



Queensland

Plant Protection Amendment Bill 2004



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Plant Protection Amendment Bill 2004

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2004

A Bill

for

An Act to amend the *Plant Protection Act 1989*, and for other purposes

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3
 This Act may be cited as the *Plant Protection Amendment Act 2004*. 4
 5

Part 2 Amendment of Plant Protection Act 1989 6
 7

Clause 2 Act amended in pt 2 8
 This part amends the *Plant Protection Act 1989*. 9

Clause 3 Amendment of s 3 (Definitions) 10
 Section 3, ‘in the schedule’— 11
omit, insert— 12
 ‘in schedule 2’. 13

Clause 4 Replacement of pt 2 hdg (Appointment of inspectors) 14
 Part 2, heading— 15
omit, insert— 16

‘Part 2 Appointment of inspectors and authorised persons 17
 18

‘Division 1 Inspectors’. 19

Clause 5	Insertion of new pt 2, divs 2 and 3	1
	Part 2, after section 6C—	2
	<i>insert—</i>	3
‘Division 2	Authorised persons	4
‘6D	Appointing authorised persons	5
	‘(1) The chief executive may appoint an individual as an authorised person.	6 7
	‘(2) However, an individual may be appointed as an authorised person only if—	8 9
	(a) the individual is—	10
	(i) a public service officer or employee; or	11
	(ii) included in a class of individual declared under a regulation to be an approved class of individual for this section; and	12 13 14
	(b) the chief executive is satisfied the individual has—	15
	(i) the necessary expertise or experience to be an authorised person; or	16 17
	(ii) satisfactorily finished training approved by the chief executive.	18 19
	‘(3) Subsection (2) does not limit the issues the chief executive may consider when deciding whether to appoint an individual as an authorised person.	20 21 22
‘6E	Functions	23
	‘The functions of an authorised person are limited to acting in pest surveillance programs as provided for in part 3, division 4.	24 25 26
‘6F	Appointment conditions and limit on powers	27
	‘(1) An authorised person holds office on any conditions stated in—	28 29
	(a) the authorised person’s instrument of appointment; or	30

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(b) a signed notice given to the authorised person; or	1
(c) a regulation.	2
‘(2) Without limiting subsection (1), the instrument of appointment, a signed notice given to the authorised person or a regulation may—	3 4 5
(a) limit the authorised person’s functions or powers under this or another Act; or	6 7
(b) require the authorised person to give the chief executive stated information or a report about the performance of the authorised person’s functions or the exercise of the authorised person’s powers.	8 9 10 11
‘(3) In this section—	12
<i>signed notice</i> means a notice signed by the chief executive.	13
‘6G When authorised person ceases to hold office	14
‘(1) An authorised person ceases to hold office if any of the following happens—	15 16
(a) the term of office stated in a condition of office ends;	17
(b) under another condition of office, the authorised person ceases to hold office;	18 19
(c) the authorised person’s resignation under section 6H takes effect.	20 21
‘(2) Subsection (1) does not limit the ways an authorised person may cease to hold office.	22 23
‘(3) In this section—	24
<i>condition of office</i> means a condition on which the authorised person holds office.	25 26
‘6H Resignation	27
‘An authorised person may resign by signed notice given to the chief executive.	28 29

‘Division 3	Identity cards	1
‘6I	Issue of identity card	2
‘(1)	The chief executive must issue an identity card to each relevant officer.	3 4
‘(2)	The identity card must—	5
	(a) contain a recent photo of the relevant officer; and	6
	(b) contain a copy of the relevant officer’s signature; and	7
	(c) identify the relevant officer as an inspector or authorised person under this Act; and	8 9
	(d) state an expiry date for the card.	10
‘(3)	This section does not prevent the giving of a single identity card to a relevant officer for this Act and other purposes.	11 12
‘6J	Production or display of identity card	13
‘(1)	In exercising a power under this Act in relation to another person, a relevant officer must—	14 15
	(a) produce the relevant officer’s identity card for the other person’s inspection before exercising the power; or	16 17
	(b) have the identity card displayed so it is clearly visible to the other person when exercising the power.	18 19
‘(2)	However, if it is not practicable to comply with subsection (1), the relevant officer must produce the identity card for the other person’s inspection at the first reasonable opportunity.	20 21 22
‘6K	Return of identity card	23
	‘A person who ceases to be a relevant officer must return the person’s identity card to the chief executive within 21 days after ceasing to be a relevant officer unless the person has a reasonable excuse.	24 25 26 27
	Maximum penalty—20 penalty units.’.	28

