



Queensland

Primary Industries and Other Acts Amendment Act 2008

Act No. 22 of 2008



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Queensland

Primary Industries and Other Acts Amendment Act 2008

Act No. 22 of 2008

**An Act to amend the *Rural and Regional Adjustment Act 1994*,
the *Sugar Industry Act 1999*, the *Land Act 1994* and the *Land
Title Act 1994* for particular purposes**

[Assented to 9 May 2008]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Primary Industries and Other Acts Amendment Act 2008*.

2 Commencement

Parts 3 to 5 commence on 1 July 2008 or the date of assent of this Act, whichever is later.

Part 2 Amendment of Rural and Regional Adjustment Act 1994

3 Act amended in pt 2

This part amends the *Rural and Regional Adjustment Act 1994*.

4 Replacement of s 3 (Object of Act)

Section 3—
omit, insert—

‘3 Object of Act

‘(1) The object of this Act is to establish QRAA primarily to administer assistance schemes that foster the development of a more productive and sustainable rural and regional sector in Queensland.

- ‘(2) QRAA may also—
- (a) support the State’s economy by administering schemes to give assistance to primary producers, small businesses or other elements of the State’s economy—
 - (i) in periods when they are experiencing temporary difficulty; or
 - (ii) to otherwise benefit the State’s economy; and
 - (b) give assistance and build its own effectiveness by administering schemes for the Commonwealth and other States in rural and regional sectors outside Queensland.’.

5 Amendment of s 4 (Definitions)

- (1) Section 4—

insert—

‘**approved scheme** means an approved assistance scheme or an authorised interstate scheme.

authorised interstate scheme means a scheme for which the Minister has given an authorisation under section 11A.’.

- (2) Section 4, definition *authority’s assistance funds*, paragraph (a), ‘approved assistance schemes’—

omit, insert—

‘approved schemes’.

6 Amendment of s 8 (Authority’s functions)

- (1) Section 8(2)(f) to (h)—

renumber as section 8(2)(g) to (i).

- (2) Section 8(2)—

insert—

‘(f) to administer authorised interstate schemes; and’.

[s 7]

7 Amendment of s 9 (Authority's powers)

Section 9—

insert—

- ‘(3) The authority may exercise its powers inside or outside Queensland.’.

8 Insertion of new s 10

Part 3—

insert—

‘10 Approved schemes

‘The authority may give financial assistance only under an approved scheme.’.

9 Amendment of s 11 (Approved assistance schemes)

Section 11(6)—

omit.

10 Insertion of new s 11A

After section 11—

insert—

‘11A Authorisation for interstate schemes

- ‘(1) This section applies in relation to a scheme, other than an approved assistance scheme, established by the Commonwealth or another State or an entity that represents the Commonwealth or another State.
- ‘(2) The authority must not tender for the administration of the scheme, or agree to administer the scheme, unless the Minister has authorised the authority to enter into arrangements for the administration of the scheme.
- ‘(3) The Minister may give authorisation only if satisfied the scheme’s main purpose is to—

- (a) foster the development of the rural and regional sector in another State; or
 - (b) give assistance to primary producers or small businesses in another State in periods when they are experiencing temporary difficulty.
- ‘(4) Authorisation may be given on conditions the Minister considers appropriate.
- ‘(5) The authority must give the Minister any information the Minister asks for about a tender or arrangement that the authority has made or proposes to make for the administration of the scheme.
- ‘(6) However, subsection (5) does not apply to the extent that giving the information would contravene a confidentiality agreement to which the authority is a party.’.

11 Amendment of s 12 (Administering approved assistance schemes)

- (1) Section 12, heading, ‘**assistance**’—
omit.
- (2) Section 12(1) and (2), ‘approved assistance scheme’—
omit, insert—
‘approved scheme’.

12 Amendment of s 13 (Funding of approved assistance schemes)

- (1) Section 13, heading, ‘**assistance**’—
omit.
- (2) Section 13, ‘approved assistance scheme’—
omit, insert—
‘approved scheme’.

[s 13]

13 Amendment of s 13A (Who may apply for internal review)

Section 13A, ‘approved assistance scheme’—

omit, insert—

‘approved scheme’.

14 Insertion of new s 16D

Part 4, division 1A—

insert—

‘16D Delegation by non-appointed directors

‘(1) A director mentioned in section 16(1)(a) or (b) may delegate the director’s functions under this Act to an appropriately qualified senior executive in the public service.

‘(2) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to the exercise of the function.

Example of standing—

the person’s classification level in a department

function includes a power.’.

15 Amendment of s 20 (Conduct of proceedings)

Section 20(3)(a), ‘the directors appointed’—

omit, insert—

‘of the directors’.

