

# PRIMARY INDUSTRIES LEGISLATION AMENDMENT BILL 1997

## EXPLANATORY NOTES

### GENERAL OUTLINE

#### Short Title

This Bill will be known as the Primary Industries Legislation Amendment Bill 1997.

#### Objectives for the legislation

The objectives of the Bill are to amend a number of Acts administered by the Minister for Primary Industries, in particular—

- (a) the *Forestry Act 1959* (jointly administered by the Ministers for Natural Resources and Primary Industries), to provide an effective deterrent against illegal harvesting of sandalwood on Crown land by—
  - (i) increasing penalties for illegally interfering with or obtaining forest products or quarry materials from Crown land;
  - (ii) providing for confiscation of equipment used or intended to be used, in or in connection with, or is evidence of such illegal activities; and
  - (iii) making minor amendments to overcome technical difficulties in the Act and clarifying the powers of forest officers to obtain certain documents for inquiry purposes;
- (b) the *Grain Industry (Restructuring) Act 1991* to change the “sunset” date for certain matters from 30 June 1997 to 30 June 1998; and
- (c) the *Sugar Industry Act 1991* to implement certain recommendations of the Sugar Industry Review Working Party, particularly about the governance of the Queensland Sugar Corporation and the Bureau of Sugar Experiment Stations, and to clarify the review process for arbitrated decisions in awards.

## **Reasons for the Bill**

### **(a) *Forestry Act 1959* Amendments**

Significant amounts of sandalwood timber are being illegally and unsustainably harvested from Crown lands in western Queensland for commercial purposes. The majority of this material is believed to be passed off as having been lawfully obtained from freehold land in order to gain Commonwealth approval for export to overseas markets.

As well as having adverse environmental impacts and threatening short and long term availability of this valuable timber resource, this illegal activity undermines legitimate operators and has the potential to bring about the collapse of the Queensland sandalwood industry.

The impact of illegal harvesting is believed to have been a major factor in the severe downturn in the industry in recent times, particularly affecting the local industry in the Richmond-Hughenden area.

Export data indicates that illegal sandalwood harvesting has not been halted by enforcement activities utilising the current investigatory provisions and penalties contained in the *Forestry Act*. The amendments to the *Forestry Act* proposed in this Bill will enhance the powers of forest officers to investigate alleged offences and increase penalties as a deterrent to further illegal harvesting activities.

### **(b) *Grain Industry (Restructuring) Act 1991* Amendments**

The amendments to the *Grain Industry (Restructuring) Act 1991* proposed in the Bill will extend the existing “sunset” date provisions for the exercise of certain statutory powers from 30 June 1997 by one year to 30 June 1998. A National Competition Policy (NCP) review of the Act is under way. The review is to assess the public benefit or cost of extending the legislation containing statutory marketing powers (“vesting”) for Grainco Ltd past 30 June 1997. During the course of the review it has become apparent that—

- (a) lucrative export barley contracts could be lost if a deregulation option was unilaterally adopted in Queensland. In particular barley contracts totalling at least 50,000 tonnes per annum to the Japanese Food Authority (JFA) could be at risk as the JFA has a policy of only sourcing food barley, for which they pay a

- premium over world export price, from statutory bodies, or bodies with statutory recognition, such as Grainco Ltd;
- (b) other States are reluctant to commence their reviews of grain legislation under National Competition Policy so as to be aligned with Queensland's timing. For example, New South Wales is not expected to have its review completed within the next two years; and
  - (c) desirably, all States should consider their NCP reviews at the same time because of competition among the States in grain trading.

### ***(c) Sugar Industry Act 1991 Amendments***

The *Sugar Industry Act 1991* was extensively reviewed over the past 12 months by the Sugar Industry Review Working Party. The Working Party reported in November 1996 in a report called *Sugar - Winning Globally*.

The amendments in this Bill, among other things, implement certain recommendations of that Report.

