

Biosecurity (Panama Disease Tropical Race 4) Amendment Regulation 2023

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Mark Furner MP, Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities, provide this human rights certificate with respect to the *Biosecurity (Panama Disease Tropical Race 4) Amendment Regulation 2023* (the Amendment Regulation) made under the *Biosecurity Act 2014* (the Act).

In my opinion, the *Biosecurity (Panama Disease Tropical Race 4) Amendment Regulation 2023*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The authorising law for the Amendment Regulation is sections 26(1), 104(1), 503 of the Act.

Since 2015, the Department of Agriculture and Fisheries (the Department), 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 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. It 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.

Panama TR4 infestations have been managed by the Department by means of a 'Notice of presence of Panama disease tropical race 4' (Notice) issued under the *Biosecurity Regulation 2016* (Regulation) to an occupier of every confirmed infested property. Under the Notice, an occupier is required to implement measures, such as the destruction of infested plants, to minimise the risk of spreading Panama TR4.

From 1 July 2023, a more streamlined regulatory approach will be adopted for the transition to the banana industry's on-going management of Panama TR4 centred around compliance with mandatory obligations for occupiers of infested land in the form of a mandatory code of practice. The ABGC in consultation with industry stakeholders 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 mirrors the requirements that are currently imposed on an occupier of infested property under a notice.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Property rights

The Code of Practice made under the Amendment Regulation engages property rights because it imposes mandatory biosecurity obligations on an occupier of a property that has been infested with Panama TR4 to minimise the spread of the disease.

Privacy and reputation

The Code of Practice made under the Amendment Regulation will engage privacy and reputation rights through recording of a person's activities on the infested property which will assist in the assessment and detection of the spread Panama TR4.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Property rights

(a) the nature of the right

Under section 24 of the HR Act, 'All persons have the right to own property alone or in association with others' and 'a person must not be arbitrarily deprived of the person's property'. Deprivation of property is not limited to physical dispossession of property and can take the form of any interference with the use, enjoyment, or exploitation of private property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the Amendment Regulation is to make a Code of Practice to minimise the biosecurity risks on a property infested with Panama TR4 including controlling and containing the spread of the disease. The requirements in the Code of Practice will also assist an occupier of infested land to know how to discharge their general biosecurity obligation in relation to Panama TR4.

The requirements in the Code of Practice will help to protect the banana industry maintain market access and minimise economic losses by controlling and containing Panama TR4 infestations in Queensland and are consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's property rights by requiring occupiers of infested properties to implement biosecurity measures such as the destruction of infested plants will assist in controlling and containing Panama TR4 infestation.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The purpose of the Amendment Regulation cannot be achieved through any less restrictive and reasonable available means. If mandatory obligations are not imposed, the risk of Panama TR4 spreading and affecting more banana plantations will increase. The Code of Conduct also assists an occupier of infested land by clarifying how they are to discharge their general biosecurity obligation in relation to Panama TR4

The requirements in the Code of Practice generally mirror the requirements that are imposed through a notice issued under Section 58 of the Regulation.

The activities on an infested property with Panama TR4 are within the control of the occupier. Therefore, it is necessary that control, and containment measures are implemented which will assist the occupier to retain the use of land including for agriculture and reduce the risk of spread to other properties.

In view of the potential for significant economic and environmental impact caused by Panama TR4, the requirements prescribed in the Code of Practice are therefore necessary to achieve the identified purpose.

A voluntary Code of Practice would not achieve the objective of addressing the serious risks of the spread of Panama TR4 and would not meet community expectations.

(e) The balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation.

The limitation of a person's property is restricted to mandatory control and containment requirements that must be implemented on Panama TR4 infested properties. The requirements will impact on the use and viability of the land including the destruction of infected banana plants.