16 Amendment of s 44 (Regulations)

Section 44, heading—

omit, insert—

‘44 Regulation-making power’.

Part 3 Amendment of Sugar Industry Act 1999

17 Act amended in pt 3

This part amends the *Sugar Industry Act 1999*.

18 Amendment of s 63 (Access right to harvest and supply cane)

(1) Section 63(1), ‘commissioner’—

omit, insert—

‘Land Court’.

(2) Section 63(4) to (6)—

renumber as section 63(5) to (7).

(3) Section 63—

insert—

‘(4) A permit to pass must state the period for which it has effect.’.

19 Amendment of s 64 (Land-holder may grant an access right)

Section 64—

insert—

‘Note—

See sections 70 and 71 for the requirement to notify the registrar.’.

[s 20]

20 Replacement of s 65 (Commissioner may grant an access right)

Section 65—

omit, insert—

‘65 Land Court may grant an access right

- ‘(1) This section applies if a person seeking an access right affecting land does not reach agreement with the land-holder for the grant.
- ‘(2) The person may apply to the Land Court to be granted the access right.
- ‘(3) The applicant must serve a copy of the application on every person the applicant knows may be entitled to claim compensation if the access right is granted.
- ‘(4) Subsection (3) does not limit the persons on whom a copy of the application must be served under the rules of the Land Court.
- ‘(5) The Land Court may grant the application only if it is satisfied—
 - (a) the applicant has failed, after reasonable attempts, to negotiate an agreement with the land-holder for the access right; and
 - (b) the access right is necessary for a purpose mentioned in section 63(2) or (5) in relation to the applicant; and
 - (c) the access right, if granted, would not affect native title, or if it would, there is an indigenous land use agreement consenting to the grant.

Note—

See sections 70 and 71 for the requirement to notify the registrar.

- ‘(6) The Land Court may impose reasonable conditions on the grant.

Example of a condition—

a condition that the mill owner or grower construct and maintain, at or near the boundaries of the land, cattle grids or other structures

‘(7) In this section—

indigenous land use agreement means an indigenous land use agreement under the *Native Title Act 1993* (Cwlth) registered on the register of indigenous land use agreements.’.

21 Omission of s 66 (Notice of decision)

Section 66—

omit.

22 Omission of s 67 (Grant of access right takes effect on registration)

Section 67—

omit.

23 Amendment of s 68 (Compensation on grant of access right)

(1) Section 68(1), ‘commissioner’—

omit, insert—

‘Land Court’.

(2) Section 68(1), ‘mill owner or grower to whom the access right is granted’—

omit, insert—

‘grantee of the access right’.

(3) Section 68(2) to (5)—

omit, insert—

‘(2) If the land-holder and grantee can not agree, either of them may apply to the Land Court for an order.

‘(3) On an application under subsection (2), the Land Court may decide the amount of any compensation payable by the grantee to the land-holder and make an order for payment.

[s 24]

- ‘(4) In deciding the amount of compensation, the Land Court must have regard to the following matters—
- (a) if the granting of the access right effectively severs land in which the land-holder has an interest from other land in which the land-holder has an interest—any change in the values of those interests;
 - (b) any change in the value of any interest in any land held by the land-holder that otherwise happens because of the granting of the access right;
 - (c) any loss, injury or damage suffered by the land-holder, or expense reasonably incurred by the land-holder, as a direct, natural and reasonable consequence of the granting of the access right;
 - (d) anything else relevant to deciding what is just and reasonable compensation for the granting of the access right.
- ‘(5) For calculating the change in the value of an interest in land under subsection (4), the changed value of the interest must be decided as at the day the access right was granted.’.
- (4) Section 68(6), ‘The commissioner, in granting a permit to pass to a person, may order the person’—
- omit, insert—*
- ‘The Land Court, in granting a permit to pass, may order the grantee’.

24 Replacement of ss 69–71

Sections 69 to 71—

omit, insert—

‘70 Notification and recording of matters relating to permits to pass

- ‘(1) This section applies if any of the following happens (a *permit event*)—
- (a) a permit to pass is granted;

-
- (b) a permit to pass is relinquished by the grantee;
 - (c) a permit to pass, or a condition on which a permit to pass is held, is varied or cancelled under section 72.
- ‘(2) Within 28 days after the permit event happens, the grantee must give to the registrar—
- (a) a signed notice—
 - (i) stating that the permit event has happened; and
 - (ii) identifying the parties to the permit to pass and the land affected by the permit; and
 - (b) a copy of—
 - (i) for the grant of a permit to pass—the permit to pass; or
 - (ii) otherwise—the document by which the relinquishment, variation or cancellation was effected.

