

Plant Protection Amendment Bill 2004

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Plant Protection Amendment Bill 2004*

Policy Objectives of the Legislation

To amend the *Plant Protection Act 1989* to rectify deficiencies identified in the Act during the current citrus canker outbreak, in particular, the proposed the *Plant Protection Amendment Bill 2004* will:

- remove the ability of some owners of diseased properties to seek injunctions to prevent eradication;
- provide greater disease surveillance powers to inspectors;
- allow inspectors to access records (wherever located) to trace the movements of potentially diseased plant matter;
- increase the penalties for breaches of the Act, and including personal liability for company directors;
- clarify the right of the State to carry out necessary treatment or destruction within a pest quarantine area.

Reasons for the Bill

An outbreak of a serious plant pest or disease in Queensland can have a significant impact on the industry involved and on the Queensland economy as a whole. Not only can plants or crops be damaged by the outbreak but Queensland's trading partners will also cease accepting that plant or crop.

A graphic example of the hardship and economic damage that can be caused by a serious plant pest or disease is the current citrus canker outbreak in Emerald. Citrus canker is a highly contagious bacterial disease that affects plants in the Rutaceae family, including citrus and some

ornamental species. The disease has been found in Asia, the Middle East, Africa, the Pacific and the United States. It is exotic to Australia. Citrus canker infection can produce a number of effects, including round blister-like necrotic lesions on leaves, stems and fruit with severe infections causing defoliation, premature fruit drop, twig dieback and general tree decline.

The Department of Primary Industries and Fisheries (DPI&F) first became aware of the citrus canker outbreak on Monday 28 June 2004 when samples taken from Evergreen Farms at Emerald by a private consultant were submitted to one of DPI&F's regional offices for identification.

When the suspicion of citrus canker emerged in laboratory testing on 29 June 2004, the affected property was immediately placed in quarantine.

A declaration of a Pest Quarantine Area (PQA) by Ministerial Notice, under the *Plant Protection Act 1989* (the PP Act), was made on the 2 July 2004, in accordance with the Draft Contingency Plan for Citrus Canker. The PQA encompasses the local government areas of Bauhinia, Emerald, and Peak Downs.

Declaring a PQA enabled DPI&F to launch the immediate action to contain and eradicate the outbreak.

On 6 July 2004 the National Management Group of Federal/State agricultural chief executives and the national citrus industry, on receipt of expert confirmation of the disease as citrus canker, approved an eradication and surveillance program. A cost sharing arrangement of \$1.56 million to enable the initial eradication phase was also agreed to.

At midnight on the 6 July 2004, the interstate plant health authorities banned all Queensland citrus from entering their respective States.

The immediate goal of the response was to prevent the spread of canker from the infected property and to commence surveillance to determine the extent of infection in the PQA. These delimiting surveys were extended to other citrus growing regions across the State to determine if there has been spread of canker and to facilitate earliest re-opening of domestic market access.

Initial destruction of trees on the declared property (Evergreen Farms) in Emerald commenced on 11 July 2004.

DPI&F is following established emergency procedures in responding to the outbreak. This involves a partnership with the Commonwealth and other States/Territories under the Primary Industries Ministerial Council (PIMC)

and following a recently developed draft Contingency Plan for Citrus Canker.

DPI&F has negotiated protocols with Australian Quarantine and Inspection Service (AQIS) to facilitate the export of citrus fruit from the Pest Quarantine Area. Exports commenced in the week of 19 July 2004.

Intrastate movement restrictions of citrus and host plants from areas outside the PQA came into effect on 20 July 2004. The purpose of these restrictions is to ensure that canker is not spread in these non-quarantine areas while area freedom is established and to ensure it is maintained once it has been established. This has secured domestic market access.

Citrus fruit can move intrastate once an inspector is reasonably satisfied that the property of origin is free from canker or the fruit itself has received post harvest treatment, been inspected by an inspector and is accompanied by an inspector's certificate. This does not apply to fruit or plant material from the Pest Quarantine Area.

Ongoing surveillance in the PQA and the remainder of the State for at least two years will be required in order to establish area freedom and maintain market access.

The full impact of this outbreak and the need for immediate access can be seen by examining the size of the citrus and nursery and landscape industries in Queensland, the latter being affected by restrictions on the movement of host plants.

The citrus industry

Queensland Citrus consists of 200 orchards and is grown on 3,000 hectares. Queensland produces 96,258 tonnes of citrus annually, which is 15% of Australia's production. Emerald produced 6700 tonnes of citrus in 2000/2001, which equates to 8.9% of the Queensland citrus production. Mandarins are the predominant variety of citrus produced in Emerald. Thirty-five percent of these are exported.

The main citrus producing area in Queensland is in the Gayndah-Mundubbera region, with annual production of approximately 22,000 tonnes.

Domestic citrus sales of Queensland product are approximately 64% of total sales, with exports responsible for approximately 18% and the remainder used for processing. For mandarins the exports are greater than for the other varieties of citrus, and equated to approximately 35% of the market in the 2002/2003 year.

The nursery and landscape industries

The Queensland nursery industry is estimated to have a gross annual output of about \$500 million. While there are no reliable estimates of the total sales of the Rutaceous plants from Queensland nurseries, DPI&F estimates that they account for about five per cent of total nursery sales. However, risk assessments have identified only ten ornamental species of the Rutaceae family to be hosts for citrus canker and in agreement with the national plant health authorities, only these ten are subject to the movement restrictions applying outside the PQA. Of these, four do not occur in Queensland and the most popular nursery and landscape species, *Murraya paniculata* (Mock orange), is considered low risk and exempted from the restrictions.

DPI&F has been fully exercising its powers under the PP Act to control the disease. The outbreak has highlighted a number of deficiencies in the Act. The exercise of these powers has already been the subject of attempted challenge in the Supreme Court. Had that challenge been successful it would have resulted in a halt to the destruction of trees on Evergreen Farm. That, in turn, would have meant both the threat of further spread of the disease and to a further period during which there could not have been any trade in citrus fruit with the other States. Such a delay and the vast economic harm it can cause is unacceptable.