Clause 6	Renumbering of s 6D (Purpose of powers)	1
	Section 6D—	2
	<i>renumber</i> as section 6L.	3
Clause 7	Insertion of new ss 6M–6P	4
	After section 6L, as renumbered—	5
	<i>insert</i> —	6
‘6M	Meaning of <i>business movement</i> for area	7
	‘(1) The movement of a plant is a <i>business movement</i> for an area if all the following circumstances apply—	8 9
	(a) the movement is—	10
	(i) into or out of the area; or	11
	(ii) within the area, because the plant is brought on to or moved from a parcel of land in the area;	12 13
	(b) the movement—	14
	(i) happens after the area becomes a pest quarantine area under a notice or regulation; or	15 16
	(ii) happened less than 7 years before the area became a pest quarantine area under a notice or regulation;	17 18
	(c) the plant is of a variety capable of being a host of the pest the subject of a pest infestation for which the area is declared to be a pest quarantine area under the notice or regulation;	19 20 21 22
	(d) the movement is for trade or business, but happens before the plant comes into the possession of a consumer.	23 24 25
	<i>Examples of movement for paragraph (d)—</i>	26
	movement to or from a person who wholesales, ripens, packs, or distributes fruit, or movement to a person who retails fruit	27 28
	‘(2) To remove any doubt, it is declared that, under this section, a movement can be a business movement for an area even though—	29 30 31

	(a) the area became a pest quarantine area after the movement happened; or	1 2
	(b) the area stops being a pest quarantine area.	3
'6N	Meaning of <i>business document</i> for area	4
	'(1) A document is a <i>business document</i> for an area if the document—	5 6
	(a) contains information about, or that in any way is evidence of, a business movement for the area; and	7 8
	(b) is or forms part of a record relating to the trade or business the subject of the business movement; and	9 10
	(c) was created in the course of the trade or business.	11
	'(2) To remove any doubt, it is declared that it is not possible for a document to be a business document for an area unless the area—	12 13 14
	(a) is a pest quarantine area when the document is created; or	15 16
	(b) becomes a pest quarantine area after the document is created.	17 18
'6O	Meaning of <i>serious pest</i>	19
	'A pest is a <i>serious pest</i> if—	20
	(a) it is listed in schedule 1; or	21
	(b) it has been declared under section 6P to be a serious pest, and the declaration is still in force.	22 23
'6P	Declaration of pest as serious pest by regulation or gazette notice	24 25
	'(1) A regulation may declare a pest to be a serious pest.	26
	'(2) The Minister may by gazette notice declare a pest to be a serious pest.	27 28
	'(3) The Minister may act under subsection (2) only if the Minister is satisfied on reasonable grounds that—	29 30

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- (a) the pest, if not eradicated, would cause significant public losses, either—
- (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.
- ‘(4) A gazette notice under subsection (2) stays in force until the first of the following to happen—
- (a) the gazette notice is revoked;
- (b) 3 months elapse after publication of the gazette notice;
- (c) a declaration of the pest as a serious pest comes into force under a regulation.’.

Clause 8 Amendment of s 8 (Control over introduction of pests) 19

Section 8(4), penalty— 20

omit, insert— 21

‘Maximum penalty—2 000 penalty units.’. 22

Clause 9 Amendment of s 9 (Control over spread of pest infestations within Queensland) 23

