

# Biosecurity and Other Legislation Amendment Regulation 2019

Explanatory notes for SL 2019 No. 56

made under the

*Biosecurity Act 2014*

*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*Biosecurity and Other Legislation Amendment Regulation 2019*

### Authorising law

Section 503 of the *Biosecurity Act 2014*

Section 165 of the *State Penalties Enforcement Act 1999*

### Policy objectives and the reasons for them

The main policy objective of the subordinate legislation is to more directly address the biosecurity risks associated with unauthorised entry into places where animals are kept, including by animal activists. A second policy objective is to provide for enforcement action to be taken in swift response to these risks.

Activities at places where animals are kept can pose serious biosecurity risks, especially in relation to the spread of animal diseases. Animal disease transmission has significant economic, environmental and regional community impacts. In addition to a range of zoonotic diseases that can spread between humans and animals, there are many serious animal diseases that can be spread by people, vehicles and equipment moving onto a premises if strict biosecurity measures are not maintained.

The gross value of production for livestock and livestock products at the farm gate for 2017-18 was approximately \$6.5 billion and included cattle and calves (\$5.1 billion), poultry (\$605 million), pigs (\$257 million), eggs (\$245 million) and milk (\$201 million).

The potential biosecurity harms caused by the entry of a person carrying a disease onto a livestock production premises or carrying a disease out of a livestock production premises, could be catastrophic to Queensland industry and regional communities. There could also be significant impacts caused by the activities of a person spreading disease from one area of a facility to another after they have entered the premises. The spread of an exotic animal disease would damage international trade and compromise market access for Australian agricultural products. Access to a broad range of international

markets with favourable import conditions is critical to the competitiveness of Queensland and Australian agriculture, with producers being heavily reliant on exports to underpin their livelihoods due to the domestic market being relatively small. Around two-thirds of Australia's agricultural products are exported, with agricultural export earnings worth around \$44.7 billion in 2015–16; forecast to increase to around \$48.7 billion in 2017–18. Australia's clean, green image, robust regulatory framework and favourable animal and plant health status give our industries and primary producers an essential competitive advantage in comparison to other exporting nations.

Biosecurity risks are posed by activities at all places where animals are kept, including on extensive grazing land and where animals are kept temporarily, such as during transport, at abattoirs and for animal exhibitions. Potential biosecurity risks are particularly high where large numbers of animals are kept, such as at intensive livestock production facilities like feedlots, pig and poultry farms.

Over recent years, there have been significant efforts made by government, industry and other stakeholders, to encourage those who keep animals to develop a biosecurity plan for their property. These plans identify the most significant biosecurity risks relevant to the property and the activities that may occur there, and detail measures that will be taken to minimise these risks. In Queensland, development and implementation of these plans has been heavily promoted as an appropriate way for a livestock producer to meet his or her general biosecurity obligation under the *Biosecurity Act 2014*.

Unauthorised entry to places where animals are kept by animal activists in Queensland is occurring more frequently and without notice. These activities are generally undertaken with flagrant disregard for the biosecurity risks they may pose and requirements under the biosecurity plan for the place in which livestock producers, animal exhibitors and others who keep animals may have made significant investments. Livestock producers, in particular, have increasingly expressed their concerns about the potential for unauthorised entry to spread diseases onto, within or from their premises.

## **Achievement of policy objectives**

The subordinate legislation will achieve its main objective by amending the *Biosecurity Regulation 2016* (regulation) to provide for a new offence for a person entering, present at, or leaving a management area for a biosecurity management plan without complying with the measures stated in a biosecurity management plan, unless the person has a reasonable excuse. The management area for the plan is the part of a place or property where animals are kept where measures in the plan apply.

