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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Sugar Research and Development Services Bill 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry,
Senator the Hon. Joseph Ludwig)

SUGAR RESEARCH AND DEVELOPMENT SERVICES BILL 2013

OUTLINE

This Bill (the bill), and the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013 (the companion bill), provide the mechanism to implement key elements of reforms to sugar research and development (R&D) arrangements.

Under the reforms, the Sugar Research and Development Corporation (SRDC) and BSES Limited will be wound-up and their assets and R&D functions, along with the research coordination activities of Sugar Research Limited (SRL), transferred to the industry owned company, Sugar Research Australia Limited (SRA). SRA is a company limited by guarantee operating under the *Corporations Act 2001*.

Operating one industry research body should deliver increased R&D efficiencies. The new company should, therefore, have the capacity to better integrate and avoid duplication of R&D activities across the sugar industry supply chain, leading to a wider range of research opportunities and increased industry and public good benefits.

The industry owned company will be funded by a statutory levy of 70 cents per tonne of sugar cane processed or sold for processing, to be paid equally (35 cents per tonne each) by growing and milling businesses. The new levy will replace the existing sugar R&D statutory levy of 14 cents per tonne and incorporate existing voluntary contributions that fund the industry owned BSES Limited.

All persons who pay the statutory levy will be eligible to register for membership and then be eligible for voting rights in the company.

Incorporating the existing sugar statutory levy and voluntary contributions under a new statutory levy will mean that growers and millers will all pay the same amount, eliminating the risk of 'free-rider' problems. Growers and millers who pay both voluntary and compulsory fees will contribute a similar amount to what they are paying now.

The change should, therefore, create a stronger national R&D capability, establish equity in the industry in relation to financial contributions to R&D and provide certainty to growers and millers about their liabilities and the amount of funding that will be available for R&D. There will also be reduced compliance costs for levy payers with growers and millers paying fewer individual levies and fees.

All levy paying businesses had the opportunity to vote on the new arrangements, including the increase in the levy. In August 2012, the Australian Electoral Commission, on behalf of the Australian Sugar Industry Alliance, polled all 4,441 eligible sugar cane growers with 3,373 valid votes cast. 84.3 per cent of these votes supported the proposal. This represents 64 per cent of all cane growers. Seven of eight milling companies (representing about 99 per cent of cane processed in 2011) also supported the proposal.

The bill commences on the day after it receives Royal Assent and provides the Minister for Agriculture, Fisheries and Forestry with the power to enter into a funding contract with an eligible company. The funding contract will enable the company to receive and invest levies collected by the Commonwealth for R&D. The funding contract will also allow the company to receive the Commonwealth's matching funding for eligible R&D expenditure. Once the company has entered into the contract, and the minister is satisfied that the company will comply with its contractual and statutory obligations, the minister can declare the company to be the industry services body.

The funding contract between the Commonwealth and the industry services body will set out certain obligations and accountability requirements for the company, including provisions relating to the use of levy monies and Commonwealth matching funding. The detail of the industry services body's accountability arrangements to the Commonwealth will be outlined in the funding contract.

The funding contract also requires the development of an agreed industry consultation plan and priority setting process. It is important that this is in place to both guide and ensure a broad industry consultation process. It is appropriate for all industry levy payers to be consulted on the operation of the company and to contribute to its priority setting processes.

The companion bill makes consequential amendments to a number of Acts and Regulations to ensure the new arrangements operate, as intended, in respect of the imposition and collection of the levy, including provision for the increase in the levy rate.

It also covers matters arising from the transition to a new industry services body such as the transfer of assets and liabilities from SRDC to the industry services body and the wind-up of SRDC.

Amendments are required to: the *Primary Industries (Excise) Levies Act 1999*; the *Primary Industries Levies and Charges Collection Act 1991*; the *Primary Industries (Excise) Levies Regulations 1999*; the *Sugar Research and Development Corporation Regulations 1990*; and the *Primary Industries Levies and Charges Collection Regulations 1991*.

The amendments made by the companion bill will start taking effect from 1 July 2013 so that industry will be provided with certainty about the imposition of the levy and when the increase to the levy rate will come into effect. The R&D activities of SRDC, and 75 per cent of its assets, will be transferred to the industry services body on the date it is declared as such. The remaining assets will be held by SRDC to cover wind-up costs until it is abolished on 30 September 2013. Any remaining SRDC assets and liabilities will be transferred to the industry services body on 1 October 2013.

The last amendments made by the companion bill to come into effect relate to the introduction of an instalment system for payment of the levy. This will occur on 1 March 2014 so that all levy payers will be treated equitably in the current harvesting season.

FINANCIAL IMPACT STATEMENT

There will be a small financial impact, with Commonwealth matching contributions to R&D expected to increase because of the higher levy rate. The financial impact over the financial years to 2016/17 is estimated at \$3.6 million.

13/14	14/15	15/16	16/17
\$1.0m	\$1.0m	\$0.8m	\$0.8m

Industry owned assets held by SRDC, including proceeds of the statutory levy, will be transferred to the new industry services body.

