

PRIMARY INDUSTRIES LEGISLATION AMENDMENT BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Primary Industries Legislation Amendment Act 1999*.

Objectives of the Legislation

The Bill amends the following Acts administered by the Minister for Primary Industries:

- *Agricultural Standards Act 1994*
- *Chicken Meat Industry Committee Act 1976*
- *City of Brisbane Market Act 1960*
- *Fisheries Act 1994*
- *Fruit Marketing Organisation Act 1923*
- *Grain Industry Restructuring Act 1991*
- *Meat Industry Act 1993*
- *Primary Producers' Organisation & Marketing Act 1926*

Reasons for the Bill

Agricultural Standards Act 1994

The Bill will remove certain words which were inserted as a result of an error in the *Primary Industries Legislation Amendment Act 1998*.

Chicken Meat Industry Committee Act 1976

The Bill will implement the recommendations of a recent National Competition Policy review of this Act.

The Review Committee recommended that a legislative arrangement be retained, central to which is the ability of growers to undertake contract negotiations directly, both collectively and independently, with individual processors, and that a clear dispute resolution process be established.

A role was envisaged for the Chicken Meat Industry Committee as a body which would facilitate the collective negotiation process between growers and processors (but no longer approve contracts) and administer the dispute resolution mechanisms covering mediation and arbitration. The Chairman of the Committee is to have a non-voting role to ensure that matters are resolved by consensus between growers and processors.

As the industry structure to be implemented in this Bill will provide for collective bargaining between growers and processors in potential contravention of the Commonwealth's *Trade Practices Act (Cth)* an explicit authorisation for this conduct will be included in the Bill to provide the necessary exemption from the provisions of part 4 of that Act.

City of Brisbane Market Act 1960

The Bill will amend and repeal the *City of Brisbane Market Act 1960*, to facilitate the corporatisation of the Brisbane Market Authority. The Act will be redundant upon the proposed corporatisation of the Brisbane Market Authority. The new corporatised entity will be a "statutory Government Owned Corporation and subsequently become a "company Government Owned Corporation" under the *Government Owned Corporations Act 1993* and will be a registered company subject to corporations law.

In order to establish the Brisbane Market Corporation as a "company GOC", it will be necessary to repeal the *City of Brisbane Market Act 1960* in two stages by separate proclamation.

Prior to the repeal of the Act, provisions will be inserted which allow for particular by-laws to be inserted into the lease contracts involving the Authority and tenants. The contracts will therefore contain those particular by-laws as the other by-laws will expire by virtue of the Act being repealed.

Fisheries Act 1994

The amendments implement Queensland participation in an agreed National Docketing System (NDS). These extend the current docket keeping requirements in the Act to wholesale sellers and buyers, and processors of abalone. Additionally the amendments create an offence where a person unlawfully possesses fish in Queensland knowing the fish have been taken in contravention of fisheries legislation of another State. The documentation will provide the means of tracing the abalone to its source to determine whether it has been lawfully taken.

The amendments also provide for inspectors to obtain a “monitoring warrant” to gain access to places other than dwelling houses for a period of up to two months to monitor compliance with the Act. A number of safeguards will apply to ensure sufficient control over the issue and content of the warrant. The magistrate will have discretion to place conditions on the powers to be exercised under the warrant and to impose other restrictions on the use of the warrant. The warrant provision will extend only to allow access to places where abalone is suspected to be held.

Amendments also provide better protection for mangroves and other marine plants and increase the associated maximum penalty from 2000 to 3000 penalty unit.

Fruit Marketing Organisation Act 1923

The name of the Committee of Direction is changed to Queensland Fruit and Vegetable Growers (QFVG) and the name of the Act is changed to reflect the situation that the organisation is no longer involved in marketing and is a grower representative body. In addition, dormant marketing provisions are repealed.

Provisions are inserted to allow QFVG board members to be elected to their positions. A wider range of legal entities will now be eligible for registration as a local association and sectional group committees will be able to be elected by regulation. This will allow greater flexibility in the internal structure of the representative fruit and vegetable grower organisation as amendments to the Act are currently required.

In addition a power will be provided to allow for regulations for a poll of growers in regard to changes in levies.

Certain fruits are declared retrospectively from 1 July 1998 to validate certain levy collections done in accordance with a set of Regulations in the fruit and vegetable industry which have since been found to be deficient.

A number of other procedural or consequential amendments are also provided.

Grain Industry Restructuring Act 1991

The Bill will implement the agreed outcome of the National Competition Policy review of this Act and make further changes arising from a review of the accountability requirements in the Act applying to Grainco.

Part 4 of the Act provides for a compulsory marketing scheme for wheat, barley and Central Queensland sorghum. By virtue of the Act these grains automatically vest in Grainco unless exempted from the part 4 provisions.

The Bill will implement the following recommendations of this National Competition Policy Review:

- deregulate all domestic trading of grain (wheat, barley and sorghum including seed wheat and seed barley);
- repeal all regulation pertaining to sorghum produced in Central Queensland;
- preserve as inactive legislation the provisions relating to the regulation of export wheat, subject to the outcome of the review of the Commonwealth's *Wheat Marketing Act 1989*; and
- maintain for three years the statutory "single desk selling" by Grainco in relation to export barley.