Maximum penalty—40 penalty units.

- ‘(3) The registrar must ensure a notice appears in the relevant register kept under the *Land Act 1994* or the *Land Title Act 1994* so that a search of the register will show the permit event has happened.

‘71 Notification and registration of matters relating to cane railway easements

- ‘(1) This section applies if any of the following happens (an *easement event*)—
- (a) a cane railway easement is granted;
 - (b) a cane railway easement is relinquished by the grantee;
 - (c) a cane railway easement, or a condition on which a cane railway easement is held, is varied or cancelled under section 72.
- ‘(2) Within 28 days after the easement event happens, the grantee must give to the registrar a signed notice—

[s 25]

- (a) stating that the easement event has happened; and
- (b) identifying the parties to the cane railway easement and the land affected by the easement.

Maximum penalty—40 penalty units.

- ‘(3) The easement event may be registered under the *Land Act 1994* or the *Land Title Act 1994* only in compliance with that Act.
- ‘(4) Until the easement event is registered, the registrar must ensure a notice appears in the relevant register kept under the *Land Act 1994* or the *Land Title Act 1994* so that a search of the register will show the easement event has happened.
- ‘(5) It is sufficient compliance with subsection (2) for the grantee to give to the registrar, within 28 days after the easement event happens, the documents the registrar requires to register the easement event.’.

25 Amendment of s 72 (Variation and cancellation of access right, dispute resolution and enforcement)

- (1) Section 72(1), ‘the holder’—

omit, insert—

‘the grantee’.

- (2) Section 72(2) to (10)—

omit, insert—

- ‘(2) A party to an access right may apply to the Land Court to vary or cancel the access right or a condition on which the access right is held.
- ‘(3) The applicant must serve a copy of the application on every person the applicant knows may be entitled to claim compensation if the application is granted.
- ‘(4) The Land Court may grant the application only if—
 - (a) for an application to cancel a cane railway easement—the court is satisfied the easement has not been used for at least 2 years; or

-
- (b) otherwise—the court is satisfied there are special circumstances.
 - ‘(5) A change in the use of the land affected by the access right is not in itself special circumstances for subsection (4)(b).
 - ‘(6) A cane railway easement included in a register kept under the *Land Act 1994* or the *Land Title Act 1994* may be varied only in compliance with the provisions of that Act about amending an easement.’.

26 Replacement of ss 73 and 74

Sections 73 and 74—

omit, insert—

‘73 Compensation on cancellation or variation of access right

- ‘(1) A party to an access right may apply to the Land Court for an order for the payment of compensation if the parties to the access right—
 - (a) have, by agreement, varied or cancelled the access right or a condition on which it is held; and
 - (b) can not agree on the payment of compensation for the variation or cancellation.
- ‘(2) Subsection (3) applies if—
 - (a) an application is made under subsection (1); or
 - (b) the Land Court makes an order under section 72 varying or cancelling an access right or a condition on which an access right is held.
- ‘(3) The Land Court may decide the amount of any compensation payable by a party to the access right to the other party and make an order for payment.
- ‘(4) In deciding the amount of any compensation, the Land Court must have regard to the following matters—
 - (a) if the variation or cancellation effectively severs land in which the land-holder has an interest from other land in

[s 26]

which the land-holder has an interest—any change in the values of those interests;

- (b) any change in the value of any interest in any land held by the land-holder that otherwise happens because of the variation or cancellation;
 - (c) any loss, injury or damage suffered by a party, or expense reasonably incurred by a party, as a direct, natural and reasonable consequence of the variation or cancellation;
 - (d) any compensation previously paid in relation to the access right;
 - (e) anything else relevant to deciding what is just and reasonable compensation for the variation or cancellation.
- ‘(5) For calculating the change in the value of an interest in land under subsection (4), the changed value of the interest must be decided as at the day the access right was varied or cancelled.

‘74 Rectification or reinstatement of land on cancellation or variation of access right

- ‘(1) This section applies if the Land Court cancels an access right affecting land or varies an access right in a way that excludes land affected by the right.
- ‘(2) The Land Court may order the person who is or was the grantee of the access right to carry out rectification or reinstatement of the land as directed by the court.

‘74A Enforcement of Land Court decisions

- ‘(1) This section applies if the Land Court makes an order under this part.
- ‘(2) The registrar of the Land Court must give a copy of the order to the registrar of the Supreme Court who must file it in the Supreme Court registry.

- ‘(3) On filing, the order is enforceable as if it were an order of the Supreme Court.’.

