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Plant Health Australia (Plant Industries) Funding Amendment Bill 2006

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Law and Bills Digest Section

Contents

Plant Health Australia (Plant Industries) Funding Amendment Bill 2006

Date introduced: 25 May 2006

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Royal Assent

Purpose

To amend the *Plant Health Australia (Plant Industries) Funding Act 2002* to establish a mechanism by which plant industries can fund their liabilities under the Government and Plant Industry Cost Sharing Deed in respect of Emergency Plant Pest Responses.

Background

The *Plant Health Australia (Plant Industries) Funding Act 2002* (the Act) put in place a levy on plant producers in order to fund the plant industries' share of the running costs of Plant Health Australia Limited (PHA). PHA was established under Corporations Law on 27 April 2000 as a non-profit company limited by guarantee. It is the national coordinating body responsible for addressing priority plant health issues in Australia, and for promoting international and domestic confidence in Australia's plant industries.[1]

The 1996 Nairn Review of Quarantine introduced the idea of a national coordinating body to deal with plant health, after finding that there was generally a greater emphasis on animal health issues.[2] With the majority of plant industries having or developing a significant export component to their business, the need for Australia to enhance its plant health status and plant heath arrangements had become increasingly important. The Nairn review proposed the formation of a coordinating body between government and industry to identify and address national priorities in plant health.[3]

Since late 2000, PHA has been brokering a cost sharing agreement between plant industry members and the Commonwealth, state and territory governments in order to meet a potential emergency response to serious harmful plant pests and diseases. PHA has argued that successful eradication of emergency plant pests (EPPs) relies on the ability to respond to threats quickly and effectively, but that response operations are often hindered by uncertainty, particularly over funding arrangements.[4] For example, they say that in the case of the grape vine leaf rust outbreak in 2003, it took two years for industry to secure funding and initiate eradication.[5] They therefore argued for a formal cost sharing arrangement, with a clearly defined, pre-agreed, responsive and sustainable funding arrangement and a joint industry/government understanding of their respective roles and responsibilities that would address this uncertainty, and minimise both the risks and potential costs of serious plant pests on both industry and the wider community.

The Government and Plant Industry Cost Sharing Deed in respect of Emergency Plant Pest Responses[6] (the Deed) commenced on 26 October 2005 with the Commonwealth, state and territory governments and plant industries as parties. According to the Minister's second reading speech, there are now 14 plant industry signatories to the Deed.[7]

The Deed defines an Emergency Plant Pest as:

> Any species, biotype or strain of invertebrate pest or pathogen injurious to plants or plant health but excluding Genetically Modified Organisms.[8]

Emergency Plant Pests include:

- EPPs that are of economic importance to Australia
- a variant form of a known plant pest that can be distinguished by investigative and diagnostic methods
- a serious plant pest of unknown or uncertain origin which may, on the evidence available at the time, be an entirely new plant pest or one not listed in the Deed, or
- a known endemic disease occurring in such a severe outbreak form that an emergency response is required to prevent a large scale epidemic of national significance or serious loss of market access.[9]

Some recent examples might include the fungal Panama disease that kills banana plants,[10] the fungus Albugo candida that affects broccoli and cauliflower,[11] or the citrus canker which was found on a Queensland citrus farm in 2004.[12]

The Deed combines a range of responses to combating EPPs – participation and cooperation, risk management, detection and response, cost sharing, and training.[13] Under the Deed, all parties commit to contributing funds to meet the costs of responding to an incident that affects them. Shares of the government parties and industry parties are capped (clause 9.5.1). Funds are raised in order to provide an emergency response in a timely manner. The Deed distinguishes three phases in the response:

- incident definition – the purpose of this phase is to define the incident, determine whether it is capable of being eradicated and to formulate the Response Plan (clause 5.1)
- emergency response – this is the phase during which the response is conducted. It lasts from adoption of the Response Plan to when the peak decision making body, the National Emergency Plant Pest Management Group (NMG), determines that the EPP

is eradicated, or any further action under the Deed would be fruitless because the EPP cannot be eradicated (clause 5.2)

- proof of freedom from disease – this phase may include research and/or surveillance activities to demonstrate that the Response Plan has been successful or that the phase should end (clause 5.3).