HUMAN RIGHTS STATEMENT

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Sugar Research and Development Services Bill 2013

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

This Bill, and the Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Bill 2013, provide the mechanism to reform sugar research and development (R&D) arrangements.

Under the reforms, the Sugar Research and Development Corporation (SRDC) and BSES Limited will be wound-up and their R&D functions, along with the research coordination activities of Sugar Research Limited, transferred to the industry owned company Sugar Research Australia Limited (SRA). SRA is a company limited by guarantee operating under the *Corporations Act 2001*.

This Bill provides the Minister for Agriculture, Fisheries and Forestry with the power to enter into a funding contract with an eligible company to enable it to receive and administer levies collected by the Commonwealth for R&D. It will also allow it to receive the Commonwealth's matching funding for eligible R&D expenditure. Once the company has entered into the contract, and the minister is satisfied that the company will comply with its contractual and statutory obligations, the minister can declare the company to be the industry services body.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

**Minister for Agriculture, Fisheries and Forestry,
Senator the Hon. Joseph Ludwig**

SUGAR RESEARCH AND DEVELOPMENT SERVICES BILL 2013

NOTES ON CLAUSES

Part 1 – Preliminary

Section 1: Short title

This section provides for the Act to be called the *Sugar Research and Development Services Act 2013*.

Section 2: Commencement

This section provides for the Act to come into effect the day after it receives Royal Assent.

Section 3: Simplified outline of this Act

This section outlines that the Act provides for a company to be declared as the industry services body for the Australian sugar industry, receive Commonwealth funding for R&D and comply with the minister's directions given in the national interest because of an emergency.

Section 4: Definitions

This section provides for terms in the Act to be defined.

The definitions of both *sugar cane* and *sugar industry* have been amended at the request of industry to better capture the usage of sugar cane as a whole, including potential future uses. Under the amended definition, 'sugar cane' will include sugar cane stalks or sugar cane stalks and leaves. The levy would not be imposed on sugar cane leaves processed or sold on their own. The definition of 'sugar industry' has been amended to include the words 'for any purpose' in order to capture potential future uses of sugar cane.

Part 2 – Funding contract

Section 5: Simplified outline of this Part

This section outlines that the Part provides for the minister to make a contract with a company for the Commonwealth to make R&D payments and matching payments to the company. It also specifies the use of and limitations on those payments.

Section 6 – Funding contract

This section provides for the minister, on behalf of the Commonwealth, to enter into a contract with a company which will allow the Commonwealth to make R&D payments and Commonwealth matching payments to the company. It also allows for the minister to vary such a contract.

The section ensures that before the Commonwealth enters into or varies a contract with the company, the minister must be satisfied that the terms of the contract ensure the funds are to be spent on activities allowed under the Act.

The R&D payments can be spent on: R&D activities for the benefit of the Australian sugar industry and/or to repay the Commonwealth for expenses (administration expenses) in relation to the collection and recovery of the R&D amounts; the administration of the funding contract and payment of refunds in relation to R&D amounts.

The matching payments can be spent on: R&D activities for the benefit of the Australian sugar industry and the Australian community generally, administrative expenses and refunding any overpayment of matching payments by the Commonwealth.

The administration expenses must be met from either: the difference between R&D payments and the limit of the R&D payments appropriation, as set out in section 7; the difference between Commonwealth matching payments and limit of the matching payments appropriation, as also set out in section 7; or payments by the company to the Commonwealth.

Subsection (3) provides that the funding contract does not oblige the Commonwealth to pay the full amounts that could be paid out of the money appropriated. This will allow the Commonwealth to make deductions prior to payment to cover the costs of collecting the levy and to make adjustments to cover refunds and payments made in error.

Subsection (4) provides that the contract may include provisions relating to the assets and liabilities being transferred from SRDC to the company under the *Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Act 2013*.

Subsection (5) provides that this section does not impliedly limit the executive power of the Commonwealth to enter into agreements.

Subsections (6) and (7) respectively provide that the minister must table a new or varied contract in each House of the Parliament within 15 sitting days from the date the contract was entered into or varied.

Section 7: Appropriation for payments under funding contract etc.

This section appropriates the Consolidated Revenue Fund for the purposes of making payments to the industry services body under the funding contract.

It also sets the overall limits on the appropriation for the Commonwealth to make R&D payments and matching payments to the industry services body. In terms of the matching payments, the section also sets annual limits on what can be paid to the industry services body and provides that the amount retained by the industry services body in any year does not exceed the annual limit. Subsection (4) provides that any amounts that exceed the annual limit must be repaid to the Commonwealth.

The annual limit is the lesser of either 0.5 per cent of the gross value of production (GVP) of sugar cane produced in Australia for the financial year or 50 per cent of the amount spent by the industry services body on R&D activities that qualify under the funding contract in that financial year.

Subsection (6) clarifies that an amount payable under subsection (4) by a company is a debt due to the Commonwealth and may be recovered in a court of competent jurisdiction.

