



REGULATORY IMPACT STATEMENT

Plant Diseases (Import Restriction) Declaration 2017

DI2017-101

Mick Gentleman MLA
Minister for the Environment and Heritage

June 2017

Purpose

The purpose of this regulatory impact statement is to provide information about the regulatory impact of the *Plant Diseases (Import Restriction Area) Declaration 2017* (the **declaration**), made under the *Plant Diseases Act 2002* (the **Act**). The declaration declares an import restriction on declared plant material and equipment used in connection with the cultivation or transport of declared plant material from an import restriction area.

Policy problem

In December 2016 the Western Australian Department of Agriculture and Food 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 and Convolvulaceae families including potato, tomato, eggplant, capsicum, chilli, tamarillo and sweet potato. The psyllid is also the host of the bacterium, *Candidatus Liberibacter solanacearum* which is associated with the zebra chip disease in potato.

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

In response to the outbreak, all state and Territory jurisdictions have placed movement control orders on a range of plant material that can act as a host for TPP.

The authorising law

The object of the Act is for the control of diseases and pests affecting plants and to protect markets for plant products by providing mechanisms for the detection, prevention and control of outbreaks of plant diseases in the ACT and assisting in the prevention and control of outbreaks of plant diseases in other jurisdictions within Australia.

Section 12 (1) of the *Plant Diseases Act 2002* (the Act) authorises the Minister to declare an area outside the ACT to be subject to an import 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 import 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 import of host plant material and the equipment used in the cultivation and transport of host material from infected areas of South West Western Australia. This is to reduce the risk of TPP spreading to the ACT or to another jurisdiction via the ACT.

The import restriction does not apply to equipment that has been fumigated with methyl bromide to kill TPP.

Consistency of the declaration with the Act

Section 12 (1) of the *Plant Diseases Act 2002* (the Act) authorises the Minister to declare an area outside the ACT to be subject to an import 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 crops in the Solanaceae and Convolvulaceae families including potato, tomato, eggplant, capsicum, chilli, tamarillo and sweet potato and that it can be spread via the transport of host 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 import restriction declaration, including that it states—

- (a) the disease or pest to which the declaration relates;
- (b) the area to which the declaration applies;
- (c) the restrictions on importing into the ACT a plant, plant product or other thing that has, at any time during a stated period, been in the areas; and
- (d) if the declaration is to have effect for a limited period—the period.

The declaration provides that—

- (a) it applies to the tomato potato psyllid (*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—
 - (i) tomato potato psyllid host plant material from the import restriction area; and
 - (ii) equipment that has been in contact with psyllid host plant material — from the import restriction area; and
- (d) the declaration expires on 30 September 2017.

The declaration is consistent with the objects of the Act as it protects markets for vegetable products by preventing and controlling 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 another jurisdiction.

Consideration of alternative options

If the declaration were not made, the ACT could attempt to rely on the Western Australian Government's movement control orders on TPP host plant material from the infected area; however, that order only prevents the movement of host plant material from and within Western Australia. The ACT declaration restricts the importation into the ACT of TPP host plant material from the import restriction area as an added protection to prevent an outbreak of TPPs in the ACT.

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 vegetable and horticultural suppliers in the ACT as a result of the declaration that TPP host plant material is prohibited from import into the ACT; however, the amount of host material concerned is likely to be minimal. Vegetable and horticultural suppliers may need to identify and engage alternative suppliers for host plant material 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 30 September 2017 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 response to the outbreak of TPP in Western Australia is being coordinated by the national Consultative Committee on Emergency Plant Pests, which contains representatives from all Australian state and Territory jurisdictions, the Australian Government Department of Agriculture and Water Resources, the CSIRO, and industry. Further targeted consultation has occurred with the New South Wales Department of Primary Industries, to ensure that the ACT's response to the outbreak is aligned with that State's.

The Senior Manager - Biosecurity will alert the main 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 import into the ACT of TPP host plant material and equipment 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 import restriction declaration, normal prosecution procedures would be followed. This includes the ability of a convicted person to seek to appeal their conviction.

Making an import 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.