

PLANT PROTECTION AMENDMENT BILL 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The Bill will amend the *Plant Protection Act 1989* (the Act) to:

- provide inspectors with a statutory basis to issue certificates relating to the status of plants;
- facilitate the movement of plants within Queensland and nationally by providing for the accreditation of persons to issue assurance certificates (as a voluntary alternative to the inspection and certification techniques undertaken by inspectors under the Act);
- confirm the effect of inspectors' approvals issued in relation to the movement of fruit out of the papaya fruit fly pest quarantine area;
- clarify the effect of the regulation-making provision of the Act to make it clear that a regulation may impose a penalty (maximum of 20 penalty units); and
- replace the general offence provision in the Act (which applied a maximum penalty of 20 penalty units to any offence provision which did not have a specific penalty attached to it) with specific penalties which are commensurate with the gravity of the offence committed.

Reasons for the Bill

The recent papaya fruit fly outbreak in northern Queensland highlighted a number of deficiencies and ambiguities in the Act. When considering the range of policy options available in response to the outbreak it became apparent that the structure of the Act did not envisage the operation of an administrative system of accreditation (where non-government officials are accredited to issue certificates relating to the pest-free status of plants) as an alternative to the inspection and certification techniques undertaken by inspectors operating under the Act. The Bill remedies this deficiency by providing a statutory basis for a system of accreditation. It also provides the basis for the State to enter into an agreement with other States, essentially, to provide for a competent national system of accreditations.

Estimated Cost for Government Implementation

There will be no cost to Government.

Consultation

Extensive consultation was undertaken with industry and other State Departments of Agriculture/Primary Industries.

NOTES ON PROVISIONS

Clause 1 sets out the short title of the amending Act. The short title is the *Plant Protection Amendment Act 1996*.

Clause 2 provides that section 22 of the amending Act is taken to have commenced on 20 October 1995 (which is the date when the papaya fruit fly pest quarantine area was first declared under the *Plant Protection (Papaya Fruit Fly) Quarantine Regulation 1995*). Section 22 of the amending Act confirms the validity of inspectors' approvals issued under the *Plant Protection (Papaya Fruit Fly) Quarantine Regulation 1995* and the *Plant Protection (Papaya Fruit Fly) Quarantine Regulation (No.2) 1995*. It also rectifies a mistake in *Plant Protection (Papaya Fruit Fly) Quarantine Regulation (No.2) 1995*.

Clause 3 provides that, when enacted, the *Plant Protection Amendment Act 1996* will amend the *Plant Protection Act 1989* (“the Act”).

Clause 4 inserts a new long title into the Act. The change in long title ensures that the Act cannot be read down to deal with pest infestations and related matters connected with Queensland only. The main reason for this change is to provide that the State can enter into arrangements with other States regarding a national system of accrediting people to issue assurance certificates for plants.

Clause 5 inserts a new provision into the Act setting out the main objectives of the legislation. In particular, the objectives reinforce the Act’s extension to potentially encapsulate national pest control concerns.

Clause 6 essentially amends section 3 to insert new definitions required as a result of other amendments made by this Act.

Clause 7 replaces sections 5 to 6A with a new provision which essentially provides that an office holder under the Act may exercise powers and functions authorised under a corresponding law. (Note that new section 3(1) defines a corresponding law as one which declared by a regulation under the Act.) It also inserts two new parts into the Act, as follows—

PART 2—APPOINTMENT OF INSPECTORS

The following amendments insert fairly standard appointment provisions into the Act.

New section 6A provides that the chief executive may appoint a person as an inspector if he or she is satisfied that the person has the necessary experience or expertise.

New section 6B provides that an inspector’s powers may be limited by a regulation, by a condition of the inspector’s appointment or by written notice given by the chief executive.

New section 6C provides that an inspector holds office in accordance with the conditions of his or her instrument of appointment.

