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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Sugar Research and Development Services Bill 2013**

**No.     , 2013**

*(Agriculture, Fisheries and Forestry)*

**A Bill for an Act relating to service provision for  
the sugar industry, and for related purposes**



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1     **A Bill for an Act relating to service provision for**  
2     **the sugar industry, and for related purposes**

3     The Parliament of Australia enacts:

4     **Part 1—Preliminary**  
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6     **1 Short title**

7                     This Act may be cited as the *Sugar Research and Development*  
8                     *Services Act 2013*.

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1     **2 Commencement**

2                     This Act commences on the day after this Act receives the Royal  
3                     Assent.

4     **3 Simplified outline of this Act**

5                     The following is a simplified outline of this Act:

6                     This Act provides for a company:

- 7                             (a) to receive (under a contract) Commonwealth  
8                             funding for research and development for the  
9                             Australian sugar industry; and
- 10                            (b) to be declared as the industry services body for the  
11                            Australian sugar industry.

12                     This Act also requires the industry services body to comply with  
13                     directions given by the Minister in the national interest because of  
14                     an emergency.

15                     Note:        The first industry services body has the assets and liabilities of the  
16                     Sugar Research and Development Corporation transferred to it by the  
17                     *Sugar Research and Development Services (Consequential*  
18                     *Amendments and Transitional Provisions) Act 2013.*

19     **4 Definitions**

20                     In this Act:

21                             ***company*** means a company registered under the *Corporations Act*  
22                             *2001* as a company limited by guarantee.

23                             ***funding contract*** means a contract entered into under section 6  
24                             (with the variations, if any, that are in force).

25                             ***industry services body*** means the company that is declared to be  
26                             the industry services body under Part 3.

27                             ***matching amounts*** means the following amounts that are received  
28                             by the Commonwealth on or after 1 July 2013:

- 1 (a) amounts of levy imposed under clause 3 of Schedule 24 to  
 2 the *Primary Industries (Excise) Levies Act 1999*;  
 3 (b) amounts that are required to be paid under section 7 of the  
 4 *Primary Industries Levies and Charges Collection Act 1991*  
 5 in relation to levy described in paragraph (a).

6 Note: Section 7 of the *Primary Industries Levies and Charges Collection Act*  
 7 *1991* concerns liability of intermediaries.

8 ***matching payments*** means payments mentioned in  
 9 paragraph 6(1)(b).

10 ***R&D amounts*** means the following amounts that are received by  
 11 the Commonwealth on or after 1 July 2013:

- 12 (a) amounts of levy imposed under clause 3 of Schedule 24 to  
 13 the *Primary Industries (Excise) Levies Act 1999*;  
 14 (b) amounts that are required to be paid under section 7 of the  
 15 *Primary Industries Levies and Charges Collection Act 1991*  
 16 in relation to levy described in paragraph (a);  
 17 (c) amounts that are payable under section 15 of the *Primary*  
 18 *Industries Levies and Charges Collection Act 1991* in  
 19 relation to levy described in paragraph (a).

20 Note: Section 7 of the *Primary Industries Levies and Charges Collection Act*  
 21 *1991* concerns liability of intermediaries and section 15 of that Act  
 22 concerns penalty for late payment.

23 ***R&D payments*** means payments mentioned in paragraph 6(1)(a).

24 ***rules*** means rules made by the Minister under section 14.

25 ***sugar cane*** means:

- 26 (a) stalks (whether whole or not) of the sugar cane plant; or  
 27 (b) stalks (whether whole or not) and leaves of the sugar cane  
 28 plant.

29 ***sugar industry*** means the industry concerned with growing,  
 30 harvesting and processing sugar cane for any purpose.

1 **Part 2—Funding contract**

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3 **5 Simplified outline of this Part**

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The following is a simplified outline of this Part:

5

The Minister may make a contract with a company for the Commonwealth to make 2 kinds of payments to the company.

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The first kind of payments (called *R&D payments*):

8

- (a) are to be spent by the company on research and development benefiting the Australian sugar industry and on payments of the Commonwealth's expenses relating to the collection of amounts it receives from the industry as primary industry levies and related payments; and

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- (b) cannot exceed those amounts.

15

The second kind of payments (called *matching payments*):

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- (a) are to be spent by the company on research and development benefiting the Australian sugar industry and the Australian community generally, and on payments of the Commonwealth's expenses relating to the collection of amounts it receives from the industry as primary industry levies and related payments; and

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- (b) are subject to limits based on those amounts, the annual value of production by the industry and the amount spent by the company on that research and development.

