



Plant Health Australia (Plant Industries) Funding Act 2002

No. 80, 2002

**An Act to direct funds to Plant Health Australia
Limited, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Plant Health Australia (Plant Industries) Funding Act 2002

No. 80, 2002

An Act to direct funds to Plant Health Australia Limited, and for related purposes

[Assented to 8 October 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Plant Health Australia (Plant Industries) Funding Act 2002*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	8 October 2002
2. Sections 3 to 13	The first 1 January, 1 April, 1 July or 1 October that occurs on or after the day on which this Act receives the Royal Assent	1 January 2003
3. Schedule 1	At the same time as the provisions covered by item 2 of this table	1 January 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Definitions

In this Act:

fundable contribution liability, in relation to a Plant Industry Member and a PHA year, means the amount of the Member's yearly contribution for the year, reduced by the total amount of any payments received by PHA (otherwise than from the Commonwealth) to the extent they discharge the liability to pay that contribution.

PHA means Plant Health Australia Limited, A.C.N. 092 607 997.

PHA late payment penalty means penalty payable under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to a failure to pay PHA levy or charge by the time it became due for payment.

PHA levy or charge means a levy or charge:

- (a) that is imposed by regulations under Schedule 27 to the *Primary Industries (Excise) Levies Act 1999* and that is described in those regulations as PHA Levy; or
- (b) that is imposed by regulations under Schedule 14 to the *Primary Industries (Customs) Charges Act 1999* and that is described in those regulations as PHA charge.

PHA plant product means a plant product on which PHA levy or charge is imposed.

PHA year means a year for which PHA levy or charge is imposed.

Plant Industry Member has the same meaning as it has in PHA's constitution.

primary levy or charge, on a PHA plant product for a PHA year, means a levy or charge that is imposed on the plant product for the year by or under the *Primary Industries (Excise) Levies Act 1999* or the *Primary Industries (Customs) Charges Act 1999* and that satisfies whichever of the following paragraphs applies:

- (a) for a plant product that is a horticultural product within the meaning of the *Horticulture Marketing and Research and Development Services Act 2000*:
 - (i) the levy or charge is covered by paragraph (a) or (b) of the definition of **research and development amounts** in section 4 of that Act; and
 - (ii) the rate of levy or charge is greater than zero;
- (b) for any other plant product:
 - (i) the levy or charge is attached to an R&D Corporation, or an R&D Fund, within the meaning of the *Primary Industries and Energy Research and Development Act 1989*; and
 - (ii) the rate of the levy or charge is greater than zero.

relevant Plant Industry Member, for a PHA plant product, means the Plant Industry Member that the Minister declares is the designated body for the plant product under:

- (a) clause 13 of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999*; or
- (b) clause 12 of Schedule 14 to the *Primary Industries (Customs) Charges Act 1999*.

Note 1: For what happens if the Minister declares that a particular Plant Industry Member is the designated body for 2 or more PHA plant products, see section 10.

Note 2: For what happens if the Minister declares that 2 or more Plant Industry Members are the designated bodies for the same PHA plant product, see section 11.

total PHA levy or charge receipts, from a PHA plant product for a PHA year, means the total amount of PHA levy or charge collected or received by or on behalf of the Commonwealth in relation to the plant product for the year (but not including any amounts paid by way of PHA late payment penalty).

total PHA penalty receipts, from a PHA plant product for a PHA year, means the total amount of PHA late payment penalty collected or received by or on behalf of the Commonwealth in relation to the plant product and year.

yearly contribution, for a Plant Industry Member for a PHA year, means the sum of:

- (a) the total annual subscription (by whatever name called) determined in accordance with PHA's constitution as being payable by the Plant Industry Member to PHA for the year; and
- (b) any other amounts that are determined in accordance with PHA's constitution, before the start of the year, as being payable by the Plant Industry Member to PHA for the year.

4 Funding to PHA if there is a primary levy or charge on a PHA plant product

Situation in which this section applies

- (1) This section applies in relation to a PHA plant product and a PHA year if there is a primary levy or charge on the plant product for the year.

Commonwealth's obligation to make a payment to PHA

- (2) The Commonwealth is to pay to PHA:
 - (a) if the total PHA levy or charge receipts from the plant product for the year exceed the relevant Plant Industry Member's fundable contribution liability for the year—an amount equal to that liability; or
 - (b) if the total PHA levy or charge receipts from the plant product for the year are equal to, or less than, the relevant Plant Industry Member's fundable contribution liability—an amount equal to those total receipts.

Payment to be used to discharge the Plant Industry Member's fundable contribution liability

- (3) The payment to PHA is made subject to the condition that PHA must apply the whole of the payment (disregarding any reduction due to set-off) towards discharging the Plant Industry Member's fundable contribution liability for the year, and so much of the payment as is not so applied is repayable by PHA to the Commonwealth.

