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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ANIMAL HEALTH AUSTRALIA AND PLANT HEALTH AUSTRALIA FUNDING
LEGISLATION AMENDMENT BILL 2022**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry,
Senator the Hon. Murray Watt)

ANIMAL HEALTH AUSTRALIA AND PLANT HEALTH AUSTRALIA FUNDING LEGISLATION AMENDMENT BILL 2022

GENERAL OUTLINE

The purpose of the proposed amendments to the *Australian Animal Health Council (Livestock Industries) Funding Act 1996* (AHA Act) and the *Plant Health Australia (Plant Industries) Funding Act 2002* (PHA Act) would be to streamline administrative processes by removing redundant provisions, to add provisions that create efficiencies and facilitate future levy arrangements, and to increase consistency between the Acts regarding the spending of emergency response levies.

The AHA Act is the disbursement Act under which the Commonwealth pays levies and charges that are collected from certain animal industries to the Australian Animal Health Council, otherwise known as Animal Health Australia (AHA). AHA is a not-for-profit company created to coordinate the government-industry partnership for animal biosecurity in Australia. The AHA Act sets priorities that must be applied to the spending of Emergency Animal Disease Response (EADR) levies. These priorities ensure that the Commonwealth's primary purposes for EADR levies are met. These purposes include cost recovery for collection of these levies and funding industry contributions to relevant emergency responses under the Emergency Animal Disease Response Agreement (EADRA).

The PHA Act is the disbursement Act under which the Commonwealth pays levies and charges that are collected from certain plant industries to Plant Health Australia (PHA). PHA is a not-for-profit company created to coordinate the government-industry partnership for plant biosecurity in Australia. The PHA Act sets priorities that must be applied to the spending of Emergency Plant Pest Response (EPPR) levies. These priorities ensure that the Commonwealth's primary purposes for the spending of EPPR levies are met. These purposes include cost recovery for collection of these levies and funding industry contributions to relevant emergency responses under the Emergency Plant Pest Response Deed (EPPRD).

Proposed amendments in the Bill relating to the AHA Act include:

- a. amending the AHA Act to facilitate the funding of emergency responses under emergency biosecurity response deeds other than the EADRA, such as the proposed Emergency Response Deed for Aquatic Animal Diseases (the Aquatic Deed);
- b. adding a power in the AHA Act for the Governor-General to make regulations, which is consistent with the regulation making power in the PHA Act; and
- c. repealing redundant provisions in the AHA Act that relate to honey, as honey-related levies are no longer paid to AHA.

Proposed amendments in the Bill relating to the PHA Act include:

- a. broadening the scope of permissible uses for EPPR levies in the PHA Act to include the promotion or maintenance of the health of an EPPR plant, which will provide more flexibility to PHA industry members in meeting industry biosecurity needs. This is also consistent with permissible uses for the equivalent (EADR) levies in the AHA Act;

- b. adding a power in the PHA Act for the Secretary of the Department of Agriculture, Fisheries and Forestry, or a delegate of the Secretary, to determine that a body is a ‘relevant Plant Industry Member’ by notifiable instrument; and
- c. repealing redundant provisions in the PHA Act that provide for the redirection of excess levies to research and development (R&D) purposes.

The Bill would also make minor consequential amendments to the *Horticulture Marketing and Research and Development Services Act 2000* and *Primary Industries Research and Development Act 1989*.

The proposed amendments in the Bill would commence on the day after the Act receives the Royal Assent.

Consultation has been undertaken with PHA, all PHA industry members and AHA (noting that the proposed changes would not impact AHA's existing industry members). A four-week period for submissions ended on 8 October 2021 and eleven submissions were received. All submissions were supportive of the proposed amendments.

FINANCIAL IMPACT STATEMENT

The Bill would have no financial impact on the Australian Government Budget.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Bill 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*.

The full statement of compatibility with human rights for the Bill is attached to this explanatory memorandum (**Attachment A**).

ANIMAL HEALTH AUSTRALIA AND PLANT HEALTH AUSTRALIA FUNDING LEGISLATION AMENDMENT BILL 2022

NOTES ON CLAUSES

Clause 1 Short title

1. Clause 1 would provide for the short title of the proposed Act to be the *Animal Health Australia and Plant Health Australia Funding Legislation Amendment Act 2022* (the Act).

Clause 2 Commencement

2. Subclause 2(1) would provide for the commencement of the whole of the Act on the day after the Act receives the Royal Assent.
3. Subclause 2(2) would provide that any information in column 3 of the table is not part of the proposed Act. It would clarify that information may be inserted in column 3 of the table, or information in it may be edited, in any published version of the Act.

Clause 3 Schedules

4. Clause 3 would provide that legislation specified in a Schedule to the Act would be amended or repealed as set out in the applicable items of the Schedule concerned, and any other item in a Schedule has effect according to its terms.