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**6 Funding contract**

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2 (1) The Minister may, on behalf of the Commonwealth, enter into or  
3 vary a contract with a company so that the contract provides for the  
4 Commonwealth to make payments of the following kinds to the  
5 company:

- 6 (a) payments called *R&D payments*;  
7 (b) payments made for particular financial years, called  
8 *matching payments*.

9 Note: After a contract has been entered into, the company can be declared as  
10 the industry services body under section 9.

11 (2) Before acting to enter into or vary the contract, the Minister must  
12 be satisfied that the terms of the contract after the action will make  
13 adequate provision to ensure that:

- 14 (a) R&D payments are spent by the company on one or both of  
15 the following:  
16 (i) research and development activities for the benefit of  
17 the Australian sugar industry;  
18 (ii) payments by the company to the Commonwealth to  
19 meet the expenses (the *administration expenses*)  
20 incurred by the Commonwealth in relation to the  
21 collection and recovery of R&D amounts, the  
22 administration of the contract and the payment of  
23 refunds related to R&D amounts; and  
24 (b) matching payments are spent by the company on one or more  
25 of the following:  
26 (i) research and development activities for the benefit of  
27 the Australian sugar industry and the Australian  
28 community generally;  
29 (ii) payments by the company to the Commonwealth under  
30 subsection 7(4);  
31 (iii) payments by the company to the Commonwealth to  
32 meet the administration expenses; and  
33 (c) the administration expenses are met from one or more of the  
34 following:  
35 (i) the difference between R&D payments and the limit  
36 under section 7 on the appropriation for those payments;

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- 1 (ii) the difference between matching payments and the limit  
2 under section 7 on the appropriation for those payments;  
3 (iii) payments by the company to the Commonwealth.

4 Note: An example of the administration expenses is the Commonwealth's  
5 expenses relating to an agreement under section 10 or 11 of the  
6 *Primary Industries Levies and Charges Collection Act 1991* between  
7 the Commonwealth and a State or organisation for it (or a State  
8 authority) to collect levies and related amounts on the  
9 Commonwealth's behalf.

- 10 (3) The contract does not have to oblige the Commonwealth to pay the  
11 full amounts that could be paid out of the money appropriated  
12 under section 7.

13 Note: For example, the contract may provide for payments less than the  
14 limits specified in section 7 so the administration expenses are met.

- 15 (4) The contract may include provisions relating to assets and  
16 liabilities that will become those of the company under the *Sugar*  
17 *Research and Development Services (Consequential Amendments*  
18 *and Transitional Provisions) Act 2013*. This subsection does not  
19 impliedly limit the matters that may be included in the contract.

- 20 (5) This section does not impliedly limit the executive power of the  
21 Commonwealth to enter into agreements.

- 22 (6) The Minister must cause a copy of the contract to be tabled in each  
23 House of the Parliament within 15 sitting days of that House after  
24 the day on which the contract was entered into.

- 25 (7) If the contract is varied, the Minister must cause a copy of the  
26 contract as varied to be tabled in each House of the Parliament  
27 within 15 sitting days of that House after the variation occurred.

28 **7 Appropriation for payments under funding contract etc.**

- 29 (1) The Consolidated Revenue Fund is appropriated for the purposes  
30 of payments by the Commonwealth under section 6.

31 *Overall limit for R&D payments*

- 32 (2) For R&D payments, the total limit on the appropriation is the sum  
33 of the R&D amounts.

*Overall limit for matching payments*

- (3) For matching payments, the total limit on the appropriation is the sum of the matching amounts.

*Matching payments—retention limit*

- (4) The matching payments made to the company during a particular financial year are subject to the condition that, if:
- (a) before the end of 31 October next following the financial year, the Minister determines the amount of the gross value of sugar cane produced in Australia in the financial year; and
  - (b) as at the end of 31 October next following the financial year, the sum of the matching payments that were paid to the company during the financial year exceeds the lesser of:
    - (i) 0.5% of the amount of the gross value of sugar cane produced in Australia in the financial year as determined by the Minister; and
    - (ii) 50% of the amount spent by the company in the financial year on activities that qualify, under the funding contract, as research and development activities;

the company will pay to the Commonwealth an amount equal to the excess.

Note: This ensures that the sum of the matching payments that are retained by the company in relation to the financial year does not exceed the lesser of the amounts calculated under subparagraphs (b)(i) and (b)(ii).

- (5) If:
- (a) before the end of 31 October next following a financial year, the Minister has not determined under subsection (4) the amount of the gross value of sugar cane produced in Australia in the financial year; and
  - (b) the Minister has determined under subsection (4) the amount of the gross value of sugar cane produced in Australia in the previous financial year;
- the Minister is taken to have made, immediately before the end of that 31 October, a determination under subsection (4) that the amount of the gross value of sugar cane produced in Australia in the financial year is equal to the amount of the gross value of sugar

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1 cane produced in Australia determined under subsection (4) for the  
2 previous financial year.

