



New South Wales

Agricultural Livestock (Disease Control Funding) Amendment Act 2004 No 45

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New South Wales

Agricultural Livestock (Disease Control Funding) Amendment Act 2004 No 45

Act No 45, 2004

An Act to amend the Agricultural Livestock (Disease Control Funding) Act 1998 to make further provision with respect to the funding of disease control services in respect of livestock; and for other purposes. [Assented to 6 July 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Agricultural Livestock (Disease Control Funding) Amendment Act 2004*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Agricultural Livestock (Disease Control Funding) Act 1998 No 139

The *Agricultural Livestock (Disease Control Funding) Act 1998* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit the definitions of *control*, *designated disease*, *designated disease control service*, *designated livestock producers*, *disease control service*, *industry contribution fund*, *industry fund*, *industry levy* and *industry levy fund*.

Insert in alphabetical order:

approved policy and priority guidelines for an industry fund means guidelines approved for the fund under section 12.

collection agent for a transaction based contribution scheme means:

- (a) any auctioneer, stock and station agent or stock and station salesperson within the meaning of the *Property, Stock and Business Agents Act 2002*, or
- (b) any other person,

involved in livestock transactions to which the scheme relates who is authorised under the scheme to collect contributions for the scheme.

control a disease includes prevent, eradicate or manage the disease.

designated disease, *designated disease control program*, *designated livestock producers*—see section 6.

disease control program—see section 5.

financial year means the year commencing 1 July.

fund administrator for an industry fund means a person or persons appointed to administer the fund under section 8A.

industry fund means a fund established under Division 1 of Part 3.

industry levy means a levy imposed under Division 3 of Part 3.

livestock transaction means the purchase or sale of livestock or any product made or derived from livestock.

non-transaction based contribution means a monetary contribution made (or to be made) to an industry fund otherwise than under a transaction based contribution scheme for the fund.

relevant transaction based scheme, in relation to a transaction based contribution, means the transaction based contribution scheme under which the contribution is collected.

Rural Assistance Authority means the New South Wales Rural Assistance Authority constituted under the *Rural Assistance Act 1989*.

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

transaction based contribution scheme means a scheme established under section 12B.

transaction based contributor means a designated livestock producer who has made a transaction based contribution to an industry fund.

[2] Part 2, heading

Omit “services”. Insert “programs”.

[3] Section 5 Nature of disease control program

Omit section 5 (1). Insert instead:

- (1) For the purposes of this Act, a ***disease control program*** is an agricultural program for livestock producers comprising a service, or series of services, for the control of a particular disease in livestock.

[4] Section 6 Approval of funding under this Act for disease control program

Insert after section 6 (2) (a):

- (a1) the rationale for the disease control program is soundly based, the objectives of the program are reasonably achievable and the program is financially viable, and

[5] Sections 6 (1), (2) and (4), 7 (3), 8 (1) and (4), 13 (1) and 14 (1)

Omit “service” and “services” wherever occurring.

Insert instead “program” and “programs” respectively.

[6] Section 8 Industry advisory committees

Omit “programs” from section 8 (4) (a) (i). Insert instead “services”.

[7] Section 8 (4) (a) (iv)

Insert after section 8 (4) (a) (iii):

- (iv) the establishment and operation of any transaction based contribution scheme to fund the designated disease control program,

[8] Part 3, heading

Omit the heading. Insert instead:

Part 3 Industry funding

Division 1 Industry funds

8A Fund administrators

- (1) The Minister may, in an order made under section 6 or by subsequent order published in the Gazette, appoint any of the following to be the fund administrator for an industry fund established (or to be established) for a designated disease control program if satisfied that the person or persons is or are qualified to administer the fund:
 - (a) the Director-General,
 - (b) the Rural Assistance Authority,
 - (c) a statutory corporation or any other body corporate,
 - (d) the trustees of a trust (but only if the Minister is satisfied that the trust deed makes appropriate provision for the trustees to administer the fund).
- (2) For the purposes of this Act, if the fund administrator for an industry fund consists of more than one trustee:

