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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Horse Disease Response Levy Collection Bill 2011**

**No.     , 2011**

*(Agriculture, Fisheries and Forestry)*

**A Bill for an Act to provide for collection and other  
matters relating to horse disease response levy, and  
for related purposes**



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1     **A Bill for an Act to provide for collection and other**  
2     **matters relating to horse disease response levy, and**  
3     **for related purposes**

4     The Parliament of Australia enacts:

5     **Part 1—Preliminary**  
6

7     **1 Short title**

8                     This Act may be cited as the *Horse Disease Response Levy*  
9                     *Collection Act 2011*.

Section 2

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1     **2 Commencement**

2             (1) Each provision of this Act specified in column 1 of the table  
3                 commences, or is taken to have commenced, in accordance with  
4                 column 2 of the table. Any other statement in column 2 has effect  
5                 according to its terms.

6

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>

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1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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2. Sections 3 to 40	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) the commencement of the <i>Horse Disease Response Levy Act 2011</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
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7             Note:         This table relates only to the provisions of this Act as originally  
8                             enacted. It will not be amended to deal with any later amendments of  
9                             this Act.

10            (2) Any information in column 3 of the table is not part of this Act.  
11                 Information may be inserted in this column, or information in it  
12                 may be edited, in any published version of this Act.

13     **3 Definitions**

14             In this Act:

15                 ***authorised person*** means a person appointed under subsection  
16                 37(1) for the purposes of the provision in which the expression  
17                 occurs.

1            **damage**, in relation to data, includes damage by erasure of data or  
2            addition of other data.

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

7            **late payment penalty** means penalty payable under section 7.

8            **levy** means levy imposed by the *Horse Disease Response Levy Act*  
9            *2011*.

10          **levy law** means Part 2 of this Act, the regulations, the *Horse*  
11          *Disease Response Levy Act 2011* and the regulations under that  
12          Act.

13          **manufactured feed** has the same meaning as in the *Horse Disease*  
14          *Response Levy Act 2011*.

15          **monitoring powers** has the meaning given by sections 14, 15 and  
16          16.

17          **monitoring warrant** means a warrant issued under section 33.

18          **person assisting** an authorised person has the meaning given by  
19          section 17.

20          **premises** includes the following:

- 21            (a) a structure, building, vehicle, vessel or aircraft;  
22            (b) a place (whether or not enclosed or built on);  
23            (c) a part of a thing referred to in paragraph (a) or (b).

24          **Secretary** means the Secretary of the Department.

25          **worm treatment** has the same meaning as in the *Horse Disease*  
26          *Response Levy Act 2011*.

#### 27          **4 Act binds Crown**

- 28            (1) This Act binds the Crown in each of its capacities.

**Part 1** Preliminary

Section 4

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- 1                   (2) However, this Act does not make the Crown liable to be prosecuted  
2                   for an offence.  
3



1

**Part 2—Collection of levy**

2

**5 When levy is due for payment**

Amounts of levy are due for payment as prescribed by the regulations.

**6 Recovery of levy etc.**

The Commonwealth may recover amounts of levy that are due for payment and amounts of late payment penalty as debts due to the Commonwealth.

**7 Penalty for late payment of levy**

If any levy remains unpaid after it became due for payment, the person liable to pay the levy must pay the Commonwealth the amount of penalty worked out as follows:

- (a) during the month in which the levy became due for payment the penalty accrues at the rate of 2% a month on the levy due;
- (b) during each later month the amount of penalty is the sum of:
  - (i) each amount of penalty that accrued during a previous month; and
  - (ii) the amount accruing during that month at the rate of 2% a month on the sum of the amount of levy then payable and penalty payable at the end of the previous month.

**8 Remission of late payment penalty**

The Secretary may remit all or part of an amount of late payment penalty.

**9 Review of refusal to remit late payment penalty**

- (1) A person affected by a decision to refuse to remit all or part of an amount under section 8 may request the Secretary to reconsider the decision.

