



Horse Disease Response Levy Bill 2008

Horse Disease Response Levy Collection Bill 2008

Horse Disease Response Levy (Consequential Amendments) Bill 2008

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Law and Bills Digest and the Economics Sections

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Horse Disease Response Levy Bill 2008

Horse Disease Response Levy Collection Bill 2008

Horse Disease Response Levy (Consequential Amendments) Bill 2008

Date introduced: 21 February 2008

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Day after Royal Assent.

Links: The [relevant links](#) to the Horse Disease Response Levy Bill 2008, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the following bills is to:

Horse Disease Response Levy Bill 2008

- introduce a levy on the initial registration of horses so that the Australian horse industry, under the terms of the Emergency Animal Disease Response Agreement (EADRA), can repay the Commonwealth for financial assistance in the event of an outbreak of an emergency horse disease.

Horse Disease Response Levy Collection Bill 2008

- provides for the collection of horse disease response levies by persons or bodies that register horses and the liability of horse registration bodies to pay the levy payments to the Commonwealth.
- imposes penalties for unpaid levies and provides for remission of any penalties.
- provides for the gathering and collection of information and documents together with a strict liability offence for failure to comply with an information request.

Horse Disease Response Levy (Consequential Amendments) Bill 2008

The Bill amends the Australian Animal Health Council (Live-stock Industries) Funding Act 1996 to:

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- enable the Commonwealth to appropriate the horse disease response levies paid to the Australian Animal Health Council (AAHC) to repay the Commonwealth for underwriting the horse industries' share of the costs involved in dealing with emergency outbreaks of horse diseases.
- enable the AAHC to utilise excess horse disease response levies for research and development purposes or the promotion and maintenance of horse health.

Background

Basis of policy commitment

In August 2007 the Australian horse industry was thrown into chaos with the detection of equine influenza at stables in Sydney. Australia had previously been free of the equine influenza virus.

Despite initial attempts at quarantine, the highly contagious horse virus spread throughout much of the eastern states of Australia at an alarming rate. The impact on the horse industry and ancillary operations was huge. The lucrative Australian horse racing industries in the eastern states were closed down, gambling revenue on horse racing was curtailed, betting on alternative racing such as greyhounds also fell, whilst the impact stretched into the recreational and community sphere with gymkhanas and local horse shows postponed or cancelled. Moreover, the cost of maintaining a strict quarantine regime meant that horses could not be transported and that in many cases feed and care had to be maintained at sites away from any home base.

The thoroughbred and harness racing industries were deeply affected by the loss of revenue caused by the cancellation of racing events and with the impact of quarantine restrictions on breeding programmes. Peak horse industry bodies had called for government assistance during the equine influenza outbreak and had received both federal and state government assistance at different stages throughout the quarantine programme. The total amount of Commonwealth funding so far has been \$352.9 million, including the \$255.7 million [announced by the government](#) on 15 February. The *Appropriation (Drought and Equine Influenza Assistance) Act No 1 2008* assented to on 18 February 2008 appropriated \$255.7 million for financial aid to the horse industry as a result of the equine influenza outbreak. The *Appropriation (Drought and Equine Influenza Assistance) Act (No.2) 2008* assented on the 18 February 2008 appropriated an amount of \$97.2 million to reimburse the States, the Northern Territory and the Australian Capital Territory for costs

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associated with the national response to eradicating equine influenza. Most of this funding—\$86.4 million— will be recovered from the horse industry.¹

The Commonwealth government has [extended equine influenza financial assistance](#) until 14 March 2008 in a range of programmes.

The actual total cost to the Australian horse industry, estimated to be hundreds of millions of dollars, is still to be determined.

In the light of the equine influenza emergency, Australian horse industry peak bodies have agreed to support federal government legislation to introduce a levy to raise funds for future emergency assistance measures. In the event of a future emergency disease outbreak affecting the horse industry, the Commonwealth government will initially finance assistance measures to the horse industry but will be repaid from funds collected by the levy over time.