- (a) any function conferred or imposed by or under this Act on the fund administrator is taken to be conferred or imposed on each trustee, and
 - (b) if a decision is not supported by all the trustees—a decision of the majority of the trustees is taken to be the decision of the fund administrator, and
 - (c) any trustee who knowingly authorised or permitted a contravention of a provision of this Act or the regulations by another trustee is also taken to have contravened the provision and is liable on conviction to any penalty specified for a contravention of the provision.
- (3) A fund administrator for an industry fund is subject to the direction and control of the Minister except in relation to any advice or report given to the Director-General or Minister concerning the operation of the fund.
 - (4) Nothing in subsection (3) authorises the Minister to direct a fund administrator for an industry fund who administers the fund as a trustee to do an act, or omit to do an act, that would constitute a breach of the trust concerned.
 - (5) If a fund administrator for an industry fund is not the Director-General, it is the duty of the Director-General to keep under review the activities of the administrator and to make regular reports to the Minister on the administration of the fund by the administrator.

[9] Section 9 Establishment of industry fund for designated disease control programs

Omit section 9 (1). Insert instead:

- (1) An industry fund is to be established for each designated disease control program.
- (1A) The fund administrator for an industry fund is to establish the fund.

[10] Section 9 (2) and (3)

Omit “Director-General” and “industry contribution fund” wherever occurring.

Insert instead “fund administrator” and “industry fund” respectively.

[11] Section 9 (2A)

Insert after section 9 (2):

- (2A) A separate account is to be maintained in an industry fund in relation to each of the following:
- (a) non-transaction based contributions to the fund,
 - (b) transaction based contributions to the fund,
 - (c) industry levies that are paid into the fund,
 - (d) any other money paid into the fund.

[12] Section 10

Omit the section. Insert instead:

10 Purpose of industry fund

The purpose of an industry fund is to provide a means by which contributions and other payments can be made to the fund by relevant designated livestock producers and other persons and bodies to fund the provision of services under a designated disease control program.

[13] Section 11

Omit the section. Insert instead:

11 Payments into industry fund

There is payable into an industry fund:

- (a) money received from non-transaction based contributions to the fund by the relevant designated livestock producers, and
- (b) money received from non-transaction based contributions to the fund by any other person or body, and
- (c) money received from transaction based contributions collected under a transaction based contribution scheme established for the fund, and
- (d) money received from an industry levy under this Part for the designated disease control program concerned, and

- (e) money advanced (if any) by the Treasurer for the fund, and
- (f) money appropriated (if any) by Parliament for the purposes of the fund, and
- (g) money required by law to be paid to the fund.

[14] Section 12

Omit the section. Insert instead:

12 Payments out of industry fund

- (1) There is payable from an industry fund:
 - (a) the costs of the relevant designated disease control program paid in accordance with any approved policy and priority guidelines for the fund, and
 - (b) the costs of administration of the fund including (but not limited to) the following:
 - (i) the allowances payable to members of the relevant industry advisory committee and any other expenses of the committee,
 - (ii) the costs of collection of transaction based contributions and industry levies payable to the fund,
 - (iii) the payment of fees to collection agents for a transaction based contribution scheme for the fund for the collection of transaction based contributions (but only where such payment is authorised under the scheme), and
 - (c) the refund to persons of the whole or part of their transaction based contributions under section 12E that have been paid into the fund, and
 - (d) money required by law to be paid from the fund.
- (2) For the purposes of subsection (1) (a), ***approved policy and priority guidelines*** for a fund are any guidelines about the policies and priorities for expenditure from the fund that have been approved by the Minister from time to time.
- (3) Without limiting subsection (2), any approved policy and priority guidelines for a fund may deal with any or all of the following matters:

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- (a) the manner in which the service or services that comprise the designated disease control program will be funded,
 - (b) the funding priorities of the fund and who should receive funding,
 - (c) the services under the designated disease control program to which transaction based contributors are to be entitled.
- (4) Before approving any policy and priority guidelines for a fund, the Minister is to have regard to any advice of the industry advisory committee for the designated disease control program concerned and the fund administrator about the policies and priorities for expenditure from the fund.

[15] Part 3, Division 2

Insert before Part 4:

Division 2 Contribution based funding

Subdivision 1 Non-transaction based contributions

12A Making of non-transaction based contributions

- (1) A non-transaction based contribution to an industry fund may be made by any designated livestock producer or other person or body that wishes to do so.
- (2) In particular, rural lands protection boards, local councils and other public or local authorities are authorised by this section to make non-transaction based contributions to an industry fund if they wish to do so.