SCHEDULE 1—AMENDMENTS

Australian Animal Health Council (Live-stock Industries) Funding Act 1996

Item 1 Section 3

5. Section 3 of the *Australian Animal Health Council (Live-stock Industries) Funding Act 1996* (AHA Act) provides definitions for the AHA Act.
6. Item 1 of Schedule 1 would insert a new definition into section 3 of the AHA Act for ***emergency biosecurity response deed***. This term would be defined to mean the EADR agreement, or a deed that both relates to an emergency biosecurity response and that is prescribed by the regulations.
7. The new definition of ***emergency biosecurity response deed*** would be used in subsection 4(5) of the AHA Act as amended by item 2 of Schedule 1.
8. The intention of this new definition, together with the amendments in item 2 of Schedule 1, is to facilitate the funding of emergency responses under emergency biosecurity response deeds other than the Emergency Animal Disease Response Agreement (EADRA), such as the proposed Aquatic Emergency Animal Disease Response Agreement (Aquatic Deed).

Item 2 Subsection 4(5)

9. Section 4 of the AHA Act provides for the payment from the Commonwealth to the Australian Animal Health Council, otherwise known as Animal Health Australia (AHA), for levies and charges other than the horse disease response levy, and the conditions of those Commonwealth payments.
10. Subsection 4(3) provides that the Commonwealth payment is subject to the condition that AHA apply the Commonwealth payment in accordance with the priorities set out in subsections 4(3A) to (6) and subject to subsections 4(7) and (8) of the AHA Act.
11. Under subsection 4(5), currently the third priority is to apply the Commonwealth payment in making, on behalf of the non-government body that is a party to the EADRA and is concerned with the production of the animal product, a payment to the Commonwealth for the purpose of discharging a liability of the body to the Commonwealth that arises under the EADRA (paragraph 4(5)(a)). Alternatively, if the animal product is honey, the payment may be made to the Commonwealth or Plant Health Australia Limited (PHA) for the purpose of discharging a liability of the body to the Commonwealth relating to the Commonwealth's costs connected with a plant disease that is, may be or may have been spread by honey bees (paragraph 4(5)(b)).
12. Item 2 of Schedule 1 would repeal subsection 4(5) of the AHA Act and substitute a new subsection 4(5), which would provide that the third priority is to apply the Commonwealth payment in making, on behalf of a non-government body that is a party to an ***emergency biosecurity response deed*** and is concerned with the

production of the animal product, a payment to the Commonwealth for the purpose of discharging a liability of the body to the Commonwealth that arises under that deed.

13. The proposed amendment would replace the reference to EADRA in existing paragraph 4(5)(a) with a reference to an *emergency biosecurity response deed*. This new term would be inserted into section 3 of the AHA Act by item 1 of Schedule 1 and is defined to include both the EADRA, or a deed that relates to an emergency biosecurity response and is prescribed by the regulations.
14. The proposed amendment would facilitate future levy arrangements for industry signatories by allowing funding to be applied in making a payment to the Commonwealth in relation to a deed other than the EADRA that relates to an emergency biosecurity response and is prescribed by the regulations. For example, a new response deed, the Aquatic Deed, is currently being developed for exotic aquatic animal diseases. It is intended that this proposed deed, if signed, would be so prescribed.
15. The Aquatic Deed will provide similar arrangements for responses to incursions of exotic aquatic animal diseases as those provided for exotic animal diseases under the EADRA. Industry parties to the proposed Aquatic Deed are likely to seek levy arrangements to meet their financial commitments under the Aquatic Deed. As emergency response levies, Emergency Animal Disease Response (EADR) levies are suitable for this purpose, but current subsection 4(5) of the AHA Act limits payments to those made on behalf of parties to the EADRA or relating to EADRA responses. While this would not prevent spending on Aquatic Deed responses, section 4 of the AHA Act in its current form would not prioritise such responses over other spending. Given that emergency response funding is the primary purpose of emergency response levies, the same priorities should apply in relation to responses under the Aquatic Deed, or other similar deeds, as apply to those under the EADRA.
16. Together with the proposed definition of *emergency biosecurity response deed* inserted by item 1 of Schedule 1, the proposed amendments would allow flexibility for future relevant deeds to be prescribed in the regulations.
17. This proposed amendment would also remove the condition relating to honey in existing paragraph 4(5)(b) of the AHA Act because it is redundant. Until 2015, the Australian Honey Bee Industry Council (AHBIC) was an AHA industry member and an EADR levy was imposed on honey. However, responses affecting, or affected by, honey bees are plant-related due to many crops relying on bees for pollination. Since 2002, the AHA Act has allowed AHA to pay Plant Health Australia (PHA) on behalf of an AHA industry member for purposes relating to emergency responses involving honey bees. AHBIC joined PHA in 2002 and became a party to the Emergency Plant Pest Response Deed (EPPRD) in 2007 and was a member of both AHA and PHA for several years. However, in 2015, AHBIC ceased its AHA membership. The EADR levy on honey was also ceased, PHA/EPPR levies on honey were introduced and any remaining honey industry reserves were transferred over to PHA. As AHBIC is no longer an AHA member and no honey-related levies are paid to AHA, subsection 4(5)(b) of the AHA Act has become redundant.