Section 10

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- 1 (2) The request must:  
2 (a) be in writing; and  
3 (b) set out the reasons for making the request; and  
4 (c) be made:  
5 (i) within 28 days after the day on which the person  
6 receives notice of the decision; or  
7 (ii) within such further period as the Secretary allows.
- 8 (3) Within 45 days after receiving the request, the Secretary must  
9 reconsider the decision and may affirm, revoke or vary the  
10 decision, as the Secretary thinks fit.
- 11 (4) If the Secretary affirms, revokes or varies a decision, the Secretary  
12 must inform the person who made the request of the result of the  
13 reconsideration of the decision and give the reasons for the  
14 affirmation, revocation or variation.
- 15 (5) An application may be made to the Administrative Appeals  
16 Tribunal for review of the Secretary's decision under  
17 subsection (3) affirming, varying or revoking a decision to refuse  
18 to remit all or part of an amount under section 8.

19 **10 Overpayments of levy and late payment penalty**

- 20 (1) If an amount of levy or late payment penalty has been overpaid, the  
21 Commonwealth must refund the overpayment.
- 22 (2) However, if, in purported compliance with the *Australian Animal*  
23 *Health Council (Live-stock Industries) Funding Act 1996*, an  
24 amount equal to all or part of the overpayment has been paid to a  
25 body:  
26 (a) if the Commonwealth has not refunded the overpayment—  
27 the body (and not the Commonwealth) must pay that amount  
28 to the person who made the overpayment; or  
29 (b) if the Commonwealth has refunded the overpayment—the  
30 Commonwealth may recover the amount from the body, by  
31 set-off or otherwise.  
32

1

2 **Part 3—Investigation**

3 **Division 1—Requirement to give information or documents**

4 **11 Powers to seek information or documents**

- 5 (1) The Secretary may give a person a written notice requiring the  
6 person to give the Secretary, within a reasonable period of at least  
7 14 days specified in the notice and in a way specified in the notice,  
8 specified information or documents that the Secretary reasonably  
9 believes are relevant to the operation of this Act.
- 10 (2) The notice may also require the person to verify the information by  
11 statutory declaration.

12 **12 Offence of failing to give information, document or return**

- 13 (1) A person must not refuse or fail to give information, a document or  
14 a return that the person is required to give by or under this Act or  
15 the regulations.

16 Penalty: 60 penalty units.

- 17 (2) Subsection (1) does not apply if the person has a reasonable  
18 excuse.

19 Note: A defendant bears an evidential burden in relation to the matter in  
20 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- 21 (3) An offence against subsection (1) is an offence of strict liability.

22 Note: For strict liability, see section 6.1 of the *Criminal Code*.

- 23 (4) A person is not excused from giving information, a document or a  
24 return on the ground that to do so might tend to incriminate the  
25 person or expose the person to a penalty.

- 26 (5) However:

27 (a) any information or document or return given by an  
28 individual; or

**Part 3** Investigation

**Division 1** Requirement to give information or documents

**Section 12**

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- 1                           (b) any information, document or thing obtained as a direct or  
2   indirect consequence of an individual giving the information,  
3   document or return;  
4                           is not admissible in evidence against the individual in criminal  
5   proceedings except proceedings for an offence against  
6   subsection (1) of this section or an offence against section 137.1 or  
7   137.2 of the *Criminal Code* that relates to this Act.
- 8                           (6) A court that convicts a person of an offence against subsection (1)  
9   may order the person to give the information, document or return  
10   concerned to an authorised person within the time specified in the  
11   order.  
12

1

2 **Division 2—Monitoring by authorised persons**

3 **Subdivision A—Monitoring powers**

4 **13 Authorised person may enter premises by consent or under a**  
5 **warrant**

- 6 (1) An authorised person may enter any premises and exercise the  
7 monitoring powers for either or both of the following purposes:  
8 (a) determining whether the levy law has been, or is being,  
9 complied with;  
10 (b) determining whether information given under Division 1 or  
11 the regulations is correct.

12 Note: The *monitoring powers* are set out in sections 14, 15 and 16.

- 13 (2) However, an authorised person is not authorised to enter the  
14 premises unless:  
15 (a) the occupier of the premises has consented to the entry and  
16 the authorised person has shown his or her identity card if  
17 required by the occupier; or  
18 (b) the entry is made under a monitoring warrant.

19 Note: If entry to the premises is with the occupier's consent, the authorised  
20 person must leave the premises if the consent ceases to have effect:  
21 see section 19.

