OUTLINE OF
DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY'S SUBMISSION TO
SENATE STANDING COMMITTEE ON RURAL AND REGIONAL AFFAIRS AND TRANSPORT

INQUIRY INTO HORSE DISEASE RESPONSE LEVY BILL 2008
(and related Bills)

September 2008

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Senate Standing Committee on Rural and Regional Affairs and Transport
Inquiry into Horse Disease Response Levy Bill 2008
(and related Bills)

1. Background

The Australian Government Department of Agriculture, Fisheries and Forestry (the department) is pleased to provide this submission to the Senate Standing Committee on Rural and Regional Affairs and Transport's inquiry into the provisions of the Horse Disease Response Levy Bill and related Bills.

2. Terms of Reference

There are no terms of reference for this inquiry. The Senate, however, has referred to the committee for inquiry the provisions of the Bills. This legislation is intended to ensure that the mechanism in place for the horse industry to fund its obligations under the provisions of the Emergency Animal Disease Response Agreement (EADRA). It will impose a once-off statutory levy on the registration of horses to meet the industry's commitment to share funding of responses to emergency disease outbreaks that affect horses. The Bills will establish the levy at a zero rate and any changes will require disallowable Regulations to be promulgated in the Parliament.

3. Roles and Responsibilities

The department's role is to develop and implement policies and programs that ensure Australia's agricultural fisheries, food and forestry industries remain competitive, profitable and sustainable.

The Product Integrity, Animal and Plant Health Division of the department includes the Animal and Plant Health Policy Branch that contributes to the department's involvement in the development, coordination and implementation of policies and programs on animal and plant health issues. Activities include:

- endemic disease policy and programs
- building and maintaining emergency management capacity, including communications
- funding and cost-sharing arrangements for emergency response activities
- departmental liaison with joint industry-government bodies
- secretariat services for national committees relating to animal health.

The branch is responsible for developing, in consultation with rural industries, levy arrangements so that industries that are signatories to emergency animal and plant health agreements, are able to meet their share of the costs of emergency animal and plant health disease outbreaks.

4. Summary of Bills' purpose

The Horse Disease Response Levy Bills were drafted to give effect to the horse industry's levy proposal of November 2006. The Australian Horse Industry Council (AHIC), Harness Racing Australia (HRA) (formerly Australian Harness Racing Council) and the Australian Racing Board (ARB) were all proposers of the horse registration levy, to be imposed on the initial registration of horses.

(a) Imposition

Horse Disease Response Levy Bill 2008

The Horse Disease Response Levy Bill 2008 provides a mechanism to impose a levy on the registration of horses.

The levy will be payable only once on the registration of a horse to a recognised registration body or a registration body specified in the regulations. While it is not compulsory under this legislation to register a horse, the owner of the horse is to be liable for the levy if it is registered.

The horse disease response levy was requested by peak industry organisations as the means to enable the industry to fund its share of obligations in responding to any national emergency disease outbreaks affecting the industry. In the event of a disease outbreak and in accordance with the provisions of the Emergency Animal Disease Response Agreement (EADRA), this will enable the horse industry to repay any amount paid by the Commonwealth on behalf of the industry.

The Bill allows for regulations to set a positive levy rate, whenever required, to fund the cost of a future emergency horse disease eradication program. Regulations are required to set a levy rate and describe the mechanics of the levy collection arrangements. The government will discuss fully with industry any future action before implementing the levy system and levy rates and has made this a requirement under the legislation.

It is possible for the industry to build up reserves through an industry contingency fund to fight future disease outbreaks. This legislation can help industry do that if required.

The proposed levy arrangements for the horse industry are similar to those applying to other industries to fund their share of responses to emergency animal diseases that affect their industries. They include the chicken meat, laying chickens, cattle, dairy, honey, sheep, lamb, goat and pig industries.

(b) Collection

Horse Disease Response Levy Collection Bill 2008

The Horse Disease Response Levy Collection Bill 2008 (the Collection Bill) provides for arrangements to collect and administer horse disease response levies imposed under the provisions of the proposed *Horse Disease Response Levy Act 2008*.