In particular, the Queensland Sugar Corporation is restructured more in line with a commercial entity. It is to be governed by a board of directors (see recommendations 6.7 and 6.8), and a regime of fiduciary duties is imposed, similar to those imposed on public corporations and State trading bodies (recommendation 6.13). The commercially sensitive issue of domestic sugar sales is managed by a special quorum that excludes directors who have sugar cane production or milling interests, or who are otherwise potentially interested in the innovations that might be considered by the Corporation in approving such sales (see recommendation 6.14).

Further, the principal research and development body, the Bureau of Sugar Experiment Stations is restructured. The existing structure is confusing and complex. The Sugar Experiment Stations Board oversees research and development activities. The Board is required to maintain a separate unincorporated entity called the Bureau of Sugar Experiment Stations, and may, within that structure, maintain sugar experiment stations. This Bill integrates these 3 concepts into a single corporate entity, the Bureau of Sugar Experiment Stations, to be governed by a board of

directors. Directors are to be appointed on the basis of their skills and expertise (see in particular recommendations 7.10 and 7.11).

The Bill also clarifies that an arbitrator's decision is taken to be a decision of the negotiating team, and thence amenable to judicial review. The need for this amendment arose after doubt was cast on whether the *Judicial Review Act 1991* in fact applied to the arbitrator's determination, as was intended originally.

### **Ways in which the objectives are to be achieved in the Bill**

The Bill's objectives are achieved by—

- increasing penalties for illegally interfering with or obtaining forest products or quarry materials from Crown land;
- providing for confiscation of equipment used in such illegal activities; and
- making minor amendments to overcome technical difficulties in the Act and clarifying the powers of Forest Officers to obtain certain documents for inquiry purposes;
- changing the “sunset” dates in the *Grain Industry (Restructuring) Act 1991* from 30 June 1997 to 30 June 1998;
- extending the appointment of the chairperson and statutory director of Grainco to the new “sunset” date;
- restructuring the Queensland Sugar Corporation and providing a regime of duties and liabilities of directors similar to those imposed on public corporations and State trading bodies;
- renaming the Sugar Experiment Stations Board as the Bureau of Sugar Experiment Stations, integrating the Bureau into a single entity, and providing for its governance by a board of directors;
- declaring that an arbitrator deciding on a local award matter must give reasons for a decision, that the decision is taken to be that of the negotiating team, and thence amenable to judicial review.

**Alternatives to the Bill**

The Bill's objectives may only be achieved by amending the Acts.

Directors' fiduciary duties may be stated informally, and training provided in corporate governance (as recommended by the Working Party to complement these amendments). However, the intention is to provide an enforceable regime to be complemented by other strategies, necessitating these amendments.

**Estimated cost for government implementation**

Nil.

**Consistency with fundamental legislative principles**

The provisions of the Bill amending the *Grain Industry (Restructuring) Act 1991* and the *Sugar Industry Act 1991* are consistent with fundamental legislative principles as set out in the *Legislative Standards Act 1992*.

The amendment of the *Forestry Act 1959* provides for seizure and, if ordered by a court, forfeiture of certain property. This raises an issue about individual's rights, especially those related to individual's property rights. The power provided for in this amendment is based on that given to the State in several other Acts about protection of natural resources and in laws about use of equipment for illegal purposes. It is considered that the power is reasonable in the circumstances of protecting a valuable natural resource, and that significant administrative and judicial safeguards provide against inappropriate use of the power.

**Consultation**

Representatives of the Sandalwood industry have requested that action be taken to strengthen regulatory powers in this area. The Minister for Natural Resources, the Department of Natural Resources, the Office of the Premier and Department of Justice were also consulted. The Department of Justice was particularly consulted on the increase in penalty, and the seizure and forfeiture amendments of the *Forestry Act 1959*. The department indicated that it has no difficulty with those proposed amendments.

Representatives of grain growers and traders have expressed support for extension of the legislation, particularly applying to barley exports, should there be a risk of loss of business out of Queensland to other States due to deregulation. The National Competition Policy Unit of the Treasury Department was also consulted and supports the extension.