Accordingly, and given that the eradication of canker may take up to two years, the PP Act needs to be urgently amended to clarify and widen the powers available to DPI&F to address some areas in which it may lack the necessary specificity or be inadequate for the necessary requirements of disease control.

Achieving the objectives

The proposed Bill will, amend the PP Act in ten areas. It will:

- (i) Remove the ability of owners of diseased properties to seek injunctions to prevent eradication. That is, to remove the court's power to grant an order of any kind relating to action taken by the Minister, the chief executive or an inspector that would stop any of them from taking any action in relation to an outbreak or suspected outbreak of a prescribed serious exotic pest or disease during a quarantine.

In 2002, Parliament set a precedent in regard to this provision by approving the inclusion of a similar provision in the *Exotic Diseases in Animals Act 1981*.

The same principle applies with this Bill – this powerful provision will be qualified to only apply to those 21 exotic pests and diseases that are specified in this Bill and which are considered to pose the gravest “quality of life” impacts on the environment and through their potential to cause major socio-economic consequences by very serious international trade losses and national market disruptions.

- (ii) Enable clear powers of surveillance to determine the presence or absence of a notifiable pest or disease when a pest quarantine area is declared or a direction into quarantine is given or an undertaking in lieu of a quarantine is in force. Surveillance powers will also be strengthened where a pest quarantine area, a direction into quarantine or an undertaking has been revoked to enable area or property freedom accreditation.
- (iii) Inspection and production of records to enable trace-forward and trace-back of records during a quarantine that relate to movement of plants from or to an infected premises. This will include obligations on businesses to keep records of movements of plants and fruit to facilitate tracing of pests and diseases. It will also include the capacity of inspectors to require people to provide assistance, information and documents in making investigations under the Act.
- (iv) Clarify relevant powers of destruction under the PP Act.
- (v) Clarify that the section of the Act regarding reconsideration of administrative decisions does not apply to decisions made by the Minister, the chief executive or an inspector made under a quarantine response to an incursion of one of the specified serious exotic pests or diseases mentioned in sub-paragraph (i), above.
- (vi) To provide a power for the chief executive to delegate his power to appoint inspectors or authorised persons under the PP Act.
- (vii) To clarify the chief executive’s power to declare restricted or affected areas within a quarantine area.
- (viii) To clarify the capacity for inspectors to issue approvals to facilitate compliance with or exemptions from quarantine obligations and to meet the objects of the quarantine.
- (ix) Clarify that the State can carry out any necessary treatment or destruction within a quarantine area in the first instance.

- (x) Increase certain penalties under the Act to reflect the gravity of the implications of non-compliance with control and eradication measures commensurate with those for equivalent quarantine offences relating to animal diseases such as foot and mouth disease.
- (xi) Require executive officers of companies to ensure corporations comply with the Act.

Administrative costs

The Commonwealth - States Cost Sharing Agreement of 1977 provides funding for the implementation of the Emergency Plant Pest Response Plan for Citrus Canker in the Emerald District of Queensland (the Response Plan).

The Response Plan was endorsed on 6 July 2004 by the National Management Group (NMG) and approval was given for initial funding of \$1.56 million to implement the initial phase as outlined in the Response Plan. The initial phase is deemed to be the first 6-8 weeks of the response. As the plan is updated, it is expected the NMG will approve the full program, backed by cost sharing, which is anticipated to run for 18-24 months.

The Commonwealth-States Cost Sharing Agreement is intended to provide funding for the eradication, containment and surveillance of the citrus canker disease up to the end of the Proof of Freedom phase, which is expected to take two years

The amendments made to the PP Act by this Bill will not involve any significant additional cost on the State in dealing with outbreaks of a significant outbreak like citrus canker.

Other costs associated with this Bill are:

- The costs of training authorised officers for appointment, as well as technical training. Development costs for the training would be approximately \$5000, delivery costs approximately \$1000 base cost per training session (plus variable costs according to the number of participants), review costs (including audit of authorised officers and review of training content at base cost of \$1000 plus variable costs according to the sample number of audits conducted);
- Issue of ID cards. These cost approximately \$10 for photos and \$10 for the card, plus incidental administrative costs (labour, postage etc, approximately \$30 per card);

- The cost of publishing/advertising details of the nature and extent of surveillance programs. This will also vary depending on the media chosen and where it is a newspaper, the particular. It is estimated that the average cost would be \$10,000 for the one-off advertising of a program. It can't be predicted how many programs may be necessary but it is likely to average one per annum;
- The training of inspectors in key new procedures under the Bill and is likely to incur similar costs to the costs of training authorized officers for appointment above.
- Any extra administrative costs associated with other measures would be incidental and part of normal enforcement of the Act.

Fundamental Legislative Principles

There are some departures from fundamental legislative principles inherent in the Bill. Any such departures will occur in the context of a tension between the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992* and the competing community desire to ensure rapid and decisive response in protecting the community against the impact of potentially devastating plant pest or disease outbreaks.

These adverse impacts extend to severe losses in production, loss of market access and resulting loss of jobs. Whilst the nature of some provisions may be considered onerous, the public interest in a precautionary and prudent approach to pest and disease control management far outweighs the public interest of individual ownership rights in respect of infected plants or crops. Where serious and significant threats to industry are the potential impacts of exotic pest and disease, it is the application of the precautionary principle that will ensure the greatest protection and benefit to the whole community.

Rights and Liberties of Individuals (Ouster clauses)

The Bill provides that once a Ministerial order or regulation has been made declaring a quarantine area then, for certain prescribed serious diseases, no proceedings for an injunction, or for any order in the nature of a prerogative writ, or an order of any other kind, may be instituted or continued in any court against the Minister, the chief executive, an inspector or any other person that would stop, prevent or restrain the Minister, chief executive, inspector or other person from taking any action in relation to or in consequence of an outbreak or suspected outbreak of an exotic pest or an exotic disease.

