

# **Plant Protection Amendment Bill 2005**

## **Explanatory Notes**

### **General Outline**

#### **Short title**

The short title of the Bill is the *Plant Protection Amendment Bill 2005*.

#### **Policy objectives**

The major policy objective of the Bill is to enable the State to contribute reimbursement of expenses incurred by persons affected by a plant pest outbreak where the reimbursement is paid in accordance with a Government and Industry Cost Sharing Agreement.

#### **Reasons for the policy objectives**

Queensland's plant primary industries contribute in excess of \$1.5 billion to the State's economy annually. Protecting the plant sector from pests and diseases is therefore of paramount importance.

Plant Health Australia (PHA) is the National forum for the development of joint industry-Government approaches to pests affecting plant industries in Australia. In 2000 PHA identified the need for a plant industry cost sharing agreement and subsequently commenced the development of the 'Government and Plant Industry Cost Sharing Deed in respect of Emergency Plant Pest Responses', known as the Emergency Plant Pest Response Deed (the Deed). The Deed is a formal agreement detailing the respective roles and responsibilities of industry and Government in dealing with plant pests and diseases.

The parties to the Deed are its signatories and are members of PHA. The Commonwealth, States and Territories are the government parties. Industry parties are the principal groups that are nationally representative of the plant industries. At this time, the Western Australian, South Australian, Victorian, Tasmanian and Commonwealth Governments have ratified the Deed. Ten of the nineteen industry representative bodies have also signed. The Queensland Government has also endorsed Queensland's ratification of the Deed.

The Deed significantly advances the national approach to plant biosecurity by ensuring a cooperative approach to plant pests, and is of particular benefit to Queensland given that approximately 80 percent of recent plant pest responses have been led by Queensland. The Deed is an investment for Queensland, not only in the efficient and effective eradication of plant pests but in the certainty of accessing the financial resources of other Governments and industry during a plant pest incursion.

The Deed provides a decision-making framework for dealing with emergency plant pests. In doing so, Government and industry are provided with certainty as to how to proceed once a pest is detected. This consequently diminishes the potential for additional harm to the affected industry, minimising trade disruptions and environmental damage.

The most significant advance in the Deed is the introduction of Owner Reimbursement Costs (ORC), the mechanisms by which growers will be reimbursed for loss incurred as a result of complying with a plant pest response plan. This is based on the principle that producers should be no better and no worse off as a result of a pest incursion. Such payments remove the financial disincentive for growers to report suspected pest incursions, thus enabling an emergency response to commence rapidly. ORC also encourages industry to seek eradication of the pest, rather than an option that secures the best financial outcome.

Any ORC paid by Queensland is only subject to the Deed's cost-sharing arrangements if paid to an industry signatory. It is estimated that the Deed will cover over 90% of the plant primary industries in Queensland. However, emerging or minor plant industries that do not have representative bodies may have difficulty becoming signatories to the Deed, and therefore becoming eligible for ORC.

In addition to the payment of ORC, the Deed introduces formal cost sharing arrangements for plant pest incursions. Under current arrangements, Government predominantly meets the costs of such programs. The expense associated with an eradication plan under the Deed however is to be met by pre-determined Government and industry contributions. Industry's financial contribution to response plans will encourage greater ownership of the eradication and a more rational approach to eradication strategies by industry.

Cost sharing commences once a plant pest response is agreed upon and ceases to operate once a decision is made that eradication has been achieved or that eradication of the pest is not feasible.

The legislative basis for implementing the provisions of the Deed lies in the *Plant Protection Act 1989* ('the Act') which provides extensive powers for the Queensland Government to act to prevent, control or eradicate plant pests, and to help other jurisdictions to achieve these goals. The Act must be amended to implement the Deed's framework for cost-sharing and owner reimbursement (effectively compensation). The Act (section 28) currently provides that compensation cannot be paid except where an agreement is reached with an owner for the destruction of healthy plants (section 14). Given the limitations of compensation under section 14, amendment is required to facilitate the Deed's effective operation.

### **How the policy objectives will be achieved**

The *Plant Protection Amendment Bill 2005* ('the Bill') will amend the Act to allow reimbursement to be paid under the Emergency Plant Pest Response Deed or another Government-industry cost sharing arrangement. This will allow payments to be made to producers despite section 28. However, where an industry has not ratified the Deed (and thus has not committed to sharing in the costs of an eradication campaign) the existing provisions in section 28 against compensation will still apply.

