

Biosecurity (Melon Necrotic Spot Virus and Other Matters) Amendment Regulation 2017

Explanatory notes for SL 2017 No. 218

made under the

Biosecurity Act 2014

General Outline

Short title

Biosecurity (Melon Necrotic Spot Virus and Other Matters) Amendment Regulation 2017

Authorising law

Section 503 of the *Biosecurity Act 2014* (the Act)

Policy objectives and the reasons for them

The purpose of the subordinate legislation is to provide for a range of amendments to the *Biosecurity Regulation 2016* (the Regulation). The policy objectives of the subordinate legislation are to:

- remove an unnecessary regulatory burden on the apiary industry by removing the requirement that the feed intended to be fed to bees must be labelled to state whether or not it contains restricted animal material. The restricted animal material labelling requirements are directed at mitigating the risk of transmissible spongiform encephalopathy (including 'mad cow disease') entering the food chain via ingestion of restricted animal matter by food producing animals. However since bees do not feed on restricted animal material, the labelling requirement for feed intended for bees is unnecessary;
- allow the movement of diagnostic samples of some pest carriers into or out of the State, or into or from a biosecurity zone without a biosecurity certificate on the conditions that the samples are sent to an approved facility or an interstate laboratory and they are quarantine secured. This will remove the financial and regulatory burden of obtaining biosecurity certificates where there is a high volume of samples sent for routine pest, disease and agronomic diagnostics including for not-for-profit research-related activities. It will also resolve an inconsistency where a person may apply for a biosecurity permit which does not attract any fees for the movement of the same diagnostic samples to a facility that is not an approved facility;
- reduce regulatory burden of low risk movements of potatoes into Queensland from a State where branched broomrape has been found provided that the potatoes intended

to be sold for consumption without further processing are practically free of soil, and the potatoes sent for processing are consigned directly to a processor using quarantine secure transport;

- protect Queensland's cucurbit industries from the biosecurity risk of *melon necrotic spot virus* (MNSV) spreading to Queensland. MNSV affects cucurbit crops including melon, cucumber and watermelon. The virus can be spread through infected seedlings, soil and water. The cucurbit industry could be impacted by loss of production, sales and market access should the virus be established in Queensland. MNSV has been detected in Victoria but it is not known to be present in Queensland;
- protect Queensland's cucurbit industries from the biosecurity risk of *Cucumber green mottle mosaic virus* by invoking the reporting obligations relating to category 1 restricted matter under section 42 of the Act;
- provide a Panama disease tropical race 4 notice (disease notice) must be accompanied by an information notice for the decision to give the disease notice. Currently, the recipient of a disease notice can require a recipient to take certain actions such as to destroy a plant or adopt and comply stated processes and procedures without giving the person an opportunity to have the decision reviewed. The requirement to give an information notice will provide the recipient an avenue to have the decision reviewed;
- support an innovative and risk appropriate approach to the movement of risk items from affected land by removing the prescribed restrictions of risk items. The current disease notice regime requires the holder of a notice to comply with risk minimisation requirements in the biosecurity manual when moving things from affected land. This has proved impractical, as it is difficult to foresee the wide range of situations present on banana farms and there is no ability to depart from the manual in unforeseen circumstances. The movement of biosecurity carriers will instead be stated into the notice given under section 58(3)(c) of the Regulation;
- provide for more flexibility in dealing with Panama disease tropical race 4 by removing the requirement that the chief executive or inspector must be satisfied on reasonable grounds the land or plant no longer poses a significant biosecurity risk before revoking a disease notice. This will allow other measures to be put into place to address the biosecurity risk of the change in biosecurity risk level including the reliance of the general biosecurity obligation;
- remove the regulatory burden of requiring a biosecurity certificate for the movement of sugar cane plants for breeding purposes under a clean planting scheme; and for the movement of low risk dried sugar cane trash. Officers from Sugar Research Australia (SRA) and their supply chain partners must be able to move sugar cane material, such as cuttings of cane stalks, as well as plantlets for plant breeding purposes between the SRA facilities under the '*SRA Plant Breeding and Clean Planting Scheme for Sugar Cane*'. Dried sugar cane trash poses a low biosecurity risk because it is dead plant material and the current regulated sugar cane pests need a living host to be transmissible. Processed sugar cane trash is a high value product generally sold in small units and allowing the movement of sugar cane trash without requiring a biosecurity certificate will reduce the regulatory burden on stakeholders and the general public;
- resolve the inconsistency between the maximum residue limit prescribed for DDT in a food commodity (Table 1) and animal feed (Table 4) in the *Agricultural and Veterinary Chemicals Code Instrument No. 4 (MRL Standard) 2012 (Cwlth)*, and the prescribed maximum permitted level for DDT as a contaminant in Part 5 of Schedule 3 of the Regulation;

- amend the name of the class of police prescribed in the Regulation that are inspectors for the purposes of section 251(1) of the Act. This will reflect the Queensland Police Service's organisational change of the name of the 'Stock and Rural Crime Investigation Squad' to 'Major and Organised Crime Squad (Rural)'.

