



Queensland

# **Primary Industries and Fisheries Legislation Amendment Act 2004**

**Act No. 27 of 2004**





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Queensland

# **Primary Industries and Fisheries Legislation Amendment Act 2004**

## **Act No. 27 of 2004**

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**An Act to amend legislation about primary industries and  
fisheries, and for other purposes**

**[Assented to 12 October 2004]**

**The Parliament of Queensland enacts—**

## **Part 1                      Preliminary**

### **1            Short title**

This Act may be cited as the *Primary Industries and Fisheries Legislation Amendment Act 2004*.

### **2            Commencement**

- (1) Part 7 is taken to have commenced on 30 September 2004.
- (2) Part 9 commences on 1 January 2005.
- (3) The remaining provisions of this Act commence on assent.

## **Part 2                      Amendment of Exotic Diseases in Animals Act 1981**

### **3            Act amended in pt 2**

This part amends the *Exotic Diseases in Animals Act 1981*.

### **4            Insertion of new ss 33A–33D**

After section 33—

*insert—*

#### **‘33A    Appeals to the Court of Appeal**

‘A party to an application to the District Court, who is dissatisfied with the court’s decision under section 33, may appeal against the decision to the Court of Appeal.



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**‘33B Starting an appeal**

- ‘(1) An appeal is started by—
- (a) filing a notice of appeal with the registrar of the Supreme Court; and
  - (b) complying with the rules of court applicable to the appeal.<sup>1</sup>
- ‘(2) For the Uniform Civil Procedure Rules, section 748,<sup>2</sup> the date of the decision appealed against is taken to be the day the appellant receives notice of the decision.
- ‘(3) However, the Court of Appeal may, at any time, extend the period for filing a notice of appeal.

**‘33C Hearing procedures**

‘The procedure for an appeal is to be under the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, under the directions of the Court of Appeal.

**‘33D Powers of Court of Appeal on appeal**

‘In deciding an appeal against a decision, the Court of Appeal may—

- (a) confirm the decision; or
- (b) amend the decision; or
- (c) substitute another decision for the decision.’.

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1 The Uniform Civil Procedure Rules contain provisions about appeals to the Court of Appeal.

2 Uniform Civil Procedure Rules, section 748 (Time for appealing)

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## Part 3                      Amendment of Fisheries Act 1994

### 5            Act amended in pt 3

This part amends the *Fisheries Act 1994*.

### 6            Renumbering of ss 65A–65C

Sections 65A, 65B and 65C—

*renumber* as sections 65C, 65D and 65E.

### 7            Replacement of s 65 (Transfer of authority (other than permit))

Section 65—

*omit, insert—*

#### ‘65        Transfer of authority (other than permit)

- ‘(1) Subject to registration under this subdivision, an authority other than a permit may be transferred unless, under a regulation or management plan, the authority is not transferable either generally or in the circumstances relating to the particular authority.<sup>3</sup>
- ‘(2) On registration of the transfer, all rights and liabilities attaching to the authority vest in the transferee.’

#### ‘65A     Application to register transfer of authority

- ‘(1) An application to register the transfer of an authority must be made—
- (a) to the chief executive; and
  - (b) in the approved form; and

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<sup>3</sup> See, for example, the *Fisheries Regulation 1995*, section 59 (Authorities that are not transferable).

- 
- (c) jointly by each holder of the authority (the “**transferor**”) and each person to whom the authority is transferred (the “**transferee**”).
- ‘(2) Without limiting what an approved form may require, the approved form must include—
- (a) a sufficient description of the authority and if the transfer is of a quota from 1 authority to another—a description of the other authority; and
- (b) a written declaration by the transferor that—
- (i) the information in or accompanying the application provided by the transferor is true; and
- (ii) the transferor has complied with the requirements under the Act that relate to the authority; and
- (c) a written declaration by the transferee that—
- (i) the information in or accompanying the application provided by the transferee is true; and
- (ii) the transferee has complied with the requirements under the Act that relate to the authority.
- ‘(3) The application must be accompanied by each of the following—
- (a) the fees prescribed under a regulation;
- (b) the written approval of each person, other than the holder, who has an interest in the authority noted in the register of authorities kept by the chief executive;
- (c) the authority to be transferred;
- (d) any other document or information prescribed under a regulation.
- ‘(4) The application must be executed by the transferor and the transferee.
- ‘(5) An application is validly executed if it is executed in the same way as is provided for the execution of an instrument under the *Land Title Act 1994*, section 161(1), (2) and (3A).<sup>4</sup>

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4 See the *Land Title Act 1994*, section 161 (Execution and proof)

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**‘65B Registration of transfer of authority**

- ‘(1) An application to register the transfer of an authority is a properly made application if the application complies with section 65A and the transferor and the transferee have complied with any requirements under subsection (2).
- ‘(2) The chief executive may, by written notice, require the transferor or the transferee (the *applicant*) to give the chief executive further documents or information to enable the chief executive to register the transfer.
- ‘(3) The chief executive must register the transfer of an authority if the chief executive receives a properly made application in relation to the authority.’.