This approach reflects community values and expectations that mandatory measures are put in place for the continued management and containment of the disease because of the serious threat to the banana industry by Panama TR4. Since the disease cannot be eradicated and there is a potential for uncontrolled spread of the disease, the requirements are necessary to protect the banana industry and reduce the impact on the economies of the regional communities in which banana production occurs. A Code of Practice is consistent with the principle of shared responsibility and will assist occupiers of infested properties to meet their general biosecurity obligation to take all reasonable and practical measures to minimise the biosecurity risk.

The limitation on property rights is therefore reasonably and demonstrably justified in the circumstances.

(f) any other relevant factors

The Code of Practice generally mirrors the requirements that are imposed on occupiers of infested properties, including the containment measures that have been demonstrated to be

successful in minimising the level of spores produced by an infested plant, to enable farming in the presence of the disease to continue.

Privacy and reputation

(a) the nature of the right

Section 25 of the HR Act protects the right to privacy and reputation. It protects personal information and data collection for example. This right protects the privacy of people from unlawful or arbitrary interference, arbitrary interference includes when someone is lawful, but also unreasonable, unnecessary, or disproportionate.

This right is based on Article 17 of the International Covenant on Civil and Political rights.

The scope of privacy is very broad and includes the protection of personal information which extends to a person's workplace. Human rights only apply to a natural person. Accordingly, the amendments have the potential to limit the privacy and reputation of all persons employed or present at the facility.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

The Code of Practice requires an occupier of a property infested by Panama TR4 to record information regarding:

- the destruction of, and planting of banana plants
- details of employees and contractors and the activities that they have performed on the property
- appliances within a production zone and decontaminated for movement out of the production zone
- consignment information for bananas and other produce.

The purpose of record keeping is to assist in controlling and containment of Panama TR4 by:

- the assessment and monitoring for the prevalence of and the impact of Panama TR4 on banana production on the property,
- tracing potential transmission vectors and assessing the risk of spread of Panama TR4,
- monitoring the application and effectiveness of the decontamination procedures applied to farm appliances prior to their removal from the property.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person who attends a property infested by Panama TR4 of their right to privacy and reputation by recording the person's activities, directly supports the purpose of controlling and containment of Panama TR4. Records are fundamental to minimising biosecurity risks including investigation and compliance purposes

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive or reasonably available alternatives that would equally achieve the purpose of supporting the control and containment of Panama TR4. Any alternate means of achieving these outcomes (e.g., electronic monitoring or recording of on farm activities) would be more onerous on property occupiers and have a significantly greater impact upon an individual's right to privacy.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The recording of information on a person's activities on an infested property is a necessary limitation to a person's right to privacy and reputation. The requirements strike a fair balance with the need to protect the banana industry, maintain market access, and minimize economic losses against the potential impact on the privacy and reputation of growers. While the Code of Practice may require the recording, or disclosure of certain information, such as destruction activities, or the identification of infested properties, the information is limited to the management of biosecurity risk associated with Panama TR4, and the scope is contained to infested properties. For this reason, the limitation to privacy and reputation is not arbitrary, and engagement of the right is limited, justified and proportional.

(f) any other relevant factors

The Code of Practice generally mirrors the requirements that are imposed on occupiers of infested properties, including the record keeping requirement that have been part of the system used to manage and contain the disease under the notice based system.

Conclusion

I consider that part of the *Biosecurity (Panama Disease Tropical Race 4) Amendment Regulation 2023* is not compatible with the *Human Rights Act 2019* to the extent outlined in this statement.

The amendment regulation provides regulatory obligation for owners of commercial banana production properties infested with Panama TR4 to follow the Code of Practice. The Code of Practice adopted under the amendment regulation will prescribe mandatory obligations for occupiers of infested commercial banana production land, which may impact the use and disposal of certain assets on the property, such as infected banana plant material and contaminated machinery, and require the disclosure of relevant information.

I further consider that the remainder of the *Biosecurity (Panama Disease Tropical Race 4) Amendment Regulation 2023* is compatible with the *Human Rights Act 2019* because it does not limit human rights.

Mark Furner MP
Minister for Agricultural Industry Development and Fisheries and Minister for Rural
Communities