22 **14 Monitoring powers of authorised persons**

23 The following are the *monitoring powers* that an authorised person  
24 may exercise in relation to premises under section 13:

- 25 (a) the power to search the premises and any thing on the  
26 premises;  
27 (b) the power to inspect or examine any thing on the premises;  
28 (c) the power to make any still or moving image or any  
29 recording of the premises or any thing on the premises;  
30 (d) the power to inspect any document on the premises;  
31 (e) the power to take extracts from, or make copies of, any such  
32 document;

**Part 3** Investigation

**Division 2** Monitoring by authorised persons

**Section 15**

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- 1 (f) the power to seize any thing on the premises;  
2 (g) the power to take onto the premises such equipment and  
3 materials as the authorised person requires for the purpose of  
4 exercising powers in relation to the premises;  
5 (h) the powers set out in subsections 15(1) and (3) and 16(2).

6 **15 Operating electronic equipment**

- 7 (1) The *monitoring powers* include the power to operate electronic  
8 equipment on the premises if the authorised person has reasonable  
9 grounds to suspect that any of the following contains relevant data:  
10 (a) the equipment;  
11 (b) a disk, tape or other storage device that:  
12 (i) is on the premises; and  
13 (ii) can be used with the equipment or is associated with it.
- 14 (2) *Relevant data* means information that is relevant to determining  
15 whether:  
16 (a) the levy law has been, or is being, complied with; or  
17 (b) information given under Division 1 or the regulations is  
18 correct.
- 19 (3) The *monitoring powers* include the following powers in relation to  
20 relevant data found in the exercise of the power under  
21 subsection (1):  
22 (a) the power to operate electronic equipment on the premises to  
23 put the relevant data in documentary form and remove the  
24 documents so produced from the premises;  
25 (b) the power to operate electronic equipment on the premises to  
26 transfer the relevant data to a disk, tape or other storage  
27 device that:  
28 (i) is brought to the premises for the exercise of the power;  
29 or  
30 (ii) is on the premises and the use of which for that purpose  
31 has been agreed in writing by the occupier of the  
32 premises;  
33 and remove the disk, tape or other storage device from the  
34 premises.

- 1 (4) An authorised person may operate electronic equipment as  
2 mentioned in subsection (1) or (3) only if the authorised person  
3 believes on reasonable grounds that the operation of the equipment  
4 can be carried out without damage to the equipment.

5 **16 Securing evidence of the contravention of a related provision**

- 6 (1) This section applies if an authorised person enters premises under a  
7 monitoring warrant for either or both of the following purposes:  
8 (a) determining whether the levy law has been, or is being,  
9 complied with;  
10 (b) determining whether information given under Division 1 or  
11 the regulations is correct.
- 12 (2) The *monitoring powers* include the power to secure a thing for a  
13 period not exceeding 24 hours if:  
14 (a) the thing is found during the exercise of monitoring powers  
15 on the premises; and  
16 (b) an authorised person believes on reasonable grounds that:  
17 (i) the thing affords evidence of the contravention of  
18 section 12 or a requirement in regulations made for the  
19 purposes of paragraph 40(2)(b) or (c); and  
20 (ii) it is necessary to secure the thing in order to prevent it  
21 from being concealed, lost or destroyed before a warrant  
22 to seize the thing is obtained; and  
23 (iii) it is necessary to secure the thing without a warrant  
24 because the circumstances are serious and urgent.
- 25 (3) If an authorised person believes on reasonable grounds that the  
26 thing needs to be secured for more than 24 hours, the authorised  
27 person may apply to a magistrate for an extension of that period.
- 28 (4) The authorised person must give notice to the occupier of the  
29 premises, or another person who apparently represents the  
30 occupier, of his or her intention to apply for an extension. The  
31 occupier or other person is entitled to be heard in relation to that  
32 application.

**Part 3** Investigation

**Division 2** Monitoring by authorised persons

**Section 17**

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- 1 (5) The provisions of this Division relating to the issue of monitoring  
2 warrants apply, with such modifications as are necessary, to the  
3 issue of an extension.
- 4 (6) However, a magistrate may issue an extension only if he or she is  
5 satisfied that it is not practicable to obtain and execute a warrant to  
6 seize the thing within the period if it is not extended.
- 7 (7) The 24-hour period may be extended more than once.

8 **17 Persons assisting authorised persons**

9 *Authorised persons may be assisted by other persons*

- 10 (1) An authorised person may be assisted by other persons in  
11 exercising powers or performing functions or duties under this  
12 Division, if that assistance is necessary and reasonable. A person  
13 giving such assistance is a **person assisting** the authorised person.