3 (6) An amount payable under subsection (4) by the company:  
4 (a) is a debt due to the Commonwealth; and  
5 (b) may be recovered by the Minister, on behalf of the  
6 Commonwealth, by action in a court of competent  
7 jurisdiction.

8 (7) A determination made under subsection (4) is not a legislative  
9 instrument.

10 (8) For the purposes of subsection (4), the rules may prescribe the  
11 manner in which the Minister is to determine the gross value of  
12 sugar cane produced in Australia in a financial year.

13 *Matching payments—unmatched R&D excess*

14 (9) If there is an unmatched R&D excess for a financial year, the  
15 amount spent by the company in the following financial year on  
16 activities that qualify, under the funding contract, as research and  
17 development activities is taken, for the purposes of this section  
18 (including for the purposes of this subsection and subsection (10)),  
19 to be increased by the amount of the unmatched R&D excess.

20 Note: This means that research and development expenditure that is not  
21 “50% matched” in one financial year because of the cap in  
22 subsection (3) or the condition in subparagraph (4)(b)(i) (or both) can  
23 be carried forward into later years.

24 (10) For the purposes of subsection (9), there is an ***unmatched R&D***  
25 ***excess*** for a financial year if:  
26 (a) the company spends a particular amount (the ***R&D spend***  
27 ***amount***) in the financial year on activities that qualify, under  
28 the funding contract, as research and development activities;  
29 and  
30 (b) because of subsection (3) or subparagraph (4)(b)(i) (or both),  
31 the net matching payments for the financial year are less than  
32 50% of the R&D spend amount.

33 The amount of the unmatched R&D excess is:

$$1 \quad \text{R\&D spend amount} \\ \text{in the financial year} - \left( 2 \times \begin{array}{c} \text{The amount of the} \\ \text{net matching payments} \\ \text{for the financial year} \end{array} \right)$$

2 Note: Amounts spent and received by the Sugar Research and Development  
3 Corporation before it ceased to exist may also affect whether there is  
4 an unmatched R&D excess, and its amount: see the *Sugar Research*  
5 *and Development Services (Consequential Amendments and*  
6 *Transitional Provisions) Act 2013.*

7 *Set off*

8 (11) If:

- 9 (a) an amount (the **first amount**) is payable by the company  
10 under subsection (4); and  
11 (b) another amount (the **second amount**) is payable by the  
12 Commonwealth to the company under the funding contract;  
13 the Minister may, on behalf of the Commonwealth, set off the  
14 whole or a part of the first amount against the whole or a part of  
15 the second amount.

16 *Net matching payments*

- 17 (12) For the purposes of this section, **net matching payments** for a  
18 financial year means the total of the matching payments made to  
19 the company during the financial year, less the amount payable by  
20 the company under subsection (4) as a condition of those matching  
21 payments.

1 **Part 3—Industry services body**

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3 **8 Simplified outline of this Part**

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The following is a simplified outline of this Part:

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The Minister may 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.

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The Minister may declare that a company ceases to be the industry services body in certain circumstances (for example, if the company requests it, the company does not comply with its contractual and statutory obligations or the company is wound up).

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Note: The significance of being the industry services body is that:

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- (a) the industry services body must comply with directions given by the Minister in the national interest under section 11; and
- (b) assets and liabilities of the Sugar Research and Development Corporation are transferred to the first industry services body by the *Sugar Research and Development Services (Consequential Amendments and Transitional Provisions) Act 2013*.

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**9 Declaration of industry services body**

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- (1) The Minister may, in writing, declare a company to be the industry services body if:

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- (a) the Commonwealth and the company have entered into a funding contract; and
- (b) the Minister is satisfied that, if the company is so declared, it will comply with its obligations under the funding contract and this Act.

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*Declaration to specify day it takes effect*

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- (2) A declaration under this section must specify the day on and after which the relevant company is to be the industry services body. The declaration has effect accordingly.

*Tabling in Parliament*

- 1  
2 (3) The Minister must cause a copy of a declaration under this section  
3 to be tabled in each House of the Parliament within 15 sitting days  
4 of that House after the day on which the declaration is made.

*Declaration is not a legislative instrument*

- 5  
6 (4) A declaration made under subsection (1) is not a legislative  
7 instrument.

