BILLS DIGEST NO. 42, 2011–12

Horse Disease Response Levy Bill 2011
Horse Disease Response Levy Collection Bill 2011
Horse Disease Response Levy (Consequential Amendments) Bill 2011

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Horse Disease Response Levy Bill 2011

Date introduced: 6 July 2011
House: House of Representatives
Portfolio: Agriculture, Fisheries and Forestry
Commencement:

**Horse Disease Response Levy Bill 2011**: the day after Royal Assent.

**Horse Disease Response Levy Collection Bill 2011**: sections 3 to 40 commence on the later of the day after Royal Assent and upon the commencement of the *Horse Disease Response Levy Act 2011*. All other provisions commence on the day after Royal Assent. However, the provisions do not commence at all if the *Horse Disease Response Levy Act 2011* does not commence.

**Horse Disease Response Levy (Consequential Amendments) Bill 2011**: schedule 1 commences on the later of the day after Royal Assent and the commencement of section 3 of the *Horse Disease Response Levy Collection Act 2011*. All other provisions commence the day after Royal Assent. However, the provisions do not commence at all if section 3 of the *Horse Disease Response Levy Collection Act 2011* does not commence.


When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at [http://www.comlaw.gov.au/](http://www.comlaw.gov.au/).

Purpose

**Horse Disease Response Levy Bill 2011**: the purpose of the Bill is to impose a levy on the disposal of manufactured feed or worm treatment used for horses in Australia to meet the horse industry’s funding obligations in the cost-sharing arrangements under the Emergency Animal Disease Response Agreement (EADR Agreement).[^1]

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Horse Disease Response Levy Collection Bill 2011: gives authority to the Commonwealth for the purposes of collection and administration of the specified levies as well as establishing investigative powers for non-compliance.

Horse Disease Response Levy (Consequential Amendments) 2011: amends the Australian Animal Health Council (Livestock Industries) Funding Act 1996 (Cth) to allow the Commonwealth to appropriate the funds raised from the levy to the Australian Animal Health Council (also known as Animal Health Australia (AHA)) and impose conditions on such a payment.

Background

Past attempt to introduce a horse disease levy

From August 2007 to June 2008, the Australian horse industry experienced for the first time an outbreak of the highly contagious disease equine influenza (EI). Despite initial efforts to contain the disease, the outbreak spread rapidly throughout the eastern states and affected horses on over 8000 properties.\(^2\) The outbreak severely disrupted both the commercial and recreational sectors of the industry. Horse racing was shut down in eastern states and gymkhanas and local horse events postponed or cancelled. Moreover, the cost of maintaining a strict quarantine regime based on restricting the movement of horses meant that that in many cases feeding and animal care activities had to be undertaken at locations away from any home base.

Australia’s major agricultural industries have implemented cost-sharing arrangements under the EADR Agreement to fund responses to disease emergencies. A central component of these arrangements is the use of legislated levies to fund each industry’s financial obligation. Although the horse-owning community had long considered various levy proposals, none had gained sufficient support across all sectors to enable implementation prior to the EI epidemic.\(^3\)

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2. At the time of the last reported detection of the virus (25 December 2007), over 8 000 properties were reported to have been affected. I Callinan, *Equine Influenza: the August 2007 outbreak in Australia*, April 2008, pp. 8–10 and Senate Standing Committee on Rural Affairs and Transport References Committee, *Australian Horse Industry and an Emergency Animal Disease Response Agreement*, The Senate, Canberra, November 2010, p. 2.


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Consequently, at the time of the EI outbreak there was no levy in place to enable the horse industry to fund its share of the response. As a result, the Commonwealth and the states and territories carried industry’s share of the cost of the disease response which saw EI eradicated. AHA has advised the direct response cost of the 2007 EI outbreak was $107 million.  

In the light of the EI emergency, Australian horse industry peak bodies agreed to support federal government legislation to introduce a levy to raise funds for future emergency assistance measures. In February 2008, the Rudd Government introduced a package of Bills to establish a horse disease response levy. The levy would repay the Commonwealth for financial assistance provided in the event of a future outbreak of an emergency horse disease under the terms of the cost-sharing arrangements in the EADR Agreement. These Bills were the Horse Disease Response Levy Bill 2008, the Horse Disease Response Levy Collection Bill 2008 and the Horse Disease Response Levy (Consequential Amendments) Bill 2008 (the 2008 Bills). For background information, the Bills Digest for the 2008 Bills is available here. The key difference between the 2008 Bills and the current Bills is that under the 2008 Bills the levy would be imposed on the first registration of a horse, rather than the disposal of manufactured feed and treatment worm for horses in the current Bills. That is, the levy would be on the output rather than the input side of the industry.