14 *Powers, functions and duties of a person assisting the authorised*  
15 *person*

- 16 (2) A person assisting the authorised person:  
17 (a) may enter the premises; and  
18 (b) may exercise powers and perform functions and duties under  
19 this Division for the purposes of assisting the authorised  
20 person to determine whether:  
21 (i) the levy law has been, or is being, complied with; or  
22 (ii) information given under Division 1 or the regulations is  
23 correct; and  
24 (c) must do so in accordance with a direction given to the person  
25 assisting by the authorised person.
- 26 (3) A power exercised by a person assisting the authorised person as  
27 mentioned in subsection (2) is taken for all purposes to have been  
28 exercised by the authorised person.
- 29 (4) A function or duty performed by a person assisting the authorised  
30 person as mentioned in subsection (2) is taken for all purposes to  
31 have been performed by the authorised person.



- 1 (5) If a direction is given under paragraph (2)(c) in writing, the  
2 direction is not a legislative instrument.

3 **18 Authorised person may ask questions and seek production of**  
4 **documents**

5 *Application*

- 6 (1) This section applies if an authorised person enters premises for the  
7 purposes of determining whether:  
8 (a) the levy law has been, or is being, complied with; or  
9 (b) information given under Division 1 or the regulations is  
10 correct.

11 *Entry with consent*

- 12 (2) If the entry is authorised because the occupier of the premises  
13 consented to the entry, the authorised person may ask the occupier  
14 to answer any questions, and produce any document, relating to:  
15 (a) the operation of the levy law; or  
16 (b) the information.

17 *Entry under a monitoring warrant*

- 18 (3) If the entry is authorised by a monitoring warrant, the authorised  
19 person may require any person on the premises to answer any  
20 questions, and produce any document, relating to:  
21 (a) the operation of the levy law; or  
22 (b) the information.

23 *Offence*

- 24 (4) A person commits an offence if:  
25 (a) the person is subject to a requirement under subsection (3);  
26 and  
27 (b) the person fails to comply with the requirement.

28 Penalty for contravention of this subsection: 30 penalty units.

1       **Subdivision B—Obligations and incidental powers of**  
2                               **authorised persons**

3       **19 Consent**

4               (1) Before obtaining the consent of an occupier of premises for the  
5               purposes of paragraph 13(2)(a), an authorised person must inform  
6               the occupier that the occupier may refuse consent.

7               (2) A consent has no effect unless the consent is voluntary.

8               (3) A consent may be expressed to be limited to entry during a  
9               particular period. If so, the consent has effect for that period unless  
10              the consent is withdrawn before the end of that period.

11              (4) A consent that is not limited as mentioned in subsection (3) has  
12              effect until the consent is withdrawn.

13              (5) If an authorised person entered premises because of the consent of  
14              the occupier of the premises, the authorised person, and any person  
15              assisting the authorised person, must leave the premises if the  
16              consent ceases to have effect.

17       **20 Announcement before entry under warrant**

18              (1) Before entering premises under a monitoring warrant, an  
19              authorised person must:

20                   (a) announce that he or she is authorised to enter the premises;  
21                   and

22                   (b) show his or her identity card to the occupier of the premises,  
23                   or to another person who apparently represents the occupier,  
24                   if the occupier or other person is present at the premises; and

25                   (c) give any person at the premises an opportunity to allow entry  
26                   to the premises.

27              (2) However, an authorised person is not required to comply with  
28              subsection (1) if the authorised person believes on reasonable  
29              grounds that immediate entry to the premises is required:

30                   (a) to ensure the safety of a person; or

1 (b) to ensure that the effective execution of the warrant is not  
2 frustrated.

3 (3) If:

4 (a) an authorised person does not comply with subsection (1)  
5 because of subsection (2); and

6 (b) the occupier of the premises, or another person who  
7 apparently represents the occupier, is present at the premises;  
8 the authorised person must, as soon as practicable after entering the  
9 premises, show his or her identity card to the occupier or other  
10 person.

## 11 **21 Authorised person to be in possession of warrant**

12 If a monitoring warrant is being executed in relation to premises,  
13 an authorised person executing the warrant must be in possession  
14 of the warrant or a copy of the warrant.

## 15 **22 Details of warrant etc. to be given to occupier**

16 (1) An authorised person must comply with subsection (2) if:

17 (a) a monitoring warrant is being executed in relation to  
18 premises; and

19 (b) the occupier of the premises, or another person who  
20 apparently represents the occupier, is present at the premises.