The Australian Constitution requires that provisions dealing with the collection and administration of a levy must be in legislation separate from the legislation which imposes the levy itself (s.55), therefore the Collection Bill provides for the collection and administration of the levy.

This Bill provides for the collection of horse disease response levies by persons or bodies that register horses. It also outlines the liability of horse registration bodies regarding the horse disease response levy payments made by horse owners to the Commonwealth.

The Bill provides for the imposition of penalties applying to unpaid levies, and allows for the remission of any penalties resulting from late payments. This Bill provides for information gathering powers which allows the collection of information and documents as required by the Commonwealth to administer the proposed levy arrangements.

Regulations will be drafted to prescribe the administrative details required to implement this legislation. The horse industry groups are aware of the need for regulations to set a levy rate and describe the mechanics of the levy collection arrangements.

(c) Appropriation

Horse Disease Response Levy (Consequential Amendments) Bill 2008

The Horse Disease Response Levy (Consequential Amendments) Bill 2008 amends the *Australian Animal Health Council (Live-stock Industries) Funding Act 1996* and provides for the appropriation and application of the horse disease response levy under the *Horse Disease Response Levy Act 2008*. In particular, the legislation will implement arrangements to enable the Australian Animal Health Council also known as Animal Health Australia (AHA) to hold and manage the emergency horse disease response levy on behalf of the horse industry.

The Bill also provides a mechanism for any excess horse disease response levies that are collected to allow for their use by relevant horse industry research and development bodies for research and development activities or for the promotion or maintenance of the health of horses.

These arrangements provide a transparent mechanism by which the horse industry can discharge any obligations incurred as a result of a response to an emergency horse disease. They are similar to those applying to other industries to fund their share of responses to emergency animal diseases that affect their industries.

This legislation will provide certainty for the horse industry about future emergency disease responses and places the horse industry on an equal footing with other livestock industries that have levy arrangements in place.

5. The Emergency Animal Disease Response Agreement (EADRA)

(a) Purpose and Scope

The *Government and Livestock Industry Cost Sharing Deed in respect of Emergency Animal Disease Responses* (EADRA) commenced in 2002. The Australian Government and all state and territory governments are members as are the major livestock industries including sheep, cattle, dairy, egg, chicken, goat, honey and pig.

While the horse industry was a party to the negotiations, it did not sign the EADRA as it did not have industry agreement to a funding mechanism to enable it to fund its obligations. A copy of the EADRA can be found at: http://www.animalhealthaustralia.com.au/programs/eadp/eadra.cfm.

The EADRA provides certainty in funding for emergency animal disease threats to Australia and the infrastructure to facilitate rapid and effective responses.

Key features of the EADRA include:

- The development of a national disease risk mitigation program.
- An obligation to advise of an emergency animal disease (EAD) incursion within 24 hours of becoming aware of an incident.
- An outline of the responsibilities of Parties and of groups involved in the response, including the Consultative Committee on Emergency Animal Diseases and the National Management Group.
- The EADRA only relates to outbreaks of diseases that are defined as EADs and only applies if it is determined that the EAD is capable of being eradicated or contained.
- The emergency animal disease response (EADR) is conducted according to a response plan developed in accordance with AUSVETPLAN and agreed by the Consultative Committee on Emergency Animal Diseases and the National Management Group.
- Consensus decision making—all Parties (government and industry) are directly involved in making decisions about how Australia responds to animal disease outbreaks and must agree to the response plans and costs.
- All Parties share the costs of the EADR according to the cost-sharing formula determined by the category of the EAD.
- The EADRA specifies that agreed limits for expenditure on an EADR cannot be exceeded without the consent of the affected Parties. This limit is one per cent of the gross value of production of the industry(s), except for foot and mouth disease which is two per cent of GVP of affected industries.
- The EADRA contains guidelines for reimbursement to owners of livestock or property that are destroyed as part of the agreed national response.

All members of the National Management Group (NMG) established under the EADRA have to agree to each EAD Response Plan for each outbreak and its budget. The NMG comprises the agency heads of government Parties and the presidents of the industry Parties affected by the particular response. The EADRA enables affected industries to play an integral role in developing response plans and draws on their experience and expertise.

