

# Biosecurity (Tomato/Potato Psyllid) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 4

made under the

*Biosecurity Act 2014*

## General Outline

### Short title

*Biosecurity (Tomato/Potato Psyllid) Amendment Regulation 2018*

### Authorising law

Sections 25 and 503 of the *Biosecurity Act 2014*

### Policy objectives and the reasons for them

The purpose of the subordinate legislation is to minimise the risk of Tomato/Potato Psyllid (TPP) entering Queensland.

TPP (*Bactericera cockerelli*) is a small winged insect and serious exotic plant pest that affects horticultural crops. TPP is capable of causing the serious psyllid yellows disease on potato, tomato, chilli, eggplant, sweet potato, tamarillo and tobacco plants, which are considered host plants of TPP. TPP is also the primary vector of the bacterium *Candidatus Liberibacter psyllauros* (also known as *Candidatus Liberibacter solanacearum*). As a complex, the psyllid and bacterium cause the Zebra Chip disease of potato and cause disease in the other known hosts of the psyllid.

TPP is not known to be present in Queensland, but is a serious risk to a number of plant industries in the State. In 2015-16, the Queensland tomato, potato, sweet potato and eggplant industries, some of the plant industries potentially affected by TPP, produced a total of approximately \$216 million worth of this produce.

TPP was detected in Western Australia in February 2017 and has subsequently been confirmed on more than 70 properties in that state. There are limited options for eradication if TPP were to enter Queensland and, in this context, movement restrictions of TPP carriers are considered necessary to prevent TPP from entering Queensland.

## Achievement of policy objectives

The subordinate legislation will achieve its objective by amending chapter 5 of the *Biosecurity Regulation 2016* (Prevention and control measures for biosecurity matter) to prohibit TPP carriers from entering the State from a state where TPP has been found, unless certain conditions are met. The subordinate legislation will complement the listing of TPP and *Candidatus Liberibacter psyllauros* as prohibited matter under schedule 1 of the *Biosecurity Act 2014* (the Act).

The subordinate legislation will also augment the general biosecurity obligation that applies to all persons under the Act. Section 25 of the Act provides that a person has failed to discharge their general biosecurity obligation under the Act if they contravene a regulatory provision identified as a way of discharging their general biosecurity obligation. Section 47 of the *Biosecurity Regulation 2016* prescribes that provisions in Chapter 5 provide a way of discharging a person's general biosecurity obligation.

The prohibition on entry to the State will apply to all known carriers of TPP. In particular, it will apply to plants in the Solanaceae and Convolvulaceae plant families, which are considered hosts of TPP. "Plants" includes fruits and vegetables. In addition, the prohibition will extend to a number of other carriers that TPP can be transported on as a contaminant or 'hitchhiker'. This will include planting media, soil, machinery and equipment which has come into contact with TPP host plants. Restrictions will also apply to the movement of non-host plants, with a number of exceptions, such as dried plant parts, timber and mulch, which are not considered TPP carriers.

The regulatory provisions provide five exceptions to the prohibition on the movement of TPP carriers into the State from a state where TPP has been found. The exceptions reflect the Queensland Government's commitment to maintaining least restrictive interstate trade measures.

The first exception allows a person to move the carrier into the State if the carrier is a seed that is free from any other vegetative material.

The second exception applies to all fruit and vegetables, other than those from a plant in the Solanaceae and Convolvulaceae plant families, which are prepared, stemmed, processed, graded, sorted or packed in a packing house and are free from any other vegetative material.

The third exception applies to all TPP carriers that come from part of a state where there is an interstate freedom certificate in force certifying that it is free from TPP and *Candidatus Liberibacter psyllauros*. This exception will require that the plant or plant material was sourced or grown in the area stated on the interstate freedom certificate or, in the case of machinery, equipment, soil and planting media used in association with TPP production, that it was located continuously in that part of the state for the past 12 months, before being moved. For this exception to apply, the person moving the carrier must get an acceptable biosecurity certificate that states the carrier comes from the TPP free area, before moving the carrier.