Subdivision 2 Transaction based contribution schemes

12B Establishment of transaction based contribution schemes

- (1) The Minister may, by order published in the Gazette, establish a scheme for the collection from designated livestock producers of contributions based on their livestock transactions for payment into the industry fund for the designated disease control program concerned (a *transaction based contribution scheme*).

- (2) A transaction based contribution scheme is to make provision for or with respect to 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 for which the scheme is established,
 - (e) the collection agents who are authorised to collect contributions for the scheme.
- (3) A transaction based contribution scheme may also:
 - (a) extend the period within which a transaction based contributor may apply for a refund of a transaction based contribution for the purposes of section 12E (1), and
 - (b) authorise the payment of fees to collection agents for the scheme out of the industry fund concerned and specify the fees that are payable.
- (4) The Minister may not establish a transaction based contribution scheme for an industry fund unless:
 - (a) the Minister has been advised by the industry advisory committee concerned that the scheme is necessary to provide sufficient funds to provide the designated disease control program concerned, and
 - (b) the Minister is satisfied that the relevant livestock industry has been consulted concerning the establishment of the scheme.
- (5) A statement in an order made under this section that the Minister has complied with the requirements of subsection (4) is conclusive evidence of compliance with those requirements.
- (6) Sections 40 (Notice of statutory rules to be tabled) and 41 (Disallowance of statutory rules) of the *Interpretation*

Act 1987 apply to an order made under this section in the same way as they apply to a statutory rule.

12C Collection of transaction based contributions

- (1) A collection agent for a transaction based contribution scheme is authorised to collect any contribution payable under the scheme in connection with a livestock transaction from a designated livestock producer to which the scheme applies.
- (2) A collection agent for a transaction based contribution scheme must:
 - (a) collect from the proceeds of any livestock transaction of a designated livestock producer to which the scheme applies such contributions as may be provided by the scheme at such times and in such manner as may be provided by the scheme, and
 - (b) pay any contribution the agent collects under the scheme to the fund administrator for the industry fund for which the scheme was established at the time and in the manner provided by the scheme, and
 - (c) keep such records concerning the collection and payment of such contributions as may be prescribed by the regulations.

Maximum penalty: 100 penalty units.

- (3) A collection agent for a transaction based contribution scheme who collects a transaction based contribution from a livestock producer must provide the livestock producer from whom the contribution was collected with a written receipt (whether on the document evidencing the livestock transaction concerned or otherwise) immediately after the collection of the contribution that indicates the following:
 - (a) the name of the livestock producer,
 - (b) the livestock transaction concerned,
 - (c) the amount of the contribution concerned and the date on which it was collected,
 - (d) the name of the collection agent.

Maximum penalty: 100 penalty units.

- (4) A collection agent for a transaction based contribution scheme must produce any records concerning the collection or payment of contributions under the scheme in accordance with any written request of the Director-General or fund administrator for the industry fund for which the scheme was established within the period of 7 days after receiving the request.

Maximum penalty: 100 penalty units.

12D Entitlements to services under designated disease control program

- (1) A transaction based contributor to an industry fund is entitled during any financial year to receive such services under a designated disease control program as may be specified for such a contributor in the approved policy and priority guidelines for the fund if:
- (a) the contributor has paid at least one transaction based contribution under the relevant transaction based contribution scheme during the previous financial year, and
 - (b) the contributor has not obtained a refund of any transaction based contribution paid by the contributor under the relevant transaction based contribution scheme during the previous financial year.
- (2) A receipt of the kind referred to in section 12C (3) is evidence that the livestock producer named in the receipt made the transaction based contribution specified in the receipt on the date specified in the receipt.
- (3) Despite subsection (1), a fund administrator for an industry fund for a designated disease control program may refuse to provide a service to a designated livestock producer if the fund administrator is satisfied that the producer negligently or intentionally contributed to the outbreak or the spread of the designated disease for which the service is sought.
- (4) Nothing in this section prevents a person who is not a transaction based contributor to an industry fund or any other person from receiving a service under a designated disease control program if the fund administrator decides to provide the service to that person.