While the amendment contemplates powers that override rights of ownership, prompt destruction is essential to reduce spread of the infestation and to reopen market access for the industry concerned. Delay in destruction can impose severe hardship on all participants in the relevant industry as well as increasing the risk of spread of the infestation. The section does not stop a person from bringing a proceeding to recover damages for loss caused by a negligent act or omission or an unlawful act.

Exclusion of the application of section 21M (Application for reconsideration of administrative decisions)

It is currently not clear that section 21M does not apply to decisions made under a quarantine regulation or notice. It is unacceptable to delay urgent action in regard to treatment of a notifiable pest or disease, or one of the prescribed serious pests or diseases, while a person aggrieved is given 28 days to apply for a review. Accordingly, for very serious diseases, where the risk to the States economy is considerable, section 21M must, in the greater public interest, be excluded.

Powers of inspectors - Deprivation of right to own property

The current provisions of the Act are slanted towards destruction of infested plants being done by the owner. It is essential, in the interests of preventing controlling or removing an exotic pest of plants, that the treatment or destruction of infected plants be carried out by an inspector. This power is necessary to ensure that the treatment or destruction is carried out effectively. A failure to do so may compromise control of the pest, for example, in the current citrus canker outbreak, the burning of infested citrus plants was a complex exercise which, if not done properly, could have resulted in airborne ash or leaves spreading the disease. The amendment will assist in avoiding unacceptable delays resulting from failure of the owner to treat or destroy as directed, particularly where the owner does not possess the necessary equipment to carry out the treatment or destruction.

The current requirement creates potential for delays and mistakes where the treatment or destruction requires expertise. The amendment also reflects actual practice in that an owner invariably requests the inspector to perform the treatment or destruction.

Rights and liberties of individuals (maximum penalties)

One of the lessons learnt from the United Kingdom experience of a Foot and Mouth (FMD) outbreak is that the spread of FMD has in some cases been exacerbated by deliberate contravention of quarantine conditions. The same can prove true of the breaking of quarantine conditions relating to plant infestations. Appropriately set penalties serve as a necessary deterrent to help prevent the introduction and spread of exotic plant pests and diseases.

It is proposed to increase the penalties under the Act to reflect the gravity of the implications of non-compliance with control and eradication measures associated with endemic and exotic pest and disease outbreaks. The penalty increases will create a reasonable parity with similar offence penalties in other Australian jurisdictions and other similar penalties in the Queensland Statute Book.

A table setting out the penalty increases being made by the Bill are set out in a table at the end of these explanatory notes.

Powers in relation to documents—Seizure of documents

The Act is deficient to the extent to which it allows for the inspection and copying of documents necessary to facilitate the objectives of the Act. Currently the section only allows seizure of certain specific documents that an inspector has reasonable grounds for believing will prove that an offence has been committed. The Bill will remedy this by providing clear power to an inspector to inspect and take a copy of a document at premises necessary for investigation of offences and the collection of evidence of an offence as well as for trace-forward and trace-back purposes. This power is critical to enable full control over the infestation and to ensure that market access is available to the industry by satisfying trading partners that the infestation is under control.

Rule against self-incrimination

The Bill overrides the general rule that a person cannot be required to provide information where that information may tend to incriminate them. This provision is essential in the case of an infestation of a serious plant pest or disease because the only way to ensure that the infestation is fully under control is to be able trace where the infection may have originated and where infected material may have gone. Without adequate trace-forward and trace-back, it cannot be definitively said that the disease is fully under control or is fully eradicated. This poses a very serious risk to

the industry concerned because of the threat to further plants and crops and the likely resultant reduction in market access this would result in for the industry.

The clause does contain some safeguard for the individual being required to supply the information because any such information obtained cannot be used to prosecute that individual.

Executive officers must ensure corporation complies with Act—the onus of proof

The Bill provides that responsibility for an offence under the Bill committed by a corporation is sheeted home to the executive officers of that corporation. However, a defence is provided to the executive officers to avoid harsh results arising from this clause. It is arguable that this provision contains a reversal of the onus of proof, however, it should be noted that the matters to be proved by the defence are not elements of the offence. Placing the onus to prove the defence on the executive officer is justified because the facts that support the defence will usually be entirely within the defendant's knowledge and would be impossible for the prosecutor to prove in the negative.

Retrospective provisions

Certain provisions of this Bill have some retrospective effect, as follows:

Under the new Part 8 of the Act being inserted by clause 26 of the Bill, a regulation or notice made under section 11 of the Act (declaring a quarantine area) on or after 2 July 2004 is taken to be, and always to have been, as valid and effective as it would have been if all provisions of the amending Act had been in force immediately before 2 July 2004. 2 July 2004 is the date on which a Ministerial notice declaring a quarantine for citrus canker was made. While this could be argued to impinge on the rights of the owner of the infected property, the indications are that the current law is valid in any case and this Bill is about abundant caution. An injunction was sought by the owners of the farm where infected citrus trees are being destroyed arguing that the notice under section 11 was not valid. Legal advice from Counsel for the State was that the notices the State is relying on under the Section 11 provisions of the PP Act, are valid. The Supreme Court Judge who heard the injunction supported this view.

However, in order to ensure that there is no further risk to continuing action to deal with the citrus canker outbreak and therefore no further risk to Queensland's citrus industry, the matter is being further clarified to reflect

what the Government already believes to be the legal situation. The Bill is about abundant caution.

The provisions of the new section 11D apply to documents created before the commencement of the Bill in order to deem them to be business documents. This is necessary in order to be able to inspect citrus canker documents for trace forward and trace back. However it is a defence to not keeping such documents if a person has a reasonable excuse. Clearly it is a reasonable excuse if the person disposed of the documents before the Act came into force. In any case the types of documents involved would need to be kept for taxation purposes.

