

# Agricultural Livestock (Disease Control Funding) Act 1998 No 139

[1998-139]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Biosecurity Act 2015 No 24](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2015 No 58](#) (not commenced — to commence on 15.1.2016)

### Authorisation

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# Agricultural Livestock (Disease Control Funding) Act 1998 No 139



New South Wales

An Act to assist agricultural industries to provide and fund services to control diseases in livestock; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Agricultural Livestock (Disease Control Funding) Act 1998*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

In this Act:

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

**carrying capacity** has the same meaning as **notional carrying capacity** has in the *Local Land Services Regulation 2014*.

**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.

**Department** means the Department of Industry and Investment.

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

**Director-General** means the Director-General of the Department.

**disease** means any disease within the meaning of the [Stock Diseases Act 1923](#) or any emergency animal disease within the meaning of the [Animal Diseases \(Emergency Outbreaks\) Act 1991](#).

**disease control program**—see section 5.

**exercise** a function includes perform a duty.

**financial year** means the year commencing 1 July.

**function** includes a power, authority or duty.

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

**industry advisory committee** means a committee established under section 8.

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

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

**levy period**—see section 15.

**livestock** means any stock within the meaning of the [Stock Diseases Act 1923](#).

**livestock producer** means a person:

- (a) who raises livestock on the person's own behalf, or
- (b) on whose behalf livestock is raised, or
- (c) who is a party to a share-farming or partnership agreement under which livestock is raised.

**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.

**occupier** has the same meaning as in the [Local Land Services Act 2013](#).

**ratable land** has the same meaning as **rateable land** has in the [Local Land Services Act 2013](#).

**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.

#### 4 Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

## Part 2 Disease control programs

### 5 Nature of disease control program

- (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.
- (2) Any such program extends (without limitation) to the following:
  - (a) measures to detect the presence of the disease in livestock,
  - (b) measures to control the disease,
  - (c) research into the disease,
  - (d) measures to assist livestock producers adversely affected by the disease.
- (3) Any such program may be limited to this State or may be a part of a program in other parts of Australia or in other countries.

### 6 Approval of funding under this Act for disease control program

- (1) The Minister may approve the funding under this Act of a disease control program with respect to a particular disease.
- (2) The Minister may give such an approval if the Minister has consulted representatives of producers of livestock liable to be infected by the disease and is satisfied that:
  - (a) the disease is a significant risk to the livelihood of those livestock producers, and

- (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
  - (b) the disease control program is being provided or supported by the relevant sector of the agricultural industry, and
  - (c) the funding of the disease control program under this Act is appropriate in order to assist that sector of the agricultural industry to provide the program.
- (3) Any such approval is to be given by an order of the Minister published in the Gazette.
- (4) While any such approval remains in force:
- (a) the program is a **designated disease control program** for the purposes of this Act, and
  - (b) the disease is a **designated disease** for the purposes of this Act, and
  - (c) the producers of livestock liable to be infected by the disease are **designated livestock producers** for the purposes of this Act.
- (5) A statement in an order giving any such approval that the Minister has complied with the requirements of subsection (2) is conclusive evidence of compliance with those requirements.

## **7 Standing Disease Control Advisory Committee**

- (1) The Minister is to establish a Standing Disease Control Advisory Committee.
- (2) The Committee is to consist of not fewer than 5 members, including:
- (a) a person appointed by the Minister, who is to be the Chairperson of the Committee, and
  - (b) at least 2 members appointed by the Minister from a panel of at least 5 livestock producers nominated by the NSW Farmers' Association or another affiliated organisation chosen by the Minister that represents livestock producers, and
  - (c) at least one member appointed by the Minister from a panel of at least 3 persons nominated by Local Land Services, and
  - (d) a nominee of the Director-General.

A majority of the members of the Committee is to comprise members who are livestock producers.

- (3) The functions of the Committee are as follows:
- (a) to advise the Minister on the establishment of disease control programs that are to be funded under this Act,



(b) to advise the Minister on the disposal of any surplus amount in an industry fund after the provision of the relevant disease control program for which the fund was established.

(4) Any such surplus amount may be disposed of by the Minister for the benefit of the livestock industry concerned having regard to the advice of the Committee.

## **8 Industry advisory committees**

(1) The Minister is to establish an industry advisory committee for each designated disease control program.

(2) An industry advisory committee is to be called the “[*name of designated disease*] industry advisory committee”.

(3) An industry advisory committee is to consist of:

(a) a person appointed by the Minister, who is to be the Chairperson of the committee, and

(b) at least one member appointed by the Minister from a panel of a least 3 designated livestock producers nominated by the NSW Farmers’ Association or another affiliated organisation chosen by the Minister that represents producers in the relevant livestock industry, and

(c) at least one member appointed by the Minister from a panel of at least 3 persons nominated by Local Land Services, and

(d) such other members (being not fewer than two) as the Minister determines after consultation with representatives of the designated livestock producers concerned.

A majority of the members of a committee is to comprise members who are designated livestock producers.

