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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HORSE DISEASE RESPONSE LEVY COLLECTION BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for Agriculture, Fisheries and Forestry,
Senator the Hon. Joe Ludwig)

HORSE DISEASE RESPONSE LEVY COLLECTION BILL 2011

OUTLINE

1. The purpose of this Bill is to give the Commonwealth authority to collect and administer levies on manufactured horse feed and worm treatments for horses.
2. There are two companion Bills relating to this Bill: the Horse Disease Response Levy Bill 2011, which imposes the levies, and the Horse Disease Response Levy (Consequential Amendments) Bill 2011, which allows for funds raised by the levies to be appropriated to the Australian Animal Health Council (also known as Animal Health Australia). All three Bills are required to establish the levy funding mechanism requested by the horse industry and enable it to meet its obligations as an Emergency Animal Disease Response Agreement (EADR Agreement) signatory. All three Bills are not retrospective in effect.
3. This Bill provides for funds raised through the levies to initially flow to the Commonwealth's Consolidated Revenue Fund and subsequently be appropriated to Animal Health Australia, which will manage the funds on behalf of the horse industry. It also includes provision for the Commonwealth to recover the costs of collecting and administering the levies.
4. Included in this Bill are provisions to impose penalties for unpaid levies and to allow the remission of any penalties for late payments. The Bill also allows for the Commonwealth to recover levies that are due and to make refunds when necessary. This is consistent with provisions in other existing levy collection legislation.
5. This Bill will also allow information and documents to be collected as specified by the Commonwealth, and includes standard entry, search and seizure powers. It also includes a strict liability offence provision should a person fail or refuse to comply with a request for information. The strict liability offence provision is necessary to ensure that the Commonwealth's levy collection requirements, as outlined in the Bill, are adhered to. These provisions are consistent with other existing levy legislation.
6. This Bill includes provision for periodic review of the levy mechanisms. It requires the Minister to ensure that the mechanisms are reviewed every 5 years, unless the levies are active at the time the review is due. If this occurs, the Minister has the option to postpone the review until the levies are set back to zero. The Minister will seek advice from affected parties before determining whether the review should be postponed.

FINANCIAL IMPACT STATEMENT

7. There is no financial impact on the Commonwealth unless an emergency animal disease outbreak affecting horses occurs, and it is agreed that a national response is required. Should such an event occur, there will be a financial impact on the Commonwealth, in that it will initially meet the horse industry's costs of the response under the EADR Agreement. However, this money will be repaid through funds raised by the levies, and will include recovery of the Commonwealth's costs in collecting or recovering the levies.

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NOTES ON CLAUSES

Introductory note

Emergency animal disease response levies imposed on livestock other than horses are collected under the authority of the *Primary Industries Levies and Charges Collection Act 1991*. This Bill contains similar provisions so that all industries with an emergency animal disease response levy in place are treated with consistency.

Clause 1: Short Title

This clause is a formal provision specifying that the short title of the Act may be cited as the *Horse Disease Response Levy Collection Act 2011*.

Clause 2: Commencement

The commencement date in this clause provides that sections 1 and 2 of the Act will commence when the Act receives Royal Assent, and that sections 3 to 59 will commence on the start of the day the Act receives Royal Assent or the commencement of the *Horse Disease Response Levy Act 2011*, whichever happens later. However, this Act will not commence if the *Horse Disease Response Levy Act 2011* does not commence.

Clause 3: Definitions

Authorised person – this definition refers to a person appointed by the Secretary of the Department to be an authorised person for the purposes of this Bill.

Damage – this definition clarifies that damage in relation to data includes erasure of data or addition of other data.

EADR Agreement – this definition is a reference to the government and livestock industry cost sharing deed in respect of emergency animal disease responses, also known as the Emergency Animal Disease Response Agreement. The EADR Agreement commenced in March 2002 and is an agreement between the Commonwealth, state and territory governments and livestock industries on how to manage the cost and responsibility for an emergency response to an animal disease outbreak. The EADR Agreement is available on Animal Health Australia's website at www.animalhealthaustralia.com.au.

Late payment penalty – this definition refers to a penalty imposed on a levy that is unpaid after it is due for payment.

Levy – this definition refers to levy on manufactured horse feed and worm treatments for horses as defined in the *Horse Disease Response Levy Act 2011*.

Levy law – this definition refers to Part 2 of this Bill, the regulations, the *Horse Disease Response Levy Act 2011* and the regulations under that Act.