Section 9(4), penalty— 24

omit, insert— 25

‘Maximum penalty for subsection (4)—2 000 penalty units.’. 26

Clause 10 Amendment of s 11 (Pest quarantine area) 28

(1) Section 11(2), ‘The Minister, by notice,’— 29

omit, insert— 30

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‘A regulation or notice under subsection (1)’.	1
(2) Section 11(2), ‘in respect of’—	2
<i>omit, insert—</i>	3
‘for’.	4
(3) Section 11—	5
<i>insert—</i>	6
‘(2A) In declaring, for subsection (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 under subsection (1)—	7 8 9 10
(a) may include requirements for—	11
(i) the treatment or destruction of plants, including plants that are not the subject of pest infestation; or	12 13
(ii) the treatment of any soil or appliance, or of anything else; and	14 15
(b) may include requirements for some or all of the treatment or destruction mentioned in paragraph (a) be performed by, or under the direction of, an inspector; and	16 17 18 19
(c) may include a requirement for the cost of treatment or destruction performed by, or under the direction of, an inspector to be at the cost of the owners or the other person; and	20 21 22 23
(d) may include requirements applying to any person—	24
(i) who is not the owner of any land, plant, soil or appliance, or of anything else, in the pest quarantine area; or	25 26 27
(ii) who is not otherwise associated with the pest quarantine area.	28 29
‘(2B) A regulation or notice under subsection (1) may—	30
(a) establish 2 or more categories for areas within the pest quarantine area; and	31 32
(b) declare any area within the pest quarantine area, or provide for the chief executive to declare any area	33 34

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within the pest quarantine area, to be an area of a particular category; and

(c) provide for different requirements to apply for areas of different categories.’.

(4) Section 11(3), ‘or (2)’—

omit.

(5) Section 11(4), ‘In lieu of’—

omit, insert—

‘Instead of there being a regulation or notice under subsection (1)’.

(6) Section 11(7)—

omit, insert—

‘(7) An inspector may give a direction, or may take an action, if the direction or action is necessary or convenient to ensure a person complies with, or to allow a person to be exempted from—

(a) a regulation or notice under subsection (1); or

(b) the conditions imposed for an undertaking given under this section; or

(c) the declared objects of a quarantine imposed under a regulation or notice under subsection (1).’.

(7) Section 11(10), penalty—

omit, insert—

‘Maximum penalty for subsection (10)—2 000 penalty units.’.

Clause 11 Insertion of new ss 11B–11F

After section 11A—

insert—

‘11B Review of particular decisions and actions

‘(1) This section applies if—

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- (a) under section 11, a regulation or notice (the *relevant instrument*) declares an area to be a quarantine area; and
- (b) the pest (the *relevant pest*) the subject of a pest infestation (the *relevant pest infestation*) for which the quarantine is declared is a serious pest.
- ‘(2) A designated decision—
- (a) is final and conclusive; and
- (b) can not be challenged, appealed against, reviewed, quashed, set aside, or called into question in another way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
- (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.
- ‘(3) Without limiting subsection (2), a person may not bring a proceeding for an injunction, or for any writ, declaration or other order, to stop or otherwise restrain the performance of a designated act.
- ‘(4) This section does not stop a person from bringing a proceeding to recover damages for loss or damage caused by—
- (a) a negligent act or omission in the performance of a designated act; or
- (b) an unlawful act.
- ‘(5) In this section—
- decision* includes—
- (a) conduct engaged in to make a decision; and
- (b) conduct related to making a decision; and
- (c) failure to make a decision.
- designated act* means an act the performance of which—
- (a) either—
- (i) is authorised, or purportedly authorised, under the relevant instrument; or

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(ii)	is otherwise authorised, or purportedly authorised, under this Act, having regard to the relevant instrument; and	1 2 3
(b)	is in compliance, or purportedly in compliance, with a direct instruction.	4 5
	<i>designated decision</i> means a decision to perform a designated act.	6 7
	<i>direct instruction</i> means an instruction, included in the relevant instrument and identified in the instrument as a direct instruction for this section, for urgent and immediate action to be taken—	8 9 10 11
(a)	to destroy, on a particular parcel of land identified in the direction, any of the following—	12 13
(i)	plants that are infested with the relevant pest;	14
(ii)	plants that are not infested with the relevant pest, but the destruction of which is necessary to achieve a buffer zone for land infested with the relevant pest; or	15 16 17 18
(b)	to restrict or stop the movement of host material, of a type identified in the direction, within, or into or out of, a particular area identified in the direction, to stop the spread of the relevant pest; or	19 20 21 22
(c)	to perform surveillance, including inspection, on land in a particular area identified in the direction, to find out the extent of the relevant pest infestation.	23 24 25
	<i>host material</i> means any of the following—	26
(a)	any plant that is of a plant variety that is capable of being a host of the relevant pest;	27 28
(b)	any soil, appliance or other thing reasonably likely to be a means of spreading the relevant pest.	29 30
‘11C	Keeping a business document for an area	31
(1)	This section applies if a person (<i>person A</i>) gives a document to another person (<i>person B</i>), and at the time the document is given, the document is a business document for an area.	32 33 34

