



Owner Reimbursement Costs

Frequently asked questions

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This document does not constitute, and should not be relied upon as being, legal advice on the interpretation of the EPPRD. It does not, and is not intended to, replace, amend or otherwise alter the terms of the EPPRD in any way. Readers should seek their own independent advice on the interpretation of the provisions of the EPPRD and the application of those provisions to their own circumstances.

Italicised terms used in this document may have specific definitions in the EPPRD, the current version of which is



The Emergency Plant Pest Response Deed

The Emergency Plant Pest Response Deed (EPPRD) is a national, legally binding agreement between the Australian Government, all state and territory governments, plant industry peak bodies and Plant Health Australia (PHA). It supports a rapid and effective response to a detection of an *emergency plant pest* by outlining prior agreement on the governance (decision making) and funding arrangements of implementing a *response plan*.

As the custodian of the EPPRD, PHA provides guidance and assistance in implementing the EPPRD arrangements.

Further information on the EPPRD or *emergency plant pest* responses may be found on PHA's website.

Owner Reimbursement Costs

To eradicate or prevent the spread of an *emergency plant pest*, a *response plan* may require a property to be *quarantined*, certain crops to be destroyed or a grower to undertake actions that are additional to their normal production practices (such as control measures or a forced fallow). Implementing these requirements often results in additional costs or potential losses to impacted individuals.

Owner reimbursement costs (ORC) is a type of payment made under the EPPRD to an individual to reimburse them for specific defined costs or losses incurred following the implementation of a *response plan*. The provisions of the EPPRD define what comprises an ORC payment, who may receive a payment, how *cost sharing* is applied, and the general valuation and payment processes undertaken.

What other support is available to affected individuals during a biosecurity incident?

Governments (federal or state/territory) and industry organisations may have available other specific support for affected individuals outside of the national EPPRD arrangements. Individuals should consult their agricultural departments or peak industry body for more information.

ORC frequently asked questions

The following information is presented as a series of 'frequently asked questions' regarding ORCs. These questions (and associated answers) provide a snapshot of key elements of ORCs and do not capture in depth all aspects related to ORCs under the EPPRD.

Further information on ORCs may be found on PHA's website (www.planthealthaustralia.com.au/orcs/).


This document will be reviewed and updated with further 'FAQ' on a needs basis.

Does a response plan need to be in place for an ORC payment to apply?

Yes.

ORCs are only available if property, crops(s) or goods are destroyed or significantly devalued as a direct result of actions taken in accordance with an agreed *response plan* under the EPPRD.

A directive from the state/territory government to undertake a specific action in accordance with the *response plan* must have been received. This directive should be specified in a jurisdictional legislative instrument and for the purpose of eradication or prevention of the spread of an *emergency plant pest*.



If an individual makes a business decision to undertake an action but is not directed to do so by the state/territory government, costs/losses arising as a result of their action would not be reimbursed as part of an ORC payment. This may mean that no (or a greatly reduced) ORC payment may be applicable.

Who may receive an ORC payment?

An ORC payment is only payable to the *owner(s)* of the crop(s) or property (or their authorised representative) which is subject to a *response plan*. An *owner* includes every person, other than a mortgagee not in possession, having or claiming any right, title or interest in any plants, plant products or land.

Individuals impacted by the *emergency plant pest* incursion (or associated actions taken by governments) but are not subject to a *response plan* would not be eligible to receive an ORC payment.

Any *owner* who has been convicted of an offence under any Act or regulation which is directly related to the eradication of the *emergency plant pest* to which the claim relates will not be paid an ORC payment.

Any person who is suspected of:

- (a) having acted with intent to mislead or defraud any of the signatories to the EPPRD (whether the industry organisation representing their cropping sector, the state/territory government or the Commonwealth) for the purpose of obtaining ORCs or
- (b) knowingly made false or misleading statements or having engaged in fraudulent practices or acts,

will be reported to the relevant authorities for appropriate action.

Does an owner need to be a member of a peak industry body to receive an ORC payment?

No. But the peak plant industry body representing their cropping sector must be a current member of PHA and a signatory to the EPPRD.

An *owner* only needs to be growing a crop that is represented by a peak plant industry body under the EPPRD. A list of current signatories is available at www.planthealthaustralia.com.au/epprd-signatories/.

What if a cropping sector is not represented under the EPPRD?

If the applicable cropping sector is not represented by a peak plant industry body under the EPPRD, an ORC payment may be available if the local value of production of the cropping sector is less than \$20 million and the payment is agreed by the *national management group*.

If the unrepresented cropping sector has a local value of production greater than \$20 million, an ORC payment to any impacted grower will not be available.

Does an owner need to be operating a commercial enterprise to receive an ORC payment?

Yes.

The *owner* must be operating a commercial business to receive an ORC payment. As an example, ORCs would not be payable for losses associated with backyard or community gardens.



Does an owner need to replant or remain within the same industry to receive an ORC payment?

No.

Although the intent of industry and government signatories to the EPPRD is to support growers to re-establish within their industry/cropping sector, there is no obligation under the EPPRD for a recipient of an ORC payment to do so. Ultimately this will be a business decision based on the specific circumstances of the recipient.

Who makes the ORC payment?