The Government accepted a Review Committee decision that if vesting powers are retained for particular grains by Government decision, a supervisory panel of three members should be appointed by the Government to ensure the administration of those powers is appropriate. The Bill widens the Ministerial power of direction in the Act to allow the Minister to require the provision of relevant information from Grainco to the panel should this prove to be necessary. The panel will effectively replace the roles of the Government appointed "statutory director" and "chairperson" and these positions will be repealed.

In addition the Bill will make the following changes to provide for more appropriate public accountability requirements for Grainco in view of its much reduced regulatory role, and in keeping with its status as a public company, subject to the full audit and reporting requirements of the Corporations Law:

- retain application of the *Criminal Justice Act 1992*, but limited to the exercise of Grainco's residual statutory powers;
- terminate the application to Grainco of the *Financial Administration and Audit Act 1977* (FAA Act), *Libraries and Archives Act 1988* and the *Parliamentary Commissioner Act 1974*.

Meat Industry Act 1993

The amendments clarify the appeal process for appeals made to the Meat Industry Tribunal and they clarify that the Tribunal is empowered to charge fees for an appeal made to it.

Primary Producers' Organisation & Marketing Act 1926

The amendments remove references to marketing provisions from the title of the Act to reflect the fact that the Act now deals only with grower representative organisations. Amendments also repeal dormant provisions relating to commodity marketing boards and make a number of amendments relating to election processes and organisational structure of the canegrower representative bodies.

The Act previously covered two types of statutory producer bodies, namely commodity marketing boards and producer representative organisations. There are no longer any marketing boards in existence and all of the unused marketing provisions are repealed.

Amendments are also made to the provisions of the Act relevant to the operation of CANEGROWERS, the statutory producer representative body in the sugar industry. These amendments have arisen in the context of a review of the Regulation relating to the internal organisational arrangements of the 3 tier structure comprising the Queensland Cane Growers' Council, district cane growers' executives and mill suppliers' committees. The amendments are necessary to facilitate a rewrite of the Regulation prior to its expiry on 30 June 1999.

Estimated costs for government implementation

Nil

Consistency with fundamental legislative principles

The provisions of the Bill are in the main consistent with fundamental legislative principles as set out in the *Legislative Standards Act 1992*.

There are five exceptions.

Firstly, the proposed amendment to the *Fruit Marketing Organisation Act 1923* to provide for the retrospective operation of the declaration of certain fruits is an infringement of the fundamental legislative principle that legislation should not adversely affect rights and liberties or impose obligations retrospectively.

However, there are good reasons to propose retrospectivity. The purpose of the *Fruit Marketing (Committee of Direction Levies) Regulation 1992* was clearly to provide for the making of a levy on certain fruits but failed to follow the procedures set out in the principal legislation to firstly declare the fruit so that a levy could be charged. Other prior and valid declarations pertaining to fruit such as avocados, rockmelons and lychees inadvertently lapsed under the automatic 10 year expiry of subordinate legislation under the *Statutory Instruments Act 1992*.

In summary, the retrospectivity is needed to correct a technical failure of the previous amendment to the *Fruit Marketing (Committee of Direction Levies) Regulation 1992* and give new life to inadvertently lapsed Regulations. At all times, the Queensland Fruit and Vegetable Growers approved the levies and the affected producers expected the levies would be charged and indeed were charged accordingly. If the declarations are not made retrospective the Queensland Fruit and Vegetable Growers will be exposed to a liability to return levies collected on the affected fruits.

Secondly, the amendment to section 2 of the *Fruit Marketing Organisation Act 1923* as far as it deals with the definition exotic fruits will contain a provision that will enable other fruits to be included in the definition as prescribed under regulation. Though this may be viewed as a “Henry VIII” clause in that it allows the principal Act to be amended by subordinate legislation, it is argued that the provision is of a minor and machinery nature. Moreover, it is argued that the clause is not a “Henry VIII” clause because it does not amend the subject section of the Act. Any

addition to the definition would be restricted to the class of “exotic fruit” and be limited by the objects of the Act. The proposal only allows for a more detailed definition to be expanded by way of subordinate legislation.

Thirdly, the amendments to section 11 of the *Fruit Marketing Organisation Act 1923*, which deals with sectional group committees provides that sectional group committees may be elected, as prescribed by regulation, for any fruit or vegetable for which there is no elected sectional group committee that has functions for that fruit or vegetable. While this clause may also be viewed as a “Henry VIII” clause because it is argued that this clause is also one that is of a minor and machinery nature. The clause does not amend the subject section of the Act. The subordinate legislation will only expand the definition of sectional group committees and as such any future amendment will be restricted by the wording of the section and the object of the Act. The proposal will allow for subordinate legislation to be used to accommodate rapid change in industry and policy without the need to require parliament to address matters of a mechanical nature.

