

# Emergency Plant Pest Response Deed (EPPRD)

## Questions and Answers

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## Frequently asked questions

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## 1. What is the Emergency Plant Pest Response Deed (EPPRD)?

The EPPRD is a formal legally binding agreement between Plant Health Australia (PHA), the Australian Government, all state and territory governments and plant industry signatories (a list of signatories is shown below in Question 2). This agreement covers the management and funding arrangements of responses to Emergency Plant Pest (EPP; see Question 3) Incidents.

The EPPRD came into effect on the 26 October 2005, once PHA and all Government Parties signed.

The EPPRD replaces previous informal arrangements and provides a recognised role for Affected Industry Parties to participate in EPP responses, and assume a greater responsibility in decision making. The EPPRD is the plant sector equivalent of the Emergency Animal Disease Response Agreement (EADRA) which operates in the animal (livestock) sector.

The current version of the EPPRD can be downloaded from [www.planthealthaustralia.com.au/epprd](http://www.planthealthaustralia.com.au/epprd)

## 2. Who is covered by the EPPRD?

The Australian Government and all state/territory governments are Parties to the EPPRD. In addition, coverage extends to all industries where the representative bodies are Parties to the EPPRD. To become a Party to the EPPRD, an industry representative body must be, or be becoming, a PHA Member and apply to PHA in accordance with the EPPRD. PHA Members that are currently Parties to the EPPRD are listed in the table below.

PHA Member	Date EPPRD Signed
Apple and Pear Australia Ltd	28-October-2004
Australian Banana Growers' Council Inc.	28-October-2004
Australian Cane Growers' Council Ltd (CANEGROWERS)	28-October-2004
Grains Council of Australia Inc. (now Grain Producers Australia Ltd)	28-October-2004
The State of South Australia	9-March-2005
Ricegrowers' Association of Australia Inc.	15-March-2005
The State of Victoria	31-March-2005
The State of Western Australia	14-April-2005
Nursery and Garden Industry Australia Ltd	23-May-2005
Avocados Australia Ltd	26-May-2005
Commonwealth of Australia	26-May-2005
Strawberries Australia Inc.	26-May-2005
Summerfruit Australia Ltd	26-May-2005
Queensland Fruit and Vegetable Growers Ltd (GROWCOM) <sup>1</sup>	26-May-2005

<sup>1</sup> Only cover pineapples for the purpose of the EPPRD

PHA Member	Date EPPRD Signed
The State of Tasmania	27-June-2005
Australian Citrus Growers Inc. (now Citrus Australia)	9-September-2005
Australian Macadamia Society Ltd	15-September-2005
The State of New South Wales	30-September-2005
The State of Queensland	20-October-2005
The Australian Capital Territory	21-October-2005
The Northern Territory of Australia	26-October-2005
Australian Mango Industry Association Ltd	23-December-2005
Australian Cotton Growers' Research Association Inc. (now Cotton Australia)	26-May-2006
Almond Board of Australia Inc.	26-October-2006
Australian Dried Fruit Association Inc.	26-October-2006
Cherry Growers of Australia Inc.	26-October-2006
Australian Table Grape Association	25-May-2007
Canned Fruits Industry Council of Australia	25-May-2007
Australian Honey Bee Industry Council	25-October-2007
Onions Australia	11-March-2008
Australian Walnut Industry Association	29-April-2008
Australian Processing Tomato Research Council Inc.	6-May-2008
Australian Olive Association	23-May-2008
Wine Grape Growers' Australia	29-May-2008
AUSVEG	20-November-2008

### 3. What is an Emergency Plant Pest (EPP)?

For a pest to be classified as an EPP, it must either be listed in Schedule 13 of the EPPRD, or be determined by the Categorisation Group (see Question 11) or National Management Group (NMG; see Question 13) to be of potential national significance and meet at least one of the criteria below<sup>2</sup>:

- A known exotic pest
- A variant form of an established plant pest
- A previously unknown pest
- A confined or contained pest

<sup>2</sup> Full definitions of these criteria found in Clause 1.1 of the EPPRD (Definitions)

#### 4. What are the benefits of the EPPRD?

The most substantial benefit is the ability to respond quickly and effectively to an EPP Incident, while minimising the uncertainty over management and funding arrangements.