The Senate Standing Committee on Rural and Regional Affairs and Transport conducted an inquiry into the 2008 Bills. The key concerns raised by submissions were:

- the cost of the levy would not be shared equally—the parties most affected by a disease outbreak are the recreational horse owners. Commercial owners generate income from the horses and are able to claim tax deductions for maintaining the horses, whereas recreational owners cannot, and
- as registration of horses was not compulsory, the pool of potential levy payers is limited.

The government members of the Committee recommended the 2008 Bills be passed without amendment. However, dissenting reports were included from the Opposition senators (Senators John Williams, Bill Heffernan and Nigel Scullion), the Australian Greens (Senators Christine Milne and Rachel Siewert) and Senator Julian McGauran.

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8. Ibid., pp. 5–12.

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The 2008 Bills were defeated in the Senate on 4 February 2009 by two votes.9

**Basis of policy commitment**

On 23 April 2010, the Primary Industries Ministerial Council (PIMC) agreed there was a need to establish a national levy for the horse industry under the EADR Agreement.10 Following this announcement, AHA, as the responsible body under the EADR Agreement, began a consultation process with its horse industry members and major equine recreational organisations. A number of levy options were assessed, with the final recommendation being a levy on the first disposal (sale) of manufactured feed and worm treatments for horses.11 In December 2010, AHA submitted a request to the Commonwealth on behalf of the horse industry that a horse disease levy be imposed on manufactured horse feed and worm treatments for horses and that the levy initially be set at a rate of zero.12

On 9 February 2011, a report by the Senate Standing Committee on Rural Affairs and Transport was tabled in the Senate, titled, *Australian Horse Industry and an Emergency Animal Disease Response Agreement*.13 The Committee made four recommendations, including:

**Recommendation 1**

The committee recommends that, consistent with the outcome of the consultation process, the horse industry should sign the EADRA based on the establishment of the levy at a zero dollar amount.

**Recommendation 2**

The committee recommends that, notwithstanding the informal review mechanism provided for in the *Levy Principles and Guidelines*, specific legislative provision be made for periodic review of the implementation of the levy.14

The Government tabled its response on 5 May 2011. The Government took note of the first recommendation recognising that AHA had received applications from the four peak horse industry bodies to become party to the EADR Agreement. In addition, the Government accepted the model

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12. The Explanatory Memorandum, Horse Disease Response Levy Bill 2011, notes at p. 6 that although the legislation imposes liability for the levy on manufacturers/importers of horse feeds and horse worming treatments the intent is that the cost of the levy will be passed on to horse owners.

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recommended by the horse industry for a proposed levy. The Government accepted the second recommendation and stated that such a provision will be included in the supporting legislation.\textsuperscript{15}

In March 2011, the Australian Horse Industry Council, Harness Racing Australia, Equestrian Australia and the Australian Racing Board became signatories to the EADR Agreement on behalf of the horse industry. In addition to the horse industry, the current signatories to the EADR Agreement are the Commonwealth, the states and territories and ten other industry groups. The Explanatory Memorandum to the Horse Disease Response Levy Bill 2011 provides a summary of the EADR Agreement:

The EADR Agreement, which commenced in March 2002, sets out roles and responsibilities in a response and how costs will be shared. These arrangements enable Australia to respond quickly and efficiently to a disease outbreak to minimise the potential impact of the disease on agricultural production, valuable exports, the environment and public health. Livestock industries also receive considerable benefits from timely outbreak responses in terms of continued trade and market access, and through minimisation of livestock losses and production cost losses.

...  

If an animal disease outbreak occurs and EADR Agreement signatories determine that a national response is required, the Commonwealth will initially meet a signatory industry’s share of response costs on the basis that the industry will repay the Commonwealth within a reasonable time period. Most livestock industries have statutory levies in place to enable them to fund their share of costs of national emergency responses.\textsuperscript{16}

A useful FAQ sheet on the EADR Agreement is available here. It includes several questions which explain funding matters.\textsuperscript{17}

**Committee consideration**

The Senate Selection of Bills Committee has recommended that the Bills not be referred to a committee for further consideration.\textsuperscript{18}


\textsuperscript{16} Explanatory Memorandum, Horse Disease Response Levy Bill 2011, p. 2.


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Policy position of non-government parties/independents

Support for the Bills has been provided by the Liberal Party and the Nationals. It does not appear that the Australian Greens or the independents have commented on the Bills.

Position of major interest groups

The inquiry into the Australian Horse Industry and an Emergency Animal Disease Response Agreement by the Senate Standing Committee on Rural Affairs and Transport indicates that there was widespread support for the horse industry to sign the EADR Agreement and therefore be subject to the cost-sharing arrangements under the Agreement.

