

2004-2005-2006

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Plant Health Australia (Plant Industries)  
Funding Amendment Bill 2006**

**No. , 2006**

*(Agriculture, Fisheries and Forestry)*

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

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1     **A Bill for an Act to amend the *Plant Health***  
2     ***Australia (Plant Industries) Funding Act 2002, and***  
3     **for related purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

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

8     **2 Commencement**

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

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1     **3 Schedule(s)**

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3                   repealed as set out in the applicable items in the Schedule  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

1  
2 **Schedule 1—Funding for emergency plant**  
3 **pest responses**  
4

5 *Plant Health Australia (Plant Industries) Funding Act 2002*

6 **1 Before section 1**

7 Insert:

8 **Part 1—Preliminary**  
9

10 **2 Section 3**

11 Insert:

12 *EPPR* is short for emergency plant pest response.

13 **3 Section 3**

14 Insert:

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

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

22 **4 Section 3**

23 Insert:

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

26 **5 Section 3**

27 Insert:

28 *EPPR late payment penalty* means penalty payable under  
29 section 15 of the *Primary Industries Levies and Charges*

1                    *Collection Act 1991* in relation to a failure to pay EPPR levy or  
2                    charge by the time it became due for payment.

3                    **6 Section 3**

4                    Insert:

5                    ***EPPR levy or charge*** means a levy or charge:

- 6                    (a) that is imposed by regulations under Schedule 27 to the  
7                    *Primary Industries (Excise) Levies Act 1999* and that is  
8                    described in those regulations as “EPPR levy”; or  
9                    (b) that is imposed by regulations under Schedule 14 to the  
10                    *Primary Industries (Customs) Charges Act 1999* and that is  
11                    described in those regulations as “EPPR charge”.

12                    **7 Section 3**

13                    Insert:

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

18                    **8 Section 3**

19                    Insert:

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

23                    **9 Section 3**

24                    Insert:

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

26                    **10 Section 3 (paragraph (a) of the definition of *PHA levy or***  
27                    ***charge*)**

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

29                    **11 Section 3 (paragraph (b) of the definition of *PHA levy or***  
30                    ***charge*)**

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

1 **12 Section 3**

2 Insert:

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

6 **13 Section 3 (definition of *relevant Plant Industry Member*)**

7 Omit “PHA”.

8 **14 Section 3 (note 1 at the end of the definition of *relevant***  
9 ***Plant Industry Member*)**

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

12 **15 Section 3 (note 2 at the end of the definition of *relevant***  
13 ***Plant Industry Member*)**

14 Omit “PHA”.

15 **16 After section 3**

16 Insert:

17 **Part 2—Funding for PHA yearly contributions**  
18

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

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

22 **17 After section 10**

23 Insert:

24 **Part 3—Funding for emergency plant pest**  
25 **responses**  
26

27 **10A Payments to PHA from EPPR levies and charges**

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

1 *Commonwealth obligation to pay PHA*

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

6 *Payment conditions*

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

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

18 *EPPR fund*

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

## 29 **10B Appropriation**

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



1 **10C Payments out of EPPR funds**

2 *PHA's obligation to apply EPPR fund*

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

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

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

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

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

22 *First priority: administrative and other costs*

23 (3) The first priority is to make payments of the following kinds:

- 24 (a) payments to discharge PHA's obligations to the  
25 Commonwealth under subsection 10E(1) or 10F(3) in  
26 relation to EPPR levy or charge on the plant product, or to  
27 reimburse PHA for any payments made to the  
28 Commonwealth (otherwise than under this section) to  
29 discharge those obligations;
- 30 (b) payments to meet, or reimburse, PHA's costs in establishing  
31 and managing the EPPR fund from time to time, including  
32 the costs of receiving payments into the fund, making and  
33 realising investments and making payments out of the fund;
- 34 (c) payments to the Commonwealth in accordance with any  
35 requirements under subsection 10G(3) to make such  
36 payments from the EPPR fund for the plant product.

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

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

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

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

15                    *Fourth priority: other emergency plant pest response purposes*

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

20                           (a) the EPPR plant product; or

21                           (b) any other EPPR plant product for which the Member is the  
22                           relevant Plant Industry Member.

23                    *Emergency plant pest response affecting 2 or more plant products*

24                    (7) If a Plant Industry Member has a liability to the Commonwealth  
25                    under the EPPR Deed in relation to an emergency plant pest  
26                    response affecting 2 or more EPPR plant products for which the  
27                    Member is the relevant Plant Industry Member:

28                           (a) the Member must determine a proportionate amount of the  
29                           total liability for each of the plant products; and

30                           (b) for subsections (4) and (5), the amount of the Member's  
31                           liability in relation to each of the plant products is the  
32                           determined proportionate amount for the plant product.

1                    *When is a payment due?*

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

5                    **10D EPPR funds—management and investment**

6                    *Management generally*

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

15                    *Investment*

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

1 **10E PHA to pay EPPR levy or charge costs**

2 *PHA's obligation to pay Commonwealth certain costs*

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

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

- 14 (2) The Commonwealth may set off an amount that is payable to it  
15 under subsection (1) against an amount that is payable to PHA  
16 under section 10A in relation to the plant product.

17 **10F EPPR levy or charge refunds**

18 *Situation in which this section applies*

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

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

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

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

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

1                                    *Liability of PHA to repay overpayment*

- 2                    (3) If an amount paid to PHA under section 10A before the refund  
3                    (disregarding any reduction due to set-off) exceeded the amount  
4                    that should have been so paid to PHA (after taking account of the  
5                    effect of subsection (2)), PHA must pay to the Commonwealth an  
6                    amount equal to the excess.

7                                    *Setting off liabilities under subsection (3) against liabilities under*  
8                                    *section 10A*

- 9                    (4) The Commonwealth may set off an amount that is payable to it  
10                    under subsection (3) against an amount that is payable to PHA  
11                    under section 10A.

12                    **10G Contravention of EPPR plant product payment conditions**

13                                    *Situation in which this section applies*

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

17                                    *Requirement to make payment*

- 18                    (2) The Minister may, by written notice to PHA, require PHA to pay a  
19                    stated amount that the Minister considers to be appropriate in the  
20                    circumstances:

- 21                                    (a) to the Commonwealth; or  
22                                    (b) into the EPPR fund for the plant product.

- 23                    (3) The Minister may, by the notice, require the payment to be made  
24                    from either or both of the following sources (in the proportions, if  
25                    any, stated in the notice):

- 26                                    (a) unless paragraph (2)(b) applies—from the EPPR fund for the  
27                                    plant product;  
28                                    (b) from a source other than that EPPR fund, whether or not the  
29                                    source is specified in the notice.

- 30                    (4) The Minister may, by the notice, state a time within which the  
31                    payment must be made.

1 *Representations by relevant Plant Industry Member*

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

7 *Liability of PHA to pay*

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

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

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

16 **Part 4—Miscellaneous**  
17

18 **18 Section 11**

19 Omit “PHA”.

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

21