‘(2) Person A must keep a copy of the business document for 7 years after the movement the document relates to.	1 2
Maximum penalty—400 penalty units.	3
‘(3) Person B must keep the business document, or a complete copy of the document, for 7 years after the movement the document relates to.	4 5 6
Maximum penalty for subsection (3)—400 penalty units.	7
‘11D Keeping a document that becomes a business document for an area	8 9
‘(1) This section applies if—	10
(a) a person (<i>person A</i>) gives a document to another person (<i>person B</i>); and	11 12
(b) after the document is given, an area is declared to be a pest quarantine area, and the document becomes a business document for the area.	13 14 15
‘(2) Person A must keep a copy of the business document for 7 years after the area is declared to be a pest quarantine area if—	16 17 18
(a) the document is still in person A’s possession when the area is declared to be a pest quarantine area; and	19 20
(b) person A knows, or ought reasonably to know, that the document is a business document for the area.	21 22
Maximum penalty—400 penalty units.	23
‘(3) Person B must keep the business document, or a complete copy of the business document, for 7 years after the area is declared to be a pest quarantine area if—	24 25 26
(a) the document or a copy of it is still in person B’s possession when the area is declared to be a pest quarantine area; and	27 28 29
(b) person B knows, or ought reasonably to know, that the document is a business document for the area.	30 31
Maximum penalty for subsection (3)—400 penalty units.	32

‘11E Production of business documents	1
‘(1) This section applies if an inspector believes on reasonable grounds that a person (the <i>document holder</i>) has in the person’s possession, or has reasonable access to, a business document for an area or a copy of a business document for an area.	2 3 4 5 6
‘(2) This section also applies if an inspector believes on reasonable grounds that a person (also the <i>document holder</i>) is required under this Act to keep a business document for the area or a copy of a business document for an area.	7 8 9 10
‘(3) If asked by an inspector, the document holder must, unless the person has a reasonable excuse, make the document or copy available for inspection by the inspector, or produce it to the inspector for inspection, at a stated reasonable time and place.	11 12 13 14
Maximum penalty—400 penalty units.	15
‘(4) When making a request under subsection (3), it is not necessary for the inspector to identify a particular document, and the inspector may ask for—	16 17 18
(a) all business documents and copies of business documents that the document holder has or can access; or	19 20 21
(b) all business documents of a particular type, or all copies of business documents of a particular type, that the document holder has or can access.	22 23 24
‘(5) When making a request under subsection (3), the inspector must warn the document holder that it is an offence not to comply with the request if the document holder does not have a reasonable excuse.	25 26 27 28
‘(6) The document holder must, unless the document holder has a reasonable excuse, allow the inspector to keep each produced business document to copy it.	29 30 31
Maximum penalty—400 penalty units.	32
‘(7) The inspector must return each business document to the document holder as soon as practicable after copying it.	33 34

'11F	Failure to comply with requirement about a document	1
	'(1) It is not a reasonable excuse for a person to fail to comply with a requirement under section 11E(3) or (6) that complying with the requirement might incriminate the person.	2 3 4
	'(2) If an individual complies with a requirement under section 11E(3) or (6), evidence of, or evidence directly or indirectly derived from, the document or information it contains that might tend to incriminate the individual is not admissible in evidence against the individual in a civil or criminal proceeding, other than a proceeding for an offence for which the falsity or misleading nature of the document is relevant.'	5 6 7 8 9 10 11 12
Clause 12	Amendment of s 13 (Special powers in relation to specific pest infestations)	13 14
	Section 13(4)—	15
	<i>omit, insert—</i>	16
	'(4) Subsection (5) applies in the following circumstances—	17
	(a) an inspector would be authorised under this section to give a person a direction to perform a particular action;	18 19
	(b) the action would be to treat or destroy plants;	20
	(c) the inspector is satisfied on reasonable grounds that the effectiveness of the action can be better secured if the action is performed by, or under the direction of, the inspector.	21 22 23 24
	'(5) The inspector may give the person a direction that the person must allow the action to be performed by, or under the direction of, the inspector.	25 26 27
	'(6) The inspector may give a direction under subsection (5) only if the inspector is satisfied on reasonable grounds that the effectiveness of the action can be better secured if the action is performed by, or under the direction of, the inspector.	28 29 30 31
	'(7) If a direction is given under subsection (5), the inspector may recover the cost of performing the action from the person to whom the direction is given as a debt owing to the State.	32 33 34

- ‘(8) A person must comply with a direction under this section, unless the person has a reasonable excuse for not complying with it.
Maximum penalty for subsection (8)—2 000 penalty units.’.