Nevertheless after a consultation process to determine the most efficient and equitable method of collection of the levy, there are still some concerns, particularly from the feed manufacturing industry, the animal pharmaceutical industry and the Thoroughbred Breeders Australia. The main concerns centre on the argument that applying a levy to manufactured feed and worm treatments may alter the buying habits of horse owners and potentially affect the health of animals. The Committee’s report summarised evidence provided by Mr John Spragg, Executive Officer of the Stock Feed Manufacturers’ Council of Australia:

- the levy cannot be described as broad-based – because only about 30% of horses consume manufactured horse feed;
- the extra cost of 60c per 20-kilo bag will alter owners’ buying habits and horse owners will go back to mixing their own feed;
- owners can simply stop buying manufactured feed, thereby avoiding the levy;
- there is a lack of clarity in relation to the labelling and description of horse feeds – feeds can simply be re-labelled as ‘general purpose pellets’ and would be outside the levy collection process;
- horse owners should be able to see recognition of the paid levy – on an invoice – this will not happen under the proposed system; and

20. Support from, for example, Racing and Wagering Western Australia, Australian Racing Board, Thoroughbred Breeders Australia, Harness Racing Australia and Pony Club Australia. The Stock Feed Manufacturers’ Council of Australia provided some concerns about the method of collection but was in support of the horse industry becoming a party to the EADR Agreement. See: Senate Standing Committee on Rural Affairs and Transport References Committee, Australian horse industry and an Emergency Animal Disease Response Agreement, op. cit., pp. 16–19.

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• the responsibility for the levy system and the payment of levies should reside with the horse industry – not the feed manufacturers.22

In addition, Thoroughbred Breeders Australia is concerned that its members will be paying 55 per cent of the levy due to thoroughbreds forming 11 per cent of the non-feral population.23 However, there was general support from the support industry for a five-year review of the levy.24

Financial implications

In the first instance there will be no financial impact on the Commonwealth or the horse industry. In the event of an emergency horse disease outbreak that is covered by the EADR Agreement, the Commonwealth will initially meet the costs. The Commonwealth’s costs will then be reimbursed from funds generated by an increase in the horse disease levy (initially to be set at zero).25 Under the generic provisions of the EADR Agreement, the actual apportionment of costs between industry and government depends on which of the four disease categories the particular disease involved falls under. EI, for example, is a Category 4 disease and in the event of another outbreak, industry would contribute 80 per cent of the response cost and government 20 per cent. The cost of Category 3 diseases is shared equally; whilst for Category 2 diseases industry’s share is 20 per cent and government meets 80 per cent. For Category 1 diseases, government bears 100 per cent of the response cost.26

AHA has estimated the total cost of a future response to disease emergency affecting horses is likely to be less that $50 million. This figure is based on the ‘worst case scenario’ of responding to EI following the recent review of the response policy and is regarded by AHA as a generous estimate.27

Key provisions

Horse Disease Response Levy Bill 2011

Clause 5 imposes the levy on the disposal of manufactured feed or worm treatment used for horses in Australia and that disposal is the first disposal of the feed or treatment after it has been imported or manufactured in Australia.28

22. Ibid., p. 20–21.
23. Ibid., p. 21.
24. Ibid.
25. Explanatory Memorandum, Horse Disease Response Levy Bill 2011, p. 4; Explanatory Memorandum, Horse Disease Response Levy Collection Bill 2011, p. 3; and Explanatory Memorandum, Horse Disease Response Levy (Consequential Amendments) Bill 2011, p. 3.
28. ‘Manufactured feed’ and ‘worm treatment’ are defined in clause 3.

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The disposer of the manufactured feed or worm treatment is responsible for paying the levy (\textit{clause 6}). The regulations may exempt certain persons from paying the levy (\textit{subclause 5(2)}).

\textbf{Clause 7} sets the levy payable on the disposal of manufactured feed and worm treatment at nil or at an amount specified in the regulation.

\section*{Horse Disease Response Levy Collection Bill 2011}

\subsection*{Collection of levy}

\textit{Clause 5} states that the regulations will stipulate when the payment of the levy is due. \textit{Clause 7} sets out the penalty for late payment of the levy. If any levy remains unpaid after the due date, a penalty will accrue at the rate of 2 per cent per month the levy remains unpaid.

\subsection*{Investigative powers}

\textit{Proposed Part 3} confers investigative powers on authorised persons to ensure compliance with the horse disease levy.