Subsection (11) allows for the minister to offset any amounts payable under subsection (4) against Commonwealth payments due to the company under the funding contract.

Subsection (4) also provides that the minister will determine the amount of the gross value of sugar cane production in a financial year before the end of 31 October following that financial year. Subsection (5) provides that if the minister has not made that determination before the end of 31 October following the financial year, then the amount of the gross value of sugar cane produced in Australia in that financial year is equal to the amount of the gross value of sugar cane produced in Australia, as determined for the previous financial year.

Subsection (7) is included to assist readers, as a determination made under subsection (4) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. The reason for this is that such a determination is a statement of what the minister reasonably believes to be a pre-existing fact (the value of production), rather than determining a law.

Subsection (8) provides for rules to be made by the minister, as per section 14 of this Act, to prescribe the manner in which the minister is to determine the GVP of sugar cane produced in Australia in a financial year.

Subsections (9) and (10) allow for R&D expenditure that is not “50 per cent matched” in one financial year because of the caps based on the GVP of Australian sugar cane production or overall levy collected, to be carried forward into later years. Subsection (10) provides a formula for calculating the unmatched R&D excess.

Subsection (12) defines the term ‘net matching payments’ to mean the total of the matching payments made to the company during the financial year, less the amount payable by the company under subsection (4).

Part 3 – Industry services body

Section 8: Simplified outline of this Part

This section outlines that the Part sets out the circumstances in which the minister may declare that a company is, or ceases to be, the industry services body.

Section 9: Declaration of industry services body

This section provides for the minister, on behalf of the Commonwealth, to declare a company to be the industry services body if there is a contract under Part 2 with the company and the minister is satisfied that the company will comply with its contractual and statutory obligations.

The declaration must specify the date it takes effect and be tabled by the minister in each House of Parliament within 15 sitting days from the date of effect.

Subsection (4) is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Section 10: Cessation of declaration of industry services body

This section enables the minister, on behalf of the Commonwealth, to declare that the company that is the industry services body will cease to be the industry services body.

The minister can take such action when: the company gives a written request to the minister to declare such; the minister has reasonable grounds to believe that the company has contravened this Act or the funding contract; the minister has reasonable grounds to believe the company's constitution is no longer appropriate or when the company has failed to comply with its constitution; an administrator of the company is appointed; the company starts to be wound up or ceases to carry on business; a receiver of property of the company is appointed; or when the company enters into a compromise or arrangement with some or all of its creditors.

The declaration must specify the date on which the company is to cease to be the industry services body and be tabled by the minister in each House of Parliament within 15 sitting days from the date the declaration is made.

Subsection (5) is included to assist readers, as a declaration made under subsection (1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Part 4 – Miscellaneous provisions

Section 11: Ministerial directions to industry services body in an emergency

This section provides for the minister to give written direction to the industry services body. The direction must meet the criteria of being in the national interest because of

exceptional and urgent circumstances. The industry services body must comply with any such direction.

The section also requires the minister to be satisfied that the direction would not require the industry services body to incur expenses greater than the amounts the body will receive under the funding contract during the period to which the direction relates. The minister must have given the industry services body's directors an adequate opportunity to discuss the need for the proposed direction and the impact of compliance on the body's commercial activities.

The direction must be tabled in each House of Parliament within 5 sitting days and gazetted as soon as practicable after giving the direction. In addition, the section provides that the annual report of the industry services body for that period must include the particulars of the direction and an assessment of the impact of the direction on the body's operations. These requirements do not apply if the minister makes a written determination that doing so would prejudice either the public interest or the industry services body's commercial activities.

The section also clarifies that the minister (or the minister's delegate) is not a director of the industry services body for the purposes of the *Corporations Act 2001*, merely because of the power granted under this section. The Commonwealth is not in a position to exercise control over the body merely because of the Minister's power under this section.

Subsection (8) is included to assist readers, as a direction given under subsection (1) or a determination made under subsection (5) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Section 12: Delegations

This section provides for the minister to delegate any or all of his or her powers and functions under this bill to either the Secretary of the Department or an SES employee or acting SES employee of the Department. The delegate, in exercising these powers or functions, must comply with any directions of the minister.

Section 13: Compensation for acquisition of property

This section provides for compensation to be paid by the Commonwealth to a person from whom property is acquired on other than just terms as a result of the operation of the bill. As property can include money, this may be relevant for the operation of section 7 (i.e. the repayment of excess matching payments). Therefore, this section is included to ensure the constitutional validity of the bill and ensure that the legislation does not give rise to an acquisition of property other than on just terms, by enabling reasonable compensation to be paid to the affected party.

If the Commonwealth and the person in question cannot agree on the amount of any such compensation to be paid, the Federal Court may, on application by the person from whom the property was acquired, determine what is a reasonable amount.

Section 14: Rules

This section provides for the minister to, by legislative instrument, make rules prescribing matters that are: required or permitted by this Act to be prescribed by the rules; or necessary or convenient to be prescribed for carrying out or giving effect to this Act.