

The Senate

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Rural and Regional Affairs and  
Transport Legislation Committee

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Provisions of the Agriculture, Fisheries  
and Forestry Legislation Amendment  
Bill (No. 2) 2004

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# Chapter 1

## Introduction

### Conduct of the inquiry

1.1 The Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004 (the bill) was introduced into the House of Representatives on 23 June 2004 and passed on 12 August. The bill was introduced into the Senate on 30 August 2004.

1.2 On 4 August 2004 the bill was referred for inquiry to the Rural and Regional Affairs and Transport Committee on the recommendation of the Senate Selection of Bills Committee. The Selection Committee gave as reason for referral:

The bill will establish a regime that will provide LiveCorp with funding from an industry levy and consolidated revenue for marketing and research and development. An inquiry is required to ensure that accountability arrangements imposed on LiveCorp in relation to these funds is adequate.<sup>1</sup>

1.3 The Committee advertised this inquiry in *The Australian* on 11 August and 25 August 2004. The Committee also approached a number of interested parties to provide evidence at a public hearing and three organisations and one individual provided written submissions (see Appendix 1). A public hearing was held on 11 August and witnesses are listed at Appendix 2.

1.4 The Committee's evidence and submissions are available on the parliament's homepage at <http://www.aph.gov.au>

### Acknowledgments

1.5 The Committee, particularly in view of the short inquiry, appreciates the time and work of all those who provided oral and written submissions to the inquiry. Their work has assisted the Committee considerably in its inquiry.

### Purpose of the bill

1.6 This bill amends the *Australian Meat and Live-stock Industry Act 1997* (the AMLI Act) to allow an industry organisation representing live-stock exporters to be determined as a marketing body and as a research body for the purpose of receiving revenue derived from compulsory charges applied to the live-stock export industry.<sup>2</sup>

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1 Selection of Bills Committee report no. 10 of 2004, *Senate Hansard* 4 August 2004, p. 25650.

2 Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004, Explanatory Memorandum, p. 1.

1.7 In introducing the bill, the Minister advised the Parliament that this bill will give effect to the second part of Recommendation 2 of the Livestock Export Review (the Keniry review).<sup>3</sup>

### **The Keniry review**

1.8 Following concerns arising from the *Cormo Express* incident in August-October 2003, Dr John Keniry chaired a government review of the livestock export industry. The report on the review was published on 23 December 2003.<sup>4</sup>

1.9 On 30 March 2004 the Minister for Agriculture, Fisheries and Forestry announced that the government had accepted most of the recommendations in full and the remainder with modification.<sup>5</sup> Most of the legislative changes required to give effect to the government's response to the review were contained in the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, which the Committee considered in June 2004. This bill adopted Keniry recommendations 1, 2 (in part) 3, 7 and 8 fully, and recommendations 4 and 5 with modifications.<sup>6</sup>

1.10 The purpose of implementing these recommendations was to increase government regulation of the export of live animals and to strengthen this with sanctions and penalties for non-compliance. Included in this process was the development of nationally consistent principles for exporting live stock, through the Australian Code for the Export of Live-stock.<sup>7</sup>

1.11 In June 2004 the Committee's report on the bill recommended it be amended to provide for the reporting, to parliament, of vital statistics pertaining to the live animal export trade. This amendment was agreed to and the bill was passed by the parliament on 24 June 2004. Consequently, the Minister is required to report to the parliament every six months in accordance with section 57AA of the AMLI Act. The statistical information required to be presented under this provision is based on reporting from the masters of ships carrying livestock within any given reporting period, and includes:

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3 Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004, Second Reading Speech, p. 1.

4 *Livestock Export Review – Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003.

5 Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, Explanatory Memorandum, p. 1

6 Rural and Regional Affairs and Transport Legislation Committee, Report into the Provisions of the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, June 2004, p. 7

7 Rural and Regional Affairs and Transport Legislation Committee, Report into the Provisions of the Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004, June 2004, p. 1



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- the ports at which animals were loaded and discharged;
  - the time of year animals were loaded and discharged;
  - the duration of the voyage;
  - type and number of livestock loaded; and
  - mortality rates.<sup>8</sup>

The purpose of section 57AA is to ensure that the live export industry is accountable not only to the Minister, but to the parliament and therefore the public as a whole.

1.12 The amendments contained in this current bill are designed to give effect to the second part of Recommendation 2 of the Keniry Review, namely:

Industry should be responsible for research and development and management of quality assurance systems to support its members translate best practice standards into outcomes consistent with best practice:

-its activities should be funded by compulsory levies.<sup>9</sup>

1.13 The bill, however, does not seek to tie the funding from levies directly to the quality assurance systems implemented in the operation of the live animal trade, as referred to in Keniry's second recommendation. The accountability mechanism provided for by section 57AA of the AMLI Act appears to be well suited to perform an important function in this regard. That is, to ensure that the industry and the wider public can be satisfied that money raised through industry levies is achieving the desired outcome of improving the health and welfare of stock subject to this form of trade.