\subsection*{Request for information or documents}

The Secretary of the Department of Agriculture, Fisheries and Forestry may, by written notice, require a person within a reasonable period (at least 14 days), to provide specified information or documents that the Secretary reasonably believes is relevant to the collection of the horse disease response levy (\textit{clause 11}). \textit{Clause 12} makes it a strict liability offence to refuse or fail to give information that is required under the proposed Act.\textsuperscript{29}

\subsection*{Monitoring powers}

\textit{Clause 13} allows an authorised person to enter any premises and exercise his or her monitoring powers under \textit{proposed Division 2} to determine ‘whether the levy law has been, or is being complied with’; and to determine whether information provided to the Secretary upon request (or otherwise required by the regulations) is correct. An authorised person only has authority to enter premises when the occupier of the premises consents or when entry is under a monitoring warrant. In summary, the monitoring powers the authorised person may exercise when inspecting a premises are:

\begin{itemize}
  \item \textbf{The proposed penalty is 60 penalty units ($6600).} One penalty unit equals $110: section 4AA of the \textit{Crimes Act 1914} (Cth). The offence will not apply if the person had a reasonable excuse not to provide the information. In addition, a person will not be excused from providing the information ‘on the ground that to do so might tend to incriminate the person or expose the person to a penalty’ (subclauses 12(2) and (4)).
\end{itemize}

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• search anything on the premises
• inspect and examine anything on the premises
• make a still or moving image of the premises or any recording of anything on the premises
• inspect any documents
• take extracts or make copies of any documents
• seize anything on the premises
• take onto the premises equipment and materials required to exercise such powers, and
• operate electronic equipment if the authorised person has reasonable grounds to suspect that
  the electronic equipment contains relevant data in relation to whether the levy has been, or is
  being complied with, or to determine whether information provided to the Secretary upon
  request (or otherwise required under the regulations) is correct (clauses 14 and 15).

The authorised person may also ask (when entry is with consent) or require (when entry is with a
monitoring warrant) the occupier of the premises to ‘answer any questions, and produce any
document, relating to: the operation of the levy law; or the information’. 30 If entry is with a
monitoring warrant and the occupier fails to answer questions or produce such documents, the
occupier will have committed an offence (clause 18). 31

Clause 17 allows for an authorised person exercising the monitoring powers to be assisted by
another person. The person assisting has the power to exercise the same powers as the authorised
person for assisting purposes. Powers and functions exercised by the person assisting are taken to
have been exercised by the authorised person.

The occupier of premises, when subject to a monitoring warrant, must provide an authorised person
executing the warrant and any persons assisting ‘with all reasonable facilities and assistance for the
effective exercise of their powers’. A breach of this requirement is an offence (clause 26). 32

Review of the levy

Clause 35 provides that the Minister for Agriculture, Fisheries and Forests ‘must ensure that at least
once every 5 years there is a review of whether a levy on manufactured feed and worm treatment is
the most appropriate way of raising money to meet the costs of any emergency response to a
disease affecting horses’. This review is not necessary if at the end of the review period there is a
levy amount above nil. If this is the case, the Minister must ensure that as soon as practicable after
the levy is removed a review is conducted.

30. Subclauses 18(2) and (3).
31. The offence under subclause 18(4) carries a penalty of 30 penalty units ($3300).
32. An offence under subclause 26(1) carries a penalty of 30 penalty units ($3300).

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Horse Disease Response Levy (Consequential Amendments) Bill 2011

Schedule 1–Amendments to the Australian Animal Health Council (Livestock Industries) Funding Act 1996 (Cth)

Proposed section 4A allows for the Commonwealth to pay to the Australian Animal Health Council the funds raised from the horse disease levy and penalties for failure to pay the levy. This payment is subject to a list of priorities, being:

- firstly, to meet or reimburse the Council’s cost in receiving and applying the payment before or in the financial year the payment is made
- secondly, payment to the Commonwealth on behalf of a non-government body to discharge a liability owed to the Commonwealth under the EADR Agreement; or if no such body is a party to the EADR Agreement, make payment to the Commonwealth less any amounts required under the first priority, and
- thirdly, make a payment to an organisation that relates to research and development for the horse industry; or for the Council to promote the maintenance of the health of the horses.

If a higher priority cannot be met, the Council may apply the payment to a lower priority.

Concluding comments

Passage of this package of Bills will conclude what has been a drawn out and difficult issue for the Australian horse industry. It will also reduce the financial obligation on the Commonwealth, states and territories in the event of another EI outbreak.

Outbreaks of animal disease emergencies covered by levy arrangements are relatively rare. The previous one was a case of Newcastle Disease (in poultry) in 2002. The relevant levy was subsequently implemented for a two year period to enable the egg industry to repay its liability to the Commonwealth.

Somewhat ironically, it seems reasonable to suggest that had there not been an outbreak of EI in 2007 then the horse industry may have become a signatory to the EADR Agreement several years ago and levy legislation enacted but possibly with a different levy mechanism.
Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2462.

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