2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

HORSE DISEASE RESPONSE LEVY BILL 2011

REVISED EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Agriculture, Fisheries and Forestry,
Senator the Hon. Joe Ludwig)

THIS EXPLANATORY MEMORANDUM TAKES ACCOUNT OF AMENDMENTS
MADE BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS
INTRODUCED
HORSE DISEASE RESPONSE LEVY BILL 2011

OUTLINE

1. The purpose of this Bill is to impose a levy on manufactured horse feed and worm treatments for horses, to enable the horse industry to repay the Commonwealth for any monies expended on its behalf in a response to an emergency animal disease outbreak affecting horses. The Bill is one of three required to establish the legislative framework for imposition and collection of the levies.

2. There are two companion Bills relating to this Bill: the Horse Disease Response Levy Collection Bill 2011 and the Horse Disease Response Levy (Consequential Amendments) Bill 2011. All three Bills are required to establish the levy funding mechanism requested by the horse industry and enable it to meet its obligations under the provisions of the government and livestock industry cost sharing deed for emergency animal disease responses (also known as the Emergency Animal Disease Response Agreement or EADR Agreement). All three Bills are not retrospective in effect.

3. Most livestock industries have statutory levies in place to enable them to fund their share of costs of national emergency responses. These levies are administered under the Primary Industries (Excise) Levies Act 1999 and Primary Industries Levies and Charges Collection Act 1991. Separate legislation is required for the horse disease levies as they are not being imposed on products of the horse industry.

4. The horse industry, through the Australian Animal Health Council (also known as Animal Health Australia), has requested that these levies be imposed.

5. 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.

6. The EADR Agreement is between the Commonwealth, state and territory governments, Animal Health Australia and eleven livestock industries.

7. 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.
8. Statutory response levies are usually set to zero and only activated when an emergency animal disease incident affecting the industry occurs. Some industries have chosen to set a levy rate above zero to provide the industry with a contingency fund to meet its cost-sharing obligations from the outset of an incident, or to invest funds to increase their biosecurity.

9. Under the terms of the EADR Agreement, Animal Health Australia coordinates, collates and maintains financial information relating to emergency animal disease responses. Livestock industries have agreed that Animal Health Australia will hold and manage funds raised by response levies, including those repaying the Commonwealth for monies expended on an industry’s behalf. This arrangement is set out in the Australian Animal Health Council (Live-stock Industries) Funding Act 1996.

10. While there is no cap on a response amount, under the EADR Agreement, an industry’s share of the costs for an emergency response to a disease outbreak cannot be more than 1 per cent of the industry’s gross value of production (GVP), or 2 per cent in the case of foot and mouth disease, unless the industry otherwise agrees in writing.

11. In December 2010 Animal Health Australia, on behalf of the horse industry, submitted a request to the Commonwealth that levies be imposed on manufactured horse feed and worm treatments intended for horses and initially set at a zero rate. The horse industry had considered a range of other levy options at the national, state and local level and determined that these levy mechanisms would provide the most equitable levy coverage across the various sectors of the horse industry.

12. In March 2011 the Australian Horse Industry Council, Harness Racing Australia, Equestrian Australia and the Australian Racing Board signed the EADR Agreement on behalf of the horse industry.

13. Under this Bill, levy will be imposed on the first disposal of manufactured horse feed based on the weight (per kilogram) of the feed or recommended dose of worm treatment for 100 kilogram weight of the horse. Subsequent disposals will only attract a levy where the feed or treatment undergoes further processing. It is expected that the manufacturer or importer will pass on the cost of the levies to the horse owning community. This Bill provides for regulations to be made for working out the amount of levy.

14. The levies will not apply to someone who manufactures or imports their own feed or worming treatments but does not dispose of the goods to another party.

15. This Bill also provides for exemptions to be made by regulation so that disposals of small amounts of manufactured feed or worm treatments will not attract levy. The circumstances and amounts in which such an exemption may apply will be determined in consultation with affected industries.
16. The Australian Constitution requires that provisions dealing with the collection and administration of a levy must be in legislation separate from the legislation that imposes the levy itself. Arrangements for the collection and administration of the horse disease response levy are contained in the Horse Disease Response Levy Collection Bill 2011.

17. Amending legislation is also required for funds raised by the levy to initially flow to the Commonwealth’s Consolidated Revenue Fund and subsequently be appropriated to Animal Health Australia. Animal Health Australia will manage the funds on behalf of the horse industry. The Horse Disease Response Levy (Consequential Amendments) Bill 2011 amends the Australian Animal Health Council (Livestock Industries) Funding Act 1996 for this purpose. Should a national emergency response to a horse disease be required, affected signatories to the EADR Agreement would be involved in the development of that response and on cost sharing arrangements. Animal Health Australia will determine each signatory’s costs at the conclusion of the response. Once the size of the horse industry’s debt to the Commonwealth is known, the Commonwealth and horse industry will liaise to determine over what time period and at what levy rate the industry will repay the Commonwealth.

