

# AGRICULTURAL STANDARDS BILL 1994

## EXPLANATORY NOTES

### GENERAL OUTLINE

#### Objective of the Legislation

The objective of the Bill is to—

- rationalise the regulatory controls over the quality and sale of seeds, stock foods and fertilisers;
- continue to provide the administrative framework for the operation of certification schemes for the genetic purity of seed;
- consolidate the controls over the use and non-use of hormonal growth promotants (HGP's) in cattle; and
- facilitate the transfer of the registration of agricultural and veterinary chemicals to the National Registration Authority.

#### Reasons for the Bill

Since 1991, there have been a number of factors necessitating a review of and changes to the *Agricultural Standards Act 1952*. These include—

- the Public Sector Management Commission (PSMC) Review of the Queensland Department of Primary Industries. One of the recommendations of this Review was that “*The Agricultural Standards Act 1952* be reviewed with the view to determining if any or all agricultural inputs can be excluded from the provisions of the legislation.”;
- the Systematic Review of Business Legislation in Queensland, undertaken in accordance with the requirements of the Business Regulation and Review Unit (BRRU) of the Department of Business, Industry and Regional Development;

- the introduction of mutual recognition legislation and its consequent impact on Queensland producers and manufacturers;
- national working parties' proposals for uniform controls over the quality and sale of seeds, stock foods and fertilisers;
- the introduction of national registration for agricultural and veterinary chemicals, to replace existing State registration controls.

The impact of each of these factors is discussed in detail below.

### ***PSMC Review***

As a result of the PSMC review, consultation took place regarding the controls required over the quality and sale of seeds, stock foods, fertilisers and agricultural and veterinary (agvet) chemicals. The pending introduction of national registration for agvet chemicals was recognised, and the abolition of State registration controls currently in the *Agricultural Standards Act 1952* was supported. Produce, seed and grain merchants and stock foods and fertiliser manufacturers favoured the elimination of the current quality standards and regulatory controls over the sale of these commodities. However, producer industry bodies generally favoured the retention of existing controls. All organisations consulted favoured the retention of certification schemes to protect the genetic purity of seed.

### ***BRRU Review***

The BRRU Reviews are essentially focussed on reducing government regulation in business. The review of the *Agricultural Standards Act 1952* therefore questioned the need for controls such as registration, labelling, and quality parameters in relation to the sale of seeds, stock foods and fertilisers.

### ***Mutual Recognition***

Controls over the quality and sale of agricultural inputs such as seeds, fertilisers and stock foods, vary from State to State. Queensland, in particular, has more stringent controls over these commodities than many other States. For example, Queensland is the only State which prescribes minimum physical quality criteria for uncertified seed. With the introduction of mutual recognition legislation, Queensland seed producers

have been disadvantaged through having to comply with their State's rigorous quality criteria, and compete with seed from other States which do not have to comply with the criteria.

### ***National Uniformity***

National committees and working parties on seeds, stock foods and fertilisers have been reviewing the controls over the quality and sale of these commodities for some time. These groups have made recommendations regarding the abolition of registration for some commodities and uniformity in labelling requirements and physical/purity criteria. The recommendations have the support of industry.

### ***National Registration***

The Commonwealth and the States and Territories have agreed on the introduction of a national registration scheme for agvet chemicals. The Commonwealth has introduced legislation providing for the scheme and all States and Territories will give effect to the agreement through the abolition of State registration controls and the introduction of legislation which will adopt the Commonwealth legislation as State laws. The provisions for the registration of agvet chemicals in Queensland are currently contained in the *Agricultural Standards Act 1952*.

Substantial amendments to the existing Act would be needed to implement the changes necessary to provide for all of the above factors. It was considered more appropriate for the existing *Agricultural Standards Act 1952* to be repealed and replaced by a new Bill.

Repeal of the existing Act would cater for—

- the abolition of the provisions for the registration of stock foods and fertilisers and the existing quality criteria for these commodities and seed; and
- the abolition of the provisions for registration and controls over the sale of agvet chemicals.