The subordinate legislation will provide that a biosecurity management plan may be made to prevent, control or stop the spread of biosecurity matter from a designated place by a registered biosecurity entity or by a holder of an exhibited animal authority from a place where an exhibited animal is kept under the authority. Under existing provisions of the *Biosecurity Act 2014*, a person who keeps a threshold number of certain animals must register and provide details of the designated place where the animals are or may be kept. The threshold for most common farm animals, such as cattle, sheep, goats and pigs, is one. The threshold for birds is 100 (including chickens).

The biosecurity management plan must be kept as a separate document and be available for inspection on request during ordinary business hours at the place. It will also be a requirement that a sign is conspicuously displayed at the management area which is

subject to the measures specified in the biosecurity management plan. The sign will inform persons that a biosecurity management plan applies to the place and that it is an offence for a person entering, present at, or leaving the management area to fail to comply with the plan without a reasonable excuse.

The offence provisions will not apply if:

- the person does not and could not have reasonably have known that a biosecurity management plan applied to the management area; or
- the entity that made the plan has not complied with the requirements to keep the biosecurity management plan as a separate document and have it available for inspection during ordinary business hours; or
- the entity that made the plan has not complied with the requirements to install signage for the management area.

The subordinate legislation will achieve its second objective by prescribing the new offence as an infringement notice offence under the *State Penalties Enforcement Act 1999*. A penalty infringement notice (PIN) will provide an alternative to prosecution through the court system. It will allow biosecurity inspectors and authorised persons, including those police appointed as inspectors under the *Biosecurity Act 2014*, and police officers to impose a response in the form of an immediate fine for people found committing the new offence.

## **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.

## **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**

While there are relevant offences under the *Summary Offences Act 2005* to deal with unlawful entry to livestock production facilities, including trespass and unlawful entry onto farm land, these offence do not address the biosecurity risks associated with such entry. Further the proposed offence is much broader than unlawful entry and applies to any person entering, present at, or leaving a place who does not comply with a biosecurity management plan without reasonable excuse.

An amendment to the Act to further address the biosecurity risks may be considered, but would take some time. The amendment regulation provides a timely response to the biosecurity threats that animal activists pose to the State.

## **Benefits and costs of implementation**

The regulatory provisions will help protect the future viability of the Queensland industries being targeted by activists by supporting measures to prevent, control and stop the spread of biosecurity matter into, at or from the places subject to a biosecurity management plan.

It will also provide further encouragement to all those who keep animals to develop and implement a biosecurity plan and erect appropriate signage so that those entering such places are aware of the plan.

The regulatory provisions may impact persons requiring access to management areas who will need to take the reasonable measures required in the biosecurity management plan. However, these measures are required to reduce biosecurity risks and those places subject to restrictions are already generally not open to the general public. Also, many persons lawfully requiring access to management areas will already be complying with these measures as a way of meeting their general biosecurity obligation under the *Biosecurity Act 2014*. This potential disruption is exceeded by the overall benefit to Queensland that results from preventing or minimising biosecurity risks.

## **Consistency with fundamental legislative principles**

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

### **Legislation should have sufficient regard to rights and liberties of individuals – (LSA) s4(2)(a)**

***Legislation should have sufficient regard to the rights and liberties of individuals, including unduly restricting ordinary activity without sufficient justification and consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the - (LSA) s4(2)(a)***

Section 41C makes it an offence for a person who enters, is present at or leaves a management area for a biosecurity plan not to comply with the measures stated in the plan without a reasonable excuse. An example of reasonable excuse is provided where a person is required or permitted, under an Act, to enter the management area in a way that is inconsistent with the measures. This example may be applicable in circumstances where work is required on power transmission lines or authorised officers are exercising entry powers under the Act.

This requirement is justified because of the significant biosecurity harms to the Queensland agricultural industry and regional communities that could result from a person:

- introducing a disease onto a livestock production premises; or
- undertaking activities which may spread disease within a facility; or
- by carrying a disease out of a place.

The spread of an exotic animal disease would damage international trade and compromise market access for Australian agricultural products.