21 (2) The authorised person must, as soon as practicable:

22 (a) make a copy of the warrant available to the occupier or other  
23 person (which need not include the signature of the  
24 magistrate who issued it); and

25 (b) inform the occupier or other person of the rights and  
26 responsibilities of the occupier or other person under  
27 Subdivision C.

## 28 **23 Expert assistance to operate electronic equipment**

29 (1) This section applies to premises to which a monitoring warrant  
30 relates.

**Part 3** Investigation

**Division 2** Monitoring by authorised persons

**Section 23**

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1

*Securing equipment*

2

(2) An authorised person may do whatever is necessary to secure any electronic equipment that is on the premises if the authorised person believes on reasonable grounds that:

3

4

5

(a) there is relevant data on the premises; and

6

(b) the relevant data may be accessible by operating the equipment; and

7

8

(c) expert assistance is required to operate the equipment; and

9

10

(d) the relevant data may be destroyed, altered or otherwise interfered with, if the authorised person does not take action under this subsection.

11

12

The equipment may be secured by locking it up, placing a guard or any other means.

13

14

(3) **Relevant data** means information relevant to determining whether:

15

(a) the levy law has been, or is being, complied with; or

16

(b) information given under Division 1 or the regulations is correct.

17

18

(4) The authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:

19

20

21

(a) the authorised person's intention to secure the equipment; and

22

23

(b) the fact that the equipment may be secured for up to 24 hours.

24

25

*Period equipment may be secured*

26

(5) The equipment may be secured until the earlier of the following happens:

27

28

(a) the 24-hour period ends;

29

(b) the equipment has been operated by the expert.

30

Note: For compensation for damage to electronic equipment, see section 24.

1                    *Extensions*

- 2                    (6) The authorised person may apply to a magistrate for an extension  
3                    of the 24-hour period if the authorised person believes on  
4                    reasonable grounds that the equipment needs to be secured for  
5                    more than that period.
- 6                    (7) Before making the application, the authorised person must give  
7                    notice to the occupier of the premises, or another person who  
8                    apparently represents the occupier, of his or her intention to apply  
9                    for an extension. The occupier or other person is entitled to be  
10                    heard in relation to that application.
- 11                    (8) The provisions of this Division relating to the issue of monitoring  
12                    warrants apply, with such modifications as are necessary, to the  
13                    issue of an extension.
- 14                    (9) However, a magistrate may issue an extension only if he or she is  
15                    satisfied that it is not practicable for the expert to operate the  
16                    equipment to make any relevant data accessible within the period.
- 17                    (10) The 24-hour period may be extended more than once.

18                    **24 Compensation for damage to electronic equipment**

- 19                    (1) This section applies if:  
20                    (a) as a result of electronic equipment being operated as  
21                    mentioned in this Division:  
22                    (i) damage is caused to the equipment; or  
23                    (ii) the data recorded on the equipment is damaged; or  
24                    (iii) programs associated with the use of the equipment, or  
25                    with the use of the data, are damaged or corrupted; and  
26                    (b) the damage or corruption occurs because:  
27                    (i) insufficient care was exercised in selecting the person  
28                    who was to operate the equipment; or  
29                    (ii) insufficient care was exercised by the person operating  
30                    the equipment.
- 31                    (2) The Commonwealth must pay the owner of the equipment, or the  
32                    user of the data or programs, such reasonable compensation for the

**Part 3** Investigation

**Division 2** Monitoring by authorised persons

**Section 25**

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1 damage or corruption as the Commonwealth and the owner or user  
2 agree on.

3 (3) However, if the owner or user and the Commonwealth fail to  
4 agree, the owner or user may institute proceedings in a court of  
5 competent jurisdiction for such reasonable amount of  
6 compensation as the court determines.

7 (4) In determining the amount of compensation payable, regard is to  
8 be had to whether the occupier of the premises, or the occupier's  
9 employees or agents, if they were available at the time, provided  
10 any appropriate warning or guidance on the operation of the  
11 equipment.

12 **Subdivision C—Occupier's rights and responsibilities**

13 **25 Occupier entitled to observe execution of warrant**

14 (1) The occupier of premises to which a monitoring warrant relates, or  
15 another person who apparently represents the occupier, is entitled  
16 to observe the execution of the monitoring warrant if the occupier  
17 or other person is present at the premises while the warrant is being  
18 executed.

19 (2) The right to observe the execution of the warrant ceases if the  
20 occupier or other person impedes that execution.