Manufactured feed – this definition was developed in conjunction with the horse industry. It indicates what is considered manufactured horse feed for the purposes of this Bill. This definition also allows for processes to be prescribed by regulations. This is to ensure that this Bill has the flexibility to recognise manufactured horse feed as feed intended for horses that is processed in ways that may be developed or used in the future.

Monitoring powers – this definition refers to the powers given to an authorised person under sections 14, 15 and 16 of this Bill. These powers are necessary to enable an authorised person to carry out functions and duties as required by this Bill. This includes allowing an officer of the Commonwealth to enter and search premises, vehicles, vessels and aircraft, by consent of the occupier or under warrant, and, if necessary, take possession of records or other things relating to the administration of payment of levies. Removal of documents is usually a last recourse where examination of the material on-site is not possible due to its volume or complexity. The provisions for search, entry and seizure are broadly consistent with those for other livestock levies and are included in the Bill to ensure all industries with an emergency response levy in place are treated equally.

Monitoring warrant – this definition refers to a warrant issued by a magistrate to an authorising person in relation to premises, as specified in section 33.

Person assisting – this definition refers to a person assisting an authorised person in exercising powers or performing functions of duties under this Bill, as specified in section 17.

Premises – this definition specifies what is considered to be premises for the purposes of this Bill.

Secretary – this definition refers to the Secretary of the Department that is responsible for administering this Bill.

Worm treatment – this definition was developed in conjunction with the horse industry. As these types of veterinary chemical products cannot be used in Australia without being approved by the Australian Pesticides and Veterinary Medicines Authority for use to treat internal parasites in horses and being either registered chemical products or registered listed chemical products under the Agvet Codes, this definition is intended to ensure that all such products are captured under this Bill.

Clause 4: This Act binds the Crown

The clause provides that this Bill binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

Part 2 – Collection of levy

Clause 5: When levy is due for payment

This clause indicates that the due date/s for levy payments to the Commonwealth will be set by regulations.

Clause 6: Recovery of levy etc.

This clause prescribes that levy payments and associated late payment penalty can be recovered as debts to the Commonwealth.

Clause 7: Penalty for late payment of levy

This clause prescribes that a levy payer who pays levy after the due date will incur a late payment penalty of two per cent per month, compounding, on any outstanding levy and penalty until the levy debt is paid.

Clause 8: Remission of late payment penalty

This clause provides that the Secretary will have the authority to remit a late payment penalty in part or in full. This is a discretionary decision but remission requests would be considered against a set of criteria to ensure the consistent treatment of such requests.

Clause 9: Review of refusal to remit late payment penalty

This clause provides that a levy payer who has had a request for the remission of penalty refused by the Secretary can seek a review of the Secretary's decision. If the levy payer is not satisfied with the outcome of the review they can seek a review of the review decision by the Administrative Appeals Tribunal.

Clause 10: Overpayments of levy and late payment penalty

This clause provides for a refund of an overpayment of levy or penalty by either the Commonwealth or Animal Health Australia. If the Commonwealth has paid the refund and has also paid to Animal Health Australia an amount equal to the overpayment, the Commonwealth can recover that amount from Animal Health Australia.

Part 3 – Investigation

Division 1 – Requirement to give information of documents

Clause 11: Powers to seek information or documents

This clause provides for the Secretary to give a person written notice to provide information relevant to the operation of this Act, as specified in the notice and within a reasonable period. The notice can also request verification of this information by statutory declaration. This power would be used to identify whether that person, or

another person, has a levy liability, the amount of that liability and any other information that would ensure compliance with is relevant to the operation of this Bill.

Clause 12: Offences of failing to give information, document or return

This clause provides for commission of an offence and a financial penalty (60 penalty units) to be imposed on a person who refuses or fails to give information, a document or a return in response to a notice under clause 11. Clause 12 is consistent with similar provisions in the *Primary Industries Levies and Charges Collection Act 1991*.

The offence created is an offence of strict liability. Setting the offence as one of strict liability complies with the principles specified in section 4.5 of the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

Clause 12 also provides that a response to a notice under clause 11 may be used to prove an offence:

- under clause 12, and/or
- Division 137 of the *Criminal Code* (providing false or misleading information or documents).

The privilege to protect against self-incrimination is abrogated in relation to a person complying with a notice issued under clause 11. Unless this privilege against self-incrimination is abrogated, a person may claim the privilege to resist producing documents or giving information that may be relevant to determining accurately the person's liability for levy or late payment penalty.

