



Plant Health Australia (Plant Industries) Funding Amendment Act 2006

No. 62, 2006

An Act to amend the *Plant Health Australia (Plant Industries) Funding Act 2002*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to amend the *Plant Health Australia (Plant Industries) Funding Act 2002*, and for related purposes

[Assented to 22 June 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Plant Health Australia (Plant Industries) Funding Amendment Act 2006*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Funding for emergency plant pest responses

Plant Health Australia (Plant Industries) Funding Act 2002

1 Before section 1

Insert:

Part 1—Preliminary

2 Section 3

Insert:

EPPR is short for emergency plant pest response.

3 Section 3

Insert:

EPPR Deed means the Government and Plant Industry Cost Sharing Deed in respect of Emergency Plant Pest Responses, executed by the Commonwealth on 26 May 2005, as the Deed is in force from time to time.

Note: At different times on or before 26 October 2005, the Deed was also executed by Plant Health Australia, the States, the Australian Capital Territory and the Northern Territory.

4 Section 3

Insert:

EPPR fund, for an EPPR plant product, means the fund mentioned in subsection 10A(4) for the plant product.

5 Section 3

Insert:

EPPR 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 EPPR levy or charge by the time it became due for payment.

6 Section 3

Insert:

EPPR 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 “EPPR 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 “EPPR charge”.

7 Section 3

Insert:

EPPR levy or charge receipt, from an EPPR plant product, means an amount of EPPR levy or charge collected or received by or on behalf of the Commonwealth in relation to the plant product (not including any amount paid by way of EPPR late payment penalty).

8 Section 3

Insert:

EPPR penalty receipt, from an EPPR plant product, means an amount of EPPR late payment penalty collected or received by or on behalf of the Commonwealth in relation to the plant product.

9 Section 3

Insert:

EPPR plant product has the meaning given by subsection 10A(1).

10 Section 3 (paragraph (a) of the definition of *PHA levy or charge*)

Omit “PHA Levy”, substitute “ ‘PHA levy’ ”.

11 Section 3 (paragraph (b) of the definition of *PHA levy or charge*)

Omit “PHA charge”, substitute “ ‘PHA charge’ ”.

12 Section 3

Insert:

plant product has the same meaning as in Schedule 27 to the *Primary Industries (Excise) Levies Act 1999* and in Schedule 14 to the *Primary Industries (Customs) Charges Act 1999*.

13 Section 3 (definition of *relevant Plant Industry Member*)

Omit “PHA”.

14 Section 3 (note 1 at the end of the definition of *relevant Plant Industry Member*)

Omit “PHA plant products”, substitute “plant products that are PHA plant products”.

15 Section 3 (note 2 at the end of the definition of *relevant Plant Industry Member*)

Omit “PHA”.

16 After section 3

Insert:

Part 2—Funding for PHA yearly contributions

Note 1: The heading to section 8 is replaced by the heading “**PHA to pay PHA levy or charge costs**”.

Note 2: The heading to section 9 is replaced by the heading “**PHA levy or charge refunds**”.

17 After section 10

Insert:

Part 3—Funding for emergency plant pest responses

10A Payments to PHA from EPPR levies and charges

(1) This section applies in relation to a plant product (an *EPPR plant product*) on which EPPR levy or charge has been imposed.

Commonwealth obligation to pay PHA

- (2) The Commonwealth must pay to PHA amounts equal to the following:
- (a) EPPR levy or charge receipts from the EPPR plant product;
 - (b) EPPR penalty receipts from the EPPR plant product.

Payment conditions

- (3) Payments under subsection (2) in relation to the EPPR plant product are made subject to the following conditions:
- (a) PHA must hold the amounts in the EPPR fund for the plant product;
 - (b) PHA must apply the fund as required by section 10C;
 - (c) PHA must not apply the fund to make payments otherwise than:
 - (i) as required by section 10C; or
 - (ii) to make an investment in accordance with section 10D.

Note: If PHA contravenes a condition in relation to a payment under this section, it may be required to make a payment under section 10G.

EPPR fund

- (4) The ***EPPR fund*** for the EPPR plant product consists of the following (and nothing else):
- (a) payments under subsection (2) in relation to the plant product;
 - (b) investments of fund money, made in accordance with section 10D;
 - (c) income (for example, interest) earned on those investments;
 - (d) the proceeds of the realisation of those investments;
 - (e) payments made into the fund in accordance with a requirement under subsection 10G(2).

10B Appropriation

Amounts payable to PHA under section 10A are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

10C Payments out of EPPR funds

PHA's obligation to apply EPPR fund

- (1) If there is an EPPR fund for an EPPR plant product, PHA must apply the fund as required by this section.

Note: PHA may have to realise an investment made in accordance with section 10D in order to meet its obligations under this section.

- (2) PHA must apply the EPPR fund to make payments of the kinds mentioned in subsections (3), (4), (5) and (6) that are due from time to time. If, at a particular time, payments of 2 or more of those kinds are due, PHA must apply the fund to make the payments in the following order of priority:

- (a) a payment mentioned in subsection (3) (the first priority);
- (b) a payment mentioned in subsection (4) (the second priority);
- (c) a payment mentioned in subsection (5) (the third priority);
- (d) a payment mentioned in subsection (6) (the fourth priority).

Note: This section does not require PHA to make a payment otherwise than by applying the EPPR fund. If there are insufficient resources in the fund at a particular time for a particular payment, PHA is only obliged at that time to make so much of the payment as can then be made from the resources of the fund. The balance would be payable later when the fund has sufficient resources.