Item 3 At the end of the Act

18. Item 3 of Schedule 1 proposes to insert section 8 into the AHA Act to provide for a regulation making power.
19. Section 8 would provide that the Governor-General may make regulations prescribing matters required or permitted by the AHA Act to be prescribed by the regulations, or matters necessary or convenient to be prescribed for carrying out or giving effect to the AHA Act.
20. This proposed amendment would enable a deed to be prescribed for subparagraph (b)(ii) of the definition of *emergency biosecurity response deed* proposed by item 1 of Schedule 1. It would also support the effective administration of the AHA Act, as it would provide a discretionary power for the Governor-General to make other regulations, where appropriate. This proposed amendment would be consistent with the *Plant Health Australia (Plant Industries) Funding Act 2002* (PHA Act) as the latter also provides a discretionary power for the Governor-General to make regulations.

Item 4 Application provision

21. Item 4 of Schedule 1 would provide that the repeal and substitution of subsection 4(5) of the AHA Act made by Schedule 1 would apply in relation to payments made by AHA on or after the commencement of item 4 of Schedule 1 to the Act.
22. Item 4 makes it clear that the amendments made by item 2 of Schedule 1 would apply prospectively.

Horticulture Marketing and Research and Development Services Act 2000

Item 5 Subsection 16(1) (note 1)

23. Item 5 of Schedule 1 would amend the first note after subsection 16(1) of the *Horticulture Marketing and Research and Development Services Act 2000* (Horticulture Marketing and R&D Act) by omitting 'Note 1' and substituting 'Note'. This is consequential to the repeal of the second note following subsection 16(1) proposed by item 6 of Schedule 1.

Item 6 Subsection 16(1) (note 2)

24. Item 6 of Schedule 1 would repeal the second note after subsection 16(1) of the Horticulture Marketing and R&D Act. This is consequential to the repeal of section 7 of the PHA Act proposed by item 14 of Schedule 1.

Plant Health Australia (Plant Industries) Funding Act 2002

Item 7 Section 3 (definition of *fundable contribution liability*)

25. Section 3 of the PHA Act provides definitions for the PHA Act.

26. Item 7 of Schedule 1 would repeal the definition of ***fundable contribution liability*** in section 3 of the PHA Act. This definition would be made redundant following the repeal of section 7 of the PHA Act proposed by item 14 of Schedule 1.

Item 8 Section 3 (definition of *primary levy or charge*)

27. Section 3 of the PHA Act provides definitions for the PHA Act.
28. Item 8 of Schedule 1 would repeal the definition of ***primary levy or charge*** in section 3 of the PHA Act. This definition would be made redundant following the repeal of section 7 proposed by item 14 of Schedule 1.

Item 9 Section 3 (definition of *relevant Plant Industry Member*)

29. Section 3 of the PHA Act provides definitions for the PHA Act.
30. The current definition of ***relevant Plant Industry Member*** in section 3 of the PHA Act states that, for a plant product, it means the Plant Industry Member that the Minister declares is the designated body for the plant product under clause 13 of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999*, or clause 12 of Schedule 14 to the *Primary Industries (Customs) Charges Act 1999*.
31. Item 9 of Schedule 1 would repeal and substitute the current definition of ***relevant Plant Industry Member*** in section 3 of the PHA Act with a new definition that would provide that ***relevant Plant Industry Member***, for a plant product, has the meaning given by proposed section 3A of the PHA Act (see item 10 of Schedule 1).
32. The proposed amendments would be consequential to the amendments made in item 10 of Schedule 1.

Item 10 At the end of Part 1

33. Item 10 of Schedule 1 would insert section 3A at the end of Part 1 of the PHA Act. Section 3A would provide for the meaning of ***relevant Plant Industry Member*** for the purposes of the PHA Act.
34. Proposed subsection 3A(1) would provide that ***relevant Plant Industry Member***, for an EPPR plant product, means a body determined in an instrument under subsection 3A(2) in relation to that EPPR plant product. Section 3 of the PHA Act provides that an ***EPPR plant product*** is a plant product on which EPPR levy or charge has been imposed (see also section 10A of the PHA Act). An ***EPPR levy or charge*** is a levy or charge that is imposed by regulations under Schedule 27 of the *Primary Industries (Excise) Levies Act 1999*, or Schedule 14 to the *Primary Industries (Customs) Charges Act 1999*, and that is described in those regulations as an EPPR levy or charge, as relevant.
35. At present the Primary Industries legislation is unnecessarily linked to the PHA Act through the combined use of the designated bodies declarations made under the Primary Industries legislation. The primary purpose of the designated bodies

declarations is to ensure the Minister must consider a designated body's representations prior to making recommendations to the Governor-General regarding regulations that effect levy changes that will apply to specified plant products.