FINANCIAL IMPACT STATEMENT

18. There is no financial impact on the Commonwealth unless an emergency animal disease outbreak affecting horses occurs, and it is agreed that a national response is required. Should such an event occur, there will be a financial impact on the Commonwealth, in that it will initially meet the horse industry’s costs of the response under the EADR Agreement. However, this money will be repaid through funds raised by the levy, and will include recovery of the Commonwealth’s costs in collecting or recovering the levy.
NOTES ON CLAUSES

Clause 1: Short Title

This clause is a formal provision specifying that the short title of the Act may be cited as the *Horse Disease Response Levy Act 2011*.

Clause 2: Commencement

The commencement date in this clause provides that the Act will commence the day after Royal Assent.

Clause 3: Definitions

*Agvet Codes* – this definition has the same meaning as provided in the *Agricultural and Veterinary Chemicals Act 1994*. An Agvet Code is an Agricultural and Veterinary Chemicals Code set out under the *Agricultural and Veterinary Chemicals Code Act 1994*. These Codes make provision for and in relation to:

- the evaluation, approval, and control of the supply, of active constituents for proposed or existing agricultural chemical products or veterinary chemical products; and
- the evaluation, registration, and control of the manufacture and supply, of agricultural chemical products and veterinary chemical products.

*EADR Agreement* – this definition is a reference to the government and livestock industry cost sharing deed in respect of emergency animal disease responses, also known as the Emergency Animal Disease Response Agreement. The EADR Agreement commenced in March 2002 and is an agreement between the Commonwealth, state and territory governments and livestock industries on how to manage the costs and responsibilities for an emergency response to an animal disease outbreak. The EADR Agreement is available on Animal Health Australia’s website at www.animalhealthaustralia.com.au.

*Manufactured feed* – this definition was developed in collaboration with the horse industry. It indicates what is considered manufactured horse feed for the purposes of this Bill. This definition also allows for processes to be prescribed by regulations. This is to ensure that this Bill has the flexibility to recognise manufactured horse feed as feed intended for horses that is processed in ways that may be developed or used in the future.

*Worm treatment* – this definition was developed in collaboration with the horse industry, the Australian Pesticides and Veterinary Medicines Authority, the Animal Health Alliance and the Veterinary Manufacturers and Distributors Association. This definition is intended to clearly identify the products that will be captured by the levy.
The levy will not apply to multi-purpose worm treatments that have instructions that the product can be used to treat other animals, such as cattle, sheep and goats, as well as horses, but will apply to products that have instructions for use for horses and/or other species within the horse family (Equidae), such as donkeys.

This definition explains that the levy will apply to a veterinary chemical product (as defined in the Agvet Codes) for which all of the following conditions are met: the product is a registered chemical product or a registered listed chemical product under those Codes; there are instructions for the use of the product that are approved by the Australian Pesticides and Veterinary Medicines Authority under those Codes or that accord with an established standard for the product under those Codes, if the product is a registered listed chemical product; and those instructions are for the use of the product for treatment of horses for internal parasites and are not for use of the product for treatment of other animals, except other members of the horse family (Equidae), for internal parasites.

Clause 4: This Act binds the Crown

This clause provides that this Bill binds the Crown in each of its capacities.

Clause 5: Imposition of levy

This clause indicates in what circumstances levy will be imposed. Levy is to be imposed on the first disposal of manufactured horse feed or worm treatment for horses by a person to another person in Australia, whether the disposal is by sale or gift.

Clause 6: Who is liable to pay the levy

This clause provides that levy will be payable by a person who manufactures and/or imports manufactured horse feed or horse worming treatments for commercial purposes and then disposes of the feed or treatments to another party. Levy will not be imposed on a person that manufactures or imports their own feed or worming treatments, but does not dispose of the goods to another person. The intent is that the person disposing of the feed or treatments will pass on the cost of the levy to horse owners. There will be a small number of instances where the levy may apply more than once. For example, if one person manufactures feed and sells it to another person, and the second person reprocesses the feed before selling it onto a third person, levy will be payable to the sales or disposals by both the first and second persons. If a person contracts another person to manufacture feed or treatments, the levy will be imposed on the person that manufactures the feed or treatments.

Clause 7: Amount of levy

This clause sets the default amount of levy at zero. It also provides for regulations to be made to set the rate above nil, should the need arise. For example, the need will arise should the horse industry be required to repay the Commonwealth for its share of the costs for an emergency response to an equine disease outbreak, or should the horse industry desire to set a positive levy rate for another reason, such as building a contingency fund. The amount of levy will not be raised above zero without consultation with the horse industry. This provision will also allow regulations to be made for levy exemptions of disposals of small amounts of feed or treatments or
disposals of a non-commercial nature. The circumstances and amounts in which such an exemption may apply will be determined in consultation with affected industries, including the manufactured feed and worm treatment industries.

**Clause 8: Act does not impose levy on property of a State**

This clause makes clear that the Act complies with the Constitutional requirement that the Commonwealth not impose a law of taxation on the property of a State or Territory.

**Clause 9: Regulations**

This clause allows for the Governor-General to make regulations under this Act. It also ensures that the Minister must consider whether a proposed regulation to set a positive levy rate does not exceed the maximum amount the horse industry can be liable to pay. Under the EADR Agreement, the horse industry’s share of the costs for an emergency response to an animal disease outbreak affecting horses cannot be more than 1 per cent of the horse industry’s GVP, unless it otherwise agrees in writing.