Other significant benefits are:

- A consistent and agreed national approach for managing EPP incursions
- Industry is directly involved in decision making about mounting and managing an EPP response from the outset
- Potential liabilities are known and funding mechanisms are agreed in advance
- Costs are minimised for all Parties
- A requirement that all funding Parties remain engaged in Cost Sharing until the EPP response is successful or a decision is made that the EPP response is no longer feasible or cost effective
- Involvement of industry and government representatives with authority to commit to actions and funding decisions
- Owners whose crops or property is directly damaged or destroyed as a result of implementing an approved Response Plan may be eligible for reimbursement of certain direct costs (see Question 6)
- Australian Government agreement to underwrite an Industry Party's share of costs where that Industry Party has an approved mechanism for repayment
- Wider commitment to risk mitigation by all Parties through the development and implementation of biosecurity strategies and programs
- All jurisdictions define a base level (normal commitment) of resources for managing EPP responses
- All state and territory Government Parties being required to meet performance standards for emergency response resources and to provide legislative support for response activities and grower reimbursement payments
- Trained and accredited personnel to be involved in EPP responses wherever possible
- Provision of accountability and transparency to all Parties

#### 5. What pests are covered under the EPPRD?

The EPPRD contains a list of Categorised EPPs in Schedule 13. In addition to these Categorised pests, the EPPRD provides a mechanism to cover EPPs not currently listed in the EPPRD, but subsequently determined by the Categorisation Group (see Question 11) or the NMG (see Question 13) to meet the EPP criteria (see Question 3).

## 6. What are Owner Reimbursement Costs (ORCs)?

Under the EPPRD, Owners of a crop or property that is directly damaged or destroyed as a result of implementing an NMG approved EPP Response Plan may be eligible for reimbursement of certain direct costs. This mechanism is called Owner Reimbursement Costs (ORCs)<sup>3</sup>.

If a Government Party reimburses the Owner under an NMG approved Response Plan, that Government Party is entitled to seek Cost Sharing for these payments.

The main objective in providing for Cost Sharing in respect of ORCs is to provide motivation for growers and other stakeholders to report suspicious pests. ORCs also provide social justice for growers who, through no fault of their own, are detrimentally affected by an EPP eradication response.

While owners of crops or property who are not covered by Industry Parties to the EPPRD may receive reimbursement of costs under a Response Plan, this will be at the discretion of the NMG. Being a signatory to the EPPRD ensures representation on NMG and a say in these decisions.

## 7. When do ORCs apply?

ORCs may be claimed once the NMG is convened, and agrees to implement a Response Plan. Claims must be made within 90 days after the date of destruction of the relevant crops, and/or receipt of an order for a fallow period, under a Response Plan. Crops or property should not be destroyed until an agreed Response Plan is in place.

## 8. What do ORCs cover?

ORCs can include the loss of the crop destroyed or damaged (including stored produce) and any extra costs that the Owner directly incurs in complying with the Response Plan. Property that is destroyed as a direct result of implementing the approved Response Plan, or costs and losses resulting from an enforced fallow period, can also be included. Reimbursements only cover costs above and beyond the Owner's normal operational costs.

### 8.1. Consequential losses

Consequential income losses are not eligible for reimbursement. The amount of ORCs will be related strictly to direct costs that arise from the implementation of a Response Plan.

### 8.2. How are these direct costs calculated?

Costs are calculated on the basis of agreed formula listed in Schedule 17 of the EPPRD, which can vary between industries. The formula reflect an intention that, as far as possible, ORCs for crop loss should be based on fair market value at the time of destruction of the crop, and that valuations should also include extra costs incurred in complying with the Response Plan.

