

Biosecurity Regulation 2016

Explanatory notes for SL 2016 No. 75

made under the

Biosecurity Act 2014

Chemical Usage (Agricultural and Veterinary) Control Act 1988

Criminal Code Act 1899

Drugs Misuse Act 1986

Environmental Protection Act 1994

Fisheries Act 1994

Health Act 1937

Mineral Resources Act 1989

Nature Conservation Act 1992

Pest Management Act 2001

Petroleum and Gas (Production and Safety) Act 2004

Police Powers and Responsibilities Act 2000

Queensland Civil and Administrative Tribunal Act 2009

Rural and Regional Adjustment Act 1994

State Penalties Enforcement Act 1999

Statutory Bodies Financial Arrangements Act 1982

Statutory Instruments Act 1992

Stock Route Management Act 2002

Sustainable Planning Act 2009

Transport Infrastructure Act 1994

General Outline

Short title

Biosecurity Regulation 2016

Authorising law

Section 503 of the *Biosecurity Act 2014*

Section 38 of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*
Section 450F of the *Criminal Code Act 1899*
Section 134 of the *Drugs Misuse Act 1986*
Section 580 of the *Environmental Protection Act 1994*
Section 223 of the *Fisheries Act 1994*
Section 180 of the *Health Act 1937*
Section 417 of the *Mineral Resources Act 1989*
Section 175 of the *Nature Conservation Act 1992*
Section 130 of the *Pest Management Act 2001*
Section 859 of the *Petroleum and Gas (Production and Safety) Act 2004*
Section 809 of the *Police Powers and Responsibilities Act 2000*
Section 242 of the *Queensland Civil and Administrative Tribunal Act 2009*
Section 44 of the *Rural and Regional Adjustment Act 1994*
Section 165 of the *State Penalties Enforcement Act 1999*
Section 78 of the *Statutory Bodies Financial Arrangements Act 1982*
Section 59 of the *Statutory Instruments Act 1992*
Section 309 of the *Stock Route Management Act 2002*
Section 763 of the *Sustainable Planning Act 2009*
Section 490 of the *Transport Infrastructure Act 1994*.

Policy objectives and the reasons for them

The objective of the subordinate legislation is to provide technical details and regulatory mechanisms for addressing biosecurity risks under the *Biosecurity Act 2014* (the Biosecurity Act).

The Biosecurity Act provides the legislative framework for an effective biosecurity system in Queensland that will allow for preventative measures to be taken in response to biosecurity threats, responding to new and emerging pests and diseases and creating mechanisms that will ensure the safety and quality of animal feed and fertilisers. The Biosecurity Act will also help align Queensland's responses to biosecurity risks with national and international obligations.

Biosecurity aims to reduce the risks posed by new and emerging animal and plant pests, invasive plants and animals and chemical contaminants on the economy, environment, human health and social amenity. Biosecurity is integral to sustaining Queensland's prosperity, unique environment and lifestyle. A significant and serious outbreak of a plant, animal or marine pest could close major international markets, cause serious economic loss to businesses and ruin Queensland's reputation as a major supplier to overseas markets.

The Biosecurity Act will provide a single cohesive legislative framework for biosecurity in Queensland. The commencement of the Biosecurity Act will create a more effective biosecurity system in Queensland that helps to minimise biosecurity risks and better facilitate a response to the impacts of those risks on the economy, environment, human health and public amenity. The provisions of the Biosecurity Act relating to managing biosecurity emergencies and risks will allow for a more timely response to a biosecurity event.

The safety and quality of animal feed, fertilisers and other agricultural inputs may be managed under the Biosecurity Act as well as provide a capacity to manage risks associated with biological, chemical and physical contaminants.

The Biosecurity Regulation 2016 (the Regulation) will commence with the Biosecurity Act on 1 July 2016.

Achievement of policy objectives

The purposes of the Biosecurity Act are to be achieved through a variety of regulatory mechanisms including the imposition of a general biosecurity obligation on a person who deals with biosecurity matter, providing for flexible and timely ways of minimising and mitigating biosecurity risks, providing for codes of practice relating to a person's obligation under the Biosecurity Act and regulating activities involving biosecurity matter or a carrier.

