

Queensland



**PRIMARY INDUSTRIES
LEGISLATION
AMENDMENT ACT 1999**

Act No. 45 of 1999

Queensland



**PRIMARY INDUSTRIES LEGISLATION
AMENDMENT ACT 1999**

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Queensland



**Primary Industries Legislation Amendment
Act 1999**

Act No. 45 of 1999

An Act to amend legislation about primary industries

[Assented to 17 September 1999]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Primary Industries Legislation Amendment Act 1999*.

Commencement

2.(1) Parts 3 and 6 commence, or are taken to have commenced, on 1 July 1999.

(2) Sections 17, 18 and 20 commence on a day to be fixed by proclamation.

(3) The proclamation fixing the day for the commencement of section 20 must fix as the day of commencement the day on which the Brisbane Market Authority becomes a company GOC under the *Government Owned Corporations Act 1993*.

(4) The remaining provisions of this Act commence on assent.

PART 2—AMENDMENT OF AGRICULTURAL STANDARDS ACT 1994

Act amended in pt 2

3. This part amends the *Agricultural Standards Act 1994*.

Amendment of s 14A (False or misleading representations about stock)

4. Section 14A(1), ‘ ‘false or misleading’ to the person’s knowledge without specifying which’—

omit, insert—

‘false or misleading in a material particular’.

**PART 3—AMENDMENT OF CHICKEN MEAT
INDUSTRY COMMITTEE ACT 1976****Act amended in pt 3**

5. This part amends the *Chicken Meat Industry Committee Act 1976*.

Amendment of s 4 (Interpretation)

6.(1) Section 4, heading—

omit, insert—

‘**Definitions**’.

(2) Section 4, definition “**approved form**”—

omit.

(3) Section 4—

insert—

‘ “**collective negotiations**” means negotiations between growers or their representatives and a processor for making an agreement.

“**competition legislation**” means the *Trade Practices Act 1974* (Cwlth), section 51(1)(b),¹ or the text of that provision as included in

¹ *Trade Practices Act 1974* (Cwlth), section 51 (Exceptions)

section 51(1)(b)² of the Competition Code of Queensland.³

“negotiated agreement” means an agreement made as a result of collective negotiations.’.

Amendment of s 5 (Constitution of committee)

7. Section 5(2)—

omit, insert—

‘(2) The committee consists of—

- (a) an equal number of representatives of growers and processors;
and
- (b) a person, other than a grower or processor, who is to be the chairperson.’.

Amendment of s 6 (Appointment of members)

8. Section 6(1)—

omit, insert—

‘6.(1) The Minister must appoint the committee members by gazette notice.’.

Amendment of s 11 (Procedure at meetings)

9. Section 11(2)—

omit, insert—

‘(2) A quorum consists of—

² Section 51 (Exceptions) of the Code provides—
‘... the following must be disregarded:

- (a) ...
- (b) anything done in a State, if the thing is specified in, and specifically authorised by:
 - (i) an Act passed by the Parliament of that State; or’.

³ The Code applies as a law of Queensland under the *Competition Policy Reform (Queensland) Act 1996*, part 2.

- (a) a majority of committee members who are representatives of growers; and
- (b) a majority of committee members who are representatives of processors.’.

Amendment of s 12 (Conduct of business)

10. Section 12(1), after ‘members’—

insert—

‘, other than the chairperson,’.

Omission of s 14 (Validity of acts)

11. Section 14—

omit.

Replacement of s 16 (Functions)

12. Section 16—

omit, insert—

‘Functions

‘16.(1) The committee’s functions are—

- (a) to facilitate collective negotiations for agreements, including, for example, by—
 - (i) convening a group comprising representatives of growers and a processor to negotiate agreements; and
 - (ii) recommending procedures for the group in the negotiations; and
- (b) to refer disputes between growers and processors to mediation; and
- (c) to refer disputes under agreements between growers and processors to arbitration; and
- (d) to make recommendations to growers and processors about

minimum conditions of agreements and other issues affecting the chicken meat industry; and

- (e) to represent growers and processors on issues affecting the industry; and
- (f) to give information to growers and processors about issues affecting the industry.

‘(2) Despite subsections (1)(d) and (1)(f), the committee must not make recommendations or give information to growers and processors about—

- (a) growing fees for supplying broiler chickens under agreements; or
- (b) how the fees are decided.

