

1985-86-87

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 2 April 1987

(Minister for Primary Industry)

A BILL

FOR

**An Act to make provision for the collection of levy imposed
by the *Sugar Cane Levy Act 1987***

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

Short title

1. This Act may be cited as the *Sugar Cane Levy Collection Act 1987*.

5 Commencement

2. This Act shall come into operation, or shall be deemed to have come into operation, as the case requires, on the day on which the *Sugar Cane Levy Act 1987* receives or received the Royal Assent.

Interpretation

3. (1) In this Act, unless the contrary intention appears:

“appoint” includes re-appoint;

“authorised person” means a person who is, by virtue of an appointment under section 13, an authorised person for the purposes of the provision in which the expression occurs.

(2) Except so far as the contrary intention appears, an expression used in this Act and in the *Sugar Cane Levy Act 1987* has the same meaning in this Act as in that Act.

Act to bind Crown

4. This Act binds the Crown in right of each of the States, of the Northern Territory and of Norfolk Island.

Time for payment of levy

5. Levy on accepted sugar cane is due and payable on the expiration of 28 days, or such longer period as is prescribed from time to time, after the last day of the month in which that sugar cane was accepted at the sugar mill for processing.

Miller's liability in relation to levy payable by grower

6. (1) For the better securing of the payment of levy on accepted sugar cane that is payable by the grower of that sugar cane, the miller of that sugar cane is liable to pay to the Commonwealth an amount (in this section referred to as the “relevant amount”) equal to levy on that sugar cane that has become payable by the grower but has not been paid to, or recovered by, the Commonwealth.

(2) Notwithstanding any law of a State or Territory, or any agreement (whether entered into before or after the commencement of this Act), to the contrary, a miller of accepted sugar cane may, for the purpose of ensuring that the miller is provided with the funds necessary for the due payment by the miller under subsection (1) of the relevant amount, deduct from any money payable by the miller for that sugar cane an amount equal to, or that may reasonably be expected to be equal to, the relevant amount.

(3) Where a miller of accepted sugar cane deducts an amount under subsection (2), the grower is, upon the levy becoming payable, discharged from the grower's liability to pay the levy to the extent of the amount so deducted, but the miller's liability under subsection (1) is not affected.

(4) Where, under subsection (1), an amount in respect of levy payable by a grower of accepted sugar cane is paid by, or is recovered by the Commonwealth from, the miller of that sugar cane:

(a) the grower is, to the extent of that amount, discharged from so much of the grower's liability to the Commonwealth to pay that levy as has not been previously discharged; and

- (b) the miller may recover from the grower, by set-off or otherwise, an amount equal to the amount discharged by virtue of paragraph (a) of this subsection.

Penalty for non-payment

7. (1) Where the liability of a person to pay levy is not discharged at or before the time when that levy is due and payable, there is payable to the Commonwealth by way of penalty, in addition to that levy, an amount calculated at the rate of 20% per annum on that levy or on so much of that levy as from time to time remains unpaid, to be computed from the time when that levy became due and payable.

(2) A penalty under subsection (1) relating to levy on accepted sugar cane is payable by the miller of that sugar cane.

(3) Where:

(a) a miller of accepted sugar cane has, under subsection 6 (2), made a deduction, in respect of levy payable on that sugar cane, from an amount payable by the miller; and

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

there is payable by the miller to the Commonwealth by way of penalty, in addition to the amount payable by the miller to the Commonwealth under subsection 6 (1), an amount calculated at the rate of 20% per annum on the amount of the deduction, or so much of that amount as from time to time remains unpaid, to be computed from the time when the levy became due and payable.

(4) The Minister or, subject to subsection (5), an authorised person, may, in a particular case, for reasons that the Minister or the authorised person, as the case may be, in his or her discretion thinks sufficient, remit the whole or a part of an amount payable under this section.

(5) The power under subsection (4) to remit the whole or a part of an amount payable under this section shall not be exercised by an authorised person if the amount, before remission, exceeds \$500.

Recovery of levy etc.

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

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

Refund of levy

9. (1) Where an amount of a kind referred to in section 8 has been overpaid, an amount equal to the amount of the overpayment shall be refunded by the Commonwealth.