The new Bill provides for standards to be made with respect to—

- seed certification schemes to protect the genetic purity of certain seed;

- the labelling of seed, stock foods and fertilisers offered for sale; and
- prohibited materials and harmful ingredients in seed, stock foods and fertilisers.

The introduction of a new Bill was seen as opportune for the inclusion of provisions relating to hormonal growth promotants (HGP's), used in cattle. Retention of HGP sensitive international markets and increasing discrimination by local consumers has led to demands for a national system, supported by individual State legislation which provides consumers with the utmost confidence that meat products are HGP free. The complex nature of the control system has required elements of this legislative support to reside in regulations under the *Stock Act 1915*, the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*, the *Agricultural Standards Act 1952* and the *Export Control Act 1982* (Commonwealth).

The necessity to include these provisions has arisen from an agreement between the Commonwealth and the States to urgently revise the existing HGP control system and to make the system operationally more effective and administratively simpler.

### **Estimated Cost for Government Implementation**

There will be no additional cost to the government with the implementation of the legislation.

Rationalisation of resources in anticipation of the amendments to the legislation took place during 1992/93 and 1993/94, resulting in cost savings to the government of approximately \$300,000 for the activities other than the registration of agvet chemicals. The savings to the government associated with the implementation of the national registration scheme for agvet chemicals have amounted to a further \$250,000.

The infrastructure for the enforcement of HGP controls is already in existence. This Bill simply consolidates the existing control provisions.

### **Consultation**

Extensive consultation took place with industry and other government bodies following the PSMC Review in 1991. A discussion paper canvassing comments on options for legislative amendments was released at that time.

Producer organisations, such as the Queensland Graingrowers Association, the Queensland Farmers Federation, Canegrowers, and the Queensland Fruit & Vegetable Growers Association expressed some opposition to the removal of registration, surveillance and inspection arrangements. They generally favoured the retention of existing controls. However, these organisations now recognise the impacts of mutual recognition legislation and the need for national uniformity in regulatory controls and no further concerns regarding the proposals have been expressed.

There has been strong support from the outset from stock food and fertiliser manufacturers and from produce, seed and grain merchant groups for the introduction of the new legislation. There has also been universal support for the retention of seed certification, mandatory labelling provisions, and for the national registration of agvet chemicals.

Cabinet also approved the release of an information paper to advise industry of the proposals for amendments to the legislation. That paper was released in April 1994. It was not intended to elicit further comment or discussion from industry.

BRRU has been involved throughout this consultation process and has endorsed the proposals outlined in the information paper. On 21 July 1994, BRRU advised that it would recommend to Cabinet in its next report, that the review of the *Agricultural Standards Act 1952* be accepted as completed.

### ***HGP's***

Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) (July 1993) endorsed in principle the revisions to the HGP control system to be implemented from 1 January 1994. Further discussion and meetings have been held with relevant Commonwealth and other States/Territories departments to obtain a consistent and complementary national approach. The government/industry Beef Residue Management Group Draft Strategic Plan (March 1994) recommended that the States implement a statutory tag identification system and amend legislation as required. Standing Committee on Agriculture and Resource Management (SCARM) (April 1994) has also noted the need for an effective national HGP control system and has called for any further action which may be necessary to assist the credibility of the system. Within

Queensland regular consultation with the Queensland Livestock and Meat Authority (QLMA) and the Australian Quarantine and Inspection Service (AQIS) has taken place.

A number of meetings have been convened which have been attended by representatives of the cattle and meat industry organisations and associated commercial interests. These organisations have included:

United Graziers Association

Cattlemen's Union

Queensland Meat Exporters Association

Queensland Livestock, Property and Produce Brokers Association

Australian Lot Feeders Association

Australian and Veterinary Chemicals Association

Cattle Council of Australia

Australian Meat and Livestock Corporation

These contacts have been continued in both formal and informal ways and a State coordinating group for HGP's has been established to facilitate the process and to develop a formal mechanism for ensuring timely and appropriate communication channels.

All parties have expressed commitment to the system and are in agreement with the policy.

Further meetings with industry are planned to develop the timetable for implementation and to coordinate publicity prior to the introduction of any changes to the system.