Regulations to be made under the Horse Disease Response Levy Act 2008, when passed, will determine the amount of the levy.

AnimalHealth Australia

The history of nationally coordinated responses to the dangers of the spread of animal diseases in Australia goes back to the 1990's when according to AnimalHealth's website 'it became apparent that consumers and national and international trading partners required increased accountability for animal health and welfare. It was agreed that there needed to be high level decisions by governments and industry groups on strategic policy for future planning and funding of national animal health service programs.'²

The Australian Animal Health Council was formed in 1996 and in 1996 the *Australian Animal Health Council (Live-stock Industries) Funding Act* was passed. The Minister for Primary Industries and Energy, Mr John Anderson, stated at the time

There is a need for as national approach to deal with animal health services to ensure coordination, cooperation and consistent policy and service delivery. This is especially so in an age when, for example, livestock are regularly moved from one state to another and in an age when, increasingly those consumers of our product, who are to be found in foreign lands— those countries that take our exports— expect to be able to deal with us as a nation rather than on a state by state basis. For example, in

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1. Senator John Faulkner, Special Minister of State, 'Second reading: Appropriation (Drought and Equine Influenza Assistance) Bill (No.1) 2007-2008, 'Second reading: Appropriation (Drought and Equine Influenza Assistance) Bill (No.2) 2007-2008.
 2. AnimalHealth Australia
<http://www.animalhealthaustralia.com.au/corporate/company-profile.cfm>

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the case of a problem with residue, as we have seen a couple times in Australia's meat industries, there needs to be a capacity to handle the situation on a nationally coordinated basis.³

The Council was incorporated under Australian Corporations Law in January 1996 and commenced operating under the business name of AnimalHealth Australia in February 2000.

Emergency Animal Disease Response Agreement

The Emergency Animal Disease Response Agreement (EADRA) is a world-first industry/government cost-sharing agreement that will boost Australia's ability to respond quickly and efficiently to animal disease outbreaks. The Agreement sets out cost-sharing arrangements between the Commonwealth, state and territory governments and Australia's livestock industries for the control, containment and eradication of 63 specific animal diseases. The management of the agreement is the responsibility of AnimalHealth Australia.⁴

According to the Explanatory Memorandum, 'Commonwealth became a party to the Agreement in March 2002.'

The EADRA provides for industry repaying any amounts paid for by the Commonwealth on behalf of industry under the agreement, via a statutory levy. To do this a new horse disease response levy will be imposed on the industry under the new Horse Disease Response Levy Act.

Under the terms of the EADRA, the AAHC co-ordinates, collates and maintains financial information in respect of any animal disease emergency. Livestock industries agreed that the AAHC will receive and disburse levy funds to be used to repay the Commonwealth for the costs underwritten by the Commonwealth on behalf of industry.⁵

Public Inquiry into Equine Influenza

The Howard Government announced on 2 September 2007 'that a comprehensive and independent inquiry would be conducted by the Honourable Ian Callinan to establish how

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3. Hon John Anderson, Minister for Primary Industries and Energy, 'Second reading speech: Australian Animal Health Council (Live-stock Industries) Funding Bill 1996,' House of Representatives, *Debates*, 26 June 1996.
 4. Emergency Animal Disease Response Agreement
<http://www.daff.gov.au/animal-plant-health/emergency/exercises/minotaur/cost-sharing>
 5. Explanatory Memorandum, Horse Disease Response Levy (Consequential Amendments) Bill 2008, p. 2.

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equine influenza got into Australia and subsequently spread. The inquiry will examine the circumstances that have contributed to the outbreak of equine influenza in Australia and any need for strengthened procedures and processes to make sure the highest standards of biosecurity are maintained for horses in post-arrival quarantine.’⁶

“Considering the seriousness of the situation and the impact on the horse industries, I have asked Justice Callinan to review all the evidence and report to me on the likely cause of the incursion and what measures are needed to maintain the integrity of Australia’s quarantine system,” Mr McGauran said.