27 Amendment of s 75 (Construction etc. of railways, obstruction of access right)

- (1) Section 75(1)(a)—

omit, insert—

- ‘(a) construct, maintain, alter and use a railway or road and carry out any other necessary works on land of the mill owner or over which the mill owner holds an access right; and’.

- (2) Section 75(2)—

omit, insert—

- ‘(2) However, subsection (1)(a) applies—

- (a) in relation to a road other than a State-controlled road, subject to any local laws in force under the *Local Government Act 1993*, section 919; or

Editor’s note—

Local Government Act 1993, section 919 (Ancillary works and encroachments on roads)

- (b) in relation to a State-controlled road, subject to the *Transport Infrastructure Act 1994*, section 50.

Editor’s note—

Transport Infrastructure Act 1994, section 50 (Ancillary works and encroachments)’.

- (3) Section 75(3), ‘Without limiting subsection (2), a person may apply to a Magistrates Court’—

omit, insert—

- ‘A person may apply to the Land Court’.

- (4) Section 75(4)—

omit.

[s 28]

(5) Section 75(5) and (6)—
renumber as section 75(4) and (5).

28 Renumbering and relocation of s 108 (Minister may establish advisory bodies)

Section 108—
relocate and *renumber*, in chapter 7, as section 246.

29 Omission of chs 4 and 5

Chapters 4 and 5—
omit.

30 Amendment of s 245 (Pooled export and domestic contract)

Section 245(3)—
omit.

31 Amendment of s 249 (Statutory declaration)

- (1) Section 249(1), ‘the commissioner or’—
omit.
- (2) Section 249(2), ‘commissioner or’—
omit.

32 Amendment of s 253 (Improper use of information prohibited)

Section 253(1), ‘is, or has been, the commissioner, or’—
omit, insert—

‘has been the Sugar Industry Commissioner under this Act, or who is or has been’.

33 Omission of ch 8, pts 1–6

Chapter 8, parts 1 to 6—

omit.

34 Amendment of s 281 (Definitions for pt 7)

Section 281—

insert—

‘commencement means the day that repealed section 258 commenced.’.

35 Insertion of new s 283A

Chapter 8, part 7—

insert—

‘283A Expiry of pt 7

‘This part expires on the day that section 243 expires or the day that section 245 expires, whichever is later.’.

36 Omission of ch 8, pt 8

Chapter 8, part 8—

omit.

37 Replacement of ch 9

Chapter 9—

omit, insert—

[s 37]

‘Chapter 9 Transitional provisions for Primary Industries and Other Acts Amendment Act 2008

‘Part 1 Preliminary

‘284 Definitions for ch 9

‘In this chapter—

access rights register means the register of that name kept by the commissioner before the commencement day under repealed section 69.

commencement day means the day this chapter commences.

commissioner means the Sugar Industry Commissioner holding office under this Act before the commencement day.

‘Part 2 Provisions relating to access rights

‘285 Period of operation of permit to pass

‘(1) This section applies to a permit to pass that was in force immediately before the commencement day.

‘(2) If the permit does not state a period for which it has effect—

(a) section 63(4) does not apply to the permit; and

(b) the permit is taken to have effect until it is cancelled or otherwise stops having effect under this Act.

‘286 Access rights granted by the commissioner

‘An access right granted by the commissioner, that was in force immediately before the commencement day, continues in force according to its terms as if it had been granted by the Land Court.

‘287 Land Court to assume jurisdiction for current applications

- ‘(1) An application to the commissioner under old section 65 that, immediately before the commencement day, had not been decided by the commissioner is taken to be an application to the Land Court under new section 65.
- ‘(2) An application to the commissioner under old section 72 that, immediately before the commencement day, had not been decided by the commissioner is taken to be an application to the Land Court under new section 72.
- ‘(3) An application to a Magistrates Court under old section 75 that, immediately before the commencement day, had not been finally dealt with by the Magistrates Court is taken to be an application to the Land Court under new section 75.
- ‘(4) The president of the Land Court may give—
- (a) a direction or order that an application mentioned in this section, and any materials relating to the application that were held by the commissioner or before a Magistrates Court, be taken to be part of the proceeding before the Land Court; and
 - (b) any other necessary directions about how a proceeding under this section is to be dealt with.
- ‘(5) The chief executive must take all reasonable steps to make any applications mentioned in subsections (1) and (2), and any materials relating to the applications that were held by the commissioner, available to the Land Court.
- ‘(6) The registrar of a Magistrates Court must take all reasonable steps to make any applications mentioned in subsection (3),

[s 37]

and any materials relating to the applications that were before the Magistrates Court, available to the Land Court.