Another matter dealt with in the Bill, relates to the Citrus Reimbursement and Reestablishment Scheme, made as an approved scheme under the *Rural and Regional Adjustment Regulation 2000*. Pursuant to legal advice, the Bill will include a provision to clarify that the Citrus Reimbursement and Reestablishment Scheme is an approved scheme under the *Rural and Regional Adjustment Act 1994* rather than the *Plant Protection Act 1989*.

### **Alternatives to the Bill**

There are no alternatives to the Bill. The passage of this Bill is essential in order for the State to sign and honor its commitments under the Government and Plant Industry Cost Sharing Deed in respect of Emergency Plant Pest Responses'.

### **Estimated administrative cost to Government for implementation**

Queensland's commitment to the Deed will have financial implications for the State when responding to plant pest incursions. The payment of Owner Reimbursement Costs under the Deed significantly increases the cost of any such response.

The amendments will however enable Queensland to enter into national cost sharing arrangements which, given the inclusion of owner reimbursement, will inevitably increase expenses associated with the eradication of a pest in a large plant industry.

**Background Costs:**

Of the cost share allocated to Government parties, the Commonwealth Government is responsible for meeting fifty percent of the expenditure. The other Government parties share costs on a pre-determined basis contained in the Deed, which is founded upon the local value of production of the affected industry in the state or territory.

If there is an outbreak of an un-categorised pest then the default cost sharing provision is fifty percent industry and fifty percent government, until the Categorisation Reference Group of PHA categorises the pest. At any time, a signatory to the Deed can request that the categorisation of a pest be reassessed on an overall basis, or for a particular Response plan.

Where a pest affects one plant industry, the response plan has a trigger point of \$20 million or two percent of the local value of production of the affected crop. In the instance that a pest affects more than one plant industry, the costs are capped at one percent of the total local values of production for the affected crops. Any additional expenditure is subject to agreement of the affected parties.

It is inevitable that expenses associated with the eradication of a pest in a large plant industry will require negotiation beyond \$20 million. Such negotiation will involve all affected parties determining whether to proceed with eradication on the same cost-sharing basis. This decision will be based on a comprehensive projected budget and a cost benefit analysis of the potential for eradication of the pest.

The cost trigger point for the costs of plant pest responses provides the Queensland Government with greater certainty about the resource implications of a response. The Deed also represents an investment not only in positive biosecurity outcomes, but in access to the security of financial resources of other Governments and industry, which is not guaranteed for plant pest responses under current conditions.

**Consistency with fundamental legislative principles**

The provisions of the Bill are consistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*.

## **Consultation**

### **Community**

As the Deed has been developed at a national level, national plant industry representative groups that are members of Plant Health Australia, such as Australian Citrus Growers, Growcom and CANEGROWERS have been consistently involved in its progression. National plant industries are therefore aware of the Deed's intention and its implications for industry in terms of plant pest responses and the financial assistance payable.

### **Government**

The following Departments were consulted on the preparation of the Bill:

- Premier and Cabinet
- Queensland Treasury
- Natural Resources and Mines
- Department of Employment and Training
- Department of Communities

## **Results of Consultation**

### **Community**

National plant industry groups consulted in the preparation of the Deed are in agreement with the principles underlying it. This Bill will enable application of those principles in Queensland.

### **Government**

All Department's consulted supported the Bill.

## **Notes on Provisions**

### **Short title**

Clause 1 provides that the short title of the Act is the *Plant Protection Amendment Act 2005*.

## **Act Amended**

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

### **Amendment of s 11B (Review of particular decisions and actions)**

Clause 3 amends section 11B(5) of the Act to correct a minor drafting error in the definition of 'direct instruction'. The Office of the Queensland Parliamentary Counsel has identified the need for the above amendment to clarify that the instrument that is required to contain the matters mentioned in paragraph (a), (b) or (c) of the definition is the instruction itself, and not another instrument in the nature of a direction.

### **Renumbering of s 21LA (Failure to decide particular decisions taken to be refusal)**

Clause 4 renumbers the current section 21LA of the Act as section 21LC. The amendment is consequential to the new Part 5A being inserted by clause 5 of the Bill.