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<sup>3</sup> Detailed in Part 4.4 of Schedule 6 of the EPPRD

### 8.3. How is the market value of an asset or crop calculated?

The formula in Schedule 17 of the EPPRD reflect the principle that the market value of an asset (including a crop) is based on the price that a fair minded buyer and a fair minded seller in open competition agree on to exchange ownership of the asset. In economic terms, it is based on the expected Net Present Value of the income stream derived from the asset over its life.

In practice this means using existing industry pricing practices as much as possible to determine the fair price. There are differences between industries and crop types, which are addressed through the range of valuation methodologies. To ensure equitable values are determined, PHA and Industry Parties are developing ORC Evidence Frameworks for the different crop types covered by the EPPRD.

## 9. What is the maximum cost of an EPP response to Industry Parties?

The EPPRD contains provisions for Parties to agree on a limit to the amount which will be eligible for Cost Sharing in respect to an EPP Response Plan. This is known as the Agreed Limit and can only be exceeded with the written agreement of the Affected Parties. In many cases, the Agreed Limit is calculated using 2% of the Local Value of Production (LVP) of the Industry Parties which are Affected by the EPP incident. Some Industry Parties have agreed to other values, and these are presented in Schedule 14 of the EPPRD. The Agreed Limit for the total Response Plan is based on the LVP for one year (and where multiple Response Plans are used for an Incident, the Agreed Limit would be applied to each Response Plan).

The actual costs of a Response Plan may be lower than the Agreed Limit. However, where there is a possibility the Agreed Limit will be exceeded, the NMG must meet to review the situation and determine what alternative actions should be taken under the EPPRD.

## 10. How much do Affected Government and Industry Parties pay?

Under the EPPRD, EPPs are Categorised into four Categories that determine the Cost Sharing split between Affected Government and Industry Parties, based on the public versus private benefit of eradication (see table below)<sup>4</sup>. These Categories are a reflection of where the EPP would impact should it become established, and is in no way linked to the likelihood of eradication or the importance of the pest.

Pest Category	Funding ratio	Summary of Category characteristics
<b>Category one</b>	100% government	Large impact on the environment, human health or amenity flora values and relatively little impact on commercial crops
<b>Category two</b>	80% government 20% industry	Significant impact on amenity flora and/or environmental values and/or effects on households, or very severe regional and national economic impacts
<b>Category three</b>	50% government 50% industry	Minor adverse impact on public amenities, households or the environment, and/or moderate trade implications and/or national and regional economic implications
<b>Category four</b>	80% industry 20% government	Primarily affects commercial cropping industries, with minor or no economic, trade or environmental impacts

<sup>4</sup> More information can be found in Clause 7 and 9 of the EPPRD.

## 11. Who determines the Category of an EPP?

The Categorisation Group determines the Category of a given EPP, using the method outlined in the EPPRD (Schedule 3). Where multiple industries are Affected by an EPP, the Categorisation Group also determines the Funding Weight for each industry. Funding Weights determine each Affected Industry Parties' Proportional Share of the EPP response costs<sup>5</sup>.

The Categorisation Group comprises (at a minimum) those members shown in the table below.

Member	Details and organisation
<b>Independent chair</b>	From PHA
<b>Standing representative of industry parties</b>	From PHA
<b>Technical experts</b> (people with specific expertise in the areas of plant pathology or entomology)	<ul style="list-style-type: none"> <li>• One nominated by the Australian Government</li> <li>• One nominated by the state/territory governments</li> <li>• One nominated by plant industry(s)</li> </ul>
<b>Person with relevant economic expertise</b>	Expertise includes social, trade and regional trade assessment. Representative comes from ABARE.
<b>Industry representative(s)</b>	A nominee from each Industry Party Affected by the EPP being Categorised
<b>Additional members</b>	The Categorisation Group may also seek advice from: <ul style="list-style-type: none"> <li>• A person with human health expertise, if a public health risk may exist</li> <li>• A conservation representative</li> <li>• Other relevant members determined by the independent chair</li> </ul>

Advisers who have specific expertise may accompany members, but will not be party to the decision-making process.