### **The Current Regulatory Regime**

1.14 The red meat industry pays compulsory levies and charges towards research and marketing activities under the *Primary Industries Customs (Charges) Act 1999* and the *Primary Industries (Excise) Levies Act 1999*, with research funds being matched by the Commonwealth as prescribed in the AMLI Act. However, the live animal export sector has, until now, been exempted from such levies and charges on the understanding that it would raise its own funding requirements from voluntary contributions.

1.15 The voluntary contributions received by LiveCorp are now deemed to be inadequate and the government has agreed to impose compulsory charges to provide

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8 Journals of the Senate, 24 June 2004, pp. 3683-3684

9 *Livestock Export Review – Final Report - A report to the Minister for Agriculture, Fisheries and Forestry*, (Dr John Keniry, Chair), December 2003, Executive Summary, p. 3.

the necessary financial underpinning for LiveCorp to undertake required roles in research and development, marketing and improving quality assurance.<sup>10</sup>

1.16 However, the AMLI Act limits the red meat industry to a single industry marketing body and a single industry research body for purposes of levy or charge funding flows. Currently, Meat and Livestock Australia Ltd (MLA) is that body. This bill amends the AMLI Act to allow the minister to determine more than one industry organisation to be a marketing body and a research body, and to receive revenue derived from compulsory levies and charges.

1.17 Current legislation requires that Commonwealth matching funds for approved research expenditure be paid to MLA, as the declared research body. This bill maintains either the MLA or another body determined to be the industry research body, will be the only body eligible to receive Commonwealth matching funds for research.<sup>11</sup>

### **Provisions of the bill**

1.18 The main provisions in Schedule 1 of the bill are:<sup>12</sup>

1.19 **Item 10** inserts criteria of which the Minister must be satisfied in order to declare a body to be the live-stock export marketing body or the live-stock export research body. These mirror the criteria that currently apply to the declaration of a body as the marketing body or the research body for the overall live-stock industry.

1.20 **Item 21** inserts new **sections 64A** and **64B** into the AMLI Act. These provide for amounts of charge received by the Commonwealth from the live-stock export industry (under the Customs Charges Act) to be paid to the live-stock export marketing body and the live-stock export research body.

1.21 **Item 26** inserts new **subsections 67(3)** and **67(3B)** into the AMLI Act. These provisions restrict the purposes for which the live-stock export marketing body and the live-stock export research body may spend money received from the Commonwealth under sections 64A and 64B. These restrictions mirror those currently imposed on the marketing body and the research body for the industry generally.

1.22 **Items 31** to **64** amend the Customs Charges Act to reflect the fact that amounts collected by the Commonwealth under this Act that were previously paid to the marketing body for the industry and the research body for the industry will now be paid to the live-stock export marketing body and the live-stock export research body.

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10 Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004, Explanatory Memorandum, p. 2.

11 Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004, Explanatory Memorandum, p. 3.

12 Taken from Bills Digest no. 3, 2004 - 05, Jennifer Nicholson, Law and Bills Digest Section, Parliamentary Library, 28 July 2004, pp. 3-4.

## **Consideration by Senate Scrutiny of Bills Committee**

1.23 The Senate Standing Committee for the Scrutiny of Bills has a standing brief to consider all bills as to whether they trespass unduly on personal rights and related matters, and draws attention to any bill which seeks to have retrospective impact. The Scrutiny Committee notes that Parts 1 and 2 of Schedule 2 to this bill will commence retrospectively. However, the Scrutiny Committee accepts the observation in the explanatory memorandum that the amendments "are beneficial to taxpayers and do not have the potential to act to the detriment of any person".<sup>13</sup>

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13 Senate Standing Committee for the Scrutiny of Bills, Alert Digest no. 9 of 2004, 4 August 2004, pp. 5-6.



# Chapter 2

## The Legislation

### Introduction

2.1 During the inquiry the Committee heard evidence from LiveCorp, peak bodies of the red meat industry (Meat and Livestock Australia and the Cattle Council of Australia) and officers of the Department of Agriculture, Fisheries and Forestry. Submissions were also received from RSPCA Australia and Animals Australia.

2.2 The Committee was also provided with two drafts of the proposed statutory funding agreement between the Commonwealth of Australia and Australian Livestock Export Corporation Limited (LiveCorp). The first draft was provided at the public hearing on 11 August and a revised draft was provided on 24 August 2004. The statutory funding agreement forms the contractual basis for the transfer of funds raised under the compulsory levy by the Commonwealth to the Livecorp. The second draft provided to the Committee was substantially revised.