36. In its current form, the PHA Act uses the designated bodies declarations as a means of identifying which Plant Industry Member represents a plant product on which a levy or charge is imposed. This can create a situation where a designated body declaration under the Primary Industries legislation is amended solely for purposes under the PHA Act. The purpose of these amendments is to simply delink this process and provide for a process within the PHA Act itself.
37. To become a PHA member, an applicant body would be required to demonstrate that it represents the plant products ("crops") identified in its application. If the applicant body was successful, its representation of the plant product would be noted in the formal record and the Secretary of the Department would make an instrument under the PHA Act determining it to be a relevant Plant Industry Member.
38. Proposed subsection 3A(2) would provide the Secretary of the Department with a discretionary power to determine by notifiable instrument one or more bodies in relation to one or more specified EPPR plant products. The making of these determinations by notifiable instrument is appropriate because this would be an administrative process to confirm that a body represents the industry for that EPPR plant product in the body's role as a Plant Industry Member. This would also allow those affected by these determinations to access an authoritative form of the instrument on the Federal Register of Legislation. It would be appropriate for the Secretary to make such a determination, having regard to their role and responsibilities. This would allow appropriate oversight of the process to determine a body, while also enhancing administrative efficiency, when compared to the existing process.
39. The proposed definition of **relevant Plant Industry Member** would not contain the requirement that is in the existing definition for the prospective member to be a designated body. This requirement has in the past necessitated several amendments to the two designated bodies declarations under clause 13 of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999* and clause 12 of Schedule 14 to the *Primary Industries (Customs) Charges Act 1999* (the Primary Industries legislation), yet the representation by these bodies for a particular leviable plant product is easy to identify through the primary industry product they nominate to represent when they apply for PHA membership. As the proposed definition of **relevant Plant Industry Member** would not contain the requirement for the prospective member to be a designated body, consequential amendments to the two designated bodies declarations would not be required when the Secretary, or delegate, makes a determination under proposed subsection 3A(2) of the PHA Act. This amendment would not affect the ability of an industry body to seek to be declared a designated body.
40. Proposed subsection 3A(3) would provide that the Secretary of the Department must not determine a body in relation to an EPPR plant product unless the body is a Plant Industry Member and the Secretary is satisfied that the body represents the industry for that EPPR plant product in the body's role as a Plant Industry Member.

41. Proposed subsection 3A(4) would provide the Secretary with the discretionary power to, by writing, delegate the Secretary's power to determine a body in relation to an EPPR plant product to an SES employee, or an acting SES employee, in the Department.
42. The delegation of this power to an SES employee, or acting SES employee, is appropriate because of their experience and knowledge of matters dealt with under the PHA Act. It would also accelerate the administrative process involved in determining a *relevant Plant Industry Member*. The delegation power under subsection 3A(4) is therefore necessary and appropriate.

Item 11 Part 2 (heading)

43. Item 11 of Schedule 1 would repeal the current heading of Part 2 of the PHA Act, 'Part 2—Funding for PHA yearly contributions' and substitute 'Part 2—Funding for PHA'.

Item 12 Sections 4 and 5

44. Section 4 of the PHA Act currently provides for payment of PHA levies on plant products that attract a primary levy or charge. Section 5 of the PHA Act currently provides for funding to PHA if there is no primary levy or charge on a PHA plant product. A *primary levy or charge* is currently defined in section 3 of the PHA Act, as being 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*, in relation to certain research and development activities.
45. Currently, where PHA levies from plant products that attract a primary levy or charge exceed the relevant Plant Industry Member's fundable contribution liability for the year, the Commonwealth would only pay to PHA an amount equal to that liability (subsection 4(2) of the PHA Act). PHA levies which are in excess to a Plant Industry Member's fundable contribution liability for a PHA year are paid to the industry's prescribed research and development corporation (RDC) in accordance with the *Horticulture Marketing and Research and Development Services Act 2000* or *Primary Industries Research and Development Act 1989*.
46. Item 14 of Schedule 1 would repeal section 7 of the PHA Act to remove the arrangement for excess levy or charge to be redirected to the industry's prescribed RDC. The intention of this change is that the Commonwealth would pay PHA an amount equal to the total PHA levies, regardless of whether or not there is a primary levy or charge on the plant product. Therefore, the distinction between sections 4 and 5 of the PHA Act would no longer be needed.
47. Consequently, this item would repeal sections 4 and 5 and substitute an amended section 4, which would provide that the Commonwealth is to pay to PHA an amount that is equal to the total PHA levy or charge receipts from each PHA plant product for a PHA year. Section 4 would also provide for the Commonwealth to pay to PHA an amount equal to the total PHA penalty receipts from each PHA plant product for a PHA year.

Item 13 Section 6

48. Section 6 of the PHA Act provides that amounts payable to PHA under sections 4 and 5 of the PHA Act are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.
49. Item 13 of Schedule 1 would omit ‘sections 4 and 5’ and substitute ‘section 4’ in section 6 of the PHA Act. This amendment is consequential to the amendments proposed by item 12 of Schedule 1.