‘Powers

‘**16A.(1)** The committee has power to do all things necessary or convenient to be done for performing its functions.

‘(2) Without limiting subsection (1), the committee has the powers conferred on it by this or another Act.

‘Additional roles of chairperson

‘**16B.(1)** The chairperson may, at any time, give the Minister a report about the committee’s performance of its functions.

‘(2) Also the chairperson must, when asked by the Minister, give the Minister a report about the following—

- (a) the committee’s performance of its functions;
- (b) any issue about the chicken meat industry.

‘(3) In addition, the chairperson may advise other committee members about the performance of the committee’s functions.’.

Insertion of new pt 2A

13. After section 19A—

insert—

‘PART 2A—AGREEMENTS AND DISPUTE RESOLUTION

‘Division 1—Agreements

‘Agreements to be written

‘19B.(1) A processor must not receive from a grower broiler chickens for processing other than under a written agreement.

Maximum penalty—20 penalty units.

‘(2) A grower must not supply to a processor broiler chickens for processing other than under a written agreement.

Maximum penalty—20 penalty units.

‘(3) In this section—

“receive” includes purchase.

“supply” includes sell.

‘Processors to notify committee of agreements

‘19C. Within 2 months after entering into an agreement with a grower, a processor must give written notice to the committee of the entering into of the agreement.

Maximum penalty—10 penalty units.

‘Specific authorisations for competition legislation

‘19D. The following are specifically authorised for the competition legislation—

- (a) collective negotiations for making a negotiated agreement, or making a negotiated agreement, or giving effect to a provision of a negotiated agreement, that has the purpose of, or would have or be likely to have the effect of, substantially lessening competition;
- (b) collective negotiations for making a negotiated agreement, or

making a negotiated agreement, or giving effect to a provision of a negotiated agreement, to the extent it has the purpose, or has or is likely to have the effect of, fixing, controlling or maintaining or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit for, the supply or acquisition of broiler chickens.

Division 2—Dispute resolution

‘Mediation

‘19E.(1) If a dispute arises between a grower and a processor about an agreement or proposed agreement, the committee must refer the dispute to mediation—

- (a) if the dispute is not resolved within 90 days after it arose; or
- (b) if asked by the parties.

‘(2) The mediation must be conducted by—

- (a) a person agreed to by the parties; or
- (b) if the parties can not agree on a mediator—the chairperson or a person appointed by the chairperson.

‘(3) The chairperson may appoint a mediator under subsection (2)(b) only if the person has the qualifications or experience the chairperson considers appropriate to mediate the dispute.

‘(4) The parties must pay the mediator the costs of mediation in the proportions decided by the mediator.

‘(5) An amount of unpaid costs is a debt payable to the mediator and may be recovered in a court of competent jurisdiction.

‘(6) Nothing in this section affects any rights or remedies to which a party to the dispute may be entitled.

‘Arbitration

‘19F.(1) This section applies if the dispute—

- (a) is between the parties to an agreement about an amount payable

under the agreement; and

- (b) is not resolved by mediation by a mediator appointed under section 19E.

‘(2) This section applies despite any provision in the agreement to the contrary.

‘(3) The chairperson must refer the dispute to an arbitrator, or entity prescribed under a regulation, nominated by the chairperson.

‘(4) However, the mediator must not be appointed arbitrator without the agreement of the parties.

‘(5) The *Commercial Arbitration Act 1990* applies to the arbitration.

‘(6) However, the committee can not be ordered to pay the costs, or part of the costs, of the arbitration.’.

Omission of ss 20–22

14. Sections 20 to 22—

omit.

Omission of s 24 (Approval of forms)

15. Section 24—

omit.

PART 4—AMENDMENT AND REPEAL OF CITY OF BRISBANE MARKET ACT 1960

Act amended in pt 4

16. This part amends the *City of Brisbane Market Act 1960*.

Omission of ss 2 and 3

17. Sections 2 and 3—

omit.

Omission of ss 7–48

18. Sections 7 to 48—

omit.

Insertion of new s 49

19. After section 48—

insert—

‘Transitional provision—City of Brisbane Market Regulation 1982

‘49.(1) This section applies to a lease of premises at the Brisbane market entered into between the authority and another person and in force immediately before the commencement of this section.