## 12. What if there is an incursion of an EPP that has not been Categorised?

If an EPP that is not Categorised is detected in Australia, it is initially Cost Shared at a 50:50 split between Government and Affected Industry Parties (Category 3). A substantiated request for re-categorisation can be submitted by a Party to initiate the Categorisation process at any time after the initial detection<sup>6</sup>.

<sup>5</sup> More information can be found in Clause 7 and Schedule 6 (Part 2.2) of the EPPRD.

<sup>6</sup> More information can be found in Clause 7 of the EPPRD.

### 13. Who is responsible for the decision making in an EPP response?

EPP emergency response decisions are made by two key committees, the Consultative Committee on Emergency Plant Pests (CCEPP) and the National Management Group (NMG). Both committees have representation from Government and Industry Affected Parties who are signatories of the EPPRD.

The CCEPP is the technical committee that makes recommendations to the NMG on incursion responses. These recommendations include the technical feasibility and economic justification of eradication. The NMG has primary responsibility for decisions in an eradication campaign and will manage the national policy and resourcing needs of a Response Plan, on behalf of the Affected Parties.

#### The CCEPP is made up of the following representatives

The Chief Plant Protection Officer (DAFF) – Chair

All state and territory Chief Plant Health Managers

One representative (non-voting) from each:

- PHA
- Biosecurity Australia
- Australian Quarantine and Inspection Service (AQIS)

Two representatives from the Affected Industry(s)

- One from the member organisation of PHA
- One other a technical representative

Other advisers/observers/resource persons may also, by invitation, attend CCEPP meetings (with the number being “kept to the essential minimum”)

#### The NMG is made up of the following representatives

Australian Government – Secretary of DAFF (Chair)

CEOs of state and territory governments.

- Only those participating in Cost Sharing vote

President, Chair or Authorised Officer of each of the Affected Industry Parties (voting)

Chair of PHA (non-voting)

### 14. Is the information given to the CCEPP and NMG completely confidential?

Most information given to the CCEPP and NMG is confidential. However, representatives present at meetings are allowed to discuss certain information within their organisation, under the provisions of the EPPRD, on a strict need-to-know basis in order to effectively operate and perform their obligations under the EPPRD.

The EPPRD also provides for disclosure to the extent necessary to permit a Government Party to report to its Parliament or committees (and other agencies or instrumentalities where it is required to do so), and for legal proceedings or as required by law. All committee members must have signed a Confidentiality Deed Poll<sup>7</sup> as part of their agreement under the EPPRD.

<sup>7</sup> The Confidentiality Deed Poll can be found in Schedule 9 of the EPPRD.

### **15. Does the NMG release any information on its deliberations?**

Public statements on the outcomes of NMG meetings are usually released after each meeting by the NMG Secretariat within DAFF. These will be available from the DAFF website ([www.daff.gov.au](http://www.daff.gov.au)).

### **16. What happens to an industry that is not a Party to the EPPRD?**

In the event of an EPP incursion, representatives from industries that are not a signatory to the EPPRD would not be part of the decision making process. The response to EPP incursions would be undertaken with decisions and Cost Sharing being undertaken only by those Affected Government and Industry Parties which are signatories to the EPPRD.

### **17. Are other sectors of the value chain covered under the EPPRD?**

Under the EPPRD, ORCs are only payable to Owners of crops or property directly affected by the implementation of an approved Response Plan. Owners in other sectors of the value chain whose crops or property is not directly affected by the EPP response are not eligible for ORC payments.