Item 14 Section 7

50. Section 7 of the PHA Act currently provides for an arrangement, whereby any excess PHA levy or charge receipts from a PHA plant product for a PHA year is redirected to certain research and development activities under the *Primary Industries Research and Development Act 1989* and *Horticulture Marketing and Research and Development Services Act 2000*. Item 14 of Schedule 1 would repeal section 7 of the PHA Act on the basis that this arrangement is redundant.
51. Currently, PHA levies which are in excess to an industry’s biosecurity needs for a financial year can be redirected to the relevant levy recipient body for a primary levy or charge, if a primary levy or charge is imposed on the same plant product. Levies disbursed to the relevant levy recipient body through this arrangement become R&D levies and are subject to any legislation relevant to that kind of levy. To give effect to this arrangement, two R&D disbursement Acts are specified in the PHA Act: the *Primary Industries Research and Development Act 1989* and *Horticulture Marketing and Research and Development Services Act 2000* (R&D Acts). At the time the PHA Act commenced, these R&D Acts covered all plant products represented by PHA industry members. However, the *Forestry Marketing and Research and Development Services Act 2007*, *Wine Australia Act 2013* and *Sugar Research and Development Services Act 2013* have since commenced and the plant products to which they relate (through the R&D levies on those products) are no longer covered by the R&D Acts named in the PHA Act. As a result, some PHA member industries who have a PHA levy (for example, grapes and wine, forest growers), or may seek to have one in the future, cannot access this arrangement. Also, in practice, all industries with a PHA levy can use those levies to fund plant health and biosecurity related R&D activities. Where the activities are administered by the RDC, PHA will pay the RDC directly.
52. Item 14 of Schedule 1 would repeal section 7 of the PHA Act to remove the arrangement for excess levy or charge to be redirected to the relevant levy recipient body for a primary levy or charge on the basis that member industries no longer all have the same access to the R&D levies arrangement and because member industries can already use PHA levies to fund plant health and biosecurity related R&D activities. Removing the provision would remove the administrative burden associated with its operation.

Item 15 Paragraph 8(1)(b)

53. Section 8 of the PHA Act provides for the obligations of PHA to pay certain costs to the Commonwealth.

54. Paragraph 8(1)(b) currently provides that PHA must pay to the Commonwealth, in relation to a PHA plant product and PHA year, amounts equalling the costs the Commonwealth incurs in administering sections 4 and 5 of the PHA Act, and the costs in administering provisions of the *Horticulture Marketing and Research and Development Services Act 2000* or the *Primary Industries Research and Development Act 1989*, as applicable under the PHA Act.
55. Item 15 of Schedule 1 would repeal and substitute paragraph 8(1)(b) to provide that PHA must pay to the Commonwealth, in relation to a PHA plant product and PHA year, the cost the Commonwealth incurs in administering section 4 of the PHA Act in relation to the plant product and year. This is consequential to the repeal of sections 5 and 7 of the PHA Act proposed by items 12 and 14 of Schedule 1.

Item 16 Subsection 8(2) (heading)

56. Section 8 of the PHA Act provides for the obligations of PHA to pay certain costs to the Commonwealth.
57. Item 16 of Schedule 1 would repeal the current heading of subsection 8(2) of the PHA Act, ‘Setting off liabilities under subsection (1) against liabilities under sections 4 and 5’, and substitute ‘Setting off liabilities under subsection (1) against liabilities under section 4’. This is consequential to the repeal of section 5 of the PHA Act proposed by item 12 of Schedule 1.

Item 17 Subsection 8(2)

58. Section 8 of the PHA Act provides for the obligations of PHA to pay certain costs to the Commonwealth.
59. Subsection 8(2) of the PHA Act currently provides that the Commonwealth may set off an amount that is payable to it under subsection 8(1) against an amount that is payable to PHA under section 4 or 5 of the PHA Act.
60. Item 17 of Schedule 1 would omit ‘or 5’ from subsection 8(2) of the PHA Act. This is consequential to the repeal of section 5 of the PHA Act proposed by item 12 of Schedule 1.

Item 18 Subsection 8(3)

61. Section 8 of the PHA Act provides for the obligations of PHA to pay certain costs to the Commonwealth.
62. Subsection 8(3) of the PHA Act provides that subsection 16(7) or paragraph 17(2)(d) of the *Horticultural Marketing and Research and Development Services Act 2000* and section 34 of the *Primary Industries Research and Development Act 1989* do not apply to an expense incurred by the Commonwealth to the extent that the expense is covered by subsection 8(1) of the PHA Act.

63. Item 18 of Schedule 1 would repeal subsection 8(3) of the PHA Act. This is consequential to the repeal of section 7 of the PHA Act proposed by item 14 of Schedule 1.

Item 19 Subsection 9(3)

64. Section 9 of the PHA Act provides for PHA levy or charge refunds.

65. Subsection 9(3) of the PHA Act provides for the liability of PHA to repay overpayment.

66. Item 19 of Schedule 1 would omit “or 5” in subsection 9(3). This is consequential to the repeal of section 5 of the PHA Act proposed by item 12 of Schedule 1.

Item 20 Subsection 9(4) (heading)

67. Section 9 of the PHA Act provides for PHA levy or charge refunds.

68. Item 20 of Schedule 1 would repeal the current heading of subsection 9(4) of the PHA Act, ‘Setting off liabilities under subsection (3) against liabilities under sections 4 and 5’, and substitute ‘Setting off liabilities under subsection (3) against liabilities under section 4’. This is consequential to the repeal of section 5 of the PHA Act proposed by item 12 of Schedule 1.