‘(2) The following provisions of the *City of Brisbane Market Regulation 1982* and any definitions in the Act or the regulation relevant to the provisions, are taken to be terms of the lease from the day this Act is repealed until the lease ends—

- (a) section 24(c) and (d);⁴
- (b) section 27(1) and (2);⁵
- (c) section 57.⁶

⁴ Section 24(c) and (d) of the regulation deal with the issue of permits by the authority for the operation of mechanical unloading devices in the Brisbane market.

⁵ Section 27 (Storage of produce) of the regulation

⁶ Section 57 (Accidents) of the regulation

Repeal

20. The *City of Brisbane Market Act 1960* is repealed.

**PART 4A—AMENDMENT OF FARM PRODUCE
MARKETING ACT 1964****Act amended in pt 4A**

20A. This part amends the *Farm Produce Marketing Act 1964*.

**Amendment of s 7 (Application for farm produce commercial seller's
licence)**

20B.(1) Section 7(8)(a), from '31 December' to 'with;'—

omit, insert—

'30 June 2000;'.
'

(2) Section 7(8A)—

omit.

Amendment of s 54 (Expiry of Act)

20C. Section 54, '31 December 1999'—

omit, insert—

'30 June 2000'.
'

Insertion of new pt 5

20D. After section 54—

insert—

**‘PART 5—TRANSITIONAL PROVISIONS FOR
PRIMARY INDUSTRIES LEGISLATION
AMENDMENT ACT 1999**

‘Fidelity bonds for issue or renewal of licences

‘55.(1) This section applies to a fidelity bond for a licence issued or renewed after the commencement of this section.

‘(2) The fidelity bond or the certificate of renewal of the fidelity bond must state that the fidelity bond has effect for the period starting on the day the licence is issued or renewed and ending on 31 December 2000.

‘Operation of provisions of Act after expiry

‘56.(1) Despite the expiry of this Act, the following provisions and any definitions in the Act relevant to the provisions remain in force until the end of 31 December 2000, when they cease to have effect—

- (a) section 6;
- (b) section 29(1) and (3);
- (c) section 30(2) to (5), (7) and (12);
- (d) sections 32 and 33.⁷

‘(2) In section 32, a reference to a person who is acting as or carrying on business as a farm produce commercial seller is taken to include a reference to a person who was acting as or carrying on business as a farm produce commercial seller before 1 July 2000.

**‘Exemption from expiry of Farm Produce Marketing Regulation
1984, s 14**

‘57. Despite the *Statutory Instruments Act 1992*, part 7, and the expiry of

⁷ Section 6 (Registrar and deputy registrar employed under Public Service Act)
Section 29 (When bond may be forfeited)
Section 30 (Banking of moneys)
Sections 32 (Inspection, audit etc. by registrar etc.) and 33 (Audit of farm produce accounts etc.)

this Act, the *Farm Produce Marketing Regulation 1984*, section 14,⁸ does not expire at the end of 30 June 2000,⁹ but remains in force until the end of 31 December 2000, when it ceases to have effect.’

PART 5—AMENDMENT OF FISHERIES ACT 1994

Act amended in pt 5

21. This part amends the *Fisheries Act 1994*.

Amendment of s 4 (Definitions)

22. Section 4—

insert—

‘**“abalone”** means a mollusc of the genus *Haliotis*.’

Amendment of s 86 (Dockets for wholesale sale of fisheries resources etc.)

23. Section 86—

insert—

‘**(5)** Also, if the fisheries resources are abalone and the seller consigns them to the buyer, the seller must ensure they are accompanied by a copy of the required docket.

Maximum penalty—500 penalty units.

‘**(6)** In addition, if the required docket relates to the sale of abalone the seller and the buyer must each keep a copy of the required docket for

⁸ Section 14 (Procedure on forfeiture of fidelity bond) of the regulation

⁹ The *Farm Produce Marketing Regulation 1984* was exempted from expiry under the *Statutory Instruments Act 1992*, part 7 (Staged automatic expiry of subordinate legislation), for the period ending at midnight on 30 June 2000—see the *Statutory Instruments Regulation 1992*, section 9.

5 years after the day the abalone are sold.¹⁰

Maximum penalty—500 penalty units.’.

Insertion of new s 86A

24. After section 86—

insert—

‘Records for processing abalone

‘86A.(1) This section applies to a person carrying on the business of processing abalone.

‘(2) The person must keep a record containing the following particulars for any abalone the person processes—

- (a) the person’s full name and usual address;
- (b) if the person is not the owner of the abalone—the full name and usual address of the owner;
- (c) the species of abalone processed;
- (d) the date of processing;
- (e) the weight of each species of abalone before processing;
- (f) the weight of each species of abalone after processing;
- (g) the way the abalone are processed.