Clause 12 does provide for a defence of "reasonable excuse" in relation to a person not complying with a notice under clause 11.

Division 2 – Monitoring by authorised persons

Subdivision A – Monitoring powers

Clause 13: Authorised person may enter premises by consent or under warrant

This clause allows an authorised person to enter premises by consent or under warrant. The Commonwealth requires this power to undertake activities, including routine record inspections, to ensure levy payers' compliance with the Bill.

Clause 14: Monitoring powers of authorised persons

This clause grants an authorised person monitoring powers, including seizure powers. These powers are necessary to enable the Commonwealth to undertake activities to ensure levy payers comply with the Bill. These provisions are consistent with similar provisions in the *Primary Industries Levies and Charges Collection Act 1991*.

Clause 15: Operating electronic equipment

This clause supplements clause 14 by providing further information on the operating of electronic equipment by authorised persons while exercising monitoring powers.

Clause 16: Securing evidence of the contravention of a related provision

This clause allows an authorised person to secure evidence in certain circumstances where the authorised person believes the evidence could be concealed, lost or destroyed before a warrant to seize the evidence is obtained. This power is needed in addition to the seizure powers in clause 14 as a situation may arise where an authorised person may need to merely secure evidence, or may need to secure evidence before seizing it.

Clause 17: Persons assisting authorised persons

This clause provides for an authorised person to be assisted by other persons whose powers would be considered for all purposes to have been exercised by the authorised person. This will allow the authorised person, in exercising their powers, to seek assistance from other persons as necessary. Subclause (5) of this clause is included to assist readers, to clarify that such an instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Clause 18: Authorised person may ask questions and seek production of documents

This clause provides for an authorised person who enters premises to ask questions and seek the production of documents to assist with determining compliance with the levy legislation. If the authorised person enters premises under a warrant, a person commits an offence if they do not comply with the authorised person's request. A penalty of 30 units applies to this offence.

Subdivision B – Obligations and incidental powers of authorised persons

Clause 19: Consent

This clause provides that an authorised person must inform an occupier of premises that the occupier can refuse consent to enter premises and that if consent is withdrawn at any time, the authorised person must leave the premises.

Clause 20: Announcement before entry under warrant

This clause sets out the announcement requirements for an authorised person before they enter premises under a monitoring warrant, including the presentation of their identity card and giving any persons at the premises the opportunity to allow entry to the premises.

If the unauthorised person is unable to make an announcement prior to entering premises, they must show their identity card to an occupier or other person as soon as practicable.

This clause does not apply if an authorised person believes on reasonable grounds that immediate entry to the premises is warranted, either to ensure the safety of a person or to ensure the execution of the warrant is not frustrated.

Clause 21: Authorised person to be in possession of warrant

An authorised person executing a monitoring warrant must be in possession of the warrant or a copy of the warrant.

Clause 22: Details of warrant etc. to be given to occupier

If an occupier of premises, or another person who represents the occupier, is present at the premises when a monitoring warrant is executed, the authorised person must, as soon as practicable, provide a copy of the warrant to the occupier or other person and inform them of their rights and responsibilities.

Clause 23: Expert assistance to operate electronic equipment

This clause provides for electronic equipment, at premises to which a monitoring warrant applies, to be secured by an authorised person if expert assistance is required to operate electronic equipment that may hold data relevant to determining compliance with levy law. This clause sets conditions on the length of time that equipment may be secured and for notices to the occupier of the premises about this action.

Clause 24: Compensation for damage to electronic equipment

This clause provides for the Commonwealth to pay reasonable compensation to the owner of electronic equipment in certain circumstances if the equipment, data or associated programs are damaged or corrupted.

Subdivision C – Occupier’s rights and responsibilities

Clause 25: Occupier entitled to observe execution of warrant

This clause provides that the occupier of a premises to which a monitoring warrant relates, or their representative, may observe the execution of the warrant, but that this right ceases if the person impedes that execution. This entitlement does not prevent the execution of a warrant at more than one premises at the same time.

Clause 26: Occupier to provide authorised persons with facilities and assistance

This clause provides that the occupier of a premises to which a monitoring warrant relates, or their representative, must provide an authorised person, or a person assisting the authorised person, with all reasonable facilities and assistance for the exercise of their powers. A penalty of 30 penalty units applies if the occupier or their representative does not comply with this provision.