Clause 13	Amendment of s 14 (Destruction of healthy crop to prevent pest infestation)	5
	(1) Section 14(1A)—	6
	<i>omit, insert—</i>	7
	‘(1A) Directions given to a person under subsection (1) may include—	8
	(a) a direction that the person must perform the destruction in accordance with the directions of the inspector; or	9
	(b) a direction that the person must allow the destruction to be performed by, or under the direction of, the inspector.	10
	‘(1B) The inspector may give a direction under subsection (1A)(b) only if the inspector is satisfied on reasonable grounds that the effectiveness of the destruction can be better secured if the destruction is performed by, or under the direction of, the inspector.’.	11
	(2) Section 14(6), penalty—	12
	<i>omit, insert—</i>	13
	‘Maximum penalty for subsection (6)—400 penalty units.’.	14
Clause 14	Amendment of s 19 (General powers of inspectors)	15
	(1) Section 19(1)—	16
	<i>insert—</i>	17
	‘(ja) without limiting any other power the inspector has under this section, require a person to give the inspector reasonable help to exercise a power under this section, including for example to produce a document or give information;’.	18
	(2) Section 19(6), penalty—	19
	<i>omit, insert—</i>	20
		21
		22
		23
		24
		25
		26
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‘Maximum penalty—400 penalty units.’. 1

(3) Section 19(7), after ‘answer a question’— 2

insert— 3

‘or under subsection (1)(ja) to give reasonable help’. 4

(4) Section 19(7), after ‘answering the question’— 5

insert— 6

‘or giving the help’. 7

Clause 15 Amendment of s 19A (Inspectors’ powers—certificates) 8

Section 19A(6), penalty— 9

omit, insert— 10

‘Maximum penalty for subsection (6)—400 penalty units.’. 11

Clause 16 Amendment of s 20 (Restricted entry into dwelling house) 12

(1) Section 20, heading— 13

omit, insert— 14

‘20 Warrants to enter’. 15

(2) Section 20— 16

insert— 17

‘(8) Subsection (1) does not limit the places for which a warrant to enter may be obtained under this section.’. 18
19

Clause 17 Insertion of new s 20AA 20

After section 20— 21

insert— 22

‘20AA Information requirement for pest infestation 23

‘(1) An inspector may give the owner of land that is infested with a pest a notice (an *information notice*) for the land. 24
25

‘(2) The information notice may require the owner to give the inspector the following information about each crop plant growing on the land— 26
27
28

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- | | | |
|------|--|----------------------|
| | (a) the genus, species, variety and type or class of the crop plant; | 1
2 |
| | (b) when the crop plant was planted on the land; | 3 |
| | (c) the source of the crop plant; | 4 |
| | (d) other information stated in the notice, if the inspector considers the information to be reasonably necessary for the prevention, control or removal of pest infestation of plants under this Act. | 5
6
7
8 |
| '(3) | An inspector may give the owner of a harvested crop that is infested with a pest a notice (also an <i>information notice</i>) for the crop. | 9
10
11 |
| '(4) | The information notice may require the owner to give the inspector the following information about the crop— | 12
13 |
| | (a) the genus, species, variety and type or class of the crop plants for the crop; | 14
15 |
| | (b) when the crop was harvested; | 16 |
| | (c) the source of the crop plants for the crop; | 17 |
| | (d) where the crop has been moved to; | 18 |
| | (e) other information stated in the notice, if the inspector considers the information to be reasonably necessary for the prevention, control or removal of pest infestation of plants under this Act. | 19
20
21
22 |
| '(5) | A person to whom an information notice is given under this section must comply with the notice unless the person has a reasonable excuse. | 23
24
25 |
| | Maximum penalty—400 penalty units. | 26 |
| '(6) | When giving a person an information notice under this section, the inspector must warn the person that it is an offence not to comply with the notice if the person does not have a reasonable excuse. | 27
28
29
30 |
| '(7) | It is not a reasonable excuse for a person to fail to comply with an information notice under this section that complying with the notice might incriminate the person. | 31
32
33 |
| '(8) | If an individual complies with an information notice, evidence of, or evidence directly or indirectly derived from, the | 34
35 |

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information given that might tend to incriminate the individual is not admissible in evidence against the individual in a civil or criminal proceeding, other than a proceeding for an offence for which the falsity or misleading nature of the information given is relevant.’.