Sugar industry participants were consulted extensively in the review process, and a legislation committee was created to guide implementation of recommendations that required statutory amendment.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

*Clause 1* provides that the short title of the Bill is the Primary Industries Legislation Amendment Bill 1997.

*Clause 2* provides for commencement of the Bill's provisions. The *Sugar Industry Act 1991* amendments commence by proclamation, allowing the Corporation and Bureau's restructuring to be coordinated with the expiry of the current members' terms later this year. Other provisions commence on assent.

### **PART 2—AMENDMENT OF FORESTRY ACT 1959**

*Clause 3* provides that this part amends the *Forestry Act 1959*.

*Clause 4* amends the heading of section 5, inserts several new definitions, clarifies an existing definition and repeals an unnecessary subsection.

*Clause 5* corrects a drafting error in section 18(1)(e) and allows a forest officer to require the production of documents which may be relevant to an

inquiry in addition to the current power to require documents which are relevant. This expanded power to require production cannot be used for unconstrained fishing expeditions because the forest officer can only require the production of such documents where the officer is able to form the reasonable opinion that they may be material to an inquiry.

The clause amends section 18(1)(g) to clarify seizure powers under the Act by combining overlapping seizure powers previously set out in sections 18(1)(g) and 82(1) into one power. The new power reflects the way in which the previous overlapping powers have been interpreted by forestry officers which was that, since section 82(1) was less restrictive in its entry powers, it applied to unoccupied land whereas section 18(1)(g) applied to occupied land.

The clause also increases the items that can be seized by a forest officer under section 18(1)(g) by including documents, machinery and plant. This amendment is necessary because evidence of the illegal interference with or getting of forest products or quarry material is sometimes contained in documents found in vehicles that have been used to scout for or transport forest product or quarry material. Plant and equipment used to load trucks or, for example to desap sandalwood is also found. The amendment will also allow seizure in circumstances where a forest officer reasonably suspects the thing is intended to be used in or in connection with, or is evidence of the getting or interfering with forest products or quarry material. This will allow for the seizure of vehicles, loaders, desappers etc which are found at the site where illegally acquired forest product or quarry material is found which will clearly be used in connection with the illegally acquired item.

*Clause 6* inserts a penalty for the offence of interfering with forest products (including quarry material) on state forests. This section has previously been covered by the lesser penalty level set out in section 88(2), the general offence provision. The increased level of the penalty is intended to communicate to the court the seriousness with which this offence should be regarded.

*Clause 7* inserts a penalty for the offence of interfering with forest products and quarry material on Crown holdings and mining leases. This section has previously been covered by the lesser penalty level set out in section 88(2), the general offence provision. The increased level of the

penalty is intended to communicate to the court the seriousness with which this offence should be regarded.

*Clause 8* inserts a penalty for the offence of interfering with forest products and quarry material on Crown land. This section has previously been covered by the lesser penalty level set out in section 88(2), the general offence provision. The increased level of the penalty is intended to communicate to the court the seriousness with which this offence should be regarded.

*Clause 9* removes the seizure power contained in section 82(1) and makes a number of minor amendments consequent on the incorporation of seizure powers into section 18(1)(g) of the Act under clause 5.

The clause also removes a number of subsections which have been replaced with new general provisions dealing with notice of seizure and forfeiture of timber.

Amendments are also made to the powers for seizure of beehives contained in the section. The power contained in sections 82(10) and 82(11) breached fundamental legislative principles because it allowed for the seizure and disposal of beehives without giving the owner any opportunity of removing the hives first. The new provisions will ensure that reasonable inquiries are made to find the owner and give the owner the opportunity to remove the beehives before they are disposed of. Beehives could not be dealt with in the new general provisions relating to seizure and forfeiture because of the highly perishable nature of beehives.

*Clause 10* removes references to seizures by forest officers under section 18(1)(g). The amendments are consequential to insertion of new sections 82B to 82M dealing with seizures under section 18(1)(g).

