

## EADRA GUIDANCE DOCUMENT

### Interpretation of Compensation and Cost Sharing in the Emergency Animal Disease Response Agreement

#### EXECUTIVE SUMMARY

- **“Compensation” is determined by state/territory legislation and processes**
- **Cost Sharing of response costs, including “Compensation” is:**
  - **requested by the combat jurisdiction and detailed in the EADRP**
  - **recommended by CCEAD**
  - **approved by NMG**
  - **managed and administered by AHA.**

#### 1. INTRODUCTION

This guidance document is provided to Parties to the *Government and Livestock Industry Cost Sharing Deed in Respect of Emergency Animal Disease Responses* (“EAD Response Agreement”) to clarify the interpretation and achieve a common understanding of the terminology used in the EADRA.

This guidance document should be read in conjunction with the EADRA. If there is any conflict between the EADRA and this guidance document then the provisions of the EADRA will take precedence over the guidance document.

#### 2. PURPOSE OF THIS GUIDANCE DOCUMENT

The purpose of this guidance document is to provide an interpretation of the meaning and intent of the terms “Compensation” and “Cost Sharing” when used in connection with the EADRA and their use in the control of an EAD.

Clauses and sections of the EADRA that are relevant to Compensation and Cost Sharing include but are not restricted to:

- |                       |                                     |
|-----------------------|-------------------------------------|
| a. Clause 2.1         | Definitions                         |
| b. Clause 10          | Principles of Cost Sharing          |
| c. Clause 11          | Funding an EADRP                    |
| d. Clause 12          | Consultations                       |
| e. Schedule 6         | Cost Sharing                        |
| f. Schedule 7         | Funding of cost sharing obligations |
| g. Schedule 11 Part 1 | Efficiency assessment               |

### 3. BACKGROUND

The terms “Compensation / compensation” and “Cost sharing / cost sharing” are used frequently in the EADRA. It is a common convention in legal documents to use a capital first letter to indicate that a word is being used in the sense that is defined in the document’s definition clause (e.g. **clause 2.1** of the EADRA). When a word is used with a small first letter, it indicates that it is being used in the sense that is defined in a standard dictionary or in ordinary speech or usage.

The relationship between Compensation and Cost Sharing can be a source of misinterpretation and misunderstanding.

### 4. INTERPRETATION

As defined (**clause 2.1**) In the EADRA, “**Compensation**” has the meaning given by applicable legislation in any particular State or Territory from time to time.

As defined (**clause 2.1**) in the EADRA, “**Cost Sharing**” is “the process of Government and Industry Parties’ proportional funding of an EADRP as described in this Deed.”

The payment of compensation is a matter that is determined and managed according to the relevant jurisdictional legislation and processes which vary between states and territories and the Australian Government. Information on the current jurisdictional legislation that determines when, where, how, to whom and how much compensation is payable can be found by contacting the relevant jurisdictional authority or the Australian Government Department of Agriculture.

The chief veterinary officer (CVO) in the state or territory in which the outbreak occurs is responsible for developing an EAD Response Plan (EADRP) for a particular outbreak. **Clause 7.1 (a) (v)** of the Deed requires that the EADRP describes which response costs (including compensation, if appropriate) are to be cost shared.

The Consultative Committee on Emergency Animal Disease (CCEAD), convened for the incident, assesses the EADRP drawn up by the affected jurisdiction’s CVO for technical soundness and consistency with AUSVETPLAN and endorses it or seeks modifications. The overall operational management of the incident rests with the CVO of the affected jurisdiction, with oversight by the CCEAD.

The National EAD Management Group (NMG), also convened for the specific incident, decides on whether cost sharing will be invoked (following advice from the CCEAD) and manages the national policy and resourcing needs. If cost sharing of the costs of a response to an EAD is requested by the combat jurisdiction and agreed by NMG (on the advice of CCEAD), then cost sharing under the EADRA is activated.

The EADRA does not determine whether compensation will be paid. This is always determined by jurisdictional legislation and processes. The EADRA does determine how the cost sharing of response costs (including compensation, if appropriate) will be determined (**clause 10 and Schedule 6**).

If any individual, group or organisation wishes to discover whether a particular item, livestock or property is compensable, they would need to approach the appropriate jurisdictional authority.

Once it has been determined that an item, livestock or property is compensable, it can be included in the EADRP and identified as a compensable item, and NMG can then consider approving the cost sharing of the compensation.

It should be noted that it is also possible that compensation may be required under jurisdictional legislation but NMG may decide not to cost share the compensation. In this case, the combat jurisdiction will be liable for all the costs of compensation or, alternatively, not to share aspects of the compensation.

States may be required, under their legislation or for other reasons, to provide payments that would not be eligible for cost sharing under the EADRA, and such payments would not form part of the cost shared expenditure.

**Clauses 13.1(b) and (c)** of the EADRA also make allowances for reimbursement and cost sharing of money spent by any other Party in respect of the EADRP.

The EADRA and most jurisdictional legislation also provide for exceptions to the payment of compensation. In general, these include loss of profit, breach of contract, loss of production and consequential loss (**Schedule 6 Part 3.4**). Compensation may also be withheld if an owner's actions or lack of action have contributed to the spread of an EAD (e.g. failure to timeously report an EAD or contravention of movement controls), or if an owner has been convicted for a breach of jurisdictional legislation or regulations and/or fraud relating to an EAD (**Schedule 6 Part 3.4**). The exclusions in the EADRA relate to the cost sharing of compensation and if jurisdictional legislation excludes compensation then – by definition – cost sharing of compensation cannot be considered.

However, **clause 10.6 (d)**<sup>1</sup> of the EADRA could still be invoked, provided that all the Relevant Parties, including the combat jurisdiction, are in agreement.

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<sup>1</sup> Clause 10.6 of the EADRA states "The principles for Cost Sharing will also apply to: .... (d) other costs as agreed by the Relevant Parties"