Fourthly, clause 88A of the Bill which amends the *Fisheries Act 1994* to provide for an offence where a person unlawfully possesses fish in Queensland, knowing the fish to have been taken in contravention of fisheries legislation of another State might be viewed as a provision which does not pay sufficient regard to the institution of the Queensland parliament. A similar provision is contained in the National Docketing Scheme legislation in other States. It is necessary for the effective operation of the National Docketing Scheme. It is designed to ensure there is some means of proceeding in Queensland against persons engaged in the illegal trafficking or possession of abalone taken in contravention of fisheries legislation in other States.

Finally, the proposal to insert particular by-laws under the *City of Brisbane Market Act 1960* into existing leases between the Brisbane Market Authority and tenants raises the Fundamental Legislative Principles issue that legislation should not adversely affect rights and liberties. The amendment will impose contractual terms on lessees which are desirable to ensure the effective operation of the market.

The proposal is not onerous for the lessees as the existing leases already make the lessee subject to the complete by-laws. The amendment will merely convert the existing obligations into contractual terms.

Consultation

Relevant industry groups have been consulted in relation to the proposed amendments. In particular, the following producer groups and statutory authorities have been consulted in relation to the following amendments.

Agricultural Standards Act 1994

The relevant officers from the Department of Primary Industries' Animal and Plant Health Service have been consulted on the amendments.

Chicken Meat Industry Committee Act 1976.

The grower and processor representatives of the National Competition Policy Review Committee have been consulted on the amendments.

City of Brisbane Market Act 1960

The relevant officers from the Brisbane Market Authority have been consulted on the amendments. Treasury officials involved in the corporatisation exercise, have also been consulted.

Brismark (the wholesaler organisation); Queensland Fruit and Vegetable Growers (the producer organisation); and the Brisbane Market Authority were consulted both through their representatives on the Brisbane Market Corporatisation Industry Reference Group and through briefing sessions with their Executive members on the corporatisation process. In addition, the Brisbane Market Authority was represented on the Charter Preparation Committee who's appointments were made under the *Government Owned Corporations Act 1993*.

Fisheries Act 1994

Sunfish which represents the interests of recreational fishers and the Queensland Commercial Fisherman's Organisation have been consulted in relation to the amendments to this Act.

Fruit Marketing Organisation Act 1923

The chief executive of the Queensland Fruit and Vegetable Growers has been consulted on the amendments.

Grain Industry (Restructuring) Act 1991

The relevant officers from Grainco and Queensland Graingrowers Association have been consulted on the Bill.

Meat Industry Act 1993

The relevant officers from the Queensland Livestock and Meat Authority have been consulted on the amendments.

Primary Producers' Organisation & Marketing Act 1926

Representatives of CANEGROWERS have been consulted on the amendments relevant to their organisation. In the absence of any marketing boards operating under the Act, the Queensland Farmers Federation was previously consulted in regard to the removal of the dormant marketing boards.

Results of consultation

All of the relevant industry bodies and statutory authorities support the proposed amendments.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 provides that the short title of the Bill is the *Primary Industries Legislation Amendment Act 1999*.

Clause 2 provides for—

- the amendments to the *Chicken Meat Industry Committee Act 1976* and the *Grain Industry (Restructuring) Act 1991* to commence on 1 July 1999;

- certain amendments to the *City of Brisbane Market Act 1960* to commence on a date to be fixed by proclamation;
- specified amendments to the *Fruit Marketing Organisation Act 1923* to be taken to have commenced on 1 July 1998;
- all remaining provisions of the Bill to commence on assent.

PART 2—AMENDMENT OF AGRICULTURAL STANDARDS ACT 1994

Clause 3 provides that this part amends the *Agricultural Standards Act 1994*.

Clause 4 amends section 14A(1) of the Act deleting the words “false or misleading to the persons knowledge, without specifying which” and replacing them with “false or misleading in a material particular”. This amendment will correct an editorial mistake inserted by the *Primary Industries Legislation Amendment Act 1998*.

PART 3—AMENDMENT OF CHICKEN MEAT INDUSTRY COMMITTEE ACT 1976

Clause 5 provides that this part amends the *Chicken Meat Industry Committee Act 1976*.

Clause 6 amends the definition section of the Act to insert definitions for “collective negotiations”, “competition legislation” and “negotiated settlements”. These terms are used in the *Trade Practices Act 1974 (Cth)* authorisation provision in the proposed section 19D. The definition of “approved form” is redundant and is omitted.

Clause 7 amends section 5 of the Act which deals with the constitution of the Chicken Meat Industry Committee (CMIC) to provide that the CMIC is to consist of—

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

The amendment allows scope for the appointment of additional industry representatives to the CMIC should a further processor establish operations in Queensland.

Clause 8 makes a consequential amendment to section 6(1) of the Act as a result of the relocation of the provision about the constitution of the CMIC to section 5 of the Act, under clause 32.

Clause 9 replaces section 11(2) of the Act with a new provision about the quorum. The current section provides that the quorum consists of the whole committee. The new section will provide that the quorum consists of a majority of the processor representative committee members and a majority of the grower representative committee members.