Subdivision D – General provisions relating to seizure

Clause 27: Copies of seized things to be provided

This clause provides that where an authorised person seizes certain things that can be readily copied, the occupier of the premises, or their representative, may request that they are provided with a copy of the thing. The authorised person must comply with the request as soon as practicable unless complying with the request would constitute an offence against Commonwealth law.

Clause 28: Receipts for seized things

This clause provides that an authorised person must provide a receipt for things that are seized under this Bill.

Clause 29: Return of seized things

This clause provides for seized things to be returned under certain circumstances or within certain timeframes to the person from whom they were seized, or to the owner if the first person is not entitled to possess the thing. Exceptions apply if the return would be contrary to a court order, or the thing is forfeited or forfeitable to the Commonwealth, or is the subject of an ownership dispute. The timeframes may not apply in certain circumstances.

Clause 30: Magistrate may permit a thing to be retained

This clause provides for the Secretary to apply to a magistrate to retain a seized thing if it is required as evidence in proceedings relating to levy law. The magistrate may order that the thing be retained for a period of no more than three years.

Clause 31: Disposal of things

This clause provides that where the Secretary has taken reasonable steps to return a seized thing but has been unable to do so, the Secretary may dispose of the thing.

Clause 32: Compensation for acquisition of property

This clause provides that if the disposal of things under clause 31 would result in the acquisition of property other than on just terms, the Commonwealth is to pay reasonable compensation to the person. This clause also provides for the person to institute court proceedings if the Commonwealth and the person do not agree on the amount of compensation.

Subdivision E – Monitoring warrants

Clause 33: Monitoring warrants

This clause provides that an authorised person may apply to a magistrate for a warrant in relation to premises. This clause sets out when a warrant can be issued and the required contents of the warrant.

Subdivision F – Powers of magistrates

Clause 34: Powers of magistrates

This clause provides that the powers conferred on a magistrate under this Bill are conferred in a personal capacity. It also provides that a magistrate exercising a power under this Bill has the same protection and immunity as if the magistrate were exercising that power as a member of the court of which they are a member.

Part 4 – Regular review of levy

Clause 35: Minister to ensure levy is reviewed every 5 years

This clause requires the Minister to ensure that the levy mechanisms are reviewed every 5 years, unless the levies are active at the time the review is due. If this occurs, the Minister has the option to postpone the review until the levies are set back to zero. The Minister will seek advice from affected parties before determining whether the review should be postponed.

Part 5 – Miscellaneous

Clause 36: Disclosure of information

This clause provides for certain information to be released to certain bodies, including horse industry bodies that are a party to the EADR Agreement, Animal Health Australia and other persons as allowed by the Secretary. Examples of other bodies include Commonwealth agencies, such as the Australian Bureau of Statistics or bodies representing levy payers, such as a feed manufacturers' representative body.

Information that could be released could relate to amounts of levy received or receivable by the Commonwealth or the names and contact details of levy payers. Any information released cannot identify how much levy an individual levy payer has paid or is required to pay. These provisions are intended to be consistent with similar provisions in the *Primary Industries Levies and Charges Collection Act 1991*.

Clause 37: Authorised persons

This clause provides that the Secretary may appoint in writing a person, who is appointed or engaged under the *Public Service Act 1999*, as an authorised person.

The Secretary must be satisfied the person has suitable qualifications and experience to properly exercise the powers of an authorised person and that person must comply with any directions by the Secretary. This clause is designed to assist readers and the appointment is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Clause 38: Identity cards for authorised persons

This clause provides that an authorised person must be issued an identity card by the Secretary. The person must carry the card when exercising their powers. If the person ceases to be an authorised person, they must return the identity card. An offence of one penalty unit will apply if the card is not returned other than for the reason that it was lost or destroyed. Strict liability applies to this offence in order to deter people from misrepresenting themselves as authorised persons.

Clause 39: Delegation

This clause provides for the Secretary to delegate in writing all or any of his or her powers under the Bill or its regulations to an APS employee in the Department. Such a delegate is subject to the directions of the Secretary. This clause is designed to assist readers and the delegation is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This authority to delegate is separate from the power to authorise under clause 37.

Clause 40: Regulations

This clause provides for the Governor-General to make regulations for the purposes of this Bill. The regulations may deal with matters relating to: the payment of levy and late payment penalty; record keeping requirements for people required to pay levy; requirements for people to submit returns, information or documents for the purposes of this Bill and for this information to be verified by statutory declaration; and the application of penalties not exceeding 10 penalty units for offences against the regulations.