12E Refunds of transaction based contributions

- (1) A transaction based contributor to an industry fund during a financial year is entitled to a refund of the contribution from the fund administrator if the contributor makes an application to the fund administrator no later than 7 days (or such greater period as may be specified under the relevant transaction based contribution scheme) after the end of the financial year during which the contribution was made.
- (2) The fund administrator for the industry fund to which the transaction based contribution was made is responsible for making refunds under this section.
- (3) Applications for, and payment of, the refund are to be made in accordance with such procedures as the Minister determines from time to time.

[16] Part 3, Division 3, heading

Omit the heading to Part 4. Insert instead:

Division 3 Industry levy based funding

[17] Section 13 Imposition of industry levy

Omit section 13 (2). Insert instead:

- (2) The Minister may give such an authorisation 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.

[18] Section 14 Liability to pay industry levy

Omit section 14 (2) and (3).

[19] Section 15 Levy period

Omit “commencing 1 July” from section 15 (1).

[20] Section 16 Amount of industry levy

Insert after section 16 (1):

- (1A) The Minister may make a subsequent order fixing a rate under subsection (1) if:
- (a) the Minister is satisfied, having regard to advice of the industry advisory committee concerned, that the amount of the levy to be fixed is appropriate, and
 - (b) the Minister is satisfied that the relevant livestock industry has been consulted concerning the amount of the levy.
- (1B) A statement in an order giving any such authorisation that the Minister has complied with the requirements of subsection (1A) is conclusive evidence of compliance with those requirements.

[21] Sections 17–20

Omit the sections.

[22] Section 21 Application

Omit “Part 4”. Insert instead “Division 3 of Part 3”.

[23] Part 5A, heading

Insert before section 25:

**Part 5A Review of funding decisions by
Administrative Decisions Tribunal**

[24] Section 25 Review of industry levy based funding decisions

Omit section 25 (1) (c).

[25] Section 25A

Insert after section 25:

25A Review of transaction based contribution funding decisions

- (1) A person from whom a transaction based contribution to an industry fund has been or may be collected under this Act may apply to the Administrative Decisions Tribunal for a review

of any of the following decisions of the Director-General or the fund administrator for the fund with respect to the contribution:

- (a) a decision that the contribution is to be collected from the person,
 - (b) a decision as to the amount of the contribution that is to be collected from the person,
 - (c) a decision not to make a refund to the person under section 12E,
 - (d) a decision that the person is not entitled to receive a service under the designated disease control program.
- (2) If a collection agent for the relevant transaction based contribution scheme makes a decision of the kind referred to in subsection (1) (a) or (b), the Director-General is taken to have made that decision for the purposes of an application under subsection (1).
- (3) If a fund administrator for an industry fund has not determined an application for a refund of a transaction based contribution to the fund within 28 days after the application is made, the fund administrator is taken to have refused to make the refund for the purposes of an application to the Tribunal under subsection (1).

[26] Section 26 Investment of money in industry funds

Omit “The Minister is to invest money in an industry fund” and “power on the Minister” from section 26 (1).

Insert instead “The fund administrator for an industry fund is (subject to any directions of the Minister) to invest money in the fund” and “power on the fund administrator” respectively.

[27] Section 26A

Insert after section 26:

26A Deficits in industry funds

A fund administrator for an industry fund must not 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.

Maximum penalty: 100 penalty units.

[28] Section 27 Internal loans between industry funds

Omit section 27 (2).

[29] Section 28 Appointment of agents to administer expenditure from industry funds

Insert “for which the Director-General is fund administrator” after “fund”.

[30] Section 28A

Insert after section 28:

28A Fund administrator to provide report to Director-General for operations for each financial year

If the fund administrator for an industry fund is not the Director-General, the fund administrator must 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.

[31] Section 30A

Insert after section 30:

30A Winding up of industry funds

- (1) The Minister may, by order in writing, 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.
- (2) The Minister may give a direction under subsection (1) if:
 - (a) the Minister is satisfied, having regard to advice of the industry advisory committee concerned, that the relevant industry fund is not viable or is no longer required, and
 - (b) the Minister is satisfied that the relevant livestock industry has been consulted concerning the closure of the fund.