The NMG will make a decision on whether to invoke cost sharing under the EADRA having regard to whether an animal disease incident is an EAD covered by the EADRA and is capable of being eradicated or contained. Under the EADRA the lead state or territory will then be required to develop a response plan, including a response strategy and budget for consideration by the NMG. Cost sharing commences only when the NMG has agreed on the response plan.

(b) Cost sharing and beneficiary pays

The costs of responding to emergency animal diseases (EADs) are shared by the affected Parties.

A guiding principle during the negotiations was the 'beneficiary pays principle'. Namely, those who benefit from the control, containment and eradication of a disease contribute to the costs.

Under the EADRA, EADs are classified into four categories and a cost sharing formula applied to each category ranging from Category 1 (very high public benefits with 100 per cent government funding—for example rabies, Western, Eastern and Venezuelan equine encephalomyelitis) to Category 4 (low public benefits with 20 per cent government funding and 80 per cent industry funding—these diseases include equine influenza). The relative benefits are defined according to who would benefit from eradication of a disease and as such are a comparison of costs incurred by governments and industry under two situations—where the disease is not present and where it is endemic. It does not deal with the impacts of any eradication effort or activities. Categorised EADs that affect horses are listed in Attachment 1.

Category of Disease	Government Funding (percentage)	Industry Funding (percentage)
Category 1: very high public benefits	100	0
Category 2: high public benefits	80	20
Category 3: moderate public benefits	50	50
Category 4: low public benefits	20	80

The Australian Government is responsible for fifty per cent of the government share of each category, with the states and territories collectively responsible for the other fifty per cent based on their share of production and the GVP of the affected industries.

(c) Eligible costs and consequential losses

As well as providing clear roles and responsibilities of the Parties to enable rapid responses to quickly contain the spread of an emergency disease outbreak, a primary objective of the agreement is to provide an incentive for people to notify and report diseases. The incentive to report is that full market value compensation will be paid for any livestock destroyed as a result of an outbreak.

The Parties recognised when negotiating the EADRA that it was not feasible or appropriate to create a mechanism that would cover all costs resulting from a disease outbreak or incursion.

Cost sharing applies to eligible direct costs incurred in implementing an EAD response plan and do not apply to consequential losses suffered by a Party.

Eligible costs in respect to salaries and wages, operating expenses, capital costs and compensation are calculated in accordance with the provisions of the EADRA including Schedule 6. Cost sharing does not apply to activities that are considered ‘normal’ and that exist for a Party’s normal biosecurity commitments.

Under a Memorandum of Understanding signed by all jurisdictions following the Exercise Minotaur National Foot-and-Mouth Disease Simulation, governments accepted a whole-of-government approach to emergency management. This applies to all agencies and departments for each jurisdiction respectively, including statutory authorities, and wholly owned government business enterprises.

The implication of the whole-of-government rule is that all agencies will be subject to the same tests for reimbursement of costs as the lead agency, including the treatment of normal commitments as a baseline.

Consequential losses suffered by a party to the arrangements are specifically excluded from cost sharing under the EADRA. Only direct costs incurred by the government and industry Parties in responding to an EAD outbreak are cost shared. These costs are over and above the Parties’ normal biosecurity commitments.

In determining the compensation to be paid, no allowance is to be made for loss of profit, loss occasioned by breach of contract, loss of production or any other consequential loss whatsoever.

(d) Industry assistance

On a case by case basis, governments may decide to provide assistance to parts of industry adversely impacted by a disease outbreak and associated control measures. Assistance may, for example, be in the form of income support payments for individuals dependent for their livelihood on the operation of the industry (e.g. horse trainers in the 2007 EI outbreak) or grants to industry organisations faced with substantially increased workloads consequential to the disease outbreak. There is no formal obligation on governments to provide industry assistance measures in the event of a disease outbreak. The Australian Government provided more than $260 million in financial assistance to individuals, organisations and businesses during the 2007 equine influenza outbreak. This assistance was separate to the cost of eradicating the disease. Any industry assistance measures provided by government are outside the scope of the EADRA and are therefore not included in the costs to be shared between the Parties.

