



Goat Fibre Levy Collection Act 1989

No. 143 of 1989

An Act providing for the collection of levy imposed by the *Goat Fibre Levy Act 1989*

[Assented to 23 November 1989]

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

Short title

1. This Act may be cited as the *Goat Fibre Levy Collection Act 1989*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. (1) In this Act, unless the contrary intention appears:
“authorised person” means a person appointed under section 15;
“dealer” means a person who buys leviable fibre in Australia;

“deliver”, in relation to leviable fibre, does not include:

- (a) deliver for processing on behalf of its grower; or
- (b) deliver for storage only;

“examinable document” means:

- (a) any document relating to financial dealings between persons who deliver leviable fibre and persons to whom leviable fibre is delivered; and
- (b) any document relating to the production, storage, carriage, delivery, processing, purchase, sale or export of leviable fibre;

“fibre-broker” means a person who carries on business in Australia as a goat’s fibre-selling broker;

“grower”, in relation to leviable fibre, means the person who owns the fibre immediately after it has been obtained;

“growers organisation” means:

- (a) an organisation known, on the commencement of this Act, as:
 - (i) the Angora Mohair Breeders of Australasia Ltd; or
 - (ii) the Australian Cashmere Growers Association; or
 - (iii) the Cashgora Fibre Association of Australia; or
 - (iv) the Goat Industry Council of Australia; or
- (b) an organisation declared by the Minister, by notice published in the *Gazette*, to be a growers organisation for the purposes of this Act;

“leviable amount”, in relation to a levy year, means:

- (a) \$50; or
- (b) if, before the commencement of the levy year, another amount is prescribed in relation to that year, that prescribed amount;

“levy” means an amount of levy imposed by the *Goat Fibre Levy Act 1989*;

“levy year” means 1990 or a later year;

“magistrate” includes a justice of the peace;

“premises” includes:

- (a) a structure, building, aircraft, vehicle and vessel; and
- (b) a place (whether enclosed or built upon or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

“processing”, in relation to goat’s fibre, means the de-hairing, washing, scouring, carbonising, felting, combing, carding, spinning, weaving or knitting of the fibre;

“Secretary” means the Secretary to the Department;

“State” includes the Australian Capital Territory and the Northern Territory.

(2) Where a grower of leviable fibre causes or permits that fibre to be delivered to another person or allows another person to take that fibre out of the grower's possession or control, the grower is, for the purposes of this Act, to be taken to have delivered that fibre to the other person.

(3) Where a grower of leviable fibre delivers that fibre to a person for carriage (either by that person or by a succession of persons commencing with that person) to another person who does not receive the fibre for the purpose of carrying it to a further destination, the fibre is, for the purposes of this Act, to be taken to have been delivered to that person receiving it last.

(4) If the ownership of leviable fibre passes from the grower of the fibre to a person or to a number of persons in succession, in a way or ways not involving the delivery of the fibre to any person, a reference in this Act to the grower is, in relation to that fibre, a reference to that person or to the last of those persons, as the case may be.

Time for payment of levy

4. (1) Levy on leviable fibre sold by a fibre-broker is due for payment at the end of a period of 28 days, or such other period as is prescribed, immediately after the quarter in which the fibre was so sold.

(2) Levy on leviable fibre delivered in Australia by the grower of the fibre to a dealer is due for payment at the end of a period of 28 days, or such other period as is prescribed, immediately after:

- (a) the quarter in which the fibre was so delivered; or
- (b) if the weight of all the leviable fibre delivered to that dealer by growers of leviable fibre in the levy year in which that quarter occurs does not become such that the levy payable in respect of it equals the leviable amount until a later quarter—that later quarter.

(3) Levy on leviable fibre processed by or for the grower of the fibre is due for payment at the end of the period of 28 days, or such other period as is prescribed, immediately after the quarter in which the fibre was processed.

(4) Levy on leviable fibre to which none of subsections (1), (2) and (3) applies is due for payment at the end of a period of 28 days, or such other period as is prescribed, immediately after the quarter in which the fibre was produced.

(5) In this section:

“quarter” means a period of 3 months ending on the last day of March, June, September or December in any year.

Liability of fibre-brokers etc.