21 (3) This section does not prevent the execution of the warrant in 2 or  
22 more areas of the premises at the same time.

23 **26 Occupier to provide authorised person with facilities and**  
24 **assistance**

25 (1) The occupier of premises to which a monitoring warrant relates, or  
26 another person who apparently represents the occupier, must  
27 provide:

28 (a) an authorised person executing the warrant; and

29 (b) any person assisting the authorised person;

30 with all reasonable facilities and assistance for the effective  
31 exercise of their powers.

- 1 (2) A person commits an offence if:  
2 (a) the person is subject to subsection (1); and  
3 (b) the person fails to comply with that subsection.

4 Penalty for contravention of this subsection: 30 penalty units.

5 **Subdivision D—General provisions relating to seizure**

6 **27 Copies of seized things to be provided**

- 7 (1) This section applies if an authorised person seizes one or more of  
8 the following from the premises under this Division:  
9 (a) a document, film, computer file or other thing that can be  
10 readily copied;  
11 (b) a storage device, the information in which can be readily  
12 copied.
- 13 (2) The occupier of the premises, or another person who apparently  
14 represents the occupier and who is present when the seizure occurs,  
15 may request the authorised person to give a copy of the thing or the  
16 information to the occupier or other person.
- 17 (3) The authorised person must comply with the request as soon as  
18 practicable after the seizure.
- 19 (4) However, the authorised person is not required to comply with the  
20 request if possession of the document, film, computer file, thing or  
21 information by the occupier or other person could constitute an  
22 offence against a law of the Commonwealth.

23 **28 Receipts for seized things**

- 24 (1) The authorised person must provide a receipt for a thing that is  
25 seized under this Division.
- 26 (2) If 2 or more things are seized, they may be covered in the one  
27 receipt.

1       **29 Return of seized things**

- 2               (1) The Secretary must take reasonable steps to return a thing seized  
3               under this Division when the earliest of the following happens:  
4               (a) the reason for the thing's seizure no longer exists;  
5               (b) it is decided that the thing is not to be used in evidence;  
6               (c) the period of 60 days after the thing's seizure ends.

7               Note:        See subsections (2) and (3) for exceptions to this rule.

8               *Exceptions*

- 9               (2) Subsection (1):  
10              (a) is subject to any contrary order of a court; and  
11              (b) does not apply if the thing:  
12                  (i) is forfeited or forfeitable to the Commonwealth; or  
13                  (ii) is the subject of a dispute as to ownership.
- 14              (3) The Secretary is not required to take reasonable steps to return a  
15              thing because of paragraph (1)(c) if:  
16              (a) proceedings in respect of which the thing may afford  
17                  evidence were instituted before the end of the 60 days and  
18                  either the proceedings or any related appeal to a court has not  
19                  been completed; or  
20              (b) the thing may continue to be retained because of an order  
21                  under section 30; or  
22              (c) the Commonwealth or the Secretary is otherwise authorised  
23                  (by a law, or an order of a court, of the Commonwealth or of  
24                  a State or Territory) to retain, destroy, dispose of or  
25                  otherwise deal with the thing.

26              *Return of thing*

- 27              (4) A thing that is required to be returned under this section must be  
28              returned to the person from whom it was seized (or to the owner if  
29              that person is not entitled to possess it).



1 **30 Magistrate may permit a thing to be retained**

- 2 (1) The Secretary may apply to a magistrate for an order permitting the  
3 retention of a thing seized under this Division for a further period if  
4 proceedings in respect of which the thing may afford evidence  
5 have not commenced before the end of:  
6 (a) 60 days after the seizure; or  
7 (b) a period previously specified in an order of a magistrate  
8 under this section.
- 9 (2) Before making the application, the Secretary must:  
10 (a) take reasonable steps to discover who has an interest in the  
11 retention of the thing; and  
12 (b) if it is practicable to do so, notify each person whom the  
13 Secretary believes to have such an interest of the proposed  
14 application.

15 *Order to retain thing*

- 16 (3) The magistrate may order that the thing may continue to be  
17 retained for a period specified in the order if the magistrate is  
18 satisfied that it is necessary for the thing to continue to be retained:  
19 (a) for the purposes of an investigation as to the existence or  
20 amount of a liability under the levy law; or  
21 (b) to enable evidence of such a liability to be secured for the  
22 purposes of recovering levy or late payment penalty.
- 23 (4) The period specified must not exceed 3 years.