Item 21 Subsection 9(4)

69. Section 9 of the PHA Act provides for PHA levy or charge refunds.

70. Subsection 9(4) of the PHA Act currently provides that the Commonwealth may set off an amount that is payable to it under subsection 9(3) against an amount that is payable to PHA under section 4 or 5 of the PHA Act.

71. Item 21 of Schedule 1 would omit ‘or 5’ in subsection 9(4) of the PHA Act. This is consequential to the repeal of section 5 of the PHA Act proposed by item 12 of Schedule 1.

Item 22 Subsection 9(5)

72. Section 9 of the PHA Act provides for PHA levy or charge refunds.

73. Subsection 9(5) of the PHA Act provides for how the *Horticulture Marketing and Research and Development Services Act 2000* applies to a refunded amount. Item 22 of Schedule 1 would repeal subsection 9(5) of the PHA Act. This is consequential to the repeal of section 7 of the PHA Act proposed by item 14 of Schedule 1.

Item 23 Section 10

74. Section 10 of the PHA Act provides for what happens if 2 or more PHA plant products have the same designated body.

75. In such circumstances, subsection 10(3) provides the Minister with the power to determine for each of the relevant plant products what proportion of the yearly contribution relates to that plant product.
76. Subsection 10(4) provides that this proportion is known as the *relevant proportion* and subsection 10(5) provides that references in sections 4, 5 and 7 to the Plant Industry Member's fundable contribution liability are to be read as references to the *relevant proportion* of that liability.
77. Item 23 of Schedule 1 would repeal section 10 of the PHA Act because the *relevant proportion* would be a redundant concept as a consequence of the proposed repeal of section 7 of the PHA Act by item 14 of Schedule 1.

Item 24 Subsection 10C(4)

78. Section 10C of the PHA Act provides for payments out of EPPR funds and priorities for those payments.
79. Subsection 10C(4) of the PHA Act provides the second priority for payment, which is for meeting liabilities under the EPPRD for the plant product.
80. Item 24 of Schedule 1 would amend subsection 10C(4) of the PHA Act by omitting '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', and substituting 'a relevant Plant Industry Member for the EPPR plant product referred to in subsection (1), to discharge any liability of that member to the Commonwealth under the EPPR Deed in relation to that EPPR plant product'. This proposed amendment would allow for circumstances where more than one body represents a particular plant product as a Plant Industry Member.

Item 25 Subsection 10C(5)

81. Section 10C of the PHA Act provides for payments out of EPPR funds and priorities for those payments.
82. Subsection 10C(5) of the PHA Act provides the third priority for payment, which is for meeting liabilities under the EPPRD for other plant products.
83. Item 25 of Schedule 1 would amend subsection 10C(5) of the PHA Act by omitting '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', and substituting 'a relevant Plant Industry Member for the EPPR plant product referred to in subsection (1), in accordance with a request by that member, to discharge any liability of that member to the Commonwealth under the EPPR Deed in relation to any other EPPR plant product for which that member is a relevant Plant Industry Member'. This proposed amendment would allow for

circumstances where more than one body represents a particular plant product as a Plant Industry Member.

Item 26 Subsection 10C(6)

84. Section 10C of the PHA Act provides for payments out of EPPR funds and priorities for those payments.
85. Subsection 10C(6) of the PHA Act provides the fourth priority for payment, which is for other emergency plant pest response purposes.
86. Item 26 of Schedule 1 would repeal subsection 10C(6) of the PHA Act and substitute a new subsection 10C(6) that would provide that the fourth priority of payment is the promotion or maintenance of plant health. This fourth priority would be to make payments to any person, in accordance with a request by a relevant Plant Industry Member for an EPPR plant product referred to in subsection (1), for any other purpose relating to the promotion or maintenance of the health of that EPPR plant product or any other EPPR plant product for which the Member is a relevant Plant Industry Member.
87. This amendment would broaden the scope of permissible uses for EPPR levies in the PHA Act to include the promotion or maintenance of the health of an EPPR plant. This would allow a PHA plant industry member to focus funds remaining after meeting the costs of an emergency response on its next most pressing biosecurity need, rather than having the funds sit in reserve unused waiting for another response. This would also be broadly consistent with permissible uses for equivalent (EADR) levies in the AHA Act.

Item 27 Subsection 10C(7)

88. Section 10C of the PHA Act provides for payments out of EPPR funds and priorities for those payments.
89. Subsection 10C(7) of the PHA Act provides for the situation where an EPPR affects 2 or more plant products.
90. Item 27 of Schedule 1 would omit ‘the relevant Plant Industry Member’ and substitute ‘a relevant Plant Industry Member’. This proposed amendment would allow for circumstances where more than one body represents a particular plant product as a Plant Industry Member.

