

MinterEllison

REPORT TO
DEPARTMENT OF AGRICULTURE AND WATER RESOURCES
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AGRICULTURAL LEVIES SYSTEM

SCOPING STUDY – VOLUME 1
DELIVERABLE 2 – FINAL REPORT





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DISCLAIMER THIS REPORT PROVIDES A SNAPSHOT OF THE CURRENT LEGISLATIVE ARRANGEMENTS AND A SCOPING STUDY OF THE AGRICULTURAL LEVIES SYSTEM. ITS PURPOSE IS TO IDENTIFY WHAT OPPORTUNITIES MAY EXIST TO IMPROVE THE EFFICIENCY, AND EFFECTIVENESS OF THE LEVY PROCESSES. IT DOES NOT CONSTITUTE AND MUST NOT BE RELIED UPON AS LEGAL ADVICE. WE HAVE USED OUR BEST ENDEAVOURS IN GOOD FAITH TO PRODUCE A COMPREHENSIVE REVIEW, HOWEVER BEYOND THIS PURPOSE, TAILORED LEGAL ADVICE SHOULD BE SOUGHT ON SPECIFIC LEGAL ISSUES CONTAINED WITHIN THE REPORT.

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GLOSSARY OF TERMS

ABARES	Australian Bureau Of Agricultural And Resource Economics and Sciences
AHA	Animal Health Australia
ATO	Australian Taxation Office
BRS	Bureau Of Rural Sciences
CCA	Cattle Council Of Australia
DAWR	Department Of Agriculture And Water Resources
EADRA	Emergency Animal Disease Response Agreement
EPPRD	Emergency Plant Pest Response Deed
FWPA	Forestry And Wood Products Australia
GGL	Graingrowers Limited
GPA	Grain Producers Australia
GST	Goods And Services Tax
GVP	Gross Value Of Production
HIAL	Horticulture Innovation Australia Limited
IGAB	InterGovernmental Agreement On Biosecurity
LCC	Levy Collection Costs
LRB	Levy Recipient Body
MLA	Meat And Livestock Australia
MOU	Memorandum Of Understanding
NEBRA	National Environmental Biosecurity Response Agreement
NRS	National Residue Survey

PHA	Plant Health Australia
PIB	Prescribed Industry Bodies
R&D	Research And Development
RDC	Research And Development Corporation
RIRDC	Rural Industries Research And Development Corporation



EXECUTIVE SUMMARY

The agricultural levy system provides significant funding for research and development, marketing, biosecurity and residue survey function for the benefit Australian agriculture and the greater society.

The Department of Agriculture and Water Resources commissioned ACIL Allen Consulting with Minter Ellison in mid-2016 to provide a legislative snapshot of the agricultural levy system (Part I) with a view to find scope for improvements. A legislative snapshot of such a complex system, is not complete without an overview of the institutional arrangements. Consultation with over 100 stakeholders from Government and industry was required to garner a deeper understanding of the way the system works and to identify the challenges and opportunities for potential options for reform (Part II).

The overall findings of this report are that the levies snapshot identifies a large amount of legislation and subordinate instruments which is relatively effective and efficient in principle but difficult to manage in practice, this makes the system complex. The complexity is due to the large number of uniquely established levies, the numerous functions and key players, the administrative processes and the interconnection between the levy system and the levy funded functions.

The stakeholder consultation confirms the administrative complexity and suggests benefit in reform to the system. The potential options for reform to the system are identified as:

- clarity and consistent application of current arrangement
- delegate to improve flexibility and efficiency
- offer an alternative arrangement for less efficient levies
- consolidate levies and legislation.

Levy system snapshot

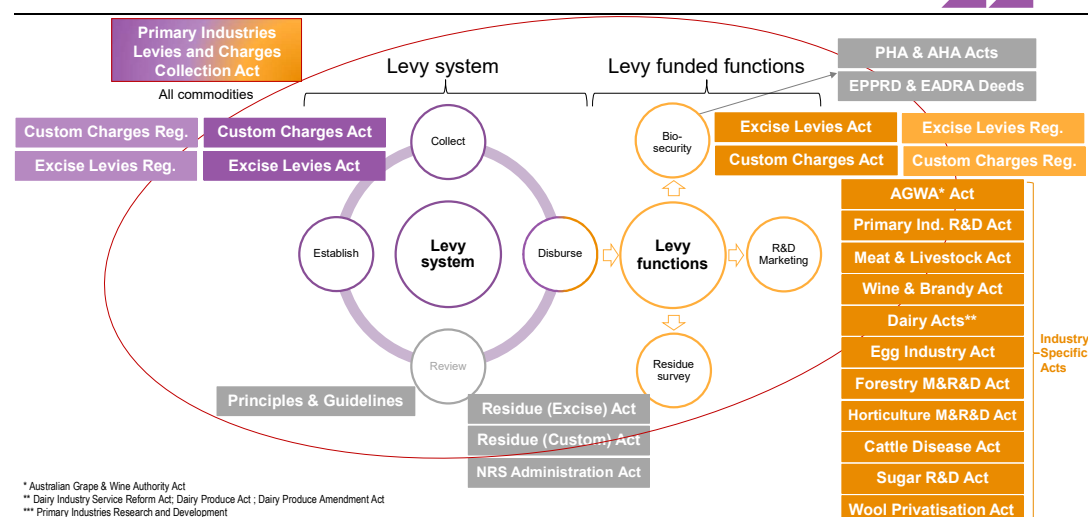
There are 263¹ different levies across the 74 commodities and 68 prescribed industry bodies. These are collected for five functions: Research and Development (R&D), marketing, National Residue Survey, biosecurity and emergency response. These levies are collected across 8,421 distinct collection points to the value of \$450 million and are disbursed to 18 levy recipient bodies.

There is considerable overlap between the legislative arrangements of levy system and the legislative arrangements of levy funded functions. This overlap leads to complexity and causes undue confusion for all stakeholders in managing and administering the system (**Figure ES 1** overleaf). It is this interface with the levy funded functions and the progressive addition of new levies that have created a burdensome and inflexible process for the more than 100 organisations involved in its administration.

¹ This number is calculated by taking the number of commodities (74) and the number of levies (rates > \$0.00) per commodity (maximum five – R&D, marketing, biosecurity, NRS, emergency response). This would mean that there could be a maximum of 370 levies but not all commodities have five levies – some, for example, goat fibre, only have an R&D levy.

A key strength of the system is that levies are generally industry determined. This has created a diverse and highly tailored system where the legislative structure is not consistent across levies as each levy has been established and legislated at different points in time since 1929. The legislative snapshot confirms: 43 related Acts (including the five primary Acts); 32 regulations; 5 orders; 16 declarations; 1 determination, and 1 scheme. The same legislation also underpins the institutions that provide the functions financed by levies.

FIGURE ES 1 LEVY SYSTEM SNAPSHOT



SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

Operationally the four levy phases (establish, collect, disburse and review) are guided by a common set of principles but have specific arrangements for each levy that are informed, but also constrained, by the particular legislation and institutional setting for the related commodity and levy recipient body. The combination of the levy system and the levy funded functions splits accountability because:

- Industries are responsible for **establishing and adjusting** levies
- Government is responsible for the **collection and disbursement** of levies
- Levy recipient bodies are responsible for the **expenditure** of levies
- All **three stakeholders are involved** managing the above responsibilities

While the functional separation of accountability is sound a wide array of arrangements as defined by legislation, levy recipient body constitutions, industry structures and numerous deeds, agreements and memoranda of understanding between stakeholders is required.

Regardless of the volume of legislation and the differences in how it works across the industries, the snapshot confirms that in a legislative sense there is:

- little or no duplication
- not much inconsistency or inefficiency
- clarity in the roles and responsibilities
- flexibility, as rates sit mainly in regulation, and
- the legislation is drafted in Plain English.

However, from a whole of system perspective and looking at the administrative reality of the levy system, this simplicity does not hold true. Paradoxically it is the same driver of strength created by the diversity and tailored approach, which makes the levy system administratively complex and a nightmare to manage.

The complexity is driven by the:

- sheer number and diversity of legislation, commodities, industry players and levy functions (R&D, marketing, NRS, biosecurity and emergency)

- industry lead establishment of each levy on a case by case basis at different points in time (the “tailored approach”)
- accountability and administrative overlaps between the levy system and levy funded functions (the “three legged stool”)
- lack of appropriate guidelines to assist in consistent and efficient establishment and review which in turn further inhibits change and makes the system less responsive to the needs of levy payers and levy recipients.

Challenges, opportunities and a way forward

The opportunity to improve the levy system is centred on the high levels of industry and Government support as these groups share the frustration around unnecessary costs and inflexibility embedded in the system. This provides industry and Government with an incentive to make changes to the system.

Operationally, all stakeholders agree establishing a levy must be subject to a “reasonable test” but they are looking for greater clarity, guidance and consistency in how to apply the principles. In terms of collection the challenge is that cost varies considerably which, along with supply chain characteristics, creates split incentives for reform between commodities dependent on how efficient their collection mechanism is. Similarly differences in institutional and legislative arrangements means that satisfaction with the performance and adaptability of levy disbursement and review ranges from highly effective to nearly completely inoperable.

Despite these differences all stakeholders agreed that levy legislation should be simplified so that changes to disbursements and levy reviews within an agreed scope do not require Parliamentary approval. This will avoid unnecessary cost and politicisation and improve flexibility and efficiency.

There is an opportunity around the question as to whether continuing to operate one levy system is appropriate. Compulsory levies accelerate industry development by requiring industry to come together as well as raising a sustainable source of funds to provide the agreed functions. As such there is a significant driver for industries to establish levies (as evidenced by on-going demand). However many new and existing commodities have relatively inefficient levies and may not have the capability to meet the various governance requirements that compulsory levies entail. Establishing an alternative but aligned system could provide a cost effective mechanism to support such development while avoiding the accretion of complexity within the current system making it more flexible and efficient. See Chapter 5, Section 5.3 for more details.

However, support for levy consolidation beyond legislative simplification is contingent on retaining the key feature of industry self-determination. So while there are consolidation opportunities in key commodity and levy recipient body groupings, any consolidations will need to be negotiated within those groups. It is unlikely whole system consolidation (e.g. a single levy) can be achieved given not all stakeholders will benefit.

More broadly there are opportunities driven by reform areas outside the scope of this study. This includes levy recipient bodies, industry representative structures, biodiversity and innovation policy reforms and also relates to improved accountability and transparency overall and to levy payers. Again the diverse arrangements that exist across the levy systems and functions, and these other areas create challenges in identifying, agreeing and implementing whole of system changes.

A pathway to reform

Overall the key triggers for addressing the challenges and pursuing the opportunities lie with the sunset provisions and to a lesser degree introduction of the levy register. To inform the way forward we have developed a series of options which progressively build on each other.

Clarifying and consistently applying current arrangements

This first option involves clarifying and consistently applying the levy principles with greater supporting guidance. The levy payer register should be used to gain a better understanding of who the levy payers are and to identify improvements through stakeholder engagement and negotiation, so as to make improvements on a levy by levy basis. The timing is such that the while the options can be

quickly implemented not all improvements will be ready before the sunset provisions need to be completed. For example, it will be time consuming to contact, engage, consult and negotiate with all levy payers in the system. A proportional response may prove more timely – focusing on where the biggest potential gains can be made. This option will result in some efficiency gains although providing minimal reform.

Greater delegation to improve flexibility and efficiency

This option involves maintaining the current policy intent of the levy system but adjusting levy legislation and standardising the levy fuel mix to improve the operational flexibility and responsiveness in addition to the previous option.

To extract maximum efficiency gains this option requires reform on the part of Government to provide the required flexibility for itself, industry and stakeholders.

Government needs to work towards delegation of powers to administrative orders to ensure levy changes occur at a level of accountability and transparency that is proportional to the change being sought. Legislative change involves establishing a hierarchy of delegations so that agreed operational adjustments within levies and allocations between functions can be made without Parliamentary approval.

The legislative changes should be identified in time to be included in the sunset provisions.

Offer alternative arrangements for less efficient levies

This option suggests that significant efficiency gains can be achieved through the development of an alternative system for less efficient levied industries or new industries to be run in parallel with the current levy system. However, this option also requires policy reform.

This option involves establishing threshold criteria for compulsory levies based on levy collection efficiency and industry representation capability under the Levy Principles and Guidelines. The threshold criteria will provide the framework for industry and Government to mutually agree on what the best alternative arrangements may be including lower governance obligations, common collection and consultation instruments and extending the time and amount of funding available to industries prior to establishing compulsory levies.

Consolidate levies and legislation

Consolidating levies is the most substantive and fundamental reform and involves a shift in policy intent and legislative consolidation to the maximum extent that is legally possible and acceptable to stakeholders. This would require the sunset dates for all levies to be aligned and if levy recipient body legislation was included they would also need to be aligned. Practically this option will require substantial stakeholder engagement and consolidation is likely to be more feasible within key commodity and levy recipient body groups rather than across the whole system.

Implementation

Based on our analysis, and the views of stakeholders, there is a need and appetite to pursue the first two options through the sunset provisions. However, these minimal reforms will be insufficient and not realise the real opportunity created by the sunset provisions.

The two more substantive reform options have merit but will require greater effort and collective consideration by industry and Government to determine whether they should be reviewed.

We have developed the terms of reference for a major review of the levy system based on these options. The terms of reference are structured so that the review can consider all or some of the options. Overall the review provides a potentially effective mechanism to engage with stakeholders and prepare for the sunset provisions but consideration needs to be given to the tradeoffs between the cost and effort required for minimal reform and the potential for maximum gain in the levy system.



1.1 Background

We ask a lot of the agricultural levies system. We want it to raise revenue for research and development (R&D) to make commodities more agile and more internationally competitive. We want it to fund market access opportunities in both Australia and overseas. We want it to help us manage bio-security and other environmental issues which pose a threat to the sustainability of agriculture. We want it to address commodity specific issues, as well as those which are common to many, if not all, commodities produced in Australia. The list of what we want levies to do goes on and on, and then on some more.

In addition to these objectives for the levy system, we want the processes which decide how much levy funds people pay and how these funds are distributed to be transparent, fair, consistent, understandable, predictable, flexible, efficient and most of all highly effective.

Most if not all of the things we ask of the levy system are worthy in themselves (though in some cases it might be reasonable to ask if the policy objectives could be achieved another way). But the result is that we have a levy system that has become overly complex. So much so that large, important parts of the levy system are difficult to understand by the people who pay levies and those who manage their collection and distribution.

Excessive complexity in the levy system, mirrors many concerns that have been a persistent problem in Australia's tax system. The desirability of a better (less complex) tax policy and law system was recognised by the Ralph Review in 1999, the Henry Tax Review (2008) and *Re:think, Tax discussion paper* (2015).² The recommendations from the Ralph Review emphasised the need for strong coordination amongst stakeholders, as well as sufficient opportunities for industry and other taxpayers to participate in the tax design process.

Since then, Government agencies have addressed these recommendations by implementing a range of legislative and regulatory design principles and processes focused on embedding a shared understanding of policy intent and effectively translating that intent into the legislation and regulations underpinning the tax system. We see many parallels between tax system complexity more broadly and the accretion of complexity in the levy system.

This report should be seen as a set of 'guide rails' for simplification to the benefit of all agricultural commodities and stakeholders who support the system and provide a definitive account on how best to deliver this simplification.

² "Review of Business Taxation," Ralph Review, accessed March 23, 2016, <http://www.rbt.treasury.gov.au/>; "Australia's future tax system," Henry Review, accessed March 23, 2016, <http://taxreview.treasury.gov.au/content/Content.aspx?doc=html/home.htm>; The Treasury, *Re:think, Tax discussion paper* (Canberra: Commonwealth of Australia, 2015).

The difficulty and resources required to implement an enhanced levy system should not be underestimated. It is acknowledged that some level of complexity in our levy system is inevitable, be it due to the evolving nature of producers, constantly changing market structures, changing international regulations, emerging biosecurity threats and ongoing technological advances that drive the needs of different commodities and the role of levies in addressing those needs. However, it is clear from this review of the current levy system that its complexity generates 'unnecessary costs' that are 'dead weight losses' to the entire agricultural system. These losses should be minimised as a priority over the coming decades.

1.2 Purpose and scope

The Department of Agriculture and Water Resources (the Department) has commissioned ACIL Allen Consulting and Minter Ellison to undertake a scoping project for reviewing the Commonwealth agricultural levies system. The purpose of the project is to inform the Department's consideration of longer term options for the design and operation of the agricultural levies system by:

- Providing a snapshot of the current legislative arrangements, how they work and improvement options
- Scoping the focus and terms of reference for a potential major review of the system.

The project is not a review of the policies, models and institutions supporting and interacting with the levy system. **Table 1.1** below outlines what is within and outside the Study's scope.

TABLE 1.1 SCOPE OF THIS PROJECT

Within scope	Outside scope
<ul style="list-style-type: none"> – R&D, biosecurity, marketing and NRS levies – Related processes, structures, systems and legislation (see Appendix A) – R&D/RDC/industry body matters where closely interlinked with levies system (see Appendix D) – Levy payer registers are within scope but not a central focus 	<ul style="list-style-type: none"> – AFMA, APVMA levies, state and territory levies – levies administered by other Commonwealth departments – Overall performance of R&D/levies system – Industry representative structures – Commonwealth matching funding arrangements – Levy collection cost recovery model – Levy matters which are solely the responsibility of industry

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

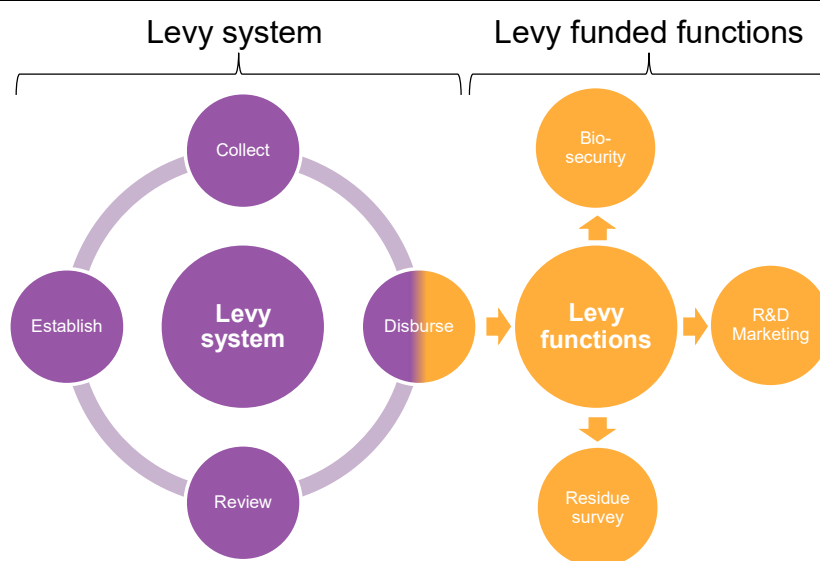
1.3 Approach

A useful way to conceptualise agricultural levies is provided in **Figure 1.1** below.

The agricultural levy system part of an interconnected structure, the other part being the system which delivers the levy funded functions. On the left hand (purple) side the levy system is characterised by the four phases in the levy lifecycle: establishment, collection, disbursement and review. Each part of this system is governed by different bodies. Peak industry bodies are typically involved in establishment and review, agents and/or the Government collects the funds and the Government disburses the levies.

The right hand side (yellow) defines what happens once the funds have been disbursed and the relationships between the different types of levies. These functions are important as they determine the levy spend and this is what ultimately provides a link back to the levy payer.

This diagram assists in differentiating between what is in the scope of this review (purple) and what is outside the scope of this review (yellow). It is the levy system (purple) that underpins this scoping project and the potential options and terms of reference provided in this report. However, the intersection between the two structures means that it is often difficult, if not impossible, to clearly separate the levy system from the functions it funds.

FIGURE 1.1 LEVY SYSTEM AND FUNCTIONS

SOURCE: ACIL ALLEN AND MINTER ELLISON

We use this representation of the interconnected structure of the levy system and funded functions throughout our report and show how and where our research and analysis fits within this structure.

1.4 This report

This report (**Deliverable 2 – Volumes 1 and 2**) provides an overview of the current agricultural levy system and proposes options and a Terms of Reference (**TOR**) as a way forward.

Volume 1, Part I of this report presents a snapshot of the current legislative and institutional arrangements and how they work.