**8 Amendment of s 65C (Temporary transfers)**

- (1) Section 65C(1), as renumbered—

*omit, insert—*

- ‘(1) A transfer of an authority may be for a stated period (a *temporary transfer*).’.

- (2) Section 65C(2)(b), as renumbered, ‘approves the application in writing’—

*omit, insert—*

‘registers the transfer’.

- (3) Section 65C(2), as renumbered—

*insert—*

‘(ca) if the authority is a quota—must end at the end of the quota year stated in the application; and’.

- (4) Section 65C(3), as renumbered, ‘granted’—

*omit, insert—*

‘registered’.

(5) Section 65C(4), as renumbered—

*omit, insert—*

‘(4) If the chief executive registers a temporary transfer, the chief executive must, as soon as practicable, give the applicants for registration of the temporary transfer written notice stating the temporary transfer of the authority has been registered.’

## 9 Amendment of s 65D (Effect of temporary transfer)

(1) Section 65D(1)(a), (3)(a) and (5), as renumbered, ‘granted’—

*omit, insert—*

‘registered’.

(2) Section 65D(3)(b), as renumbered, before ‘original’—

*insert—*

‘the’.

(3) Section 65D(6), as renumbered, definition *interested party*, paragraph (c), ‘granted’—

*omit, insert—*

‘registered’.

## 10 Amendment of s 65E (Waiver of fee or requirement on transfer or amendment)

(1) Section 65E(2)(a) and (3)(c)(i), as renumbered, ‘transfer or amendment’—

*omit, insert—*

‘amendment or registration of a transfer’.

(2) Section 65E(2)(b), as renumbered, ‘transfer or amend’—

*omit, insert—*

‘amend or register the transfer of’.

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**11 Amendment of s 76 (Offences about registers)**

Section 76(b)(ii), ‘a register’—

*omit, insert—*

‘the register’.

**12 Amendment of s 175 (False or misleading information)**

Section 175(1)(a) and (b), ‘to an inspector’—

*omit, insert—*

‘to the chief executive or an inspector’.

**13 Amendment of s 182 (Obstruction etc. of inspector)**

(1) Section 182, ‘, hinder or resist’—

*omit.*

(2) Section 182—

*insert—*

‘(2) In this section—

*obstruct* includes assault, hinder, resist and attempt or threaten to obstruct.’.

**14 Insertion of new s 217A**

After section 217—

*insert—*

**‘217A Authority to disclose personal information**

‘(1) The chief executive may disclose personal information about an individual to a prescribed government entity if the chief executive is satisfied on reasonable grounds that—

(a) the information would help the entity to perform its function of investigating or taking action in relation to criminal offences; and

(b) disclosure of the information is appropriate in the circumstances.

- ‘(2) Also, the chief executive may disclose personal information about an individual to a prescribed government entity if—
- (a) the entity asks for the information; and
  - (b) the entity states that the information would help the entity to perform its function of investigating or taking action in relation to criminal offences; and
  - (c) the entity undertakes not to use the information for any other purpose.
- ‘(3) The chief executive may develop a policy about matters to be considered in making a decision about disclosing personal information.<sup>5</sup>
- ‘(4) The chief executive can not, under section 21, delegate a power under this section.
- ‘(5) In this section—
- prescribed government entity*** means—
- (a) a Minister of the State, another State or the Commonwealth; or
  - (b) an entity of or representing the State, another State, a Territory or the Commonwealth in relation to a function the entity has under a law to investigate or take action in relation to criminal offences.

*Examples of a prescribed government entity—*

Australian Taxation Office, Australian Federal Police, the police service of the State or another State, a government entity responsible for the management of aquatic ecosystems in the Commonwealth or another State

***personal information***—

1. *Personal information*, about an individual, means information or an opinion about the individual, held by the chief executive, if—
  - (a) the individual’s identity is apparent or can reasonably be found out from the information or opinion; and

<sup>5</sup> See the department’s website for a copy of a policy developed under this section.

