

# Biosecurity (Siam Weed and Other Matters) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 95

made under the

*Biosecurity Act 2014*

## General Outline

### Short title

*Biosecurity (Siam Weed and Other Matters) Amendment Regulation 2020*

### Authorising law

Sections 15, 21, 38, 43 and Schedule 2, Part 2 of the *Biosecurity Act 2014*.

### Policy objectives and the reasons for them

The *Biosecurity (Siam Weed and Other Matters) Amendment Regulation 2020* (the subordinate legislation) amends the *Biosecurity Regulation 2016* (the Regulation) to:

- update the technical reference in the definition of 'MRL standard' to refer to the current Federal instrument; and
- enable the distribution of *Chromolaena* Gall fly (Gall fly) as a biological control for Siam weed (*Chromolaena odorata*), including the distribution of Gall fly infected Siam weed, without the need for a Restricted Matter Permit.

#### **'MRL standard'**

The first policy objective of this subordinate legislation is to update the technical reference to the 'MRL standard' in the Regulation. The Australian Pesticides and Veterinary Medicines Authority (APVMA) sets 'maximum residue limits' (MRLs) for agricultural and veterinary chemicals allowed in or on a food product, agricultural commodity or animal feed sold in Australia. These limits are provided in Schedule 1 of the *Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019 (Cwlth)*, and referred to as the MRL standard. The MRL standard is referenced in Schedule 3, Schedule 3 of the Regulation. The instrument referenced in this Schedule, the *Agricultural and Veterinary Chemicals Code Instrument (No. 4) (MRL Standard) 2012 (Cwlth)* was superseded on 23 August 2019 by the *Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019 (Cwlth)*. Both instruments are substantially the same. Update of this

technical reference will correct the present inaccuracy and provide clarity to stakeholders on the standards applicable to agricultural practices in Queensland.

### **Siam weed**

The second policy objective of this subordinate legislation is to enable the distribution of Gall fly infested Siam weed (*C. odorata*) without the need for a Restricted Matter Permit. Siam weed (*Chromolaena odorata* and *squalida*) is an invasive weed species that poses a serious threat to the Queensland economy and environment due to its severe impacts on agricultural and native vegetation.

The Chromolaena Gall fly (*Cecidochares connexa*) has recently been approved for release by the Australian Government as a biological control of Siam weed (*C. odorata*). The most effective way of distributing Chromolaena Gall fly is to release Siam weed plants or plant parts already infected with Gall fly into uninfected Siam weed infestations. However, as Siam weed is Category 3 restricted matter, it cannot be distributed unless in accordance with a Restricted Matter Permit. It is expected that land managers responsible for managing Siam weed (*C. odorata*) will be eager to obtain the Gall fly as soon as possible and that the requirement to obtain a Restricted Matter Permit will be an encumbering regulatory burden. Enabling the distribution of Gall fly infested Siam weed without the need for a Restricted Matter Permit will limit the regulatory burden upon stakeholders and accelerate the distribution of Gall fly.

## **Achievement of policy objectives**

The subordinate legislation achieves its objectives by amending the *Biosecurity Regulation 2016* to:

- amend the definition of 'MRL standard' in Schedule 3, schedule 3 to refer to the current instrument, namely the *Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019 (Cwlth)*;
- consequentially amend the definition of 'maximum residue limit' to refer broadly to the 'MRL standard';
- prescribe Siam weed (*C. odorata*) as an invasive plant Category 3 restricted matter that may be distributed for the purpose of biological control if infested with a recognised biological control agent in Schedule 4, part 1; and
- prescribe Chromolaena Gall fly as the corresponding recognised biological control agent for Siam weed (*C. odorata*) in Schedule 4, part 1.

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

The subordinate legislation is consistent with the purposes of the *Biosecurity Act 2014*, which include the management of risks associated with emerging, endemic and exotic pests and diseases, as well as ensuring the safety and quality of animal feed, fertilisers and other agricultural inputs.

## **Inconsistency with policy objectives of other legislation**

The subordinate legislation is not inconsistent with the policy objectives of other legislation.

## Alternative ways of achieving policy objectives

The policy objective of the amendment relating to Siam weed (*C. odorata*) could not be achieved in an alternative way. Siam weed (*C. odorata*) was previously listed as a Category 3 restricted matter that could not be released without a Restricted Matter Permit. The only way to allow the unencumbered release of Gall fly infested Siam weed (*C. odorata*) is to amend the Regulation as proposed to relist Siam weed (*C. odorata*) as a Category 3 restricted matter that may be distributed for biological control if infested with a recognised biological control agent, and prescribe *Chromolaena* Gall fly as the corresponding biological control agent.

There is no alternative way to achieve the policy objective of the amendment relating to the MRL standard because the amendment updates a technical reference to a currently in force federal instrument.

## Benefits and costs of implementation

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

The subordinate legislation protects Queensland's economy and environment from the impacts of Siam weed (*C. odorata*) infestation by allowing the distribution of Gall fly through infested Siam weed as a biological control. Enabling the distribution of Gall fly through infested Siam weed, without the need to apply for a Restricted Matter Permit, will limit the regulatory burden upon stakeholders seeking to use this biological control method.

The amendment to the definition of 'MRL standard' will ensure the Regulation references the correct current maximum residue limits permitted for agricultural and veterinary chemicals in or on a food, agricultural commodity or animal feed in Australia, as applicable in Queensland. This amendment will provide clarity to stakeholders on the standards expected of agricultural practices in Queensland.

## Consistency with fundamental legislative principles

The subordinate legislation is generally consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*. Potential breaches of fundamental legislative principles are addressed below.

**Subordinate legislation should have sufficient regard to the institution of Parliament, including that subordinate legislation should allow the sub-delegation of a power delegated by an Act only in appropriate cases and to appropriate persons, and if authorised by an Act (*Legislative Standards Act 1992* section 4(5)(e))**

Section 3 amends the definition of 'MRL standard' so that it means the MRL Standard under the *Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019 (Cwlth)*. This section potentially breaches the fundamental legislative principle that legislation should allow the sub-delegation of a power delegated by an Act only in appropriate cases, because it provides a definition that is contained in an external document.

However, this potential breach is justified because the definition is contained in an instrument that is publicly available, and is sub-delegated as part of a standardised national arrangement in which the APVMA sets maximum residue limits for agricultural and veterinary chemicals registered for use in Australia. Defining 'MRL standard' in any other way would be inconsistent with this arrangement and this approach is, therefore, the only practical way to define the term.

## Consultation

The Department of Agriculture and Fisheries consulted the Office of Best Practice Regulation (OBPR), within the Queensland Productivity Commission, on whether the amendment relating to Siam weed is excluded from further analysis under the *Queensland Government Guide to Better Regulation*. OBPR assessed that the amendment is excluded from further regulatory impact analysis on the basis of Category K – *Regulatory proposals 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*.

The amendment relating to the 'MRL standard' has been self-assessed by the Department of Agriculture and Fisheries in accordance with the *Queensland Government Guide to Better Regulation*. The Department of Agriculture and Fisheries assessed that the amendment is excluded from further regulatory impact analysis on the basis of Category A – *Regulatory proposals that make consequential amendments*.