**10 Cessation of declaration of industry services body**

- 8  
9 (1) If any of the following apply, the Minister may declare in writing  
10 that the company that is the industry services body ceases to be the  
11 industry services body:  
12 (a) the company gives the Minister a written request that the  
13 declaration be made;  
14 (b) the Minister has reasonable grounds to believe that the  
15 company has contravened this Act or the funding contract  
16 with the company;  
17 (c) the Minister has reasonable grounds to believe that:  
18 (i) the company's constitution is no longer appropriate for  
19 a company performing the functions of the industry  
20 services body; or  
21 (ii) the company has failed to comply with its constitution;  
22 (d) an administrator of the company is appointed;  
23 (e) the company starts to be wound up or ceases to carry on  
24 business;  
25 (f) a receiver, or a receiver and manager, of property of the  
26 company is appointed (by a court or otherwise);  
27 (g) the company enters into a compromise or arrangement with  
28 some or all of its creditors.
- 29 (2) The declaration must specify the day on which the company is to  
30 cease to be the industry services body.
- 31 (3) The declaration has effect accordingly.

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*Tabling in Parliament*

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- (4) The Minister must cause a copy of the declaration to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the declaration is made.

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*Declaration is not a legislative instrument*

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- (5) A declaration made under subsection (1) is not a legislative instrument.

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**Part 4—Miscellaneous provisions****11 Ministerial directions to industry services body in an emergency**

- (1) The Minister may give a written direction to the industry services body if:
- (a) the Minister:
    - (i) is satisfied that the direction is in Australia's national interest because of exceptional and urgent circumstances; and
    - (ii) is satisfied that the direction would not require the body to incur expenses greater than the sum of the amounts previously paid to the body under the funding contract that have not been spent or committed and the amounts the body will receive under the funding contract during the period to which the direction relates; and
    - (iii) has given the body's directors an adequate opportunity to discuss with the Minister the need for the proposed direction and the impact of compliance with subsections (3) and (4) on the body's commercial activities; and
  - (b) the direction is made for a purpose that is within the Commonwealth's legislative power.
- (2) The body must comply with the direction.
- (3) The Minister must cause a copy of the direction:
- (a) to be published in the *Gazette* as soon as practicable after giving the direction; and
  - (b) to be tabled in each House of the Parliament within 5 sitting days of that House after giving the direction.
- (4) The body's annual report for each period to which the direction relates must include:
- (a) particulars of the direction; and
  - (b) an assessment of the impact of the direction on the body's operations during the period.

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- 1 (5) Subsections (3) and (4) do not apply to the direction if:  
2 (a) on the body's recommendation, the Minister determines in  
3 writing that compliance with the subsections would prejudice  
4 the body's commercial activities or would be likely to do so;  
5 or  
6 (b) the Minister determines, in writing, that compliance with the  
7 subsections would be contrary to the public interest.
- 8 (6) The Minister, or a person to whom the Minister delegates the  
9 Minister's power under this section, is not a director of the body  
10 for the purposes of the *Corporations Act 2001* merely because of  
11 that power.
- 12 (7) The Commonwealth is not in a position to exercise control over the  
13 body merely because of the Minister's power under this section.
- 14 (8) A direction given under subsection (1) or a determination made  
15 under subsection (5) is not a legislative instrument.

### 12 Delegations

- 16 (1) The Minister may delegate all or any of the Minister's powers and  
17 functions under this Act (other than under section 14), or the rules,  
18 to:  
19 (a) the Secretary of the Department; or  
20 (b) an SES employee, or acting SES employee, in the  
21 Department.  
22 The delegation must be in writing.
- 23 (2) In exercising powers or functions under a delegation, the delegate  
24 must comply with any directions of the Minister.  
25

### 13 Compensation for acquisition of property

- 26 (1) If the operation of this Act would result in an acquisition of  
27 property from a person otherwise than on just terms, the  
28 Commonwealth is liable to pay a reasonable amount of  
29 compensation to the person.  
30
- 31 (2) If the Commonwealth and the person do not agree on the amount  
32 of the compensation, the person may institute proceedings in the

1 Federal Court of Australia for the recovery from the  
2 Commonwealth of such reasonable amount of compensation as the  
3 court determines.

4 (3) In this section:

5 *acquisition of property* has the same meaning as in  
6 paragraph 51(xxxi) of the Constitution.

7 *just terms* has the same meaning as in paragraph 51(xxxi) of the  
8 Constitution.

9 **14 Rules**

10 The Minister may, by legislative instrument, make rules  
11 prescribing matters:

- 12 (a) required or permitted by this Act to be prescribed by the  
13 rules; or  
14 (b) necessary or convenient to be prescribed for carrying out or  
15 giving effect to this Act.