First priority: administrative and other costs

- (3) The first priority is to make payments of the following kinds:
- (a) payments to discharge PHA's obligations to the Commonwealth under subsection 10E(1) or 10F(3) in relation to EPPR levy or charge on the plant product, or to reimburse PHA for any payments made to the Commonwealth (otherwise than under this section) to discharge those obligations;
 - (b) payments to meet, or reimburse, PHA's costs in establishing and managing the EPPR fund from time to time, including the costs of receiving payments into the fund, making and realising investments and making payments out of the fund;
 - (c) payments to the Commonwealth in accordance with any requirements under subsection 10G(3) to make such payments from the EPPR fund for the plant product.

Second priority: meeting liabilities under EPPR Deed for the plant product

- (4) The second priority is to make payments to the Commonwealth, on behalf of the relevant Plant Industry Member, to discharge any liability of the Member to the Commonwealth under the EPPR Deed in relation to the EPPR plant product.

Third priority: meeting liabilities under EPPR Deed for other plant products

- (5) The third priority is to make payments to the Commonwealth on behalf of the relevant Plant Industry Member, in accordance with a request by the Member, to discharge any liability of the Member to the Commonwealth under the EPPR Deed in relation to any other EPPR plant product for which the Member is the relevant Plant Industry Member.

Fourth priority: other emergency plant pest response purposes

- (6) The fourth priority is to make payments to any person, in accordance with a request by the relevant Plant Industry Member, for any other purpose relating to emergency plant pests, within the meaning of the EPPR Deed, that affect, or that may affect:
- (a) the EPPR plant product; or
 - (b) any other EPPR plant product for which the Member is the relevant Plant Industry Member.

Emergency plant pest response affecting 2 or more plant products

- (7) If a Plant Industry Member has a liability to the Commonwealth under the EPPR Deed in relation to an emergency plant pest response affecting 2 or more EPPR plant products for which the Member is the relevant Plant Industry Member:
- (a) the Member must determine a proportionate amount of the total liability for each of the plant products; and
 - (b) for subsections (4) and (5), the amount of the Member's liability in relation to each of the plant products is the determined proportionate amount for the plant product.

*When is a payment **due**?*

- (8) For the purposes of this section, a payment of a kind described in subsection (3), (4), (5) or (6) is **due** if the conditions described in the subsection for making the payment are satisfied.

10D EPPR funds—management and investment

Management generally

- (1) PHA may manage an EPPR fund, or arrange for an EPPR fund to be managed by another person on PHA's behalf, in any way it considers appropriate, subject to:
- (a) this section; and
 - (b) any restriction or requirement in relation to the management of the fund (including any restriction or requirement in relation to the investment of money that is in the fund) to which PHA is otherwise subject.

Investment

- (2) If there is any money in an EPPR fund that is not immediately required for a payment under section 10C, PHA may invest the money (or part of it).
- (3) If PHA cannot apply an EPPR fund as required by section 10C without realising an investment forming part of the fund, PHA must realise the investment.
- (4) PHA may invest money that is in an EPPR fund only in a way that would readily allow PHA to realise the investment, if necessary, to meet its obligations to make payments under section 10C.
- (5) Despite subsection (4):
- (a) PHA may invest money that is in an EPPR fund in a form (if any) that is permitted by the regulations; and
 - (b) PHA must not invest money that is in an EPPR fund in a form (if any) that is not permitted by the regulations.

10E PHA to pay EPPR levy or charge costs

PHA's obligation to pay Commonwealth certain costs

- (1) PHA must pay to the Commonwealth, in relation to an EPPR plant product, amounts equalling:
 - (a) the costs the Commonwealth incurs in collecting or recovering:
 - (i) EPPR levy or charge receipts from the plant product; and
 - (ii) EPPR penalty receipts from the plant product; and
 - (b) the costs the Commonwealth incurs in administering this Part.

Setting off liabilities under subsection (1) against liabilities under section 10A

- (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 10A in relation to the plant product.

10F EPPR levy or charge refunds

Situation in which this section applies

- (1) This section applies if:
 - (a) a person pays an amount by way of EPPR levy or charge or EPPR late payment penalty in relation to an EPPR plant product; 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 EPPR 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 under section 10A before the refund (disregarding any reduction due to set-off) 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 section 10A

- (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 10A.

10G Contravention of EPPR plant product payment conditions

Situation in which this section applies

- (1) This section applies if the Minister is satisfied that PHA has contravened a condition mentioned in subsection 10A(3) in relation to an EPPR fund for an EPPR plant product.

Requirement to make payment

- (2) The Minister may, by written notice to PHA, require PHA to pay a stated amount that the Minister considers to be appropriate in the circumstances:
 - (a) to the Commonwealth; or
 - (b) into the EPPR fund for the plant product.
- (3) The Minister may, by the notice, require the payment to be made from either or both of the following sources (in the proportions, if any, stated in the notice):
 - (a) unless paragraph (2)(b) applies—from the EPPR fund for the plant product;
 - (b) from a source other than that EPPR fund, whether or not the source is specified in the notice.
- (4) The Minister may, by the notice, state a time within which the payment must be made.

Representations by relevant Plant Industry Member

- (5) Without limiting subsection (2), (3) or (4), in considering whether to give a notice under subsection (2), or the requirements to be included in such a notice, the Minister must have regard to any representation made by the relevant Plant Industry Member for the EPPR plant product.

Liability of PHA to pay

- (6) PHA must pay the amount stated in a notice under subsection (2) in accordance with the notice, within the time (if any) stated in the notice.

Setting off liabilities under subsection (6) against liabilities under section 10A

- (7) The Commonwealth may set off an amount that is payable to it under subsection (6) against an amount that is payable to PHA under section 10A.

Part 4—Miscellaneous

18 Section 11

Omit “PHA”.

Note: The heading to section 11 is altered by omitting “**PHA**”.

*[Minister's second reading speech made in—
House of Representatives on 25 May 2006
Senate on 13 June 2006]*

(62/06)

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