

Biosecurity (Updating of Code of Practice and Biosecurity Zone Map) Amendment Regulation 2024

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 (Updating of Code of Practice and Biosecurity Zone Map) Amendment Regulation 2024* (the Amendment Regulation) made under the *Biosecurity Act 2014*.

In my opinion, the Amendment Regulation, 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

Electric ant biosecurity zone extension

The intent of the subordinate legislation is to ensure the electric ant biosecurity zone is to allow the Department of Agriculture and Fisheries (the department) to impose movement controls swiftly in the event of an electric ant detection. The proposed extension areas include:

- the Yarrabah Aboriginal Shire Council local government area (Yarrabah Shire) and adjacent lots in the Cairns Regional Council local government area locality of Coral Sea;
- the locality of Dunk (including the Family Islands National Park), in the Cassowary Coast Regional local government area;
- the locality of Low Isles in the Douglas Shire local government area.

The subordinate legislation will amend section 74 of the *Biosecurity Regulation 2016* (the Regulation) to reference a new electric ant biosecurity zone map that includes the above-mentioned areas.

Section 74A of the Regulation and Section 129(1)(c) of the *Biosecurity Act 2014* allow that a lesser restrictions area can be established within the biosecurity zone that provides for lesser restrictions than would otherwise apply.

Within the biosecurity zone, the area not identified as the lesser restrictions area is known as the *restricted zone*. The restricted zone encompasses properties infested or deemed infested with electric ants.

The subordinate legislation will enable the Chief Executive to implement a lesser restrictions area across the entire extension area. Biosecurity zone regulatory provisions, established under section 75 of the Regulation will only apply if electric ant infestation is detected.

Updating of Code of Practice for the Management and Control of Panama disease tropical race 4 on Infested Property in Queensland (Code of Practice)

From 1 July 2023 the *Code of Practice for the Management and Control of Panama disease tropical race 4 on Infested Property in Queensland* (Code of Practice) was adopted for the transition of disease management to the banana industry's on-going management of Panama TR4 centred around compliance with mandatory obligations for occupiers of infested land. The Code of Practice mirrors the requirements that were imposed on an occupier of infested property under the previous section 58 (Notice of presence of Panama disease tropical race 4). The code of practice is a more streamlined regulatory approach.

The Code of Practice is proposed to be amended to:

- reduce the size of the destruction zone to include the infested plant plus other plants for a distance of five metres along the row in both directions, for ten metres total length
- provide that there be no destruction of plants in the rows opposite to the infested plant.

The reduction in destruction zone size has the potential to provide a more practical and workable solution to infested property owners in managing the disease.

Human Rights Issues

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

Electric ant biosecurity zone extension

The human rights under the *Human Rights Act 2019* (HR Act) that are relevant to the amendment to the electric ant biosecurity zone in the event that electric ant infestation is detected within the extension area are:

- Freedom of movement (section 19 of the HR Act)
- Property rights (section 24 of the HR Act)
- Privacy and reputation (section 25 of the HR Act)
- Cultural rights – Aboriginal and Torres Straight Islanders (section 28 of the HR Act).

Code of Practice

The human rights under the *Human Rights Act 2019* (HR Act) that are relevant to the amendment 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.

(a) the nature of the right

Freedom of movement

Section 19 of the Human Rights Act 2019 provides that every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where he or she lives. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right places an obligation on the State not to act in a way that unduly restricts the freedom of movement, but does not go so far as to require that the State take positive steps to promote the freedom of movement. This section is modelled on Article 12 of the International Covenant on Civil and Political Rights (ICCPR).

Property rights

The right to property rights under section 24 of the HR Act, states that ‘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.

Privacy and reputation

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person’s private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home.

Cultural rights – Aboriginal and Torres Strait Islanders

Section 28 of the HR Act protects the right to live life as an Aboriginal person or Torres Strait Islander who is free to practise his or her culture; and provides that they must not be denied certain rights in relation to traditional knowledge, spiritual practices, language, kinship ties, relationship with land and resources, and protection of the environment. The right also protects Aboriginal peoples and Torres Strait Islander peoples’ rights to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment.

This section is modelled on Article 27 of the ICCPR and Articles 8, 25, 29 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples.

- (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

Electric ant biosecurity zone extension

The limitation on human rights (freedom of movement, property rights, privacy and reputation and cultural rights – Aboriginal and Torres Strait Islanders) will minimise the risk of human assisted movement of electric ants through electric ant carriers.

Freedom of movement

The sections of the Regulation that are affected by the subordinate legislation that are relevant to this right are:

- Restriction on the movement of electric ant carriers from the restricted zone within the electric ant biosecurity zone if electric ant infestation is detected (section 75).
- If electric ant infestation is detected, the Regulation empowers a Biosecurity Instrument Permit for the movement of a carrier from the restricted zone if not moved to a waste facility listed on the department's webpage as being a facility that accepts electric ant carriers (section 75).

Property rights

The section of the Regulation that is affected by the subordinate legislation that is relevant to this right is:

- Restriction on the movement of electric ant carriers from the restricted zone within the electric ant biosecurity zone if electric ant infestation is detected (section 75).
- Property rights may be limited by regulating the movement of carriers from a property unless in compliance with legislated movement controls (section 75).

Privacy and reputation

The section of the Regulation that is affected by the subordinate legislation that is relevant to this right is:

- Publication of the restricted zone which may identify the location of a person's residence or business if electric ant infestation is detected (section 74 of the Regulation and section 128(4) of the Act which provides for publishing the map on the department's webpage).

