



REGULATORY IMPACT STATEMENT

Plant Diseases (Importation Restriction Area) Declaration 2017 (No 2)

DI2017-268

Mick Gentleman MLA
Minister for the Environment and Heritage

2017

Purpose

The purpose of this regulatory impact statement is to provide information about the regulatory impact of the *Plant Diseases (Importation Restriction Area) Declaration 2017 (No 2)* (the **declaration**), made under the *Plant Diseases Act 2002* (the **Act**). The declaration declares an importation restriction on declared plant material, and equipment and coverings used in connection with the cultivation or transport of declared plant material, from an importation restriction area.

Policy problem

In December 2016 the former Department of Agriculture and Food Western Australia detected the exotic plant pest ‘tomato potato psyllid’ (**TPP**) (*Bactericera cockerelli*) in backyard gardens in the Perth area. This psyllid is an insect that attacks a range of crops in the Solanaceae, Convolvulaceae and Lamiaceae families including potato, tomato, eggplant, capsicum, chilli, tamarillo, sweet potato and spearmint. The psyllid can also be a vector for the bacterium, *Candidatus Liberibacter solanacearum* (not currently in Australia), which is associated with the zebra chip disease in potato.

The psyllid has now been found in multiple locations across the Perth metropolitan area and surrounding regions. Affected host plants in these regions include tomato, eggplant, capsicum and chilli.

In response to the outbreak, all states (except Tasmania) and territories have placed movement restrictions on a range of plant material that can act as a host or carrier for TPP. Carrier plants are species that are not affected by TPP but have green parts that support survival of TPP. Movement restrictions also apply to equipment and coverings used in association with restricted plant material. There are exemptions to the restrictions for host and carrier plant material and used equipment and coverings that have been treated in certain ways.

The authorising law

The object of the Act is for the control of diseases and pests affecting plants. Managing plant diseases and pests through detection, prevention and the control of outbreaks in the ACT protects markets for plant products and assists in preventing their spread into other jurisdictions within Australia.

Section 12 (1) of the Act authorises the Minister to declare an area outside the ACT to be subject to an importation restriction if the Minister has reasonable grounds for believing that the declaration is necessary or desirable to prevent a disease or pest becoming established, or spreading, in the ACT.

Sections 12 (8) and (9) of the Act create offences if a person contravenes a restriction in an importation restriction declaration. The maximum penalty on conviction of an offence is 1,000 penalty units.

Objectives of the declaration

The declaration solves the policy problem outlined above by restricting the importation of host and carrier plant material, and the equipment and coverings used in their cultivation and transport, from infected areas of South West Western Australia. This reduces the risk of TPP spreading to the ACT or to another jurisdiction via the ACT.

Consistency of the declaration with the Act

Section 12 (1) of the Act authorises the Minister to declare an area outside the ACT to be subject to an importation restriction if the Minister has reasonable grounds for believing that the declaration is necessary or desirable to prevent a disease or pest becoming established, or spreading, in the ACT.

Having been advised of the outbreak of TPP in Western Australia, the fact that it is a serious pest that attacks a range of host crops, and that it can be spread via the transport of host and carrier plant material, the Minister reasonably believes that making the declaration is necessary to prevent the spread of the pest both within the borders of the ACT and across the border to New South Wales.

Section 12 (3) of the Act prescribes the content of an importation restriction declaration, including that it must contain a diagram showing the declared area and state—

- (a) the disease or pest to which the declaration relates;
- (b) the restrictions on importing into, or selling in, the ACT any plant, plant product or other stated thing that has, during a stated period, been kept in or travelled through the declared area;
- (c) the date the declaration takes effect; and
- (d) if the declaration is to have effect for a limited period—the date when (unless sooner revoked) it stops having effect.

The declaration provides that—

- (a) it applies to TPP (*Bactericera cockerelli*) and the bacterium *Candidatus Liberibacter solanacearum*;
- (b) it applies to the infected areas of South West Western Australia as shown on the diagram at schedule 1 of the declaration;
- (c) restrictions are placed on importing into the ACT from the importation restriction area —
 - (i) TPP host and carrier plant material; and

- (ii) used equipment and coverings that have been in contact with TPP host and carrier plant material; and
- (d) the declaration expires on 1 November 2022.

The declaration is consistent with the object of the Act as it:

- (a) protects markets for fruit, vegetable and horticultural products by preventing and controlling the outbreak of an exotic plant pest in the ACT; and
- (b) assists in the prevention and control of the outbreak of the exotic plant pest in another jurisdiction.

Consideration of alternative options

If the declaration was not made, the ACT could attempt to rely on the Western Australian Government's movement restrictions on TPP host and carrier plant material from the infected area; however, those restrictions only prevent the movement of host and carrier plant material from and within Western Australia. The ACT declaration restricts the importation into the ACT of TPP host and carrier plant material from the importation restriction area as an added protection to prevent an outbreak of TPP in the ACT. The restrictions do not apply to exempt host plant and carrier materials that have been treated in certain ways.