2.3 Three central issues of concern emerged during the inquiry. These are discussed below.

### Issues

#### *The nature of the Compulsory Levy*

2.4 Support for the central plank of the legislation – the compulsory levy and the transfer of those funds to LiveCorp - was not universal. Animals Australia, while opposed to the export of live animals, supported the compulsory levy to ensure that research and development takes place.

2.5 Representatives of the Cattle Council of Australia (CCA) and Meat and Livestock Australia (MLA) also expressed support for the introduction of compulsory levies on livestock exports. However, they expressed concern at the implications of introducing the levy by new legislation rather than by activating the relevant provisions of the *Primary Industries Customs (Charges) Act 1999* and the *Primary Industries (Excise) Levies Act 1999*.

2.6 Compulsory charges applied under the *Primary Industries Customs (Charges) Act 1999* and the *Primary Industries (Excise) Levies Act 1999* are set at zero for the live-stock export sector. Although effectively exempt from the charges, the option remained open for the Minister to activate them should other sources of revenue prove to be insufficient for the industry's requirements.<sup>1</sup> Instead, LiveCorp has relied on

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1 Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004, Explanatory Memorandum, pp 1 and 2

funding from a voluntary levy, rendering it a voluntarily funded organisation dependent on the preparedness of its members to contribute to its activities. Principally, these voluntary funds have allowed LiveCorp to cover operational costs and marketing activities, and to provide funds to MLA to administer agreed research and development projects, which are in turn matched dollar for dollar by the Commonwealth.

2.7 In March 2004 LiveCorp requested the Commonwealth government introduce the proposed compulsory levy on live-stock exports for the purpose of funding industry support services.<sup>2</sup> In its submission to this inquiry, LiveCorp indicated that under existing arrangements the industry would struggle to maintain funding levels for existing programs as a consequence of diminishing exporter commitment to voluntary funding.<sup>3</sup> This was attributed to a more difficult trading environment, more stringent regulatory requirements and the introduction of the levy to pay for costs arising out of the *Cormo Express* incident:

We always had the expectation that it would be extremely difficult for us to maintain a commitment to programs with voluntary funding, given the size of the *Cormo* levy being substantially larger than our voluntary funding.<sup>4</sup>

2.8 Supplementing the current legislative arrangement enabling MLA to be declared as the red meat industry's research and marketing body, this bill allows for the Minister to declare a separate live-stock export marketing body and a live-stock research body.<sup>5</sup> Accordingly, LiveCorp will be declared to be both of these bodies, changing it from a voluntary funded organisation to a compulsory statutory levy funded body.

2.9 By providing for the prescription of a separate marketing and research body for the live-stock sector alone, the bill reflects a process separate from the existing available provision to activate charges to the live-stock sector that are applied to other red meat industry sectors such as the producers represented by CCA and the Sheepmeat Council.<sup>6</sup> It is this approach that raises concern.

2.10 Under the Australian meat and livestock industry Memorandum of Understanding (MOU)<sup>7</sup> all compulsory levies collected under the *Primary Industries*

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2 LiveCorp, *Submission No 1*, p. 1.

3 LiveCorp, *Submission No 1*, p. 2

4 Mr K. Shiell, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 5

5 Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004, Explanatory Memorandum, p. 2

6 Cattle Council of Australia's Submission to Livestock Export Review, p 6 cited at [http://www.cattlecouncil.com.au/images/4\\_PUBLICATIONS/General%20Reports/Cattle%20Council%20Submission%20-%20Livestock%20Export%20Review.pdf](http://www.cattlecouncil.com.au/images/4_PUBLICATIONS/General%20Reports/Cattle%20Council%20Submission%20-%20Livestock%20Export%20Review.pdf) on 27 August 2004.

7 This MOU came into operation on 27 April 1998.

*Customs (Charges) Act 1999* and the *Primary Industries (Excise) Levies Act 1999* for the red meat industry go direct to MLA. However, this bill provides that compulsory levies on livestock exports would go direct to LiveCorp. LiveCorp would then determine their use for operational, marketing or research and development purposes. The industry is concerned that the status of the MOU is being eroded by this apparent breach of its provisions:

**Senator O'BRIEN**—What is the impact of these changes we are effectively considering today on the operation of the MOU? Have you got any general comment to make about that?