“Justice Callinan will undertake a full independent inquiry and have wide-ranging powers under the Quarantine Act 1908, which allows him to subpoena witnesses and hold public hearings.

“I have asked Justice Callinan to examine the findings of the investigation currently being undertaken by the Australian Quarantine and Inspection Service (AQIS) into the outbreak, as well as the epidemiological investigations and any other relevant matters.

“I have also asked Justice Callinan to take into account the views of interested individuals and organisations.

“The inquiry will examine the circumstances that have contributed to the outbreak of EI in Australia and any need for strengthened procedures and processes to make sure the highest standards of biosecurity are maintained for horses in post-arrival quarantine.”⁷

Media reports suggest that Mr Callinan’s findings are due to be handed down by 25 April 2008.⁸

Position of significant interest groups/press commentary

The Explanatory Memorandum advises that peak horse industry bodies such as the Australian Horse Industry Council, the Australian Harness Racing Council, and the Australian Racing Board support the introduction and application of a horse disease response levy.⁹

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6. Hon. Peter McGauran (Minister for Agriculture, Fisheries and Forestry), ‘Immediate response to Horse Flu’, *media release*, Parliament house, Canberra, 4 September 2007.
 7. Hon Peter McGauran, (Minister for Agriculture, Fisheries and Forestry, *Public Inquiry into Equine Influenza*, 2 September 2007.
 8. Melissa Jenkins, Horse flu eradicated by March: officials, *Canberra Times*, 1 February 2008, p. 23.
 9. Explanatory Memorandum, Horse Disease Response Levy Bill 2008, p. 2

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The Chief Executive of the Equestrian Federation of Australia told the ABC on 22 February 2008 that he had concerns with the levy as the outbreak was not the fault of the owners.

"At the present we are actually applying for a recategorisation of the disease to make sure the industry has to pay less of any outbreak and we are really banking on that the fault lies with the Commonwealth and the agencies and that they should pick up the tab," he says.¹⁰

Financial implications

The Explanatory Memorandum states that there is no financial impact on the Commonwealth Government. However, in practice there will be monies paid and then refunded to the Commonwealth as a consequence of an outbreak of an emergency horse disease and subsequent horse industry payments made under the Emergency Animal Disease Response Agreement.

Key issues

The key issue revolves around the structure and application of a levy on horse registrations as a method of generating funds for the Australian horse industry to repay Commonwealth payments in the event of an emergency horse disease outbreak. Emergency assistance measures are provided for under the Emergency Animal Disease Response Agreement, although until this Bill is passed, the horse industry remains alone in not providing levy funding as do other livestock and plant industries.

Main provisions

Horse Disease Response Levy Bill 2008

Introduction of a Levy

Proposed subsection 4(1) imposes a horse disease response levy at the time when a horse is first registered with a horse registration body. No levy is imposed for any subsequent registrations of the horse even if it registered with a separate organisation (**proposed subsection 4(2)**). **Proposed section 5** provides that the rate of the levy will be fixed by regulation. The owner is responsible for paying the levy (**proposed section 6**). **Proposed section 8** provides that the levy is not a tax on 'property of any kind belonging to a State.' Such a tax is prohibited by section 114 of the Commonwealth Constitution. The reference

10. Libby Price, 'Horse flu finished at cost to owners', ABC Rural Queensland, <http://www.abc.net.au/rural/qld/content/2007/s2170230.htm> accessed on 11 March 2008.

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to a State in section 114 includes the Australian Capital Territory and the Northern Territory (**proposed subsection 8(3)**).

Proposed section 3 defines ‘horse registration body’ as a person or body with whom a horse can be registered or a person or body specified as such in the regulations.

Proposed subsection 7(1) provides that the Minister may declare a body be a horse industry body if he considers that the body represents the horse industry nationally.

