

# Biosecurity (Fire Ant Controls) Amendment Regulation 2020

## 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, provide this human rights certificate with respect to the *Biosecurity (Fire Ant Controls) Amendment Regulation 2020*, made under the *Biosecurity Act 2014* (the Act).

In my opinion, the *Biosecurity (Fire Ant Controls) Amendment Regulation 2020* (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 certificate.

### Overview of the Subordinate Legislation

The Amendment Regulation is made under the Act. The authorising law for the Amendment Regulation includes sections 128, 129 and 503 of the Act.

The main purpose of this Amendment Regulation is to further reduce the risk of red imported fire ants ('fire ant') being spread through the human assisted movement of fire ant carriers in Queensland. The Amendment Regulation clarifies the requirements for storing fire ant carriers within and moving fire ant carriers out of the fire ant biosecurity zones, contained in the fire ant biosecurity zone regulatory provisions within chapter 5 of the *Biosecurity Regulation 2016* (the Regulation). The Amendment Regulation will also amend the fire ant biosecurity zone regulatory provisions to expand the risk mitigation strategies, such as screening or washing, that may be used in relation to fire ant carriers. Currently, these strategies can only be used if a person holds a Biosecurity Instrument Permit (BIP) for that purpose.

The Amendment Regulation will also update the numbering of the fire ant biosecurity zones to more accurately reflect the current distribution of fire ant infestation and treatment activities in South East Queensland. These minor changes will include the deletion of zone 3, and swapped numbering of zones 1 and 2.

### Human Rights Issues

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

In my opinion, the human rights under the *Human Rights Act 2019* that are relevant to the Amendment Regulation are:

- Freedom from forced work (section 18 of the *Human Rights Act 2019*);
- Freedom of movement (section 19 of the *Human Rights Act 2019*); and

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the *Human Rights Act 2019*).

*Freedom from forced work*

The section of the Amendment Regulation that is relevant to this right is:

- Requirement for frequent disturbance of specific fire ant carriers when stored and prior to movement – section 9.

*Freedom of movement*

The sections of the Amendment Regulation that are relevant to this right are:

- Restriction on the movement of fire ant carriers out of the fire ant biosecurity zones – sections 5 and 6.
- Requirement for frequent disturbance of specific fire ant carriers when stored and prior to movement – section 9.
- Requirement for information about the movement, storage and/or treatment of a carrier to be provided – section 9.
- Regulation empowers a BIP for the movement of soil from or within a fire ant biosecurity zone – section 5.

*Cultural rights – Aboriginal peoples and Torres Strait Islander peoples*

The sections of the Amendment Regulation that are relevant to this right are:

- Storage and movement restrictions of fire ant carriers of a natural/environmental nature (for example bark, grasses, plant fibre, clay pigments) may impact the distinctive spiritual, material and economic relationship between Aboriginal peoples or Torres Strait Islander peoples with the land and other resources with which they have a connection under Aboriginal tradition or Island custom – sections 5, 6, 8 and 9.
- Storage and movement restrictions of fire ant carriers of a 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 - sections 5, 6, 8 and 9.

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

(a) the nature of the right

*Freedom from forced work*

Under section 18 of the *Human Rights Act 2019*, a person must not be made to perform forced or compulsory labour. This right means that persons should not be subject to conditions that violate individual dignity and exploit human productivity. The scope of this right is also limited by an internal qualification; forced or compulsory labour does not include work or service that forms part of normal civil obligations.

This section is modelled on Article 8 of the International Covenant on Civil and Political Rights (ICCPR).

Provisions that may engage the right include those which provide for the provision of any labour or the performance of any service under the threat of penalty.

*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 ICCPR.

The right may be engaged where a public entity actively curtails a person's freedom of movement. Generally, provisions that may engage this right include provisions that impose restrictions of movement or place of residence of persons, and provisions that allow for the surveillance or monitoring of a person's movements.

*Cultural rights - Aboriginal peoples and Torres Strait Islander peoples*

Section 28 of the *Human Rights Act 2019* 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.