The Regulation:

- creates codes of practice for the Labelling of fertilisers and contaminants in fertilisers and Feed for food producing animals;
- prescribes the maximum amount a local government may pay to the chief executive for services provided or to be provided by the chief executive or an invasive animal board for activities that help the local government perform their function under the Act;
- provides for the number of directors, operational area for the Darling Downs-Moreton Rabbit Board and the part of the barrier fence for which the board is responsible;
- creates state-wide and intrastate prevention and control measures for a range of pests and diseases that affect horticultural and agricultural production including bananas, sugar cane, nursery plants, potatoes and host species of cattle tick by prescribing biosecurity zones and state wide regulatory restrictions;
- prescribes information that the receiver of special designated animals must give to the National Livestock Identification System administrator;
- sets maximum levels of contaminants in carriers;
- provides for prescribed distances between apiaries;
- creates restrictions on the use of diagnostic test kits and obligations in relation to category 3 and 7 restricted matter; and
- prescribes fees payable under the Biosecurity Act and the waiver of particular fees.

The Regulation also makes terminology and consequential changes to the *Chemical Usage (Agricultural and Veterinary) Control Regulation 1999*, *Criminal Code (Animal Valuers) Regulation 2014*, *Drugs Misuse Regulation 1987*, *Environmental Protection Regulation 2008*, *Fisheries Regulation 2008*, *Health (Drugs and Poisons) Regulation 1996*, *Mineral Resources Regulation 2013*, *Nature Conservation (Estuarine Crocodile) Conservation Plan 2007*, *Nature Conservation (Macropod) Conservation Plan 2005*, *Pest Management Regulation 2003*, *Petroleum and Gas (Production and Safety) Regulation 2004*, *Police Powers and Responsibilities Regulation 2012*, *Queensland Civil and Administrative Tribunal Regulation 2009*, *Rural and Regional Adjustment Regulation 2011*, *State Penalties Enforcement Regulation 2014*, *Statutory Bodies Financial Arrangements Regulation 2007*, *Statutory Instruments Regulation 2012*, *Sustainable Planning Regulation 2009* and *Transport Infrastructure (State-controlled Roads) Regulation 2006*.

The Regulation also makes amendments to the *Land Protection (Pest and Stock Route Management) Regulation 2003* by removing Parts 2 and 4. The Regulation will also change the title to the *Stock Route Management Regulation 2003*, make consequential terminology changes and remove any references to pest animals and plants.

Consistency with policy objectives of authorising law

The Regulation is consistent with the objects of the Biosecurity Act and implements the objectives of the Act by establishing a framework for an effective biosecurity system for Queensland and the management of the risks associated with emerging endemic and exotic pests, zoonotic diseases and biological, chemical and physical contaminants in carriers.

Consequential changes have been made to provisions relating to restricted animal material, prohibited feed for pigs and poultry and some related definitions as a result of amendments made to the Act by the *Animal Management (Protecting Puppies) and Other Legislation Amendment Act 2016* which was assented to on 25 May 2016.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

The costs of the Regulation will be met from existing resources. The costs of the biosecurity register will be partially offset by the fee charged for registering biosecurity entities (prescribed by the Regulation).

Consistency with fundamental legislative principles

A number of provisions in the Biosecurity Regulation prescribe that a person may move a carrier or biosecurity matter if the carrier or biosecurity matter meets the risk minimisation requirements for dealing with the carrier or biosecurity matter stated in the Biosecurity Manual. Drafting these provisions in this manner allows an external document, the Biosecurity Manual (the Manual), to create elements of an offence provision.

Allowing external documents that are not subject to Parliamentary scrutiny to stipulate the circumstances under which a person must carry out a risk minimisation requirement may be seen to breach section 4(2)(b) of the *Legislative Standards Act 1992* which requires legislation to have sufficient regard to the institution of Parliament. The Regulation provides to the greatest extent possible the risk minimisation requirement a person must follow. The technical detail for achieving the risk minimisation requirement is contained in the Manual.

