

## ***EXPLANATORY MEMO***

### ***Consultation for new regulations under the Biosecurity and Agriculture Management Act 2007***

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#### **Introduction**

The *Biosecurity and Agriculture Management Act 2007* (The Act) establishes a new regulatory regime to prevent pests and diseases entering the State and becoming established, and minimise the spread and impact of those already present. The Act is a modern legislative reform, which replaces several pieces of existing legislation.

One of those sets of regulations, the *Biosecurity and Agriculture Management Regulations 2011* (BAM Regs), has been drafted to consolidate the useful aspects of existing legislation, and introduce innovation and investment into declared pest management and border biosecurity. The existing legislative instruments to be repealed are:

- *Agriculture and Related Resources Protection Act 1976* (ARRPA);
- *Agriculture and Related Resources Protection (Searches for Declared Plants and Animals) Regulations 2003*; (SDPA 2003)
- *Agriculture and Related Resources Protection (Traps) Regulations 1982*(T 1982);
- *Agriculture and Related Resources Protection (Fencing) Regulations 1985*(F 1985);
- *Agriculture and Related Resources Protection (Property Quarantine) Regulations 1981*(PQ 1981);
- *Agriculture and Related Resources Protection (Declared Animals) Regulations 1985*(PQ 1985);
- *Agriculture and Related Resources Protection (Poisons) Regulations 1983*(P 1983);
- *Agriculture and Related Resources Protection (Interference with Experiments) Regulations 1980*(IWE 1980);
- *Plant Diseases Act 1914* (PDA); and
- *Plant Diseases Regulations 1989* (PDR).

The BAM Regs will also need to be read in conjunction with other sets of regulations currently being drafted by Parliamentary Counsel's Office, and which will also be the subject of public consultation. For example, the *Biosecurity and Agriculture Management (Stock Identification and Movement) Regulations*, which relate to establishing ownership of stock, and recording their movement to meet market requirements, and trace risks such as diseases and chemical residue contamination. These regulations will incorporate aspects of the *Stock (Identification & Movement) Act 1970*, *Stock (Identification & Movement) Regulations 1972* and National Livestock Identification System (NLIS) requirements. They will also include particular requirements of the *Beekeepers Act 1963* and *Beekeepers Regulations 1963* regarding registering beekeepers, identifying hives and moving apiaries.

## Consultation

Consultation on regulations established under the Act is required under section 192 and is being conducted via a two stage process:

1. **A regulatory reference group (RRG)** to assist with coordinating stakeholder input. The core of the RRG comprises representatives from:
  - the Biosecurity Council;
  - WA Farmers;
  - Pastoralists and Graziers Association (PGA);
  - Western Australian Local Government Association (WALGA); and
  - regional natural resource management (NRM) groups.

The group has an independent chair and will remain active until all regulations are complete and the BAM Act can be fully implemented. Additional expertise is added to the core group as required according to the regulations being considered.

2. **Wider community and industry consultation**, which will target relevant stakeholders and make use of rural radio and print, web-based documentation and submission processes, and briefings to relevant stakeholders.

## *The BAM Regs*

This explanatory memo outlines the content of the BAM Regs. In particular, it focuses on summarising where existing legislation is being transferred to the BAM Act regime, and highlighting those aspects that are new to the regulation of biosecurity and agriculture management.

### **Part 1 - Preliminary - Regulations 1-8**

Part 1 contains the definitions used in the BAM Regs, including the prescribed potential carriers. The list was drafted to ensure that both organic and inorganic carriers are subject to import and inspection conditions under the Act.

Regulations 7 and 8 describe control categories that can be assigned to declared pests (DP) and prohibited organisms in circumstances where the Minister for Agriculture and Food is of the opinion that additional management is required. These provisions replaces the categorisation system previously used under the *Agriculture and Related Resources Protection Act 1976*<sup>1</sup> (ARRPA).

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<sup>1</sup> ARRPA ss 35,36.

There are three categories available:

<b>Category 1</b>	<b>Exclusion</b>	If in the opinion of the Minister introduction of the DP into an area or part of an area for which it is declared should be prevented
<b>Category 2</b>	<b>Eradication</b>	If in the opinion of the Minister eradication of the DP from an area or part of an area for which it is declared is feasible
<b>Category 3</b>	<b>Management</b>	If in the opinion of the Minister eradication of the DP from an area or part of an area for which it is declared is not feasible but that management of the pest should occur

In addition, regulation 7 defines keeping categories for DPs and the requirement for keeping DPs under permit.

## Part 2 - Dealing with declared pests and prescribed potential carriers - Regulations 9-22

Part 2 Division 1 deals with keeping, breeding and cultivating DPs. This relates to section 23 of the Act, which prohibits keeping, breeding or cultivating a DP except as otherwise provided in regulations.

Section 23 creates an offence to keep, breed, or cultivate a DP, or infect or infest a thing with a DP, or keep, breed or cultivate a thing infected or infested with a DP, or release a DP or a thing infected or infested with a DP.

The regulations require either a permit or a quarantine facility to keep a declared pest. This replaces a similar provision under ARRPA<sup>2</sup> which imposed conditions on keeping DPs as well as a permit requirement.

Part 2 also covers the keeping requirements of certain carriers, infection and infestation, the conditions for the movement of DPs in a DP area, introduction of DPs into a DP area, and the advertising and supply of DPs. Movement and introduction are concepts drawn from ARRPA<sup>3</sup> and consolidated into these regulations.