(4) The functions of an industry advisory committee are as follows:

(a) to advise the Minister on the funding of the designated disease control program, including:

(i) the services to be funded, and

(ii) the policies and priorities for expenditure from the industry funds established in respect of the designated disease control program,

(iii) any industry levy that may be imposed under this Act,

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

(b) such other functions with respect to the designated disease control program as the Minister directs.

(5) Schedule 1 has effect with respect to the constitution and procedure of an industry advisory committee.

## **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 Establishment of industry fund for designated disease control programs**

- (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.
- (2) An industry fund is to be called the “[*name of designated disease*] industry fund”.
- (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.
- (3) Money in an industry fund is under the control of the fund administrator and can be expended by the fund administrator only for the purposes authorised by this Act.

## **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.

## **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.

## **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:
  - (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.

## **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, Local Land Services, 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.

## **Division 3 Industry levy based funding**

### **13 Imposition of industry levy**

- (1) The Minister may (but need not) authorise the imposition of an industry levy to assist the funding of any designated disease control program.
- (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.
- (3) Any such authorisation is to be given by an order of the Minister published in the Gazette.
- (4) The Director-General is to impose industry levies in accordance with this Act if authorised to do so by any such order of the Minister.
- (5) A statement in an order giving any such authorisation that the Minister has complied with the requirement of subsection (2) is conclusive evidence of compliance with that requirement.
- (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 giving any such authorisation in the same way as they apply to a statutory rule.

### **14 Liability to pay industry levy**

- (1) An industry levy is a rate levied on the occupiers of all ratable land on which livestock in respect of the designated disease control program concerned is raised by or on behalf of designated livestock producers. The rate is to be levied according to the carrying capacity of the land.
- (2), (3) (Repealed)



## **15 Levy period**

- (1) An industry levy is payable in respect of each financial year.
- (2) However, the Minister may, by the order imposing the levy or by a subsequent order published in the Gazette, direct that the levy is payable in respect of a different period.
- (3) The period in respect of which the levy is payable is called the **levy period** for the purposes of this Act.

## **16 Amount of industry levy**

- (1) The amount of an industry levy is to be calculated by the Director-General at the rate fixed by the Minister in the order authorising the levy or in a subsequent order of the Minister published in the Gazette.
  - (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.
- (2) The rate fixed by the Minister may provide for a minimum or maximum amount of levy to be payable, or for no amount to be payable if the carrying capacity of the ratable land does not exceed a minimum carrying capacity.

## **Part 4**

### **17-20 (Repealed)**

## **Part 5 Collection of industry levies**

### **21 Application**

This Part applies to the collection of industry levies imposed by the Director-General under Division 3 of Part 3.

### **22 Obtaining information from Local Land Services**

- (1) The Director-General may, by notice in writing, require Local Land Services to supply to the Director-General such information with respect to ratable land and other matters as the Director-General requires for the purposes of the imposition and

collection of industry levies.

- (2) Local Land Services is required to supply that information within the time and in the form required by the Director-General despite any restriction imposed by law on the disclosure of that information by Local Land Services.

### **23 Local Land Services required to collect industry levies**

- (1) The Director-General may, by notice in writing, direct Local Land Services to collect the industry levies imposed by the Director-General in respect of ratable land.
- (2) Local Land Services is to collect any such industry levy in the same manner as it collects a rate imposed under the *Local Land Services Act 2013*.
- (3) Any amount collected by Local Land Services is to be paid to the Director-General within such time and in such manner as the Director-General directs.
- (4) Local Land Services is to be paid such amount for the collection of industry levies as the Minister determines having regard to the advice of Local Land Services and the relevant industry advisory committee. The arrangements for that payment may include the retention by Local Land Services of a percentage of industry levies collected by Local Land Services.
- (5) A failure by Local Land Services to collect or pay the levy, or to comply with any requirement made by or under this Act with respect to the levy, is taken to be a contravention by Local Land Services of the *Local Land Services Act 2013* and may be dealt with accordingly.

### **24 Application of *Local Land Services Act 2013***

- (1) The *Local Land Services Act 2013* applies, for the purposes of the collection of an industry levy, as if the industry levy were a rate imposed by Local Land Services under that Act.
- (2) That Act so applies with any necessary modifications and with such modifications as are prescribed by this Part or the regulations.
- (3) The regulations may provide that a function exercisable by Local Land Services under that Act may be exercised by the Director-General in connection with industry levies under this Act.
- (4) In this section, **modifications** includes additions and omissions.

## **Part 5A Administrative review of funding decisions by Civil and Administrative Tribunal**

## **25 Administrative review of industry levy based funding decisions**

- (1) A person who is required to pay an industry levy under this Act may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions of the Director-General with respect to the levy:
  - (a) a decision that the person is liable to pay the levy,
  - (b) a decision as to the amount of the levy that the person is liable to pay,
  - (c) (Repealed)
- (2) A decision is not subject to administrative review in an application under this section on the grounds of a dispute about the carrying capacity of ratable land.