Commonwealth's obligation to pay PHA late payment penalty

- (4) If the Commonwealth makes a payment under paragraph (2)(a), the Commonwealth is also to pay to PHA amounts equalling any amounts of PHA late payment penalty:
 - (a) that relate to the liability to pay PHA levy or charge on the plant product for the year; and
 - (b) that are collected or received by the Commonwealth at or before the time by which the total amount of PHA levy or

Section 5

charge collected or received in relation to the plant product for the year equals the relevant Plant Industry Member's fundable contribution liability for the year.

- (5) If the Commonwealth makes a payment under paragraph (2)(b), the Commonwealth is also to pay to PHA an amount equal to the total PHA penalty receipts from the PHA plant product for the PHA year.

5 Funding to PHA if there is no primary levy or charge on a PHA plant product

Situation in which this section applies

- (1) This section applies in relation to a PHA plant product and a PHA year if there is no primary levy or charge on the plant product for the year.

Commonwealth's obligation to make a payment to PHA

- (2) The Commonwealth is to pay to PHA an amount equal to the total PHA levy or charge receipts from the PHA plant product for the year.

Payment to be used to discharge the Plant Industry Member's fundable contribution liability

- (3) The payment to PHA is made subject to the condition that PHA must apply the whole of the payment (disregarding any reduction due to set-off) towards discharging the Plant Industry Member's fundable contribution liability for the year, and (subject to subsection (4)) so much of the payment as is not so applied is repayable by PHA to the Commonwealth.
- (4) However, if the amount of the payment to PHA exceeds the Plant Industry Member's fundable contribution liability, subsection (3) only applies to so much of the payment as equals the amount of that liability.

Commonwealth's obligation to pay PHA associated late payment penalty

- (5) The Commonwealth is also to pay to PHA an amount equal to the total PHA penalty receipts from the PHA plant product for the PHA year.

6 Appropriation

Amounts payable to PHA under sections 4 and 5 are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

7 Payment of any remaining balance for research and development purposes

Situation in which this section applies

- (1) This section applies if the total PHA levy or charge receipts from a PHA plant product (being a plant product on which there is a primary levy or charge) for a PHA year, exceed the relevant Plant Industry Member's fundable contribution liability by an amount (the *excess*).

Treatment of excess—horticultural products

- (2) For a PHA plant product that is a horticultural product within the meaning of the *Horticulture Marketing and Research and Development Services Act 2000*, that Act applies as if:
- (a) the excess; and
 - (b) so much of the total PHA penalty receipts from the plant product for the year as exceeds the amount paid or payable to PHA under subsection 4(4);
- were covered by the definition of ***research and development amounts*** in section 4 of that Act.

Treatment of excess—other PHA plant products

- (3) For any other PHA plant product, the *Primary Industries and Energy Research and Development Act 1989* applies as if:

- (a) PHA levy or charge on the plant product for the year were attached to the R&D Corporation or R&D Fund (within the meaning of that Act) to which the primary levy or charge on the plant product for the year is attached; and
- (b) the research component of the PHA levy or charge so attached were an amount equal to the excess; and
- (c) so much (if any) of the total PHA penalty receipts from the plant product for the year as exceeds the amount paid or payable to PHA under subsection 4(4) were an amount of penalty referred to in subparagraph 30(1)(a)(iii) or 108(1)(a)(iii) of that Act (as the case requires) that is attributable to the research component referred to in paragraph (b) of this subsection.

8 PHA to pay Commonwealth certain costs

PHA's obligation to pay Commonwealth certain costs

- (1) PHA must pay to the Commonwealth, in relation to a PHA plant product and PHA year, amounts equalling:
 - (a) the costs the Commonwealth incurs in collecting or recovering:
 - (i) the total PHA levy or charge receipts from the plant product for the year; and
 - (ii) the total PHA penalty receipts from the plant product for the year; and
 - (b) the costs the Commonwealth incurs in administering the following provisions in relation to the plant product and year:
 - (i) sections 4 and 5 of this Act;
 - (ii) the *Horticulture Marketing and Research and Development Services Act 2000* as it applies because of subsection 7(2) of this Act;
 - (iii) the *Primary Industries and Energy Research and Development Act 1989* as it applies because of subsection 7(3) of this Act.

Setting off liabilities under subsection (1) against liabilities under sections 4 and 5

- (2) The Commonwealth may set off an amount that is payable to it under subsection (1) against an amount that is payable to PHA under section 4 or 5.

The research and development Acts do not apply to these expenses

- (3) The following provisions do not apply to an expense incurred by the Commonwealth to the extent that the expense is covered by subsection (1):
- (a) subsection 16(7) or paragraph 17(2)(d) of the *Horticulture Marketing and Research and Development Services Act 2000*;
 - (b) section 34 or 113 of the *Primary Industries and Energy Research and Development Act 1989*.

