

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Financial Framework (Supplementary Powers) Act 1997

*Financial Framework (Supplementary Powers) Amendment
(Agriculture, Water and the Environment Measures No. 5) Regulations 2020*

The *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) confers on the Commonwealth, in certain circumstances, powers to make arrangements under which money can be spent; or to make grants of financial assistance; and to form, or otherwise be involved in, companies. The arrangements, grants, programs and companies (or classes of arrangements or grants in relation to which the powers are conferred) are specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the Principal Regulations). The powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

Section 65 of the FF(SP) Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 32B of the FF(SP) Act authorises the Commonwealth to make, vary and administer arrangements and grants specified in the Principal Regulations. Section 32B also authorises the Commonwealth to make, vary and administer arrangements for the purposes of programs specified in the Principal Regulations. Schedule 1AA and Schedule 1AB to the Principal Regulations specify the arrangements, grants and programs.

The *Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 5) Regulations 2020* (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for the Government to provide funding to Plant Health Australia Limited (PHA) to deliver activities in support of national biosecurity outcomes in relation to plant pests, diseases and weeds. The Department of Agriculture, Water and the Environment has responsibility for the activity.

PHA is a not-for-profit public company limited by guarantee, which was established in 2000 by the Australian, state and territory governments, and national plant industries. Its objectives are to develop a whole-of-industry and whole-of-government approach to developing, coordinating and implementing plant health policies and management programs in Australia.

Commonwealth expenditure is in the form of annual membership fees and additional funding arrangements, through the Immediate Assistance Fund, to support PHA deliver activities in support of national biosecurity outcomes in relation to plant pests, diseases and weeds. These efforts are consistent with responsibilities under the *Intergovernmental Agreement on Biosecurity*, which came into effect in early 2019.

PHA's activities to be supported by Commonwealth funding include:

- administration and operation of the *Emergency Plant Pest Response Deed*;

- coordination of government-industry partnerships;
- development of pest and disease management and preparedness programs;
- facilitation of nationally coordinated surveillance programs;
- improvement of Australia's diagnostic capability of plant pests and diseases;
- implementation of the *National Plant Biosecurity Research, Development and Extension Strategy*; and
- administration of projects funded under the Immediate Assistance Fund, which provides additional capacity and rapid assistance to state and territory governments and industry to respond to an emergency pest or disease incursion, including deployment of national and international experts and specialised equipment.

Details of the Regulations are set out at [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, consultation has taken place with the Department of Agriculture, Water and the Environment.

A regulation impact statement is not required as the Regulations only apply to non-corporate Commonwealth entities and do not adversely affect the private sector.

Details of the *Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 5) Regulations 2020*

Section 1 – Name

This section provides that the title of the Regulations is the *Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 5) Regulations 2020*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Financial Framework (Supplementary Powers) Act 1997*.

Section 4 – Schedules

This section provides that the *Financial Framework (Supplementary Powers) Regulations 1997* are amended as set out in the Schedule to the Regulations.

Schedule 1 – Amendments

Financial Framework (Supplementary Powers) Regulations 1997

Item 1 – In the appropriate position in Part 4 of Schedule 1AB (table)

This item adds a new table item to Part 4 of Schedule 1AB to establish legislative authority for government spending on an activity administered by the Department of Agriculture, Water and the Environment (the department).

New **table item 427** establishes (and renews) legislative authority for the Government to provide funding to Plant Health Australia Limited (PHA) to deliver activities in support of national biosecurity outcomes in relation to plant pests, diseases and weeds.

PHA is a not-for-profit public company limited by guarantee, established in 2000 by the Australian, state and territory governments, and national plant industries. Its objectives are to develop a whole-of-industry and whole-of-government approach to developing, coordinating and implementing plant health policies and management programs in Australia. The Commonwealth is a founding member of PHA.

PHA is the national coordinator of government-industry partnerships for plant biosecurity in Australia with the aim to minimise the impacts of plant pests, diseases and weeds; boost industry productivity and profitability; and enhance market access. PHA is the custodian for the *Emergency Plant Pest Response Deed* (EPPRD), which is an agreement between PHA, the Australian, state and territory governments, and national plant industries to facilitate

emergency responses to plant pests and diseases, and improve Australia's preparedness and capability to respond to biosecurity incidents.

The PHA's constitution designates the minister responsible for agriculture as the Commonwealth representative. Responsibility for PHA company business has been formally delegated to the Australian Chief Plant Protection Officer, a senior executive position within the department. In addition to participating in emergency response arrangements conducted under the EPPRD, the Government participates in PHA's general meetings as a voting member, is represented on multiple working groups coordinated by PHA, and conducts strategic meetings with the PHA's executive management on an annual basis.

