

Biosecurity (Fire Ant Controls) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 60

made under the

Biosecurity Act 2014

General Outline

Short title

Biosecurity (Fire Ant Controls) Amendment Regulation 2020

Authorising law

Sections 128, 129 and 503 of the *Biosecurity Act 2014*

Policy objectives and the reasons for them

The main policy objective of the subordinate legislation is to further reduce the risk of red imported fire ants ('fire ant') being spread through the human assisted movement of fire ant carriers in Queensland.

The fire ant is an aggressive and invasive pest ant species that was first detected in South East Queensland in 2001. If fire ants were to spread unabated, the species has the potential to significantly impact upon Queensland's economy, environment and community.

Human assisted movement has been a contributing factor to the spread of fire ants in South East Queensland. Such movements can occur when materials (such as soil, turf, potted plants, mulch, baled hay or straw, animal manure, mining or quarry products and composted materials) which are infested with fire ants are moved to a new location. Materials in which fire ants can be transported are collectively referred to as 'fire ant carriers'.

Activities to eradicate fire ants in Queensland are managed under the *Biosecurity Act 2014* (the Act). Concerning fire ants specifically, the Act provides a general biosecurity obligation (GBO), under which individuals and organisations are required take all reasonable steps to ensure they do not spread fire ants. Failure to discharge this GBO results in the commission of an offence. The *Biosecurity Regulation 2016* (the Regulation) allows for this obligation to be satisfied in certain ways by persons handling fire ant carriers (materials such as soil, baled hay / straw, mulch, turf etc.).

Specific controls on the storage and movement of fire ant carriers are provided in Chapter 5, Part 5 of the Regulation. These controls include the establishment of fire ant biosecurity zones in South East Queensland, and specific mitigation strategies available to individuals and businesses undertaking activities involving the storage and movement of fire ant carriers between and out from these zones.

Previously, the Regulation did not stipulate the full range of acceptable risk mitigation strategies suitable for all circumstances. As a result, applications are received each year from individuals and businesses seeking to use alternative risk mitigation measures under a Biosecurity Instrument Permit (BIP). The BIP application and assessment process represents a significant regulatory burden for Government and stakeholders. It is, therefore, a policy objective of this subordinate legislation to incorporate the existing risk mitigation strategies commonly permitted under BIPs into the Regulation in order to reduce the overall regulatory burden associated with the storage and movement of fire ant carriers.

A further policy objective of the subordinate legislation is to clarify the classification of fire ant carriers as 'soil' and 'fire ant carrier other than soil' to remove ambiguity about the risks associated with the types of carriers. Previously, fire ant carriers were classified as 'soil' and 'other fire ant carriers', including a sub-classification within this group of 'special risk fire ant carriers'. The use of the term 'special risk fire ant carrier' and the specific storage and movement controls that apply to those carriers caused confusion for stakeholders, and were misinterpreted as implying 'special risk fire ant carriers' posed lower levels of risk of spreading fire ants.

A related policy objective of the subordinate legislation is to renumber the fire ant biosecurity zones to more closely align the zones with the current 'eradication' and 'suppression' efforts being used to manage the spread of fire ants. This includes the swapping zones 1 and 2 (i.e. zone 1 is now zone 2) and removing zone 3. These amendments reflect changes to the spatial extent of the fire ant biosecurity zone map which were made by the National Red Imported Fire Ant Eradication Program concurrently with this Amendment Regulation. Renumbering the zones in such a way increases stakeholder transparency about the activities being carried out to manage the spread of fire ants, as the zones reflect whether suppression or eradication activity is being undertaken. This renumbering, combined with changes to the spatial extent of the zones, will provide additional protections to those areas which have previously been subject to eradication activities and reduce the potential for reinfestation by human assisted movement of fire ants in known fire ant carriers.

Achievement of policy objectives

The subordinate legislation achieves its objectives by amending Chapter 5, Part 5 of the Regulation to:

- remove the definition of 'special risk fire ant carrier' in section 71, and reclassify fire ant carriers as 'soil' and 'fire ant carrier other than soil';
- clarify the movement controls applying to 'soil' and 'fire ant carrier other than soil' from fire ant biosecurity zones to more effectively reduce the risk of fire ant infestation spread (sections 68 and section 69) by:
 - prescribing that the movement of 'soil' from a Fire ant biosecurity zone is only allowed where the soil is moved from a place in zone 1 to a place in zone 2 (section 68), or in accordance with an approved BIP;

- note: the movement of soil from a place in zone 1 to a waste facility in zone 2 is permitted under this provision;
- prescribing that the movement of a 'fire ant carrier other than soil' from a fire ant biosecurity zone is allowed:
 - where the carrier is moved directly to a waste facility in the same zone; or
 - if the carrier originates in zone 1, the carrier is moved to a waste facility in zone 2, in accordance with an approved BIP; or
 - in accordance with the controls formerly available to special risk fire ant carriers under section 69(d); and
 - extend the storage controls previously available to 'special risk fire ant carriers' to every 'fire ant carrier other than soil';
 - provide for 'disturbance' as an alternative storage control for relevant fire ant carriers, for example, screening or washing the carrier (section 71A);
 - clarify that the movement controls in section 68 apply to 'soil' and the movement controls in section 69 apply to every 'fire ant carrier other than soil'; and
 - remove fire ant biosecurity zone 3 (sections 66 and 70), and swap the numbering of fire ant biosecurity zones 1 and 2 (sections 68 and 69) in relevant fire ant carrier movement provisions to better reflect the distribution of current fire ant infestation and management activities.