9 Treatment of refunds

Situation in which this section applies

- (1) This section applies if:
- (a) a person pays an amount by way of PHA levy or charge or PHA late payment penalty in relation to a PHA plant product and PHA year; and
 - (b) the Commonwealth refunds the amount (the **refunded amount**) to the person.

Note: For example, the Commonwealth might refund an amount because the person paid too much PHA levy or charge.

Other provisions of this Act apply as if the refunded amount had never been paid

- (2) The other provisions of this Act apply, and are taken always to have applied, as if the refunded amount had never been paid to the Commonwealth.

Note: This may, for example, lead to a result as provided for in subsection (3) or (4).

Liability of PHA to repay overpayment

- (3) If an amount paid to PHA before the refund (disregarding any reduction due to set-off) under section 4 or 5 exceeded the amount that should have been so paid to PHA (after taking account of the effect of subsection (2)), PHA must pay to the Commonwealth an amount equal to the excess.

Setting off liabilities under subsection (3) against liabilities under sections 4 and 5

- (4) The Commonwealth may set off an amount that is payable to it under subsection (3) against an amount that is payable to PHA under section 4 or 5.

How the research and development Acts apply to the refunded amount

- (5) If an amount dealt with before the refund in accordance with subsection 7(2) or (3) exceeded the amount that should have been so dealt with under that section (after taking account of the effect of subsection (2)), the following provisions apply to the refunded amount, to the extent of the excess:
- (a) subsection 16(7) or paragraph 17(2)(d) (as the case requires) of the *Horticulture Marketing and Research and Development Services Act 2000*;
 - (b) section 35 or 114 (as the case requires) of the *Primary Industries and Energy Research and Development Act 1989*.

10 What happens if 2 or more PHA plant products have the same designated body?

Situation in which this section applies

- (1) This section applies if the Minister declares that a particular Plant Industry Member is the designated body for 2 or more PHA plant products (the *relevant plant products*) under:
- (a) clause 13 of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999*; or

(b) clause 12 of Schedule 14 to the *Primary Industries (Customs) Charges Act 1999*.

PHA to advise what proportion of the yearly contribution relates to each of the relevant plant products

- (2) As soon as practicable after the Plant Industry Member's yearly contribution for a particular PHA year is known, PHA must, in relation to each of the relevant plant products, advise the Minister what proportion (expressed as a percentage or fraction) of the yearly contribution relates to that plant product.

Minister to determine what proportion of the yearly contribution relates to each of the relevant plant products

- (3) The Minister must, by notice published in the *Gazette*, determine, for each of the relevant plant products, what proportion (expressed as a percentage or fraction) of the yearly contribution relates to that plant product. The Minister must, in making the determination, have regard to PHA's advice (unless PHA has not provided advice).

A plant product's relevant proportion

- (4) The **relevant proportion**, for a particular one of the relevant plant products, is the percentage or fraction determined by the Minister under subsection (3) in relation to the plant product.

References to fundable contribution liability to be read as references to the relevant proportion of that liability

- (5) Sections 4, 5 and 7, as they apply in relation to a particular one of the relevant plant products, have effect as if the references in those provisions to the Plant Industry Member's fundable contribution liability were instead references to the relevant proportion of that liability.

Regulations may set out other modifications

- (6) The regulations may set out other modifications of this Act, including modifications of this section, that are to apply in situations to which this section applies.

11 What happens if there are 2 or more designated bodies for the same PHA plant product?

The regulations may set out modifications of this Act that are to apply if the Minister declares that 2 or more Plant Industry Members are the designated bodies for the same PHA plant product under:

- (a) clause 13 of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999*; or
- (b) clause 12 of Schedule 14 to the *Primary Industries (Customs) Charges Act 1999*.

12 Regulations

The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

13 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Consequential amendments

Horticulture Marketing and Research and Development Services Act 2000

1 Subsection 16(1) (note)

Omit “Note:”, substitute “Note 1:”.

2 At the end of subsection 16(1) (after note 1)

Add:

Note 2: See also subsection 7(2) of the *Plant Health Australia (Plant Industries) Funding Act 2002*, which provides that this Act applies to certain amounts of levy or charge (and related late payment penalty) to which that Act applies.

Primary Industries and Energy Research and Development Act 1989

3 At the end of subsection 30(1)

Add:

Note: See also subsection 7(3) of the *Plant Health Australia (Plant Industries) Funding Act 2002*, which provides that this Act applies to certain amounts of levy or charge (and related late payment penalty) to which that Act applies.

4 At the end of subsection 108(1)

Add:

Note: See also subsection 7(3) of the *Plant Health Australia (Plant Industries) Funding Act 2002*, which provides that this Act applies to certain amounts of levy or charge (and related late payment penalty) to which that Act applies.

[Minister’s second reading speech made in—
House of Representatives on 26 June 2002
Senate on 22 August 2002]

(144/02)