Clause 10 amends section 12 of the Act which deals with the conduct of business by the CMIC, to insert the words “other than the chairperson” in subsection (1). The effect of the amendment is to provide that the chairperson is not to vote on any question to be decided by the CMIC.

Clause 11 omits section 14 of the Act which provides that acts or proceedings of the CMIC are not unlawful by reason of defect in the qualification or appointment of any member. This section is omitted as it is covered by the *Acts Interpretation Act 1954*.

Clause 12 replaces section 16 of the Act to provide for the new functions of the CMIC which are—

- facilitating collective negotiations for agreements, including, for example, by—
 - convening a group comprising representative of growers and a processor to negotiate agreements; and
 - recommending procedures for the group in the negotiations;
- referring disputes between growers and processors to mediation;
- referring disputes under agreements between growers and processors to arbitration;

- making recommendations to growers and processors about minimum conditions of agreements and other issues affecting the chicken meat industry;
- representing growers and processors on issues affecting the industry;
- giving information to growers and processes about issues affecting the industry.

The CMIC is not to make recommendations or give information to growers and processors about—

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

The intention of the above provision is to ensure the CMIC does not make recommendations about growing fees or matters which might influence the final determination of the growing fee, such as fee determining models or formulas, or suggested commercial rates of return for growers.

In addition, the clause inserts a new section 16A which provides that the CMIC has the power to do all things necessary or convenient for the performance of its functions.

Further, the clause inserts a new section 16B into the Act to provide for the new role of the chairperson which is to report to the Minister when asked, about any issue about the chicken meat industry, and to report to the Minister when asked, or at any time about the CMIC's performance of its functions. Additionally the chairperson is to advise other committee members about the performance of the committee's functions.

Clause 13 inserts a new Part 2A (sections 19B, 19C 19D 19E and 19F) into the Act, to provide for compulsory written agreements, to specifically authorise the collective bargaining conduct for the *Trade Practices Act 1974 (Cth)*, and to provide for resolution of disputes between growers and processors.

Section 19B establishes an offence for a processor to receive or purchase chickens from a grower other than under a written agreement, and an offence for a grower to sell or supply chickens to a processor other than under a written agreement.

Section 19C requires processors to give written notice to the CMIC within two months of an agreement being entered into with a grower. The provision does not however require the giving of copies of agreements to the CMIC.

Section 19D provides specific authorisation for certain conduct of processors and growers contemplated by the Act, for the purposes of the *Trade Practices Act 1974 (Cth)*.

Specifically, the section authorises collective negotiations for making a negotiated agreement, making a negotiated agreement, and giving effect to a provision of a negotiated agreement where the conduct has or is likely to have the effect of substantially lessening competition or where the conduct has or is likely to have the effect of fixing or controlling the price for the supply or acquisition of broiler chickens. Definitions for the terms “collective negotiations” and “negotiated agreements” are inserted into section 4 of the Act by clause 6 of the bill.

The section is intended to provide specific authorisation under section 51 of the *Trade Practices Act 1974 (Cth)* to cover potential breaches of section 45 of that Act for example, price fixing, or other conduct that has or is likely to have the effect of substantially lessening competition.

Section 19E provides for the referral of disputes between a grower and a processor to mediation, where they are not resolved within 90 days, or earlier if asked by the parties. The section applies to both disputes which arise during the agreement renewal process (disputes about a proposed agreement) and to disputes which arise when an agreement has been entered into (disputes about an agreement). The section provides for the costs of the mediator to be paid by the parties to the dispute rather than by the CMIC.

Section 19F establishes a compulsory arbitration requirement for disputes between the parties to an agreement not settled by mediation, where the dispute relates to any amount payable under the agreement. The section is intended to provide scope for parties to agree to any additional matters to be arbitrated in the event of a dispute. The chairperson of the CMIC is required to refer the dispute to an arbitrator. Unless the parties agree, the arbitrator must not be the person who conducted the mediation. The *Commercial Arbitration Act 1990* is to apply to the arbitration. The section provides that the CMIC can not be ordered to pay the cost of the arbitration.

The arbitration provision applies only to disputes where an agreement is in place between the parties. There is to be no compulsory arbitration (unless the parties agree) for disputes about proposed agreements.

Clause 14 repeals sections 20, 21 and 22 of the Act. Sections 20 and 21 deal with the role of the CMIC in approving all agreements between growers and processors and in determining disputes including fee disputes. These functions are to be omitted as they are no longer appropriate in the less regulated industry structure recommended by the National Competition Policy Legislative Review Committee.

Section 22 establishes a general offence provision. This can be repealed as specific offence provisions are provided where necessary in the sections of the Act.

Clause 15 repeals a redundant provision about approval of forms.

PART 4—AMENDMENT OF CITY OF *BRISBANE* *MARKET ACT 1960*

Clause 16 provides that this part amends the *City of Brisbane Market Act 1960*.