‘(7) In this section—

new means as in force from the commencement day.

old means as in force before the commencement day.

‘288 Outstanding decisions of valuers

‘(1) This section applies if—

- (a) a valuer was appointed under section 68 or 73 to decide an amount; and
- (b) immediately before the commencement day, the valuer had not finally decided the amount.

‘(2) Section 68 or 73, as in force immediately before the commencement day, continues to apply in relation to the making, effect and costs of the decision.

‘289 Access rights register

‘(1) On the commencement day, the access rights register becomes the property of the registrar.

‘(2) The registrar must ensure that, for each current access right recorded in the access rights register immediately before the commencement day, a notice appears in the relevant register kept under the *Land Act 1994* or the *Land Title Act 1994* so that a search of the register will show the existence of the access right.

‘290 Rectification or reinstatement order by the commissioner

‘(1) An order made by the commissioner before the commencement day under old section 74, that was in force immediately before the commencement day, continues in force according to its terms as if it had been made by the Land Court.

-
- ‘(2) In this section—
old means as in force before the commencement day.

‘Part 3 Provisions relating to the commissioner

‘291 Commissioner

- ‘(1) On the commencement day, the commissioner goes out of office.
- ‘(2) No compensation is payable to the commissioner because of subsection (1).

‘292 Agreements and legal proceedings

- ‘(1) An agreement or arrangement in force immediately before the commencement day, between the commissioner and another entity, is taken to be an agreement or arrangement between the State and the entity.
- ‘(2) A proceeding that could have been started or continued by or against the commissioner before the commencement day may be started or continued by or against the State.

‘293 Assets and liabilities

‘On the commencement day, an asset or liability of the commissioner, in the commissioner’s capacity as commissioner under this Act, immediately before the commencement day becomes an asset or liability of the State.

‘294 Employees

- ‘(1) A person’s employment by the commissioner immediately before the commencement day is, on the commencement day,

[s 37]

taken to be lawfully terminated under the *Industrial Relations Act 1999*.

- ‘(2) The person has the rights given to an employee whose employment has been lawfully terminated under that Act.
- ‘(3) The rights given to the person may be exercised against the State as if the State had been the employer who terminated the person’s employment.

‘295 Exempt documents

‘A document to which section 271 applied immediately before the commencement day continues to be exempt matter under the *Freedom of Information Act 1992*.

‘Part 4 Appeals

‘296 Appeal to Magistrates Court

- ‘(1) This section applies in relation to a decision of the commissioner, made before the commencement day, from which a person had a right of appeal under section 234 before the commencement day.
- ‘(2) The appeal may be started or continued on or after the commencement day and, for that purpose—
 - (a) section 234, as in force before the commencement day, continues to apply; and
 - (b) the chief executive is the respondent in place of the commissioner.

‘297 Appeal to Land Court

- ‘(1) This section applies in relation to a decision of the commissioner made before the commencement day under section 65 or 72(3).

-
- ‘(2) An appeal against the decision may be started or continued on or after the commencement day and, for that purpose—
- (a) section 235, as in force before the commencement day, continues to apply; and
 - (b) the chief executive is the respondent in place of the commissioner.’.

38 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *access rights register*, *appropriately qualified*, *commissioner*, *employment rights*, *Industrial Relations Act*, *information notice* and *pooled domestic contract*—

omit.

- (2) Schedule—

insert—

‘**grantee**, of an access right, means the mill owner or grower to whom the access right is granted.

party, to an access right, means the land-holder for the land affected by the access right or the grantee of the access right.

registrar, in relation to an access right, means—

- (a) if the access right relates to land included in a register kept under the *Land Act 1994*, the chief executive under that Act; or
 - (b) if the access right relates to land included in a register kept under the *Land Title Act 1994*, the registrar of titles.’.
- (3) Schedule, definition *cane railway easement*, ‘63(4)’—
- omit, insert*—
- ‘63(5)’.

Part 5 Amendment of Land Title Act 1994

42 Act amended in pt 5

This part amends the *Land Title Act 1994*.

43 Amendment of s 81A (Definitions for div 4)

(1) Section 81A—

insert—

‘cane railway easement see the *Sugar Industry Act 1999*, section 63(5).

mill owner see the *Sugar Industry Act 1999*, schedule.’.

(2) Section 81A, definition *public utility provider*—

insert—

‘(f) a mill owner, but only for the registration of a cane railway easement.’.

44 Amendment of s 89 (Easements for public utility providers)

Section 89(2)(a)—

insert—

‘(vii) in the case of a cane railway easement in favour of a mill owner—a purpose for which a cane railway easement may be granted under the *Sugar Industry Act 1999*; and’.