The clause also deletes subsections (3) to (5) consequent on the insertion of new procedures in the Act relating to procedures relating to seizure and forfeiture.

*Clause 11* sets out procedures for the issuing of a receipt by a forest officer to the person from whom the officer has seized a seized thing. The clause also provides a right for a person to inspect a seized thing and if it is a document, make copies of it, and for the Primary Industries Corporation to return a seized thing, including on conditions and sets out when the Corporation must return any property or security taken by it under a condition imposed.



Proposed section 82E provides for the circumstances under which the Primary Industries Corporation must return a thing seized. Return is not required if the Corporation believes on reasonable grounds that the seized thing is liable for forfeiture or if a court has ordered that the thing be forfeited.

Proposed section 82F provides that the Primary Industries Corporation may order forfeiture of unclaimed things seized to the corporation where it cannot identify the owner or because of its value it is not reasonable to make inquiries about its owner.

Proposed section 82G provides that on conviction for an offence under sections 39, 53 or 54 of the Act, the court may order forfeiture of a thing seized to the corporation, while proposed section 82M provides that on forfeiture a seized thing becomes the property of the corporation.

Proposed section 82H allows a person from whom a thing has been seized to appeal to the Magistrates Court nearest to where the thing was seized provided that the seized thing has not become the State's property.

Proposed section 82I sets out the procedures for an appeal under proposed section 82H.

Proposed section 82J sets out the powers of the Magistrates Court on appeal. The court may confirm the seizure of the thing or set aside the seizure and order the return of the thing.

Proposed section 82K allows an appeal to the District court on questions of law by a party dissatisfied by the decision of the Magistrates court under proposed section 82J.

Proposed section 82L sets out the circumstances in which seized forest products and quarry material become State's property. Despite proposed sections 82E to 82G, forest products and quarry material become the State's property if, within 14 days, the seizure is not the subject of an appeal to the Magistrates Court, there is an appeal but the seizure is confirmed or agreement is reached in writing between the corporation and the claimant that the property should become the corporation's property. This provision reflects the current practice as set out in section 82 and is necessary because of the perishable nature of forest products.

Proposed section 82M provides that on forfeiture of a thing seized, the thing becomes the States' property.

*Clause 12* amends the section consequent upon the insertion of new sections 82B to 82M specifically dealing with seizures by forestry officers pursuant to section 18(1)(g).

*Clause 13* amends the section consequentially to the expanded number of things that may be seized by a forestry officer under section 18(1)(g) and expands the offence dealing with taking, removing or interfering with things seized or detained to include things forfeited.

*Clause 14* increases the penalty levels for offences under section 87, about forgery of licences etc and other offences. The increased level of the penalty is intended to communicate to the court the seriousness with which this offence should be regarded.

### **PART 3—AMENDMENT OF GRAIN INDUSTRY (RESTRUCTURING) ACT 1991**

*Clause 15* provides that this part amends the *Grain Industry (Restructuring) Act 1991*.

*Clause 16* inserts a definition “expiry date”, used in the later amendments of this Act.

*Clause 17* amends a sunset date.

*Clause 18* amends a sunset date.

*Clause 19* amends a sunset date.

*Clause 20* amends a sunset date.

*Clause 21* amends a sunset date.

*Clause 22* amends a sunset date.

*Clause 23* amends a sunset date.

*Clause 24* extends the appointment of the Chairperson and statutory director of Grainco from the old “sunset” date to the new expiry date.

## **PART 4—AMENDMENT OF SUGAR INDUSTRY ACT 1991**

*Clause 25* provides that this part and the schedule amend the *Sugar Industry Act 1991*. *Clause 2* provides that these amendments commence by proclamation.

*Clause 26* amends certain definitions.

*Clause 27* restructures the Queensland Sugar Corporation by providing for its management by a board of directors, increases the number of directors by 1 to 10, and provides for directors' qualifications.