		1
		2
		3
		4
		5
Clause 18	Amendment of s 20A (Inspectors’ powers—imminent risk of infestation)	6
		7
	(1) Section 20A(9), penalty—	8
	<i>omit, insert—</i>	9
	‘Maximum penalty—400 penalty units.’.	10
	(2) Section 20A—	11
	<i>insert—</i>	12
	‘(10A) The inspector may take any of the following steps as are reasonable in the circumstances—	13
		14
	(a) inspect anything on the land;	15
	(b) monitor plant movements;	16
	(c) photograph anything;	17
	(d) test anything;	18
	(e) take samples of anything for testing or identification;	19
	(f) lay baits and set lures or traps.	20
	‘(10B) Subsection (10A) does not limit—	21
	(a) the reasonable steps the inspector may direct, take or authorise under subsection (5); or	22
		23
	(b) the powers the inspector may exercise under subsection (10).’.	24
		25
	(3) Section 20A(11) and (12), ‘and (10)’—	26
	<i>omit, insert—</i>	27
	‘, (10) and (10A)’.	28

Clause 19	Insertion of new pt 3, div 4	1
	Part 3—	2
	<i>insert—</i>	3
'Division 4	Surveillance to establish presence or absence of pest	4 5
'20B	Chief executive may authorise pest surveillance program	6 7
	'(1) The chief executive may authorise the conduct in the State of a pest surveillance program.	8 9
	'(2) The chief executive must ensure that each inspector who is proposed by the chief executive to act in the pest surveillance program is informed of—	10 11 12
	(a) the purpose of the program; and	13
	(b) the nature and extent of the program, including the parts of the State to which the program applies; and	14 15
	(c) the extent to which the inspector is to act under the program; and	16 17
	(d) the extent to which authorised persons are to be directed to act under the program.	18 19
	'(3) The chief executive must also ensure that, to the extent practicable in the circumstances, timely information about the nature and extent of the program is advertised in communities likely to be affected by the program.	20 21 22 23
'20C	Purpose of pest surveillance program	24
	'The purpose of a pest surveillance program must be stated in the program, and must be limited to the following—	25 26
	(a) to confirm the presence, or find out the extent of the presence, in the areas of the State to which the program applies, of the pest to which the program applies;	27 28 29
	(b) to confirm the absence, in the areas of the State to which the program applies, of the pest to which the program applies.	30 31 32

'20D	Circumstances required for pest surveillance program	1
		2
'(1)	The chief executive may authorise the conduct in the State of a pest surveillance program only if the circumstances stated in this section apply.	3
		4
		5
'(2)	Firstly, it must be the case that—	6
	(a) a notice or regulation (a <i>relevant instrument</i>) under section 11 declaring the State or a part of the State to be a quarantine area—	7
		8
		9
	(i) is in force under this Act; or	10
	(ii) has been in force under this Act, but is no longer in force; or	11
		12
	(b) an undertaking (also a <i>relevant instrument</i>) accepted by the Minister under section 11—	13
		14
	(i) is in force under this Act; or	15
	(ii) has been in force under this Act, but is no longer in force; or	16
		17
	(c) a direction (also a <i>relevant instrument</i>) given to the owner of land by an inspector under section 13—	18
		19
	(i) is in force under this Act; or	20
	(ii) has been in force under this Act, but is no longer in force.	21
		22
'(3)	Secondly it must be the case that, because of a circumstance stated in subsection (2), it is necessary to establish the status of the State, or of a part of the State, in relation to a pest (the <i>relevant pest</i>) the subject of the relevant instrument.	23
		24
		25
		26
'(4)	To remove any doubt, it is declared that it does not matter whether an area of the State to which the pest surveillance program applies is an area that is or was the subject of a relevant instrument.	27
		28
		29
		30
'(5)	In subsection (3)—	31
	<i>necessary</i> means necessary in the interests of 1 or more of the following—	32
		33
	(a) the prevention, control or removal of pest infestation of plants in Queensland involving the relevant pest;	34
		35