24 **31 Disposal of things**

- 25 (1) The Secretary may dispose of a thing seized under this Division if:  
26 (a) the Secretary has taken reasonable steps to return the thing to  
27 a person; and  
28 (b) either:  
29 (i) the Secretary has been unable to locate the person,  
30 despite making reasonable efforts; or  
31 (ii) the person has refused to take possession of the thing.

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- 1 (2) The Secretary may dispose of the thing in such manner as the  
2 Secretary thinks appropriate.

3 **32 Compensation for acquisition of property**

- 4 (1) If the operation of section 31 would result in an acquisition of  
5 property from a person otherwise than on just terms, the  
6 Commonwealth is liable to pay a reasonable amount of  
7 compensation to the person.
- 8 (2) If the Commonwealth and the person do not agree on the amount  
9 of the compensation, the person may institute proceedings in a  
10 court of competent jurisdiction for the recovery from the  
11 Commonwealth of such reasonable amount of compensation as the  
12 court determines.
- 13 (3) In this section:
- 14 *acquisition of property* has the same meaning as in paragraph  
15 51(xxxi) of the Constitution.
- 16 *just terms* has the same meaning as in paragraph 51(xxxi) of the  
17 Constitution.

18 **Subdivision E—Monitoring warrants**

19 **33 Monitoring warrants**

20 *Application for warrant*

- 21 (1) An authorised person may apply to a magistrate for a warrant  
22 under this section in relation to premises.

23 *Issue of warrant*

- 24 (2) The magistrate may issue the warrant if the magistrate is satisfied,  
25 by information on oath or affirmation, that it is reasonably  
26 necessary that one or more authorised persons should have access  
27 to the premises for the purpose of determining whether:  
28 (a) the levy law has been, or is being, complied with; or

1 (b) information given under Division 1 or the regulations is  
2 correct.

3 (3) However, the magistrate must not issue the warrant unless the  
4 applicant or some other person has given to the magistrate, either  
5 orally or by affidavit, such further information (if any) as the  
6 magistrate requires concerning the grounds on which the issue of  
7 the warrant is being sought.

8 *Content of warrant*

- 9 (4) The warrant must:
- 10 (a) describe the premises to which the warrant relates; and
  - 11 (b) state that the warrant is issued under this section; and
  - 12 (c) state the purpose for which the warrant is issued; and
  - 13 (d) authorise one or more authorised persons (whether or not  
14 named in the warrant) from time to time while the warrant  
15 remains in force:
    - 16 (i) to enter the premises; and
    - 17 (ii) to exercise the powers set out in this Division in relation  
18 to the premises; and
  - 19 (e) state whether entry is authorised to be made at any time of  
20 the day or during specified hours of the day; and
  - 21 (f) specify the day (not more than 6 months after the issue of the  
22 warrant) on which the warrant ceases to be in force.

23 **Subdivision F—Powers of magistrates**

24 **34 Powers of magistrates**

25 *Powers conferred personally*

- 26 (1) A power conferred on a magistrate by this Division is conferred on  
27 the magistrate:
- 28 (a) in a personal capacity; and
  - 29 (b) not as a court or a member of a court.

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*Powers need not be accepted*

2

- (2) The magistrate need not accept the power conferred.

3

*Protection and immunity*

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- (3) A magistrate exercising a power conferred by this Division has the same protection and immunity as if the magistrate were exercising the power:

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6

7

- (a) as the court of which the magistrate is a member; or

8

- (b) as a member of the court of which the magistrate is a member.

9

10

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2 **Part 4—Regular review of levy**  
3

4 **35 Minister to ensure levy is reviewed every 5 years**

5 (1) The Minister must ensure that at least once every 5 years there is a  
6 review of whether a levy on manufactured feed and worm  
7 treatments is the most appropriate way of raising money to meet  
8 the costs of any emergency response to a disease affecting horses.

9 (2) However, the Minister need not ensure there is a review within a  
10 5-year period if at the end of the period regulations are in force  
11 under the *Horse Disease Response Levy Act 2011* providing for the  
12 working out of an amount (except a nil amount) of levy on a  
13 disposal of manufactured feed or worm treatment.