Horse Disease Response Levy Collection Bill 2008

Part 2—Liability for horse disease response levy and penalties

Proposed section 6 provides that a horse registration body is liable to pay the Commonwealth for levies paid to the body by horse owners as the registration levy and also any penalties incurred as a result of late payment of the levy.

Proposed subsection 7(1) provides that a horse must not be registered until the horse owner has paid the levy to the horse registration body. The body must issue a receipt to the horse owner when the levy is paid.

Proposed section 10 provides that the horse registration body will pay a penalty if the levy remains unpaid to the Commonwealth when it was due for payment. The penalty accrues at the rate of 2% per month on the levy and for each subsequent month the accrued amount for that month and the previous month at the rate of 2% per month. The Minister retains some discretion to remit any such penalty (**proposed section 11**).

Part 3—Information gathering powers

Proposed subsection 14(1) provides that an authorised person, appointed under **proposed subsection 19(1)**, may give notice that specified information or documents relevant to the operations of the Act are required. A statutory declaration may be required to verify the information provided (**proposed subsection 14(2)**). Note that the definition in section 3 of *authorised person* requires amendment as it should refer to a person appointed under subsection 19(1) and not subsection 18(1).

Offences in relation to returns etc

Proposed subsection 15(1) provides that a person who refuses or fails to give a return, information or a document required by the Act commits an offence. The maximum penalty is 60 penalty units (\$6600). Subsection 15(1) does not apply if the person is able to prove they had a reasonable excuse in accordance with subsection 13.3(3) of the *Criminal Code* (**proposed subsection 15(2)**). **Proposed subsection 15(3)** provides that an offence under subsection 15(1) is an offence of strict liability in accordance with section 6.1 of the

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Criminal Code. This means that the offence does not require any proof of fault, but the defence of honest and reasonable mistake of fact applies.

A person is not excused from giving information or documents because it may incriminate the person or expose them to a penalty (**proposed subsection 15(4)**). However, **proposed subsection 15(5)** provides that any information or documents provided, or any further information obtained directly or indirectly as a result of the giving of that information is not admissible as evidence in criminal proceedings other than proceedings related to this Act or proceedings for the recovery of an amount payable by way of a penalty under section 10. **Proposed subsection 15(6)** provides that a court may direct, if a person is convicted under subsection 15(1), to give the information required by the Act or regulations and to do so within a specified time.

Horse Disease Response Levy (Consequential Amendments) Bill 2008

Item 4 (proposed subparagraph 4(2)(c)) provides that the Commonwealth can transfer funds to the Australian Animal Health Council (AAHC) collected as penalties under section 10 of the *Horse Disease Response Levy Collection Act 2008*.

Item 5 (proposed subsection 4(3)) replaces the existing subsection and provides that the AAHC has an obligation to apply a Commonwealth payment in accordance with priorities in subsections (4), (5) and (6) and subject to (7), (7A) and (8). Under existing subsection 4(4), the First priority is to reimburse the AAHC for costs that the Council incurs. Under **Item 6 proposed subsection 4(5)** the Second priority is to discharge liabilities by non-government bodies to the Commonwealth under the EADR Agreement. Under **proposed subsection 4(6)** the Third priority is the ability to make payments to research and development organisations or to promote and maintain the health of animals. Existing subsection 4(7) provides that a body is a declared body under the relevant schedule as a designated body for the animal product. **Proposed subsection 4(7A)** provides the AAHC is to apply a Commonwealth payment on request by a non-government body who is a party to the EADR agreement. Existing subsection 4(8) provides that the AAHC does not contravene any condition if it makes a payment in accordance with a lower priority if it cannot make a payment in accordance with a higher priority.

Concluding comments

The huge financial cost of an outbreak of disease in the Australian horse industry has already been illustrated with the equine influenza experience in 2007. The proposed legislation enables funds to be raised directly from the horse industry in order to repay the Commonwealth Government for financial assistance under the EADRA in the event of any future emergency horse disease outbreak.

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