The state or territory government in which the *response plan* is being implemented will initially make the payment to the *owner*.

That government would then seek to have the cost of the ORC payment partially reimbursed by sharing the cost amongst the governments and industries that are jointly funding the *response plan*.

What costs or losses does an ORC payment include?

The types of costs or losses included in an ORC payment will depend on the specific actions identified under the *response plan* and whether these costs/losses meet one or more of the criteria set out in the EPPRD. Broadly, the following may be included:

- Direct eradication costs incurred by the owner that are additional to ordinary operating costs. For example, the cost of destroying a crop if that cost is incurred by the owner and destruction was directed by a state/territory government.
- The farm gate value of crops destroyed or where the economic value is destroyed (for example a perishable plant product which could not be moved from a quarantined premises).
- The loss of the estimated farm gate value of crops foregone, less the costs of production, resulting from an order being given (by a state or territory government) that a property lie fallow for a period.
- Costs above normal operating costs resulting from actions specified in a *response plan* and implemented in accordance with the *response plan* such as additional pest control measures and special treatments for machinery and equipment.
- Replacement value ('like for like') of capital items destroyed.

Will an ORC payment cover reimbursement for all potential impacts arising because of an emergency plant pest incursion?

Unlikely.

Throughout the response to an *emergency plant pest* incursion, individuals may be affected in ways that are not covered by the ORC provisions under the EPPRD. An ORC payment is limited to what the signatories to the EPPRD (industry and government) have agreed should form part of the reimbursement.

The following are some examples of costs/losses that would not be reimbursed:

- consequential losses
- costs incurred in complying with the *response plan* which would have been incurred anyway as part of normal operating costs
- costs associated with replanting (except for perennial crops)
- the cost of fertilisers, packing boxes or other such items purchased but which cannot be used until a later date

- insurance premiums
- costs associated with meeting the requirements of a market or losses associated with a market not accepting host plants or plant products
- losses associated with the inability to conduct a related business activity, whether related to the crop in question or not (for example a packing shed, bed and breakfast or hosting of weddings in a rural setting)
- legal fees and valuation costs incurred by an *owner* seeking to appeal their ORC valuation
- compensation for emotional or mental stress.

Does the crop (or property) need to be infected or infested by the emergency plant pest?

No.

The property must be subject to a requirement of a *response plan* but does not need to be infected/infested with the *emergency plant pest* that the *response plan* is written for. For example, a property may be subject to quarantine restrictions if it is located within a defined geographical area.

Does the crop/plant need to be actively destroyed for an ORC payment to be available?

No.

An ORC payment may include reimbursement of costs or losses other than those arising from crop/plant destruction. For example, an ORC payment may solely comprise of reimbursement of treatment costs to suppress the *emergency plant pest* (as a result of a directive by the state/territory government) that are additional to ordinary operating expenses.

Will an ORC payment cover the value of crop losses that occur as a result of restrictions that prevent movement of a crop/plant product?

Potentially – it will depend on the specific requirements of the *response plan*.

If restrictions are imposed on a premises by the combat state/territory government (in accordance with the *response plan*) and as a result of those restrictions, the crop itself or the economic value of the crop is destroyed, the *owner* may be eligible to be reimbursed for the value of the crop losses.

Costs associated with meeting the requirements of a market, or losses associated with a market not accepting the crop/plant product, are not considered an eligible element in an ORC valuation.

Who manages the valuation and payment processes?


The processes for valuation and payment of ORCs are managed by way of emergency response structures established by the relevant government agency (the *lead agency*) as part of the response to the biosecurity incursion.

The valuation will be completed by an independent valuer with the required expertise, contracted by the *lead agency* to provide advice regarding a fair value of the claim.

How is the value of a potential ORC payment calculated?

Each ORC valuation is based on the formula specified in the EPPRD for the relevant cropping sector.

The valuer will use an agreed ORC evidence framework to identify the sources of information/data required to calculate the ORC value in an auditable, transparent and fair way.



The data sources are determined by a hierarchy of evidence approach, using specific, local and certifiable information when available and appropriate (ideally auditable owner records), and then increasingly general, regional and applicable averages or estimates.

Agreed ORC evidence frameworks are published at www.planthealthaustralia.com.au/orcs/.

May an initial valuation be appealed?

Yes.

An appeal against a valuation must be made in writing by, or on behalf of, the *owner* to the *lead agency* within 30 days of receipt of notification of either (a) the valuation or (b) in respect of a fallow period, that the property is eligible to be re-sown or replanted.

The appeals process will involve convening a small panel to consider the scope and content of the appeal. A second valuation by a different independent valuer may also be undertaken to inform the appeals process.

What is the timeframe to receive an ORC payment?

The provisions of the EPPRD require that an ORC payment must be paid to the *owner* by the applicable state or territory government within 60 days of the completion of the valuation process (excluding any period during which an appeal is being assessed).

An *owner* should expect to receive an ORC payment as a single lump sum.

Will an ORC payment be treated as taxable income?

The tax treatment of the ORC payment will be dependent on the factual circumstances relevant to the recipient and may vary between recipients.

While an ORC payment may be treated as income and included in the owner's assessable income in the year in which the payment is derived, recipients should seek their own independent advice relevant to their specific circumstances.