Owners of properties or crops that are subject to a Response Plan may be eligible for reimbursement (Part 4.4 of Schedule 6). There is a time limit for making and settling a claim.

The parties have agreed to classify EPPs into four categories, based on the level of risk to industry and the wider community.[14] The principles of cost sharing are contained in the Deed (at clause 9). Costs are shared proportionally between the government parties and industry parties according to the category of EPP as follows:

Category of EPP	**Government funding**	**Industry funding**
Category 1 *(Very high public benefits)*	100%	0%
Category 2 *(High public benefits)*	80%	20%
Category 3 *(Moderate public benefits)*	50%	50%
Category 4 *(Mostly if not wholly private benefits)*	20%	80%

The Commonwealth meets half of the government parties' share of costs. The state and territory governments share costs on the basis of an arrangement that is set out in the Deed.[15] Where one industry party is affected, it is responsible for the industry share. A formula is provided to share the costs among various crops covered by one industry party.[16] Where more than one industry party represents a plant species affected by an EPP, then costs are shared by them proportionally on an agreed basis.[17]

The manner of funding cost shares is set out in clause 10 of the Deed, with details in Schedule 7. Parties are expected to take reasonable steps to ensure that they can meet their obligations.[18] However, if an industry party cannot meet its share, either directly or from industry funds held on its behalf, the Commonwealth will initially pay the industry party's cost share obligations. The industry party will repay the Commonwealth in the manner set out in Part 1 of Schedule 7 of the Deed. This Bill implements the agreed arrangements. This legislation does not impose the new Emergency Plant Pest Response (EPPR) levy or charge on participating plant industry members. Instead, it directs the Commonwealth to pay certain moneys out of Consolidated Revenue to PHA on behalf of participating plant industries. The new EPPR levy and charge will be imposed on plant producers by regulations under Schedule 27 to the *Plant Industries (Excise) Levies Act 1999* and under Schedule 14 to the *Primary Industries (Customs) Charges Act 1999*. The regulations will only set the maximum amount of the levy and charge. The operative rate will be determined by the participating plant industry which will be able to vary it depending on the decision of their members. Any reserve of funds collected by the levy and charge will be accumulated and managed by PHA for use by the participating plant industry according to the industry's priorities.

Financial implications

This Bill introduces a special appropriation for the purpose of industry levies that are prescribed in the Bill. The appropriation will only occur if a plant industry elects to repay its liabilities to the Commonwealth through an EPPR levy and will generally only be necessary for the period of time that it takes an industry to repay these liabilities. The Deed specifies that this must occur within a reasonable time, generally expected to be less than ten years.

Main provisions

Items 2 to **9** of **Schedule 1** insert definitions of terms associated with emergency plant pest responses, including the EPPR Deed and the EPPR levy and charge. A 'penalty receipt' is defined as an EPPR late payment penalty collected or received by, or on behalf of, the Commonwealth in relation to a plant product.

Item 17 inserts a **new Part 3** into the Act to provide for the funding of emergency plant pest responses. **Proposed section 10A** provides that the Commonwealth will forward to PHA, amounts collected by the EPPR levies and charges, together with any penalty receipts. PHA is required to hold the payments for each participating plant industry in a separate fund. All levies and charges received by the Commonwealth must be paid into the Consolidated Revenue Fund. Amounts equal to the amounts collected by the EPPR levies and charges will then be payable to PHA out of Consolidated Revenue (**proposed section 10B**).