PART 3—PEST CONTROL

The amendments in this part essentially tidy up existing provisions relating to the control of pests. Most amendments attach specific revised maximum penalties to existing offences (which needs to be done because this Act deletes the Act's general offence provision, section 31). Amendments are also made, where appropriate, to bring these offences into line with current legislative policy (by providing reasonable excuse as a defence to prosecution and by maintaining the common law privilege against self-incrimination).

New section 6D provides that this division provides powers to prevent, control or remove pest infestation of plants.

Clause 8 inserts new section 9(4) which makes it clear that contravening a regulation or notice made under section 9 incurs a maximum penalty of 1,000 penalty units. (Section 9 provides that, in order to control the spread of pest infestations within the State, subordinate legislation may be made which, essentially, prohibits the movement of plant or other material.)

Clause 9 inserts new section 10(5) which makes it clear that contravening a notice made under section 10 incurs a maximum penalty of 250 penalty units. (Section 10(2) provides that the Minister may issue a notice directing a person to do things which the Minister considers necessary or desirable to prevent control or eradicate a pest infestation of a crop plant in a declared crop plant district. This notice is subordinate legislation.)

Clause 10 inserts a specific penalty (viz, a maximum penalty of 1,000 penalty units) to apply in relation to a contravention of section 12(2). (Section 12(2) requires a land owner to notify an inspector when he or she discovers or becomes aware that a notifiable pest is on his or her land.)

Clause 11 inserts new section 13(4) which provides that a person must comply with an inspector's direction made under section 13 unless he or she has a reasonable excuse not to do so. The maximum penalty for breaching this provision is 1,000 penalty units. (Section 13 provides special powers in relation to specific pest infestations, and is aimed at preventing a pest spreading from one property to another.)

Clause 12 inserts a new section 14(7) which provides that a person must comply with a direction made under section 14 (to destroy a healthy crop to

prevent pest infestation). The offence is not committed however, if a person has a reasonable excuse not to comply with the direction. A maximum penalty of 200 penalty units is imposed for a breach of this provision. A right to compensation is provided (by section 14(4)) where a healthy crop is destroyed in accordance with directions issued under section 14.

Clause 13 inserts new section 15(2) which makes it an offence for a person to not comply with directions made by an inspector under section 15 to destroy a volunteer plant. (A volunteer plant is essentially one which has not been intentionally grown or cultivated; the term is defined in section 3(1).) The offence is not committed however, if a person has a reasonable excuse not to comply with the direction. A maximum penalty of 200 penalty units is imposed for a breach of this provision.

Clause 14 inserts new section 19(6) which provides that a person must comply with a direction or requirement made by an inspector under section 19 (which sets out the general powers of inspectors). The offence is not committed however, if a person has a reasonable excuse not to comply with the direction. A maximum penalty of 200 penalty units is imposed for a breach of this provision.

New section 19(7) maintains the common law privilege against self-incrimination where a person is required to answer a question under section 19.

Clause 15 inserts new section 19A which essentially provides inspectors with an explicit statutory power to issue certificates under the Act. Spelling this power out in the Act ensures that inspectors are afforded the general protection from liability provided by section 28. The new provision also provides that the person requesting the certificate may pay the reasonable costs associated with issuing it.

New section 19A(5) makes it an offence for someone who is not an inspector to issue an inspector's certificate (maximum penalty of 1,000 penalty units).

New section 19A(6) imposes a maximum penalty of 50 penalty units for when a person makes representations about a plant which are likely to cause someone reasonably to believe that an inspector's certificate has been issued when this is not the case.

Clause 16 deletes an obsolete provision and inserts three new parts.

PART 4—ACCREDITATION

New section 21 sets out the purpose of accreditation. Prior to these amendments, all certificates relating to the pest status of plants were issued by inspectors following the physical inspection of plants or treatments of plants. The new system of accreditation will allow essentially anyone to be accredited to issue certificates (known as “assurance certificates”). While accreditation will be voluntary, it will be conferred on a person only if he or she has an effective system of in-house quality assurance management. Furthermore, a condition of accreditation will require the accredited person to be subject to inspection and audit, and penalties will be provided where the person fails to meet the conditions of accreditation.