Clause 20 of the Bill amends section 21M(5) of the Act to insert a definition of 'decision of an administrative character under the Act'. It is currently not clear that section 21M does not apply to decisions made under a quarantine regulation or notice. Clearly it is unacceptable to delay action in such circumstances whilst a person aggrieved is given 28 days to apply for a review. Accordingly, the definition will ensure that section 21M does not apply to decisions of the Minister, the chief executive or an inspector under a quarantine regulation or notice. The section will apply to the citrus canker notice made on 2 July 2004. Again, the amendment is being made to ensure that there is no further risk to continuing action to deal with the citrus canker outbreak and therefore no further risk to Queensland's citrus industry. An internal review would involve a delay of at least 28 days that is unacceptable when dealing with an urgent and serious outbreak. No internal review of a decision has been sought and there is no indication that one will be but the amendment is being made for abundant caution.

Consultation

Community

In view of the need to urgently progress this issue, there has not yet been formal consultation with relevant industry bodies. However, the Queensland Fruit and Vegetable Growers (QFVG), the Queensland Citrus Growers Association (QCGA) and AgForce Queensland Union of Employers Ltd (AgForce) will be advised of the introduction of the Bill immediately following its introduction into the Legislative Assembly, and will be supplied with appropriate explanatory material.

Government

There was consultation with the Department of the Premier and Cabinet (DPC), Treasury, and the Departments of Natural Resources, Mines and Energy (NRME), Education and Training (DET), Communities (DoC), Justice and Attorney General (JAG), State Development and Innovation (DSDI) and the Environmental Protection Agency (EPA).

Results of consultation**Community**

As mentioned above, there has not yet been formal consultation with relevant industry bodies, but QFVG, QCGA and AgForce will be communicated with once the Bill has been introduced. It is not expected that there will be any opposition to the provisions of the Bill from the responsible industry organisations.

Government

The Department's consulted support the proposed changes.

Notes on Provisions**Part 1 Preliminary****Short title**

Clause 1 provides that the short title of the Act may be cited as the *Plant Protection Amendment Act 2004*.

Part 2 Amendment of Plant Protection Act 1989

Act Amended in pt 2

Clause 2 provides that this part amends the *Plant Protection Act 1989*.

Amendment of s 3 (Definitions)

Clause 3 amends section 3 of the Act (Definitions) by omitting reference to 'in the schedule' and inserting 'in schedule 2'. The amendment is consequential to the new schedule listing serious pests that is inserted in the Act by clause 27 of this Bill.

Replacement of pt 2 hdg

Clause 4 omits the heading of part 2 of the Act (Appointment of inspectors) and inserts a new heading (Appointment of inspectors and authorised persons) and a new Division 1 (Inspectors). The amendment reflects the fact that clause 5 of the Bill will insert new provisions into the Act enabling the appointment of authorised persons.

Insertion of new pt 2, divs 2 and 3

Clause 5 inserts new part 2, divisions 2 and 3 into the Act enabling the appointment of authorised persons under the Act and dealing with the use of identity cards by both inspectors and authorised persons.

New Division 2 Authorised persons

New section 6D Appointing authorised persons

New section 6D provides for the appointment of authorised persons under the Act. In a large pest or disease infestation there is a need for large numbers of people to carry out monitoring and surveillance work, not only within the quarantine area but throughout the State in order to satisfy the State's trading partners that areas of the State are disease free. This is vital to ensure trade in the plant or crop the subject of the quarantine can continue.

To facilitate this important activity it is desirable that not every person involved (numbers can be in the hundreds) have to be inspectors. At present these persons would need to be appointed as inspectors, and

therefore be trained to carry out a greater range of duties, including enforcement, than is actually required. This results in additional delays whilst the training is carried out and in increased costs. Authorised persons, having lesser powers and requiring a lower level of training can effectively carry out some of this necessary activity.

New section 6E Functions

New section 6E provides that the functions of authorised person are limited to carrying out monitoring and surveillance.

New section 6F Appointment conditions and limit on powers

New section 6F provides that an authorised officer holds office on the conditions stated in the officer's instrument of appointment, under a regulation or notice of the chief executive. This allows the exercise of the functions and powers of an authorised officer to be restricted to a specific quarantine.

Conditions of appointment may require an authorised officer to provide information or a report to the chief executive about the performance of the officer's functions or the exercise of the officer's powers. This is designed to ensure authorised officers are accountable for the exercise of their statutory powers.

New section 6G When authorised person ceases to hold office

New section 6G details the circumstances in which an authorised officer ceases to hold office.

New section 6H Resignation

New section 6H specifies the conditions and method of resignation of an authorised officer.

New Division 3 Identity Cards

New section 6I Issue of identity card

New section 6I requires the chief executive to provide each relevant officer with an identity card, containing a recent photograph of the person and other relevant particulars. The purpose of the clause is to ensure relevant officers can be easily identified.

New section 6J Production or display of identity card

New section 6J requires that a relevant officer must produce or display the relevant officer's identity card before exercising any powers under the Act. However, provision is also made for the relevant officer to produce the card at the first reasonable opportunity where it is not immediately practical to do so.

New section 6K Return of identity card

New section 6K provides that when a person ceases to be a relevant officer, the person must return the identity card to the chief executive. This is to ensure that a person does not represent that the person is a relevant officer after ceasing to be one.

Renumbering of s 6D (Purpose of powers)

Clause 6 renumbers section 6D of the Act as section 6L. This amendment is consequential to the insertion of new sections 6D to 6K relating to authorised persons and identity cards.

Insertion of new ss 6M to 6P

Clause 7 inserts a new clauses 6M to 6P into the Act.

New section 6M Meaning of business movement for area

New section 6M defines the meaning of "a business movement for an area". This definition is relevant to the new provisions being inserted into the Act (new sections 11C to 11F) by this Bill providing for the trace forward and track back of documents that will assist in tracing the original source of the infestation and where infested material may have moved to.

The provision relates to movements into or out of an area or within an area of a plant capable of being a host of the pest the subject of the infestation. It relates to movements that happen on or after the area becomes a pest quarantine area or movements that happened less than 7 years before the area became a pest quarantine area (since infestations are not found as soon as they occur, the seven year period will ensure the ability to fully trace forward and trace back). The provision only deals with movements in trade or business, in other words consumers are not expected to keep records of the purchase of relevant fruit or plants.