Maximum penalty—1 000 penalty units.

‘(3) The person must keep the record for 5 years after the day the abalone are processed.

Maximum penalty—500 penalty units.

‘(4) In this section—

“processing”, abalone, includes doing any of the following to the abalone—

- (a) shelling;

¹⁰ Under section 173 (Power to require production of documents), an inspector may require a person to produce a document required to be kept.

- (b) filleting;
- (c) cooking;
- (d) preserving;
- (e) packing.’.

Insertion of new s 88A

25. Part 5, division 4, after section 88—

insert—

‘Possessing fish taken in contravention of other fisheries legislation

‘88A. A person must not unlawfully possess fish knowing the fish have been taken in contravention of a law of the Commonwealth or another State about fishing, fisheries resources or fish habitats.

Maximum penalty—1 000 penalty units.’.

Replacement of s 123 (Protection of marine plants)

26. Section 123—

omit, insert—

‘Protection of marine plants

‘123. A person must not unlawfully—

- (a) remove, destroy or damage a marine plant; or
- (b) cause a marine plant to be removed, destroyed or damaged.

Maximum penalty—3 000 penalty units.

Example of removing a marine plant—

Removing seagrass from a beach or foreshore.

Example of destroying a marine plant—

Burning saltcouch.

Example of damaging a marine plant—

Pruning or trimming mangroves.’.

Insertion of new s 148A

27. After section 148—

insert—

‘Monitoring warrants for abalone

‘148A.(1) An inspector may apply to a magistrate for a warrant under this section for a place, other than a place, or part of a place used exclusively as a person’s residence, if the inspector is reasonably satisfied—

- (a) abalone are at the place; and
- (b) it is necessary for the inspector to enter the place to find out if this Act is being complied with in relation to abalone.

‘(2) The application must be sworn and state the grounds on which the warrant is sought.

‘(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

‘(4) The magistrate may issue the warrant only if the magistrate is satisfied it is reasonably necessary that the inspector should have access to the place for the purpose of finding out whether this Act is being complied with in relation to abalone.

‘(5) The warrant must state—

- (a) that an inspector may, with necessary and reasonable help and force—
 - (i) enter, and from time to time re-enter, the place; and
 - (ii) exercise an inspector’s powers under this part; and
- (b) the purpose for which the warrant is sought; and
- (c) the hours of the day or night when the place may be entered; and
- (d) any conditions imposed by the magistrate; and

- (e) the date, within 2 months after the warrant's issue, the warrant ends.

Examples for paragraph (d)—

1. The magistrate may limit the number of times an inspector may enter the place while the warrant is in force.
2. The magistrate may require an inspector to give to the magistrate information about the use of the inspector's powers under the warrant.'

PART 6—AMENDMENT OF GRAIN INDUSTRY (RESTRUCTURING) ACT 1991

Act amended in pt 6

- 28.** This part amends the *Grain Industry (Restructuring) Act 1991*.

Amendment of s 2 (Objects of this Act)

29.(1) Section 2(e), 'barley and Central Queensland grain sorghum; and'—

omit, insert—

'barley.'

(2) Section 2(f)—

omit.

Amendment of s 3 (Definitions)

30.(1) Section 3, definitions "Central Queensland grain sorghum", "defined area", "dissolution date", "expiry date", "Grainco", "Grain Industry Trust", "merger participants", "season" and "transfer date"—

omit.

(2) Section 3—

insert—

‘ **“competition principles agreement”** means the competition principles agreement defined in the *Queensland Competition Authority Act 1997*.

“exemption”, for vested grain, means an exemption granted under part 4, division 4.

“expiry date” means 30 June 2002.

“Grainco” means Grainco Australia Limited ACN 070 878 241.

“season”, for wheat or barley, means a period notified by Grainco by public notice, or if Grainco does not notify a period, a financial year.’.

(3) Section 3, definition, **“compulsory marketing scheme”**, ‘, barley and Central Queensland grain sorghum’—

omit, insert—

‘and barley’.

Insertion of new s 3A

31. After section 3—

insert—

‘Grainco does not represent State

‘3A. Grainco does not represent the State and is not entitled to the immunities of the State.’.

Omission of pt 2 (Grainco)

32. Part 2—

omit.