**Mr de Hayr**—Our general concern is that we really do not know where this now leaves the MOU that was signed back in 1997. It is a significant departure and we have received no clarification as to what the status of this document is in terms of its implications into the future, specifically for other sectors.<sup>8</sup>

2.11 The Committee raised this point with representatives of the Department of Agriculture, Fisheries and Forestry (DAFF) at the public hearing. DAFF acknowledged that Annexure D of the MOU with MLA outlines the process to be followed for the introduction of statutory levies. However, DAFF argued that the new levies proposed in this bill are different, and not subject to the provisions of the MOU:

**Mr Williamson**—That annexure [to the MOU] refers to the existing statutory levies that are meant to flow to MLA in the event that this annexure is triggered. The statutory levy that we are discussing in respect of this bill is a new statutory levy. It is not this statutory levy. It is an entirely different statutory levy. As far as we are aware this annexure does not apply to that levy ... There is a statutory levy which is rated zero which is intended to flow to Meat and Livestock Australia but the current levy that is being contemplated in this bill is a different levy which requires an act of parliament and that levy will flow directly to LiveCorp and not to MLA.<sup>9</sup>

2.12 DAFF continued:

... under that arrangement, which was set out when the MOU was agreed upon, the logic was that if the voluntary levies were not sufficient a compulsory levy would be triggered—indeed the minister could do that by regulation, I understand, but the money would go directly to MLA. In this case, it is the government's intent, as I mentioned earlier, that the funding from the levies go directly to LiveCorp which is a different approach and indeed reflects recommendations of the Keniry report which were that

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8 Mr B. de Hayr, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 19

9 Mr G. Williamson, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 28

industry should have responsibility for the research and development matters and should be accountable for them.<sup>10</sup>

2.13 The Committee notes that the proposal does not break the terms of the MOU with MLA and that LiveCorp sought to have the compulsory levy applied after experiencing the *Cormo Express* incident and the subsequent report of the Keniry inquiry. However, it has concerns that the approach to introduce a new legislative basis for the levy has not only created confusion within the industry it has also given the impression of attempting to circumvent the provisions of the MOU with MLA. The Committee regards this as regrettable.

### *Use of levy funds*

#### *Industry concerns*

2.14 Underlying the producers' concern over how the levy is raised is the sustainability of funding for, and therefore the viability of, long term research and development programs currently underway. Under the proposed arrangements LiveCorp will be directly responsible (and accountable) for its research and development activities, rather than being required to provide funds to MLA to carry out this purpose.

2.15 Mr de Hayr of the CCA informed the Committee that delays in new funding for LiveCorp, or a change in LiveCorp priorities, could reduce LiveCorp's contribution towards ongoing joint research and development projects, requiring additional funds to be committed by producer organisations:

It would certainly have implications in that, if LiveCorp were unable for various reasons to maintain their commitments to the joint program, because of the importance of a number of the projects that are under way specifically in the animal welfare area, I would expect that the cattle sector would have to—and I would be very surprised if the sheepmeat sector would not also—from a producer's perspective, increase their funding into those programs. I think those programs would be maintained, but we would have to carry an increased level of funding.<sup>11</sup>

2.16 The Committee was told by DAFF that while LiveCorp will have total discretion on how it invests in research and development, there are strong incentives for it to continue to work through the MLA:

**Senator O'BRIEN**—Is it possible for the LiveCorp board to choose to initiate research on its own behalf, without matching funding from the Commonwealth, or must it only undertake R&D through MLA?

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10 Mr D. Mortimer, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 28

11 Mr B. de Hayr, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 21



**Mr Williamson**—It is possible for LiveCorp to initiate R&D on its own behalf. It is not compelled to go through MLA; however, there is a very strong incentive for LiveCorp to channel R&D funding through MLA by virtue of the fact that only MLA receives the matching funds. It is also worth pointing out that, in the current MOU, LiveCorp is not compelled to pass on its voluntary contributions to MLA; it can seek outside research providers if it wishes, so conceptually there is very little difference.<sup>12</sup>

2.17 The Committee notes that under the proposed amendments MLA remains the only industry body eligible to receive dollar for dollar matched Commonwealth funds for research. MLA supported these provisions, indicating that:

We also note that the legislation very specifically and carefully safeguards MLA's position as the recipient of matching funds from the government for R&D. That was a position that the whole of the industry recommended to the government. The live exporters, the Cattle Council and the Sheepmeat Council recommended it to the government and it was taken on board. We were very pleased to see that there, and we see that as an important element of the legislation.<sup>13</sup>

2.18 The government's explanatory memorandum states that it is anticipated that no additional matching Commonwealth funding would be required as a consequence of the proposed legislative change.<sup>14</sup> This statement is dependent on the assumption that the level of funds currently directed to MLA - from LiveCorp's voluntary contributions - for research and development purposes will remain the same. On the basis that LiveCorp will continue to honour agreed contributions to existing research and development projects, and maintain that level for mutually beneficial projects in the future, this is indeed a fair assumption. DAFF officers explained the imperatives in the following terms:

The legislation declares that LiveCorp can receive funds directly from a levy for the purpose of marketing and research and development. But the structure of the arrangements are such that, because the money goes directly to LiveCorp but the matching dollar does not go to their own expenditure, there is a very strong incentive indeed to protect the current cooperative arrangements between LiveCorp and MLA.<sup>15</sup>

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12 Mr G. Williamson, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 29