Achievement of policy objectives

The subordinate legislation will achieve its objectives by amending the Regulation to:

- remove the requirement in sections 36 and 37 that the feed intended to be fed to 'bees' must be labelled to indicate whether or not the feed contains restricted animal material;
- permit the movement of diagnostic samples of prescribed pest carriers into the State, or into or from a biosecurity zone, if the samples are sent to an approved facility or an interstate laboratory and are quarantine secured;
- permit the movement of potatoes into Queensland from a State where branched broomrape has been found provided that the potatoes intended to be sold for consumption without further processing do not carry any detachable soil, and the potatoes sent for processing are consigned directly to a processor using quarantine secure transport;
- prescribe MNSV as 'prohibited matter' in Schedule 1, part 1 and restrict the movement of MNSV carriers into the State (on the same conditions as the cucumber green mottle mosaic virus carriers);
- prescribe *Cucumber green mottle mosaic virus* as category 1 'restricted matter' in Schedule 1, part 2;
- omit section 59 which restricts the chief executive and inspectors to revoke a disease notice only in the circumstances in which they are satisfied there is no significant biosecurity risk. Section 24AA of the *Acts Interpretation Act 1954* will allow the chief inspector and an inspector to amend or revoke a disease notice in the same way, and subject to the same conditions, as a notice is made;
- omit section 60 to allow more flexibility to support innovative and risk appropriate approaches to the movement of risk items from Panama disease tropical race 4 affected land;
- extend the exception of moving a sugar cane carrier under section 94(3) from sugar cane plantlet to a sugar cane plant provided it has been grown under a scheme for the clean planting of sugar cane that is stated in the biosecurity manual;
- allow the movement of dried sugar cane trash under section 94(3);
- exclude the application of the prescribed maximum residual levels of DDT in a food commodity (Table 1) or an animal feed (Table 4) in the MRL Standard and amend the references in section 19 to the correct columns in table 4 of the MRL Standard;
- amend section 125 to amend the name of the unit of the police service prescribed for the purposes of section 251(1) of the Act to 'Major and Organised Crime Squad (Rural)' to reflect the Queensland Police Service's organisational name change for that unit.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the objectives of the *Biosecurity Act 2014* including the objective of providing a framework for an effective biosecurity system for Queensland that helps to minimise biosecurity risks, and ensuring the safety and quality of animal feed, fertilisers and other agricultural inputs.

Inconsistency with policy objectives of other legislation

The subordinate legislation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no viable alternative to achieve the policy objectives for the amendments.

Benefits and costs of implementation

Social, economic and environmental benefits to the community from the amendments will include:

- removing the regulatory burden of labelling feed for bees on the apiary industry;
- reducing the regulatory burden on business by allowing some movement of potatoes into Queensland from interstate without a biosecurity certificate;
- reducing the regulatory burden by allowing the movement of sugar cane plant material and not just plantlets provided it has been grown under a scheme for the clean planting of sugar cane that is stated in the biosecurity manual; or it is dried sugar cane trash;
- removing the financial and regulatory burden by permitting the movement of diagnostic samples of prescribed pest carriers to an approved facility or interstate laboratory provided they are quarantine secured without obtaining a biosecurity certificate;
- protecting Queensland's cucurbit industries from MNSV spreading to Queensland by prescribing MNSV as prohibited matter and restricting its movement into Queensland from other States;
- protecting Queensland cucurbit industries by prescribing *Cucumber green mottle mosaic virus* as restricted matter which will invoke reporting obligations where a person believes, or ought reasonably believe, the presence of the virus;
- provide for flexible regulatory responses to Queensland's banana industry from Panama disease tropical race 4 by removing regulatory restrictions.

Social and economic costs to the community will include restrictions on the movement of a melon necrotic spot virus carrier into Queensland from another State.