There are safeguards to ensure that a person is aware of the biosecurity measures in place so that he or she can choose to comply before entering the management area. Section 41B imposes obligations on a registered biosecurity entity or holder of an exhibited animal authority to provide the opportunity for a person to familiarise him or herself with the measures which require compliance. Further, it is a defence for the offence provided

for in section 41C that the person does not know and could not have reasonably known a biosecurity management plan applied to the management area.

The offence carries a maximum penalty of 20 penalty units. This is necessary to discourage a person from offending. The penalty is comparable to the penalties imposed in the *Summary Offences Act 2005* for trespass.

The offence in section 41C will be prescribed as an infringement notice offence under the *State Penalties Enforcement Act 1999* to provide an alternative to prosecution through the court system. It will allow biosecurity inspectors and authorised persons, including those police appointed as inspectors under the *Biosecurity Act 2014*, and police officers to impose immediate fines that carry a penalty of 5 penalty units for an individual.

**Legislation should have sufficient regard to the institution of Parliament – LSA s4(2)(b)**

***Legislation should only allow the delegation of legislative power only in appropriate cases and to appropriate persons – LSA s4(4)(a)***

New section 41B provides that a registered biosecurity entity or a holder of an exhibited animal authority may make a biosecurity management plan stating reasonable measures to prevent, control or stop the spread of biosecurity matter from a designated place or a place where an exhibited animal is kept under the authority, respectively.

The potential FLP issue is that these provisions may be regarded as a subdelegation of legislative power because the biosecurity plans are made by registered biosecurity entities and are used to determine if a person has committed an offence.

These provisions are justified because the person making the biosecurity management plan has unique knowledge about what activities occur at the place including which activities might pose a risk and what would be reasonable and practical measures to prevent, control or stop the spread of biosecurity matter into, at or from the place.

It is not mandatory that a biosecurity management plan be made, but where the person develops a plan it will also assist others at the place to comply with the general biosecurity obligation that applies to everyone.

Further, the offence will only apply if the registered biosecurity entity or holder of an exhibited animal authority making a biosecurity management plan alerts the public that the place is subject to a biosecurity management plan and that it is an offence not to comply with the plan without a reasonable excuse. To enable a person to comply with the plan, the registered biosecurity entity or holder of an exhibited animal authority must keep the biosecurity management plan as a separate document and make it available for inspection on request during ordinary business hours.

**Legislation does not reverse the onus of proof in criminal proceedings without adequate justification – LSA s4(3)(d)**

Section 41C(2) provides that a person must comply with the measures stated in the biosecurity management plan unless the person has a reasonable excuse. The potential FLP issue is whether the legislation reverses the onus of proof in criminal proceedings without adequate justification.

Under this section, the person would bear the onus of proof to show he or she had a reasonable excuse. The reversal of the onus of proof is justified because the offence involves matters which would be within the defendant's knowledge and/or on evidence which would be available to them.

## Consultation

In early April 2019, the Animal Industry Security Taskforce (AIST) was formed. AIST is a Queensland Government initiative, bringing together senior operational and policy officers from the Department of Agriculture and Fisheries and the Queensland Police Service with intensive livestock industry leaders in order to identify and analyse all of the issues relating to animal activism and farm trespass. AIST discussed the proposed amendments on 11 April 2019, and was highly supportive of the measures to address the biosecurity risks associated with animal activism.

Public consultation on the details of the amendment regulation has not be undertaken. However, on 7 April 2019, the Honourable Mark Furner MP, Minister for Agricultural Industry Development and Fisheries referred to an announcement by the Honourable Anastacia Palaszczuk MP, Premier and Minister for Trade, that amendments would be prepared giving police and inspectors new powers to issue fines for farm invasions. Feedback from this announcement has informed development of the amendment regulation.

The Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission was consulted as to whether the proposed amendment qualified for an exclusion from further Regulatory Impact Analysis. The OBPR advised that it considered 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*.