The proposal has no direct impact on the community. Provided the substance is legally registered and used according to directions, HGP residues in meat are permissible provided they are below the maximum residue limit. Concerns have been expressed by the Queensland Consumers Association Inc in correspondence to the Minister for Primary Industries that a system of distinction between treated and untreated animals is not required within Queensland. The provision of a regulatory framework which meets European standards would provide the same assurance to the Australian community if an extension to the local market is demanded in the future.

## NOTES ON PROVISIONS

### PART 1—PRELIMINARY

*Clause 1* sets out the short title of the Bill.

*Clause 2* provides for the commencement by proclamation.

*Clause 3* establishes that the main object of the Bill is to provide for the making of standards about agriculture and indicates how that object is to be achieved.

*Clause 4* defines words and phrases used in the Bill.

### PART 2—STANDARDS

*Clause 5* allows the chief executive to make standards about agriculture including standards about:—

- (a) protecting the genetic purity or other qualities of seed for agriculture;
- (b) regulating the ingredients of agricultural requirements;
- (c) labelling and packing of agricultural requirements;
- (d) selling or using hormonal growth promotants; or
- (e) marking or non-marking of stock in relation to the use or non-use of hormonal growth promotants.

The standard can also create offences with a maximum penalty of 20 penalty units.

*Clause 6* provides for a standard to be subordinate legislation.

*Clause 7* allows the chief executive to establish advisory committees to advise the chief executive about standards.

*Clause 8* sets out the procedure to make a standard including requiring

the chief executive to prepare a draft standard and take reasonable steps to engage in consultation about that draft standard.

*Clause 9* provides that compensation is not payable merely because the standard is made, amended or repealed.

*Clause 10* provides for a regulation to prevail over a standard if there is any inconsistency between the regulation and the standard, to the extent of that inconsistency.

### **PART 3—OFFENCES ABOUT AGRICULTURE**

*Clause 11* prohibits the selling of an agricultural requirement unless it is packed or labelled in a way required by a standard.

Maximum penalty—\$3,000 (50 penalty units).

*Clause 12* creates an offence for a person to make a false or misleading representation about an agricultural requirement in the course of trade or commerce and in connection with the supply or possible supply of that agricultural requirement. To omit from a statement attached to an agricultural requirement anything that to the person's knowledge would be misleading in a material particular is also an offence.

Maximum penalty—\$3,000 (50 penalty units).

*Clause 13* prohibits a person from possessing an agricultural requirement that contains a prohibited material or too much of a harmful ingredient, in the course of trade or commerce in connection with the supply or possible supply of that agricultural requirement. A standard can prescribe things that are prohibited materials or harmful ingredients, and the maximum amount of harmful ingredients that can be included in an agricultural requirement.

Maximum penalty—\$3,000 (50 penalty units).

*Clause 14* creates an offence for a person to make a false or misleading representation about the use or non-use of a hormonal growth promotant in the course of trade or commerce.

Maximum penalty—\$3,000 (50 penalty units).



**PART 4—ENFORCEMENT OF ACT**

*Clause 15* provides for the chief executive to appoint inspectors provided the person has the necessary expertise or experience, or has satisfactorily completed approved training.

*Clause 16* allows for an inspector's powers to be limited by regulation, condition of appointment or by written notice from the chief executive to the inspector.

*Clause 17* provides for an inspector to hold office on conditions set out in the instrument of appointment, and sets out how an appointment may terminate.

*Clause 18* provides for requirements in relation to an inspector's identity card, and its return when the person ceases to be an inspector. Failure to return the identity card when a person ceases to be an inspector is an offence.

Maximum penalty—\$600 (10 penalty units).

*Clause 19* provides for an inspector to produce an identity card for inspection, when the inspector is exercising a power.

*Clause 20* provides for an inspector to enter places in certain circumstances. For example, if the place is a public place and the entry is made when the place is open to the public, or if the occupier consents to the entry.

*Clause 21* sets out the process by which an inspector can obtain consent to entry of a place, and the completion of an acknowledgment by the occupier if consent is given.

