

Biosecurity and Other Legislation Amendment Regulation (No. 1) 2016

Explanatory notes for SL 2016 No. 132

made under the

Biosecurity Act 2014

Chemical Usage (Agricultural and Veterinary) Control Act 1988

General Outline

Short title

Biosecurity and Other Legislation Amendment Regulation (No. 1) 2016

Authorising law

Section 503 of the *Biosecurity Act 2014*

Section 38 of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*

Policy objectives and the reasons for them

The *Biosecurity Act 2014* and *Biosecurity Regulation 2016* (the new biosecurity legislation) commenced on 1 July 2016 providing a new legislative framework for biosecurity in Queensland. A number of legislative instruments were repealed or amended on the commencement of the new biosecurity legislation including the *Stock Act 1915* (Stock Act), which was repealed, and the *Chemical Usage (Agricultural and Veterinary) Control Regulation 1999* (Chemical Usage Regulation), which was amended.

The subordinate legislation will provide for the enforcement of maximum residue levels (MRLs) for specified chemicals in animals. MRLs for specified chemicals in animals were regulated under the Stock Act until it was repealed by the new biosecurity legislation. The intent was for them to be enforced under the Chemical Usage Regulation once the new biosecurity legislation commenced. To give that effect, an amendment to section 4 of the Chemical Usage Regulation was included in the *Biosecurity Regulation 2016* (Biosecurity Regulation) with the intent of extending the definition of MRLs to include tissues and products derived from food producing animals that were previously regulated under the Stock Act.

However, this amendment provision could not be given effect because of an earlier amendment of section 4 by the *Agriculture and Other Legislation Amendment Regulation (No. 1) 2016* on 27 May 2016. A further amendment to section 4 of the Chemical Usage

Regulation is now necessary to provide for the enforcement of MRLs in relation to tissues and products derived from food producing animals.

The subordinate legislation will amend the definitions of *cucumber green mottle mosaic virus carrier* and *giant pine scale carrier* in the Biosecurity Regulation to more accurately reflect the risk of items carrying the biosecurity matter.

In addition, the subordinate legislation will rectify the unintended consequences of the provisions of the Biosecurity Regulation that restrict the movement of sugarcane pest carriers. The unintended effect of these restrictions is to prevent the movement of sugarcane pest carriers from a biosecurity zone to another State. It is not appropriate for Queensland to impose restrictions on materials moving into another jurisdiction – this is the regulatory remit of that jurisdiction.

The subordinate legislation will also provide more appropriately for the appointment as authorised officers of certain persons involved in selling S7 poisons, other than for human therapeutic use.

Section 43 of the *Biosecurity Act 2014* provides that a person must not distribute or dispose of category 3 restricted matter unless the distribution (which includes giving, selling or trading) or disposal is in accordance with that section including under a restricted matter permit or in a way that is prescribed under a regulation. Some invasive animals that are category 3 restricted matter, including rabbits and some species of deer, are lawfully kept for exhibition to the public. The holder of an exhibition licence under the *Exhibited Animals Act 2015* is authorised to buy or accept these animals and sell or give these animals in certain circumstances. However, section 43 of the *Biosecurity Act 2014* currently does not exclude persons authorised under the *Exhibited Animals Act 2015* from the restrictions on distributing invasive animals that are category 3 restricted matter. In effect this means exhibition licence holders would need to hold a restricted matter permit as well as their exhibition licence to sell or give these animals.

The subordinate legislation will also reduce red tape and expense for the holder of an exhibited animals authority by ensuring they do not have to make application for a restricted matter permit under the *Biosecurity Act 2014* when they want to sell or give away an animal, such as a rabbit, to a person who is lawfully able to buy or accept it.

Achievement of policy objectives

The subordinate legislation will achieve its objective in relation to MRLs by amending the provision that states the purpose of Part 3 of the *Chemical Usage (Agricultural and Veterinary) Control Regulation 1999* to extend the application of the maximum residue limit for certain chemicals to include the tissue of a trade species and a product derived from a trade species animal.