- **Part II** provides an analysis used to inform and develop the potential options for consolidating, streamlining and otherwise improving these arrangements; and the major review scope (**TOR**) to inform a future review of the levy system.

This report is structured as follows:

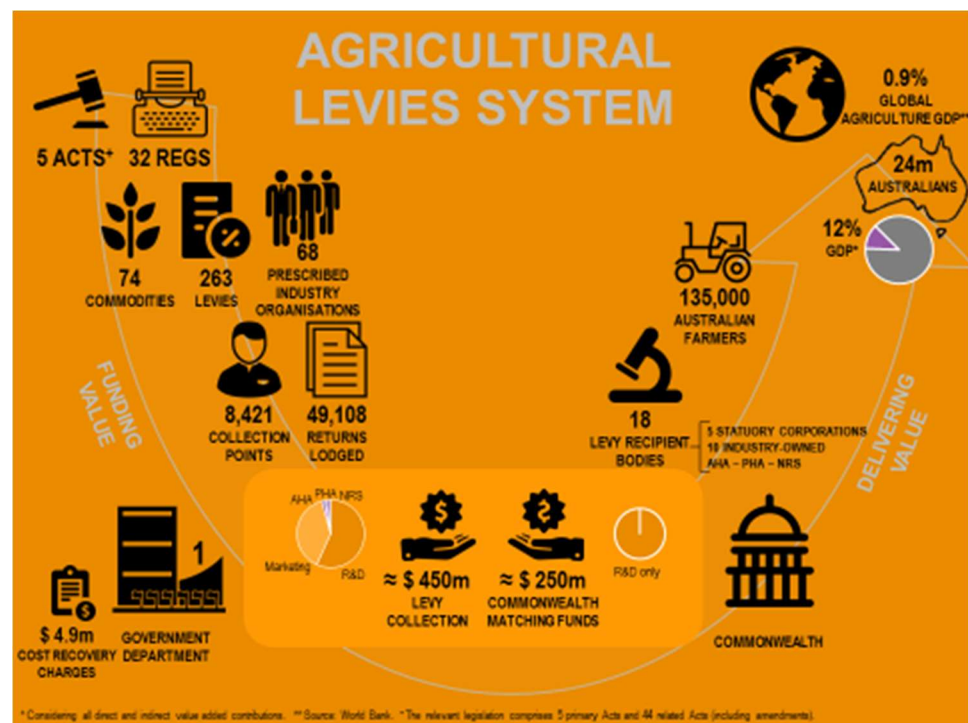
- **Part I – Snapshot of the levy system**
 - Chapter 2: presents the levy system rationale and guiding principles
 - Chapter 3: presents the legislative and institutional arrangements
- **Part II – Opportunities, challenges and a way forward**
 - Chapter 4: summarises the key findings and analyses the challenges and opportunities for the major issues
 - Chapter 5: presents potential options for a way forward
 - Chapter 6: provides a potential Terms of Reference.

The appendices are provided in **Volume 2**:

- **Appendix A:** Levy related legislative instruments
- **Appendix B:** Summary and assessment of the legislation and regulations by levied commodity
- **Appendix C:** Levy rates and values by commodity for each levy function (R&D and marketing, NRS, biosecurity and emergency response levies)
- **Appendix D:** Legislative and institutional relationships across research and development corporations and industry owned bodies
- **Appendix E:** Stakeholder consultation
- **Appendix F:** Stakeholder analysis

I

SNAPSHOT OF THE LEVY SYSTEM





2.1 What are levies?

Levies and charges are taxes imposed on producers and are initiated by the relevant primary industry body to allow for key industry issues to be addressed by pooling industry resources. Levies are taxes imposed on domestic products while charges are taxes on imports and exports.

Primary industry levies are legislated under five key Acts and 34 different pieces of regulation. Anyone who grows, produces, processes or distributes agriculture products of any of the 74 different leviable commodities may be required to pay a levy or charge on that product.

The levy rates and/or charges are different for many different commodities and there are at least 15 different leviable units, from dollars or percentages per kilogram, to per head to value of production or even dollars per pot, box, bale or strawberry runner. These may be collected at different points across the supply chain – from farm gate to processing and exporting.

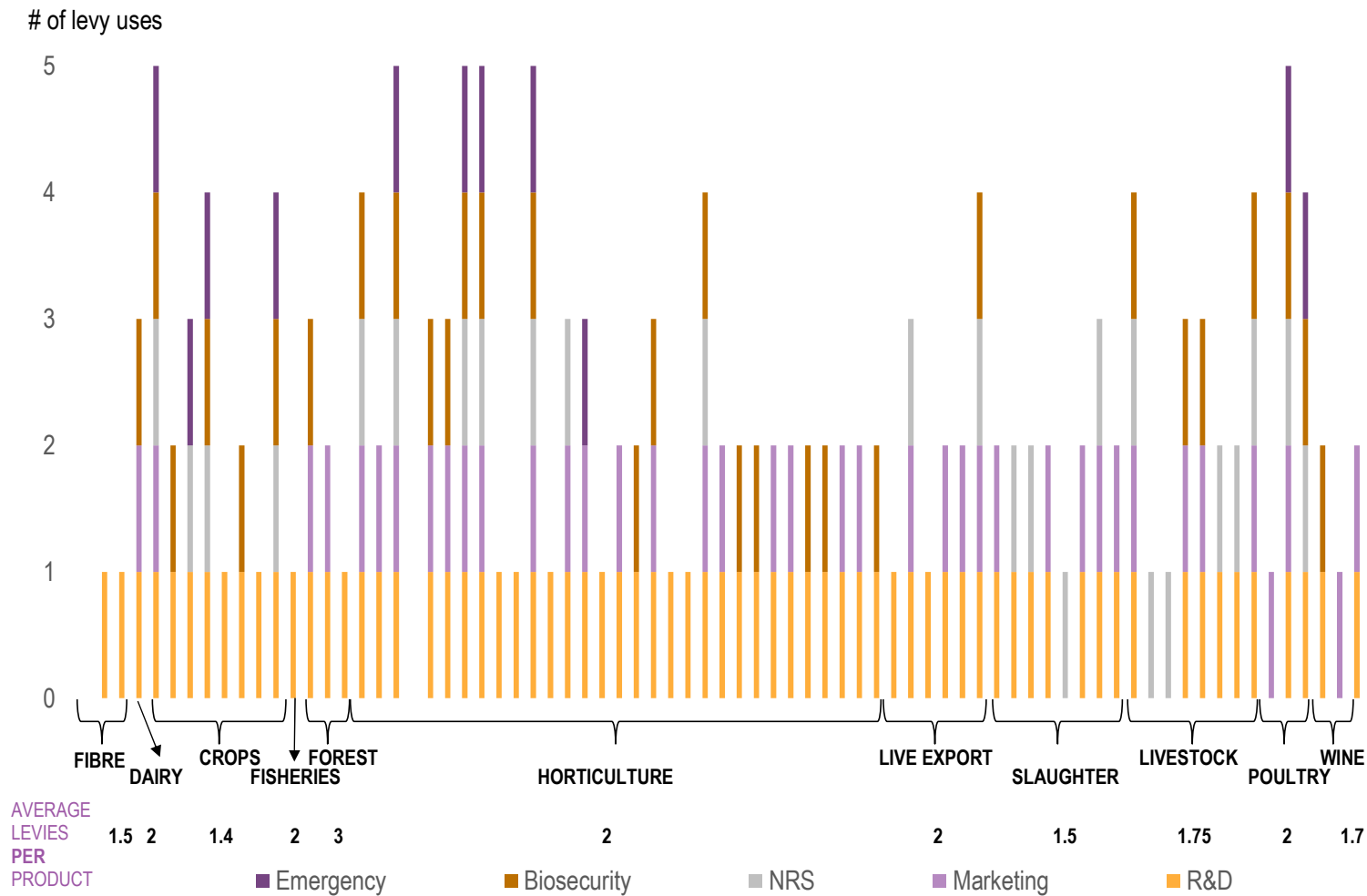
Each commodity (or group of commodities) has different exemption mechanisms, different frequencies of payment (or lodgement of returns – monthly, quarterly, annual or once off) and different collection mechanisms (lodged by the farmer, the processor or collected by agents) and all collected funds are distributed in different ways to different bodies for different uses and with different outcomes.

Currently there are 263³ different levies across the 74 commodities and 68 prescribed industry bodies. These are collected for four functions: Research and Development (R&D) and marketing, National Residue Survey, biosecurity and emergency response. These levies are collected across 8,421 distinct collection points to the value of \$450 million (See **Table 2.1**). Of this, approximately \$20 million is used for biosecurity and national residue testing services, with the remainder allocated to research, development and marketing.

Figure 2.1 depicts a three dimensional analysis of levy frequency and use. The chart shows the final use of the levies by the function (i.e. R&D, marketing, biosecurity, residue testing and emergency response). Some levies have a single clear purpose, others fund up to five different uses, and in some instances, the levy covers all five different categories. This complexity is especially prevalent in horticulture, poultry and field crops. In turn, the livestock slaughter and wine industries have a much more targeted levy use.

³ This number is calculated by taking the number of commodities (74) and the number of levies (rates > \$0.00) per commodity (maximum five – R&D, marketing, biosecurity, NRS, emergency response). This would mean that there could be a maximum of 370 levies but not all commodities have five levies – some, for example, goat fibre, only have an R&D levy.

FIGURE 2.1 FREQUENCY AND USE OF PRIMARY INDUSTRIES LEVIES



SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON, WITH DATA FROM THE DEPARTMENT OF AGRICULTURE AND WATER RESOURCES

The Department of Agriculture and Water Resources then administers the 49,108 levy returns⁴ that are lodged and the Commonwealth Government matches approximately \$250 million to eligible research and development funds.

Approximately \$700 million is then distributed by the Department to 15 levy recipient bodies for research, development and marketing services and the remaining funds are distributed to three other bodies for biosecurity and national residue testing.

TABLE 2.1 LEVY SYSTEM - OVERVIEW

Commodity	# of levied commodities	# of levy collection points*	Levy collected (in \$ 000's)	# of Peak Industry Bodies	# of entities funded	RDC's or other entities funded
Animal Fibres	2	180	\$48,045	5	2	AWI RIRDC
Dairy	1	88	\$35,342	4	1	DAL AHA
Field Crops	8	2,523	\$144,047	11	4	GRDC RIRDC SRA CRDC NRS PHA
Fisheries	1	18	\$175	4	1	FRDC
Forestry	2	395	\$5,360	3	1	FPWA PHA
Horticulture	32	6,172	\$48,036	40	2	HIAL RIRDC NRS PHA
Live Export	6	84	\$5,136	8	3	LiveCorp RIRDC MLA NRS AHA
Livestock Slaughter	8	636	\$32,725	8	3	AMPC RIRDC APL NRS
Livestock Transaction	8	2,753	\$100,385	8	1	MLA NRS AHA
Poultry	3	61	\$9,153	2	2	AECL RIRDC NRS AHA
Wine	3	3,855	\$17,905	2	1	AGWA PHA
Total Primary Industries	74	16,765*	\$446,309	95	21	

Note: * Collection points, or levy payers, can be counted more than once if they deal in multiple commodities and go to multiple LRBs. The active levy agent base as at 31 December 2015 is 8 421

SOURCE: ACIL ALLEN CONSULTING, MINTER ELLISON AND DEPARTMENT OF AGRICULTURE AND WATER RESOURCES

2.2 Policy rationale for levies

There is a history of public and rural industry support for agricultural research and development (R&D) in Australia and this is what underpins the current levy system.

Levies were first legislated in 1929 and now all the major agricultural industries have levies that raise revenue for research. These industry raised revenues (levies) are matched by general taxpayer revenues.

The policy rationale for providing levy support to rural research was defined by Core (2009) as follows:

- The agricultural sector has many diverse industries with a large number of producers who cannot realise enough benefits from the R&D that they could self-fund, leading to underinvestment in the sector.
- The collection of mandatory levies limits free-riding by some on the R&D provided by others

⁴ Department of Agriculture and Water Resources, 2016, *Mid-Year Report to Levy Stakeholders, 2015-16*.

- There are significant positive externalities (or spill over benefits) to Australian society.⁵

This policy rationale is considered relevant today as many rural firms in Australia lack sufficient economies of scale to invest in R&D and biosecurity. Further the benefits from investment in research are often not realised in the short term and the benefits from agricultural R&D required for productivity are not easily captured by commercial investors.

The levy system is strongly supported by the Commonwealth Government and valued by Australia's traditional primary industries. The benefits it provides for R&D, promotion and marketing, residue testing, plant and animal health programs are numerous.

Provision of R&D activities and biosecurity provides a net social benefit. It helps Australian primary producers achieve productive efficiency, product quality, sustainability, innovation and be able to supply and respond to competitive global and local market needs.⁶

2.3 Guiding principles

The principles and guidelines underpinning new or amended levies provide a framework for proposing and changing levies across all commodities. Designed in 1997, these 12 principles (See **Box 2.1** overleaf for more details) include the fundamental concepts of ensuring a levy is only introduced where market failure is present and when it is supported by the industry body and existing or potential levy payers in a transparent and accountable manner.

The Levy Principles and Guidelines were developed to help industry bodies:

- Prepare a sound case for the introduction of a levy or charge or a change to an existing levy or charge
- Require industry bodies to inform all potential and existing payers about the proposal
- Provide an opportunity for all prospective and existing levy payers and other interested parties to express their views.

2.4 What are levies used for?

Levies are used to fund agricultural R&D and marketing that would otherwise not be funded due to the failure of the market to encourage private rural research and development. Levies pooled across industries allow for a co-ordinated approach to research and for solutions to industry relevant problems that may not otherwise be solved if left to the market.

Other than R&D and marketing there have been levies established in the area of residue testing and biosecurity. Examples include:

- National Residue Survey levies
- Emergency Animal Disease Response levies
- Emergency Plant Pest Response levies
- Plant and Animal Health Australia membership subscription fees.

Levies may also be set up for other purposes, such as Government-initiated industry adjustment levies which operate for a defined period.

While these functions are defined and funded (in part or whole) by the levies system they are a separate system with its own legislation and governance arrangements (**Figure 1.1**).

⁵ Core, P. (2009), *A Retrospective on Rural R&D in Australia*, in collaboration with the Australian Department of Agriculture, Fisheries and Forestry as a background paper for the Rural Research and Development Council, November 2009.

⁶ Mallawaarachchi, T, Walcott, J, Hughes, N, Gooday, P, Georgeson, L and Foster, A 2009, Promoting productivity in the agriculture and food sector value chain: issues for R&D investment, ABARE and BRS report to the Rural R&D Council, Canberra, December. p 3.

BOX 2.1 THE LEVY PRINCIPLES AND GUIDELINES

The *Levy Principles and Guidelines* were designed by the Commonwealth Government to help industry bodies prepare a sound case for a levy or charge to be considered by industry members.

The Principles and Guidelines require:

the industry body to inform all potential and existing payers of the levy proposal, and to give those prospective levy payers and other interested parties an opportunity to express their views.

The Levy Principles and Guidelines (2009), Page 1

The 12 principles are as follows:

1. The levy must be proposed to correct for a market failure
2. A request for a new or amended levy requires stakeholder consultation with all existing and potential levy payers, where possible, and any identified beneficiaries or other interested parties.
3. A levy must be assessed giving consideration to the extent, nature and support or opposition provided by stakeholders.
4. The following information needs to be provided in making a case for a levy:
 - An estimation of the total amount of levy required to achieve its outcome
 - A plan for how the levy will be used, including identifying any issues of equity
 - A statement of acceptance of the above plan by levy payers consistent with stakeholder engagement in Principle 2.
5. The proposed levy imposition and/or collection method needs to be agreed by the majority of stakeholders, or, despite objections, it can be demonstrated that imposition/collection method is equitable given the circumstances.
6. The levy imposition must be equitable between levy payers
7. The levy must be related to the inputs, outputs or a unit of the value of production (or by some other equitable manner) and linked to the cause of the market failure.
8. The collection mechanism must be transparent, accountable, practical and efficient and minimise red tape to related parties.
9. Any organisation that will be involved in the management of spending the levies must be consulted prior to the levy being introduced.
10. The organisation managing the expenditure must be accountable to levy payers and the Australian Government.
11. Levies must be reviewed against these principles in a manner acceptable to the Government, after a specified time period from when the levy was first imposed
12. Any changes to existing levies must be supported by the industry bodies, levy payers or by the Government in the public interest and must have regard to the above principles where applicable.

SOURCE: ADAPTED FROM THE LEVIES REVENUE SERVICE (2009), LEVY PRINCIPLES AND GUIDELINES, DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY

Levies have become increasingly popular since they first were put in place for wine exports in 1929. In the last 25 years 60 commodities have been levied. **Figure 2.2** shows the establishment of new levies by commodity and year and the relative amount collected (indicated by the font size).

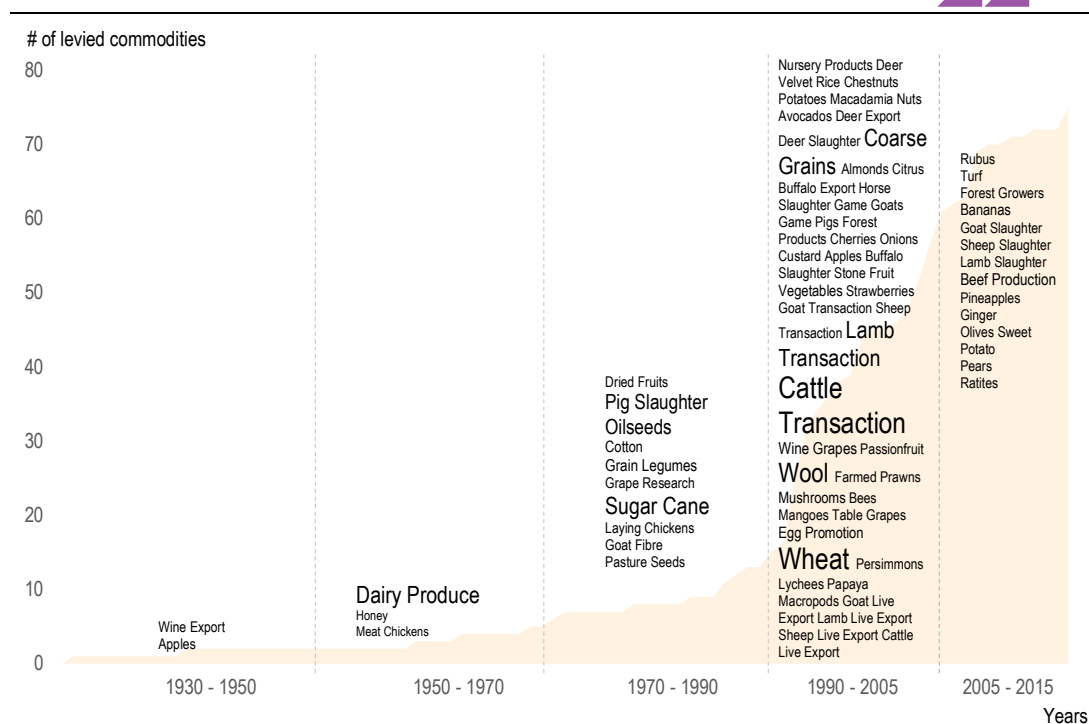
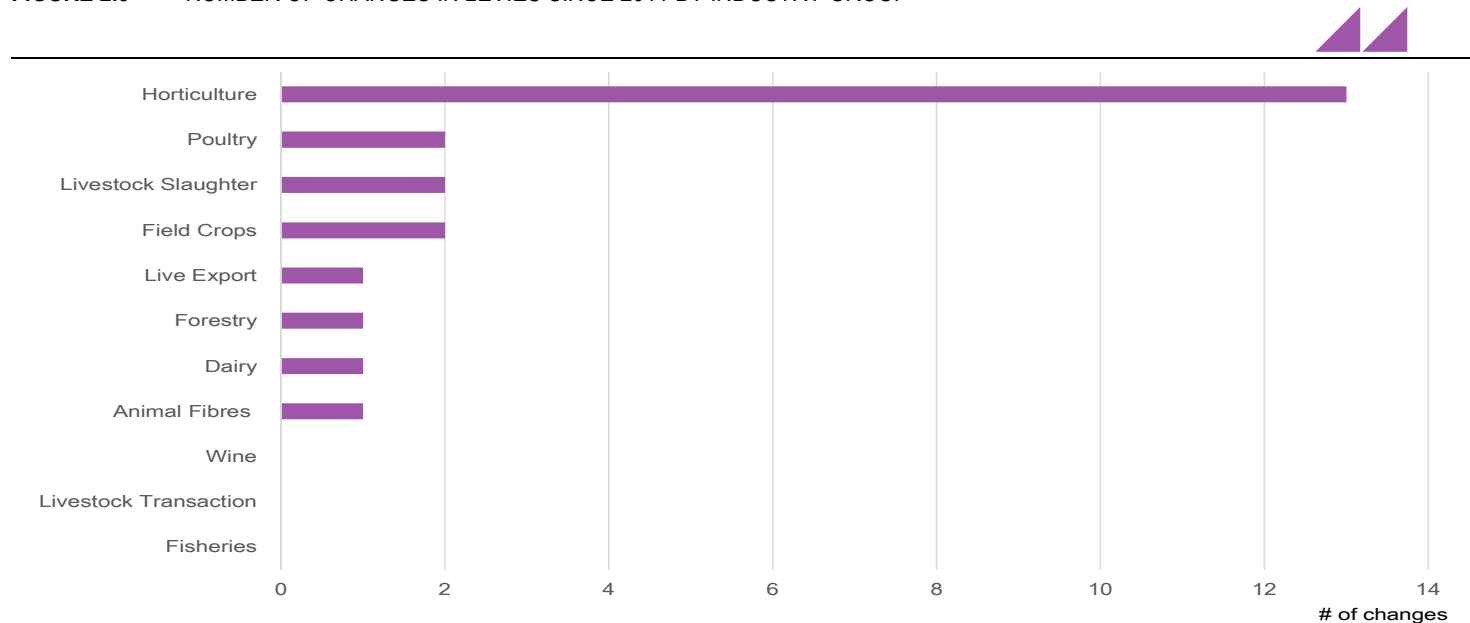
FIGURE 2.2 CUMULATIVE NUMBER OF LEVIES BY COMMODITY AND YEAR OF INTRODUCTION