Clause 17 omits sections 2 and 3 of the Act. Those sections provided for regulations to be made exempting fruit and vegetables from the operation of Act and defined terms used in the Act. These provisions are redundant, as the Brisbane Market authority will operate under the provisions of the *Government Owned Corporations Act 1993*.

Clause 18 omits sections 7 to 48 of the Act. Those provisions constituted the body of the Act and provided for the functions, mechanism, proceedings and on-going operation of the Brisbane Market Authority. These provisions are redundant, as the Brisbane Market authority will operate under the provisions of the *Government Owned Corporations Act 1993*. The Authority is to be a corporation under the *Government Owned Corporations Act 1993*.

Clause 19 inserts a new section, section 49 into the Act. This section provides that certain provisions of the *City of Brisbane Market Authority Regulation 1982* are to be taken as forming terms of leases until the expiration of these leases. These provisions of the regulation currently constitute part of the by-laws of the Brisbane Market Authority. These provisions deal with the operation of vehicular mechanical unloading devices, notification of vehicle accidents and the placement, stacking and storage of produce within the market. Retention of these provisions is necessary for the orderly and safe operation of the market.

Clause 20 repeals the remainder of the *City of Brisbane Market Act 1960* (that is, those provisions not already omitted by clauses 41 and 42). This will take effect on a date determined by Proclamation coinciding with the completion of the corporatisation process. The will be redundant once the Brisbane Market Authority is incorporated under the *Corporations Law*.

PART 5—AMENDMENT OF *FISHERIES ACT 1994*

Clause 21 provides that this part amends the *Fisheries Act 1994*.

Clause 22 amends the definition section of the Act to define “abalone”. The definition is intended to cover all species of abalone.

Clause 23 amends section 86 of the Act which provides for the giving of a docket by a seller to a buyer for a wholesale sale of fisheries resources.

The clause adds two new subsections to section 86 to provide additional docket keeping requirements for transactions involving abalone. Section 86(5) will require a seller who consigns abalone to a buyer to ensure the abalone is accompanied by a copy of the prescribed docket. This provision is designed to ensure that a docket will remain with the abalone at all stages through the distribution network.

Section 86(6) will require both buyers and sellers, where the sale relates to abalone, to keep a copy of the prescribed docket for five years. The existing provisions of section 86 require the keeping of the docket only by the buyer and only while the buyer is in possession of the fish. This extension of the docket keeping requirement is intended to provide a means of tracing the abalone back to its source by reference to the dockets kept by successive sellers or buyers.

Clause 24 amends the Act to insert a new section 86A which requires a person carrying on the business of processing abalone to keep a docket. The section prescribes the particulars to be included on that docket. The processor will be required to keep a copy of the docket for five years.

The term “carrying on the business of processing abalone” is used to exclude the processing of small amounts of abalone by householders, and to exclude processing by restaurants for meals sold to the public. However it is not intended that there must be an established or licensed business operation in place in order for the section to apply; persons processing unlawfully taken abalone will often operate on a short-term basis, in transitory premises without necessary licences.

Clause 25 inserts section 88A into the Act. This section creates an offence for a person to unlawfully possess fish knowing the fish have been taken in contravention of a law of the Commonwealth or another State about fishing, fisheries resources or fish habitats. A maximum penalty of 1000 penalty units applies.

Clause 26 amends section 123 of the Act which provides an offence for the unlawful removal, destruction or damage of marine plants. The amendment will add three examples to illustrate specific activities which constitute the removal, destruction or damage of marine plants.

The inclusion of these specific examples is intended to remove uncertainty as to the meaning of these words, which has resulted in a failure to proceed with prosecutions in the past.

The example of “removing seagrass from a beach or foreshore” is intended to cover the removal of significant quantities of seagrass washed up on to a beach or foreshore. This “marine compost” is essential to the local ecosystem in recycling nutrients and in sustaining subsequent fish habitats and fisheries production.

The amendment will also increase the maximum penalty prescribed for this offence from 2000 penalty units to 3000 penalty units.

Clause 27 inserts a new section 148A into the Act. The section provides for an inspector to apply to a magistrate for a warrant to gain entry to a place (other than a person’s residence) for up to two months to check for compliance with the requirements in the Act about abalone. The section will allow the magistrate to refuse to consider the application until provided with any further information required. In addition the section provides scope for the magistrate to impose restrictions upon the powers to be exercised by an

inspector under the warrant and to impose other conditions, for example, a limit on the number of times the inspector may enter the place during the term of the warrant.

PART 6—AMENDMENT OF *FRUIT MARKETING ORGANISATION ACT 1923*

Clause 28 provides that this part amends the *Fruit Marketing Organisation Act 1923*.

Clause 29 amends the long title of the Act to read “An Act to provide for the organisation of the growers in the Queensland fruit and vegetable industry”. This reflects the refocussing of the Act towards representational rather than marketing activities.

Clause 30 amends the Act by inserting a new Part 1 heading, “Part 1 Preliminary”.

Clause 31 amends the short title of the Act to read “This Act may be cited as the Fruit and Vegetable Growers’ Organisation Act 1923”.