The Government recognises biosecurity is a shared responsibility and is committed to building a stronger, more resilient and financially sustainable biosecurity system, including through:

- working collaboratively with state and territory governments and industries to prepare for the threat of emergency animal and plant pests and diseases and coordinating national responses; and
- funding pest and disease eradication programs.

Biosecurity incursions affect agricultural, forestry and marine industries, impacting on production, 'farm gate' profits and jeopardising access to high-value export markets, with flow-on consequences for regional jobs, downstream businesses and Australian consumers. Incursions can also cause significant environmental and ecosystem damage, and generally negatively impact on our way of life.

Commonwealth expenditure will be in the form of annual membership fees and additional funding arrangements, through the Immediate Assistance Fund, to support PHA deliver core activities critical to maintaining Australia's favourable pest and disease status. These efforts are consistent with responsibilities under the *Intergovernmental Agreement on Biosecurity*, which came into effect in early 2019.

PHA's activities to be supported by Commonwealth funding include:

- administration and operation of the EPPRD;
- coordination of government-industry partnerships;
- development of pest and disease management and preparedness programs;
- facilitation of nationally coordinated surveillance programs;
- improvement of Australia's diagnostic capability of plant pests and diseases;
- implementation of the *National Plant Biosecurity Research, Development and Extension Strategy*; and
- administration of projects funded under the Immediate Assistance Fund, which provides additional capacity and rapid assistance to state and territory governments and industry to respond to an emergency pest or disease incursion, including deployment of national and international experts and specialised equipment.

Administration and operation of the EPPRD

The EPPRD is a formal agreement between PHA, the Australian, state and territory governments, and national plant industry signatories for the management and cost sharing of responses to nationally significant emergency plant pests and diseases. It facilitates timely, effective and efficient responses to plant pest and disease incursions.

As the EPPRD custodian, PHA provides advice on deed application, carries out relevant training for government and industry, conducts debriefs to capture and apply response learnings to future incursions, categorises deed treatment of new pests and diseases, and develops and documents EPPRD policy and application for member consideration, as required.

The EPPRD supports the Government's goal of sharing responsibility for biosecurity with other governments and industry. State and territory governments benefit by receiving support to undertake eradications of plant pests, diseases and weeds within their jurisdiction, while industry secures a formal seat at the decision making table on issues that directly impact their livelihoods. Ultimately, all parties benefit through the cost sharing arrangements for national responses, reducing the financial burden on individual parties.

Coordination of government-industry partnerships

PHA facilitates government-industry partnerships that strengthen Australia's biosecurity system. These partnerships deliver outcomes such as industry-led surveillance programs for market access certification; increased awareness of biosecurity, including early reporting of suspect pests, diseases and weeds; and nationally consistent management of plant pests.

These partnerships enable the Government to engage effectively with industry and leverage their resources and expertise, while providing a means for industry to directly highlight issues to government, improving biosecurity outcomes and protecting returns along the agricultural value chain.

Development of pest and disease management and preparedness programs

PHA supports government and industry to identify, prepare and manage threats to plant-based agriculture, positioning them to respond rapidly to these threats should they be realised. Activities include horizon scanning to identify emerging biosecurity threats overseas and prioritising those pests for Australia; aligning industry biosecurity pest risk assessment processes with those of government to ensure consistency; and supporting industry to adopt better on-farm biosecurity risk management within their business practices, protecting individual growers as well as the industry overall. Governments benefit through having mature agricultural industries capable of responding to and managing ongoing biosecurity risks in a rapidly changing environment.

Facilitation of nationally coordinated surveillance programs

Surveillance for plant pests is crucial to the integrity of the biosecurity system, and to maintaining and improving domestic and overseas market access for Australian industries. Ongoing surveillance increases the likelihood of early detection of, and preparation for, new exotic pests, supports eradication efforts, and assists in maintaining market access by demonstrating absence of key pests. It is an important complementary component to our border controls, particularly in relation to natural pathways. PHA undertakes a range of activities in the area, including developing national surveillance plans for key commodities, establishing surveillance programs for priority pests, facilitating surveillance in commercial production areas, and facilitating industry surveillance data collection.