### **Insertion of new pt 5A**

Clause 5 inserts a new Part 5A into the *Plant Protection Act 1989* (the Act). The new part enables the State to enter into Government and industry cost sharing agreements. Such an agreement will enable the State, along with another jurisdiction and industry to manage risks posed by pests and to respond to outbreaks of pest infestation. The deed will provide for joint contribution to the associated costs including the reimbursement of expenses incurred by persons affected by a plant pest outbreak.

## **New Part 5A – Government and industry cost sharing agreements**

### **Entering into agreement**

New section 21LA empowers the Minister or the Chief Executive to enter into a Government and industry cost sharing agreement. A Government and industry cost sharing agreement is an agreement between the State, one or more other jurisdictions and one or more plant industry bodies. The agreement is directed at ensuring a coordinated process to manage risks posed by pests and to respond to outbreaks of pest infestation.

## **Content of agreement**

New section 21LB sets out what the contents of a Government and cost sharing agreement can be. The agreements will deal with measures the parties to the agreement must undertake to prepare for, prevent, control and respond to an outbreak of pest infestation. The cost of responding to an outbreak may include the costs of implementing the response and the whole or partial cost of reimbursing landowners for costs incurred or losses suffered by complying with the response. The agreement may also provide for restrictions applying to cost sharing such as a limit on the amount that may be eligible for cost sharing under the agreement or the types of costs that may be eligible for cost sharing.

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

Clause 6 amends section 21M(5) of the Act by changing a reference in that subsection to another provision of the Act. The change of reference is consequential to the amendments made by this Bill and reflects the fact that because this Bill introduces new sections into the Act, section 21LA referred to in subsection 21M(5) has been renumbered by clause 4 of the Bill.

## **Amendment of s 28 (Limitation of action)**

Clause 7 amends section 28 of the Act, by inserting new subclauses (3) and (4). Section 28(2) of the Act currently provides that no compensation is payable where a person suffers damage through compliance with the Act, except where section 14(3) is used to destroy healthy plants. The amendments make it clear that Government and industry cost sharing agreements and other Acts (such as the *Rural and Regional Adjustment Act 1994* under which the recent Citrus Reimbursement and Reestablishment Scheme was made) operate independently of the *Plant Protection Act 1989*. In particular, the sub-sections make it clear that payments made under the agreements or other Acts are not intended to be subjected to the same arbitration procedures available under section 14 (Destruction of healthy crop to prevent pest infestation) or any other procedures or limitations under the *Plant Protection Act 1989*. Instead the provisions of the agreements or other Acts themselves will define and regulate how and when the payments are made. This is so irrespective of whether the payment was made before or after the commencement of this sub-section.

**Amendment of s 31 (Delegation by Chief Executive)**

Clause 8 amends section 31 of the Act to include Government and industry cost sharing agreements as a matter that cannot be delegated by the Chief Executive. The provision is in line with the 1996 policy (Policy No. 1 1996) adopted by the Scrutiny of Legislation Committee ("the Committee") on the delegation of powers. In summary, the policy provides that where a power being delegated is "significant", the Committee prefers that those to whom the power can be delegated should be limited and the qualifications or office specified either in the Act or a regulation under the Act. If the significant powers are delegated to a broad category of persons, the delegates should be "appropriately qualified" - in terms of qualification and/or experience.

Generally speaking, the Committee believes the powers that are "significant" in terms of the above policy include the following-

- (a) Powers that are extensive;
- (b) Powers that affect the rights or legitimate expectations of others;
- (c) Powers that require a particular expertise and/or experience.

The power to enter into a government and industry cost sharing agreement is a "significant" power under (a) and (b) (and possibly even (c)). Accordingly, the power to delegate has been precluded. This is in line with the approach that has been taken in the Act for inter-governmental agreements.

**Omission of section 40 (Transitional arrangements for identity card requirements)**

Clause 9 omits section 40 of the Act (Transitional arrangements for identity card requirements). The transitional arrangements provided for under the section have expired and consequently the section is now redundant.

**Amendment of sch 2 (Dictionary)**

Clause 10 amends the dictionary to the Act by inserting a definition of "government and industry cost sharing agreement".