Provisions that may engage this right include provisions that allow or limit the ability of Aboriginal or Torres Strait Islander persons to continue to take part in a cultural practice, or otherwise interfere with their distinct cultural practices, and provisions that interfere with the relationship between Aboriginal or Torres Strait Islander persons and land, water and resources.

(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 limitations on the freedom from forced work relates to provisions requiring fire ant carriers to be frequently disturbed. This requirement includes activities to chip, crush, screen, shred, turn or wash specific fire ant carriers at least every 21 days when stored and at least 24 hours prior to moving the carrier to another place.

The limitation on the freedom of movement relates to provisions that require frequent attendance to specific stored fire ant carriers in order to meet the requirements for frequent disturbance under the provisions. This requirement may prohibit the responsible person from travelling freely away from the fire ant carrier he or she is obligated to maintain.

The limitation on the cultural rights of Aboriginal peoples and Torres Strait Islander peoples relates to provisions which may limit the ability of these peoples to engage with their traditionally owned or otherwise occupied lands, and the resources therein, where the fire ant biosecurity zone restrictions apply. For example, plant fibres for use in traditional textile making (encompassed within the ‘relevant fire ant carrier’ definition in 71A) may need to be stored differently from cultural custom in the fire ant biosecurity zones.

The purpose of the limitation on the freedom from forced work, freedom of movement and cultural rights of Aboriginal peoples and Torres Strait Islander peoples is to reduce the risk of human assisted movement of fire ants through fire ant carriers in Queensland. The purpose of the limitation on these rights is to ensure that the public, environment and industry are able to be protected from potentially significant and long-lasting impacts associated with fire ant infestation or spread.

Accordingly, these purposes 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 the right of freedom from forced work, freedom of movement and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples through this Amendment Regulation will minimise the risk of human assisted movement of fire ants through fire ant carriers in Queensland. This will directly help achieve the limitations’ other purposes of protecting the public from social, economic, and environmental consequences of fire ant 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 reasonably available and less restrictive means. Existing regulatory provisions have not proven adequate to manage the risk of human assisted movement of fire ants in carriers in Queensland. For this reason, the Amendment Regulation seeks to clarify the existing provisions in a targeted way where the existing provisions have proven inadequate to meet this risk management need.

The amendments are targeted and address the shortcomings of existing regulatory provisions, which provide a number of risk mitigation strategies for storing or moving fire ant carriers, though these are not exhaustive. People seeking to use alternative risk mitigation activities may do so under a BIP. This Amendment Regulation simplifies the processes required to engage these alternative risk mitigation activities through incorporating a number of these strategies into the Regulation.

However, these restrictions, and the associated limitations on the rights, are limited only to the areas of Queensland where fire ants have been detected or where there is a significant risk of fire ant infestation, and are, therefore, no wider than necessary.

- (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 amendments to the fire ant biosecurity zone regulatory provisions will limit the freedom from forced work; freedom of movement; and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples within and outside of the fire ant biosecurity zones. 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 fire ant infestation or spread through the transportation of fire ant carriers. Failure to impose these measures, and subsequent infestation or spread, could result in significant and long lasting impacts across the State. Although the Amendment Regulation limits three broad and important rights, the limitations are minor in nature and are essential to achieving the purpose of the Amendment Regulation. When the limitation of the right is balanced against the myriad of public and private benefits from further regulating this activity, it is my opinion that the amendment is reasonably and demonstrably justified in the circumstance.

- (f) any other relevant factors

The current provisions in the Act and Regulation relating to BIPs could mitigate the potential human rights impacts of the Amendment Regulation. This is because these provisions empower a person to apply for a BIP which authorises him or her to perform a risk mitigation activity other than in compliance with the biosecurity zone regulatory provisions, including activities in the Amendment Regulation.

## Conclusion

I consider that the *Biosecurity (Fire Ant Controls) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because, while it does limit, restrict or interfere with human rights, that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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