Clause 32 amends the definition section of the Act. The definition section will be located in the schedule to the Act. The amendment will remove reference to the “COD” and “committee of direction” and define the “Queensland Fruit and Vegetable Growers”. The amendment will include a definition of “exotic fruit”, “local association” and expanded definitions of “citrus fruit”, “deciduous fruit” and “other fruits”. The new definitions will allow for the continued collection of levies under the *Fruit Marketing (Committee of Direction Levies) Amendment Regulation 1998*. The amendment also allows for a scheme to provide strawberry runners to growers by providing for such in the definition of “grower services”.

Clause 33 amends the Act by inserting a new Part 2 heading, “Part 2—Establishment of Organisation.

Clause 34 amends section 4 of the Act and provides for the establishment of the Queensland Fruit and Vegetable Growers as the representative organisation for growers following the abolition of the Committee of Direction.

Clause 35 amends section 6 of the Act by removing reference to the committee of direction and replacing it with “QFVG”. The amendment provides that the committee of direction is continued in existence as the QFVG without change in its legal personality.

Clause 36 amends the Act by inserting a new Part 3 heading, “Part 3—Winding-up procedures.”

Clause 37 amends the Act by inserting a new Part 4 heading, “Part 4—general Provisions”.

Clause 38 repeals sections 7 and 7A of the Act. Those sections dealt with the now defunct acquisition and marketing powers of the committee of direction.

Clause 39 amends section 9 of the Act which deals with the constitution of the committee of direction and which now provides that the Queensland Fruit and Vegetable Growers is to consist of the number of representatives prescribed under regulation for each sectional group committee. If a sectional group committee does not elect a representative the section provides that the Queensland Fruit and Vegetable Growers will consist of the number of representatives who have been elected.

Clause 40 amends section 10 of the Act which deals with the constitution and functions of the local associations. The amendment provides that the QFVG may register any registered association, co-operative, company or other entity as a local association.

Clause 41 amends section 11 of the Act which deals with sectional group committees. The amendment provides that sectional group committees may be elected, as prescribed by regulation, for any fruit or vegetable for which there is no elected sectional group committee already in existence that has functions for that fruit or vegetable.

Clause 42 replaces sections 14A to 14AC of the Act which dealt with the accounting obligations of the committee of direction. The new section provides that the QFVG is declared to be a statutory body under the *Financial Administration Act and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 43 amends section 15 of the Act which prescribes the regulation making power under the Act. The amendments remove specific reference to elections, exemptions, penalties, levies, forms, ballots, polls under sections 7 and 7A, (to be omitted by virtue of clause 65), agents,

commissions, other expenses and the mode of proof required under the Act. The amendments allow for a regulation to be made in respect of the registration of local associations, the auditing of election rolls and the holding and conduct of a poll before a levy is made by the QFVG. In addition, the amendments prescribe that the maximum fine for non-payment of a levy is 1 penalty unit. One penalty unit is the minimum penalty unit under the *Penalties and Sentences Act 1992* and is equal to \$75.00 by virtue of section 5 of that Act. Prior to the amendment the maximum fine was \$40.00.

Clause 44 amends the Act by inserting a new Part 5, “Part 5-Transitional Provision for Primary Industries Legislation Amendment Act 1999.” The new part provides that a reference to the *Fruit Marketing Organisation Act 1923* in an Act or document may, if the context permits, be taken to be a reference to this Act. The part also provides that reference to the committee of direction, the committee of direction of fruit marketing and the may, if the context permits, be taken to be a reference to the QFVG.

Clause 45 omits the redundant schedule to the Act.

Clause 46 inserts a new schedule into the Act. The schedule will contain the “Dictionary” provision for the Act.

PART 7—AMENDMENT OF *GRAIN INDUSTRY (RESTRUCTURING) ACT 1991*

Clause 47 provides that this part amends the *Grain Industry Restructuring Act 1991*.

Clause 48 deletes a reference to Central Queensland grain sorghum from the objects of the Act in section 2 as there is no longer a marketing scheme for that commodity. The amendment also omits a redundant object about the establishment of the Grain Industry Review Committee.

Clause 49 amends the definition section of the Act to omit several definitions which are no longer required and to update other definitions, including the definition of “Grainco” to refer to its corporate name and ACN number. In addition the clause amends the definition of “expiry date” to 30 June 2002.

Clause 50 inserts section 3A which provides that Grainco does not represent the Crown and is not entitled to the immunities of the Crown. This provision is currently contained in section 11 of part 2 of the Act. The amendment is a consequence of the omission of part 2 under clause 74.

Clause 51 omits part 2 of the Act. This amendment will remove the sections of the Act which provide for the government appointed positions of chairperson and statutory director on the board of Grainco.

Clause 52 omits section 13 of the Act. This will remove the accounting and reporting obligations upon Grainco imposed under the *Financial Administration and Audit Act 1977*.

Clause 53 amends section 14(1) of the Act which imposes various accountability requirements upon Grainco by the application of other Acts.

This amendment will limit the application to Grainco of the *Criminal Justice Act 1989* to matters which relate to the performance of Grainco's statutory functions or the exercise of its statutory powers.

