilseeds and persons to whom leviable oilseeds are delivered; or
- (b) any books, documents or papers relating to the production, storage, processing, sale, purchase or export of leviable oilseeds.

25. (1) A person shall not fail or neglect duly to furnish a return or information that he is required under this Act or the regulations to furnish. Offences in relation to returns, &c.

(2) A person shall not present to an officer or other person doing duty in relation to this Act or the regulations an account, book or document, or make or furnish to such an officer or person a statement or return, that is false or misleading in a material particular.

Penalty: \$200.

26. In proceedings for the recovery of a debt referred to in section 8, a statement or averment in the complaint, claim or declaration of the plaintiff is *prima facie* evidence of the matter so stated or averred. Averments

27. The Minister may, by writing signed by him, appoint a person, or persons included in a class of persons, to be an authorized person or authorized persons, as the case may be, for the purposes of a specified provision of this Act. Appointment of authorized persons

**Annual
report**

28. (1) The Committee shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister, for presentation to the Parliament a report of its operation during the 12 months ending on that date.

(2) The Minister shall cause a copy of a report furnished to him under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after he has received the report.

Regulations

29. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act or for facilitating the collection or recovery of amounts of levy or penalty and, in particular—

- (a) providing for the manner of payment of levy;
- (b) requiring the keeping of records in respect of leviable oilseeds by purchasers and receivers of leviable oilseeds, by growers of leviable oilseeds who process or export leviable oilseeds and by such other persons as are prescribed;
- (c) requiring purchasers and receivers of leviable oilseeds, growers of leviable oilseeds who process or export leviable oilseeds and such other persons as are prescribed to furnish returns for the purposes of this Act; and
- (d) prescribing penalties not exceeding a fine of \$200 for offences against the regulations.

NOTE

1. Act No. 113, 1977; assented to 28 October 1977.