The Queensland Government will not incur any additional costs in the implementation of this subordinate legislation.

Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to the fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA). Potential FLPs are addressed below.

Legislation should have sufficient regard to rights and liberties of individuals

Legislation should not, without sufficient justification, unduly restrict ordinary activity – LSA s4(2)(a)

Clause 7 - Amendment of section 51

This provision prohibits a person from moving a MNSV carrier into Queensland for trade or business purposes if it is from a State where MNSV has been found unless the movement is within the prescribed exceptions.

The subordinate legislation will amend section 51 to also restrict the movement of a melon necrotic spot virus carrier into the State on the same conditions as the cucumber green mottle mosaic virus carrier.

The potential FLP issue is whether the legislation unduly restricts ordinary activity without sufficient justification and the right to conduct business without interference. The restriction on movements are justified to protect Queensland's cucurbit industries from MNSV spreading to Queensland from other States. The regulation provides exceptions to the prohibition of the movement of MNSV carriers by allowing carriers into the State if they are from a certified interstate free area for the MNSV virus or the person moving the carrier into the State has an acceptable biosecurity certificate and risk minimisation requirements for the carrier are complied with.

Legislation should have sufficient regard to the institution of Parliament

Legislation should allow the subdelegation of a power delegated by an Act only in appropriate cases and if authorised by an Act - LSA s4(5)(d)

Clause 5 – new provision (section 46A)

Section 46A provides that a person may move a sample of a prescribed carrier if it is being sent to an 'approved facility' or an interstate laboratory. 'Approved facility' is defined to mean a facility listed as an approved facility in the Biosecurity Manual.

The potential FLP issue is whether the legislation has sufficient regard to the institute of Parliament by allowing an external document that is not subject to Parliamentary scrutiny prescribe an approved facility.

The new provision is aimed at reducing the regulatory burden of sending diagnostic samples whilst minimising any risks to the horticultural industries. Therefore it is important that any amendments to the list of approved facilities are done as quickly as possible as a delay of weeks or months could potentially result in significant costs to industry and the economy.

The Biosecurity Manual is readily available on the department's website and only amended in accordance with the legislation so the changes to the approved facilities list in the Manual justifies the sub-delegation by referring to the Manual in the Regulation.

Consultation

The decision to impose regulatory measures to keep MNSV out of Queensland is a co-regulatory approach which Queensland agreed through the National Consultative Committee on Emergency Plant Pests in consultation with the States and Territories and with the full support of industry stakeholders including the Australian Melon Association, AUSVEG and the Nursery and Garden Industry Australia.

Consultation was undertaken in relation to the movement of diagnostic carriers with affected industries including the Nursery and Garden Industry Australia, Growcom,

Papaya Australia, Australian Banana Growers' Council, the Sugar Industry Biosecurity Committee, the Australian Mango Industry Association, the Australian Society of Sugar Cane Technologists Limited, Crop Consultants Australia, Crop Consultants Queensland, Australian Society of Soil Science and the National Association of Testing Authorities, Australia. The industry bodies are supportive of the change.

The Sugarcane Industry Biosecurity Committee provides technical advice on prioritisation of emergency plant pests to Plant Health Australia who manage the Emergency Plant Pest Response Deed and the Biosecurity plan for the sugarcane industry on behalf of industry and government. The committee, which comprises members who are representative of growers, millers, researchers, cane productivity service companies and the Department of Agriculture and Fisheries, is supportive of the changes to the movement of sugar cane material grown under the clean planting scheme and dried sugar cane trash.

Consultation was undertaken with Biosecurity South Australia on behalf of the South Australian potato industries to allow the conditional movement of potatoes into Queensland.

There has been ongoing consultations with the Australian Banana Growers' Council (ABGC), who are both the industry representative and the owner of the original infested banana farm. A more flexible and responsive regulatory regime is supported by the ABGC.

The Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission was consulted as to whether the proposed amendment to include MNSV as prohibited matter qualified for an exclusion from further Regulatory Impact Analysis. The OBPR advised that the proposal is excluded from further analysis under category (m) of the *Queensland Government Guide to Better Regulation* (Regulatory proposals for matters that require an immediate legislative response to prevent damage to property or injury to persons).

The Department of Agriculture and Fisheries has self-assessed the remainder of the proposed amendments under category (g) of the *Queensland Government Guide to Better Regulation* and has determined that the amendments are excluded from further Regulatory Impact Analysis on the basis that they are machinery in nature.