(b) the information or opinion came to the chief executive in the course of the administration of this Act.

2. Information or an opinion can be personal information whether or not the information or opinion is true, is recorded in a material form or forms part of a database.’.

#### 15 **Amendment of schedule (Dictionary)**

Schedule, definition *temporary transfer*—

*omit, insert*—

‘*temporary transfer* see section 65C(1).’.

## Part 4 **Amendment of Food Production (Safety) Act 2000**

#### 16 **Act amended in pt 4**

This part amends the *Food Production (Safety) Act 2000*.

#### 17 **Amendment of s 6 (Exemption from application of Act)**

Section 6(3)(a), after ‘wild’—

*insert*—

‘by an individual for the individual’s own use’.



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## Part 5 **Amendment of Grain Industry (Restructuring) Act 1991**

### 18 **Act amended in pt 5**

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

### 19 **Amendment of s 2 (Objects of this Act)**

Section 2(b) to (f)—

*omit, insert—*

‘(b) to provide for a review of export marketing arrangements for wheat produced in the State if—

(i) under the *Wheat Marketing Act 1989* (Cwlth), national arrangements for wheat marketing are reviewed; and

(ii) because of the review, the Commonwealth announces that it intends to change the national arrangements for the export of wheat.’.

### 20 **Amendment of s 3 (Definitions)**

(1) Section 3, definitions ‘asset’ and ‘Grainco’—

*omit.*

(2) Section 3—

*insert—*

‘*change the national arrangements for the export of wheat* includes the following—

(a) the repeal of the *Wheat Marketing Act 1989* (Cwlth), section 57;

(b) any amendment of the *Wheat Marketing Act 1989* (Cwlth) that would allow the unrestricted export of wheat in bulk from Australia.’.

- 
- 21 Omission of s 4 (Grainco does not represent the State)**  
Section 4—  
*omit.*
- 22 Omission of pt 2, div 1 (Administration)**  
Part 2, division 1—  
*omit.*
- 23 Omission of pt 2, div 2, hdg (Ministerial advisory bodies)**  
Part 2, division 2, heading—  
*omit.*
- 24 Amendment of s 34 (Review of export wheat marketing arrangements)**  
(1) Section 34(1)—  
*omit, insert—*  
(1) This section applies if—  
(a) the report mentioned in the *Wheat Marketing Act 1989* (Cwlth), section 57(10)<sup>6</sup> is given; and  
(b) because of the report, the Commonwealth announces that it intends to change the national arrangements for the export of wheat.  
(2) Section 34(4), ‘Grainco and’—  
*omit.*
- 25 Omission of ss 57–61**  
Sections 57 to 61—  
*omit.*

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6 *Wheat Marketing Act 1989* (Cwlth), section 57 (Control of export of wheat)

**26 Omission of pt hdgs**

Parts 1, 2, 5 and 7, headings—  
*omit.*

**Part 6 Amendment of Police Powers  
and Responsibilities Act 2000**

**27 Act amended in pt 6**

This part amends the *Police Powers and Responsibilities Act 2000*.

**28 Amendment of s 65B (Power to give animal welfare direction)**

Section 65B(2)(e), '65(2)(d)'—  
*omit, insert—*  
'60(1), 66(2)(c) or (d) or 74(1)(h)'.

**29 Amendment of s 66B (Power to destroy animal)**

Section 66B(a), '66(2)(d)'—  
*omit, insert—*  
'60(1), 66(2)(c) or (d) or 74(1)(h)'.

**Part 7 Amendment of Sawmills  
Licensing Act 1936**

**30 Act amended in pt 7**

This part amends the *Sawmills Licensing Act 1936*.

**31 Insertion of new s 21**

After section 20—

*insert—*

**‘21 Transitional provision for Primary Industries  
and Fisheries Legislation Amendment Act 2004**

- ‘(1) A licence in force immediately before 30 September 2004 continues in force until the end of 31 December 2004.
- ‘(2) Subsection (1) applies—
- (a) despite any other provision of this Act; and
  - (b) unless the licence is sooner surrendered or cancelled.
- ‘(3) The licensee is not required to lodge an application for renewal under section 6.’.

**Part 8 Amendment of Stock Act 1915**

**32 Act amended in pt 8**

This part amends the *Stock Act 1915*.