New section 6N Meaning of business document for area

New section 6N defines “a business document” for an area. This definition relates to the trace forward and trace back provisions being inserted by new sections 11C to 11F below. A business document is a document:

- (a) that contains information about, or that in any way is evidence of, a business movement for the area;
- (b) is or forms part of a record relating to the trade or business the subject of the business movement; and
- (c) was made or otherwise came into existence in the course of the trade or business.

The type of documents that would be covered by this clause include receipts for sale, transport documents, documents covering the packing of fruit or the ripening of fruit. Documents that a consumer would hold, such as a receipt for the purchase of fruit, are not covered by the definition, only documents coming into existence in the course of trade or business. The documents concerned are of a nature a business would be likely to need to keep in any case for business and taxation purposes.

New section 6O Meaning of serious pest

New section 6O defines the meaning of a serious pest. A serious pest is one that is listed in schedule 1 or is declared under section 6P to be a serious pest.

The relevance of a serious pest is that is that new section 11B will apply. That clause seeks to prevent a court challenge of certain action designated by the Minister in relation to serious pests.

New section 6P Declaration of pest as serious pest by regulation or gazette notice

New section 6P provides that a pest may be declared a serious pest by regulation or by the Minister by gazette notice. A gazette notice expires after 3 months unless followed up with a regulation.

A serious pest is one that if not eradicated would cause significant public loss, either:

- (a) (i) directly, through serious loss of amenity or environmental values, or serious effects on households; or

- (ii) indirectly, through very severe economic impacts on regions and the State economy; or
 - (iii) through trade losses with flow on effects through the State economy; and
- (b) the declaration of the pest as a serious pest is necessary in the interests of the prevention, control or removal of pest infestation of plants under this Act.

Amendment of s 8 (Control over introduction of pests)

Clause 8 amends section 8(4) (contravention of a notice or regulation dealing with the control over introduction of pests) by increasing the penalty from 1,000 penalty units to 2,000 penalty units. The increased penalty will reflect the gravity of the implications of non-compliance with the control measures provided under the section. The penalty increases will create a reasonable parity with similar offence penalties in other Australian jurisdictions and other similar penalties in the Queensland Statute Book.

Amendment of s 9 (Control over spread of pest infestations within Queensland)

Clause 9 increases the penalty for failure to comply with a regulation or notice imposing restrictions on the movement of any plant, soil, appliance or other specified matter designed to regulate the spread of a pest infestation within Queensland from 1,000 penalty units to 2,000 penalty units. The increased penalty will reflect the gravity of the implications of non-compliance with the control measures provided under the section that are associated with endemic and exotic pest and disease outbreaks. The penalty increases will create a reasonable parity with similar offence penalties in other Australian jurisdictions and other similar penalties in the Queensland Statute Book.

Amendment of s 11 (Pest quarantine area)

Clause 10 clarifies a number of matters relating to section 11 of the Act under which quarantine areas can be established. This section is critical to dealing with a pest or disease infestation and accordingly it is essential that it clearly and unambiguously contains those powers necessary to establish and take action under a quarantine.

Sub-clause 10(1) amends sub-section 11(2) of the Act to clarify that the actions that can be taken under a quarantine can be taken irrespective of whether the quarantine is established by regulation or by a Ministerial notice. The sub-section could currently be interpreted as only applying to Ministerial notices. This would mean that a regulation could only declare a quarantine and define its boundaries whereas a Ministerial notice could go much further, declaring the objects and nature of a quarantine. Since a Ministerial notice must be replaced with a regulation after 3 months, this would be a totally unsatisfactory result. The amendment will clarify that sub-section (2) applies to both regulations and Ministerial notices.

Sub-clause 10(2) replaces the words ‘in respect of’ with ‘for’. This amendment makes no practical difference in the application of the section and is being done for consistency with the language used elsewhere in the Act.

Sub-clause (3) inserts a new sub-section (2A). The new sub-section will remove the considerable uncertainty about the scope of what provisions can be included in a regulation or Ministerial notice made under section 11 of the Act. In particular it is currently uncertain what can be included under section 11(2)(b) which provides for the setting out of “the duties and obligations imposed upon owners of land within the pest quarantine area or part thereof or imposed upon any other person in order to achieve the objects of the quarantine”.

Section 11(2)(b) has been used to require treatment and destruction of plants in a quarantine area. An injunction was sought during the current citrus canker outbreak asserting that requirements for destruction of plants under the relevant Ministerial order were ultra vires because the relevant power to require destruction of healthy plants is section 14 (Destruction of healthy crops to prevent pest infestation). That injunction application was unsuccessful but nevertheless it is desirable to remove all doubt as to the scope of the section and to ensure that it will enable adequate response to a pest or disease infestation.

New sub-section (2A) provides that, in declaring, for sub-section 2(b), the duties and obligations imposed on owners of land, or on any other person in order to achieve the objects of the quarantine, a regulation or notice may include requirements for the treatment or destruction of plants, including healthy plants, soil or appliances.

The destruction may be carried out by an inspector. This is because in the case of some pest or disease outbreaks, treatment or destruction needs to be carried out by someone with the necessary expertise, for example, in the case of the current citrus canker outbreak the burning of the infected plants needed to be done with

extreme care after days of careful planning because leaves or ash rising from the fire could spread the infection. In such cases it is risky and undesirable to leave treatment or destruction to the owner. Where an inspector carries out the destruction, the owner may be required to meet the cost. This would be no different from the current situation where the owner must destroy and must meet the cost of doing so.

New sub-section (2B) clarifies the ability to establish 2 or more categories for areas within the pest quarantine area and to impose differing requirements to be applicable in relation to those different categories. This enables a greater restriction to be imposed on the property where the actual infestation has been found than on surrounding properties that are still within the quarantine area but on which no infestation has been found.

Sub-clause (4) and (5) are amended consequent to the amendment made by sub-clause (1).

Sub-clause (6) amends sub-section (7) by rewording it in line with current drafting practice.