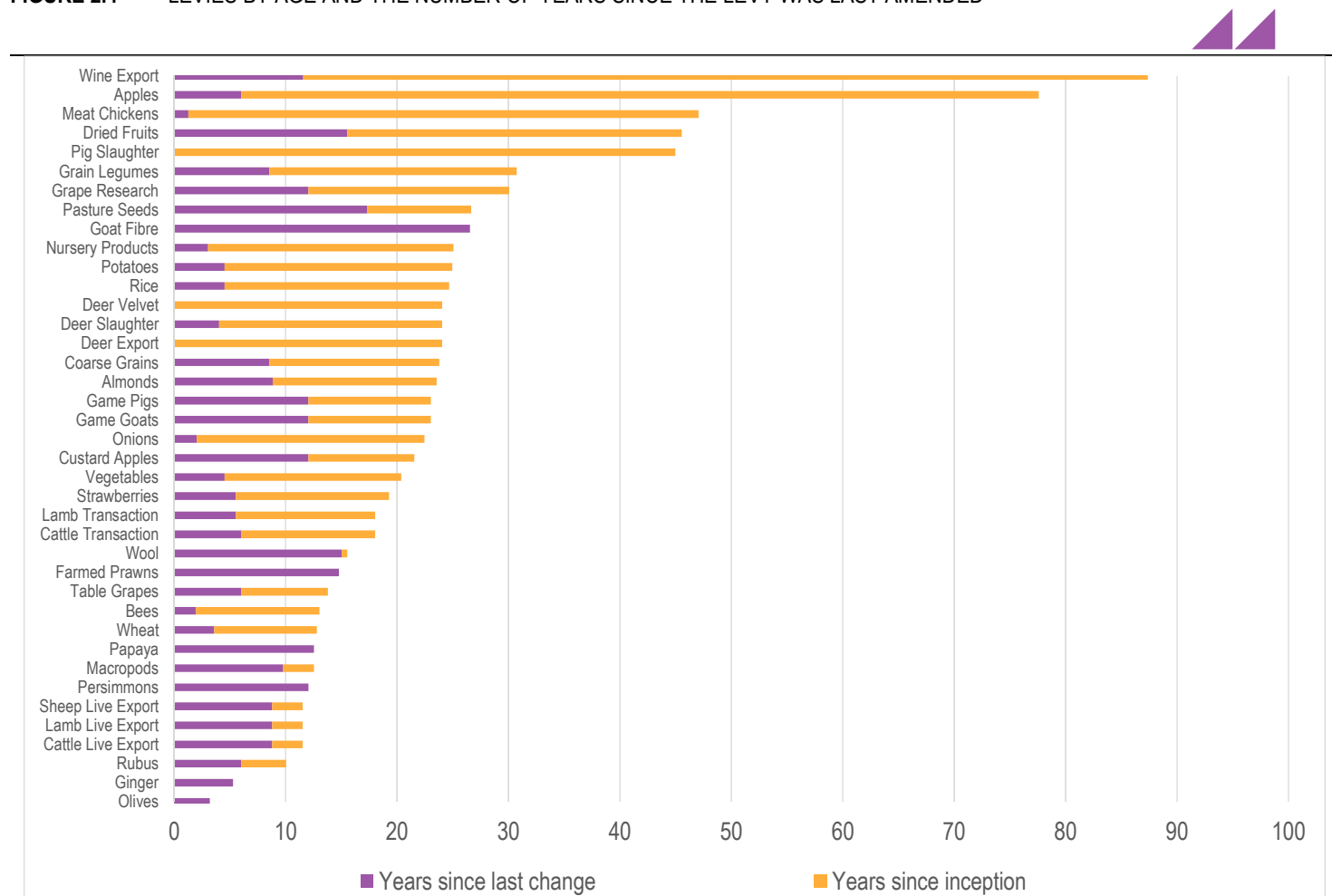
Figure 2.3 suggests the horticulture sector has seen the most levy changes in the last five years⁷, while most other broad industry groups have seen two or less changes. Wine, livestock transaction and fisheries have seen no change at all. Bananas, chestnuts and forest products were the only individual commodities to be changed more than once in the period of analysis.

Figure 2.4 (overleaf) takes a longer term view and shows the complete life of all current commodity levies. More than half of all current levies were created at or after the introduction of the *Primary Industries (Excise) Levies Act 1991* (i.e. most levies are 25 years old or less). **Figure 2.4** also depicts the time elapsed since the last change in the levy. The data shows that 64 per cent of all levies have not been changed in the last 5 years, 36 per cent of levies have had no change since 2006 and the goat fibre levy was last amended in 1990.

⁷ This could be due to the large number of commodities under the horticulture umbrella.

FIGURE 2.3 NUMBER OF CHANGES IN LEVIES SINCE 2011 BY INDUSTRY GROUP

SOURCE: DEPARTMENT OF AGRICULTURE AND WATER RESOURCES

FIGURE 2.4 LEVIES BY AGE AND THE NUMBER OF YEARS SINCE THE LEVY WAS LAST AMENDED

SOURCE: DEPARTMENT OF AGRICULTURE AND WATER RESOURCES

3

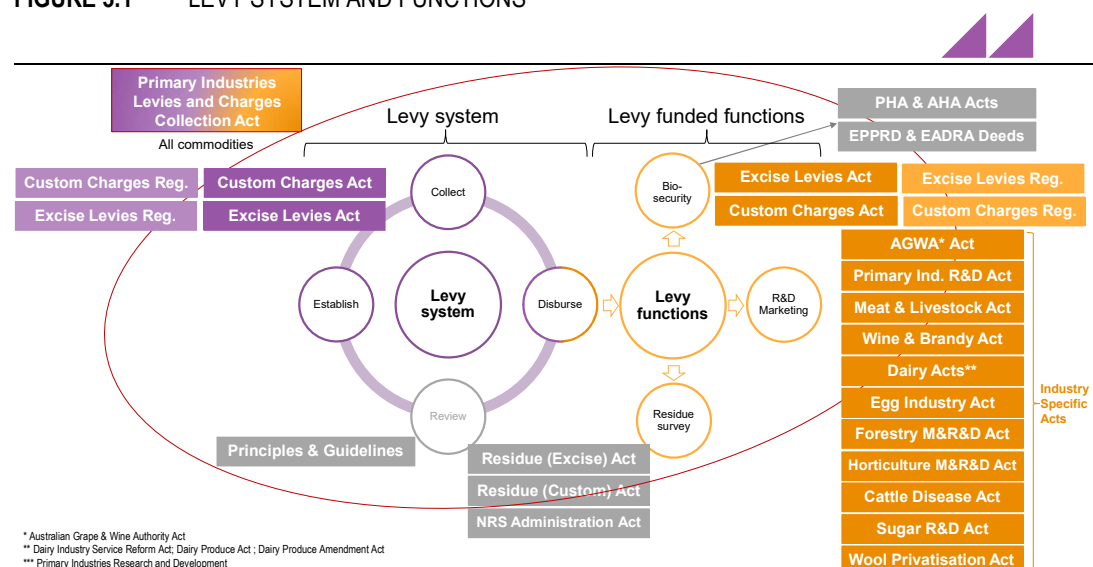
LEGISLATIVE AND INSTITUTIONAL ARRANGEMENTS

3.1 Introduction

The levy system is governed by five primary Acts and 34 pieces of regulation and is administered by the Department of Agriculture and Water Resources on behalf of the Commonwealth Government. Within the system there are also 18 Levy Recipient Bodies (LRBs) which comprise five Government owned research corporations (RDCs), ten industry owned RDCs and three bodies responsible for biosecurity and residue services.

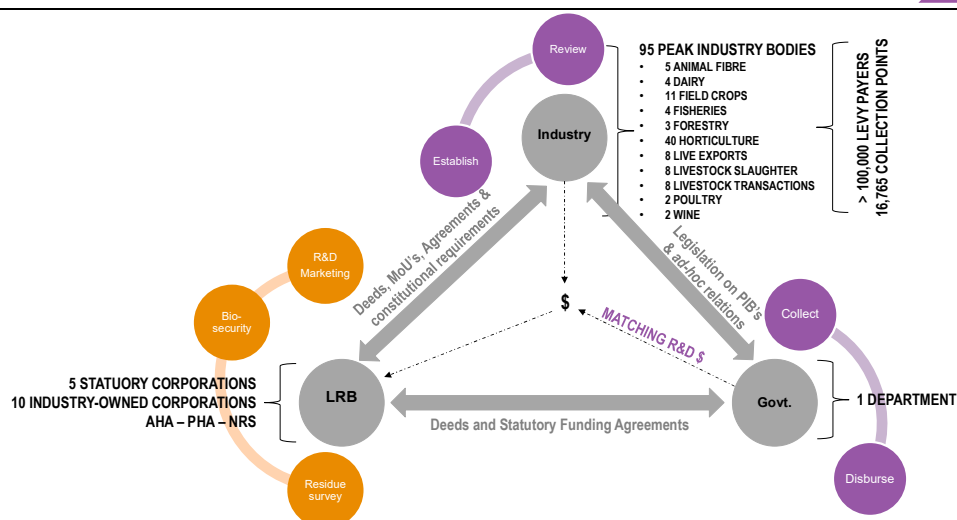
As shown in **Figure 3.1** there is considerable overlap between the legislative arrangements of levy system and the legislative arrangements of levy funded functions. This overlap leads to complexity and causes undue confusion for all stakeholders in managing and administering the system.

FIGURE 3.1 LEVY SYSTEM AND FUNCTIONS



SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

Figure 3.2 below represents the institutional arrangements of the agricultural levy system as a “three legged stool” and shows how these relationships overlap between the main players, the levy system and the levy funded functions.

FIGURE 3.2 INSTITUTIONAL ARRANGEMENTS

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

This Chapter provides the legislative snapshot of the agricultural levy system including the key legislation for the levy system and the legislation for the levy funded functions and the current institutional arrangements and administrative processes.

3.2 Current legislative arrangements and how they work

The legislative arrangements within the levy system can be described by the following hierarchy:

- Statute/Act/Principal Legislation
- Regulations
- Delegated legislation/Order/Declaration/Rules

Details on the definitions of these terms can be found in the Glossary of Legal Terms in **Appendix A**.

Other documents related to the agricultural levy system include but are not limited to:

- Memorandum of Understanding (MOUs)
- Statutory funding agreements (SFAs)
- Emergency Response Deeds
- Company constitutions
- Deeds of Agreement

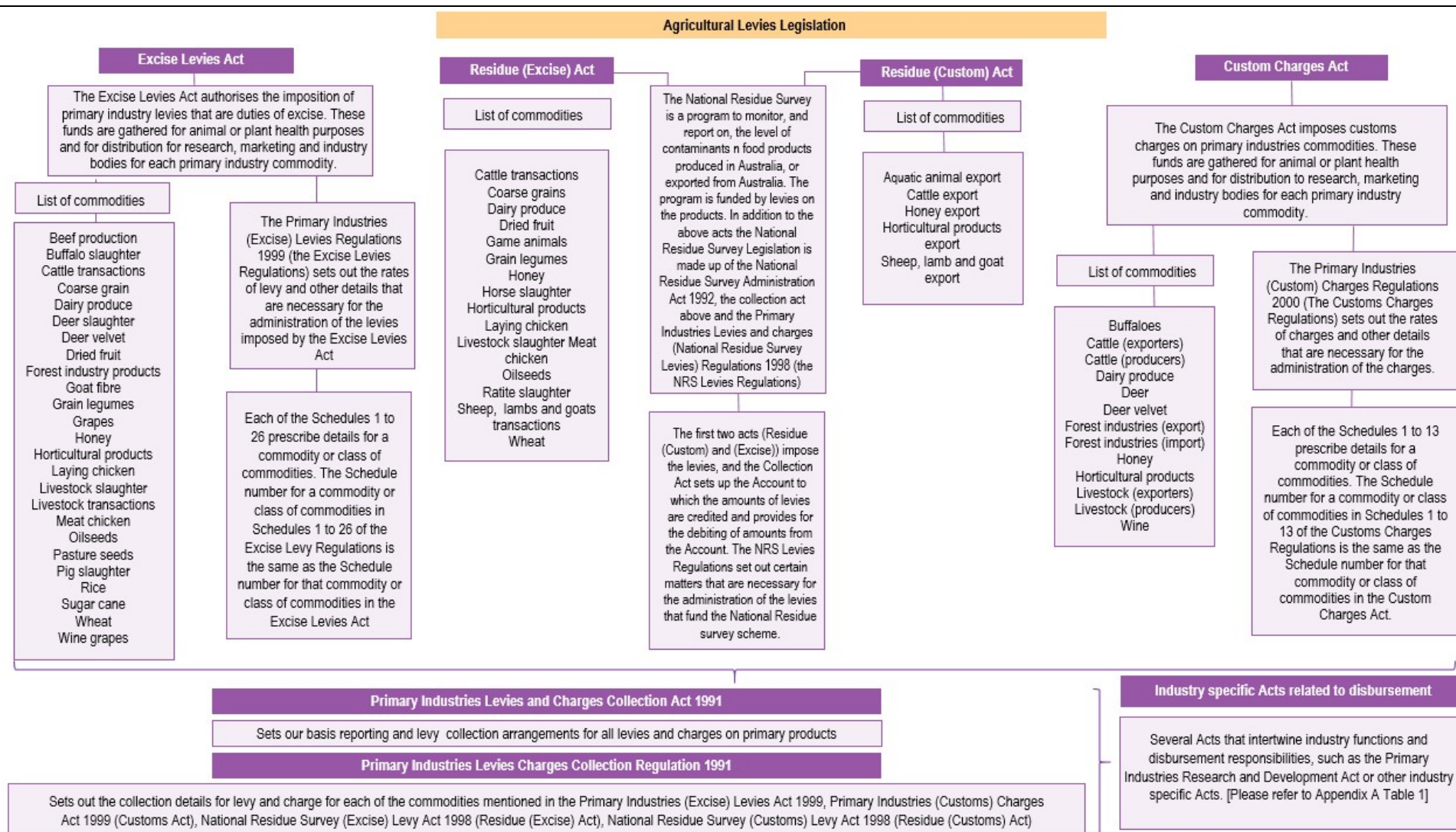
Using this hierarchy we present the following snapshot of the current levy system and the levy funded functions.

3.2.1 Key levy system legislation

The *Primary Industries (Excise) Levies Act 1999* and the *Primary Industries (Customs) Charges Act 1999* impose the levies and charges.

These two Acts provide the authorisation for R&D, marketing and biosecurity levies. The rates and administrative arrangements for the relevant commodities sit below in various pieces of regulation. The *Primary Industries Levies and Charges Collection Act 1991* rationalises levy and charge collection and contains provisions for the effective collection of primary industry levies and charges.

FIGURE 3.3 AGRICULTURAL LEVIES LEGISLATIVE MAP



SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

The NRS levy system sits parallel to the Excise and Customs Acts but is a purpose built legislative system consisting of a *National Residue Survey (Customs) Levy Act 1998* and *National Residue Survey (Excise) Levy Act 1998* with an Administration Act and its own regulatory instrument the *Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998*.

Figure 3.3 above presents a legislative map of the agricultural levies system. The focus is on the five primary Acts:

1. *Primary Industries (Excise) Levies Act 1999*
2. *Primary Industries (Customs) Charges Act 1999*
3. *Primary Industries Levies and Charges Collection Act 1991*
4. *National Residue Survey (Customs) Levy Act 1998*
5. *National Residue Survey (Excise) Levy Act 1998*

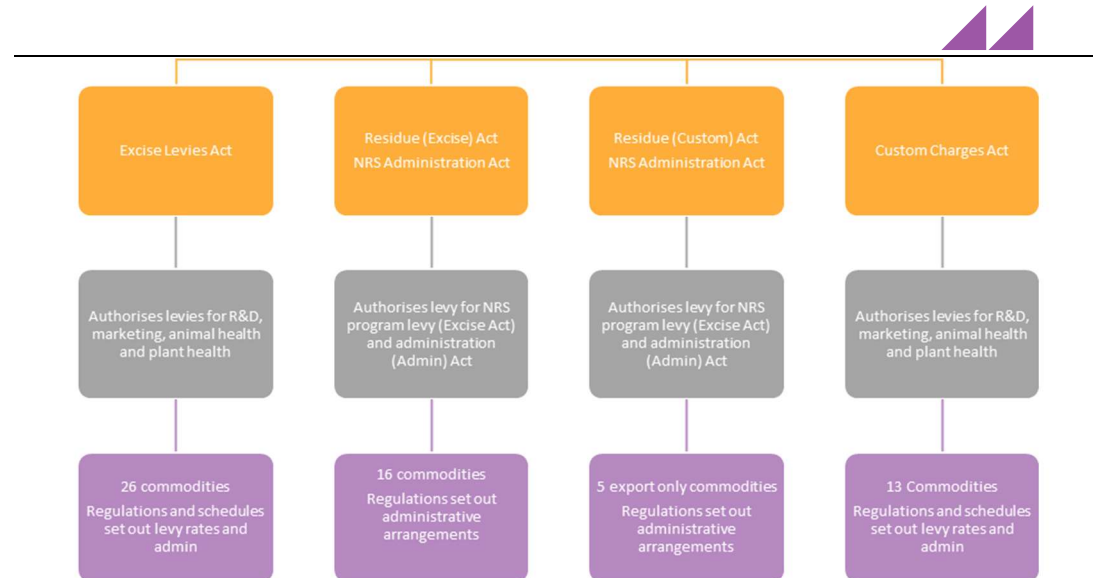
The legislation which governs the agricultural levy system and levy funded functions and their accompanying regulations, which govern how levies and charges are imposed and collected are all listed in **Appendix A, Table A.1**.

There are:

- 43 related Acts (including the five primary Acts)
- 32 regulations
- 5 orders
- 16 declarations
- one determination
- one scheme.

Figure 3.4 below presents a schematic of the legislation for the agricultural levy system by the number of commodities. This follows with a breakdown of the legislation by levy function (R&D and marketing, NRS, Biosecurity and Emergency Response levies).

FIGURE 3.4 LEGISLATIVE MAP OF IMPOSITION LEGISLATION BY NUMBER OF COMMODITIES



SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

A detailed assessment of the legislative issues on a commodity by commodity basis is presented in **Appendix B**.

Research, development and marketing levies

The following legislation governs the research and development and marketing levies.