The fourth exception applies only to TPP plant carriers that have been certified as free from TPP in accordance with a corresponding law to the Act or an inspection certification program, administered by the department responsible for agriculture in the affected state. For this exception to apply, the carrier must be accompanied by an acceptable biosecurity

certificate that states the carrier is certified as being free of TPP under a corresponding law or under an inspection and certification program, before moving the carrier.

The last exception applies to all TPP carriers that meet the risk minimisation requirements for that carrier. This exception requires the person moving the carrier into the State to obtain an acceptable biosecurity certificate that states the carrier meets the risk minimisation requirements, before moving the carrier. Risk minimisation requirements are procedures contained within the Biosecurity Manual, such as appropriately treating the carrier, which reduce or eliminate the risk the carrier poses.

The amendment regulation will replace a Movement Control Order (MCO) made by the chief executive under the Act on 2 November 2017 and which expires on 2 February 2018. The regulatory provisions broadly reflect the MCO, but provide greater certainty to industry by creating a permanent regulatory response.

## **Consistency with policy objectives of authorising law**

The subordinate legislation is consistent with the objectives of the Act.

## **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**

The establishment of TPP regulatory provisions is the most feasible approach to mitigate the risk of TPP from entering the State.

An alternative way of achieving the policy objective would be to continue implementing new MCOs under the Act. However, a MCO is a legislative tool that is intended for use only over a limited period rather than over an extended or indefinite period. Therefore, a permanent regulatory response is required, as a further MCO would not be consistent with the intended purpose of MCOs under the Act.

Providing no Government intervention and leaving industry to self-regulate to mitigate the risk of TPP entering Queensland is not supported, as this may lead to an inconsistent approach that may more greatly expose industry to the threat of TPP and *Candidatus Liberibacter psyllaeus*. There are limited control options to eradicate TPP if it were to enter Queensland, therefore a consistent regulatory response across industry is required.

## **Benefits and costs of implementation**

The regulatory provisions will help protect the future viability of the horticulture industry in Queensland by ensuring the state remains free of TPP and its associated diseases. The regulatory provisions will additionally support the Queensland economy by allowing interstate trade to continue in a way that minimises biosecurity risk from TPP.

The regulatory provisions may adversely impact business and individuals by prohibiting the movement of TPP carriers, including all plants, from entering the State from a state where TPP has been found, unless certain conditions are met. However, the potential disruption this places on the ordinary activity of businesses and individuals is exceeded by the overall net benefit to Queensland that results from preventing TPP from entering the State.

## Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

The regulatory provisions place a prohibition on the movement of certain TPP carriers from entering the State from a state where TPP has been found. This is a potential breach of the principle that legislation should not, without sufficient justification, unduly restrict ordinary activity (*Legislative Standards Act 1992* section 4(2)(a)). The prohibition on movement is justified, however, because of the risk TPP poses to Queensland's horticultural industry. Additionally, the regulation attempts to limit the impact on individuals by providing a number of exceptions to the general prohibition on entry.

## Consultation

The Plant Health Committee, the peak government national plant biosecurity decision-making forum, through its Sub-Committee on Domestic Quarantine and Market Access (SDQMA), agreed on a suite of interstate movement control orders to guide Australian governments on preventing the spread of TPP. The SDQMA's recommendations, including measures to minimise the risk of *Candidatus Liberibacter psyllauros* and the spread of TPP through non-host carriers, have formed the basis of the MCO conditions and this subordinate legislation.

The respective peak national and State plant industry bodies were consulted on the development of the TPP MCO, which is broadly reflected in the amendment regulation. The stakeholders consulted include AUSVEG, Growcom, Nursery and Garden Industry Australia and Flower Association of Queensland.

The Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission was consulted on a Preliminary Impact Assessment. The OBPR advised that no further analysis is required under the *Queensland Guide to Better Regulation*. The commission noted that the subordinate legislation will enable industry to continue interstate trading of potential TPP carriers from Western Australia and will contain no additional requirement from those currently in the MCO.