Sub-clause (7) amends sub-section (10) by increasing the penalty from 1,000 penalty units to 2,000 penalty units. The increased penalty will reflect the gravity of the implications of non-compliance with quarantine measures provided under the section. The penalty increases will create a reasonable parity with similar offence penalties in other Australian jurisdictions and other similar penalties in the Queensland Statute Book.

Insertion of new ss 11B to 11F

Clause 11 inserts new sections 11B to 11F into the Act.

New section 11B Review of particular decisions and actions

New section 11B provides that a Ministerial order or regulation declaring a quarantine area may include certain direct instructions from the Minister relating to serious diseases. Those direct instructions may relate to:

- destruction of plants on a specific property;
- restricting the movement of host material out of a quarantine area; or
- carrying out surveillance to scope the extent of the infestation.

In relation to a direct instruction, no proceedings for an injunction, or for any order in the nature of a prerogative writ, or an order of any other kind, may be instituted or continued in any court against the Minister, the chief executive, an inspector or any other person that would stop, prevent or

restrain the Minister, chief executive, inspector or other person from taking any action in relation to or in consequence of an outbreak or suspected outbreak of an exotic pest or an exotic disease.

While the amendment contemplates powers that override rights of ownership, prompt destruction is essential to reduce spread of the infestation and to reopen market access for the industry concerned. Delay in destruction can impose severe hardship on all participants in the relevant industry as well as increasing the risk of spread of the infestation. The section does not stop a person from bringing a proceeding to recover damages for loss caused by a negligent act or omission or an unlawful act.

New section 11C Keeping a business document for an area

New section 11C requires a person who receives a document that is, at the time of receipt, a business document (defined in new section 6N) for an area to keep the business document for 7 years after the movement the document relates to. The type of documents that would be covered by this clause are essential for trace forward and trace back purposes and include receipts for sale, transport documents, documents covering the packing of fruit or the ripening of fruit. Documents that a consumer would hold, such as a receipt for the purchase of fruit, are not covered by the definition, only documents coming into existence in the course of trade or business. The documents concerned are of a nature a business would be likely to need to keep in any case for business and taxation purposes.

New section 11D Keeping a document that becomes a document for an area

New section 11D requires a person:

- who receives a document that relates to an area that is declared to be a pest quarantine area; and
- after it is given to that person, the document becomes a business document (defined in new section 6N) for an area

to keep the business document for 7 years after the movement the document relates to.

New section 11E Production of business documents

New section 11E requires a person to produce a business document for an area to an inspector who has requested the document where the inspector believes on reasonable grounds that the person:

- has the document or has reasonable access to the document; or
- is required under this Act to keep a business document for the area or a copy of the document.

The inspector does not need to specify a particular document, and may take copies of documents obtained under this section, after which the inspector must return it to the person.

If the person fails, without a reasonable excuse to produce the business document or allow the inspector to copy the document the person will be guilty of an offence with a maximum penalty of 400 penalty units. The penalty is subject to the inspector first warning the document holder of the offence.

New section 11F Failure to comply with requirement about a document

New section 11F rules out self-incrimination as a reasonable excuse for failing to comply with a document requirement. This provision is essential in the case of an infestation of a serious plant pest or disease because the only way to ensure that the infestation is fully under control is to be able trace where the infection may have originated and where infected material may have gone. Without adequate trace-forward and trace-back, it cannot be definitively said that the disease is fully under control or is fully eradicated. This poses a very serious risk to the industry concerned because of the threat to further plants and crops and the likely resultant reduction in market access this would result in for the industry.

The clause does contain some safeguard for the individual being required to supply the information because any such information obtained cannot be used to prosecute that individual.

Amendment of s 13 (Special powers in relation to specific pest infestations)

Clause 12 amends section 13 of the Act to amend the special powers of inspectors in relation to specific pest infestations. Currently section 13 empowers an inspector to give directions to a person to do certain things to control or remove a pest on the person's land. These powers are limited to requiring the person to do the removal or treatment. In practice the mode of treatment can be complicated or require specialist equipment and destruction must often be carried out with extreme care to prevent the further spread of the pest or disease.

Given these problems, clause 12 will amend section 13 to enable the inspector to carry out the treatment or destruction where the inspector is satisfied that the effectiveness of the action can be better secured if the action is performed by, or under the direction of the inspector.

Where a direction is given, the inspector may recover the cost of performing the action from the person to whom the direction is given. This would be no different from the current situation where the owner must destroy and must meet the cost of doing so.

Amendment of s 14 (Destruction of healthy crop to prevent pest infestation)

Clause 13 amends section 14 of the Act. Currently section 14 empowers the chief executive to give directions to a person to do destroy healthy crops where the chief executive considers it necessary to do so in order to prevent, control or remove pest infestation of plants. These powers are limited to requiring the person to carry out destruction. In practice the mode of destruction can be complicated or require specialist equipment and destruction must often be carried out with extreme care to prevent the further spread of the pest or disease.

Given these problems, clause 13 will amend section 14 to enable the chief executive to have the inspector carry out the destruction or direct how it is to be performed where the inspector is satisfied that the effectiveness of the action can be better secured if the action is performed by, or under the direction of the inspector.

Amendment of s 19 (General powers of inspectors)

Clause 14 inserts a new paragraph 19(1)(ja) that will require a person to give the inspector reasonable help to exercise a power under the section including for example to produce a document or give information. Such a requirement is usual in legislation involving inspectors.

Clause 14 also makes consequential amendments to sub-sections 19(7). Clause 14 also increases the penalty for failure to comply with a direction or requirement of an inspector without reasonable excuse from 200 penalty units to 400 penalty units.

Amendment of s 19A (Inspectors' powers—certificates)

Clause 15 increases the penalty for false representation about a plant or thing that is likely to cause someone to reasonably believe that an

inspector's certificate has been given for the plant or thing from 50 penalty units to 400 penalty units. The increased penalty will reflect the gravity of the implications of such a false representation. The penalty increase will create a reasonable parity with similar offence penalties within the Act and with other Australian jurisdictions and other similar penalties in the Queensland Statute Book.