*Clause 28* omits provisions that are unnecessary: refer *Acts Interpretation Act 1954*, section 25.

*Clause 29* amends the power of delegation consequentially to the change of the Corporation's structure.

*Clause 30* provides for the general duties and liabilities of the directors of the Corporation implementing in part recommendation 6.14 of the Sugar Industry Review Working Party report. The duties and liabilities are comparable to those in the *Corporations Law* and those imposed on directors of State trading entities. Further duties and liabilities are provided by other clauses of this Bill.

*Clause 31* adjusts the term of membership to reflect current drafting practice, and to allow the *Acts Interpretation Act 1954* provisions about appointments to take effect for local boards.

*Clause 32* omits provisions that are unnecessary: refer *Acts Interpretation Act 1954*, section 25.

*Clause 33* provides for judicial review of arbitrated decisions in awards. This was the original intention in implementing the new negotiating procedure in 1996. However, doubt has been cast on whether such a decision was subject to judicial review. This amendment provides that the inclusion of a provision in an award following arbitration is to be taken as a decision made by the negotiating team, and to be subject to the *Judicial Review Act 1991*. The arbitrator is required to give reasons for the decision to ensure that reasons are available in the event of the determination being challenged by an aggrieved person.

*Clause 34* establishes the Bureau of Sugar Experiment Stations as a body corporate with legal capacity. Another provision in this Bill renames the existing Sugar Experiment Stations Board as the “Bureau of Sugar Experiment Stations” thereby preserving the continuity of the entity.

*Clause 35* restructures the Bureau by providing for its management by a board of directors, states the number of directors to be 8, and provides for directors' qualifications. The clause also omits provisions that are unnecessary because of the *Acts Interpretation Act 1954*, section 25.

*Clause 36* amends the functions of the Bureau consequentially to the change to the Bureau's structure and name.

*Clause 37* omits the obligation of the previous Board to maintain the Bureau. This Bill integrates the Board, the Bureau and the sugar experiment stations into a single organisational structure, making section 69 unnecessary.

*Clause 38* inserts a definition in section 81 consequentially to the changes to section 3.

*Clause 39* amends the definitions for part 6 consequentially to the structural changes to the Corporation and the Bureau, and to provide for revised duties and liabilities of directors or members of the various bodies under the Act.

*Clause 40* provides in proposed section 103 that members of bodies must disclose any interest they have in a matter to be considered by the body. Proposed section 103A provides for voting by members who are interested in a matter before a body. These 2 sections replace the existing section 103 with a form of disclosure and voting provision now common across State entities, but designed to address specifically the bodies under this Act.

Proposed section 103B deals expressly with consideration by the Corporation of domestic marketing by it of sugar, implementing recommendation 6.14 of the Sugar Industry Review Working Party report. That recommendation was for such matters to be dealt with only by those directors who are not industry participants (who are possessed of an interest in such matters because they are industry participants). In practice, this means only 4 directors are available to consider such matters, being the directors described in proposed sections 14(a) and (d) and 13(2)(a): see clause 27. A quorum under section 98(3) is 6 of the Corporation's 10

directors. Therefore, a special quorum of 2 appointed directors is provided. That quorum is still subject to the disclosure and voting provisions inserted by this clause.

*Clause 41* omits a provision that is unnecessary: see *Acts Interpretation Act 1954*, section 25.

*Clause 42* amends the section about proceedings for offences to provide for the new category of offences, some carrying custodial sentences, to be heard on indictment. Other offences against this Act proceed summarily.

*Clause 43* inserts a new provision allowing a prosecution for the newly inserted offences of a breach by a director of the Corporation of the director's duties (see proposed section 29A) to proceed on indictment.

*Clause 44* provides for renaming of the Sugar Experiment Stations Board as the Bureau of Sugar Experiment Stations, and continuity of that body.

## **SCHEDULE**

The Schedule make minor amendments to the *Sugar Industry Act 1991* consequentially to the change to the name and structure of the previous Board (now Bureau) and changes to governance of the Corporation.