13 Mr M. Hayward, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 16

14 Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004, Explanatory Memorandum, p3. The level of matched funding the Commonwealth will provide to MLA for research and development is capped at 0.5% of Gross Value of Production for the red meat industry. It is not anticipated that this legislative change will affect the cap; see also evidence from Mr G. Williamson of DAFF, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, pp. 40-41

15 Mr D. Mortimer, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 31

2.19 However, the Committee notes that any decision on the part of LiveCorp to increase contributions to MLA for agreed research and development projects would attract additional matched Commonwealth funding, and therefore increase Commonwealth expenditure. Conversely, the Committee also notes that contributing additional funds to MLA under current (and remaining) legislative arrangements, LiveCorp would dilute its capacity to direct its research and development priorities. Should, in fact, LiveCorp choose to allow its contributions to MLA to diminish as agreed programs reached their completion, then the government's funding commitments would also decrease.

2.20 The Committee notes the views of DAFF officers that the limitation of the Commonwealth's dollar for dollar matching funds to MLA research and development will provide a sufficient incentive to Livecorp to maintain their existing contributions to joint projects and encourage further joint projects.

2.21 It also notes that LiveCorp will have sole responsibility for prioritising its research and development spending, and that in anticipation of its new responsibilities it has established a new board of directors responsible for decisions regarding expenditure of the levy. This board will include four of what are termed "Special Qualifications Directors" and three "Exporter Directors". Of these three live-stock export industry representatives, one is to be elected by ALEC and another is to be elected by the members of LiveCorp. The other will be elected by levy contributors on the basis of an entitlement to one vote per \$100 paid.<sup>16</sup> While the Committee notes that the selection of an industry representative weighted towards large exporters will reduce the input to the board from small exporters, it urges the board to consider the industry as a whole when considering funding for future research projects.

#### *Animal Welfare concerns*

2.22 The submissions from Animals Australia and RSPCA Australia emphasised that community concerns focus primarily on animal welfare issues, and suggested that research and development programs using public monies (derived from matching government grants) should reflect those concerns.

2.23 Specifically, RSPCA Australia's submission made a number of recommendations, including "that the reference to 'marketing' as a financial beneficiary of the compulsory levy, be removed from the ... Bill ...".<sup>17</sup> Alternatively, it proposed that the Bill be amended to specify the amount of funding from the compulsory levy that can be used for marketing, suggesting that 10 percent would be an appropriate amount.<sup>18</sup>

2.24 The levy rates proposed by LiveCorp are as follows:

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16 LiveCorp, *Submission No 1*, p. 5

17 RSPCA Australia, *Submission No. 2*, p. 2

18 RSPCA Australia, *Submission No 2*, p. 2

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- Cattle \$2.50 per head exported;
  - Sheep \$0.30 per head exported; and
  - Goats \$0.25 per head exported.<sup>19</sup>

2.25 Assuming these rates are applied, LiveCorp has anticipated that it will collect \$2,560,000 under the proposed levy in 2004/5.<sup>20</sup> In its submission to this Committee, LiveCorp indicated that the levy would enable continuing direct financing of:

- research and development;
- industry standards and quality assurance;
- overseas technical and veterinary services in support of animal welfare; and
- industry communications and issues management.<sup>21</sup>

2.26 During the public hearing the Committee questioned DAFF as to the means of ensuring that animal welfare issues are given due consideration by LiveCorp:

**Senator BARTLETT**—Given that a primary concern that drove the Keniry review and all of those things was the animal welfare problems with the industry—all of us know that is something that has been an ongoing matter for decades—how is the structure of determining the expenditure of money going to ensure that animal welfare gets that priority and primary consideration?

**Mr Mortimer**—There are two dimensions to that. One is that LiveCorp on behalf of live trade will be better equipped and more capable to deal with the issues around live trade. The response to the Keniry committee as a whole in terms of the different pieces of legislation that have been touched on are all designed to come together to get better outcomes for the live trade, including the welfare of the animals. Secondly, in establishing both their research priorities and the joint program I would expect that the board of LiveCorp will be consulting to ensure that they meet these issues specifically. This government has given clear signals to the industry that it wants the industry to perform better on those matters.<sup>22</sup>

2.27 The Committee notes that the compulsory levy, if applied at the rates proposed by LiveCorp, will raise a substantial amount of revenue. Although it is proposed that it will be declared the live-stock export marketing body the majority of the proposed expenditure outlined in its submission will be in support of aspects of

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19 LiveCorp, *Submission No 1*, p. 3

20 LiveCorp, *Submission No 1*, p. 3

21 LiveCorp, *Submission No 1*, p. 2

22 Mr D. Mortimer, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 41

animal welfare outlined in the Keniry Report's recommendation 2, rather than on marketing.