14 (3) If there is not a review in that period, the Minister must ensure that  
15 there is a review described in subsection (1) as soon as practicable  
16 after there are not any such regulations in force.  
17

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2 **Part 5—Miscellaneous**

3

4 **36 Disclosure of information**

- 5 (1) An authorised person may disclose information described in  
6 subsection (2) to any of the following:
- 7 (a) a body that is representative of the horse industry and is a  
8 party to the EADR agreement;
  - 9 (b) the Australian Animal Health Council Limited (ACN 071  
10 890 956);
  - 11 (c) any other person to whom the Secretary allows information  
12 to be disclosed.

- 13 (2) The information is:
- 14 (a) information relating to amounts of levy received or  
15 receivable by the Commonwealth; or
  - 16 (b) the name, address and other contact details of a person who is  
17 or was liable to pay levy.

18 Note 1: Information relating to amounts of levy received or receivable may be  
19 information relating to a particular sector of the horse industry or a  
20 levy relating to activities in a particular State, Territory or region.

21 Note 2: Information described in paragraph (2)(b) is personal information for  
22 the purposes of the *Privacy Act 1988*, so paragraph 3 of Information  
23 Privacy Principle 11 in section 14 of that Act applies to use and  
24 further disclosure of that information if it is disclosed under this  
25 section.

- 26 (3) Subsection (1) does not authorise the disclosure of information  
27 relating to the amount of levy received or receivable by the  
28 Commonwealth from a person whose name, address or other  
29 contact details are disclosed under that subsection.

30 **37 Authorised persons**

- 31 (1) The Secretary may appoint in writing a person appointed or  
32 engaged under the *Public Service Act 1999* to be an authorised

- 1 person for the purposes of one or more specified provisions of this  
2 Act.
- 3 (2) The Secretary must not appoint a person as an authorised person  
4 unless the Secretary is satisfied that the person has suitable  
5 qualifications and experience to properly exercise the powers of an  
6 authorised person.
- 7 (3) An authorised person must, in exercising powers or performing  
8 functions as an authorised person, comply with any directions of  
9 the Secretary.
- 10 (4) If the Secretary gives a direction under subsection (3) in writing,  
11 the direction is not a legislative instrument.

### 12 **38 Identity cards for authorised persons**

- 13 (1) The Secretary must issue an identity card to an authorised person.
- 14 (2) The identity card must:  
15 (a) be in the form prescribed by the regulations; and  
16 (b) contain a recent photograph of the person.
- 17 (3) A person commits an offence if:  
18 (a) the person has been issued with an identity card; and  
19 (b) the person ceases to be an authorised person; and  
20 (c) the person does not return the identity card to the Secretary as  
21 soon as practicable after ceasing.
- 22 Penalty: 1 penalty unit.
- 23 (4) An offence against subsection (3) is an offence of strict liability.  
24 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 25 (5) Subsection (3) does not apply if the identity card was lost or  
26 destroyed.  
27 Note: A defendant bears an evidential burden in relation to the matter in this  
28 subsection: see subsection 13.3(3) of the *Criminal Code*.
- 29 (6) An authorised person must carry his or her identity card at all times  
30 when exercising powers as an authorised person.

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1     **39 Delegation**

- 2             (1) The Secretary may delegate in writing all or any of his or her  
3                 powers under this Act or the regulations to an APS employee in the  
4                 Department.
- 5             (2) In the exercise of a delegated power, a delegate is subject to the  
6                 directions of the Secretary.
- 7             (3) If the Secretary gives a direction under subsection (2) in writing,  
8                 the direction is not a legislative instrument.

9     **40 Regulations**

- 10            (1) The Governor-General may make regulations prescribing matters:  
11                (a) required or permitted by this Act to be prescribed; or  
12                (b) necessary or convenient to be prescribed for carrying out or  
13                giving effect to this Act.
- 14            (2) The regulations may:  
15                (a) make provision relating to the payment of levy and late  
16                payment penalty; and  
17                (b) prescribe requirements for manufacturers or importers of  
18                manufactured feed or worm treatments to make and keep  
19                records relating to manufactured feed or worm treatments;  
20                and  
21                (c) prescribe requirements for manufacturers or importers of  
22                manufactured feed or worm treatments to give returns,  
23                information or documents for the purposes of this Act; and  
24                (d) provide for penalties, not exceeding 10 penalty units, for  
25                offences against the regulations.
- 26            (3) The regulations may provide that information given in accordance  
27                with a requirement covered by paragraph (2)(c) must be verified by  
28                statutory declaration.
- 29            (4) Subsections (2) and (3) do not limit subsection (1).