5. (1) For the better securing of the payment of levy:

- (a) a fibre-broker who sells leviable fibre on behalf of its grower; and

- (b) a dealer who, in Australia, buys leviable fibre from its grower otherwise than through a fibre-broker; and
- (c) a person who, in a prescribed way, assists the grower of leviable fibre in its sale outside Australia otherwise than through a fibre broker;

is liable to pay to the Commonwealth, on behalf of the grower, an amount equal to any levy on the fibre that is due for payment and remains unpaid.

(2) In spite of anything to the contrary in any law of a State or in any agreement (whether entered into before or after the commencement of this Act), a fibre-broker who sells, or a dealer who buys, leviable fibre and who is liable under subsection (1) to pay an amount to the Commonwealth in respect of levy due for payment on that fibre may deduct from any money payable to the grower of the fibre by the fibre-broker or dealer in respect of that fibre an amount equal to, or that may reasonably be expected to be equal to, the amount payable to the Commonwealth.

(3) Where a fibre-broker or dealer deducts an amount under subsection (2), the grower is, on the levy becoming due for payment, discharged from liability to pay the levy to the extent of the amount deducted, but the liability of the fibre-broker or dealer under subsection (1) is not affected.

(4) Where an amount in respect of the levy payable on any leviable fibre is paid on behalf of the grower by, or is recovered by the Commonwealth from, the fibre-broker or dealer:

- (a) the grower is, to the extent of that amount, discharged from so much of the grower's liability to the Commonwealth to pay that levy as has not been previously discharged under subsection (3); and
- (b) the fibre-broker or dealer may recover from the grower, by set-off or otherwise, an amount equal to the difference (if any) between the amount in respect of the levy and the amount of money (if any) deducted under subsection (2).

(5) Where, under this section, an amount in respect of the levy payable on any leviable fibre is paid on behalf of the grower by, or is recovered by the Commonwealth from, a person to whom paragraph (1) (c) applies:

- (a) the grower is discharged from liability to pay that levy to the extent of that amount; and
- (b) subject to any agreement between that person and the grower, that person may recover from the grower, by set-off or otherwise, an amount equal to the amount paid in respect of the levy.

Penalty for non-payment

6. (1) If any levy remains unpaid after the day on which it became due for payment, there is payable to the Commonwealth by way of penalty, in respect of each day after that day on which the levy or any part of the levy

remains unpaid, an amount calculated at the rate of 2% per month on the levy or on so much of the levy as remains unpaid on that day.

(2) A penalty under subsection (1) is payable:

- (a) where the penalty relates to levy in respect of which a person is liable to pay an amount to the Commonwealth under subsection 5 (1)—by that person; or
- (b) in any other case—by the grower.

(3) A penalty under subsection (1) is payable in addition to any levy in respect of the non-payment of which the penalty is payable.

Remission of amounts

7. (1) Subject to subsection (2), the Minister or an authorised person may remit the whole or a part of an amount payable under section 6.

(2) An amount remitted by an authorised person under subsection (1) may not exceed \$500.

Recovery of levy etc.

8. The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) levy that is due and payable;
- (b) an amount payable under subsection 5 (1);
- (c) an amount payable under section 6.

Refund of levy etc.

9. (1) Where there has been an overpayment in respect of an amount referred to in section 8, the amount overpaid must be refunded by the Commonwealth.

(2) Where an amount that is to be refunded by the Commonwealth in accordance with subsection (1) has been taken into account under paragraph 7 (1) (a) or 34 (ca) of the *Rural Industries Research Act 1985* in calculating an amount to be paid into a Fund, the amount of the refund must be paid from the Fund to which the levy is attached when the refund is paid.

(3) An expression has the same meaning in subsection (2) as in the *Rural Industries Research Act 1985*.

Power to call for information

10. An authorised person may, by notice in writing given or sent by post to a person, require the person:

- (a) to give to the authorised person, within such reasonable time as is 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; and
- (b) to verify any such return or information by statutory declaration.

Powers of authorised person in relation to premises

11. (1) An authorised person may, with the consent of the occupier of the premises or in accordance with a warrant issued under section 12, enter premises for the purpose of exercising the powers of an authorised person under subsection (2).

(2) Where an authorised person enters any premises under subsection (1), the authorised person may;

- (a) search for, examine and take stock of leviable fibre and any goods produced from leviable fibre; and
- (b) take and retain samples of any fibre; and
- (c) search for, inspect, take extracts from, and make copies of, any examinable documents; and
- (d) remove, and retain for 30 days, any examinable documents for the purpose of taking extracts from, or making copies of, them.