The subordinate legislation will achieve its other objectives by amending the *Biosecurity Regulation 2016* to:

- exclude 'harvesting bins' from the definition of *cucumber green mottle mosaic virus carrier*,
- include an appliance or soil that has come into contact with a plant of the family *Pinaceae* in the definition of *giant pine scale carrier*,

- remove the movement restriction on sugarcane pest carriers moving from a biosecurity zone to another State;
- remove 'holders of a licence to sell S7 poisons, other than for human therapeutic use, granted under section 233 of the *Health (Drugs and Poisons) Regulation 1996*' as a class of persons that the chief executive may appoint as an inspector;
- extend the class of person that the chief executive may appoint as an authorised person from 'the holder of a licence to sell S7 poisons, other than for human therapeutic use, granted under section 233 of the *Health (Drugs and Poisons) Regulation 1996*' to include employees of a company that is the holder of such a licence; and
- provide that invasive animals which are category 3 restricted matter can be distributed or disposed of if it is authorised under a law of the State, the Commonwealth or another State.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the objectives of the *Biosecurity Act 2014* and the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

Inconsistency with policy objectives of other legislation

The subordinate legislation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no viable alternative to the amendments as they provide the necessary restrictions to minimise biosecurity risks.

Benefits and costs of implementation

Social, economic and environmental benefits to the community will include:

- protection of market access by reimposing the maximum residue limits for certain chemicals in the tissue of a trade species and a product derived from a trade species animal;
- savings by those who are currently applying risk minimisation procedures in relation to "harvesting bins" which are no longer considered by the industry to be a risk item for the transmission of the cucumber green mottle mosaic virus;
- increased protection in Queensland from giant pine scale by regulating the movement of risk items;
- access for sugarcane into New South Wales for processing without the need to undergo risk minimisation procedures; and
- reduced red tape and costs relating to the lawful distribution of invasive animals that are category 3 restricted matter by holders of exhibited animal authorities.

Social and economic costs to the community will include restrictions on appliances or soil that have come into contact with a plant of the family *Pinaceae* (cedar, fir pine, spruce) entering Queensland from another State.

The State Government will not incur any additional costs in the implementation of this subordinate legislation.

Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*. While the subordinate legislation is generally consistent with those principles, a potential issue has been identified in relation to provisions that prescribe the way and purpose a category 3 restricted matter that is an invasive animal may be disposed or distributed.

Legislative Standards Act 1992, subsection 4(5)(e) - Whether the subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons; and if authorised by an Act.

Section 43 of the *Biosecurity Act 2014* provides that a person must not distribute or dispose of category 3 restricted matter unless the distribution (which includes giving, selling or trading) or disposal is in accordance with that section including under a restricted matter permit or in a way that is prescribed under a regulation. Consequently, persons holding exhibition licences under the *Exhibited Animals Act 2015* would still require a restricted matter permit to distribute invasive animals that are category 3 restricted matter even though they are authorised to buy or accept these animals and sell or give these animals in certain circumstances under the *Exhibited Animals Act 2015*. That is, exhibition licence holders would need to hold a restricted matter permit as well as their exhibition licence to sell or give these animals. The provisions in the subordinate legislation that provide that category 3 restricted matter that is an invasive animal may be disposed of or distributed in a way authorised under another Act or a law of the Commonwealth are effectively a subdelegation of legislative power.

The provisions are justified on the basis that the subdelegation is to another piece of legislation and is not an administrative decision or non-legislative document. It will reduce the red tape and expense for the holder of an exhibited animals authority by ensuring they do not have to make application for a restricted matter permit under the *Biosecurity Act 2014* when they want to sell or give away an animal to a person who is lawfully able to buy or accept it.

Consultation

Consultation was conducted with the Australian Melon Association in relation to the removal of the example of 'harvesting bins' from the definition of cucumber green mottle mosaic virus carrier. The Australian Melon Association supported the removal of the example because harvesting bins were no longer considered a risk item for the spread of the virus. No other external consultation was conducted in relation to the other amendments as they do not impact on industry rather they rectify or clarify provisions.

The Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission was consulted as to whether the amendments qualified for an exclusion from the Regulatory Impact Statement (RIS) system. The OBPR advised the proposed amendments are either correcting an error or a drafting error or reducing the burden of regulation with no apparent significant adverse impacts and therefore are excluded from further assessment under the Treasurer's RIS guidelines.