- *Primary Industries (Customs) Charges Act 1999*
- *Primary Industries (Customs) Charges Regulations 2000*
- *Primary Industries (Excise) Levies Act 1999*
- *Primary Industries (Excise) Levies Regulations 1999*
- *Primary Industries Levies and Charges Collection Act 1991*
- *Primary Industries Levies and Charges Collection Regulations 1991*

While there are some specific marketing levies in place, for example egg promotion levy and those for dried tree fruits, most marketing levies are raised in conjunction with research and development levies.

The levy rates for each commodity are provided in **Appendix C, Table C.1**.

National residue survey levies

Following human health concerns about pesticide residues in exported meat in the 1960s the Commonwealth established the National Residue Survey (NRS) which manages the risk of chemical residues and environmental contaminants in Australian food products.

Residue and other contaminants are tested for beef as well as other meats, grain, horticulture and fish. The NRS is funded by industry levies and the NRS levies are governed under the following legislation and regulation:

- *National Residue Survey (Customs) Levy Act 1998*
- *National Residue Survey (Excise) Levy Act 1998*
- *Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998*

These levies are charged for some commodities and not others. **Appendix C, Table C.2** presents the commodities with NRS levies and their current rate.

Biosecurity

Biosecurity levies are paid to not-for-profit organisations (as distinct from legislated statutory bodies) – Plant Health Australia (PHA) and Animal Health Australia (AHA) and are raised under following legislative scheme:

- *Primary Industries (Customs) Charges Act 1999*
- *Primary Industries (Customs) Charges Regulations 2000*
- *Primary Industries (Excise) Levies Act 1999*
- *Primary Industries (Excise) Levies Regulations 1999*
- *Primary Industries Levies and Charges Collection Act 1991*
- *Primary Industries Levies and Charges Collection Regulations 1991*

The role of PHA and AHA is to assist in developing a national approach to animal and plant health through Government and industry partnerships. Biosecurity levies are not levied on all commodities.

Biosecurity levies can be used to:

- Meet membership subscriptions to PHA and AHA
- Fund (in some instances) broader plant and animal biosecurity projects for pest and disease preparedness, prevention, emergency response and management.

The current biosecurity levies are presented in **Appendix C, Table C.3**.

Emergency Plant Pest Response Levies

Emergency Plant Pest Response (EPPR) levies are imposed under the general power to impose levies in Part 2 of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999* as long as the

product levied is produce of a primary industry. For example for grapes, Schedule 13 of the Primary Industries (Excise) Levies Regulations 1999 imposes an EPPR levy, which is currently set at zero.

A Deed between the Industry and Government has been established between the Australian Government, all state and territory Governments, PHA and plant industry signatories on how to manage the costs and responsibilities for responding to an emergency plant pest outbreak (EPPR Deed). The Deed sets out the intentions of relevant parties to fund their Deed obligations through levies and obligations to take steps to increase levy rates in accordance with the Levy Principles and Guidelines when a Response Plan is implemented.

Under the EPPR Deed, the Australian Government may initially meet an industry's cost-sharing obligations, but the industry will then repay the Government within a reasonable time period - generally up to 10 years. Industry signatories must nominate how they will meet their financial obligations.⁸ This is usually done by establishing an EPPR levy/charge, which is set to zero and only activated when an emergency plant pest incident occurs.

Emergency Animal Disease Response Levies

Emergency Animal Disease Response (EADR) levies are also imposed under the general power to impose levies in Part 2 of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999*. For example for dairy produce, Schedule 6 of the Primary Industries (Excise) Levies Regulations 1999 imposes an EADR levy, which is currently set at zero.

Animal Health Australia (AHA) manages the Emergency Animal Disease Response Agreement (EADRA), a contractual arrangement between Australia's Governments and industry groups⁹ to collectively reduce the risk of disease incursions and manage a response if an outbreak occurs.

The EADRA covers 66 categorised animal diseases and 23 Signatories to the Deed (Governments and industry bodies).

Horse Disease Response Levy

In relation to the Horse Disease Response Levy – the power to impose an emergency biosecurity levy is found in section 5 of the *Horse Disease Response Levy Act 2011* and the power to collect in the *Horse Disease Response Levy Collection Act 2011*.

Current emergency response levies are presented in **Appendix C, Table C.4**.

3.2.2 Key levy funded functions (levy recipient bodies) legislation

There is also a significant number of industry-specific legislation and regulations as well as legislation which sets up agriculture related statutory bodies.¹⁰

For most agricultural levies, the marketing and R&D components of both levies and charges accrue to an industry service body - for example the Research and Development Corporation, Horticulture Innovation Australia Limited (HIAL), Meat and Live-Stock Australia (MLA), or Forestry and Wood Products Australia (FWPA). These industry service bodies are given this role by ministerial declarations subsequent to empowering legislation. This effectively means the minister may control which bodies receive funds raised by agricultural levies and charges. Examples of the relevant legislation¹¹ include the:

- *Australian Meat and Live-stock Industry Act 1997*
- *Horticulture Marketing and Research and Development Services Act 2000*
- *Forestry Marketing and Research and Development Services Act 2007*
- *Primary Industries Research and Development Act 1989*

⁸ A number of industry bodies are signatory to the deed but do not yet have an emergency response levy in place.

⁹ A number of industry bodies are signatory to the agreements but do not yet have an emergency response levy in place.

¹⁰ For example RIRDC is a statutory authority established by the *Primary Industries Research and Development Act 1989 (Cth)*

¹¹ Note that this list is purely used to exemplify the point that some levies accrue to an industry services body. This does not imply that some of the regulations under these Acts contain some elements that relate to the levy system, e.g. disbursement, as well as the levy funded functions.

— *Australian Grape & Wine Authority Act 2013*

Table 3.1 outlines the key pieces of principal legislation relating to the Levy system. The 'Levies related' column contains those principal acts that concern the imposition of levies and related issues. The 'Functional' column contains legislation regarding the operation of the system itself. **Table 3.1** does not include relevant regulations and subordinate legislative instruments as these are made under the legislation cited below, however the relevant subordinate legislation is presented in **Appendix A, Table A.1**.

TABLE 3.1 OTHER LEGISLATION RELATED TO LEVIES

Levies related	Functional
<i>Horse Disease Response Levy Act 2011</i>	<i>Australian Animal Health Council (Live-stock Industries) Funding Act 1996</i>
<i>Horse Disease Response Levy Collection Act 2011</i>	<i>Australian Grape and Wine Authority Act 2013</i>
<i>National Residue Survey (Customs) Levy Act 1998</i>	<i>Australian Meat and Live-stock Industry Act 1997</i>
<i>National Residue Survey (Excise) Levy Act 1998</i>	<i>Australian Wine and Brandy Corporation Amendment Act 2010</i>
<i>Primary Industries (Customs) Charges Act 1999</i>	<i>Dairy Industry Service Reform Act 2003</i>
<i>Primary Industries (Excise) Levies Act 1999</i>	<i>Dairy Produce Act 1986</i>
<i>Primary Industries Levies and Charges Collection Act 1991</i>	<i>Dairy Produce Amendment (Dairy Service Levy Poll) Act 2016</i>
	<i>Egg Industry Service Provision Act 2002</i>
	<i>Forestry Marketing and Research and Development Services Act 2007</i>
	<i>Horticulture Marketing and Research and Development Services Act 2000</i>
	<i>National Cattle Disease Eradication Account Act 1991</i>
	<i>National Residue Survey Administration Act 1992</i>
	<i>Pig Industry Act 2001</i>
	<i>Plant Health Australia (Plant Industries) Funding Act 2002</i>
	<i>Primary Industries Research and Development Act 1989</i>
	<i>Sugar Research and Development Services Act 2013</i>
	<i>Wool Services Privatisation Act 2000</i>

Note: We note that this list of legislation is a review of the legislation provided by the Department, it has been 'reverse' cross-checked to determine the legislation relevant to the agricultural levies system as either directly 'levies related' or 'functional' to the levies system. See a complete list of the legislative instruments of all legislative instruments under DAWRs administration relating to agricultural levies in **Appendix A, Table A.1**.

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

Table 3.2, Table 3.3 and Table 3.4 below summarise the ownership structures of the Levy Recipient Bodies and the legislation or legal instruments governing their arrangements.

TABLE 3.2 STATUTORY RESEARCH AND DEVELOPMENT CORPORATIONS

Levy Recipient Body	Ownership structure	Legislation
Australian Grape and Wine Authority (AGWA)	Statutory RDC	<i>Australian Grape & Wine Authority Act 2013 (AGWA Act)</i>
Cotton Research and Development Corporation (CRDC)	Statutory RDC	<i>Primary Industries Research and Development Act 1989</i>
Fisheries Research and Development Corporation (FRDC)	Statutory RDC	<i>Primary Industries Research and Development Act 1989</i>
Grains Research and Development Corporation (GRDC)	Statutory RDC	<i>Primary Industries Research and Development Act 1989</i>
Rural Industries Research and Development Corporation (RIRDC)	Statutory RDC	<i>Primary Industries Research and Development Act 1989</i>

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

TABLE 3.3 INDUSTRY OWNED RESEARCH AND DEVELOPMENT CORPORATIONS

Levy Recipient Body	Ownership structure	Relevant legislation (if any)
Australian Egg Corporation Ltd (AECL)	Industry-owned company	<i>Egg Industry Service Provision Act 2002</i>
Australian Pork Ltd (APL)	Industry-owned company	<i>Pig Industry Act 2001</i>
Australian Wool Innovation Ltd (AWI)	Industry-owned company	<i>Wool Services Privatisation Act 2000</i>
Dairy Australia Ltd (DA)	Industry-owned company	<i>Primary Industries (Excise) Levies Act 1999</i>
Forest and Wood Products Australia (FWPA)	Industry-owned company	<i>Primary Industries (Excise) Levies Act 1999</i>
Horticulture Innovation Australia Ltd (HIAL)	Industry-owned company	<i>Primary Industries (Excise) Levies Act 1999</i>
LiveCorp, Australian Meat Processors' Corporation (AMPC) & Meat and Livestock Australia (MLA)	Industry-owned company	<i>Australian Meat and Live-stock Industry Act 1997</i>
Sugar Research Australia (SRA)	Industry-owned company	<i>Primary Industries (Excise) Levies Act 1999</i>

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

TABLE 3.4 BIOSECURITY AND NATIONAL RESIDUE SURVEY

Levy Recipient Body	Ownership structure	Relevant legislation (if any)
Animal Health Australia	Not-for-profit public company	Emergency Animal Disease Response Agreement National Environmental Biosecurity Response Agreement
Plant Health Australia	Not-for-profit public company	Emergency Plant Pest Response Deed National Environmental Biosecurity Response Agreement
National Residue Survey	Government department	<i>National Residue Survey (Customs) Levy Act 1998 and National Residue Survey (Excise) Levy Act 1998</i>

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

Appendix D presents a detailed overview of the legislative relationships of the LRBs and the prescribed organisations (**Table D.1**).

3.2.3 Conclusion

For the most part, the legislation and regulations are fit for purpose, efficient, consistent, transparent and flexible (in the sense that they provide a legislative structure which can be changed as reasonably required). See **Appendix A** and **Appendix B** for further details from a macro and micro perspective.

However, the legislative analysis (**Section A.1, Appendix A**) and this snapshot suggest that a thematic review may be warranted or at least that there would be some benefit in undertaking a thematic review.

A thematic review is where an:

'investigation of the cumulative burden of regulation in a given area, and [identification of] opportunities to streamline, simplify or reduce such burdens in line with the Government's deregulation agenda.'

AGD 'Guide to Managing Sunsetting of Legislative Instruments' April 2014

Constitutional issues or barriers

It is worth noting that any options or recommendations provided in the report that suggest legislative amendment the Department would need to consider seeking further advice in determining whether there are any constitutional limitations or hurdles. For instance the limitations imposed by section 55 of the Constitution¹² (which require that laws imposing taxation must only deal with one subject of taxation, laws imposing customs deal only with customs, and laws imposing excise deal only with excise). Due to the *Legal Services Directions 2005* (LSDs), we are unable to provide advice regarding potential constitutional limitations.

The Constitutional validity and limitations of any of the proposed options and recommendations need to be considered in accordance with the LSDs. It is for the Department to decide whether to seek constitutional advice and whether that is confined to issues under section 55 of the Constitution or otherwise.

3.3 Current institutional arrangements and how they work

There are many key players/groups of players within the levy system and the levy funded functions:

- The Department of Agriculture and Water Resources
- The Levy Recipient Bodies (LRBs)
- Industry bodies:
 - Prescribed Organisations (POs)
 - Representative Organisations (ROs)
 - Other Peak Industry Bodies (PIBs)

Each is discussed in turn below.

3.3.1 Institutional roles and responsibilities

The Department of Agriculture and Water Resources

The Department of Agriculture and Water Resources operates as a repository and distributor of the funds collected on a cost recovery basis. The Department's roles are as follows:

- Administer the levies (on a cost recovery basis) through collection and disbursement mechanisms
- Monitor the system to ensure compliance through risk based audits
- Provide support for the establishment of a new levy or change to an existing levy

¹² Part V - Powers of The Parliament, Commonwealth of Australia Constitution Act 1901

Funds are collected and then paid to the relevant Levy Recipient Bodies (e.g. R&D and marketing bodies, Animal Health Australia, Plant Health Australia and the National Residue Survey).

Levies collected are distributed as they are received. Eligible R&D is 'matched' by the Commonwealth up to legislated limits on a "claim" from the LRBs.

The Department audits levy payers to provide assurance that levy collection is materially complete and to ensure that participants meet their obligations under legislation. The Department also reports annually to industry representative bodies and to levy and charge recipient bodies on its collection and administration activities.

Levy recipient bodies

There are 18 Levy Recipient Bodies (LRBs) which are comprised of the five Government owned research corporations (RDCs), ten industry owned RDCs as well as bodies responsible for biosecurity (Animal and Plant Health) and the National Residue Survey service.

The list of relevant organisations is in **Table 3.5**, **Table 3.6** and

Table 3.7 below.

TABLE 3.5 COMMONWEALTH STATUTORY RDCS

Commonwealth Statutory RDCs

Australian Grape and Wine Authority
Cotton Research and Development Corporation
Fisheries Research and Development Corporation
Grains Research and Development Corporation
Rural Industries Research and Development Corporation

For a list of the legislation governing prescribed organisations for statutory RDCs see **Appendix D, Table D.1**.

TABLE 3.6 INDUSTRY OWNED RDCS

Industry owned bodies

Australian Egg Corporation Limited
Australian Livestock Export Corporation Limited (LiveCorp)
Australian Meat Processor Corporation
Australian Pork Limited
Australian Wool Innovation Limited
Dairy Australia Limited
Forest and Wood Products Australia
Horticulture Innovation Australia Limited
Meat and Livestock Australia
Sugar Research Australia Limited

SOURCE: DEPARTMENT OF AGRICULTURE AND WATER RESOURCES

TABLE 3.7 OTHER BODIES

Other

Plant Health Australia
Animal Health Australia
National Residue Survey

SOURCE: DEPARTMENT OF AGRICULTURE AND WATER RESOURCES

Industry bodies

Some industry bodies are declared in legislation (“representative organisations” or ROs) or prescribed in regulations (“prescribed industry bodies” or PIBs) as the recognised industry representative body in relation to their respective RDCs. Most RDCs are legally obliged to consult with and report to at least one prescribed or declared body regarding:

- levy expenditure
- research, development and extension (RD&E) activities
- strategic direction
- corporate matters.

Prescribed and declared organisations

There are currently 68 PIBs and ROs (See **Appendix D, Table D.1** for a list of organisations and the relevant legislation).

Representative Organisations (ROs) and Prescribed Industry Bodies (PIBs) play key roles in the rural R&D system. Industry bodies can be declared in legislation or prescribed in regulations for a range of purposes, including to provide for an industry body to be consulted by a rural research and development corporation (RDC) about its operations or corporate planning documents, or to make recommendations about the levy rate to be applied to the industry’s products.

ROs are declared (PIRD & AGWA Acts); PIBs, eligible industry bodies (term mainly used for horticulture) or prescribed peak body (fisheries) are specified in the regulations to the levies/custom/industry Acts or named in the legislation (e.g. Deer Industry Association named as the RO in the Excise Levies and Customs Charges Acts).

The decision to declare or prescribe an industry body is a matter for the Minister for Agriculture and Water Resources, or the relevant Assistant Minister as per agreed responsibilities. The legislation and regulations do not outline specific criteria for making such a decision.

Error! Reference source not found. below provides an overview of the numbers of prescribed and declared organisations by RDC.

TABLE 3.8 INDUSTRY BODIES

RDC	No. of prescribed organisations	No. of representative organisations*
Statutory RDCs		
Australian Grape and Wine Authority	0	2
Cotton Research and Development Corporation	0	1
Fisheries Research and Development Corporation	0	4
Grains Research and Development Corporation	0	2
Rural Industries Research and Development Corporation	0	2
Industry owned		
Australian Egg Corporation Limited	0	0
Australian Livestock Export Corporation Limited (LiveCorp)	7	0
Australian Meat Processor Corporation	7	0
Australian Pork Limited	0	0
Australian Wool Innovation Limited	0	0
Dairy Australia Limited	1	0
Forest and Wood Products Australia	3	0
Horticulture Innovation Australia Limited	29	0
Meat and Livestock Australia	7	0

RDC	No. of prescribed organisations	No. of representative organisations*
Sugar Research Australia Limited	3	0

Note: * The number of other industry representative bodies recorded as "known" to the Department, otherwise recorded as a 0.
 ** GRDC also has three State based representative organisations.

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON WITH DATA FROM THE DEPARTMENT OF AGRICULTURE AND WATER RESOURCES

3.3.2 How are levies established and/or reviewed?

Typically a problem or opportunity facing industry is identified by an industry body which recognises the need for collective industry funding via a levy or charge. It is possible for the Commonwealth Government to introduce or change a levy or charge if it is in the public interest (such as raising a levy in response to a biosecurity issue).

A levy then needs to be assessed in accordance with the *Levy Principles and Guidelines* and stakeholders consulted to show a link to the value of production and the market failure it seeks to correct. The collection system needs to be designed to minimise red tape and promote efficiency, transparency and accountability. If approved, the levy or charge is imposed and collected under legislation.

Procedure to establish or change levy

Before a levy is imposed or changed a proposal is required to be submitted by a relevant industry organisation to the Minister or Parliamentary Secretary. The process begins when a peak industry body identifies a problem or opportunity which requires the need to consider the introduction or amendment of a levy or charge (either initiating a levy to be introduced or the change of a levy). See **Figure 3.5**.

FIGURE 3.5 PROCESS FOR ESTABLISHING AND REVIEWING A LEVY



SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

The industry body needs to prepare a case for a levy or charge to be considered. The proposal requires demonstration that the proposal meets the Levy Principles and Guidelines. The Government first introduced the 12 Levy Principles in January 1997 (See **Box 2.1** above) and they must be met when an industry or group of levy payers proposes a new levy or an amendment to an existing statutory levy.

One of the key requirements is that the request for a levy must relate to a function for which there is market failure and the levy (or levy change) must be supported by industry bodies representing levy payers, beneficiaries and other interested parties (see Principles 1 and 2). The Industry must be able to demonstrate that there is agreement by a majority for the levy imposition/collection mechanism.

The requirement to demonstrate the support by industry bodies, representing levy payers and interested parties stems from the *Primary Industries (Excise) Levies Act 1999* (Cth), which requires the Minister to take into consideration recommendations regarding the levy rate from declared industry

bodies (where the Minister has declared a body) or where there is no declared body other industry bodies (those bodies must have consult with persons required to pay the levy).

These legislative provisions are set out in the relevant Schedule to the *Primary Industries (Excise) Levies Act 1999* (Cth) for each commodity and therefore vary slightly per commodity. There are also similar provisions relating to the Minister considering recommendations from declared bodies about levy rates in the *Primary Industries (Customs) Charges Act 1999* to those in the *Primary Industries (Excise) Levies Act 1999*.

If a majority of industry participants supports the levy or change proposal, the industry body submits the proposal to the Commonwealth for consideration. If approved by Parliament the levy or charge is imposed and collected under legislation.

The Government provides assistance to industries and assesses all proposals to increase a levy against the same principles applicable to a new levy.

Beyond meeting the principles laid out in the guidelines, the manner in which an industry works together to agree on the need for a levy or a change to an existing one is a matter for each industry.