**33 Amendment of s 36 (Appeals to Magistrates Courts)**

- (1) Section 36(1)—

*omit.*

- (2) Section 36(2), after ‘by a decision’—

*insert—*

‘(an *original decision*), other than an original decision about compensation.’.

**34 Insertion of new ss 36A–36K**

After section 36—

*insert—*

### **‘36A Who may appeal to the District Court**

- ‘(1) A person who is aggrieved by an original decision about compensation may appeal to the District Court against the decision.
- ‘(2) Also, a person who has appealed to the Magistrates Court against an original decision, other than a decision about compensation, may appeal to the District Court against the Magistrates Court decision.

### **‘36B Starting an appeal**

- ‘(1) An appeal under section 36A is started by—
  - (a) filing a notice of appeal with the registrar of the District Court; and
  - (b) complying with the rules of court applicable to the appeal.<sup>7</sup>
- ‘(2) The notice must be filed within 28 days after—
  - (a) the day the person receives notice of the decision appealed against; or
  - (b) if paragraph (a) does not apply, the day the person otherwise becomes aware of the decision.
- ‘(3) However, the District Court may, at any time, extend the period for filing the notice of appeal.

### **‘36C Stay of operation of decision**

- ‘(1) The District Court may grant a stay of the operation of the decision appealed against under section 36A to secure the effectiveness of the appeal.
- ‘(2) The stay—
  - (a) may be given on conditions the court considers appropriate; and

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<sup>7</sup> The Uniform Civil Procedure Rules contain provisions about appeals to the District Court.

- (b) has effect for the period fixed by the court; and
  - (c) may be amended or revoked by the court.
- ‘(3) The period of the stay must not extend past the time when the court decides the appeal.
- ‘(4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

### **‘36D Hearing procedures**

- ‘(1) In deciding an appeal under section 36A, the court—
- (a) has the same powers as the entity that made the original decision; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- ‘(2) The appeal is by way of rehearing, unaffected by the decision appealed against, on the material before the entity that made the original decision and any further evidence allowed by the court.

### **‘36E Powers of court on appeal**

‘In deciding an appeal under section 36A, the court may—

- (a) confirm the decision appealed against; or
- (b) amend the decision appealed against; or
- (c) substitute another decision for the decision appealed against.

### **‘36F Who may appeal to the Court of Appeal**

‘A party to an appeal to the District Court, who is dissatisfied with the decision of the court, may appeal against the court’s decision to the Court of Appeal.

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**‘36G Appeal on questions of law only**

‘An appeal to the Court of Appeal may be made only on a question of law.

**‘36H Starting an appeal**

- ‘(1) An appeal under section 36F is started by—
- (a) filing a notice of appeal with the registrar of the Supreme Court; and
  - (b) complying with the rules of court applicable to the appeal.<sup>8</sup>
- ‘(2) For the Uniform Civil Procedure Rules, section 748,<sup>9</sup> the date of the decision appealed against is taken to be the day the appellant receives notice of the decision.
- ‘(3) However, the Court of Appeal may, at any time, extend the period for filing a notice of appeal.

**‘36I Stay of operation of decision**

- ‘(1) The Court of Appeal may grant a stay of the operation of the decision appealed against under section 36F to secure the effectiveness of the appeal.
- ‘(2) The stay—
- (a) may be given on conditions the court considers appropriate; and
  - (b) has effect for the period fixed by the court; and
  - (c) may be amended or revoked by the court.
- ‘(3) The period of the stay must not extend past the time when the court decides the appeal.
- ‘(4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

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8 The Uniform Civil Procedure Rules contain provisions about appeals to the Court of Appeal.

9 Uniform Civil Procedure Rules, section 748 (Time for appealing)

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**‘36J Hearing procedures**

‘The procedure for an appeal under section 36F is to be under the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, under the directions of the Court of Appeal.

**‘36K Powers of court on appeal**

‘In deciding an appeal under section 36F, the court may—

- (a) confirm the decision appealed against; or
- (b) amend the decision appealed against; or
- (c) substitute another decision for the decision appealed against.’.

**35 Amendment of sch 2 (Dictionary)**

Schedule 2—

*insert—*

**‘original decision** means—

- (a) a direction, order or other decision made or given under this Act by the Minister, the chief executive, an inspector or an authorised veterinary surgeon; or
- (b) a failure by a person mentioned in paragraph (a) to make or give under this Act a direction, order or other decision that the person is required to make or give.’.



## **Part 9**

## **Repeal**

### **36 Repeal**

The *Sawmills Licensing Act 1936* is repealed.