*Clause 22* provides for an inspector to apply to a Magistrate for a warrant to enter a place, and for a Magistrate to issue the warrant if satisfied the inspector has reasonable grounds for suspecting that evidence may be gained in respect of an offence against the Act and the evidence is, or may be within the next seven days, at the place.

*Clause 23* allows an inspector to apply for a warrant by phone, fax and other forms of communication if necessary because of urgent circumstances or other special circumstances, such as the inspector's remote location. The clause also provides for procedures for the inspector to obtain a warrant in those special circumstances.

*Clause 24* provides for an inspector to enter a vehicle if the inspector suspects the vehicle is being or has been used to commit an offence against the Act, and the vehicle or something in the vehicle may provide evidence of an offence against the Act. The clause also sets out powers in relation to how the inspector may enter the vehicle. Failure to comply with an inspector's requirement is an offence.

Maximum penalty—\$2,400 (40 penalty units).

*Clause 25* provides a power for an inspector, who enters a vehicle, to seize something in the vehicle if the inspector believes on reasonable grounds the thing is evidence of an offence against the Act. Tampering with a seized thing can amount to an offence.

Maximum penalty—\$2,400 (40 penalty units).

*Clause 26* provides for the inspector to give written notice to enable a thing to be seized and require the person to take it to a stated place or to remain in control of the seized thing.

Maximum penalty—\$2,400 (40 penalty units).

*Clause 27* requires an inspector to give a receipt for anything seized.

*Clause 28* allows the owner of a seized thing to gain access to that thing for certain purposes.

*Clause 29* provides for a seized thing to be returned to the owner in certain circumstances.

*Clause 30* provides for an inspector to require the owner of a seized thing to alter it to make it comply with the Act, if possible. If the alteration does not take place, then the seized thing will be forfeited to the State.

*Clause 31* provides for the forfeiture of a seized thing if it cannot be made to comply with the Act and it is necessary to retain it to prevent the commission of an offence.

*Clause 32* provides for a seized thing to be forfeited to the State if the owner cannot be located or it cannot be returned to its owner.

*Clause 33* sets out inspectors' powers after entering places or vehicles, including such things as searching the place or vehicle, copying documents found in the place or vehicle and taking samples of anything in the place or vehicle.

Maximum penalty—\$2,400 (40 penalty units).

*Clause 34* provides for an inspector to require a person to state that person's name and address if the inspector finds the person committing an offence against the Act or finds the person in circumstances that lead the inspector to suspect the person has just committed an offence against the Act. The person does not commit an offence of failing to provide a name and address if that person is not convicted of the original offence.

Maximum penalty—\$2,400 (40 penalty units).

*Clause 35* provides for an inspector to require the production of documents that must be kept under the Act. The inspector may keep the document for such things as making copies of the document.

Maximum penalty—\$3,000 (50 penalty units).

*Clause 36* provides for an inspector to destroy an agricultural requirement which the inspector believes is a serious risk of potential harm to such things as health, trade or commerce or the environment.

Maximum penalty—\$4,800 (80 penalty units).

*Clause 37* allows the chief executive to have a sample analysed which has been taken by an inspector. The clause also provides for an offence for tampering with the sample.

Maximum penalty—\$2,400 (40 penalty units).

*Clause 38* allows the chief executive to publish a document containing such things as the analysis results, the name and address of the person who manufactured the analysed thing and an explanation of the analysis results.

*Clause 39* provides for an offence to be created if a person gives false or misleading information to an inspector in a material particular, or omits from a statement to an inspector information which makes the statement misleading in a material particular.

Maximum penalty—\$2,400 (40 penalty units).

*Clause 40* provides for an offence to be created if a person supplies a document containing information which the person knows is false, misleading or incomplete in a material particular. It is not an offence if the person when supplying the document informs the chief executive or an inspector how the document is false, misleading or incomplete.

Maximum penalty—\$2,400 (40 penalty units).

*Clause 41* allows for a person to claim compensation from the State if

that person incurs loss or expense arising from the exercise of a power under the Act, if a court is satisfied that it would be just to make the order in the circumstances of the particular case.