(e) Funding obligations

Animal Health Australia (AHA) is the custodian of the EADRA on behalf of the Parties. During a response, those Parties that have expended costs eligible for cost sharing submit a claim to AHA for verification. Costs are apportioned according the agreed cost sharing formulae and the Parties advised of their cost sharing obligations with invoices issued for payment.

Under the EADRA, the Australian Government has agreed to underwrite an industry’s share of the costs of the response, provided the industry can demonstrate that it is able to repay the Commonwealth within a reasonable time period (generally less than ten years). Most industries have elected to implement a levy (initially set at zero) to provide a repayment mechanism.

(f) Horse industry coverage and a levy

As indicated earlier, the EADRA does not presently cover the horse industry. Upon ratification, the EADRA would apply to 21 equine diseases including three multi-species diseases that involve proportional sharing of the cost of response liability with other livestock industries. Four diseases involve organisms pathogenic to humans where the total cost would be covered by Australian, state and territory governments.

Ten of the diseases included in the agreement are listed in Category 4 which would require the horse industry to pay 80 per cent of the costs of eradication of these diseases. The EADRA also provides coverage for known and unknown diseases that are not yet categorised. Responses to outbreaks of these emergency animal diseases are treated as Category 3 diseases until such time as they are categorised.

The absence of an agreed funding mechanism until now has prevented the industry from becoming a Party to the EADRA. However, to enable this to proceed, statutory levy arrangements are required.

6. Industry consultation and support

(a) History (including AHA consultancy)

The horse industry identified the need for a statutory levy to fund its obligations when the EADRA was being negotiated. However, agreement had not been reached on a suitable levy mechanism when the EADRA commenced in 2002.

The peak national representative horse industry bodies, the Australian Horse Industry Council (AHIC), the then Australian Harness Racing Council (AHRC) and the Australian Racing Board (ARB), in conjunction with Animal Health Australia, continued their efforts to gain a consensus on a suitable levy mechanism through extensive meetings and discussions. The prime objective of these consultations was to identify an equitable levy.

Consultation on becoming a party to the EADRA and possible levy arrangements included broad industry participation in a Horse Industry Summit held in June 2004; the publication of numerous industry media releases; newsletters and bulletins; radio interviews and meetings. While considerable progress was made in 2004 and 2005 in obtaining further support for ratification of the EADRA, agreement on a levy mechanism was still not possible with various levy mechanisms being considered including a combination of levies on horse shoes, a slaughter levy and a levy on foal registrations.

An AHA consultancy funded by DAFF was commissioned in late 2005 aimed at identifying critical issues that were hindering the participation of the horse industry in the EADRA, particularly, the identification of feasible and practicable levy mechanisms for the industry. The resulting report, *The Australian Horse Industry as a Signatory to the Emergency Animal Disease Response Agreement* (Geoff Neumann &

Associates Pty Ltd, 23 January 2006), identified potential horse industry levies for consideration and examined advantages and disadvantages. These included a levy on horse shoes, a slaughter levy, a foal registration levy or a combination of levies.

Accepting that there will always be some industry participants who are not subject to whatever levy collection mechanism was used, it was recommended that as the basic product of the horse industry were horses, that foals were the logical uniform point of application of a levy.

In 2006, the Board of AHIC accepted a recommendation that a zero based levy on the initial registration of horses with breed societies and performance organisations be pursued as the most effective way in which to enable the Australian horse industry to become as signatory the EADRA. Information on this proposal was prepared and distributed to all known horse industry organisations with request for feed back.

Following further broad consultation, this led to the development of the industry's formal levy submission to government in November 2006 by the AHIC on behalf of the three peak industry bodies—the AHIC, the AHRC and the ARB, for a levy on the registration of horses.

On 18 December 2006 the then Parliamentary Secretary Agriculture, Fisheries and Forestry, the Hon Sussan Ley MP, responded to the President of the AHIC, G. Barry Smyth, advising that the levy submission would be considered and that new levy regulations would need to be drafted and considered by the Executive Council.

The industry's levy submission was assessed against the Department of Agriculture, Fisheries and Forestry's Levy Principles and Guidelines and meets these requirements.