(2) Where:

- (a) an amount is to be refunded by the Commonwealth under subsection (1); and
- (b) that amount has been taken into account under paragraph 7 (1) (a) of the *Rural Industries Research Act 1985* in calculating an amount to be paid into the Research Fund established under that Act in relation to goods of a kind in respect of which levy is imposed under the *Sugar Cane Levy Act 1987*;

the amount of the refund shall be paid from that Research Fund.

Power to call for information

10. An authorised person may, by notice in writing given or sent by post to a person, require the person to give to the authorised person, within such time (being not less than 14 days after receipt of the notice) as is specified in the notice, such return or information in relation to matters relevant to the operation of this Act as is specified in the notice, including a return or information verified by statutory declaration.

Access to premises

11. (1) An authorised person may, with the consent of the occupier of any premises, enter those premises for the purpose of exercising the powers of an authorised person under this section.

(2) Where an authorised person has a reasonable ground for believing that:

- (a) particular premises are a sugar mill; or
- (b) there are examinable documents on particular premises;

the authorised person may make application to a Justice of the Peace for a warrant authorising the authorised person to enter the premises for the purpose of exercising the powers of an authorised person under this section.

(3) If, on an application under subsection (2), the Justice of the Peace is satisfied, by information on oath or affirmation, that:

- (a) there is a reasonable ground for believing that:
 - (i) the premises to which the application relates are a sugar mill; or
 - (ii) there are examinable documents on the premises to which the application relates; and

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

the Justice of the Peace may grant a warrant authorising the authorised person, with such assistance as is reasonable and the authorised person thinks necessary, to enter the premises during such hours of the day or night as the warrant specifies, or, if the warrant so specifies, at any time, using such force as is necessary and reasonable, for the purpose of exercising the powers of an authorised person under this section.

(4) A warrant granted under this section shall specify a day, not later than 28 days after the day of issue of the warrant, on which the warrant ceases to have effect.

5 (5) Where an authorised person has entered any premises under this section, the authorised person may:

- (a) search for, examine, and take stock of, sugar cane or raw sugar; and
- (b) search for, inspect, take extracts from, and make copies of, any examinable documents.

0 (6) A person shall not, without reasonable excuse, obstruct or hinder an authorised person acting under subsection (1) or under a warrant issued under subsection (3).

Penalty: \$1,000 or imprisonment for 6 months, or both.

(7) In this section, "examinable documents" means:

- 5 (a) any documents relating to financial dealings between persons who grow or deliver sugar cane and:
- (i) persons to whom sugar cane is delivered; or
 - (ii) persons who accept sugar cane for processing; and
- 0 (b) any documents relating to the production, carriage, delivery, processing, purchase, storage or sale of sugar cane or the production or storage of raw sugar.

Offences in relation to returns etc.

12. (1) A person shall not, without reasonable excuse, refuse or fail to submit a return or provide information that is required by or under this Act or the regulations to be submitted or provided.

0 (2) A person is not excused from submitting a return or providing information that the person is required by or under this Act or the regulations to submit or provide on the ground that the return or information might tend to incriminate the person, but any return or information so submitted or provided is not admissible in evidence against the person in:

- (a) criminal proceedings other than proceedings for an offence against subsection (1) or (3); or
- (b) proceedings for recovery of a penalty payable under section 7.

5 (3) A person shall not present a document, make a statement, or submit a return, that the person knows to be false or misleading in a material particular, to a person performing duties in relation to this Act.

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- 0 (b) in the case of a body corporate—\$5,000.

Appointment of authorised persons

13. The Minister may, by writing, appoint persons, or classes of persons, to be authorised persons for the purposes of a specified provision of this Act.

Review of decisions

14. An application may be made to the Administrative Appeals Tribunal for a review of a decision made under subsection 7 (4).

Regulations

15. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

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

and in particular:

- (c) providing for the manner of payment of levy and other money payable to the Commonwealth under this Act;
- (d) requiring the keeping of records in respect of sugar cane by growers of sugar cane, millers of accepted sugar cane and such other persons (if any) as are prescribed;
- (e) requiring growers of sugar cane, millers of accepted sugar cane and such other persons (if any) as are prescribed, to provide returns for the purposes of this Act; and
- (f) prescribing penalties, not exceeding a fine of \$500, for offences against the regulations.