How is a levy collected?

Each commodity (or group of commodities) has different exemption mechanisms, different frequency of payment (or lodgement of returns) and different collection mechanisms.

The levies system is based on self-assessment and compliance. Depending on the commodity, returns can be due and payable on a monthly, quarterly, biannual or annual basis.

Levies are collected by agents or industry bodies and transferred to the Department of Agriculture and Water Resources where the funds are appropriated back to the relevant industry body(s) (Levy Recipient Bodies) less administrative costs. There are currently 8,421 levy collection points (active agents) across the eleven commodity groups. A collection point is defined as “the narrowest point in the supply chain that most, if not all, primary produce travels through”.¹³

These groups and the number of collection points per commodity group are presented in below **Table 3.9**.

¹³ Department of Agriculture and Water Resources, 2016, *Mid-Year Report to Levy Stakeholders, 2015-16*.

TABLE 3.9 LEVY COLLECTION POINTS BY COMMODITY GROUP

Commodity group	Number of levied commodities	Number of levy collection points*
Animal fibres	2	180
Dairy	1	88
Field crops	8	2,532
Fisheries	1	18
Forestry	2	395
Horticulture	32	6,172
Live export	6	84
Livestock slaughter	8	636
Livestock transaction	8	2,753
Poultry	3	61
Wine	3	3,855
Total	74	16,765*

Note: * Collection points, or levy payers, can be counted more than once if they deal in multiple commodities and go to multiple LRBs. The active levy agent base as at 31 December 2015 is 8 421

SOURCE: ACIL ALLEN CONSULTING, MINTER ELLISON AND DEPARTMENT OF AGRICULTURE AND WATER RESOURCES

Traditionally a collection point was used to reduce the cost of collection from individual producers. Collection agents include a range of different businesses, including market agents (for horticulture), abattoirs (for livestock) or processing plants. Some levies are still collected direct from producers.

Recently the Department introduced the 'Levies Online' system that allows levy payers to lodge their levy returns online as well as change account details and view previous returns. Submitting levy returns online helps to minimise the cost to industries of processing returns.

On an individual commodity level, on average there are 176 agents per commodity, a median of 104 agents, with a minimum of one in the case of deer exports and game goats and a maximum of nearly 3,000 for wine grapes.¹⁴

Each levy is collected on a different frequency and at different times throughout the year. Returns can be lodged annually, quarterly, monthly or on an ad hoc basis such as at the time of sale.

How is a levy distributed?

Once a levy has been collected and the data has been entered into the system the amounts equal to the collected levies are then disbursed by the Department back to the industry via the Levy Recipient Bodies (LRBs). In the case of eligible R&D these funds are 'matched' where appropriate on a dollar for dollar basis by the Commonwealth Government.

All amounts equal to collected funds are distributed in different ways to different levy recipient bodies in accordance with the relevant disbursement legislation.

Currently, 74 commodities grouped in 11 broad industry categories attract a levy. However, there are large differences in terms of the amount of levy disbursed to each commodity, roughly in line with their weight in agricultural production. The top 20 grossing commodities attract 90 per cent of total levy revenue, while the remaining 54 make up only 10 per cent of the total disbursements. However, the differences in collection do not mean judgement on the importance or value for money of a levy. In fact it is often the case that a small levy pool may be of great value for an industry while a larger industry derives less value from its pool, even when it is larger in absolute terms. (See Section 4.3.3 for further details).

¹⁴ Ibid.

There are 18 LRBs consisting of the five Government owned research corporations, ten industry owned RDCs and three bodies responsible for biosecurity and residue services. See **Table 3.10** below.

TABLE 3.10 LEVY RECIPIENT BODIES

Statutory research corporations	Industry owned corporations	Other bodies
Australian Grape and Wine Authority	Australian Egg Corporation Limited	Plant Health Australia
Cotton Research and Development Corporation	Australian Livestock Export Corporation Limited (LiveCorp)	Animal Health Australia
Fisheries Research and Development Corporation	Australian Meat Processor Corporation	National Residue Service
Grains Research and Development Corporation	Australian Pork Limited	
Rural Industries Research and Development Corporation	Australian Wool Innovation Limited	
	Dairy Australia Limited	
	Forest and Wood Products Australia	
	Horticulture Innovation Australia Limited	
	Meat and Livestock Australia	
	Sugar Research Australia Limited	

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

Levy Recipient Bodies, manage the expenditure of the levy funds and are accountable to levy and charge payers and to the Australian Government. Levy Recipient Bodies are required to have record keeping arrangements, table annual reports in parliament and hold annual general meetings.

3.3.3 Financial position of the levy system¹⁵

The levies system works on a cost recovery basis and aims to breakeven each financial year. Its financial position is expected to remain steady in 2015-16. With a slight increase in overall expenditure offset by an increase in revenues from Government (See **Table 3.11** below).

TABLE 3.11 FINANCIAL POSITION OF THE LEVIES REVENUE UNIT (\$)

	2014-2015	2015-2016(e)
Revenues from Government	\$219,182	\$241,020
Other revenue	\$5,659	
Cost recovery charges	\$4,978,468	\$4,922,880
Total revenue	\$5,203,309	\$5,163,900
Employee expenses	\$2,998,178	\$3,106,309
Supplier expenses	\$632,830	\$533,704
Other expenses	\$20,045	\$22,993
Depreciation & amortisation	\$174,757	\$165,314
Departmental overheads	\$1,377,500	\$1,337,402
Total expenses	\$5,203,309	\$5,165,722
Net surplus / (deficit)		-\$1,822
Levy disbursed	\$488,783,571	\$446,309,072
Commonwealth matching	\$245,898,049	\$260,221,000

¹⁵ The data we have used for this analysis is the latest publicly available data from the Department.

	2014-2015	2015-2016(e)
Total disbursed	\$734,681,620	\$692,207,121

SOURCE: DEPARTMENT OF AGRICULTURE

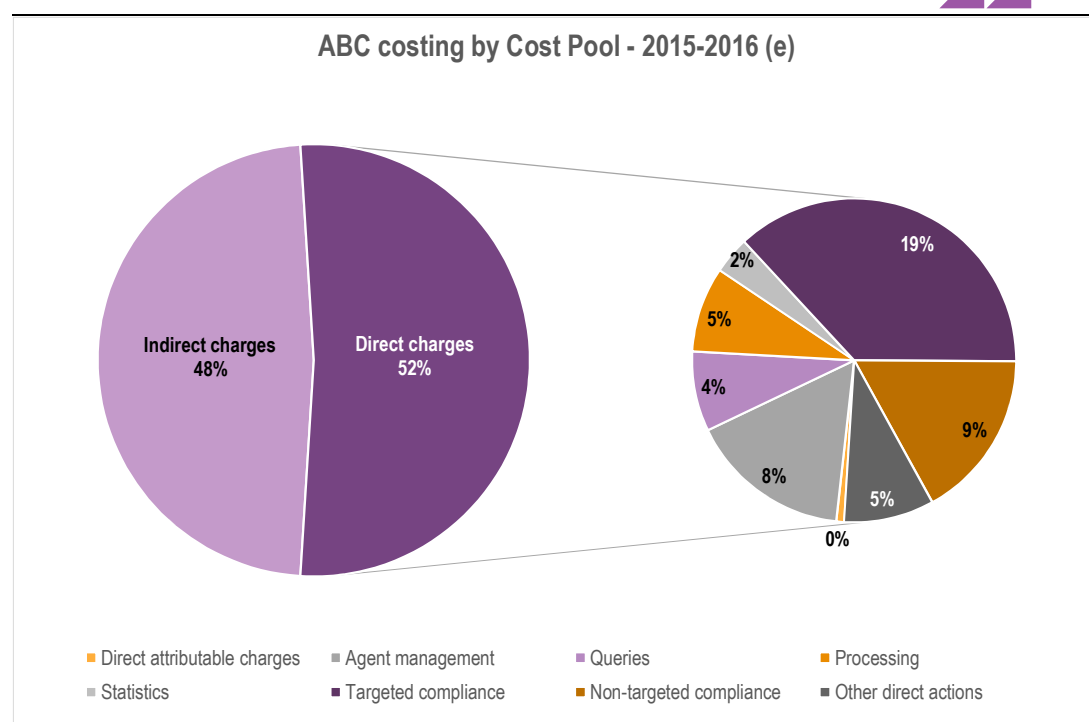
Cost recovery analysis (by commodity)

Cost recovery is undertaken by the Department using the activity based cost methodology.¹⁶ This method reflects the time and effort spent on collecting the levies. Costs are allocated based on timesheets completed by staff in the unit. Direct costs are coded to a collection point or commodity depending on the activity. Program management and other indirect costs are assigned to direct effort on a proportional basis.

Indirect costs comprise almost half of the total costs of the unit (see **Figure 3.6** below).

It is difficult to assign these costs to a particular commodity except by assigning proportions. This may result in over charging some commodities (or groups of commodities) that would otherwise not be charged if a more granular analysis of costs was feasible.

FIGURE 3.6 LEVY REVENUE UNIT - ACTIVITY BASED COSTING BY ITEM



Note: Indirect charges are described as "Project Management" by the Department of Agriculture

SOURCE: DEPARTMENT OF AGRICULTURE

Estimated levy disbursements for the 2015-2016 financial year are \$ 446,309,073, while estimated levy collection costs amount to \$ 4,922,880. The cost recovery ratio (i.e. cost recovery charges as a percentage of disbursed levies) is 1.1 per cent. These figures are similar to those observed over recent years.

¹⁶ Although cost recovery is out of scope of this project we are reporting the efficiency and effectiveness of the levy system and to do so requires an assessment of the Department's operations related to collection and disbursement of levies.

3.4 Summary

Legislatively simple but administratively complex

The findings of the legislative review on a micro level (See **Appendix B**) show the levy system is relatively simple and clear.

Regardless of the relative simplicity of the legislation it is the existence of a complex administrative system which makes difficult to see which commodity falls under which piece of legislation. This makes the system appear duplicative for some commodities and makes it difficult to untangle where the roles and responsibilities fall. From an administrative perspective this then leads to considerable inconsistencies and inefficiencies in applying the various administrative phases – establishment, collection, disbursement and review.



OPPORTUNITIES, CHALLENGES AND THE WAY FORWARD





4.1 Introduction

This Chapter presents the key findings of the stakeholder consultations and our analysis of the major issues identified in this study and their challenges and opportunities.

4.2 Key findings – stakeholder consultation

Overall, the stakeholders consulted¹⁷ are supportive of the levy system as a means to fund the levy functions and develop their industries. Most stated that levies are a powerful force to improve industry cohesiveness, despite the political and administrative challenges, and they would be worse off without them. This is also reflected in continued demand from industry to establish more and more levies.

The principle of “self-determination” and tailored levies (rates, collection and functions) is seen as a key strength that needs to be sustained. The tailoring and resulting industry ownership creates a significant barrier to consolidating levies and the various operative elements to improve efficiency and effectiveness.

Consequently most stakeholders prefer focusing on improving the efficiency and flexibility of the levy system, rather than transformational change, particularly in the levy establishment and review phases.

The principle of a “reasonable test” is supported by industry and Government to establish a levy and is widely accepted so suggested improvements revolve around greater clarity, consistent application and improved guidance. There is a view that compulsory levies may not be for everyone. Given the establishment costs and on-going governance obligations, it may be too onerous in the long run for new (and some existing) industries. However the choice is stark if industries do not establish or sustain a compulsory levy.

In these cases they are reliant on voluntary contributions which are hard to sustain and need to leverage additional resources with less enduring on-going support. This led to the concept of two levy systems where smaller compulsory levies and voluntary levies operate under a different set of arrangements while the well-established or larger levies continue under current arrangements. Some of the changes smaller industries are looking for will require new arrangements including cost effective means of collection, lower governance requirements whilst still maintaining access to matching R&D contributions from the Commonwealth.

In terms of levy collection stakeholders appreciated gaining a broader perspective of the whole system and diversity of levy structures, instruments and cost involved. There is interest in exploring more

¹⁷ See **Appendix F** for a list of stakeholders consulted, and **Appendix G** for a detailed stakeholder analysis.

efficient means of levy collection amongst higher collection cost levies, provided industry rights are not subjugated.

The concept of partnership between industry, Government and levy recipient bodies is widely supported and understood to be central to the system. However there are a number of tensions around the partnership that raised questions around whether the “three legged stool” is balanced.

This in part stems from splitting the raising and allocation of funds between the levy and functional (levy recipient body) systems. Such as the two step approach where the levy system set the levy amount and disburses funds collected to levy recipient bodies who then separately allocate/invest the funds against the (levy system defined) functions is confusing for some stakeholders both in terms of understanding where the funds go and how to advise on their expenditure.

While it is widely understood the levies are raised from industry, many stakeholders do not appreciate that the Commonwealth matching R&D (and other) funding comes through the levy recipient body arrangements rather than the levy legislation. This in turn has created an expectation amongst many stakeholders that all matching funds are directly hypothecated to the specific R&D levy by law that the levy recipient body must adhere to in all circumstances.

As a result levy recipient body governance and stakeholder accountability (and engagement) is a critical partnership issue for both industry and Government (and outside the terms of reference for this study). The governance and stakeholder engagement/accountability arrangements vary markedly across industry and levy recipient bodies. The result is different views on levy recipient bodies’ actual and perceived performance, and by proxy the levy system, ranging from extreme satisfaction to extreme dissatisfaction. Stakeholders also noted that while the levy recipient body-to-Government is strong overall and the levy recipient body-to-industry relationship is variable the industry-to-Government relationship is the weakest link in “three legged stool”.

Nonetheless and putting levy recipient bodies aside, all stakeholders identified the levy review phase is the area of greatest potential gain. Most stakeholders were surprised by the legislative arrangements and questioned whether the legislative complexity is necessary. The concept of making adjustments to the fuel mix (i.e. rate and functional allocation) less burdensome to all stakeholders is seen as essential. Replacing unnecessary Parliamentary approval and full industry consultation with more cost effective mechanisms is highly desired to make the levy system more dynamic, flexible and effective.

4.3 Major issues analysis

There are several major issues identified from the stakeholder consultation and the snapshot of current legislative and administrative arrangements provided in Chapter 3. The major issues identified are that the levy system:

- has a complex structure due to considerable diversity is hard to understand, manage and adjust
- is cumbersome and burdensome as processes limits adjustment
- is highly variable in terms of cost efficiency
- has accountability that needs to be separate for levy management and levy expenditure
- reforms will be legislatively, operationally and politically constrained.

4.3.1 Complex structure by virtue of considerable diversity

Issue

Stakeholder consultation and the review of the current legislative and institutional arrangements suggest that the levy system integrated with the levy funded functions has a complex structure which is hard to understand, manage and adjust. Essentially, there are too many moving parts, and as a result all stakeholders assert unnecessary effort in navigating the system.

The underlying policy intent and the way the levy system has developed over time has both strengths and weaknesses. The system is strong as it achieves its objective of mandating the collection of funds to develop better public good outcomes for industry and society. It is strong because it has, by design,

been tailored to each industry allowing levies to be industry lead and to achieve industry needs. This in turn means considerable benefits for levied industries and Australia as a whole.

The weakness in the system is a direct result of these strengths. Diversity and its tailored approach mean that the levy system has become overly complex. So much so that large, important parts of the levy system are difficult to understand by the people who pay levies and those who manage their collection, distribution and expenditure. The degree of understanding and ability to deal with this systemic complexity varies considerably across industry, levy recipient bodies and Government (within the Department and more broadly). This confusion means considerable burden for stakeholders and in turn creates further inconsistency and inefficiency in the system, a deadweight loss.

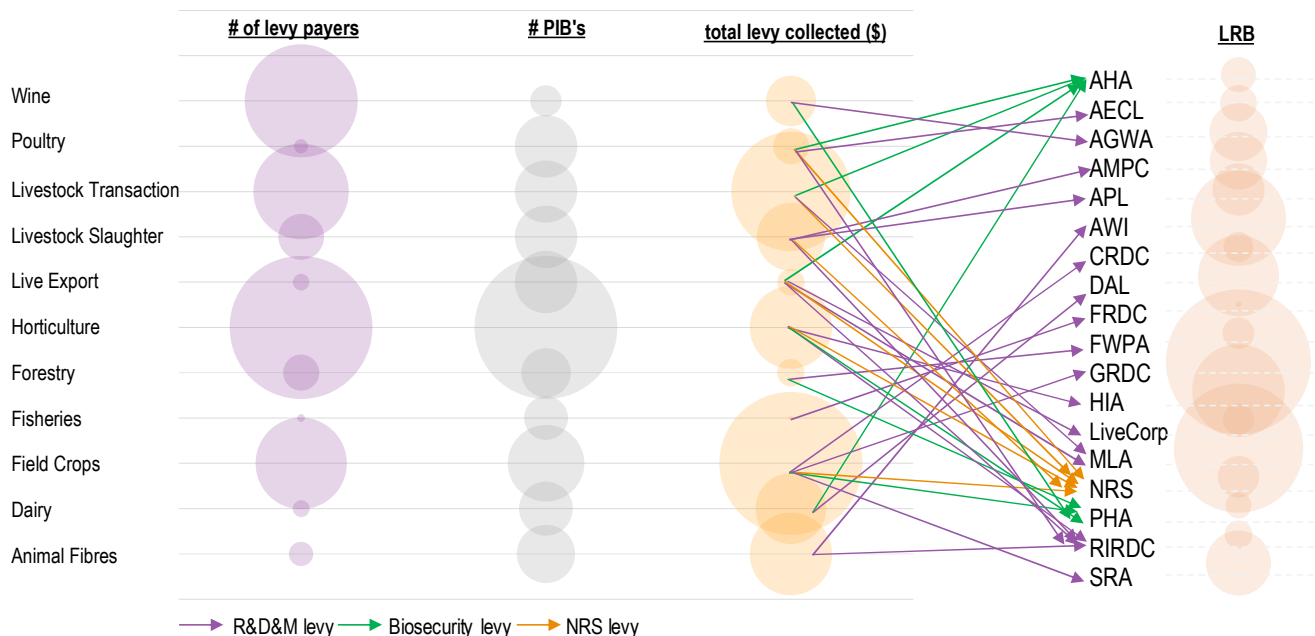
Evidence of stakeholders' confusion is demonstrated in several ways:

- Although the levy system policy rationale is clearly understood the actual benefits are not particularly well evaluated and there is concern that the policy rationale may not be justified in all parts of the system as circumstances continue to change over time.
- Although solid principles and guidelines for establishing and revising levies exist they are not consistently or efficiently:
 - applied by industry,
 - supported by the Department, or
 - approved by Government.

For example, a direct consequence of maintaining an equitable “one size fits all” approach to levies is that the levy principles are applied irrespective of the number of levy payers and peak industry bodies involved or the size of the levy pools generated in each industry or the commodities within them. That is, there is limited regard for a proportional response.¹⁸

As depicted in **Figure 4.1**, the cash flows from each levy pool fund several different uses and institutions greatly increasing the strain on the governance of the system.

FIGURE 4.1 COMPLEXITY OF THE AGRICULTURAL LEVIES SYSTEM



Note: PIB and LRB stand for peak industry body and levy recipient body respectively

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

The intertwining nature of the levy system and the levy recipient bodies means that in practice the key levy system activities (establish, collect, disburse and review) engage the same stakeholders as the

¹⁸ The exception is that the Levy Principles and Guidelines offer guidance for alternative consultation mechanisms to take the size of the industry into account, for example, ballot mechanisms.

levy funded functions. This interlocking makes the system as a whole much more complex, less flexible and less transparent.

Challenge

To make the levy system less complicated to manage.

Opportunity

The opportunity is to remove the deadweight loss (or administrative burden) created by the levy system by either:

- changing the structure of the levy system – i.e. reducing the number of moving parts.
- improving the management and administrative processes - i.e. providing proportional response and improving navigational aids

Changing the structure of the system would be very difficult, if not impossible in the current policy settings. To reduce the number of parts (i.e. the number of levies or the type of system) would essentially require an overhaul of the entire system including a review of the levy funded functions. The policy settings and levy funded functions are outside the scope of this study.

However, there is considerable opportunity for improving the existing levy principles with an objective to deliver industry a set of principles and supporting guidance that can be easily interpreted and consistently and proportionally applied by stakeholders during the establishment and review stages of a levy.

