



Australian Animal Health Council (Live-stock Industries) Funding Amendment Act 2002

No. 122, 2002

**An Act to amend the *Australian Animal Health
Council (Live-stock Industries) Funding Act 1996*,
and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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An Act to amend the *Australian Animal Health Council (Live-stock Industries) Funding Act 1996*, and for related purposes

[Assented to 2 December 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Animal Health Council (Live-stock Industries) Funding Amendment Act 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	2 December 2002
2. Schedule 1	A single day to be fixed by Proclamation, subject to subsection (3)	1 May 2003 (<i>Gazette</i> 2003, No. GN16)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If a provision covered by item 2 of the table does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to emergency animal disease response

Australian Animal Health Council (Live-stock Industries) Funding Act 1996

1 Section 3

Insert:

EADR agreement means the government and livestock industry cost sharing deed in respect of emergency animal disease responses made by the Commonwealth and other parties, and executed by the Commonwealth in March 2002.

2 Paragraph 4(b)

Repeal the paragraph, substitute:

- (b) amounts of penalty paid under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to a failure to pay Australian Animal Health Council levy by the time it became due for payment.

3 At the end of section 4

Add:

- (2) The Commonwealth is to pay to the Australian Animal Health Council an amount equal to the sum of the following amounts less the Commonwealth's costs in collecting or recovering those amounts and in administering this subsection:
 - (a) amounts of levy or charge:
 - (i) imposed by regulations under Schedule 27 to the *Primary Industries (Excise) Levies Act 1999* or Schedule 14 to the *Primary Industries (Customs) Charges Act 1999* on an animal product (as defined in whichever one of those Schedules is relevant); and
 - (ii) described in those regulations as EADR levy or EADR charge; and

- (iii) collected or received by or on behalf of the Commonwealth;
 - (b) amounts of penalty paid under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to a failure to pay levy or charge described in paragraph (a) by the time it became due for payment.
- (3) A payment (the ***Commonwealth payment***) under subsection (2) relating to a levy or charge and to an animal product is made subject to the condition that the Australian Animal Health Council apply the Commonwealth payment in accordance with the priorities in subsections (4), (5) and (6) and subject to subsections (7) and (8).
- (4) The first priority is to apply the Commonwealth payment in meeting, or reimbursing the Australian Animal Health Council for meeting, costs the Council incurs:
 - (a) in receiving and applying the Commonwealth payment in accordance with subsection (3); and
 - (b) before or in the financial year in which the Commonwealth payment is made.
- (5) The second priority is to apply the Commonwealth payment in making, on behalf of the non-government body that is a party to the EADR agreement and is concerned with the production of the animal product, a payment:
 - (a) to the Commonwealth for the purpose of discharging a liability of the body to the Commonwealth that arises under the EADR agreement; or
 - (b) if the animal product is honey—to the Commonwealth or Plant Health Australia Limited (ACN 092 607 997) for the purpose of discharging a liability of the body to the Commonwealth relating to the Commonwealth's costs connected with a plant disease that is, may be or may have been spread by honey bees.

Note: A payment to Plant Health Australia Limited may be made for the purpose of discharging a liability of the non-government body concerned with honey production to the Commonwealth relating to a plant disease spread by honey bees if Plant Health Australia Limited is obliged to pay the Commonwealth on behalf of the body.

- (6) The third priority is to apply the Commonwealth payment in:
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- (a) making a payment to an organisation that is concerned with research and development relevant to production of the animal product; or
 - (b) taking measures relating to the promotion or maintenance of the health of animals to which the animal product relates.
- (7) If a body is declared under the relevant Schedule mentioned in subparagraph (2)(a)(i) as the designated body for the animal product, the Australian Animal Health Council is to apply the Commonwealth payment in accordance with the third priority only:
- (a) on request by the body; and
 - (b) in the way that the body requests.
- (8) It is not a contravention of the condition in subsection (3) for the Australian Animal Health Council to apply the Commonwealth payment in accordance with a lower priority if the Council cannot apply the payment in accordance with a higher priority. For this purpose, a priority set out in a later subsection is lower than a priority set out in an earlier subsection.

4 At the end of the Act

Add:

6 Treatment of refunds

When this section applies

- (1) This section applies if:
- (a) a person pays an amount by way of levy, charge or penalty described in subsection 4(2) relating to an animal product; and
 - (b) the Commonwealth refunds the amount (the ***refunded amount***) to the person.

Note: For example, the Commonwealth might refund an amount because the person paid too much levy or charge.

Act applies as if the refunded amount had never been paid

- (2) The other sections of this Act apply, and are taken always to have applied, as if the refunded amount had never been paid to the Commonwealth.

Note: This may, for example, lead to a result as provided for in subsection (3), (4) or (5).

Liability of Council to repay overpayment

- (3) Each payment under subsection 4(2):
- (a) that relates to the animal product; and
 - (b) that exceeds the amount it should have been because of subsection (2) of this section;

is made subject to the condition that the excess is a debt due by the Australian Animal Health Council to the Commonwealth, and that the Australian Animal Health Council comply with subsection (5) (if applicable).

Note: Some or all of this debt may be discharged if the Commonwealth expects it will not be able to set this debt off against future payments under subsection 4(2), and if past payments under that subsection have already been applied. See subsections (5) and (6).

Setting off this liability against future payments

- (4) The Commonwealth may set off the excess against an amount that is payable to the Australian Animal Health Council under subsection 4(2) in relation to the animal product.

Reduced liability to repay if future payments cease

- (5) If:
- (a) the Secretary of the Department gives written notice to the Australian Animal Health Council that the Secretary expects the Commonwealth will not be able to set off under subsection (4) a specified amount of the excess; and
 - (b) the Australian Animal Health Council is yet to fully apply one or more Commonwealth payments (as defined in section 4) relating to the animal product;
- the Australian Animal Health Council must, before applying those Commonwealth payments in accordance with the third priority in that section, apply those Commonwealth payments in paying the Commonwealth as much as possible of that specified amount.
- (6) The debt is discharged by this subsection to the extent of the difference (if any) between:
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- (a) the amount specified in a notice described in paragraph (5)(a); and
- (b) the amount (if any) paid to the Commonwealth under subsection (5) by the Australian Animal Health Council in connection with the notice.

Note: A set-off under subsection (4) of an amount of the excess, or a payment to the Commonwealth under subsection (5), also discharges the debt to the extent of that amount or payment.

- (7) Subsections 4(3) and (7) have effect subject to subsections (3) and (5) of this section.
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*[Minister's second reading speech made in—
House of Representatives on 19 September 2002
Senate on 21 October 2002]*

(189/02)