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- (3) A statement in an order under subsection (1) that the Minister has complied with the requirements of subsection (2) is conclusive evidence of compliance with those requirements.
 - (4) The Minister may, by order in writing, direct that any money standing to the credit of any such fund may be applied for the benefit of such persons or bodies representing the livestock industry concerned (including for the purpose of payment into another industry fund established for the industry) as the Minister may direct from time to time.
 - (5) The regulations may make provision for or with respect to the winding up of industry funds.
 - (6) The regulations may declare any matter concerning the winding up of an industry fund under this section to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
 - (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
 - (b) a specified provision of that legislation, or
 - (c) that legislation other than a specified provision, or
 - (d) that legislation otherwise than to a specified extent.

Note. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

[32] Section 31 Act to bind the Crown

Insert at the end of the section (but before the note):

- (2) However, nothing in this Act renders the Director-General or the Crown liable to prosecution for an offence.

[33] Section 31A

Insert after section 31:

31A Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the

management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

[34] Section 33 Regulations

Insert after section 33 (1):

- (1A) Without limiting subsection (1), the regulations may 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.

[35] Schedule 2 Savings, transitional and other provisions

Insert before clause 1:

Part 1 General

[36] Schedule 2

Insert at the end of clause 1 (1):

*Agricultural Livestock (Disease Control Funding)
Amendment Act 2004*

[37] Schedule 2, Part 2

Insert after clause 2:

**Part 2 Provisions consequent on enactment of
Agricultural Livestock (Disease Control
Funding) Amendment Act 2004**

3 Definitions

In this Part:

amending Act means the *Agricultural Livestock (Disease Control Funding) Amendment Act 2004*.

commencement day means the day on which the amending Act commences.

4 Existing orders

- (1) Any order in force under section 6 or 13 immediately before the commencement day ceases to have effect on that day.
- (2) Nothing in subclause (1) affects:
 - (a) any liability of any person to pay an industry levy that accrued before the commencement day and that remained unpaid on that day, or
 - (b) any right of a person to obtain a refund under section 17 as in force immediately before its repeal by the amending Act.

5 Existing industry contribution funds and industry levy funds

- (1) Any industry contribution fund or industry levy fund in existence immediately before the commencement day is closed on the commencement day.
- (2) Any money standing to the credit of any such fund may be applied for such purposes as the Minister may direct from time to time (including for the purpose of payment into an industry fund established on or after the commencement day).

6 Existing industry advisory committees

- (1) Any industry advisory committee for a designated disease control service that is in existence immediately before the commencement day is dissolved on that day.
- (2) Any person who, immediately before the commencement day, held office as a member of an industry advisory committee ceases to hold office on that day.
- (3) A person to whom subclause (2) applies is not entitled to any remuneration or compensation because of the loss of office but is, if qualified, eligible for appointment to another industry advisory committee established on or after the commencement day.

**7 Appointment of industry advisory committee in respect of
Ovine Johne's Disease**

- (1) In this clause:

former committee means any industry advisory committee established for a designated disease control service for Ovine Johne's Disease that was in existence immediately before the commencement day.

former member of a former committee means any person who was a member of the committee immediately before the commencement day.

6-month transitional period means the period commencing on the commencement day and ending on expiry of the period of 6 months after that day.

- (2) In establishing an industry advisory committee during the 6-month transitional period for a designated disease control program for Ovine Johne's Disease, the Minister is taken to have made an appointment of a member to the committee in compliance with section 8 (3) (b), (c) or (d) if:
 - (a) the Minister appoints a former member of a former committee who had been appointed to the former committee under paragraph (b), (c) or (d) (as the case may be), or

- (b) if any such former member declines appointment or is otherwise unavailable for appointment, the Minister appoints another person who the Minister considers would represent:
 - (i) in the case of an appointment under paragraph (b) or (d)—designated livestock producers, or
 - (ii) in the case of an appointment under paragraph (c)—the Rural Lands Protection Board Association.

8 Consultation on transaction based contribution schemes

Any consultation undertaken by the Minister, the Director-General or an industry advisory committee before the commencement day in respect of the establishment of a scheme for the collection of transaction based contributions to fund the provision of a disease control program for a particular disease is taken to constitute consultation for the purposes of section 12B (4) (b) (as inserted by the amending Act) in respect of a scheme established on or after that day for that disease.

[Second reading speech made in—
Legislative Assembly on 22 June 2004
Legislative Council on 24 June 2004]

BY AUTHORITY