*Clause 42* allows for a court to order the forfeiture of something, the subject of an offence, if a person is convicted of the offence.

*Clause 43* provides that something forfeited to the State becomes the State's property and may be dealt with as the chief executive considers appropriate.

*Clause 44* provides for an inspector to give notice to the owner of a thing if the inspector damages that thing when exercising a power under the Act.

*Clause 45* prohibits a person obstructing an inspector exercising a power under the Act.

Maximum penalty—\$3,600 (60 penalty units).

*Clause 46* prohibits persons from pretending to be inspectors.

Maximum penalty—\$3,600 (60 penalty units).

## **PART 5—REVIEW OF CHIEF EXECUTIVE'S DECISIONS**

*Clause 47* provides for an appeal to the chief executive by persons who are adversely affected by a decision under certain parts of the Act.

*Clause 48* provides for an appeal of a decision to be made within 28 days after notice of the decision is given to the person.

*Clause 49* requires the chief executive to make a decision on an application for review within 28 days after the application is made, and if the decision is not made within that time the original decision is confirmed.

*Clause 50* allows for an applicant for a review of a decision to apply to a Magistrates Court for a stay of the decision.

## **PART 6—APPEALS**

*Clause 51* provides for an appeal to a Magistrates Court by a person dissatisfied with a decision of the chief executive or an inspector, but only if the person has sought a review of the decision by the chief executive.

*Clause 52* sets out the procedure for making an appeal to the Magistrates Court.

*Clause 53* allows for a Magistrates Court to grant a stay of the decision appealed against.

*Clause 54* sets out the powers of the Magistrates Court on appeal.

*Clause 55* provides that if the Magistrates Court substitutes another decision then the substituted decision is taken to be the chief executive's decision.

*Clause 56* allows rules of court to be made for appeals to the court.

*Clause 57* provides that an appeal to the District Court from a decision of a Magistrates Court can only be made on a question of law.

## **PART 7—LEGAL PROCEEDINGS**

*Clause 58* provides that an offence against the Act is to be a summary offence brought under the *Justices Act 1886*.

*Clause 59* provides that a person who attempts to commit an offence commits an offence with the maximum penalty of half of the maximum penalty for actually committing the offence.

*Clause 60* limits the time in which a proceeding for an offence can be brought.

*Clause 61* provides for the chief executive to issue certificates which will be evidence of specified matters as stated in the certificate, such as whether at a particular time the person stated in the certificate was the holder of an approval or a licence.

*Clause 62* provides for notice to be given to the chief executive in relation

to a prosecution if the person intends to challenge specified matters, such as the appointment of the chief executive or an inspector.

*Clause 63* provides for a certificate or report of the result of an analysis to be evidence of the contents of that certificate or report, if it is signed by a person competent to make the analysis.

*Clause 64* provides that if a person is convicted of an offence the court may order that person to pay the costs of the analysis.

*Clause 65* provides for an indemnity to be given, to inspectors or persons acting under the direction of inspectors, by the State.

## **PART 8—MISCELLANEOUS**

*Clause 66* provides for a power of delegation of the chief executive.

*Clause 67* provides a power for the Governor in Council to make regulations.

## **PART 9—TRANSITIONAL PROVISIONS**

*Clause 68* provides for definitions which relate to Part 9.

*Clause 69* provides for existing permissions to continue in effect as if made under the new Act unless the permission would permit something that could not be permitted under the new Act.

*Clause 70* provides for existing inspectors' appointments to continue for a period of 6 months after the commencement of the Act.

*Clause 71* provides for an order, direction, requirement or other decision made under the existing Act to continue as if it were made under the new Act.

*Clause 72* provides for a regulation or rule made under the existing Act to continue in effect for 6 months after the commencement of the new Act.

*Clause 73* allows the Governor in Council to make a regulation in relation to transitional matters if the Governor in Council considers that no provision or insufficient provision has been made for that transitional matter.

*Clause 74* provides for the Minister to review the Act as soon as practicable after 5 years from the commencement of the Act.

## **PART 10—REPEALS**

*Clause 75* provides for a number of Acts to be repealed.