New section 21(2) explains that an assurance certificate may be sufficient to satisfy a requirement of this State’s law or the law of another jurisdiction.

New section 21(3) provides that, providing the accreditation conditions specifically provide for this, a person other than the actual accredited person (eg, an employee of the accredited person) may issue an assurance certificate on behalf of the accredited person.

New section 21(4) provides that subject to the conditions of accreditation, the certificate or any Act, an assurance certificate may be given for the person giving the certificate or another person. In other words, the accredited person may be accredited to issue certificates for plants irrespective of who owns them (including the accredited person).

New section 21A provides that a person may apply to the chief executive for a grant of accreditation. The chief executive has the discretion to grant or refuse accreditation.

New section 21B provides that if the chief executive decides to refuse to grant accreditation, he or she must give the applicant written notice including the reasons for the refusal. The chief executive must also notify the applicant of his or her rights of appeal.

New section 21C provides that a grant of accreditation may be made subject to conditions. The types of conditions which may be attached to a grant of accreditation are set out in new section 21C(2). Amongst other things, a condition may require the accredited person to provide a security or pay the reasonable costs relating to the accreditation as well as the reasonable costs associated with ensuring that the conditions of accreditation

are complied with (eg, the reasonable costs of auditing and inspecting the accredited person's certification facilities and procedures). Other conditions may also be imposed. A person may be accredited to issue certificates in relation to particular circumstances only. For example, he or she may be allowed to issue assurance certificates only in respect of particular plants or treatments of plants. Moreover, a condition of accreditation may impose a restriction on the property or facilities to which the accreditation applies (eg, accreditation may require that the plants to be certified be treated at a specified approved treatment facility).

New section 21D requires that a register of accredited persons be kept.

New section 21E sets out grounds for cancelling or suspending accreditation. Note that section 21F provides that cancellation or suspension is discretionary. Accordingly, the grounds set out in new section 21E may be relied on by the chief executive to cancel or suspend accreditation under section 21F (or to refuse accreditation under section 21B).

New section 21F provides that if the chief executive considers that an accreditation should be amended, the chief executive may amend the accreditation under section 21G.

New section 21G provides for the procedures to be followed if the chief executive considers a ground exists to cancel or suspend an accreditation, or to amend an accreditation.

New section 21G(6) provides that if the chief executive considers it necessary in the public interest, the chief executive may, by written notice to the accreditation holder, immediately suspend the accreditation.

New section 21H provides that the chief executive may require an accredited person to return any document of accreditation (to amend the document to reflect the amendment done under new section 21G). New subsection (3) provides that an accredited person must comply with such a requirement unless he or she has a reasonable excuse for not doing so. The maximum penalty for breaching this provision is 40 penalty units.

New section 21I prohibits an accredited person from contravening a condition of accreditation (maximum penalty of 200 penalty units).

New section 21J(1) prohibits anyone who is not an accredited person or an inspector from issuing an assurance certificate. New section 21J(2) prohibits anyone from making representations about a plant which are likely

to cause someone reasonably to believe that an acceptable assurance certificate was given for a plant when this is not the case. The maximum penalty for contravening either provision is 1,000 penalty units.

PART 5—INTERGOVERNMENTAL AGREEMENTS

New section 21K sets out the purpose of intergovernmental agreements made under this part, which essentially is to provide for a competent national system of accrediting people to issue assurance certificates for plants.

New section 21L provides that the chief executive, as agent of the State, may enter into an agreement with other jurisdictions fundamentally providing for:

- the mutual recognition of assurance certificates issued under the accreditation schemes of the parties to the agreement; and
- the imposition of appropriate audit and inspection requirements to ensure the integrity of the various accreditation schemes.

PART 6—REVIEW OF ADMINISTRATIVE DECISIONS

The amendments contained in this part are standard provisions relating to the review of administrative decisions made by the chief executive under the Act.