4.3.2 Cumbersome and burdensome processes

Issue

The levy system is governed by cumbersome and burdensome processes which limits the responsiveness of a levy, so as to be able to allocate levy funds to the highest value use in a timely fashion. Agricultural production is inherently risky as it is a dynamic system dependent on changes in markets and climate both of which can change very quickly. The current levy system is not designed to be flexible and adaptive.

Stakeholder consultation indicated that many industries choose to not modify their levy due to the time, effort and cost required and some are frustrated that they cannot match the dynamic pace of changing environmental or market conditions. See **Box 4.1** below. The implication of this is that if the process were less cumbersome and burdensome there would be more changes to levy rates in line with changing marketing conditions.

Each levy, under legislation, has been hypothecated to a specific function:

- research and development
- marketing
- NRS
- biosecurity
- emergency levies

This means that any funds collected can only be used for the purpose for which they have been collected. This is set up when a levy is established and is governed under legislation or regulation.

To make a change in the use of the funds, an industry needs to embark on a process, in line with the Levy Principles and Guidelines, which ultimately requires Ministerial and Parliamentary approval. See Section 3.3.2. Parliamentary approval takes a significant amount of time which further limits the flexibility of the process.

The roles, responsibilities and relationships between industry and LRBs also require consideration. To invoke change, industry or LRBs are required to consult with levy payers and stakeholders, including each other. LRBs and industry need to be in agreement for the process of change to occur.

If funds have already been tagged for a specific purpose, a change in the mix or allocation of funds needs to be carefully managed.

There also needs to be consideration of the matching dollar provided by the Government which cannot be used for marketing purposes.

Overall, the result is a high cost, time consuming and inflexible process for all stakeholders. **Box 4.1** illustrates the process an industry must follow to adjust its levies.

BOX 4.1 LEVY ADJUSTMENT – A HYPOTHETICAL EXAMPLE

A hypothetical organisation is the uncontested, highly supported and independently financially viable peak body for its industry. This peak industry body (PIB) is the prescribed organisation under legislation for an RDC and a member of PHA/AHA. The industry also has a residue levy.

The PIB has four main roles:

- represent the industry;
- advising the expenditure of the R&D, marketing, residue and biosecurity levies by the levy recipient bodies
- improve the industry through standards, training, events, leadership, awards, careers development and employment facilitation; and
- provide membership services.

Being responsible for the advising on the expenditure of levies the PIB has identified there are residue and R&D reserves surplus to requirements for within the NRS and the RDC. At the same time there are additional biosecurity and marketing programs for which there are insufficient funding within AHA/PHA and the RDC respectively. The surplus reserves held by NRS cannot be spent on these programs unless they meet the legislated functions for the residue levy. Similarly the surplus marketing reserves cannot be readily transferred to R&D without the RDC and Government agreeing. The R&D reserves can only be transferred to AHA/PHA through contract if the program meets the definition of R&D and the RDC agrees.

One practical solution is for the rates across the four levies to be adjusted so that they are allocated to the highest value use, agreed to by the PIB, levy payers and three levy recipient bodies, and the reserves balance to their agreed levies. However once the PIB has secured agreement, the business case with the agreed proposed changes then needs to be assessed against the Levy Principles and Guidelines by the Department and presented to Minister for approval. Once approved the regulatory changes need to be drafted and legislated through Parliament before they can come into force.

The time to execute the changes is estimated to a minimum of 12 months and will incur considerable costs to the PIB, levy recipient bodies and the Department even if the changes are fully supported by all parties. Over this time industry priorities may change, the surplus reserves remain unallocated and while the time and resources required is not available to address other priorities.

Challenge

- To develop a more flexible and adaptive system to allow levy payers and/or levy recipient bodies to hold reserves and change the mix and allocation of funds without requiring Parliamentary approval.

Opportunity

Review legislation in line with the sunseting process to delegate responsibility down to administrative orders and away from requiring Parliamentary approval (subject to Constitutional considerations). This will allow a more flexible and adaptive system so that industry can alter the mix and allocation of an existing levy to better suit changing industry needs.

In addition it will also be important the each levy has access to reserves given that levy adjustments will still involve costs and time even when delegated to administrative orders. This will also ensure levy adjustments are strategic rather than being used to manage operational constraints.

4.3.3 Variable cost efficiency

Issue

The levy system is characterised by variable cost efficiency which places disproportionate and unnecessary costs and burden on different players in the system. This is driven by the fit for purpose design of the system, the size of the leviable industry and constrained by the collection instruments.

The cost efficiency of levies ranges from more efficient than ATO to extremely inefficient levies where large proportion of levy is spent on administration, such as reporting and accountability, rather than investing in activities that create value.

Some industries with a large levy base have the capability and capacity to shape investment priorities and support levy recipient body governance and disbursement of levy funding.

Other commodities are less mature in these capabilities and capacities, but could benefit from a levy and the options levy funding provides them. They also struggle to enter and sustain a presence in the levy system, citing the complexity and excessive costs of establishing a levy a barriers to entry.

Consultation with Ginger Australia, for example, whose levy was established in 2005, suggests that they are only able to utilise \$0.25 of the matching \$1.00 of R&D funds provided by the Government after they account for their administrative and regulatory costs.

The financial efficiency of each primary industry levy structure has been assessed through the use of ratio analysis using data from the Department of Agriculture on levy collection costs (LCC) for specific commodities. As discussed above, due to the diversity and tailored approach of the levy system, different commodities have different levy collection arrangements and agreements with their collectors.

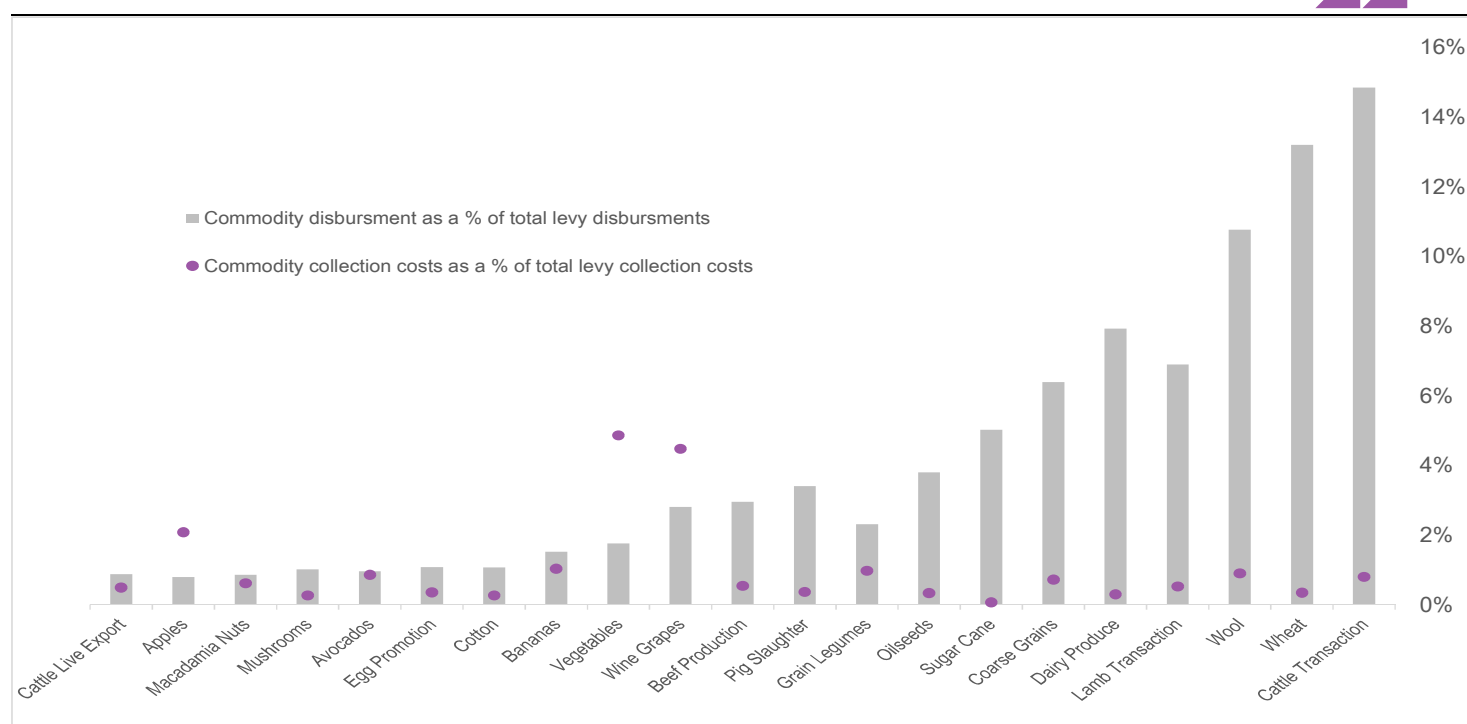
Looking across all 74 levied commodities there is high variability in collection efficiency with the cost recovery ratio ranging from a minimum of 0.07 per cent for sugar cane to a maximum of 5,100 per cent for game goats. Such an extreme range in efficiency values distorts the usual reporting measures such as the average. The average cost recovery ratio across all levies is 80 per cent, while the median sits at 4 per cent. As the average cost recovery ratio is higher than the median, and the median is higher than the weighted average (by dollar value) there is a clear pattern of inefficiency in those commodities with a lower levy disbursement (and lower value of production).

In fact, just 20 commodities comprise 90 per cent of all disbursed levies with a cost recovery ratio of 0.77 per cent (just one tenth of a percentage point above the ATO's collection efficiency ratio). However, the cost recovery ratio for the remaining 55 leviable commodities is far less efficient at 4.1 per cent. Breaking this down further shows the collection cost ratio for the 38 commodities with a levy value of less than \$1 million is 6.3 per cent. The top grossing commodities' levy collection costs as a percentage of total collection costs are well below the levy disbursement ratio, while the opposite is true for the remaining commodities. This is evidenced in **Figure 4.2** below and **Figure 4.3** overleaf.

This analysis suggests that the key determinants of levy cost efficiency are, in general:

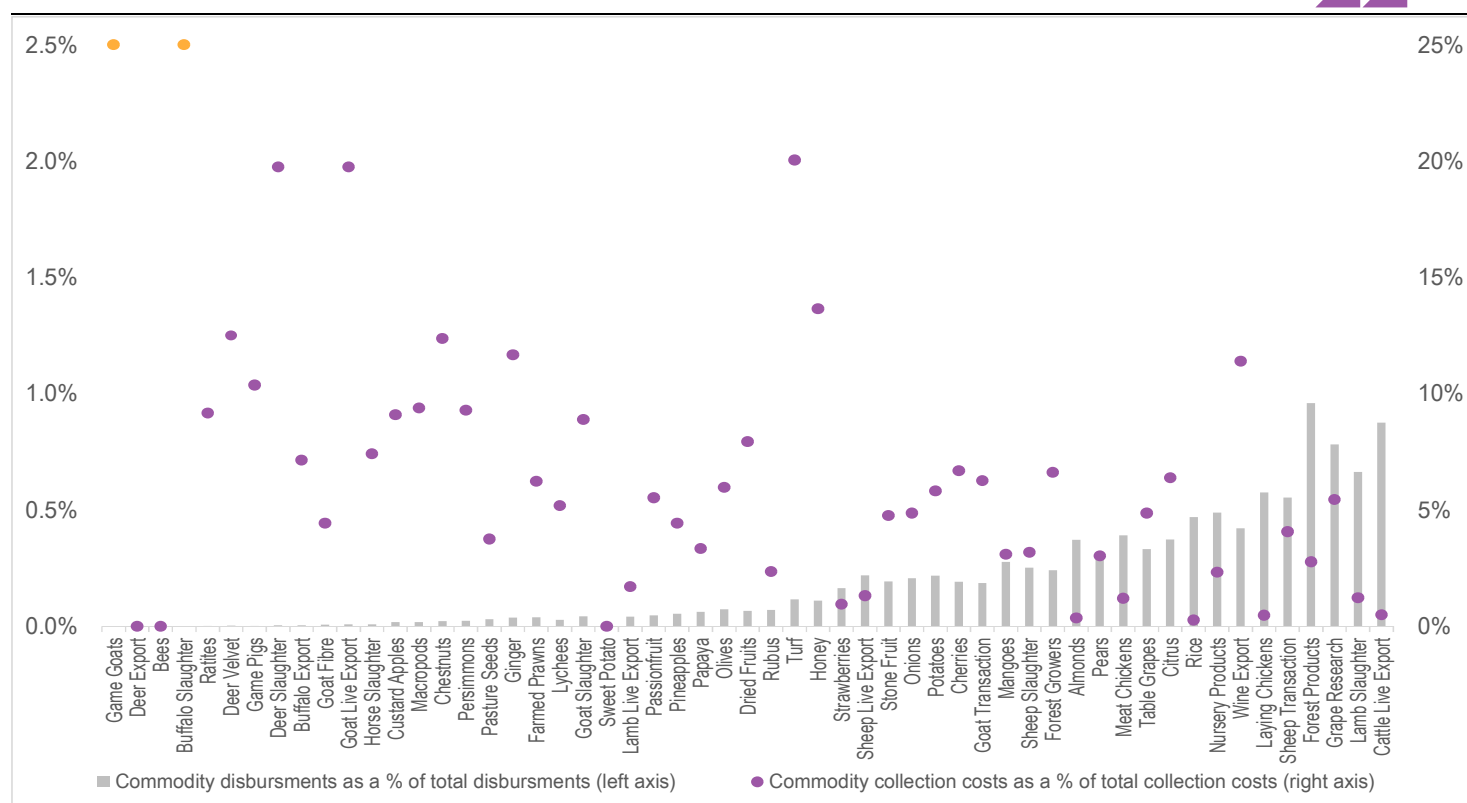
- the gross value of production (GVP) of a commodity (the larger the GVP, the larger the contribution base allowing for a fixed costs of collection to be better distributed), this is the case for commodities such as grains and red meat.
- the number of collection points (the smaller the number of levy collection points (due to the nature of a commodity's supply chain) the less collection costs (unless the supply chain has specific characteristics that allow an efficient collection instrument to be established). For example, almonds have a rather efficient levy due to limited number of collection points, whereas some larger sectors such as vegetables or wine grapes perform rather poorly due to a larger number of collection points and the higher costs associated with each point.

FIGURE 4.2 LEVY DISBURSEMENTS AND COLLECTION COSTS RATIOS BY COMMODITY (PRODUCTS COMPRISING 90% OF THE TOTAL LEVY DISBURSEMENTS)



SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

FIGURE 4.3 LEVY DISBURSEMENTS AND COLLECTION COSTS RATIOS BY COMMODITY (PRODUCTS COMPRISING 10% OF THE TOTAL LEVY DISBURSEMENTS)



Note: Commodities with an orange marker are considerably off the scale (they have LCC ratios greater than 25%).

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

The implication of such diverse collection costs is that any move to consolidating levy collection practices to improve efficiency and flexibility will be resisted by commodities with more efficient mechanism than any alternative proposed. At the same time, as evidenced in **Figure 4.4**, new players joining the levy system are likely to be less efficient and therefore their levies less effective because their commodities are smaller in terms of GVP which in turn will generate smaller levy pools.

FIGURE 4.4 AVERAGE LEVY POOL SIZE AND TOTAL COLLECTION COSTS (IN \$ MILLIONS)



Note: Data was unavailable for the period 2009 – 2011 and we have estimated data for this period (indicated by the dashed lines) using a linear trend.

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON WITH DATA FROM THE DEPARTMENT OF AGRICULTURE AND WATER RESOURCES

The average levy pool size can be defined as the total value of the levies collected per year divided by the number of levied commodities. For example, in 2015, the levy pool was \$488,783,571 and there were 72 levied commodities. Therefore in 2015, the average levy pool was \$6,788,661.

Figure 4.4 shows that as commodities are added – the average size of the levy pool declines, and as smaller commodities typically have higher collection costs, the levy collection costs will typically rise (this effect may be reduced if savings are made such as online collection).

Other costs within the levy system are also likely to be dependent on the GVP of a commodity (but less so on the number of collection points). That is, new entrants, with smaller GVPs and less industry maturity, are likely to have considerably more significant establishment, administrative and compliance costs (reporting and accountability) than existing levy holders had either at the time they established their levies or for their current levy requirements. This implies that, generally speaking, levies established in the future will be less cost efficient than the existing levies, and any new entrant will lack the scale and scope or ability to improve their efficiency once their levy is established.

Challenge

There are two distinct challenges:

- making the existing levy system more cost efficient, and
- allowing new entrants to efficiently join and participate in the levy system

Opportunity

The first opportunity is to strive to streamline the levy collection process and to reduce where possible levy collection costs in order to maximise the potential benefits from the levy payments.

The second opportunity is, in conjunction with the existing levy system, to create an alternative funding model for new entrants who are not mature enough in terms of GVP or do not have a supply chain which affords them a small number of collection points. An alternative model could further work to ensure proportional administrative requirements (e.g. reporting and accountability) dependent on GVP, size of the levy base, number of collection points and the maturity of an industry. This may be an extension of the existing RIRDC system which operates for emerging plant industries.

4.3.4 Accountability issues

Issue

Accountability within and across the levy system is confused and confounded by the integration between the levy system and the levy funded functions.

This is because it:

- involves same stakeholders in different roles. For example the APL operates as both a LRB and the peak industry body – this means that the APL is responsible for representing the industry and being accountable to the government for its research spend. This only works when industry is completely aligned with government priorities, otherwise APL has a conundrum as to who they are ultimately accountable to.
- stakeholders have different capabilities and accountability requirements. For example larger industries are better equipped (financially or otherwise) to deal with the reporting or compliance requirements of the Department.
- confusion as to who to consult when. For example, an industry group who wishes to establish a new levy may not know how to find all the potential levy payers or which LRB or other stakeholders they need to engage.
- concerns are often focused on levies when they relate to LRBs and vice versa. For example, there is concern by some levy payers that “their” money is not being spent on the “right” research is seen by some as the “fault” of levies per se rather how the LRB engages to meet their needs. At the same time the matching R&D funding does not need to be fully hypothecated to the each industry levy. Rather the LRB needs to be invest the matching R&D funding in line with its strategic plan.

Further, the Government’s demand for increasing accountability and transparency acts as an additional driver for change. But, unless this occurs within both the levy system and levy funded functions any improvements are unlikely to meet the demand and may be unnecessarily duplicative.

Challenge

Accountability for levy management (levy system) needs to be separated from levy expenditure (levy funded functions). The accountability for how levies are established, collected, reviewed and disbursed needs to be separate for the accountability imposed on an LRB to spend the levy.

Opportunity

While this suggests levy system improvements have the potential to strengthen other policies and reforms the way these different agendas are integrated requires careful consideration and are beyond the scope of this project.

4.3.5 Reform issues

Issue

The high level of support for the system and an agreement that complexity is creating unnecessary costs and inflexibility are the primary drivers for change. These are offset by those who do not support the system and those with a general desire to achieve win:win reforms. On top of this is a history of adversarial negotiations between stakeholders, in many cases, combined with considerable variation

in the levy system. This creates a significant barrier in which even the consideration of change will be assessed in terms of avoiding potential loss.

Scope for improvements¹⁹

On a macro level, legislative provisions can be shifted from legislation into regulations (to assist flexibility of amendment) is a generalised consideration applicable to all commodities. It is worth considering if the current agricultural levies system (made up of five key Acts and their accompanying regulations) could be simplified, with regulations operating to prescribe the specific levies and charges for the various commodities.

Under the current system there are some specific instances where the exact levy rate has been specified in the Act, making it difficult to amend (specifically goat fibres and deer slaughter). These could be relocated to the regulations, providing a clearer picture of applicable levies.

For a number of commodities there are maximum rates for the levy or charge specified in Act, which then provides for the regulations to prescribe the actual rate.

In pursuing a simplified legislative and regulatory system for agricultural levies this, the principles associated with legislative drafting, the legislative process, department considerations and stakeholder views would need to be considered for any proposed amendment or review (See **Box 4.2** for legislative barriers to change). Such considerations are important, particularly for further review to overhaul the current agricultural levies legislative and regulatory system as a whole.

Challenge

Any reform to the levy system is legislatively, operationally and politically constrained and require effort to change because:

- legislatively levies must specify function, recipient and collection instrument
- legislative instruments cannot be readily combined due to different heads of power
- strong support limits consolidation unless win-win on a case by case basis
- many concerns relate to LRBs and PIBs (levy funded functions) rather than the levy system.