## **25A Administrative 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 Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* 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).

## **Part 6 General provisions relating to industry funds**

### **26 Investment of money in industry funds**

- (1) The fund administrator for an industry fund is (subject to any directions of the

Minister) to invest money in the fund:

(a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or

(b) if that Act does not confer power on the fund administrator to invest the money—in any manner approved by the Treasurer.

(2) The proceeds of investment of money in an industry fund are to be paid into that fund.

(3) Money in all or any of the industry funds may be invested as a common pool. The proceeds of investment are to be distributed among the industry funds that contributed money to the common pool according to the amount contributed.

#### **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.

#### **27 Internal loans between industry funds**

(1) Money held in any industry fund (being money that is not yet required for the purposes of that fund) may be lent (by way of an internal loan) to any other industry fund if the Minister approves.

(2) (Repealed)

(3) The terms of the loan (including the time for repayment and any additional amount, in the nature of interest, that is to be paid) are to be as determined by the Minister.

(4) Before any such loan is made, the Minister is to have regard to any advice of the industry advisory committees concerned.

#### **28 Appointment of agents to administer expenditure from industry funds**

The Director-General may appoint the Rural Assistance Authority, or any other body, as an agent to administer any expenditure from an industry fund for which the Director-General is fund administrator.

#### **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.

### **29 Audit of industry funds**

- (1) The Auditor-General is to inspect and audit the accounts and records of financial transactions of the industry funds.
- (2) Any such inspection and audit is to be conducted under section 45 of the *Public Finance and Audit Act 1983*.

### **30 Annual reports by Director-General**

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Director-General must prepare and forward to the Minister a report on the operation of industry funds under this Act. The report is to include any report of the Auditor-General under section 45 of the *Public Finance and Audit Act 1983* with respect to the audit of the industry funds for the reporting year.
- (2) The Minister must cause each such report to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) A report under this section need not be separately prepared but may form part of the report prepared for the Department under the *Annual Reports (Departments) Act 1985*.

### **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.
- (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.

## **Part 7 Miscellaneous**

### **31 Act to bind the Crown**

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.
- (2) However, nothing in this Act renders the Director-General or the Crown liable to prosecution for an offence.

**Note—**

This section does not make the Crown liable to pay an industry levy because the levy is only payable in respect of ratable land (as defined in section 3).

### **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.

### **32 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.

#### **32A Delegation**

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to any member of staff of the Department.

### **33 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (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.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

### **34 Savings, transitional and other provisions**

Schedule 2 has effect.

### **35 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Constitution and procedure of industry advisory**

## **committees**

(Section 8)

### **1 Definitions**

In this Schedule:

**Chairperson** means the Chairperson of an industry advisory committee.

**member** means any member of an industry advisory committee.

### **2 Terms of office of members**

Subject to this Schedule, a member holds office for such period as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Allowances**

A member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

### **4 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person:
  - (a) has all the functions of the member and is taken to be a member, and
  - (b) is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or



- (e) is absent from 4 consecutive meetings of the industry advisory committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the committee or unless the member is excused by the committee for having been absent from those meetings.

(2) The Minister may at any time remove a member from office.

## **6 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Effect of certain other Acts**

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **8 General procedure**

The procedure for the calling of meetings of an industry advisory committee and for the conduct of business at those meetings is, subject to this Act, the regulations and any direction of the Minister, to be as determined by the committee.

## **9 Quorum**

The quorum for a meeting of an industry advisory committee is a majority of its members.

## **10 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members present to chair the meeting) is to preside at a meeting of an industry advisory committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **11 Voting**

A decision supported by a majority of the votes cast at a meeting of an industry advisory committee at which a quorum is present is the decision of the committee.

## **12 Transaction of business outside meetings or by telephone**

- (1) An industry advisory committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the committee.
- (2) An industry advisory committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **13 First meeting**

The Minister may call the first meeting of an industry advisory committee in such manner as the Minister thinks fit.

## **Schedule 2 Savings, transitional and other provisions**

(Section 34)

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

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

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**2 Amendment of this Act following commencement of [Rural Lands Protection Act 1998](#)**

On the commencement of the [Rural Lands Protection Act 1998](#), this Act is amended as follows:

- (a) by omitting from the definition of **occupier** in section 3 and from sections 23 and 24 “[Rural Lands Protection Act 1989](#)” wherever occurring and by inserting instead “[Rural Lands Protection Act 1998](#)”,
- (b) by omitting the definitions of **carrying capacity** and **ratable land** in section 3 and by inserting instead the following definitions:

**carrying capacity** means notional carrying capacity within the meaning of Part 7 of the [Rural Lands Protection Act 1998](#).

**ratable land** means rateable land within the meaning of section 60 of the [Rural Lands Protection Act 1998](#).

**Editorial note—**

Commencement of the [Rural Lands Protection Act 1998](#) for the purposes of this clause, 28.9.2001.

**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.