2.28 In its submission, RSPCA Australia reflected that on the "spirit" of the Keniry report and recommendation 2, the industry should be responsible for the research and development which should "improve the 'welfare' of the animals involved."<sup>23</sup> RSPCA Australia further recommends that the "'improved animal welfare' be specifically mentioned as the 'central goal of all the industry funded Research and Development'."<sup>24</sup>

2.29 The Committee notes that the new Constitution of Australian Livestock Export Corporation Limited provides in paragraph 2.1 (a) (iv) that one of the objects of the Company is "to facilitate continuous improvement in animal wellbeing having regard to the Code and otherwise to recognise and promote compliance with the Code".<sup>25</sup>

### *Accountability*

2.30 In their submissions, both RSPCA Australia and Animals Australia indicated that there should be a high level of transparency and accountability for the funds raised by the compulsory levy. Animals Australia suggested that:

Annual reports of the R&D program and any completed papers be published by the Government.<sup>26</sup>

2.31 RSPCA Australia proposed that "an independent, accountable and transparent process be established to oversee the management of the funds accrued by the compulsory levy".<sup>27</sup>

2.32 Another submitter, Ms Ruchita Saklani, put the view that:

Another serious issue is that LiveCorp has failed in the past is in regards to accountability to both government bodies and the community.<sup>28</sup>

2.33 At the public hearing, DAFF officers suggested that public scrutiny of live animal exports will ensure that animal welfare issues are a research and development priority:

**Mr Mortimer**—I do not think it is something that can be legislated. Essentially the answer is to have the most open and fulsome reporting and

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23 RSPCA Australia, *Submission No 2*, p. 2

24 RSPCA Australia, *Submission No 2*, p. 2

25 Constitution of Australian Livestock Export Corporation Limited, provided to Committee on 12 August 2004, p 4

26 Animals Australia, *Submission No 3*, p. 2

27 RSPCA Australia, *Submission No 2*, p. 2

28 Ms Ruchita Saklani, *Submission No 4*, p. 1

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for that to be scrutinised by that group of interests, that broader set of stakeholders—if I can put it like that. I think LiveCorp will know what the challenge is for them, and they will be under scrutiny at a number of levels on whether they are achieving that, whether gains are being made to animal welfare and whether the community at large is happy with them.<sup>29</sup>

2.34 There is clearly an expectation that LiveCorp will be open to scrutiny and accountable for its activities, not just with its members but also the community at large. An open and transparent approach by Livecorp is one that is encouraged by the Committee, given the role of the Commonwealth as levy collector. In its submission Livecorp outlined the proposal for the compulsory levy:

The exporter would pay the levy, with the funds collected by the Levies Revenue Service (LRS) of DAFF along the same lines applying for the existing levy to fund the costs associated with the Cormo Express shipment. Funds from this new levy would be paid direct to LiveCorp by LRS under a Statutory Funding Agreement (SFA) between DAFF and Livecorp.<sup>30</sup>

2.35 In accepting that the Commonwealth is the 'collector and distributor' of the compulsory levy LiveCorp is implicitly accepting that the Commonwealth will have some responsibility to account for LiveCorp's expenditure of the funds.

2.36 During its inquiry the Committee sought assurances from LiveCorp that it not only understood that the Commonwealth, and in particular, the parliament, would expect a high degree of accountability for its expenditure of the funds, but that it would co-operate in providing the level of transparency sought:

**CHAIR**—Do you have any comments to make, given that it is a sort of public funded thing now by way of a levy to the Commonwealth and the Commonwealth to you, on the amount of parliamentary scrutiny you think your operation will come under?

**Mr Shiell**—I have a good feeling for that. I think it is set out very clearly in the statutory funding agreement.<sup>31</sup>

2.37 However, when the terms of the draft statutory funding agreement (DSFA) provided to the Committee are examined it becomes apparent to the Committee that there are limitations placed on parliamentary scrutiny. Schedule 3 of the draft agreement provides that an annual report be provided to the Minister and that the report is to include a comprehensive account of financial commitments and under paragraph (b):

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29 Mr D. Mortimer, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 42

30 LiveCorp, *Submission No 1*, p 3

31 Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 4

The extent to which Livecorp's R&D activities contributed to the Commonwealth's board priorities for research and development expenditure and the achievement of public benefit.<sup>32</sup>

2.38 However, the DSFA also includes the following provision:

The Commonwealth shall not be in breach of clause 14.4 in respect of Confidential Information given by Livecorp and held by the Department where a request is made by Parliament (including a committee of Parliament) for that information to be given to Parliament, provided that the Department notifies Parliament of the confidential nature of the information and requests Parliament hold and deal with that information on an *in camera* basis.<sup>33</sup>

2.39 The Committee notes that Livecorp had commenced work on programs to address issues arising from the Keniry report prior to the finalisation of the report.