Most of the provisions in the Regulation that reference the Manual relate to movement restrictions on fruit and vegetables from interstate and within the State. Given there is a significant number of combinations and permutations relating to the required treatment of produce entering the State, it is not considered practical to include all of these details in the Regulation.

The relevant provisions in the Regulation are aimed at preventing the introduction or movement of serious pests and diseases which could devastate Queensland's horticultural industries. On occasion, these movement restrictions may change quickly because of the discovery of a new pest or the spread of a new or current pest in another State.

These changes can be expected to take place within 24 hours of notification and any corresponding movement restrictions need to be adjusted to ensure trade in fruit and vegetables and nursery products are maintained without significant disruption. This need for a rapid response and change to movement restrictions cannot be achieved in a timely way through changes to legislation. A delay of weeks or months could result in significant costs to industry and the economy.

The Manual will be readily available on the department's website and only be amended or revised in consultation with the relevant stakeholders. It is considered that the structure of the provisions in the Regulation that reference the Manual coupled with the rigour surrounding the development of the Manual and proposed consultation on any changes to the Manual justifies the sub-delegation by referring to the Manual in the Regulation.

Consultation

Community

Significant and extensive consultation with industry and stakeholders has occurred during the development of the Regulation. The Queensland Government released a Consultation Regulatory Impact Statement (Consultation RIS) on the Regulation to the public on 16 October 2014. Submissions on the Consultation RIS closed on 21 November 2014 but further submissions were received up until 5 December 2014. A total of 625 submissions were received on the Consultation RIS. Approximately 350 responses were from farmers and 200 from hobby farmers. Responses were received from individuals, alliances and industry peak bodies.

Further consultation was undertaken with industry peak bodies and groups after submissions to the Consultation RIS closed. Significant consultation has since occurred with the Australian Banana Growers' Council on banana biosecurity issues. The provisions in the Regulation relating to banana pests and carriers of banana pests are consistent with outcomes of this consultation.

Ongoing consultation has occurred with representatives from the bee, mango, sugar cane, papaya, horticulture and nursery industries. Significant consultation on the proposed provisions in the Regulation relating to cattle tick and location of the tick line has occurred since the conclusion of the Consultation RIS. Electronic media, public meetings and acceptance of written submissions and petitions have been part of the broad consultation process on the cattle tick line and cattle tick provisions.

Departmental officers attended nineteen meetings where the views of over 1000 people were heard on the location of the tick line. These meetings were conducted across the State as far north as Prairie and south to Pilton. A total of 633 submissions were received via the on-line survey and 400 written submissions and petitions were also received. Peak industry bodies including AgForce and Cattle Tick Management Queensland have also been consulted.

Provisions in the regulation relating to cattle tick management align with the preferred option contained in the Decision RIS and have been drafted to align with feedback received from stakeholders as a result of ongoing consultation. A decision on the location of the cattle tick line is expected to be finalised before 1 July 2016.

The Biosecurity Legislation Reference Group (BLRG) has been a key consultative body during the development of the Biosecurity Regulation. The following groups are represented on the BLRG: Queensland Resources Council, Regional Natural Resources Groups, CaneGrowers, AgForce, Queensland Conservation Council, Racing Queensland, Local Government Association of Queensland, Queensland Farmers Federation, Queensland Horse Council, Nursery and Garden Industry Association, North Queensland Bulk Ports, Cotton Australia, GrowCom, PowerLink, Australian Lot Feeders Association and Queensland Horse Alliance.

Government

Consultation has been undertaken with the Department of the Premier and Cabinet and Queensland Treasury. The Department of Justice and Attorney-General has been consulted about penalty provisions.

The Regulation makes minor consequential amendments to subordinate legislation administered by the Department of Justice and Attorney-General, Queensland Health, Department of Natural Resources and Mines, Department of Transport and Main Roads, Department of Infrastructure, Local Government and Planning, Queensland Treasury and Department of Environment and Heritage Protection. All of these agencies have been consulted and the amendments have been made consistent with the instructions received.