Improvement of Australia's diagnostic capability of plant pests and diseases

Australia's biosecurity system relies on accurate and rapid identification of pests, especially when these are exotic species posing a risk to plant health. Current challenges include an increasing need to adopt new DNA technologies, as well as a reduction in specialised skills using morphological (physical) identification techniques. PHA supports efforts to improve Australia's diagnostic capability by increasing the number of approved diagnostic protocols for emergency plant pests, enhancing Australia's diagnostic network and supporting the work of the Sub-committee on Plant Health Diagnostics, a sub-committee of Plant Health Committee, which is the peak government plant biosecurity policy and decision making forum. This work assists governments to better manage diagnostic resources and prioritise Australia's diagnostic needs, while industry benefits through rapid pest identification.

Implementation of the National Plant Biosecurity Research, Development and Extension Strategy

PHA provides the chair, strategy leader and executive officer supporting the *National Plant Biosecurity Research, Development and Extension Strategy*, a component of the *National Primary Industries Research, Development and Extension Framework*, an initiative of the then Standing Committee on Primary Industries. The strategy aims to enable effective management of economic, environmental and social risks posed by pests of biosecurity concern to Australia, by strengthening biosecurity research, development and extension for plant industries and those dependent on them.

Activities funded under the Immediate Assistance Fund

PHA may also be funded to undertake activities through the existing Immediate Assistance Fund (IAF).

The IAF is an ad-hoc grants program administered by the department providing additional capacity and rapid assistance to state and territory governments and industry to respond to an emergency pest or disease incursion, including deployment of national and international experts and specialised equipment. It also supports industry and governments to conduct preparedness activities in relation to emerging threats.

This program addresses a gap between national emergency response funding arrangements and critical first-response obligations of state and territory governments and industries, strengthening the Government's commitment to help protect farmers from exotic pests and diseases and to maintain and grow access to export markets. The IAF also strengthens existing partnerships between the Australian Government, state and territory governments and agricultural production industries.

Types of projects funded under the IAF include surveillance and delimitation support as part of a response, engagement of individuals with appropriate technical expertise to assist in response efforts, development of response tools (for example, a mobile phone application to collect and collate surveillance data), appointment of biosecurity liaison officers in industry associations, industry specific communication and engagement tools (such as materials, workshops and training to manage risks). Technical expertise on a particular pest or disease may be sought from international experts to benefit domestic industries.

The department makes payments for annual membership fees to PHA, in accordance with the requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014*. Annual membership costs for PHA are equally shared on a one third basis by the Commonwealth, state and territory governments, and relevant industry bodies.

Annual membership fee amounts are proposed by the PHA Board to members at annual meetings for endorsement. PHA members include the Commonwealth, all state and territory governments, and national plant industry bodies, the majority of whom are also signatories to the EPPRD.

The Australian Chief Plant Protection Officer, who is a delegate of the Minister for Agriculture, Drought and Emergency Management (the Minister), approves membership costs on behalf of the Minister, consistent with the Minister's delegation of PHA company business. The Government cannot veto an increase in membership fees if the majority of members agree to an increase.

A delegate of the Secretary of the department approves the release of funds to pay an annual membership fee. PHA's annual report contains details of the company's financial position and is published on the company website.

The IAF funding is provided using competitive and non-competitive grant processes, in accordance with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs) and the IAF guidelines, which were approved by the then Minister for Agriculture and Water Resources in 2016.

The guidelines provide a basis for decision making to ensure that IAF funds are used for eligible emergency response or preparedness activities. The grant opportunity guidelines are undergoing their first review since the program inception, and will shortly be made available on GrantConnect at www.grants.gov.au. The Minister or his delegate will be the decision maker for grant expenditure, with relevant approvals subject to the PGPA Act and the CGRGs.

Decisions made in connection with payments of annual membership fees are not subject to independent merits review. PHA was established as a company by governments and industry to be an independent custodian of the EPPRD. As a signatory to the EPPRD, the Australian Government is required to be a member of PHA.

The Government actively participates in annual general meetings, member meetings, annual debriefs and regular reviews to provide input and direction to PHA's work program and agenda to ensure the Government's objectives and goals are met. PHA is also required to attend Senate estimates for the Rural and Regional Affairs and Transport where their operations and expenditure can be scrutinised.

The PHA membership fees must be paid by members, and the Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 3.8 to 3.12 of the guide, *What decisions should be subject to merit review?*).

Funding decisions made in connection with the IAF are not considered appropriate for independent merits review on the basis that it involves the allocation of a finite resource, and the remaking of a decision under merits review would affect the timely provision of grant funding and delivery of the activities.

A decision in relation to the funding amount will also be influenced by the number of applicants funded. As such, there is only a finite amount of resources available and an allocation that has been made to another party would be affected by a review overturning the original decision. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.14 of the guide, *What decisions should be subject to merit review?*).

