

Biosecurity (Citrus Canker) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 25

made under the

Biosecurity Act 2014

General Outline

Short title

Biosecurity (Citrus Canker) Amendment Regulation 2019

Authorising law

Section 503 of the *Biosecurity Act 2014*

Policy objectives and the reasons for them

The policy objectives of the subordinate legislation is to minimise the risk of citrus canker (*Xanthomonas citri* pv. *citri*) entering Queensland.

Citrus canker is a contagious bacterial disease which affects all citrus plants. The disease can be spread rapidly over short distances by wind-blown rain, weather events and human movement, particularly in tropical and subtropical climates. Infected plants display lesions which form on leaves, fruits and stems, resulting in low plant vigour and a reduction in fruit quality and quantity. Citrus canker can also be spread on contaminated machinery and equipment used in the production of citrus canker host crops.

Citrus canker is not known to be present in Queensland, but was detected in April 2018 in the Northern Territory and confirmed in May 2018. Detections in the north of Western Australia, linked to nursery plants imported from Darwin, have also been confirmed.

Achievement of policy objectives

The subordinate legislation will achieve its objective by amending chapter 5 (Prevention and control measures for biosecurity matter) of the *Biosecurity Regulation 2016* (the Regulation) to prohibit potential carriers of citrus canker from entering Queensland from another state or territory where citrus canker has been found, unless certain conditions are met. The restriction and control of potential carriers will support existing regulatory measures directed at citrus canker, including the listing of citrus canker as prohibited matter under the *Biosecurity Act 2014* (the Act).

The prohibition on entry of carriers into Queensland will apply to:

- the plants (which includes fruit) listed in the new schedule 7A of the Regulation as citrus canker carriers; and
- soil or appliances (apparatus, equipment, machinery or vehicles) that have come into contact with a plant that is a citrus canker carrier.

The subordinate legislation provides three exceptions to the prohibition on the movement of citrus canker carriers into Queensland from another state where citrus canker 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 under a biosecurity authorisation. A biosecurity authorisation is a permit or other authorisation issued under the Act that allows the holder of the authorisation authority to deal with biosecurity matter in a way that would otherwise be prohibited.

The second exception allows a person to move the carrier from an area of another state that has been certified by that other state to be free from of citrus canker.

The third exception applies to a carrier that meets the risk minimisation requirements for the carrier. This exception requires the person, before moving the carrier into Queensland, to obtain an acceptable biosecurity certificate under the Act stating that the carrier meets the risk minimisation requirements. The 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 Biosecurity Manual contains the processes for dealing with a number of pests and diseases that could present a biosecurity risk to the State and is available for inspection on the Department of Agriculture and Fisheries' website.

The subordinate legislation will permanently transition the risk minimisation measures from the Movement Control Order (MCO) that was made by the chief executive under the Act on 24 December 2018 into the Regulation. The subordinate legislation broadly reflects 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. In particular, the subordinate legislation is consistent with the Act's 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

The establishment of the subordinate legislation is the most feasible approach to mitigate the risk of citrus canker from entering Queensland.

The continued use of MCOs is not feasible, as MCOs are a legislative mechanism that is only intended for use over a limited period, rather than over an extended or indefinite period.

A possible alternative would be to provide no Government intervention and allow industry to self-regulate to mitigate the risk of citrus canker from entering State. This approach is not supported, as it may lead to an inconsistent approach taken by those within industry that could expose the State to an increased risk of citrus canker. There are limited control options if citrus canker were to enter the State, so it is necessary to impose State-wide entry restrictions on potential carriers to decrease the risk presented.

Benefits and costs of implementation

The subordinate legislation will help protect the future viability of the horticulture industry in Queensland by ensuring the State remains free of citrus canker. The subordinate legislation will additionally support the Queensland economy by allowing interstate trade to continue in a way that minimises the risk of entry of citrus canker into the State.

The subordinate legislation may adversely impact businesses and individuals by prohibiting the movement of citrus canker carriers from entering Queensland from a state where citrus canker 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 citrus canker from entering the State.

Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to, though provides a justified departure from, the fundamental legislative principles (FLPs), as defined in section 4 of the *Legislative Standards Act 1992* (LSA).

Restrictions on the movement of citrus canker carriers are a potential breach of the principle that legislation should not, without sufficient justification, unduly restrict ordinary activity without sufficient justification, and the right to conduct business without interference (*Legislative Standards Act 1992* section 4(2)(a)).

The prohibition is justified because of the risk citrus canker poses to Queensland's horticulture industry. Additionally, the subordinate legislation limits the impact on those affected by providing a number of exceptions to the general prohibition on entry.

Consultation

In April 2018, the Plant Health Committee, the peak national government plant biosecurity decision-making forum, through its Sub-Committee on Domestic Quarantine and Market Access (SDQMA), agreed on a suite of interstate movement controls to guide Australian governments' measures to prevent the spread of citrus canker. On 1 May 2018, the agreement was updated to provide for the Federal Government's protocol for the importation of unshu (satsuma) mandarins from Japan to be applied as a basis to interstate movement controls of citrus fruit from a state with a detection of citrus canker.

On 30 October 2018, SQDQMA was consulted about, and was supportive of, Queensland's intention to extend the proposed measures through the Regulation.

Citrus Australia (CA) and Nursery and Garden Industry Australia (NGIA) were consulted about, and were supportive of, the current and previous MCOs for citrus canker and carriers that were made as an interim regulatory response to the potential threat of citrus canker entering into Queensland. State horticulture group, Growcom, CA and NIGA did not raise any concerns when consulted on the Government's intention to transition the restrictions into legislation on 30 October 2018.

The Office of Best Practice Regulation (OBPR), within the Queensland Productivity Commission, was consulted as to whether the subordinate legislation required further regulatory impact analysis through a Preliminary Impact Assessment. The OBPR advised that the proposal was unlikely to result in significant adverse impacts and it would not benefit from further regulatory impact analysis under the *Queensland Government Guide to Better Regulation*.