Item 28 Subsection 10G(5)

91. Section 10G of the PHA Act deals with contraventions of EPPR plant product payment conditions.
92. Subsection 10G(5) of the PHA Act provides for representations by the relevant Plant Industry Member. Subsection 10G(5) requires the Minister to have regard to any representations made by the relevant Plant Industry Member for the EPPR plant product in considering whether to give a notice under subsection 10G(2) requiring

PHA to pay a stated amount to the Commonwealth or into the EPPR fund for the plant product, or in considering the requirements to be given in such a notice.

93. Item 28 of Schedule 1 would amend subsection 10G(5) of the PHA Act by omitting ‘the relevant Plant Industry Member’ and substituting ‘a relevant Plant Industry Member’. This proposed amendment would allow for circumstances where more than one body represents a particular plant product as a Plant Industry Member.

Item 29 Section 11

94. Section 11 of the PHA Act deals with the situation where there are 2 or more designated bodies for the same plant product. Section 11 of the PHA Act currently provides that the regulations may set out modifications of the PHA Act that are to apply if the Minister declares that 2 or more Plant Industry Members are the designated bodies for the same plant product under clause 13 of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999* or clause 12 of Schedule 14 to the *Primary Industries (Customs) Charges Act 1999*.
95. Item 29 of Schedule 1 would repeal section 11 of the PHA Act. Section 11 would be redundant because the PHA Act would comprehensively deal with circumstances where two or more Plant Industry Members are designated bodies for the same plant product.

Item 30 Application provisions

96. Item 30 of Schedule 1 would provide application provisions for the amendments proposed by Schedule 1 to the Bill.
97. Subitem 30(1) of Schedule 1 would provide that the amendments made by items 7 to 9 and 11 to 23 apply in relation to the PHA year in which item 30 of Schedule 1 commences and each later PHA year.
98. Subitem 30(2) of Schedule 1 would provide that the amendments of section 10C of the PHA Act made by Schedule 1, apply in relation to payments made by PHA on or after the commencement of item 30 of Schedule 1.
99. Subitem 30(3) of Schedule 1 would provide that the amendment of section 10G of the PHA Act made by Schedule 1 applies in relation to a notice given under subsection 10G(2) of the PHA Act on or after the commencement of item 30 of Schedule 1.

Primary Industries Research and Development Act 1989

Item 31 Subsection 30(1) (note)

100. Item 31 of Schedule 1 proposes to repeal the note in subsection 30(1) of the *Primary Industries Research and Development Act 1989*, which refers to subsection 7(3) of the PHA Act. This proposed amendment would be consequential to item 14 of Schedule 1 which proposes to repeal section 7 of the PHA Act.

Statement of Compatibility with Human Rights

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

Animal Health Australia and Plant Health Australia Funding Legislation Amendment Bill 2022

This Bill would be 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 Bill

The purpose of the proposed Bill would be to amend the *Australian Animal Health Council (Live-stock Industries) Funding Act 1996* (AHA Act) and the *Plant Health Australia (Plant Industries) Funding Act 2002* (PHA Act) to streamline administrative processes, remove redundant provisions, add provisions that create efficiencies and increase consistency between the Acts.

The Australian Animal Health Council, otherwise known as Animal Health Australia (AHA), and Plant Health Australia (PHA) are not-for-profit companies created to coordinate the government-industry partnership for animal and plant biosecurity, respectively, in Australia. Each company also serves as the custodian for a biosecurity emergency response deed: AHA for the Emergency Animal Disease Response Agreement (EADRA) and PHA for the Emergency Plant Pest Response Deed (EPPRD). Both AHA and PHA's membership include the Australian Government and all state and territory governments. AHA members also include 14 animal industry members and 10 animal industry associate members. PHA members include 39 plant industry organisations.

The AHA Act provides for the disbursement of AHA and Emergency Animal Disease Response (EADR) levies and charges (levies) to AHA. The PHA Act provides for the disbursement of PHA and Emergency Plant Pest Response (EPPR) levies to PHA. These levies fund animal (the AHA Act) and plant (the PHA Act) biosecurity related activities including industry contributions to responses held under the biosecurity emergency response deeds. The Acts also set priorities that must be applied to the spending of biosecurity response levies.

Proposed amendments to the AHA Act

A new response deed is being developed for exotic aquatic animal diseases (Aquatic Emergency Animal Disease Response Agreement (the Aquatic Deed)). If the Aquatic Deed is signed, AHA will serve as deed custodian and industry signatories to the deed will, as a matter of practice, be required to be AHA industry members. The Bill would facilitate future

levy arrangements for Aquatic Deed signatories by making changes to the third priority for applying Commonwealth payments relating to an AHA levy or charge to include payments made on behalf of a non-government party to an *emergency biosecurity response deed*. Currently under the AHA Act the third priority only applies to payments made on behalf of a non-government party to the EADRA. The Bill would define the term *emergency biosecurity response deed* to include the EADRA and other deeds prescribed by the Regulations. This will enable relevant deeds like the Aquatic Deed to be so prescribed for the purposes of the new definition when they are signed. (Items 1 and 2 in Schedule 1 would effect these changes.)