As a signatory to the Intergovernmental Agreement on Biosecurity, the ACT is committed to strengthening its working partnership with other Australian governments to improve the national biosecurity system and minimise the impact of plant pests and diseases on Australia's economy, environment and community. Making the declaration assists in the ACT's contribution to a national response to the TPP outbreak.

Cost/benefit analysis of implementing the declaration

There may be some costs to fruit, vegetable and horticultural suppliers in the ACT as a result of the declaration that TPP host and carrier plant material is prohibited from importation into the ACT; however, the amount of material concerned is likely to be minimal. For example, Woolworths has advised it does not import fruit and vegetables from Western Australia directly into the ACT.

Fruit, vegetable and horticultural suppliers may need to identify and engage alternative suppliers for host and carrier plant material from the declared area. Alternatively, suppliers can import material from the declared area that is exempt from importation restrictions through appropriate treatment, as evidenced by a valid biosecurity certificate.

Exemptions from importation restrictions have been increased in this declaration relative to the previous declaration DI 2017-101. Changes:

- (a) exclude host plant material that is seeds or has been processed;
- (b) exclude plant material (other than host plant material) that is fruit or vegetables without green parts, harvested grain or seeds;
- (c) allow for treatment of Solanaceae fruit prior to harvest with insecticide as an alternative to post-harvest fumigation with methyl bromide;
- (d) reduce the requirement for insecticides used to treat carrier plants prior to harvest from being effective on all life stages of TPP to being effective on adult TPP;
- (e) allow for the importation of carrier plants that are strawberries, or are other fruit or vegetables with green parts, that have been washed and/or packed under certain conditions; and
- (f) allow for the importation of carrier nursery stock that has been treated according to certain conditions.

These changes provide increased flexibility to suppliers to import host and carrier plant materials from the declared area into the ACT.

This declaration also places four new requirements on suppliers importing host and carrier plant material from the declared area into the ACT. Changes require:

- (a) imported Convolvulaceae tubers to be in a dormant state;
- (b) inspection of specified host and carrier plant material by a particular method;
- (c) treated host plant and carrier plant material (except Convolvulaceae host plant material) to be placed, and remain, in secure conditions after treatment to prevent infestation of TPP until the material enters the ACT; and
- (d) a biosecurity certificate to be issued under Australian state or Northern Territory legislation to certify all import conditions have been met.

These requirements will be met by Western Australia or other jurisdictions and are not expected to increase costs for any importation of host and carrier plant material by ACT suppliers from the declared area. The benefit of implementing the declaration is reducing the risk of further spreading the TPP pest throughout Australia.

The cost associated with implementing the instrument until 1 November 2022 is less expensive than later being forced to implement biosecurity measures aimed at controlling, mitigating or eradicating TPP should it ever enter the ACT.

Consultation

The initial response to the outbreak of TPP in Western Australia was coordinated by the national Consultative Committee on Emergency Plant Pests, which contains representatives from all Australian states and territories, the Australian Government Department of Agriculture and Water Resources, the CSIRO, and industry. Further targeted consultation has occurred through the national Subcommittee on Domestic Quarantine and Market Access and with the New South Wales Department of

Primary Industries, to ensure that the ACT's response to the outbreak is aligned with that of other jurisdictions.

The Senior Manager - Biosecurity has alerted the main fruit, vegetable and horticultural suppliers in the ACT of the TPP outbreak in Western Australia and its potential effect on the ACT horticulture industry.

Consistency of the declaration with scrutiny committee principles

The Scrutiny of Bills Committee's terms of reference require it to consider whether (among other things) any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly—

- is in accord with the general objects of the Act under which it is made;
- unduly trespasses on rights previously established by law;
- makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
- contains a matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly.

The declaration is consistent with the objects of the Act as it protects markets for horticultural products by preventing the outbreak of an exotic plant pest in the ACT and assisting in the prevention and control of the outbreak of the exotic plant pest in other jurisdictions within Australia.

The declaration does not unduly trespass on rights previously established by law. The declaration restricts the importation into the ACT of TPP host and carrier plant material and equipment and coverings used in connection with the cultivation or transport of declared plant material from a defined area for a limited period.

The declaration is subject to disallowance by the Legislative Assembly. Should a person contravene the importation restriction declaration, normal prosecution procedures would be followed. This includes the ability of a convicted person to seek to appeal their conviction.

Making an importation restriction declaration is a matter which is expressly provided for in the Act. As biosecurity measures need to be implemented as soon as possible to reduce the risk of an exotic disease spreading it is appropriate to be dealt with in a disallowable instrument rather than within an Act of the Legislative Assembly.