... prior to the *Cormo Express* matter and the Keniry review, the industry, the government and the producer organisations that support our industry were working very cooperatively on a variety of projects under the auspices of the Livestock Export Industry Consultative Committee. As we know, *Cormo* came along and then Keniry came along. Interestingly to me, projects that the Livestock Export Industry Consultative Committee were working on were the subject of recommendations from Keniry.<sup>34</sup>

2.40 The DFSA provision relating to confidential information seeks to place limitations on how Parliament can use the information that to requires and is counter to a commitment to be open and accountable. The Committee believes that if Livecorp develops an open and transparent approach to its activities under the proposed arrangements it could avoid unnecessary criticism. It therefore encourages the government and LiveCorp to review the provisions of the DSFA dealing with the provision of information to Parliament.

2.41 The Committee's recent inquiry into corporate governance issues within Australian Wool Innovation Limited<sup>35</sup> suggests that bodies in receipt of Commonwealth raised industry levies, such as LiveCorp, also need robust corporate governance to ensure they best serves their members' interests. Further, the

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32 Draft Funding Agreement between the Commonwealth of Australia and Australian Livestock Export Corporation Limited for the purposes of the *Australian Meat and Live-stock Industry Act 1997*, draft provided to Committee on 24 August 2004, p 29.

33 Draft Funding Agreement between the Commonwealth of Australia and Australian Livestock Export Corporation Limited for the purposes of the *Australian Meat and Live-stock Industry Act 1997*, draft provided to Committee on 24 August 2004, p 19.

34 Dr R. Trivett, Rural and Regional Affairs and Transport Legislation Committee, *Transcript of Evidence*, Canberra, 11 August 2004, p. 3

35 *Australian Wool Innovation Limited – Application and expenditure of funds advanced under Statutory Funding Agreement dated 31 December 2000*, Report by Rural and Regional Affairs and Transport Legislation Committee, February 2004.

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compulsory nature of the levy suggests that the industry participants should have effective means to resolve disagreements about spending priorities.

2.42 The Committee welcomes the constitution's provision requiring four directors being present at board meetings, including at least one of each of the two categories of directors. The Committee notes, however, the absence of a written provision for written minutes at board meetings.

### **Committee Comment**

2.43 The Committee has considered the provisions of the bill and the associated draft statutory funding agreement.

2.44 It notes that the bill provides the legislative basis for the implementation of the final part of the recommendations of the Keniry Review agreed to by the government. That is, the part of recommendation 2 that relates to industry responsibility for research and development, management of quality assurance systems and support for members in best practice standards, and that these activities be funded by compulsory levies.

2.45 The statutory funding agreement will provide the contractual basis for Livecorp's activities funded by the compulsory levy.

2.46 The Committee notes that the proposal to collect the levy under the AMLI Act rather than activate it under the existing provisions of the *Primary Industries Customs (Charges) Act 1999* and the *Primary Industries (Excise) Levies Act 1999* created confusion in the wider industry. While the Committee has assured itself that the terms of the MOU with MLA were not broken it remains concerned about the confusion and urges the government to make clear that its support for the MOU between itself and MLA remains.

2.47 The collection of the levy under the AMLI Act has also been perceived as casting doubt the long term funding of existing programs administered by MLA with contributions from LiveCorp. While the Committee notes that the bill provides a guarantee that the Commonwealth will continue to match dollar for dollar MLA's research and development funding, it is clear that LiveCorp will be responsible and accountable for its funding priorities. The Committee also notes the concerns expressed by RSPCA Australia and Animals Australia that the welfare of animals be a primary goal of the research and development programs. The Committee encourages LiveCorp to make its funding decisions in the context of benefits for the wider industry as well as the government's priorities for animal welfare.

2.48 Finally, the Committee notes the evidence recommending that LiveCorp be open and accountable for their activities. The Committee shares the view that the industry's transparency and accountability will be critical to any future improvement of the industry's image in the wake of the *Cormo Express* incident and the Keniry review. It acknowledges that section 57AA of the AMLI Act (see paragraph 1.11) is an important reporting requirement but considers this requirement to be limited.

2.49 While the Committee acknowledges that the terms of the draft Statutory Funding Agreement make provision for the Minister to receive a comprehensive annual report, there is no requirement for the Minister to table the report in parliament. The Committee is of the view that for the industry to be properly accountable to the parliament and the Australian people there should not only be a requirement to table the annual report but also a requirement for the Minister to provide a statement to the parliament outlining LiveCorp's compliance with the provisions of the statutory funding agreement on an annual basis.