(3) A person shall not, without reasonable excuse, obstruct or hinder an authorised person in the exercise of a power conferred under subsection (1) or (2).

Penalty: Imprisonment for 6 months.

Warrant to enter premises

12. (1) If a magistrate, on application by an authorised person, is satisfied, by information on oath or affirmation:

- (a) that there is reasonable ground for believing that:
 - (i) leviable fibre is produced, stored or processed on particular premises; or
 - (ii) goods produced from leviable fibre are stored on particular premises; or
 - (iii) there are examinable documents on those premises; and
- (b) that the issue of a warrant is reasonably required for the purposes of this Act;

the magistrate may issue a warrant authorising the authorised person to enter the premises:

- (c) with such assistance, and by such force, as is necessary and reasonable; and
- (d) during such hours as the warrant specifies or, if the warrant so specifies, at any time.

(2) A warrant is to specify the period, not exceeding one month, during which it remains in effect.

Offences in relation to returns etc.

13. (1) A person must not, without reasonable excuse, refuse or fail to give a return or information that the person is required to give by or under this Act or the regulations.

(2) A person is not excused from giving a return or information on the ground that the return or information might tend to incriminate the person, but any return or information given, and any information or thing (including any document) obtained as a direct or indirect result of the giving of the return or information, is not admissible in evidence against the person in:

- (a) criminal proceedings other than proceedings for an offence against subsection (1) or (3); or
- (b) proceedings for recovery of a penalty payable under section 6.

(3) A person must not knowingly present a document, make a statement or submit a return, that is false or misleading in a material particular, to a person performing duties in relation to this Act.

Penalty: Imprisonment for 6 months.

Conduct of directors, servants and agents

14. (1) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act and the regulations, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) Where it is necessary to establish, for the purposes of this Act, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act and the regulations, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(6) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of an external Territory.

(7) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Appointment of authorised persons

15. The Secretary may, in writing, appoint:

- (a) a person to be an authorised person; or
- (b) a class of persons to be authorised persons;

for the purposes of a specified provision of this Act.

Identity cards

16. (1) The Secretary may cause an identity card to be issued to an authorised person.

(2) An identity card is to:

- (a) contain a recent photograph of the authorised person to whom it is issued; and
- (b) be in a form approved, in writing, by the Secretary.

(3) Where an authorised person proposes to enter premises otherwise than in accordance with a warrant issued under section 12, the authorised person must produce his or her identity card to the occupier of the premises for the occupier's inspection and, if the authorised person fails to do so, the authorised person is not entitled to enter the premises under subsection 11 (1).

(4) Where a person to whom an identity card has been issued ceases to be an authorised person, the person must forthwith return the identity card to a person occupying such office in the Department as is designated, in writing, by the Secretary.

Penalty: \$100.

Review of decisions

17. (1) Application may be made to the Administrative Appeals Tribunal for a review of a decision to refuse to remit under subsection 7 (1) the whole or part of an amount.

(2) Where the Minister or an authorised person makes a decision under subsection 7 (1) and gives to the person whose interests are affected by the decision notice in writing of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal, by or on behalf of any person whose interests are affected by the decision, for a review of the decision.

(3) A failure to comply with the requirements of subsection (2) in relation to a decision does not affect the validity of the decision.

Delegation by Secretary

18. (1) The Secretary may, by signed instrument, delegate to the person occupying an office in the Department all or any of the Secretary's powers under this Act.

(2) A delegate is, in the exercise of a delegated power, subject to the directions of the Secretary.

Regulations

19. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and in particular:

- (c) providing for the manner of payment of levy and other amounts payable to the Commonwealth under this Act; and
- (d) requiring growers of leviable fibre, fibre-brokers, dealers and such other persons as are prescribed to make and keep accounts, accounting records and other records in respect of leviable fibre; and
- (e) requiring growers of leviable fibre, fibre-brokers, dealers and such other persons as are prescribed to give returns or information for the purposes of this Act; and
- (f) prescribing penalties, not exceeding, in the case of a natural person, a fine of \$1,000 and, in the case of a body corporate, a fine of \$5,000, for offences against the regulations.

(2) Before making any regulation for the purposes of the definition of "leviable amount" in subsection 3 (1), the Governor-General is to take into consideration any relevant recommendation made to the Minister by a growers organisation.

*[Minister's second reading speech made in—
House of Representatives on 30 August 1989
Senate on 26 October 1989]*