Amendment of s 20 (Restricted entry into dwelling house)

Clause 16 amends section 20 of the Act (Restricted entry into dwelling houses). The amendment inserts a new heading – 'Warrants to enter'. The clause also inserts a new sub-section that provides that subsection (1) does not limit the places for which a warrant to enter may be obtained under the section. This will clarify that the ability to obtain a warrant to enter is not limited to warrants to enter dwelling houses.

Insertion of new s 20AA

Clause 17 inserts a new section 20AA into the Act dealing with information requirements for pest infestations. The new section will empower an inspector to give an information notice requirement to the owner of land or a harvested crop to provide information the person may have to the inspector whenever the inspector is satisfied on reasonable grounds that a pest is infesting or is deemed under s 5 of the act to be infesting the land or harvested crop.

The clause requires the person to give the information to the inspector even if it is self-incriminating, but precludes the information being admissible in a proceeding against the individual. This provision is essential in the case of an infestation of a plant pest or disease because without adequate trace-forward and trace-back, a pest or disease cannot be brought fully under control. This poses a very serious risk to the industry concerned because of the threat to plants and crops and the likely resultant reduction in market access this would result in for the industry.

The scope of the information would include but not be limited to

- (i) the genus, species, variety, and type or class of plant or harvested crop; and
- (ii) when planted or harvested; and
- (iii) the source of the plants or harvested crop; and
- (iv) where the plants or harvested crops have been moved to.

Amendment of s 20A (Inspector's powers – imminent risk of infestation)

Clause 18 amends section 20A of the Act (Inspectors powers – imminent risk of infestation). The amendment increases the penalty for failure to comply with an inspector's direction in relation to imminent risk of infestation without reasonable excuse from 100 penalty units to 400 penalty units. The increased penalty will reflect the gravity of the implications of such a false representation. The penalty increase will create a reasonable parity with similar offence penalties within the Act and with other Australian jurisdictions and other similar penalties in the Queensland Statute Book.

Clause 18 also inserts a new sub-section 10(A) which clarifies the inspectors powers when entering premises where there is an imminent risk of infestation. The inspector may take any of the following steps as are reasonable in the circumstances:

- (a) inspect anything on the land;
- (b) monitor plant movements;
- (c) photograph anything;
- (d) test anything;
- (e) take samples of anything for testing or identification; and
- (f) lay baits and set lures or traps.

Insertion of new pt 3, div 4

Clause 19 inserts a new part 3, division 4 into the Act dealing with surveillance to establish the presence or absence of a pest. After an outbreak of a pest or disease infestation, it is necessary to carry out surveillance, not only to determine the extent of the outbreak and to control it but also to satisfy Queensland's trading partners that parts of the State are free of the pest or disease so that trade in the relevant plant or crop can continue. Such surveillance is done in accordance with a plant surveillance program. Failure to satisfy trading partners of the disease free status of all or parts of Queensland would have a devastating impact on the State's economy.

New section 20B Chief executive may authorise pest surveillance program

New section 20B empowers the chief executive to authorise the conduct of a pest surveillance program. The chief executive must ensure that each inspector who will be involved in the pest surveillance program is informed of the purpose, nature and extent of the program and the extent of the involvement of the inspector and authorised persons. The chief executive must also ensure that, to the extent practicable in the circumstances, timely information about the nature of and extent of the program is advertised in communities likely to be affected by the program.

New section 20C Purpose of pest surveillance program

New section 20C requires the purpose of a pest surveillance program to be stated in the program. The program must be limited to confirming the presence or finding out the extent of the presence, or to confirming the absence, in areas of the State to which the program applies of the pest to which the program applies.

New section 20D Circumstances required for pest surveillance program

New section 20D sets out the circumstances in which the chief executive may authorise a pest surveillance program. They are:

- a quarantine must be or have been in force; or
- an undertaking accepted by the Minister under section 11 (an undertaking to the Minister that an owner of land in a quarantine area will comply with conditions imposed by the Minister) is in force or was in force; or
- a direction given to the owner of land by an inspector under section 13 (special powers in relation to specific pest infestation) is in force or has been in force; and
- because of one of these circumstances, it is necessary to establish the status of the State or a part of the State in relation to a pest in order to prevent, control or remove a pest infestation or facilitate movement of plants into within or out of Queensland.

New section 20E Taking action under a pest surveillance program

New section 20E limits actions that can be taken under a pest surveillance program to those that are reasonably necessary for achieving the program's purpose. An inspector or an authorised person acting under the direction of an inspector may at any reasonable time exercise the following powers under a program:

- (a) inspect anything on the land;
- (b) monitor plant movements;
- (c) photograph anything;
- (d) test anything;
- (e) take samples of anything for testing or identification; and
- (f) lay baits and set lures or traps.

Amendment of s 21M (Application for reconsideration of administrative decisions)

Clause 20 amends section 21M(5) of the Act to insert a definition of 'decision of an administrative character under the Act'. It is currently not clear that section 21M does not apply to decisions made under a quarantine regulation or notice. Clearly it is unacceptable to delay action in such circumstances whilst a person aggrieved is given 28 days to apply for a review. Accordingly, the definition will ensure that section 21M does not apply to decisions of the Minister, the chief executive or an inspector under a quarantine regulation or notice for a notifiable pest.

Amendment of s 21N (Decision on reconsideration)

Clause 21 amends section 21N of the Act (Decision of reconsideration). The amendment rectifies a typographical error in sub-section (3) where an 'or' should be an 'and'. In other words when a decision is made on reconsideration, that is at internal review and the decision is not the decision sought by the applicant, a notice must be given to the applicant stating:

- (a) the reason for the decision; and (prior to the amendment this was an 'or')
- (b) that the applicant may appeal against the decision to a Magistrates Court within 28 days.

Amendment of s 24 (Obstruction)

Clause 22 amends section 24 of the Act (Obstruction) to reflect the fact that this Bill will include in the Act the power to appoint authorised officers and they too may be obstructed.