## Part 3 - Control of declared pests - Regulations 23-49

Section 30 of the Act imports a duty on owners, occupiers, or persons in control of an area to control DPs by taking prescribed measures. This is similar to an existing provision under ARRPA, requiring occupiers of private land to control DPs<sup>4</sup>. Regulation 23 prescribes the control measures required under section 30 of the Act, which details the different treatments that may be applied to control DPs.

<sup>2</sup> ARRPA ss 80,81; DAR 1985 r13.

<sup>3</sup> ARRPA ss 77-79.

<sup>4</sup> ARRPA s49.

Part 3 also requires owners or persons in control of an area to manage and control things infested with a DP. The regulations require reporting of serious DPs and impose some restrictions to assist with containment and control of DPs.

Part 3 also deals with the use of poisons and traps, signs, and the regulations pertaining to the barrier fence. These regulations have been consolidated from ARPA<sup>5</sup>.

The Director General (DG) of the Department of Agriculture and Food (DAFWA) may fix a rate of payment for the destruction of a DP under this Part, which may be claimed for successful removal or destruction of a DP. This provision has been retained from the ARPA regulations<sup>6</sup>.

#### **Part 4 - Quarantine of places - Regulations 50-66**

Part 4 deals with quarantine of places, and contains the provisions pertaining to movement notices<sup>7</sup>, pest control notices<sup>8</sup>, and quarantine notices<sup>9</sup>. Movement notices and quarantine notices are defined in this Part, and pest control notices are contained in the Act. These concepts exist in current legislation.

This Part contains provisions regarding compliance with notices, amendment or revocation of notices, exemption from notices<sup>10</sup>, persons bound by notices, warning signs<sup>11</sup> and quarantine of areas<sup>12</sup>. In the event of a change of ownership of land, regulation 65 requires an outgoing owner of a property to give notice about any pest control or quarantine notices currently applying to the land.

#### **Part 5 - Import of organisms and potential carriers - Regulations 67-75**

Part 5 deals with the import of organisms and potential carriers. Permitted carriers may enter Western Australia subject to an inspector's satisfaction at the border<sup>13</sup>, and meeting a range of entry conditions.

This part also allows authorisation of the import of a carrier subject to a permit.

This Part contains regulations which affect commercial carriers, including a regulation to give notice of import, and a requirement to advise passengers on commercial passenger carriers of the import conditions prior to entry. Commercial passenger carriers are also required to use approved quarantine facilities, either at checkpoints or to provide approved facilities.

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<sup>5</sup> ARPA s69; T 1982 r6-7; F 1985 r3, r5, r6, r9, r10; PQ 1981 r4.

<sup>6</sup> PDDA Regs, now repealed.

<sup>7</sup> PQ 1981 r5,7.

<sup>8</sup> ARPA s50.

<sup>9</sup> PQ 1981 r3.

<sup>10</sup> PQ 1981 r9.

<sup>11</sup> PQ 1981 r4.

<sup>12</sup> PQ 1981 r10.

<sup>13</sup> PDA s16.

This Part also contains a requirement to have imported organisms and prescribed potential carriers inspected at inspection points, unless a permit or inspector's direction allows otherwise.

### **Part 6 - Inspection of conveyances - Regulations 76-80**

Part 6 deals with inspection warning signs and the requirement of drivers to stop when an inspector requires it. These provisions currently exist in regulation under the PDA<sup>14</sup>.

### **Part 7 - Protection of agricultural activities - Regulation 81**

This regulation replaces a similar provision in PDA<sup>15</sup>, to permit the destruction of neglected orchards, and neglected bee hives.

### **Part 8 - Permits - Regulations 82-97**

Part 9 outlines the regulations pertaining to permits, including how to apply, duration of permits, conditions of permits, amendment, revocation and suspension of permits, and record keeping requirements. These requirements currently exist in ARPPA regulations.<sup>16</sup>

### **Part 9 - Quarantine facilities - Regulations 98-115**

Part 10 outlines the regulations pertaining to quarantine facilities, including how to apply for approval, duration of approval, conditions of approvals, amendment, revocation, suspension and transfer of approvals.

### **Part 10 - Fees, charges and costs - Regulations 116-120**

DAFWA offers a number of charged services to external clients for inspections, assessments and examinations, and are reviewed by the Department of Treasury annually and published on DAFWA's website. Some fees are also currently prescribed in regulations.<sup>17</sup>

This Part outlines the powers to determine fees and charges and the ability of the DG to waive, reduce or refund fees. These regulations also describe the process for recovering fees and charges and commencing the costs of remedial action permitted under the Act. Cost recovery for remedial action is in existing legislation.<sup>18</sup>

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<sup>14</sup> PDA s13, PDR 11.

<sup>15</sup> PDA s22.

<sup>16</sup> DA 1985 rr16, 16A, 19, 21.

<sup>17</sup> PDR r19P; schedule 2.

<sup>18</sup> ARPPA s52; PDA s24.

### **Part 11- Miscellaneous - Regulations 121-125**

Part 12 contains miscellaneous offence provisions regarding false and misleading statements, and interference with research experiments, which is a current provision under ARRPA regulations.<sup>19</sup>

This Part also describes the powers of the DG to take remedial action, a provision allowing directions to be given orally or in writing, and matters that may be prescribed under section 185 of the Act, covering the results of test that may be published in the public interest.

### **Part 12- Transitional provisions - Regulation 126**

Transitional matters under the legislation due for repeal is listed under this part.

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<sup>19</sup> IWE 1980 r9.