New section 21M provides that a person who is aggrieved by an administrative decision under the Act can apply to the chief executive for a reconsideration of the decision. (Note that the person is entitled to receive a statement of reasons for the decision under the *Judicial Review Act 1991*.)

New section 21N provides that, when reconsidering the decision, the chief executive has the power to confirm, amend or reverse his or her original decision.

New section 21O provides that a person who is aggrieved by a decision made by the chief executive under section 21N may appeal to the Magistrates Court against that decision.

New section 21P sets out the procedure for initiating an appeal. The appellant must file the notice of appeal within 28 days of receipt of the decision. The court, however, may extend the time for lodging the notice of appeal. New section 21P(6) requires that the notice of appeal state the grounds of the appeal.

New section 21Q provides the court with the power to grant a stay of a decision which is being appealed against to secure the effectiveness of the appeal. The operation of a decision which is being appealed against is not affected unless the court has granted a stay.

New section 21R sets out the hearing procedures to be adopted by the court when it deals with the appeal. In particular, it requires that the appeal be by way of a re-hearing of the matter, and that, in deciding the appeal, the court is not bound by the rules of evidence. Furthermore, when the court hears the decision it must observe the rules of natural justice, and it may hear the matter in court or in chambers.

New section 21R(3) sets out the court's powers when hearing the appeal: the court may confirm the decision, set aside the decision and substitute it with an another decision, or set aside the decision and return the matter to the chief executive for reconsideration with any directions which the court considers appropriate.

New section 21S deems that a court's substituted decision is taken to be the chief executive's decision for the purposes of the Act.

Under new section 21T, a person aggrieved by the decision of the Magistrates Court is provided with a right to appeal of the District Court on a question of law.

PART 7—MISCELLANEOUS

Clause 17 replaces section 23 (which created offences relating to the supply of information required under the Act) with two new sections dealing with the same subject matter. Specifically, new section 23 makes it

an offence for a person to say anything to an inspector which the person knows to be false or misleading in a material particular, while new section 24 makes it an offence for a person to give an inspector a document containing information which the person knows to be false, misleading or incomplete in a material particular. The maximum penalty for breaching either provision is 200 penalty units.

Clause 18 inserts a specific maximum penalty of 200 penalty units for a contravention of section 24 (which deals with obstructing an inspector).

Clause 19 replaces the word “Minister” with “chief executive” in section 26 (which sets out what may happen to something which was seized under the Act).

Clause 20 replaces sections 31 (which essentially is a general offence provision) and 32 (which sets time limits within which to mount proceedings for a breach of the Act) with:

- a new provision (section 31) which provides the chief executive with powers of delegation. In particular, new section 31 sets out that the chief executive cannot delegate the power to either appoint inspectors or enter into intergovernmental agreements; and
- new section 32 which deems that the prosecution of an offence under the Act is a summary proceeding under the *Justices Act 1886*.

Clause 21 amends the regulation-making provision in the Act (section 35) to specifically provide that a regulation may be made which imposes a penalty not exceeding 20 penalty units. It also provides that a regulation may impose a fee.

Clause 22 inserts new section 35A into the Act. New section 35A:

- confirms the validity of inspectors’ approvals issued under the *Plant Protection (Papaya Fruit Fly) Quarantine Regulation 1995* and the *Plant Protection (Papaya Fruit Fly) Quarantine Regulation (No.2) 1995*. (These regulations essentially provide that fruit could not be taken out of the declared pest quarantine area without an inspector’s written approval. New section 35A(1) confirms the effect of the inspectors’ approvals which were granted after 20 October 1995 - which is when the quarantine was first imposed);

- rectifies a mistake in *Plant Protection (Papaya Fruit Fly) Quarantine Regulation (No.2) 1995*; and
- expires the day after the amending Act commences.

As noted, clause 2 provides that clause 22 is taken to have commenced on 20 October 1995.

SCHEDULE

The Schedule makes minor technical drafting amendments to various provisions in the Act.