The Bill would provide for the Governor General to have the power to make regulations prescribing matters required or permitted by the AHA Act to be prescribed by the regulations, or necessary or convenient to be prescribed for carrying out or giving effect to the AHA Act. This would enable a deed to be prescribed for the purposes of the proposed definition of *emergency biosecurity response deed* as mentioned above. It would also support the effective administration of the AHA Act by providing a discretionary power for the Governor-General to make regulations where appropriate. (Item 3 of Schedule 1 would effect this change.)

The Bill would also remove honey related provisions from the AHA Act. These became redundant in 2015 after the Australian Honey Bee Industry Council (AHBIC), having joined PHA and become a signatory to the EPPRD, ceased AHA membership. The EADR levy on honey was ceased, PHA and EPPR levies on honey were introduced and any remaining honey industry reserves were transferred over to PHA. (Item 2 in Schedule 1 would effect the change to remove the redundant honey related provisions.)

Proposed amendments to the PHA Act

The primary purpose of EPPR levies is to fund industry contributions to emergency responses under the EPPRD. The levies can also be spent for purposes relating to emergency plant pests (EPPs), as defined in the EPPRD. The Bill would broaden the permissible uses of funding to include, as the fourth priority for payments, the promotion or maintenance of the health of an EPPR plant product. This is broadly consistent with permissible uses for equivalent (EADR) levies in the AHA Act, while retaining the priorities that must be applied to spending of EPPR levies. The intention is to allow more flexibility to PHA member industries in meeting industry biosecurity needs. (Item 26 in Schedule 1 would effect this change.)

The PHA Act currently provides for excess PHA levies (above an agreed threshold, identified in the PHA Act as the fundable contribution liability) to be automatically redirected to the research and development (R&D) levy recipient body for that plant product for the remainder of the financial year. The Bill would remove this provision, on the basis that it is unnecessary because in practice PHA levies can be spent on biosecurity-related R&D activities directly, without relying on the provision. Removing the provision would remove the administrative burden associated with its operation. In its current form it is also not available to all PHA industry members with a PHA levy, as the three R&D funding Acts relevant to some PHA member industries were made after the PHA Act and are no longer covered by the R&D Acts

named in the PHA Act. The practical outcome of these amendments would be that all PHA levies would be paid to PHA. Any subsequent spending of PHA levies on R&D activities would be a decision for PHA and the relevant plant industry member. (Items 7-8 and 11-23 in Schedule 1 would effect these changes.)

The PHA Act refers to a *relevant Plant Industry Member* when it links, for purposes in the PHA Act, a particular PHA industry member to a leviable plant product on which a PHA or EPPR levy is imposed. Currently, to meet the definition of a *relevant Plant Industry Member*, a PHA industry member must have been declared a designated body under the *Primary Industries (Excise) Levies Act 1999* (the Levies Act) or the *Primary Industries (Customs) Charges Act 1999* (the Charges Act).¹ Declaring PHA industry members as designated bodies for the purposes of the PHA Act currently necessitates amendments to the designated bodies declarations under the Levies Act and the Charges Act. The Bill would simplify the process of identifying the relevant Plant Industry Member for a given plant product by providing a discretionary power for the Secretary of the Department to determine, by notifiable instrument, one or more bodies in relation to one or more specified EPPR plant products. It would be appropriate for the Secretary to make such a determination, having regard to their role and responsibilities. This would allow appropriate oversight of the process to determine a body, while also enhancing administrative efficiency, when compared to the existing process. (Items 9 and 10 in Schedule 1, including new subsections 3A(1) to(3), would effect this change.)

The Bill would also provide the Secretary with the discretionary power to delegate the Secretary's power to make such a determination to an SES employee, or an acting SES employee, in the department. The delegation of this power to an SES employee, or acting SES employee, is appropriate because of their experience and knowledge of matters dealt with under the PHA Act and it would accelerate the administrative process involved in determining a relevant Plant Industry Member. The delegation power is therefore necessary and appropriate. (Item 10 in Schedule 1, including new subsection 3A(4), would effect this change.)

The Bill would also make minor amendments to allow for circumstances where more than one body represents a particular plant product as a Plant Industry Member. (Items 24 to 29 would effect these changes).

Consequential Amendments

The Bill would also make minor consequential amendments to the *Horticulture Marketing and Research and Development Services Act 2000* and *Primary Industries Research and Development Act 1989*.

¹ Clause 13 of Schedule 27 to the Primary Industries (Excise) Levies Act 1999; or clause 12 of Schedule 14 to the Primary Industries (Customs) Charges Act 1999.

Human rights implications

This Bill would not engage any of the applicable rights or freedoms as it is largely technical in nature. The amendments set out above would be to streamline administrative processes, remove redundant provisions, add provisions that create efficiencies and increase consistency between the Acts. The Bill would not impose levies and would not change the rates of relevant levies or how levies are collected. All of these matters are achieved through separate legislation.

Conclusion

This Bill would be compatible with human rights as it does not raise any human rights issues.

**Senator the Hon. Murray Watt
Minister for Agriculture, Fisheries and Forestry**