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 policy objectives of the subordinate legislation could not be achieved through any reasonably available and less restrictive means. The subordinate legislation clarifies the existing legislative provisions which reduce the risk of human assisted movement of fire ants through the transportation of fire ant carriers in Queensland.

The previous regulatory provisions were no longer sufficient to meet the policy objective due to the changing operational needs of fire ant carrier management. There was no suitable alternative in updating the numbering of the fire ant biosecurity zones, as the updated zones now appropriately reflect current fire ant management practice. The specific storage and movement provisions relating to 'special risk fire ant carriers' were also no longer suitable due to stakeholder confusion regarding the interpretation of 'special risk'. The incorporation of a number of additional storage and movement controls for fire ant carriers other than soil was designed to overcome the narrow breadth of the existing permitted controls, and the burden this placed on stakeholders in applying for BIPs.

Removing the fire ant biosecurity zone regulatory provisions and providing no Government intervention to reduce the spread of fire ants to other areas of Queensland to mitigate the impacts of fire ants on the community, economy and environment are not viable

alternatives to achieving the policy objectives. This is because of the significant risk of uncontrolled and severe infestation spread posed by a mitigation-based response. The Queensland Government has already committed its support to the *National Red Imported Fire Ant Eradication Program Ten-Year Eradication Plan 2017-2027*.

Benefits and costs of implementation

The subordinate legislation protects Queensland's community, economy and environment from the impacts of fire ants by limiting the movement of carriers that may contribute to fire ant infestation spread.

The Queensland Government will not incur any additional costs in the implementation of this subordinate legislation. Enforcement and extension activities will be undertaken within existing budgetary constraints.

The subordinate legislation may adversely impact businesses and individuals by restricting or prohibiting the movement of fire ant carriers between and out from the fire ant biosecurity zones. However, this is justified because of the overall net benefit to Queensland's community, economy and environment that results from preventing the spread of fire ants.

Consistency with fundamental legislative principles

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

Legislation should have sufficient regard to the rights and liberties of individuals, including ordinary activities should not be unduly restricted including the right to private enjoyment of their land (*Legislative Standards Act 1992* section 4(2)(a))

The subordinate legislation could potentially infringe upon the FLP that legislation should not, without sufficient justification, unduly restrict ordinary activity, including the right of a landowner to use and enjoy his or her land without interference. This is because the subordinate legislation restricts the acceptable storage methods of fire ant carriers within the fire ant biosecurity zones and restricts where landowners may move fire ant carriers within the fire ant biosecurity zones, including on their private land.

This potential infringement of this FLP is justified, however, on the basis of the overriding risk of community, economic and environmental impacts of fire ant infestation or spread without these restrictions, and corresponding community-wide interest in the effective management and eradication of fire ants in Queensland. In addition, through the imposition of these requirements on land owners, the landowners will privately benefit through a reduction in or possible eradication of fire ants on their property, which is a private benefit.

Legislation should have sufficient regard to the rights and liberties of individuals, including that ordinary activities should not be unduly restricted including the right to conduct a business without interference (*Legislative Standards Act 1992* section 4(2)(a))

The subordinate legislation could potentially infringe upon the FLP that legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct a business without interference. This is because the proposed amendments require fire ant carriers to be frequently disturbed, and kept in specified ways, in addition to restrictions concerning where fire ant carriers may be moved in relation to the fire ant biosecurity zones. The restrictions apply to all persons and, therefore, have the ability to impact on the ordinary activities of those who move or store fire ant carriers in a business context.

The restrictions are justified, however, because of the risk of further spread of fire ants and the impact this would cause to Queensland's community, economy and environment, and the corresponding community-wide interest in fire ant eradication.

Consultation

The National Red Imported Fire Ant Eradication Program Steering Committee was consulted on, and endorsed, the changes to the storage and movement controls for fire ant carriers, and the changes to the fire ant biosecurity zones.

The Department of Agriculture and Fisheries sought advice from the Office of Best Practice Regulation (OBPR), within the Queensland Productivity Commission, on the regulatory impact analysis required for the amendments. The OBPR advised that the proposal is excluded from further analysis under the *Queensland Government Guide to Better Regulation* on the basis of category (k) – *regulatory proposals that are designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts.*