

## **Agricultural Livestock (Disease Control Funding) Amendment Bill 2004**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to amend the *Agricultural Livestock (Disease Control Funding) Act 1998*:

- (a) to provide for the collection of transaction based contributions from livestock producers to fund the provision of livestock disease control programs established under the Act, and
- (b) to provide for the refund of such contributions and for the review of decisions concerning such contributions by the Administrative Decisions Tribunal, and
- (c) to provide for the appointment of fund administrators for industry funds for livestock disease control programs established under the Act (***industry funds***), and
- (d) to make further provision with respect to the establishment, purposes, operation and winding up of industry funds, and
- (e) to require the Minister to have the benefit of certain expert advice before imposing an industry levy for payment into an industry fund or fixing such a levy, and
- (f) to make provision for matters of savings and transitional nature.

#### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Clause 3** is a formal provision that gives effect to the amendments to the *Agricultural Livestock (Disease Control Funding) Act 1998* set out in Schedule 1.

#### **Schedule 1 Amendments**

##### **Definitions**

**Schedule 1 [1]** amends section 3 of the *Agricultural Livestock (Disease Control Funding) Act 1998* to insert definitions for new terms used in provisions to be inserted in the Act and to omit or replace several existing definitions.

In particular, a ***livestock transaction*** is defined to mean the purchase or sale of livestock or any product made or derived from livestock.

**Schedule 1 [19]** makes an amendment to section 15 consequent on the insertion in section 3 of a definition of ***financial year***.

##### **Disease control programs**

Currently, section 5 of the Act defines the expression ***disease control service*** for the purposes of the Act.

**Schedule 1 [3]** amends section 5 to replace this expression with the concept of a ***disease control program***. A disease control program is defined to mean an agricultural program for livestock producers comprising a service, or series of services, for the control of a particular disease in livestock. **Schedule 1 [2], [5] and [6]** make consequential amendments to the Act.

**Schedule 1 [4]** amends section 6 of the Act to require the Minister to be satisfied that the rationale for a disease control program is soundly based, the objectives of the program are reasonably achievable and the program is financially viable before approving the funding of the program under the Act.

##### **Industry advisory committees**

Currently, section 8 of the Act provides for the Minister to establish an industry

advisory committee for each disease control service established under the Act for livestock.

**Schedule 1 [7]** amends section 8 of the Act to provide that one of the functions of an industry advisory committee for a disease control program established under the Act is to give advice to the Minister on the establishment and operation of transaction based contribution schemes for funding the program.

### **Industry funds**

Currently, the Act provides for the establishment of two industry funds for each disease control service established under the Act.

An industry contribution fund is established for such a service to provide a means by which voluntary contributions to fund the service may be made by relevant livestock producers and other persons and bodies.

If an industry levy is also imposed to fund the service, the Act requires the establishment of a second industry levy fund into which such levies are to be paid.

Both industry contribution funds and industry levy funds are administered by the Director-General of the Department of Agriculture (the **Director-General**).

**Schedule 1 [8]–[14]** amend Part 3 of the Act so as to create a new Division 1 dealing with the establishment and operation of industry funds. The principal features of the amended provisions are as follows:

(a) There will be a single industry fund for each disease control program established under the Act. However, each fund will have the following 4 separate accounts:

- (i) an account for non-transaction based contributions to the fund,
- (ii) an account for transaction based contributions to the fund,
- (iii) an account for industry levies that are paid into the fund,
- (iv) an account for any other money paid into the fund.

(b) Each fund will be administered by a fund administrator appointed by the Minister who may (but need not) be the Director-General. The Minister may appoint a corporation or trustees to administer a fund instead of the Director-General. However, in that event, the Director-General will be under a duty to keep under review the activities of such administrators and to make regular reports to the Minister on the administration of industry funds by such administrators.

(c) The Minister will be empowered to approve policy and priority guidelines for each industry fund by reference to which funds will be expended to provide the relevant disease control program.

**Schedule 1 [21]** consequentially omits sections 17–20, which deal with the establishment and operation of industry levy funds. **Schedule 1 [22], [24], [26], [28] and [29]** make consequential amendments to the Act.

**Schedule 1 [27]** inserts a new section 26A in the Act to make it an offence for a fund administrator for an industry fund to make payments out of the fund if the fund is in deficit, or would be in deficit if the payments were made, unless the fund administrator has first obtained the written approval of the Minister. The maximum penalty for such an offence will be 100 penalty units (currently, \$11,000).

**Schedule 1 [30]** inserts a new section 28A in the Act to require a fund administrator (other than the Director-General) to prepare and forward to the Director-General a report on the operation of the fund during a financial year no later than 1 August immediately following the end of that financial year.

**Schedule 1 [31]** inserts a new section 30A in the Act to enable the Minister to direct the fund administrator for an industry fund to wind up the affairs of the fund if the Minister is satisfied that it is in the best interests of the livestock industry for which the fund is established for it to be wound up. The Minister

may also give directions about the payment of surplus funds to other persons or bodies.

### **Contributions to industry funds**

**Schedule 1 [15]** inserts a new Division 2 in Part 3 of the Act dealing with the funding of disease control programs by contributions from livestock producers and other persons and bodies.

The new Division recognises 2 kinds of contributions, namely, non-transaction based contributions and transaction based contributions.