### **18. Is the use of contractors Cost Shared under a Response Plan?**

Yes. Where someone is contracted by a Party to undertake work as a direct result of an EPP Incident and within an approved Response Plan, costs incurred as a result of that contract will be included as part of the Cost Sharing arrangements under the EPPRD. The exception is where the contractor is performing activities that form part of the agreed normal commitments of the Party(s).

### **19. What if an Affected Industry is unable to meet its Cost Sharing obligation?**

The Australian Government has agreed to initially pay an Industry Party's Cost Sharing obligation where that Party is unable to do so. This is done on the basis that the Industry Party will repay the Australian Government within a reasonable period (generally expected to be no longer than ten years) using a pre-agreed funding mechanism, such as the EPP Response Levy (see Question 20).

### **20. How does industry meet its Cost Sharing obligation?**

Parties to the EPPRD can establish an EPP Response (EPPR) Levy to meet financial liabilities for responses under the EPPRD. While this is not the only option, many industries have chosen this approach, as it provides the greatest flexibility in relation to adjusting levy rates to suit particular needs.

Other options available include using funds held by the industry in trust accounts, voluntary levies or funds raised by other means. This could also include funds from the PHA levy<sup>8</sup> over and above membership subscription commitments. However, if an adjustment to the PHA levy rate is necessary, it would require consultation with members of the industry (producers) and their agreement before DAFF will consider changing the levy.

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<sup>8</sup> The *Plant Health Australia (Plant Industries) Funding Act 2002* provides mechanisms that Industry Members can use to meet part or all of their subscription commitments each year by establishment of a PHA levy. Funds from the PHA levy can also be applied to meet other liabilities including liabilities resulting from EPPs where these are agreed before the start of the financial year and are consistent with PHA's Constitution.

### **20.1. Has the EPPR Levy always been an option?**

No. The EPPR Levy option has only become available since amendments to the *Plant Health Australia (Plant Industries) Funding Act 2002*<sup>8</sup> commenced on 22 June 2006.

### **20.2. How does the levy work?**

The rate of the levy will be determined by each participating industry up to a maximum determined by the Regulations. Industries may elect to set the levy rate at zero, to be activated in the event of an EPP response or at some other level up to the maximum. Industries may also set the levy as a positive rate to undertake biosecurity risk mitigation activities, such as surveillance and research related to EPPs.

### **20.3. How will the EPPR Levy funds be managed?**

The Australian Government will collect, and forward to PHA, amounts collected by the EPPR Levies and charges. PHA is required to hold the payments for each participating plant industry in a separate fund.

Any reserve of funds collected by the levy will be managed by PHA. The accumulated funds may be applied to EPP responses and related EPP activities, such as surveillance and preparedness programs where support has been provided by the industry in accordance with the Australian Government Levy Principles and other relevant legislation. Where the accumulated levy funds or the operative levy rate are found to be insufficient to meet liabilities, industries will need to obtain agreement to vary the levy rate.

### **20.4. Where can I obtain more information on the levy?**

Advice may be sought from PHA and from DAFF in relation to the EPPR Levy and the options and implications for each industry. For more information, visit the DAFF levies website at [www.daff.gov.au/agriculture-food/levies](http://www.daff.gov.au/agriculture-food/levies)

## **21. What is the base capacity of EPPRD signatories in an EPP response?**

Parties to the EPPRD have committed to define "normal commitments", which are the normal resourcing levels expected from all Parties. Only costs over and above normal commitments during an EPP incident would be eligible for national Cost Sharing through the EPPRD.

**Plant Health Australia**

Suite 5, FECCA House  
4 Phipps Close  
DEAKIN ACT 2600

Phone +61 2 6215 7700  
Fax +61 2 6260 4321  
Email [biosecurity@phau.com.au](mailto:biosecurity@phau.com.au)  
[www.planthealthaustralia.com.au](http://www.planthealthaustralia.com.au)