The horse disease levy Bills presently before the Parliament are supported by the three peak industry bodies. This has been confirmed orally and in writing by these bodies a number of times during 2008 and more recently before the debate on the Bills in the House of Representatives.

(b) *Levy Principles and Guidelines*

Australia's farm businesses are world leaders in terms of production efficiency, sustainable product quality, innovation and ability to supply and respond to market demands.

The effective use of primary industry levies and charges can greatly assist producers. By pooling their physical, financial and research resources, industries can work together to find better farming methods and demand for their products.

Many of Australia's primary industries rely on the levy system and the support it provides for animal and plant health programs, research and development, marketing and promotion and residue testing. It addresses market failure issues that would result in the activity not being funded in the absence of levies.

The government's role, through DAFF, is to consult with industries that want a levy system and to implement an effective collection system for them at minimum cost.

Usually an industry body identifies the need for a levy or charge so it can respond to an opportunity or to a problem, such a response to an animal disease emergency. If this requires collective industry funding, the organisation puts a levy proposal to its members for discussion and should also consult the department on the proposal.

The Australian Government developed the *Levy Principles and Guidelines* to help industry bodies prepare a sound case for a levy or charge to be considered by industry members. An industry submission is assessed against these principles and guidelines and needs to address issues such as:

- the nature and type of levy
- equity
- the efficiency and practicality of the proposed collection system
- support from industry bodies representing potential levy payers, the relevant beneficiaries and other interested Parties
- the extent of any opposition to the levy and why the levy should be imposed in spite of this opposition.

A copy of the *Levy Principles and Guidelines* is at Attachment 2 for information.

(c) Levy mechanisms considered

As indicated above, considerable consultation has continued over many years between industry and government about the best levy mechanism for the horse industry.

Levies imposed on other livestock industries are related to the inputs, outputs or units of value of production of the industry or some other equitable arrangement.

However, the difficulties faced by the horse industry in identifying an equitable levy system were due to the nature of the industry. Unlike other livestock industries, the industry is quite broad based consisting of a large recreation sector as well as a commercial sector involved in livestock breeding and production and racing. The recreation sector includes show jumping and eventing, endurance riding, polo and polocrosse, pony clubs, working horses, breed societies and camp drafting and rodeo interests.

The horse industry considered a large number of levy options. These included levies based or imposed on slaughter, horse shoes, foal registration, mare returns, membership of organisations, entry fees, veterinary vaccines or drugs, horse feeds, horse sales, annual registration of horse trailers or trucks, universal registration of all horses and registration of horse properties.

Difficulties identified with the various options included potential levy collection inefficiencies, many collection points, poor coverage resulting in inequities, arrangements too complicated to administer, leakage and lack of specificity.

The AHIC accepted that the nature of the industry was such that a levy system that was equitable in absolute terms was not possible and that some horse owners and even sectors would not be "captured" by any single levy mechanisms. These concerns led to a proposal to use a suite of three levies to expand the coverage of the industry and improve equity between horse owning potential levy payers.

After much consideration, the AHIC's submission of November 2006 on behalf of the three peak national representative horse industry bodies recommended that a levy on the initial registration of a horse was the most equitable.

7. Nature of proposed horse levy regulations

(a) Reflect legislation and industry submission

The horse disease levy Bills provide for regulations which will be needed to implement arrangements to give effect to the introduction of a levy and reflect the primary legislation and be consistent with the industry's submission.

Legal advice from the Australian Government Solicitor has confirmed that regulations will only give effect to the provisions of the Bills and cannot go beyond the scope of the Bills, i.e. a levy on the initial registration of a horse.

For example, the regulations will need to list or specify:

- the registration bodies that will collect the horse disease levy
- the operative levy rate (initially at zero)
- exemptions for payment of levy—for example, this could provide for levy not being payable where the registration body registers less than 20 horses
- what a levy year is
- when levy is due for payment
- who must lodge a return
- when a return must be lodged
- what must be included in a return
- what records must be kept.

(b) Consultation with industry

The Bills require the Minister to take into account any relevant recommendations made to him by a horse industry body before the Governor-General makes regulations under the Acts if promulgated.