While the department has not undertaken stakeholder consultation in relation to the establishment of legislative authority for payments to PHA, consultation is undertaken on an ongoing basis with state and territory governments and industry bodies as a result of the Government being a member of PHA since its establishment. PHA was registered as a public company limited by guarantee in April 2000, following a recommendation of the Australian Quarantine Review Committee's report, *Australian Quarantine: A Shared Responsibility* (the 1996 Nairn Review) and subsequent industry-government consultation.

The IAF was included in the Agricultural Competitiveness White Paper (released in 2015) to boost the emergency pest and disease eradication and national response capability. In implementing the IAF, the department identified a range of internal and external stakeholders to be engaged. The external consultation process included engagement with state and territory governments, national plant and animal industry bodies, and PHA and the Australian Animal Health Council Limited (Animal Health Australia).

Funding for PHA and Animal Health Australia membership fees of \$6.5 million over three years from 2020-21 and for the IAF of \$9.2 million over three years from 2020-21 comes from Program 4.2: Plant and Animal Health, which is part of Outcome 4. Details are set out in the *Portfolio Additional Estimates Statements 2019-20, Agriculture, Water and Environment Portfolio* at page 76.

Noting that it is not a comprehensive statement of relevant constitutional considerations, the objective of the item references the following powers of the Constitution:

- the communications power (section 51(v));
- the quarantine power (section 51(ix));
- the external affairs power (section 51(xxix)); and
- the express incidental power and the executive power (sections 51(xxxix) and 61), including the nationhood aspect.

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'.

The funding will support PHA to host, maintain and develop the National Plant Biosecurity Diagnostic website. In this regard, the website will assist PHA's plant health diagnostic activities which relate to diagnosing plant pests.

Quarantine power

Section 51(ix) of the Constitution empowers the Parliament to make laws with respect to quarantine.

The funding will support PHA to improve Australia's plant quarantine measures. In this regard, through PHA's preparedness and surveillance activities, the funding will protect Australia from the introduction and spread of pests, diseases and weeds that affect plant health or plants. Activities include facilitating identification of pest risks and mitigation activities, facilitating a framework for management of weeds and pests of pastures, the development of surveillance plans, expanding data collection, and establishing surveillance programs, hubs and reporting systems.

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation implementing Australia's obligations under international treaties to which it is a party.

Australia has obligations relating to the *Convention on Biological Diversity*. Article 8(h) requires Contracting Parties, as far as possible and as appropriate, to '[p]revent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species'.

The funding will assist PHA with activities directed at invasive pests that threaten ecosystems, habitats or species. In this regard, through PHA's preparedness, surveillance and research activities, the funding will assist to support the minimisation of damaging consequences caused by biosecurity threats to Australian plant industries, including endemic and exotic pests, diseases and weeds.

The external affairs power also supports legislation with respect to matters concerning Australia's relations with other nations. The funding will assist PHA to undertake plant biosecurity activities which involve international cooperation with foreign entities.

Executive power and express incidental power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

The funding will assist PHA to undertake activities relating to national plant biosecurity issues affecting national industries. In this regard, the funding (including through the IAF) will support PHA's partnership activities with the government, state and territory governments and national plant industry body signatories, with management and responses to emergency plant pest incidents.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 5) Regulations 2020

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

Section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) authorises the Commonwealth to make, vary and administer arrangements and grants specified in the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations) and to make, vary and administer arrangements and grants for the purposes of programs specified in the FF(SP) Regulations. Schedule 1AA and Schedule 1AB to the FF(SP) Regulations specify the arrangements, grants and programs. The powers in the FF(SP) Act to make, vary or administer arrangements or grants may be exercised on behalf of the Commonwealth by Ministers and the accountable authorities of non-corporate Commonwealth entities, as defined under section 12 of the *Public Governance, Performance and Accountability Act 2013*.

The *Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 5) Regulations 2020* amend Schedule 1AB to the FF(SP) Regulations to establish legislative authority for the Government to provide funding to Plant Health Australia Limited (PHA) to deliver activities in support of national biosecurity outcomes in relation to plant pests, diseases and weeds. The Department of Agriculture, Water and the Environment has responsibility for the activity.

PHA is a not-for-profit public company limited by guarantee, which was established in 2000 by the Australian, state and territory governments, and national plant industries. Its objectives are to develop a whole-of-industry and whole-of-government approach to developing, coordinating and implementing plant health policies and management programs in Australia.

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- administration of projects funded under the Immediate Assistance Fund, which provides additional capacity and rapid assistance to state and territory governments and industry to respond to an emergency pest or disease incursion, including deployment of national and international experts and specialised equipment.

Human rights implications

This disallowable legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This disallowable legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance**