

Biosecurity (Polyphagous Shot-hole Borer) 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, Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities provide this human rights certificate with respect to the *Biosecurity (Polyphagous Shot-hole Borer) Amendment Regulation 2023* made under the *Biosecurity Act 2014*.

In my opinion, the *Biosecurity (Polyphagous Shot-hole Borer) Amendment Regulation 2023*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

Polyphagous shot-hole borer (*Euwallacea fornicatus* or PSHB) is a high-risk quarantine pest that can be introduced with unrestricted trade practices, has a high potential for establishment and spread and has a demonstrated ability to cause serious economic and ecological damage. It attacks a very wide range of woody plants and is considered a pest of agricultural, environmental, and urban amenity trees. To date, more than 400 host species in 75 families have been reported, and the host range continues to expand, especially when PSHB is introduced to new locations.

Polyphagous shot-hole borer is a serious risk to plant industries, urban amenity, and the environment in Queensland; and if movement control and prevention measures fail and PSHB enters Queensland, eradicating PSHB once it has entered Queensland will be costly and challenging. Establishment of this pest in Queensland is highly likely to have a significant impact on urban amenity trees, native vegetation, plantation forestry and fruit and nut tree crop industries.

In response to the detection of PSHB in Western Australia, the Chief Executive made a Movement Control Order (MCO). The MCO applies to the whole of Queensland and prescribes certain requirements to minimise the risk of PSHB from entering the state.

The MCO was made on 1 November 2022, remade on 1 March 2023, and again on 1 June 2023. It expires on 1 September 2023, unless earlier revoked. Under the Biosecurity Act, MCOs may be directed at managing, reducing, or eradicating controlled biosecurity matter over a limited period rather than over an extended or indefinite period. For these reasons, a permanent biosecurity zone regulatory provision to prevent the introduction of PSHB is required to be in force by the time the MCO expires.

The Amendment Regulation achieves its first objective by establishing biosecurity zone regulatory provisions for PSHB as a new Chapter 5, Part 12B of the *Biosecurity Regulation 2016* (Biosecurity Regulation).

The biosecurity zone regulatory provisions reflect the temporary biosecurity measures contained in the MCO and establishes the whole of Queensland as a biosecurity zone. The biosecurity zone requires persons to:

- notify an inspector about the presence of PSHB; and
- not move PSHB carriers into the biosecurity zone other than in particular circumstances.

Human Rights Issues

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

The proposed legislation engages two human rights under the *Human Rights Act 2019*, property rights (section 24) and the right to privacy (section 25).

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

(a) the nature of the right

The right to privacy protects an individual from all interferences and attacks on their privacy, family, home or correspondence (written and verbal). The purpose of this is ‘to protect and enhance the liberty of the person – the existence, autonomy, security and well-being of every individual in their own private sphere’. In the context of the subordinate legislation, the right to privacy protects against arbitrary interference with a person’s private and personal information.

In a human rights context for the purpose of the above rights, ‘arbitrary’ means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought. Because questions of proportionality arise when considering justification of limits on human rights under section 13 of the *Human Rights Act 2019*, it is important to consider the questions below (under headings (b) – (e)) before making a determination as to whether any limitation on the right to privacy will be arbitrary.

Property rights and the right to privacy are drawn from Article 17 of the Universal Declaration of Human Rights.

The right is potentially engaged by the positive obligations for persons to report, and therefore potentially identify themselves and provide information about themselves, to an inspector if they suspect the presence of PSHB or that a carrier plant is showing signs of a PSHB infestation.

(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 limitations on these rights imposed by the subordinate legislation on these rights is to minimise the significant biosecurity risks presented to the gardening and plant nursery industry from an incursion of PSHB. The Department of Agriculture and Fisheries has indicated that crop losses in fruit tree industries such as mangoes and avocados would be substantial with Queensland representing the majority commercial producer of these crops within Australia.

The purpose of the limitations, to ensure that Queensland's bee industry is protected from the harmful effects of harmful biosecurity incursions is 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

The limitations on the right to privacy and property rights are directly related to reducing the biosecurity risks associated with PSHB. Requirements to notify the presence of PSHB will assist in minimising risk to the State.

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

There are no less restrictive ways of achieving the purpose of the limitations. The requirements contained in the subordinate legislation have been after thorough consideration and consultation with peak industry bodies.

Providing no Government intervention and leaving industry to self-regulate against the risks of PSHB is not appropriate as this may lead to an inconsistent approach that may more greatly expose industry to the threat of PSHB. There are limited control options to eradicate PSHB, and therefore a consistent regulatory response across industry is required.

(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 subordinate legislation limits the right to privacy of individuals through the imposition on positive requirements on individuals to report the presence of select biosecurity matter, which may result in an interference to privacy.

Balanced against this limitation is the significant biosecurity concerns and of the biosecurity matter if it were to enter Queensland, particularly PSHB. Without adequate biosecurity requirements, including notification, the viability of the fruit growing, gardening and plant nursery industries in Queensland could be compromised as well as environmental impacts to native and residential trees. The limitation of these rights through the amendments also protects the broader public interest in ensuring the sustainability and prosperity of Queensland's fruit, and nursery industry. When the limitation of the right is balanced against the myriad of public and private benefits from the requirements implemented through the subordinate legislation, it is my opinion that the amendments are reasonably and demonstrably justified in the circumstance.

Conclusion

I consider that the *Biosecurity (Polyphagous Shot-hole Borer) Amendment Regulation 2023* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

MARK FURNER
MINISTER FOR AGRICULTURAL INDUSTRY DEVELOPMENT AND FISHERIES
AND MINISTER FOR RURAL COMMUNITIES

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