

# Biosecurity (Panama Disease Tropical Race 4) Amendment Regulation 2023

Explanatory Notes for SL 2023 No. 66

made under the

*Biosecurity Act 2014*

## General Outline

### Short title

*Biosecurity (Panama Disease Tropical Race 4) Amendment Regulation 2023*

### Authorising law

Sections 26, 104 and 503 of the *Biosecurity Act 2014* (the Act).

### Policy objectives and the reasons for them

Panama disease tropical race 4 (Panama TR4) is a serious banana disease. It is a form of fusarium wilt, *Fusarium oxysporum f. sp. cubense tropical race 4*, a fungal disease that lives in the soil and has the capacity to survive for decades in the soil. It poses a significant threat to Queensland's banana production and the livelihoods of growers and those in the banana supply chain.

The first detection of Panama TR4 in Far North Queensland was in 2015, and since then eight properties in close proximity to each other in the Tully Valley have been infested.

As Panama TR4 cannot be eradicated, it needs considerable management in terms of control and containment, because it is easily spread by the movement of infected banana plants and material, contaminated soil and water, people, vehicles, machinery, and animals. The movement of contaminated soil due to heavy rainfall and floods can also spread Panama TR4.

Recognising the importance of the banana growing industry to the Queensland economy, the Queensland Government has invested almost \$42 million responding to the threat of Panama TR4.

Since 2015, the Department of Agriculture and Fisheries (DAF), the Australian Banana Grower's Council (ABGC) and growers have worked in collaboration to control and contain the disease through surveillance, compliance, communication, and education measures.

In 2020, the Queensland Government and industry established the Panama TR4 Program Management Board (the Board) with equal representation to jointly fund, govern, and deliver the TR4 Program (the Program) until 30 June 2023.

The Board provided the banana industry with the opportunity to make key decisions on the future management of Panama TR4, and to ensure the Program continued to be effective and efficient. It was agreed by the Queensland Government and ABGC to work towards the banana industry taking responsibility for the on-going management of Panama TR4 from 1 July 2023.

The aim of the Program was to control and contain Panama TR4 in Queensland to protect the banana industry, maintain market access and minimise economic losses. The purpose was to assist the banana industry and regions to implement prevention and containment protocols, transition to other crops, and undertake research and development projects, including the development of new Panama TR4 resistant varieties.

The Board commissioned the *2021 Panama TR4 Epidemiological Review* which was an independent review to examine patterns of spread of Panama TR4 in Far North Queensland, and whether existing control and containment strategies were sufficient. The review reported that losses have been minimal, due to early detection and destruction of diseased plants before inoculum could be released into the soil, and the acceptance of biosecurity preparedness by the industry. The results have justified the past investment in surveillance, eradication, and containment activities.

The review also recommended areas of research that will inform how the disease may be managed from 1 July 2023.

Panama TR4 infestations have been managed by DAF by means of a 'Notice of presence of Panama disease tropical race 4' (Notice) issued under the *Biosecurity Regulation 2016* to the occupiers of confirmed infested properties. Under the Notice, the occupiers are required to implement biosecurity measures, such as the destruction of infected plants, to minimise the risk of spreading Panama TR4.

After the initial response, the industry has been largely self-managing the risks of Panama TR4. Biosecurity inspectors have conducted regular surveillance and have performed compliance audits on the infested properties to ensure compliance with the management measures in the Notice.

Although biosecurity legislation and the Panama TR4 Program targets on-farm biosecurity and early reporting to prevent the spread of Panama TR4, while the associated measures implemented voluntarily by landholders also defend them from the risk of infestation. This highlights both the principle of shared responsibility, and that the Panama TR4 Program cannot and should not be the only instrument used to control and contain Panama TR4.

A more streamlined regulatory approach will be adopted for the transition to the banana industry's on-going management of Panama TR4. It will be centred around compliance with a code of practice that prescribes mandatory obligations for occupiers of infested land. The ABGC, in consultation with banana growers and a stakeholder reference group, developed the *Code of Practice for the Management and Control of Panama disease tropical race 4 on Infested Property in Queensland* (Code of Practice). The Code of Practice generally mirrors the requirements that are currently provided for in a Notice, including the successful containment measures to minimise the level of spores produced

by an infected plant, to enable farming in the presence of the disease to continue. The Code of Practice will describe how an occupier of infested land may discharge their general biosecurity obligation in relation to Panama TR4.

The Code of Practice made under the Act will create a permanent regulatory response to allow the industry to take responsibility without the need for individual Notices.

The ABGC will take responsibility to undertake monitoring of infested properties with the consent of the occupier of the property, to promote compliance with the Code of Practice. The Department will continue to maintain a biosecurity program for Panama TR4 and undertake surveillance, compliance and enforcement action when required.

The purpose of the *Biosecurity (Panama Disease Tropical Race 4) Amendment Regulation 2023* (Amendment Regulation) is to adopt the Code of Practice in its entirety and to remove the Notice provisions.