- (b) facilitating the movement of plants into or out of Queensland. 1
2

'20E Taking action under a pest surveillance program 3

- '(1) Actions taken under a pest surveillance program must be limited to those that are reasonably necessary for achieving the program's purpose. 4
5
6
- '(2) Subject to subsection (1), an inspector, or an authorised person acting under the direction of an inspector, may, at any reasonable time, exercise any of the following powers on land included in an area the subject of the program— 7
8
9
10
- (a) inspect anything on the land; 11
- (b) monitor plant movements; 12
- (c) photograph anything; 13
- (d) test anything; 14
- (e) take samples of anything for testing or identification; 15
- (f) lay baits and set lures or traps. 16
- '(3) This section does not limit the powers of an inspector under division 3.'. 17
18

Clause 20 Amendment of s 21M (Application for reconsideration of administrative decisions) 19
20

Section 21M(5)— 21

insert— 22

'decision of an administrative character under this Act does not include a decision of the Minister, the chief executive or an inspector if— 23
24
25

- (a) the decision is made— 26
- (i) under a regulation or notice under section 11 (a *relevant instrument*); or 27
28
- (ii) otherwise under this Act, if the decision is authorised, or purportedly authorised, under this Act, having regard to a relevant instrument; and 29
30
31

- (b) the relevant instrument declares an area to be a quarantine area; and 1
2
- (c) the pest the subject of a pest infestation for which the quarantine is declared is a notifiable pest under section 12.’. 3
4
5

Clause 21	Amendment of s 21N (Decision on reconsideration)	6
	Section 21N(3)(a), ‘or’—	7
	<i>omit, insert</i> —	8
	‘and’.	9
Clause 22	Amendment of s 24 (Obstruction)	10
	Section 24—	11
	<i>insert</i> —	12
	‘(4) In this section—	13
	<i>inspector</i> includes an authorised person.’.	14
Clause 23	Insertion of new s 29A	15
	After section 29—	16
	<i>insert</i> —	17
‘29A	Executive officers must ensure corporation complies with Act	18 19
	‘(1) The executive officers of a corporation must ensure the corporation complies with this Act.	20 21
	‘(2) If a corporation commits an offence against a provision of this Act, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.	22 23 24 25
	Maximum penalty—the penalty for the contravention of the provision by an individual.	26 27
	‘(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of	28 29

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the executive officers committed the offence of failing to
ensure the corporation complies with the provision. 1
2

‘(4) However, it is a defence for an executive officer to prove— 3

(a) if the officer was in a position to influence the conduct
of the corporation in relation to the offence, the officer
exercised reasonable diligence to ensure the corporation
complied with the provision; or 4
5
6
7

(b) the officer was not in a position to influence the conduct
of the corporation in relation to the offence.’. 8
9

Clause 24 Amendment of s 31 (Delegation by chief executive) 10

Section 31, from ‘power to’— 11

omit, insert— 12

‘power to enter into intergovernmental agreements.’. 13

Clause 25 Insertion of new s 32A 14

After section 32— 15

insert— 16

‘32A Limitation on time for starting proceedings 17

‘A proceeding for an offence may be started within— 18

(a) 1 year after the offence is committed; or 19

(b) 1 year after the offence comes to the complainant’s
knowledge, but within 2 years after the offence is
committed.’. 20
21
22

Clause 26 Insertion of new pt 8 23

After section 35— 24

insert— 25

'Part 8	Transitional and validation provisions for Plant Protection Amendment Act 2004	1
		2
		3
'36	Definitions for pt 8	4
	'In this part—	5
	<i>amending Act</i> means the <i>Plant Protection Amendment Act 2004</i> .	6
		7
	<i>canker notice</i> means the <i>Plant Protection (Canker) Notice 2004</i> .	8
		9
	<i>commencement</i> means the commencement of this section.	10
	<i>interim period</i> means the period from the beginning of 2 July 2004 until immediately before the commencement.	11
		12
	<i>relevant area</i> means an area declared to be a quarantine area under a relevant pest quarantine instrument.	13
		14
	<i>relevant pest quarantine instrument</i> means a regulation or notice under section 11 that was notified in the interim period.	15
		16
'37	Validation of relevant pest quarantine instruments	17
	'(1) A relevant pest quarantine instrument 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 for the interim period.	18
		19
		20
		21
	'(2) Without limiting, or being limited by, subsection (1), the canker notice is, and it is declared always was from when it was made, valid.	22
		23
		24
	'(3) Subsections (1) and (2) do not have the effect of imposing criminal liability retrospectively.	25
		26
	'(4) To remove any doubt, it is declared that on and from the commencement, this Act, as amended by the amending Act, applies to an area that is a pest quarantine area even though the area became a pest quarantine area before the amending Act commenced.	27
		28
		29
		30
		31