In addition the amendment will remove the application to Grainco of both the *Libraries and Archives Act 1988* and the *Parliamentary Commissioner Act 1974*.

No change is made to section 14(1)(b) which provides that Grainco is a public authority under the *Freedom of Information Act 1992*.

Clause 54 inserts a new section 15A into the Act which will require Grainco to provide information about the performance of its statutory functions or exercise of its statutory powers to the Minister or to a body established by the Minister.

The purpose of this amendment is to support the operations of a supervisory panel to be appointed by the Minister to oversee the administration by Grainco of its residual statutory powers and functions.

Clause 55 omits part 3 division 2 of the Act which contains redundant provisions about the establishment and operations of the Grain Industry Review Committee.

Clause 56 amends section 29 of the Act which makes provision about the application of the part 4 compulsory marketing scheme sections. The amendment will render inactive the application of part 4 of the Act to wheat until a date is prescribed by regulation. A date may only be prescribed where a public benefit test is conducted under the competition principles

agreement and the public benefit test supports the application of the compulsory marketing provisions to wheat.

In addition the amendment provides for the application of part 4 of the Act, to export barley, to continue until the expiry date of 30 June 2002.

Clause 57 inserts a new section 38A which will exempt non-export grain from the application of the compulsory marketing provisions of part 4 of the Act. The provision is intended to deregulate all domestic trading of grain in the State.

Clause 58 amends section 43 of the Act. This section establishes an offence for non-compliance with a condition of an exemption from the compulsory marketing scheme provisions. The section is currently limited to conditions of a general or special exemption. The amendment will extend the section to apply to all exemptions. The amendment is designed to ensure that section 43 will extend to cover non-compliance with the condition of the exemption in the proposed section 38A about trading in domestic grain.

Clause 59 amends section 45 (1) of the Act to omit a reference to Central Queensland grain sorghum. This commodity is to be completely deregulated.

Clause 60 amends section 47(1)(c) of the Act to omit a further reference to Central Queensland grain sorghum.

Clause 61 omits part 9 of the Act which contains obsolete transitional provisions and inserts a new section 81 to provide for renumbering of the Act when reprinted.

PART 8—AMENDMENT OF *MEAT INDUSTRY ACT* 1993

Clause 62 provides that this part amends the *Meat Industry Act 1993*.

Clause 63 inserts a new section 127(2A) which provides that when deciding an appeal the meat industry tribunal is to be unaffected by the decision appealed against.

Clause 64 amends section 130 of the Act so that an appeal to the tribunal must be based on the ground(s) that the original decision was contrary to the Act, manifestly unfair to the appellant or it will cause severe and unjustified financial hardship to the appellant.

Clause 65 provides for a new section 131(1) of the Act which prescribes that an appeal must be commenced in writing and that the notice of appeal must state the grounds of appeal, be accompanied by the fee prescribed by regulation and filed within 28 days of notice of the decision appealed against. The section requires the tribunal to provide the Meat Industry Authority with a copy of the appeal notice and that it may extend the time period for the filing of the notice.

PART 9—AMENDMENT OF *PRIMARY PRODUCERS’ ORGANISATION AND MARKETING ACT 1926*

Clause 66 provides that this part and the schedule, part 2, amend the *Primary Producers’ Organisation and Marketing Act 1926*.

Clause 67 amends the long title of the Act so that it reads “An Act to provide for the establishment, operation and accountability of producer representative bodies and for related purposes”. This reflects the refocussing of the Act towards representational rather than marketing activities.

Clause 68 amends the short title of the Act so that it reads “Primary Producers’ Organisation Act 1926”.

Clause 69 amends the definition section of the Act. Definitions that relate to marketing functions of the now defunct boards are removed. The definition section will be included in schedule 2 of the Act will include a reference to “QFVG” as the Queensland Fruit and Vegetable Growers and define a board as being the state council of a producer representative body.

Clause 70 removes part 2 of the Act that dealt with Officers of marketing boards.

Clause 71 removes the word “Commodity” from the heading of part 3 of the Act.

Clause 72 amends section 9 of the Act. The amendment removes those provisions that deem specific commodities to be commodities under the Act, acquisition of a commodity, a growers' poll and regulations dealing with commodities.

Clause 73 removes sections 10-10A of the Act. Those sections dealt with the power, functions, continuance, amalgamation of the now defunct boards and the powers of the Governor in Council in respect of those boards.

Clause 74 amends section 11 of the Act so as to remove any obligation on the Minister to appoint officers to the boards. The amendment also inserts "QFVG" in place of "committee of direction". The heading of the section will now read "Boards" rather than "Commodity Boards".

Clause 75 amends the heading of section 11A of the Act so that the reference to "commodity board" is removed.

Clause 76 removes section 11E of the Act which dealt with the 'Vacation of office' of members of the now defunct board constituted under the Act.

Clause 77 removes section 13B of the Act. That section dealt with the powers of an affiliated body. An affiliated body was a corporation or cooperative whose directors were entitled to be members of a now defunct board constituted under the Act. This section was never utilised.