Opportunity

The degree to which the challenges of the levy system can be addressed and the opportunities realised is highly dependent on the forces for and against change within industry, Government and levy recipient bodies.

¹⁹ Note: any proposed solution or action in relation to the duplications identified above must take into account any Constitutional limitations.

BOX 4.2 LEGISLATIVE BARRIERS TO CHANGE

Principal Acts

Provisions imposing taxes and levies should usually be implemented only through Acts of Parliament. However, whether a matter should be included in primary or subordinate legislation may be influenced by the nature, subject matter and by various other factors relevant to that matter. In this case, it may be appropriate that levy amounts/rates are consistently stated in regulations (not in the Act). This already occurs in some cases in the Primary Industries (Excise) Levies Act 1999 (Cth) where there is no specified dollar amount or maximum amount provided in the Act and the regulations prescribe rates.

- If a specific date is referenced in the Act, problems will arise if it does not pass parliament before that date.
- The provisions should only apply to the future.
- Savings and transitional provisions should be considered — where the law on a particular subject matter is to be altered, Parliamentary Counsel needs to be instructed on the relationship between the new law and the old law.

Any proposal should address:

- the application of the new legislation to cases that arose before the alteration;
- any requirement for a transitional period during which the new law needs modification or special provisions are required; and
- to what extent, if any, things done under the old legislation are to have effect under the new legislation.
- The decision maker should be clearly stated. i.e. the Minister, a statutory body or departmental officer.
- Also consider if there should be any criteria for the Minister or other decision maker in determining whether a new levy should be agreed upon. This may add to transparency.
- Any legislation (or regulations) should not confer open-ended discretions, as these will attract criticism in Parliament, particularly from the Senate Standing Committee for the Scrutiny of Bills.

If a new process to determine the levy is proposed, the legislation/regulations may have to consider/specify any review or appeal rights of that decision. All provisions which are in any way related to the allocation, use or control of Commonwealth moneys should be determined in consultation with the Department of Finance and Administration. The modern approach to legislation is that text should be in plain English and easily accessible

Subordinate/delegated legislation

Matters of detail and matters liable to frequent change should be dealt with by subordinate legislation, for example fees to be paid for various services. A variety of other matters may be included in subordinate legislation in order to streamline the primary legislation. However, the desirability of simplifying primary legislation is only one consideration in this area, and others (such as parliamentary control of certain matters) may be more important in particular cases.

Subordinate or delegated legislation will be scrutinised to ensure that it:

- is in accordance with the statute;
- does not trespass unduly on personal rights and liberties;
- does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- does not contain matter more appropriate for parliamentary enactment.

The Act must make provision for a sufficiently wide regulation-making power or authorising provision to allow for the proposed levies to be made under the regulations. Legislative instruments for which there is no clear authorising provision in the relevant Act may become a focus of the Senate Standing Committee on Regulations and Ordinances and may be disallowed as part of the parliamentary process.

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

4.4 Summary

Overall a SWOT analysis (Table 4.1) indicates that the key strength of the levy system is based on the partnership where industries can utilise Government's powers to institute compulsory levies for establishing an enduring source of funds to finance industry development for agreed purposes. The system is flexible in allowing each levied commodity to define the purpose and establish levy

collection, disbursement and revision arrangements that are fit for purpose. The system is also “open” allowing for commodities to join or leave the system.

TABLE 4.1 SWOT ANALYSIS

Strengths	Weaknesses
<ul style="list-style-type: none"> – Industry-government partnership with strong support based on common principles – Levies require a clear purpose (fund agreed functions) agreed to by industry and Government to be established – Enduring source of finance and cohesion to develop industry and manage risks 	<ul style="list-style-type: none"> – Diversity in levy legislation, administration, levy pools and industries challenges one size fits all – Accountability split across the levy and functional systems using different mechanisms involving the same stakeholders – Hard to review cost-effectively to improve dynamic efficiency and flexibility of levies
Opportunities	Threats
<ul style="list-style-type: none"> – Legislative/process improvements to increase flexibility/efficiency of “as is” – Consolidate (some) levies or create two level system where efficient, effective, fit for purpose levies are retained and alternative is offered – Redefine policy objectives (reform levy and functional policies simultaneously) 	<ul style="list-style-type: none"> – Misallocation (levy system does not adapt to changing circumstances) – Expectation/perception the levies and levy recipient bodies must do more – Conflict undermines support and leads to undesirable outcomes

SOURCE: ACIL ALLEN CONSULTING AND MINTER ELLISON

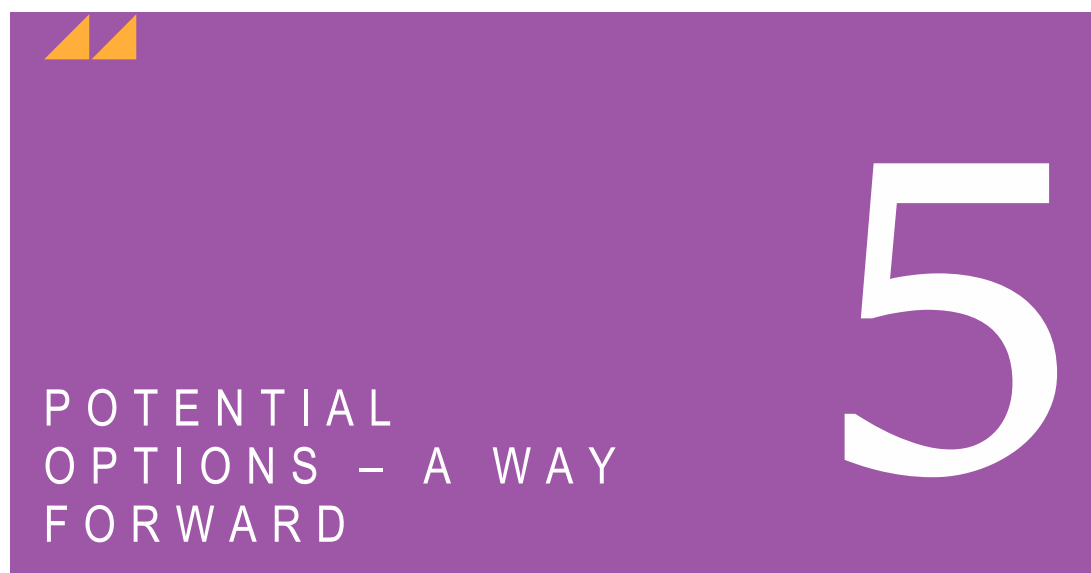
This “self-determined, tailored and equitable” approach is based on a common set of principles but it is increasingly becoming a weakness as the levy system becomes more complex and less efficient and effective as more and more levies are added to the system. This means that the system needs to cater for the considerable diversity within commodities, between levies and in legislation. This is further accentuated by accountability for levies and their expenditure being split between the levy system and the levy funded functions (LRBs). These systems which involve the same stakeholders are linked but are using different mechanisms. Together these factors make it hard, expensive and even risky to review levies even for simple adjustments where there is industry and Government agreement.

The lack of flexibility driven by this complexity reduces the dynamic allocative efficiency of the levy system placing greater pressure on LRBs to adapt expenditure to changing circumstances. The actual and perceived expectations around how the levies and the LRBs should adapt to such circumstances is a source of tension for stakeholders. Are they unreasonably being asked to do more? Which in turn, undermines confidence in the whole system.

Nonetheless the Government, industry and LRBs all see that changing the levy system’s legislative and administrative arrangements, while retaining the current policy settings, is a significant opportunity to improve efficiency and flexibility. Beyond this there are opportunities to consolidate levies although this is likely to be limited to some levies, rather than all levies, given the diversity. This in turn raises the question as to whether less efficient and effective levies (both new and existing) are better located under different arrangements.

Many of the challenges and opportunities lie outside the levy system and within the funding functional (levy recipient body) system which flows into broader industry-Government partnership relationships. This creates the opportunity to consider reforming the policy settings for both the levy system and the funding function system.

Overall this suggests that moving the levy system through the sunset provisions needs to be undertaken in a layered approach where the potential options progressively build on each other. This approach will allow industry and Government to explore, discuss and agree on the level of improvements to the levy system. A way forward is discussed in the following chapter.



Options to improve the levy system are defined by the current policy settings, what is legislatively possible and the degree to which the Commonwealth, levied industries and levy recipient bodies can agree to reforms. For the purposes of this study we have assumed the following policies will continue:

- Industry self-determination on whether to impose a levy and how it is structured
- Continuation of matching R&D levies
- Levies must be distributed to the levy recipient bodies.

These policies constrain the degree to which levy system legislation can be rationalised to reduce unnecessary cost and complexity since various legislation will be required to define and authorise each levy. Therefore the real opportunity lies in ensuring that levy system legislation does not constrain the efficient administration or effective allocation of levies. Similarly while there is scope to improve levy efficiency and effectiveness through consolidation and better arrangements these need to be analysed and negotiated with each industry.

Based on these assumptions we have identified four options drawing on our analysis of the levy system snapshot and stakeholder consultations. They are structured to progressively build on each other with each option requiring greater levels of change and negotiation. This provides the platform for the Department to consider what could be addressed through the upcoming sunset provision or at a later time.

5.1 Option 1: Clarify and consistently apply current arrangements (business as usual)

Rationale

This option is based on the assumption that the policies underpinning the levy system are sound so rather than changing the legislative base the Department should focus on incremental improvements by clarifying and consistently applying the current arrangements.

What problem does this address?

Stakeholders who work with the levy system have expressed on numerous occasions throughout the study concern about the lack of clarity and consistent application of the Levy Principles and Guidelines. On top of this, it is the absence of a levy payer register limits cost-effective consultation on changes to levies. The lack of clarity and consistency results in all stakeholders incurring unnecessary costs and limits the establishment of new and adjustment of existing levies.

What is involved?

This option involves updating the Levy Principles and Guidelines; the Department and each industry/levy recipient body establishing agreed processes; and using the levy register for consultation on levy changes.

Updating the Levy Principles and Guidelines

The Department should be responsible for reviewing the Levy Principles and Guidelines by:

- Drafting the principles and guidelines in plain English
- Developing separate principles and guidelines for levy establishment and levy review
- Expanding supporting material to include processes and examples

Providing the current principles and guidelines in plain English along with expanded supporting materials will suffice for levy establishment.

The principles and guidelines for levy review is a substantial piece of work that needs to align purpose and process. There are essentially three reasons for reviewing a levy:

- Should the levy continue (i.e. is there still market failure)?
- What are the optimal levy rates and allocation (“fuel mix”) for an industry’s levies?
- How can collection costs be reduced?

The guidelines need to reinforce the principle that each industry should have agreed process that establishes when and how each of these questions should be answered. The processes do not need to be the same across each industry given the number of levy payers, amount of levies collected and consultation mechanisms.

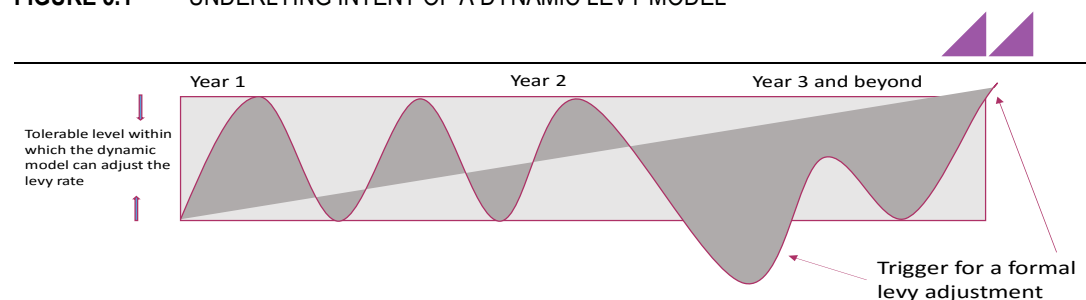
As a general guide the first question on whether to continue a levy should only be asked when necessary and should involve industry wide consultation underpinned by analysis.

The question of levy rate and allocation should focus on what is required for the up-coming strategy cycle for the levy recipient bodies and will require consultation with levy payers.

The question of whether collection costs can be reduced is essentially administrative and could be addressed by the Department and industry body reviewing costs on a regular basis or when opportunities arise.

The updated Levy Principles and Guidelines also need to cover the total levy burden and functional allocations (i.e. R&D, marketing, NRS and biosecurity) for each industry so that levies are collectively rather than individually optimised. This involves outlining the principles and guidelines for Government, industry and LRBs to dynamically manage fluctuations in the ‘rate’ and functional allocations (the fuel mix) under an industry’s total levy cap on an agreed basis through: reserves and/or lines of credit; transfers between Levy Recipient Bodies; and adjustment to individual levy rates in line with LRB strategic planning cycles (i.e. 3-5 years). More extreme fluctuations (say caused by a long term biosecurity crisis) would be managed through the current levy adjustment system. A demonstration of how changes in the fuel mix within the cap could work in practice is provided in **Figure 5.1** below.

FIGURE 5.1 UNDERLYING INTENT OF A DYNAMIC LEVY MODEL



Note: Levy funding can be used to address a mixture of R&D, marketing and bio-security related priorities

SOURCE: ACIL ALLEN

Applying the updated Levy Principles and Guidelines

To maximise the benefits of the updated principles and guidelines they need to be applied by the Department and each industry and the Levy Recipient Body. This will take considerable time given the number of industries involved. There are also legislative constraints which need to be addressed to realise the full benefits of dynamically management the levy fuel mix.

Irrespective of how the levy principles and guidelines are applied it will be critical to ensure that the levy payer register is available to consult levy payers on levy adjustments. This will be a matter for the RDCs to decide in consultation with their industries.

Further, the Department should revise its advisory structures so they are centrally coordinated to offer consistent and practical advice on the application of the principles and interpretation of the guidelines.

Implementation and assessment

This option proposes minimal change and involves limited investment to improve the levy system by clarifying and consistently applying the current arrangements. The option does not require a thematic review of the levy system and involves updating the Levy Principles and Guidelines and using the levy register to assist with industry consultation when levies are reviewed. The option can be implemented immediately and does not require any changes to legislation or involvement of the sunset provisions.

While clearer guidance and consistent application will benefit the levy system the option does little to reduce the burden for industry, Government or levy recipient bodies. Industry and levy recipient bodies will still need to develop new or use existing processes to consult levy payers on changes. The Department will need to continue to use considerable resources to gain Parliamentary assent to the changes given the operative elements remain in legislation. More importantly the option does little to create incentive for industry, Government or levy recipient bodies to improve the efficiency of levy administration or consider how the system can be reformed to increase the value it creates.

This option can be implemented now and the updated Levy Principles and Guidelines completed by early 2017.

5.2 Option 2: Greater delegation to improve flexibility and efficiency

Rationale

The rationale of this option is to improve the operational flexibility and efficiency of the levy system so that it is more responsive to changing needs without changing the core principles or functional aspects of the system. To improve flexibility and efficiency will require reform on the part of Government and industry.

This option therefore involves three components:

- That Government removes technical detail from the levy system Acts and regulation to ensure levy changes occur at a level of accountability and transparency that is proportional to the change being sought.
- That industry mobilises to develop an agreed process, acceptable to Government, levy payers and levy recipient bodies to assist them in adjusting their levies.

What is the problem?

Stakeholders consulted expressed frustration at the inability of the levy system to adapt to the needs of industry. As priorities and circumstances change it is important to adjust levy rates and allocations so the funds are put to the highest value use and that surplus funds (in excess of agreed reserves) do not accumulate in levy recipient bodies. At present the delegation structure to adjust levies within industry and Government limits responsiveness and incurs considerable cost.

Levy rates and allocations are generally located in regulation with a few in Acts so that currently any changes require Ministerial and Parliamentary approval. This arrangement creates considerable delays and cost to the Department even if the adjustments are supported by stakeholders.

Within industry, the situation is the opposite as there are many industries lacking an agreed process that is accepted by levy payers, levy recipient bodies and Government to adjust levies. Even when these processes exist they are costly and do not necessarily cover all the levies (e.g. polls). This lack of agreed processes, in turn leads to wider discussions around the levy rationale and levy recipient bodies. While such discussions are important they actually limit the ability of an industry to adjust its levies to meet changing priorities.

What is involved?

Legislative change

The objective of the first component of this option is to simplify the core legislation and place the details of Government decision making and accountability at a level that is proportional to the change being requested. This will involve defining caps for levies individually and in aggregate within regulations and placing the levy rates and collection instruments within administrative orders to be decided by the Secretary and/or Minister.

Responsibility for presenting the business case for changes to levy rates (up to the cap) and collection instruments that is consistent with the Levy Principles and Guidelines lies with the industry and Department.

The Levy Recipient Body legislation can also be changed to allow funds surplus to requirements (i.e. existing and projected commitments against the strategic plan and the agreed reserves) to be transferred to between Levy Recipient Bodies. However this would also require the support of the Levy Recipient Bodies to make the necessary changes to their own constitutions and legal structures.

The option could also be expanded, making use of the levy payer register, to establish a legislated mechanism for industry to be consulted on levy changes. To be fully effective the mechanism should have the ability to consult levy payers on all levies rather than just R&D and marketing as is the case for wool and dairy. However there are a number of considerations that challenge whether legally establishing consultation mechanisms is in the best interests of industry, Government or the levy recipient bodies. In particular the variable number of the levy payers within each widely differing industry structures means that some mechanisms may be more cost effective and avoid wider politicisation around the levy rationale and levy recipient body performance. The alternative option is that each industry develop their own levy review process as per option 1.

Procedurally the delegation of Government decision making can be addressed through the sunset provisions where the revised regulations and new administrative orders are drafted simultaneously for all levies by the Department in consultation with the Office of Parliamentary Council. The amendment bills would then be introduced in Parliament for approval and assent.

Implementation and assessment

This option significantly improves administrative efficiency through greater delegation of decisions, in Government and potentially industry, while maintaining the structure of the current levy system. The reduced cost and time savings will considerably increase the flexibility and responsiveness of levies. There is considerable appetite for implementing this option amongst the stakeholders consulted.

On the Government side, this option will generate considerable benefits by moving the operative elements from Acts and regulations to administrative orders so that that decisions on levy rates (up to a regulated cap) and collection instruments are made by the Secretary and/or Minister. This avoids the cost and time delay of the current requirements for Parliamentary approval.

On the industry side, this option creates strong incentives for each industry to establish a fit for purpose, repeatable process by which to adjust levies. The mechanisms for consulting with levy payers and whether to establish this legislatively (e.g. polls) or by mutual agreement is left to each industry. This will avoid unnecessary cost or inflexibility that would arise from a common approach mandated across all industries.

Changing levy recipient body legislation to allow transfer of surplus funds between them will further increase the flexibility the system to levies can be allocated to their highest value use. This change is

likely to encounter considerable resistance from the levy recipient bodies who would also need to make additional changes (e.g. constitutions). So while it can be pursued in parallel with amendment to levy legislation it does not completed at the same time.

The option represents a considerable investment given the levy legislation would need to be revised and new administrative orders drafted that would then require Parliamentary assent to establish the delegation. Most industries will also need to invest in developing the agreed processes so that levies can efficient adjusted.

None the less the savings are considerable given all future levy rate and collection instruments adjustments will be less costly resulting in greater value through flexible and responsive allocation of levies.

This option should be implemented as part of the sunset provisions. Scheduling the sunset provisions to occur simultaneously across all levies, possibly through a thematic review will ensure consistency and reduce cost.

5.3 Option 3: Offer alternative arrangements for less efficient levies

Rationale

The study has found that compulsory levies are supported by industries because they: build industry cohesion, generate sustainable (and sufficiently large) funding pools to address priorities while avoiding free riding producers who benefit from the levy but would not otherwise have paid the levy.

However not all industries share these characteristics resulting in a large number inefficient levies. Given many less efficient levied industries have limited scope to improve, an option is to offer alternative arrangements which will assist with their industry's development while improving the efficiency and support for the levy system.

What is the problem?

The aspiration of many industries is to establish a compulsory levy given it is widely understood as an important pathway to accelerating industry development. This is reflected in continued demand from new industries to establish compulsory levies.

The current situation is that prior to establishing a compulsory levy industries can seek funding for projects from Government programs, RIRDC or establish a voluntary levy. The voluntary levy may attract additional funding for R&D from RDCs where the current R&D levy total is less than the 0.5 per cent cap (e.g. Horticulture Innovation Australia). After a time these industries are encouraged to establish a compulsory levy and, in the case of the RIRDC program, become ineligible for further funding.