'38	Application of s 11D for particular business documents	1 2
	‘For the application of section 11D to a relevant area—	3
	(a) section 11D(1)(a) has application to the giving of a document even if the giving happened before the commencement, and whether the giving happened before or after 2 July 2004; and	4 5 6 7
	(b) in relation to the giving of a document before the commencement, the relevant area is taken to have been declared a quarantine area on the commencement.	8 9 10
'39	Application of s 21M to particular decisions in interim period	11 12
	‘For the application of section 21M(5), definition <i>decision of an administrative character under this section</i> —	13 14
	(a) a reference to a relevant instrument is taken to include a reference to a relevant pest quarantine instrument; and	15 16
	(b) a reference to a decision of the Minister, the chief executive or an inspector is taken to include a reference to a decision of the Minister, the chief executive or an inspector made in the interim period.	17 18 19 20
'40	Transitional arrangements for identity card requirements	21 22
	‘Until 6 months after the commencement or this section, or until an earlier time stated under a regulation, part 2, division 3 does not apply to inspectors who were appointed before the commencement.’.	23 24 25 26
Clause 27	Insertion of new sch 1	27
	Before the schedule—	28
	<i>insert</i> —	29

‘Schedule 1	Serious pests	1
	section 60	2
‘Part 1	Animals	3
Insects and mites		4
Common name	Scientific name and author	
khapra beetle	<i>Trogoderma granarium</i> Everts	
melon fly	<i>Bactrocera cucurbitae</i> (Coquillett)	
Oriental fruit fly	<i>Bactrocera dorsalis</i> (Hendel)	
papaya fruit fly	<i>Bactrocera papayae</i> Drew and Hancock	
Philippine fruit fly	<i>Bactrocera philippinensis</i> Drew and Hancock	
sugarcane borer	<i>Sesamia</i> spp.	
‘Part 2	Pests associated with plant disease	5
		6
A. Organisms		7
Nematodes		8
<i>Globodera rostochiensis</i> (Wollenweber) Behrens (abbreviated name—golden nematode)		

Bacteria

1

Clavibacter michiganensis subsp. *sepedonicus* (Spiek and Kotth.) Davies *et al.*

Erwinia amylovora (Burrill) Winslow *et al.* (abbreviated name—fire blight)

“*Liberobacter asiatica*” Jagoueix *et al.*

Xanthomonas axonopodis pv. *citri* (Hasse) Vauterin

Xylella fastidiosa Wells *et al.*

Fungi

2

Peronosclerospora sacchari (T. Miyake) Shirai and K. Hara

Tilletia indica Mitra

B. Viruses and viroids

3

Viruses

4

Plum pox virus’.

Clause 28 Amendment of schedule (Dictionary)

5

(1) Schedule—

6

insert—

7

‘*amending Act*, for part 8, see section 36.

8

authorised person means a person who holds appointment as an authorised person under section 6D.

9

10

business document, for an area, see section 6N.

11

business movement, for an area, see section 6M.

12

canker notice, for part 8, see section 36.

13

commencement, for part 8, see section 36.

14

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation’s

15

16

management, whether the person is a director or the person's position is given the name of executive officer.	1
	2
<i>in</i> , a place, includes at or on the place.	3
<i>interim period</i> , for part 8, see section 36.	4
<i>relevant area</i> , for part 8, see section 36.	5
<i>relevant officer</i> means—	6
(a) an inspector; or	7
(b) an authorised person.	8
<i>relevant pest quarantine instrument</i> , for part 8, see section 36.	9
	10
<i>serious pest</i> see section 6O'.	11
(2) Schedule, as amended—	12
<i>renumber</i> as schedule 2.	13

Part 3	Amendment of Judicial Review Act 1991	14
		15
Clause 29	Act amended in pt 3	16
	This part amends the <i>Judicial Review Act 1991</i> .	17
Clause 30	Amendment of sch 1 (Operation of other laws)	18
	Schedule 1, part 1—	19
	<i>insert</i> —	20
'5A	<i>Plant Protection Act 1991</i> , section 11B'.	21