The Bill provides for PHA to hold and manage the funds raised by the levies and charges in accordance with the priorities set out in **proposed section 10C**. The first priority is to meet the Commonwealth and PHA's costs in collecting and managing the funds, including the costs of receiving and applying the funds. The second priority is to discharge any obligations (debts) that a participating plant industry may incur under the EPPR Deed in relation to relevant plant product or products on which the EPPR levy or charge is raised. The third priority is, at the request of the participating plant industry, to discharge any liability of the industry in relation to any other EPPR plant product. The fourth priority is, at the request of a participating plant industry, to apply the funds for other emergency plant pest related purposes, such as pest and disease surveillance. Funds may be used for a lower priority if there is no call on the funds for a higher priority.

Proposed section 10D provides that PHA must manage an EPPR fund in a way it considers appropriate, subject to other requirements imposed upon it, for example under its Constitution, or as a result of a resolution of its members. According to the Explanatory Memorandum,[19] PHA will be able to invest money that is in an EPPR fund, and any income on an investment will form part of the fund. This will be subject to any provisions or restrictions specified in regulations (**new paragraph 10D(5)(b)**). **Proposed section 10E** sets out PHA's obligations to pay the costs that the Commonwealth incurs in collecting EPPR levies and charges and in recovering any penalties. The Commonwealth may recover these costs directly from the amounts payable to PHA.

Proposed section 10G provides for the Minister to require PHA to repay an appropriate amount to the Commonwealth or into the EPPR fund if the Minister is satisfied that PHA has breached the conditions of payment of EPPR funds. Before taking action under this proposed section, the Minister must take into consideration advice received from the relevant participating plant industry.

Endnotes

1. Plant Health Australia, 'Who we are'. Information from their website at http://www.planthealthaustralia.com.au/who_we_are/background.asp (site visited 29/5/2006).

2. Australian Quarantine Review Secretariat, *Australian quarantine: a shared responsibility*, by M.E. Nairn [and others], Canberra, Department of Primary Industries and Energy, 1996.

3. ibid., p. 173–5.

4. Plant Health Australia, *Business case, Emergency Plant Pest Response Deed*, June 2004, p. 7. Information available from their website at http://www.planthealthaustralia.com.au/project_documents/uploads/040629_EPPRD_business_case_web.pdf (Site visited 29/5/2006)

5. ibid.

6. Government and Plant Industry Cost Sharing Deed in respect of Emergency Plant Pest Responses [EPPR Deed], Plant Health Australia, [2005]. Available at:

http://www.planthealthaustralia.com.au/project_documents/display_document.asp?category=15&ID=211 (Site visited 29/5/2006)

7. Hon. Peter McGauran, Minister for Agriculture, Fisheries and Forestry, 'Second reading speech, Plant Health Australia (Plant Industries) Funding Amendment Bill 2006, House of Representatives, *Debates*, 25 May 2006, p. 5.
8. EPPR Deed, op. cit., clause 1.
9. ibid., clause 1.1.
10. Lorelei Fong Lim, 'Disease isolates 5 farms', *Northern Territory News*, 19 August 2004.
11. Cameron Atfield, 'Imported disease hits crops', *Courier-Mail*, 10 September 2005, p. 16.
12. Daniel Knowles, 'Citrus deal struck: spray allows sales as trees are destroyed', *Sunday Mail* (Brisbane), 11 July 2004, p. 6.
13. EPPR Deed, *Explanatory Memorandum*, [p. 1]. Available at http://www.planthealthaustralia.com.au/project_documents/uploads/041013_EPPRD_Explanatory_Memorandum.pdf (site visited 29/5/2006)
14. For categories of EPPs, see Table 1, *Business case, Emergency Plant Pest Response Deed*, op. cit., p. 10.
15. EPPR Deed, op. cit., Part 1 of Schedule 6.
16. ibid., Part 2 of Schedule 6.
17. ibid., Part 3 of Schedule 6.
18. ibid., clause 10.4.1.
19. *Explanatory Memorandum*, Plant Health Australia (Plant Industries) Funding Amendment Bill 2006, p. 5.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2526.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.