As a result many industries' believe they have no choice but to establish a compulsory levy, irrespective of the cost. This is reflected in many industries having significantly higher levy collection costs due to the available collection instruments and the need to cover levy administration and compliance costs from relatively smaller levy pools.

At the same time compulsory levies create obligations industry must meet. AHA and PHA are member based and require an annual membership fee to support the organisations and industry need to cover their cost of participation. The peak industry bodies also need the capability to advise RDCs on R&D and marketing which they must self-finance and involves an array of arrangements to manage conflict of interest.

The consequence is that compulsory levies in many industries are inefficient and place considerable burden on the peak bodies and levy recipient bodies driven by the requirements of the levy system. So, while the levy system is sound in principle, and for industries with sufficiently large levies and representative capability there is efficiency and overall confidence in the system, this is eroded by less efficient levied industries, or new industries, who believe they have no alternatives.

What is involved?

This option involves expanding the threshold criteria for compulsory levies (under the Levy Principles and Guidelines) and establishing alternative arrangements for new and existing levies that do not comply.

The expanded compulsory threshold would involve new criteria for levy collection costs and industry representation capability. Given the principles of industry self-determination and equity, and for some industries both Government and industry are seeking levies, these criteria will require mutual and agreed assessment of a number of factors, by both parties.

The levy collection cost criterion should be based on an industry's willingness to pay assessment. For R&D levies this should be based on assessing willingness to pay before the matching contribution. The industry representation capability must be based on an industry self-assessment approach that is mutually agreed with Government and the levy recipient bodies. The key considerations are the capability, financial resources and ability to consult levy payers (which the levy register may assist with) to meet future obligations to review levies and engage with the levy recipient bodies.

There is a fundamental choice on what happens to industries that do comply with the expanded threshold criteria; offer an alternative arrangement or work with them to develop a pathway to be able to establish a compulsory levy in the future.

The alternative arrangements will need to be designed based on the outcomes of the assessments against the expanded criteria. These arrangements could consist of:

- lower governance obligations (such as offered by RIRDC for relatively smaller levies such as rice)
- grouping smaller R&D and marketing levies in one levy recipient body with lower governance obligations (e.g. RIRDC)
- establishing common collection and industry consultation instruments
- extending the amount of funding and time the funding is available for prior to establishing compulsory levies
- transition arrangements for existing less efficient compulsorily levied industries.

Further consideration of whether such arrangements are required and how they should be structured is a significant piece of work and beyond the scope of this study.

Irrespective of whether such arrangements are put in place it will be important to work with industries who do not comply (with either existing or extended criteria and the Levy Principles and Guidelines) to develop a pathway to establish a compulsory levy in the future. This could be achieved by the Department working with industry to develop a plan with targeted capacity building.

This option can commence immediately with the aim of developing an initial scope for wider consultation by early 2017. Implementation will depend on the specific arrangements chosen.

Implementation and assessment

This option represents a substantive change by limiting participation to improve the levy system's efficiency and effectiveness. The option is based on the addressing concerns in some industries with higher collection costs and the costly governance arrangements associated with compulsory levies. These industries support the levy system but are frustrated as they have limited prospects to address the concerns which will either limit their access to the system or the make best use of the levies (where compulsory levies are established).

The merit of this approach is to avoid reducing overall levy efficiency and undermining confidence and support for the system, by not applying the same arrangements to all industries. Overall there is a high level of interest in this option, but less so by industries where levies are efficient and effective.

The option is not without its challenges since it requires both new and existing levies to be assessed, alternative arrangements to be established and transition pathways to be developed and implemented. The assessment framework will need to act as a common diagnostic tool that allows industry and Government to mutually agree on what the best alternative arrangements may be.

The investment is large since the alternative arrangements need to be designed and then agreed on by industry, Government and levy recipient bodies. However, the benefits are considerable since much of the frustration and concern around the levy system lies around industries believing they have no choice but to establish a compulsory levy even if that levy is relatively inefficient and hard to manage.

This option can be included as part of the thematic review of the levy system. If transition of existing levies is to be included in the sunset provisions then timing may need to be delayed.

5.4 Option 4: Consolidate levies and legislation

Rationale

The rationale for this option is that the sheer number of levies creates unnecessary cost and inefficient allocation of funds that in turn limits the value generated. To overcome these constraints the levies and the levy legislation could be consolidated to improve the flexibility, efficiency and effectiveness of the levy system and levy recipient bodies. This will increase the value created for industry and Government.

What is the problem?

One of the biggest challenges is that the levy system defines what an industry is, the functions levies can be used for and who they are disbursed to, at a point in time. On top of that the levy system is only accountable for raising and disbursing levies. Accountability for expenditure lies within a separate levy funded function (levy recipient body) system, even though it involves the same stakeholder and in some case the same legislation. The net result is a high degree of rigidity and limited transparency that make it difficult for the industries and levy recipient bodies to respond to changing needs without extensive industry and Government consultation on a commodity by commodity basis.

What is involved?

This option approaches the challenge by creating a new rather than optimising the existing levy system. The aim is to establish a levy system that:

- collects levies efficiently across all industries
- allows the funds collected to be readily disbursed to the highest value use
- has cost effective and transparent accountability to industry and Government

Realisation of this option lies in consolidating the number of levies and collection instruments. Such consolidation will reduce levy collection costs, combine levies within industries so their use can be readily adjusted and create larger levy pools that are more efficient and effective. Each of these improvements can be approached in a number of different ways and relies on Government, industry and levy recipient bodies agreeing.

Reducing levy collection costs involves replacing the existing means of collection with more efficient ones. Replacement will either involve a single manner of collection or negotiation with individual industries if another means is more efficient. Given some levy means of collection instruments are already extremely efficient combining collection across industries may be seen as a “loss of control”. It is difficult to implement efficiency without disadvantaging some industries even if there is an overall net gain.

Combining levies and levy legislation within an industry would simplify the system. However there are legislative constraints that limit the degree to which this can be achieved given Constitutional considerations. At the same time greater use of administrative orders as described in option 2 is more likely to achieve the cost effective flexibility required to responsively adjust levies as identified during this study.

Practically, the real benefit of consolidation will come from consolidating the number of industries rather than the number levies. Such consolidation will reduce legislative complexity considerably and create larger and more efficient levy pools. However, this is constrained by the current policy of

industry self-determination and will require industries and Government to agree to new definitions of industry.

If existing industries combine their levies a new allocation mechanism would need to be established either before funds are disbursed or within the levy recipient body. If the mechanism is established in the levy recipient bodies then the levy and levy recipient body legislation will need to be amended to allow transfers between the bodies. This in turn raises the question of whether the levy recipient bodies are appropriately structured. This is beyond the scope of this study.

Implementation and assessment

This option is essentially about creating a new levy system that is considerably more efficient and flexible than the current arrangements. To realise the benefits of this option industry, Government and levy recipient bodies will need to agree to consolidating levies and collection instruments. Without such agreement there is limited or no ability to create a more streamlined legislative structure or efficient administrative arrangements to underpin improved efficiency and flexibility and to make the best use of levy system.

There was little support for levy consolidation from stakeholders consulted, although individual stakeholders did see benefit in some areas, such as standardising collection to improve collection efficiency, or consolidating levies to create larger pools and stronger industry groupings. Stakeholders also questioned whether consolidation of levies could be conducted without improving the performance of the levy recipient bodies and the accountability arrangements for expenditure of levies.

Practically this option has limited merit until the net benefit of consolidation is analysed and the resulting distributional impacts on stakeholders are understood across the whole levy system. This will require consideration of what the consolidated industry pools, and the collection instruments are and whether these deliver greater value than the existing levy system prior to scoping the legislative amendments. Additional assessments on how these changes may impact the levy recipient bodies and the costs and benefits to industry and Government would also be required. This is outside the scope of this study.

Implementation of this option will require a thematic review and should include option 3. It may not be possible to avoid considering levy recipient bodies as part of this or another review. The option is a substantial task and unlikely to be completed before the sunset provisions come into effect.

5.5 Summary

The options considered in this chapter have been assessed as to whether they are appropriate for inclusion in a review. Option 1 is suitable for inclusion but insufficient to justify a review on its own given the Department can update the Levy Principles and Guidelines and implement a capacity building program to support consistent application. Option 2 is suitable for inclusion given industry and levy recipient bodies will need to support the delegation of Government's levy change decisions from Acts and regulation to administrative orders as well as establishing or reviewing their own approval processes. Option 3 can also be included but will broaden the scope of the review if the alternative arrangements need to be established outside of the levy system.

Option 4 is not suitable for inclusion if the review is limited to the levy system under the current policy settings. Proper consideration of this option will require the review to analyse whether alternative/s to the currently self-determined definition of industry are more efficient and effective; and possibly an analysis of the alternative/s for the structure and operations of levy recipient bodies. While there is potential value in reviewing option 4 there is limited appetite to do so and it will require changes to the policies and the assumptions underpinning the levy system.

The next chapter demonstrates how the analysis of these options can inform the Terms of Reference for a potential review of the levy system.



6.1 Background statement for the Terms of Reference

The Australian Government has identified the agriculture sector as one of the five pillars of the economy. It promotes the economic potential of the sector by supporting agricultural commodities to raise levies which address short, medium and longer term issues facing commodities with the intent of supporting improved productivity and global competitiveness.

The Australian Government's productivity and global competitiveness agenda has focussed on implementing reforms in the agricultural levies which minimise the costs or burden placed on industries and helps them to reach their potential. This is applicable in the areas of levies where the Commonwealth has significant legislative and regulatory responsibility.

Over the next few years, a large number of Commonwealth legislation and regulations underpinning the agricultural levy system will be subject to sunset and review provisions. These provisions provide Government and industry with an opportunity to consider the efficiency, effectiveness and appropriateness of the current levy legislation and what improvements might be necessary to support a future system.

While levies have valid objectives, such as protecting longer term investment in R&D, managing biosecurity risks and supporting export activities, the current system of agricultural levies are complex. The cumulative impact of this complexity demonstrates that the benefits of the levy system are not being fully realised which may have adverse effects on producers who pay levies and will generate unnecessary costs for the vast array of institutions which support levy payers.

As such, the purpose of a Review of the levy system should be to reduce the unnecessary complexity of levy system to the benefit of all system stakeholders and the broader Australian economy.

6.2 Scope of the Terms of Reference

The Review scope should reflect the appetite of the Minister, the Department and industry for reform of the current levy systems policy, legislative/regulatory, institutional/functional and process-based frameworks. It is evident from the analysis and consultation undertaken for this report that reform options which seek to enhance the processes and legislative/regulatory frameworks underpinning the levy system are less contested amongst stakeholders than those reform options that seek to implement minimal changes to processes, or enhance the flexibility and responsiveness of levy legislation/regulations.

From this perspective, the Review's scope could be layered or segmented to focus the less controversial improvement suggestions identified in this report, before moving to more substantive options where consensus about reform is much lower. This means focusing on reform options that

optimise parts of the existing levy system which stakeholders see as requiring reform but do not change the fundamental policy setting or operating frameworks of the levy system. In particular, the parts of the existing levy system that determine a levy is *established* and *reviewed* should be a core remit of the Review's scope.

Reform options that seek to fundamentally reform the existing system or implement an entirely new one have, by contrast have much lower levels of stakeholder support (despite the merits of the arguments put to industry), and are inherently more complex as they challenge existing policy and institutional arrangements. While some of the options presented in this report are worthy in their own right, they will require considerable analytical resources to understand their practical implications and significant planning and policy negotiation to implement them in a considered and conciliatory way.

Consistent with its policy, legislative and regulatory remit, the Department should at a minimum have particular regard to:

1. ***Reviewing the levy principles and guidelines (and supporting guidance material) to ensure they are effective tools to assisting industries to establish a levy and review existing levies.***

Stakeholder feedback collected for this scoping project, has highlighted the need to improve the clarity of the current levy collection principles. While the principles are clear from a conceptual perspective, they must be more clearly articulated in their written form, and the advice given by Government must support consistent application of the principles. The addition of examples relating to best practice application of the principles would also assist industries in their use of the principles and guidelines. In order to provide this clarity and consistency the Department should undertake an internal review of these documents and how it communicates advice to key stakeholders.

If the appetite for further reform exists, the Department should have particular regard to an area of reform that have received broad stakeholder support throughout the scoping project:

2. ***Streamlining and reconfiguring Commonwealth levy legislation and regulations to ensure they are responsive, flexible, consistent and transparent instruments for establishing levies and reviewing existing levies.***

This scoping report has identified the presence of considerable operative detail in the core legislation that underpins the current levy system. The presence of this detail in core legislation reduces the flexibility of the levy system to and its ability respond to emerging industry needs when required.

The Review should give due consideration to removing the operative detail in core legislation and placing it within subordinate instruments where the delegated authority to make minor or non-controversial changes to a levy is appropriate for the change being requested. This consideration will include a review of the current legislation to identify opportunities for consistency and a process of redrafting all legislation to ensure that they are cast on a consistent and flexible (principles) basis, but that the legal delegations for review of a levy are sound and within the expectations of industry.

If the appetite for further reform exists, the Department should have particular regard to:

3. ***Exploring the opportunities to establish a new options for those industries that currently have an inefficient levy or new entrants who would benefit from a levy but do not have the scale, scope or level of industry maturity to participate in the current levy system.***

This scoping report has identified that while industries can materially benefit from a compulsory levy, not all industries have the resources and level of industry maturity to establish and/or maintain a levy. Under this ToR the Review would consider the creation of an alternative system, in conjunction with the current levy system. The merits of establishing a two level system comprised of:

- Existing system—where the current principles and arrangements apply and only commodities that can maintain cost effective levy arrangements participate in the system.
- An alternative pathway—where smaller and emergent commodities are assessed on their capacity, financial resources and ability to consult levy payers and can work with Government to establish and alternative pathway should they not meet the threshold criteria.

Finally if there is an appetite for significant policy and legislative reform, the Department should have particular regard to:

4. *Rationalising the number of levies operating in the system. Rationalisation would also include consideration of the ways in which standardisation (in terms of levy rates, units and collection processes) could be achieved across the entire levy system.*

Consolidating the number of levies currently in the system, be it from 250 to 200 or 250 to 1 levy, will require a fundamental reform of the current levy system and a shift in the Government's policy in this area. Any consolidation of existing levies would require commodities and industries to trade-off the key principles of self-determination and the right to raise and spend levy resources in accordance with documented industry priorities.

Depending on the level of consolidation considered by the Review, due consideration would also need to be given to the current functional structure which supports the disbursement of levies and whether it appropriately, efficiently and effectively supported consolidation. Due consideration would also be required to the large number of legislation and regulations that underpin the functional system.

6.3 Other requirements of the Terms of Reference

In undertaking the Review, the Department should:

- identify specific or sub-options for alleviating unnecessarily burdensome, complex or redundant aspects of the levy system. The role of the Review will be to explore the key themes or inquire outlined in this scoping report with the view to developing more detailed options for reform.
- identify priority areas for reform (regardless which level of analysis is undertaken by the Review) and the complementary investments that are required to delivery reform
- provide recommendations which give due regard to enhancing the flexibility, responsiveness and simplicity of the entire levy system, whilst retaining its beneficial features, even if they are beyond the precise scope of the ToR.

6.4 Process for executing the Terms of Reference

Should a full Review take place (i.e. ToR 1—4 are considered), the Department should advertise nationally, consult broadly with key interest groups and affected parties, hold hearings, invite public submissions and release a draft report to the public for consultation and feedback.

To expedite the Review the Department should consider relevant submissions to the various reviews of agricultural competitiveness, the levy system and Northern Australia and other relevant material in the public domain to identify where key views of industry have already been articulated.

The final report should be provided within 18 months of the commencement of the Review process.

If the decision is taken to not to proceed with a full review and/or to re-write the Levy Principles only (i.e. ToR 1 is considered), then the process for doing this should take no longer than three months. The review process for this scope of work could be managed internally by the Department with limited use of consultation/engagement mechanisms and external consultants/advisors.

A Review which encompasses any combination of ToR 1—3 is undertaken then a final report should be provided to the Department within 12 months of completion. It should involve broad consultation and the use of external experts and advisors to execute the Review.

6.4.1 Review governance and advisory arrangements

Governance arrangements for a fully scoped review

For a fully scoped review (i.e. any combination of ToR 2—5) the governance and strategic oversight of the review should remain the responsibility of Government to ensure consistency with the Commonwealth's legislative and regulatory remit for the levy system.

It is therefore prudent for the governance committee of the Review to contain senior representatives from DAWR, the Attorney-General's Department and Treasury. The governance committee should be chaired by DAWR to ensure consistency with portfolio responsibilities. This committee should meet on a monthly basis during the review period to ensure effective progress against this Terms of Reference.

This report has established that the current levy system is built on a partnership model between Government, Industry and LRBs. To ensure this partnership is maintained, it will be important to ensure that members of each stakeholder group are formally represented within the Review's advisory arrangements. The membership of the review advisory committee could include and be selected on the following basis:

- Government—a senior representative from DAWR who also has a role on the Review governance committee
- Levy Recipient Bodies —CEO/MD or Chair of the LRBs which represent each of the significant levy functions (i.e. Biosecurity, Marketing and R&D, the NRS)
- Industry—a small selection of industries that represent large, medium and small levy paying commodities.

Membership of this committee should be limited to ten representatives to ensure it provides focused input and advice to the Review. The advisory committee should meet between 3-4 times throughout the review process.

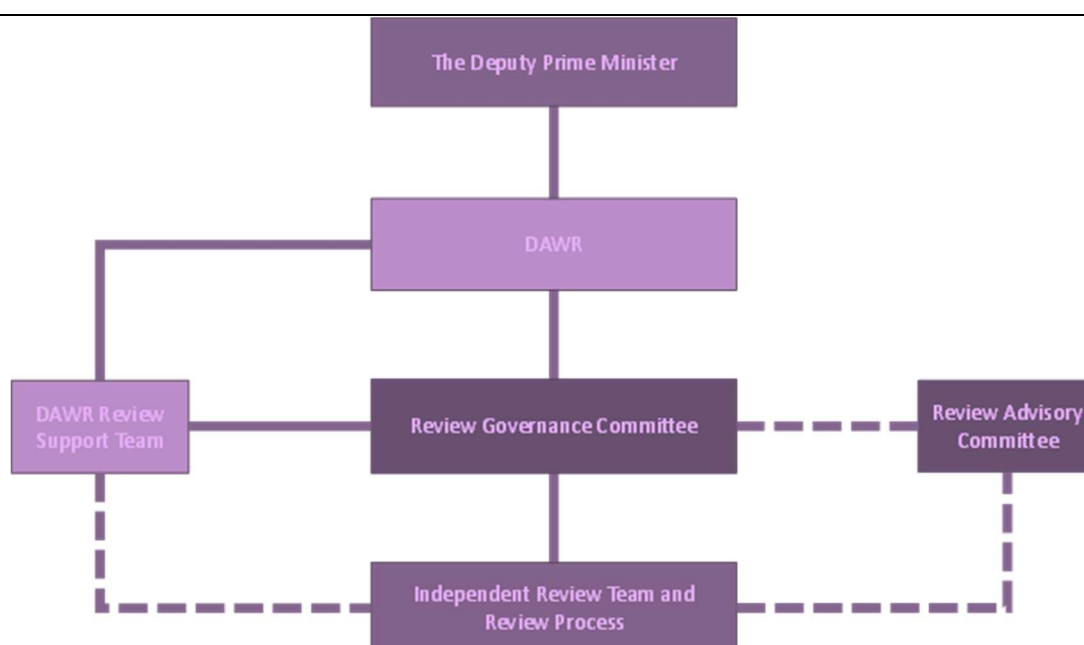
These committees should be supported by a DAWR secretariat and an independent review team who is external to the department, but has a strong appreciation and understanding of the levy system.

The relationship between the governance and advisory committees and the review team for the Review is shown in the **Figure 6.1** overleaf.

Governance arrangements for a smaller review

The review process for a smaller scope of work could be managed internally by the Department with limited use of consultation/engagement mechanisms and external consultants/advisors. It would be however, prudent for the Department to establish a small working group or taskforce to oversee the execution of this scope of work within the nominated timeframe.

FIGURE 6.1 REVIEW GOVERNANCE AND OPERATIONS



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