Cultural rights – Aboriginal and Torres Strait Islanders

The sections of the Regulation that are affected by the subordinate legislation that are relevant to this right is:

- Movement restrictions of electric ant carriers of a natural/environmental nature (for example bark, grasses, plant fibre) may impact the distinctive spiritual, material and economic relationship between Aboriginal peoples or Torres Strait Islander people with the land and other resources with which they have a connection under Aboriginal tradition or Island custom if electric ant infestation is detected (section 75).
- Movement restrictions of electric ant carriers of natural/environmental nature may impact the ability of Aboriginal peoples or Torres Strait Islander peoples to conserve or protect the environment and productive capacity of their land and resources if electric ant infestation is detected (section 75).

Code of Practice

The purpose of the Amendment Regulation is to update the Code of Practice to minimise the biosecurity risks on a property infested with Panama TR4 including controlling and containing the spread of the disease.

Changing requirements of the destruction zone will minimise economic losses by reducing destruction zone size. Minimising economic loss where disease is detected as early as possible to contain Panama TR4 infestations in Queensland 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

Electric ant biosecurity zone extension

If electric ant infestation is detected in the biosecurity zone extension, limiting the rights of freedom of movement, property rights, privacy and reputation, and Cultural rights—Aboriginal peoples and Torres Strait Islander peoples through this proposal will minimise the risk of human assisted movement of electric ant from those areas deemed infested with electric ant.

In 94 per cent of all electric ant infestations detected in Queensland, the dispersal method is either confirmed or suspected to be from human assisted movement of carriers.

Limiting these rights will directly help achieve the limitations other purposes of protecting the public from social, economic, and environmental consequences of electric ant infestation.

Code of Practice

The amendments to the code of practice will reduce the number of plants required for destruction once an infested plant is identified and will increase a growers freedom of property while still controlling and containing Panama TR4 infestation.

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

Electric ant biosecurity zone extension

The purpose of the proposal cannot be achieved through any other reasonably available and less restrictive means. Imposing less restrictions would not achieve the objective of eradicating electric ants.

An initial economic impact assessment conducted in 2006, when considering residential, agricultural, natural ecosystems and tourism impacts, found that the economic benefits of eradication of electric ant had a net present value of \$79 million over 30 years at a real discount rate of five per cent, and that funds invested would result in a 14:1 benefit/cost ratio.

A 2019 cost-benefit analysis undertaken for the Wet Tropics Management Authority's Yellow Crazy Ant Eradication Program (YCAEP) for the protection of the Wet Tropics World Heritage Area can be cautiously applied to the eradication of electric ant. The analysis conservatively estimated the YCAEP's net present value as \$6.1 billion and benefit cost-cost ratio of 178:1 (at a conservative seven per cent discount rate) over a 30-year period. The effects of uncontrolled yellow crazy ant and electric ant infestations are considered similar when considering environmental (including the critically important Wet Tropics World Heritage Area), residential, tourism, and agricultural impacts.

Code of Practice

Reducing the size of destruction zones is less restrictive. The code of practice is a minimum standard of a way to satisfy the general biosecurity obligation while still requiring destruction of plants. If mandatory obligations are not imposed, the risk of Panama TR4 spreading and affecting more banana plantations will increase.

The day-to-day management of a Panama TR4 infested property 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 banana growing for as long as possible and reduce the risk of spread to other properties. In view of the potential for significant economic impact caused by Panama TR4, the requirements prescribed in the Code of Practice are therefore necessary to achieve the identified purpose.

- (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

Electric ant biosecurity zone extension

The amendments to the electric ant biosecurity zone regulatory provisions will limit the freedom of movement; property rights; right to privacy and reputation and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples within and outside of the electric ant biosecurity zone. It will do this by broadly imposing restrictions that require people to act in a positive way to do something; limit their movement; or act in a way potentially inconsistent with their cultural rights.

Balanced against limiting these rights is the benefit brought to the Queensland community, environment and industry through the reduced risk of electric ant infestation or spread through the transportation of electric ant carriers. Failure to impose these measures, and subsequent infestation or spread, could result in significant and long-lasting impacts across the State. The limitations on an individual's rights are minor in nature and are essential to achieving the purpose of the Amendment Regulation.

Code of Practice

The limitation of a person's property for the amendment of the code of practice and the adoption of a version 2 in the *Biosecurity Regulation 2016*, is less restrictive by having a reduced destruction zone area and is restricted to mandatory control and containment requirements that must be implemented on Panama TR4 infested properties.

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. A Code of Practice is consistent with the principle of shared responsibility and assists occupiers of infested properties to meet their general biosecurity obligation to take all reasonable and practical measures to minimise the biosecurity risk. Since the disease cannot be eradicated and there is a potential for uncontrolled spread of the disease, the new requirements for destruction encourage earlier detection, and empower occupiers to choose similar or better options to manage the disease, tailored to the best agronomic practices for the individual farm.

- (f) any other relevant factors

Code of Practice

The amendment to the Code of Practice replaces a previous section that has greater restrictions on a person's property rights. The amendment will create more freedom for an infested property to which the Code of Practice applies.

Conclusion

I consider that the *Biosecurity (Updating of Code of Practice and Biosecurity Zone Map) Amendment Regulation 2024* 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 MP
MINISTER FOR AGRICULTURAL INDUSTRY DEVELOPMENT AND FISHERIES
AND MINISTER FOR RURAL COMMUNITIES

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