### **Recommendation 1**

**2.50 The Committee therefore recommends that the bill be amended to place a statutory requirement on the Minister to table in both Houses of Parliament, within 14 days of the signing of the statutory funding agreement, the funding agreement between the Commonwealth and Livecorp, any subsequent variation to the agreement and an annual statement of Livecorp's compliance with the provisions of the statutory funding agreement.**

### **Recommendation 2**

**2.51 The Committee also recommends that the bill be amended to place a statutory requirement on the Minister to table in both Houses of Parliament the annual report provided by LiveCorp.**

**Senator the Hon Bill Heffernan  
Chair**



# DISSENTING REPORT

## **Agriculture, Fisheries and Forestry Legislation Amendment Bill (No.2) 2004**

In my view, the proposed amendments to the *Australian Meat and Live-stock Industry Act 1997* (AMLI Act) contained in this legislation do nothing to address the longstanding and serious concerns about the live animal export trade. Given that the legislation is part of the response to the recommendations of the Keniry inquiry which was established in an effort to address widespread community concerns about the industry, this is unsatisfactory.

Under the Bill, funds normally disbursed to the Meat and Live-stock Australia (MLA) will be diverted specifically to LiveCorp, which promotes the further expansion of live export trade. LiveCorp is not only being handed a life-line, it is also being given an opportunity to exert even greater influence in matters related to the industry.

In addition to the intrinsic cruelty to animals involved in the live sheep and cattle trade, in my view there is clear evidence that the trade directly costs jobs in Australia.

If there was any genuine intent to get better animal welfare outcomes in the livestock industries, attempts would be made to develop economically viable alternatives to live exports. There is an existing trade in processed and frozen meat which is much larger in value than live exports, yet nothing is being done to further develop this as alternative, despite it clearly being a viable alternative.

The support for LiveCorp extending its role and responsibilities to that of the live-export industry's research and development body seems incongruous under the circumstances; particularly considering the number of previous attempts made to improve the performance of the industry.

The Australian Democrats do support the notion of compulsory fees for the purposes of research and development on animal welfare issues while the trade continues, as long as this is not done as an alternative to better developing viable alternatives to the industry. However, it is completely inappropriate for any portion of the levy being directed into marketing of any type.

I fail to see how spending more to market and promote an industry that has major animal welfare problems can do anything to reduce those problems. Given the industry's long standing record of denying animal welfare problems and only acting on these matters whenever an incident occurs which highlights the clear cruelty involved, it is hard to see how extra marketing funds would be used for anything other than PR exercises to counter the bad publicity that is inevitably going to continue occurring.

Whilst spending money from an industry levy on research & development may appear to have more validity, I have little confidence there is any real likelihood of this spending involving any significant or meaningful focus on animal welfare matters.

From the evidence presented to the Senate Committee, there has clearly been no real effort made by industry to date consult with animal welfare groups about the development of the guidelines for determining how the research and development funds would be spent. There has also clearly been no meaningful attempt to involve animal welfare groups in the formulation of this legislation or its application. The very limited time which peak groups such as the RSPCA and Animals Australia had to do a submission for this Committee inquiry and their consequential inability to give evidence at the public hearing reinforced the simple fact that there is still no serious recognition of the innate cruelty involved in this trade. The level of public concern at this cruelty is clearly large and continuing. It will not go away or be mollified by being ignored or by just responding with a better funded marketing and PR campaign.

In addition to full accountability and transparency of the imposition and collation of such fees, I believe any monies raised by the levy should only be used in the following ways:

- to enable research to be undertaken into animal welfare and animal health issues, and that these issues are central to all industry funded research and development;
- that the scientific merits of every proposed research and development project be examined to ensure improved animal welfare is its core goal, and that the progress of individual research and development projects be assessed to ensure the funds are being well utilised;
- to facilitate the establishment of an advisory group which includes at least two animal welfare representatives, to have input into the type of research undertaken using the R&D funds collected from industry;
- an annual audit be conducted of the entire research and development process to ensure its complying with the spirit and intention of the Keniry Report; and
- production and publication of annual reports and any completed papers in relation to research and development.

The Australian Democrats view the welfare and health of the animals in the livestock export trade as being fundamental to the imposition and collation of compulsory levies, and urge the Senate to support amendments on this basis.

Senator Andrew Bartlett  
Australian Democrats

# **Appendix 1**

## **List of Submissions**

1. LiveCorp
2. RSPCA Australia
3. Animals Australia
4. Ruchita Saklani



## **Appendix 2**

### **Witnesses at the Public Hearing**

*Wednesday, 11 August 2004  
Canberra, Parliament House*

**LiveCorp**

Mr Kevin Shiell, Chief Executive Officer

**Australian Livestock Export Corporation**

Dr Richard Trivett, Vice Chairman Cattle

**Cattle Council of Australia**

Mr Brett de Hayr, Executive Director

**Meat and Livestock Australia**

Mr Michael Hayward, General Manager

**Department of Agriculture, Fisheries and Forestry**

Mr David Mortimer, Executive Director, Food and Agriculture Business

Ms Jenni Gordon, National Manager, Animal Program

Mr Gregory Williamson, General Manager, Meat, Wool and Dairy