A non-transaction based contribution is a monetary contribution made (or to be made) to an industry fund for a disease control program established under the Act otherwise than under a transaction based contribution scheme for the fund. Such contributions may be made by livestock producers and other persons or bodies. They may be made as often and in such amounts as a contributor wishes. In particular, the new Division authorises rural lands protection boards, local councils and other public or local authorities to make non-transaction based contributions to an industry fund if they wish to do so.

A transaction based contribution is a monetary contribution made (or to be made) to an industry fund under a transaction based contribution scheme for the fund.

A transaction based contribution scheme for a fund will be a scheme established by the Minister, by order published in the Gazette, for the collection from certain livestock producers of contributions based on their livestock transactions for payment into the industry fund. The order establishing the scheme will need to provide for the following matters:

- (a) the livestock transactions by reference to which contributions under the scheme are to be collected,
- (b) the designated livestock producers from whom contributions are to be collected under the scheme,
- (c) the amount of a contribution (or the manner in which the amount of a contribution is to be calculated) under the scheme,
- (d) the times and manner in which contributions are to be collected under the scheme and paid into the industry fund concerned,
- (e) the collection agents who are authorised to collect contributions for the scheme.

Any such order will need to be tabled before Parliament and will be disallowable in the same way as a statutory rule.

The new Division authorises a collection agent for a transaction based contribution scheme to collect any contribution payable under the scheme in connection with a livestock transaction from a designated livestock producer to which the scheme applies. However, the new Division also makes it an offence for a collection agent not:

- (a) to collect contributions from the proceeds of any livestock transaction of a livestock producer to which the scheme applies as provided by the scheme, or
- (b) to pay any contribution collected under the scheme to the fund administrator for the appropriate industry fund as provided by the scheme, or
- (c) to keep such records concerning the collection and payment of such contributions as may be prescribed by the regulations, or
- (d) to provide the livestock producer from whom the contribution was collected with a written receipt for the contribution, or
- (e) to produce to the Director-General or the relevant fund administrator, if requested to do so, records of the collection agent concerning the collection or payment of contributions under the scheme.

The maximum penalty for any such offence will be 100 penalty units (currently, \$11,000).

The new Division enables a transaction based contributor to obtain a refund of a transaction based contribution paid during a financial year if the application for the refund is made to the fund administrator to whom it was paid no later than 7 days (or such greater period as may be specified under the transaction based contribution scheme concerned) after the end of the financial year during which the contribution was made. However, a person who obtains such a refund will not be entitled to receive certain services under the designated disease control program concerned. Only those livestock producers who have paid a transaction based contribution during the previous financial year and have not obtained a refund will be entitled to receive these services in the next financial year.

#### **Industry levies**

**Schedule 1 [16]** converts Part 4 of the Act (which deals with industry levies for disease control services) into Division 3 of Part 3.

**Schedule 1 [17]** amends section 13 of the Act to provide that the Minister may authorise the imposition of an industry levy for payment into an industry fund for a disease control program only if:

(a) the Minister is satisfied, having regard to advice of the industry advisory committee concerned, that the relevant industry fund may not be sufficient to fund the necessary program, and

(b) the Minister is satisfied that the relevant livestock industry has been consulted concerning the imposition of the levy.

**Schedule 1 [20]** amends section 16 of the Act to make similar provision in relation to fixing the rate of a levy in a subsequent order of the Minister.

Currently, sections 14 and 17 of the Act provide that if a minimum voluntary contribution is made to an industry contribution fund during a levy period by a livestock producer, the producer is entitled to a refund of an industry levy paid by the producer into the industry levy fund during that period. **Schedule 1 [18] and [21]** remove this entitlement. **Schedule 1 [24]** makes a consequential amendment to section 25.

#### **Review of funding decisions by Administrative Decisions Tribunal**

**Schedule 1 [23]** creates a new Part 5A dealing with reviews of funding decisions by the Administrative Decisions Tribunal. Section 25, which currently provides for reviews of certain decisions of the Director-General concerning industry levies, will be located in the new Part.

**Schedule 1 [25]** inserts a new section 25A in the new Part. It provides for the review by the Administrative Decisions Tribunal of certain decisions of the Director-General or fund administrators in respect of transaction based contributions.

#### **Offences**

**Schedule 1 [32]** amends section 31 of the Act to make it clear that nothing in the Act renders the Director-General or the Crown liable to prosecution for an offence.

**Schedule 1 [33]** inserts a new section 31A in the Act. The new section contains the standard provisions with respect to the liability of directors and managers of corporations for contraventions of the Act or the regulations by corporations.

#### **Audit of accounts and records of collection agents**

**Schedule 1 [34]** amends section 33 of the Act to enable the regulations to make provision for or with respect to the auditing of the accounts and records of collection agents for transaction based contribution schemes in relation to the collection and payment of transaction based contributions.

#### **Savings and transitional provisions**

**Schedule 1 [36]** amends Schedule 2 to the Act to enable the Governor to make

regulations for matters of a savings or transitional nature consequent on the amendment of the Act.

**Schedule 1 [37]** inserts a new Part in Schedule 2 to the Act that contains savings and transitional provisions consequent on the amendment of the Act by the proposed Act. **Schedule 1 [35]** inserts a Part heading in Schedule 2 that is consequential on the insertion of the new Part.