## **Achievement of policy objectives**

The policy objective will be achieved by amending the *Biosecurity Regulation 2016* by:

- omitting chapter 5, Part 3, Division 2, subdivision 1 (Panama disease tropical race 4) to remove the provisions relating to Notice of presence of Panama disease tropical race 4
- inserting a new chapter 2, part 2, division 3 to provide:
  - the *Code of Practice for the Management and Control of Panama disease tropical race 4 on Infested Property in Queensland* is a code of practice under section 104(1) of the Act.
  - the Code of Practice as a way of discharging a person's general biosecurity obligation in relation to minimising biosecurity risks associated with dealing with, and controlling the spread of biosecurity matter by, carriers of Panama disease tropical race 4.

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

The Amendment Regulation is consistent with the objectives of the Act 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**

This Amendment Regulation is not inconsistent with the policy objectives of any other legislation.

## **Alternative ways of achieving policy objectives**

An alternative way to achieve the policy objective would be for biosecurity inspectors to continue to issue Notices. However, this is not consistent with the Queensland Government's agreement for industry self-regulation.

A further alternative would be to adopt a voluntary Code of Practice. However, given the risks to the livelihoods of all stakeholders in the banana production and supply chain, this is not considered sufficient to address the serious threat posed by Panama TR4.

If the Code of Practice and its mandatory obligations was not adopted as a basis for industry self-regulation, the risks of Panama TR4 spreading more rapidly would increase.

This would have significant impacts for the Queensland banana industry and the economies of those regional communities in which banana production occurs.

## **Benefits and costs of implementation**

The establishment of an industry led management framework is considered the most appropriate option to ensure that the requirements to manage the disease are maintained, thereby minimising the potential for uncontrolled spread of the disease. These requirements will be outlined in a Code of Practice adopted under the Act. This approach is consistent with the principle of shared responsibility.

Biosecurity Queensland will maintain a capacity to assist industry with monitoring, surveillance, and compliance with the Code of Practice. This support will be provided from within the Department's existing resources. The reduction in resources dedicated to the management of Panama TR4 will be at a reduced scale, thereby allowing Queensland's biosecurity resources to be redeployed to other high priority areas.

## **Consistency with fundamental legislative principles**

The Amendment Regulation has been drafted with regard to, and is consistent with, the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

A potential breach of FLP arises because the Code of Practice has the potential to unduly restrict the right to conduct business without interference, because the Code of Practice will impose biosecurity management obligations on occupiers of land infested by Panama TR4.

However, the obligations are justified because Panama TR4 poses a significant risk to whole of the Queensland economy. Although the Act imposes a general biosecurity obligation to take all reasonable and practical measures to prevent or minimise the biosecurity risk, the Code of Practice will assist occupiers of infested lands to meet that obligation.

The Code of Practice will provide mandatory minimal standards which are generally the same as the current mandatory requirements imposed by a Notice.

A mandatory Code of Practice is justified because mandatory requirements need to be imposed on occupiers of infested properties to restrict and contain Panama TR4, and to reduce the threat that it poses to Queensland's banana industry. This approach reflects community values and expectations that mandatory measures are put in place for the continued management and containment of the disease.

## Consultation

In December 2021, the ABGC published a discussion paper ‘PANAMA TR4 PROGRAM TRANSITION’ (Discussion paper) to inform growers that the Panama TR4 Program was transitioning to industry management. The Discussion paper detailed how the ABGC will be making decisions that will change the size, structure, and priorities of the current Program to continue to protect the industry from Panama TR4.

ABGC conducted one-on-one grower and group consultation meetings throughout the first quarter of 2022 for feedback on the issues raised in the Discussion paper.

The Project Reference Group (Reference group) was formed to consider and provide feedback on a draft Code of Practice developed by the ABGC. The Reference group included representatives from ABGC, Biosecurity Queensland, the New South Wales government biosecurity agency, a grower who is an occupier of an infested property, a grower in close proximity to an infested property, and a grower not in close proximity to an infested property. A copy of the draft Code of Practice and associated information was provided to Reference group members on 22 June 2022 with final responses received by 22 July 2022.

A public consultation draft of the Code of Practice was prepared following consideration of the Reference group’s feedback.

The consultation draft of the Code of Practice was released for public comment on 8 August 2022 and concluded on 16 September 2022. There were approximately 349 unique hits on the webpage representing strong interest by growers about the draft Code of Practice. Two submitters left comments. Occupiers of infested properties generally acknowledged the current containment and destruction protocols were working but believed a less restrictive approach would be more appropriate.

The Department of Agriculture and Fisheries consulted the Office of Best Practice Regulation (OBPR), on whether the amendments are excluded from further analysis under the Queensland Government Guide to Better Regulation. OBPR advised that the stakeholders affected by the regulatory change, the banana industry, has been consulted and its industry group (ABGC) has developed and approved the industry code. On this basis, no further regulatory impact analysis is required.