Omission of s 13 (Grainco’s responsibility to account for its administration)

33. Section 13—

omit.

Amendment of s 14 (Application of certain other Acts)

34. Section 14(1)—

omit, insert—

‘14.(1) Grainco is—

- (a) in relation to the performance of its statutory functions or exercise of its statutory powers—
 - (i) a unit of public administration for the *Criminal Justice Act 1989*; and
 - (ii) a public authority for the *Parliamentary Commissioner Act 1974*; and
- (b) a public authority for the *Freedom of Information Act 1992*.’.

Insertion of new s 15A

35. After section 15—

insert—

‘Minister may require information about functions and powers

‘15A.(1) The Minister may, by written notice, require Grainco to give the Minister, or an advisory committee or other body established by the Minister under section 25, information about the performance of its statutory functions or exercise of its statutory powers.

‘(2) The notice must state the time within which the information is required to be given.

‘(3) Grainco must comply with the notice.’.

Omission of pt 3, div 2

36. Part 3, division 2—

omit.

Amendment of s 29 (Application)

37. Section 29(1) and (2)—

omit, insert—

‘**29.(1)** Subject to subsection (2), this part applies to all wheat and barley grown in Queensland.

‘**(2)** This part does not apply to either of the following—

- (a) wheat harvested before the date prescribed under a regulation;
- (b) wheat or barley harvested after the expiry date.

‘**(2A)** A date may be prescribed under subsection (2)(a) only if—

- (a) a public benefit test is conducted under the competition principles agreement; and
- (b) application of this part to wheat is consistent with clause 5(1) of the agreement.’.

Insertion of new s 38A

38. After section 38—

insert—

‘Exemptions for non-export grain

‘**38A.(1)** This section applies if, under a contract—

- (a) a grower sells vested grain; and
- (b) the grain is not to be exported to a foreign country.

‘**(2)** The grain is exempt from delivery under the compulsory marketing scheme on condition that the purchaser does not export the grain to a foreign country or sell the grain to another person for export to a foreign country.’.

Amendment of s 43 (Noncompliance with conditions of exemption)

39. Section 43, ‘a general or special’—

omit, insert—

‘an’.

Amendment of s 45 (Grain pools)

40. Section 45(1)—

omit, insert—

‘**45.(1)** Grainco may establish the grain pools for wheat or barley it considers appropriate.’.

Amendment of s 47 (Reserve fund)

41. Section 47(1)(c)—

omit.

Omission of pt 9 (Transitional arrangements for appointments)

42. Part 9—

omit.

**PART 7—AMENDMENT OF MEAT INDUSTRY
ACT 1993****Act amended in pt 7**

43. This part amends the *Meat Industry Act 1993*.

Amendment of s 127 (Evidence and procedure)

44. Section 127—

insert—

‘**(2A)** In deciding an appeal, the tribunal is unaffected by the decision appealed against.’.

Amendment of s 130 (Appeals to tribunal)

45. Section 130(1), after ‘tribunal’—

insert—

‘but only on 1 or more of the following grounds—

- (a) the decision was contrary to this Act;
- (b) the decision is manifestly unfair to the appellant;
- (c) the decision will cause severe and unjustified financial hardship to the appellant.’.

Replacement of s 131 (How to start an appeal)

46. Section 131—

omit, insert—

‘How to start an appeal

‘**131.(1)** An appeal is started by filing a written notice of appeal with the tribunal.

‘**(2)** The notice of appeal must—

- (a) state the grounds of the appeal; and
- (b) be accompanied by the fee prescribed under a regulation.

‘**(3)** The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.

‘**(4)** The tribunal may at any time extend the period for filing the notice of appeal.

‘**(5)** The tribunal must give a copy of the notice to the authority.’.

PART 8—RENUMBERING OF ACTS

Acts renumbered

47. As permitted by the *Reprints Act 1992*, section 43—

- (a) in the next reprint of the Acts amended by parts 3 and 6, the provisions of each of those Acts must be numbered and renumbered; and
- (b) in the next reprint of subordinate legislation made under an Act amended by parts 3 and 6, a reference to a provision of the Act under which the subordinate legislation is made, must, if the context permits, be changed to agree with the numbering and renumbering mentioned in paragraph (a).

PART 9—EXPIRY

Expiry of Act

48. This Act expires 3 months after the last of the Acts amended by parts 3 and 6 is reprinted as mentioned in section 47(a).