It will be necessary to have extensive consultations with industry when developing regulations to ensure a levy system is as equitable as possible and meets the industry's wishes. Broad industry support for the levy system is needed if the arrangements are to work. For example, the horse registration bodies to be specified under the regulations will be determined in consultation with the horse industry to ensure that the arrangements are broad-based, fair and equitable.

The primary consultation with industry on the development of the regulations will be with the three peak national representative horse industry bodies. Consultations with other representative industry bodies and individuals will be undertaken as far as is practicable.

It will also be necessary to meet with all proposed horse registration bodies to assist them with the development of levy collection systems, records and returns.

(c) Not retrospective; cost-effective collection

The horse disease levy is not retrospective. It is proposed to be imposed on future horse registrations.

The *Levy Principles and Guidelines* state that the levy collection system must be efficient and practical. It must impose the lowest possible 'red tape' impact on business and must satisfy transparency and accountability.

The industry has recognised that horse owners registering their horse with small breed societies cannot cost effectively be captured by their proposed horse registration scheme.

It is also acknowledged that owners of horses that never register with a society would not contribute directly to the cost of an EAD response other than in the sense that an additional cost burden is applied to the industry and over a number of years can be expected to become part of the cost structure of the industry.

(d) Only state/territories with power for compulsory registration

In discussions with the department on 19 June 2008, the ARB requested that a study be conducted with the primary aim of identifying the size of the horse community and how many horses would be eligible for a levy (from birth/foals), comparing the level of levy revenue that would be collected under the current proposal of initial registration of horses to the levy collections if a compulsory registration scheme were to be implemented.

To give effect to the ARB concerns, the horse disease response levy would need to be imposed as a compulsory registration. However, under the Horse Disease Response Levy Bill, it is not possible to make the registration of a horse compulsory. Only state and territory governments have the power to impose compulsory animal registrations.

Animal Health Committee (AHC) is currently examining the issue of horse registration, including a mandatory nationally consistent policy of horse property registration as well as a voluntary system of horse event registration. AHC is chaired by Australia's Chief Veterinary Officer (CVO) and includes all state and territory CVOs. If AHC agrees on a national approach, the horse industry will be consulted on how these arrangements may affect any horse disease levy arrangements.

8. Concluding remarks

The Horse Disease Response Levy Bills were drafted to give effect to the horse industry's levy submission of November 2006 to impose a levy on the initial registration of horses. The industry's submission was made by the Australian Horse

Industry Council (AHIC) on behalf of AHIC, Harness Racing Australia (HRA) (formerly Australian Harness Racing Council) and the Australian Racing Board (ARB).

The industry's levy submission was assessed against the government's *Levy Principles and Guidelines* and meets these requirements.

The Bills presently before the Parliament are supported by the three peak national representative horse industry bodies, the AHIC, the HRA and the ARB. This has been confirmed orally and in writing by these bodies a number of times during 2008 and more recently before the debate on the Bills in the House of Representatives.

While there is opposition from some horse sectors to the proposed levy on the registration of horses as provided for in the Bills, the industry has argued that the legislation should proceed in spite of this opposition in the interests of the broader horse industry.

The horse industry is committed to improved biosecurity arrangements including the introduction of risk mitigation measures to reduce disease threats.

Ratification of the EADRA has been an industry objective for a number of years. Levy arrangements for the horse industry will enable this to happen. It will provide the protection the industry has been seeking to threats from emergency animal diseases that could otherwise result in the industry having to bear significant ongoing management costs if these diseases became endemic.

ATTACHMENT 1

EMERGENCY EQUINE DISEASES

The emergency animal diseases (EADs) covered under the EADRA which may affect horses are as follows:

Category 1
- rabies
- Japanese encephalitis
- Western, Eastern and Venezuelan equine encephalomyelitis
- Nipah virus

Category 2
- Hendra virus
- glanders
- screw worm fly
- vesicular stomatitis

Category 3
- African horse sickness
- anthrax (major outbreaks)
- encephalitides (tick-borne)

Category 4
- Borna disease
- contagious equine metritis
- dourine
- epizootic lymphangitis
- equine babesiosis
- equine encephalosis
- equine influenza
- Getah virus
- Potomac fever
- surra

A significant horse disease not covered under the EADRA is West Nile virus disease.