Insertion of new s 29A

Clause 23 inserts a new section 29A into the Act that requires executive officers to ensure the corporation they are employed by complies with the Act.

Amendment of s 31 (Delegation by chief executive)

Clause 24 amends section 31 to enable the chief executive to delegate the power to appoint inspectors. Currently the section prevents such a delegation. During the outbreak of a serious pest or disease like citrus canker there is an urgent need to appoint very large numbers of inspectors who can operate throughout Queensland. This urgent action can be delayed when only one person can do the appointments (over 100 in several weeks during the citrus canker outbreak).

Insertion of new s 32A

Clause 25 inserts a new section 32A into the Act that sets out the limitation on time for starting proceedings under the Act. The limitation is one year after the offence is committed or 1 year after the offence comes to the complainant's knowledge, but within two years after the offence is committed. These variations to the normal limitation period are required because it can take quite some time for offences under this Act to become apparent, for example for an infestation caused by a breach of an inspectors instruction to be discovered.

Insertion of new pt 8

Clause 26 inserts new sections 36 to 40 that relate to transitional provisions relating to the commencement of this Bill. The clause deals with commencement of certain provision in the Bill.

New section 36 Definitions for pt 8

New section 36 inserts definitions for this part.

New section 37—Validation of relevant pest quarantine instruments

A regulation or notice made under section 11 of the Act (declaring a quarantine area) on or after 2 July 2004 is taken to be, and always to have been, as valid and effective as it would have been if all provisions of the amending Act had been in force immediately before 2 July 2004. 2 July 2004 is the date on which a Ministerial notice declaring a quarantine for citrus canker was made. While this could be argued to impinge on the rights of the owner of the infected property, the indications are that the current law is valid in any case and this Bill is about abundant caution. An injunction was sought by the owners of the farm where infected citrus trees are being destroyed arguing that the notice under section 11 was not valid. Legal advice from Counsel for the State was that the notices the State is relying on under the Section 11 provisions of the PP Act, are valid. The Supreme Court Judge who heard the injunction supported this view.

However, in order to ensure that there is no further risk to continuing action to deal with the citrus canker outbreak and therefore no further risk to Queensland's citrus industry, the matter is being further clarified to reflect what the Government already believes to be the legal situation. The Bill is about abundant caution.

the clause will not have the effect of imposing criminal liability retrospectively.

New section 38—Application of s 11d for particular business documents

The provisions of the new section 11D apply to documents created before the commencement of the Bill in order to deem them to be business documents. This is necessary in order to be able to inspect citrus canker documents for trace forward and trace back. However it is a defence to not keeping such documents if a person has a reasonable excuse. Clearly it is a reasonable excuse if the person disposed of the documents before the Act came into force. In any case the types of documents involved would need to be kept for taxation purposes.

New section 39—Application of s 21M an particular designs in interim period

The transitional provisions also provide that the amendment made by clause 20 of the Bill applies to the citrus canker notice. Clause 20 amends section 21M(5) of the Act to insert a definition of 'decision of an

administrative character under the Act'. It is currently not clear that section 21M does not apply to decisions made under a quarantine regulation or notice. Clearly it is unacceptable to delay action in such circumstances whilst a person aggrieved is given 28 days to apply for a review. Accordingly, the provision will ensure that section 21M does not apply to decisions of the Minister, the chief executive or an inspector under a quarantine regulation or notice. The section will apply to the citrus canker notice made on 2 July 2004.

Again, the amendment is being made to ensure that there is no further risk to continuing action to deal with the citrus canker outbreak and therefore no further risk to Queensland's citrus industry. An internal review would involve a delay of at least 28 days that is unacceptable when dealing with an urgent and serious outbreak. No internal review of a decision has been sought and there is no indication that one will be but the amendment is being made for abundant caution.

New section 40—Transitional arrangements for identity cost requirements

New section 40 provides for a transitional period of six months to allow all inspectors and authorised persons to be issued with identity cards that comply with the new requirements being inserted as Division 3 in the Act by clause 5 of this Bill.

Insertion of new sch 1

Clause 27 inserts a new schedule into the Act that defines what is a serious pest. The significance of the definition is that under new section 11B, judicial review of certain decisions relating to serious pests is restricted.

Amendment of schedule (Dictionary)

Clause 28 amends the dictionary of the Act consequential to the amendments made by this Bill.

Part 3 Amendment of Judicial Review Act 1991

Act amended in pt 3

Clause 29 provides that this part amends the *Judicial Review Act 1991*.

Amendment of sch 1 (Operation of other laws)

Clause 30 amends Schedule 1, part 1 of the *Judicial Review Act 1991* (operation of other laws) by inserting reference to section 11B of the *Plant Protection Act 1989*. This amendment is consequential to the inclusion in the Act by this Bill of new section 11B that restricts judicial review of certain decisions relating to serious pest.

Penalty increases

The table below lists all penalty increases being made by this Bill.

| Penalty provision | Penalty | Current level of penalty | Proposed Penalty |
|--------------------------|--|---------------------------------|-------------------------|
| s.8 | Control over the introduction of pests | 1,000 penalty units | 2,000 penalty units |
| s.9 | Contravention of a regulation or notice controlling spread of a pest infestation within Queensland | 1,000 penalty units | 2,000 penalty units |
| s.11 | Offences in relation to a pest quarantine area | 1,000 penalty units | 2,000 penalty units |
| s.13 | Special powers in relation to specific pest infestations | 1,000 penalty units | 2,000 penalty units |
| s.14 | Failure to comply with a direction to destroy health crop to prevent pest infestation | 1,000 penalty units | 2,000 penalty units |
| s.19 | Failure to comply with a direction or requirement of an inspector without reasonable excuse | 200 penalty units | 400 penalty units |

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|-------|---|-------------------|-------------------|
| s.19A | False representation about a plant or thing that is likely to cause someone to reasonably believe that an inspector's certificate has been given for the plant or thing | 50 penalty units | 400 penalty units |
| S.20A | Failure to comply with an inspector's direction without reasonable excuse where imminent risk of infestation | 100 penalty units | 400 penalty units |