Clause 78 removes the heading to part 4 of the Act which read "Marketing".

Clause 79 omits section 14 of the Act. That section dealt with the powers of the now defunct marketing boards.

Clause 80 amends section 14A of the Act. The section deals with the obligation of a board to insure against defalcations. The amendment removes reference to the committee of direction and replaces it with the "QFVG". The amendment also removes any reference to the chief executive making recommendations in respect of the section, as any such reference is superfluous. The new section will relocate as section 27B of the Act.

Clause 81 removes sections 14B to 24 of the Act. Those sections deal with the now dormant marketing provisions of the Act including the administrative powers of a marketing board, the deeming of a board as a body corporate under the *Land Act 1962*, the power of a board to purchase a commodity and the delivery, marketing and contractual arrangements,

purchase and remedy provisions in respect of dealings with a commodity. All of these provisions are superfluous as there are no longer any marketing boards in existence. The amendment will also insert a new Part 4, “Part 4—Administration Boards”.

Clause 82 amends section 29 of the Act which deals with the power of a board to make a levy. The amendment removes the power of a board to make a levy and therewith establish a security fund to meet any liability or obligation undertaken by the Crown. This section was never utilised and is superfluous. The amendment also removes reference to committee of direction under the *Fruit Marketing Organisation Act 1923*.

Clause 83 inserts a new Part 6A heading, “Part 6A—Queensland Cane Growers’ Organisation”.

Clause 84 relocates section 29B ‘superannuation schemes’ to part 5 of the Act and renumbers the section as section 27C. This is considered more appropriate as section 27 refers to financial administration..

Clause 85 amends section 30 of the Act. The section provides that cane is declared to be a commodity and deals with the operation of the statutory producer representative body in the industry (CANEGROWERS). The amendment removes reference to a marketing board and powers in respect of elections of and appointment to district committees and it removes any maximum number for the membership of these committees. The amendment also excludes the owner of a mill, as defined within the *Sugar Industry Act 1991*, and a subsidiary of a corporation that owns a mill from being a “grower” for the purposes of the Act. The section also provides that “grower”, subject to the above exclusions, means a holder under the *Sugar Industry Act 1991* of an assignment of 2ha or more that is being used to grow sugar cane.

Clause 86 removes section 30A from the Act. That section was the definition section for section 30 of the Act. The definitions have been relocated to section 30. Section 30 provides that cane is declared to be a commodity and deals with the operation of the statutory producer representative body in the industry (CANEGROWERS).

Clause 87 amends section 30D of the Act. The amendment relates to State councils and their ability to carry on a business and it removes reference to the powers, authorities, duties and functions of a marketing board.

Clause 88 inserts a new section 30DA into the Act. The new section will allow for the State councils, with the approval of the Minister, to fix fees and expenses to be paid to members of the councils or a subsidiary body. This section is inserted so as to preserve and modernise provisions of the Act that are omitted by virtue of consequential amendments.

Clause 89 amends section 30E(2) of the Act. The amendment removes the regulation making power in respect of subsidiary bodies. This section is superfluous as the general regulation making power within the Act adequately deals with this requirement.

Clause 90 inserts a new Part 6B heading “Part 6B—Queensland Commercial Fisherman’s Organisation”.

Clause 91 amends section 30F of the Act. The amendment removes transitional provisions originally inserted in 1989 dealt with the transfer of rights, liabilities and property of the Queensland Commercial Fishermen’s Organisation to the Queensland Commercial Fishermen’s State Council.

Clause 92 amends the Act by inserting a new Part 6C heading, “Part 6C—General Provisions for Producer Representative Bodies. The clause also relocates and renumbers sections 30C-30E to be included in part 6C as sections 30G to 30J.

Clause 93 amends section 32 of the Act by deleting the words “or is an authorised agent,” from section 32(c) as it deals with evidence of a matter. This section was only relevant in respect of the now defunct marketing boards.

Clause 94 amends section 34 of the Act. The amendment provides that each grower will be provided with a copy of the annual report of the board. The amendment also removes the necessity of including the operation of an affiliated body in the annual report.

Clause 95 removes section 34C of the Act. That section dealt with the application of the Act to an affiliated body (reference in the Act to such bodies is removed in clause 99C).

Clause 96 amends section 37(2) of the Act by removing reference to marketing boards and producer representative bodies and allowing for a petition signed by 30% of growers to be sufficient to request a poll to wind up a board.

Clause 97 amends section 38 of the Act. The amendments remove the redundant provision that allows for the appointment of an inspector to a

marketing board to be wound up if it has not conducted business for a period of three years.

Clause 98 amends section 51 of the Act which deals with the making of rules or articles for concerned bodies. The amendment removes reference to a marketing board, producer representative bodies and subsidiaries of producer representative bodies.

Clause 99 amends section 56 of the Act. The amendment removes those provision that deal with the regulation making power in respect of fees, allowances and expenses payable to a member, officer or representative of a board. It also removes those provisions dealing with administrative functions of a board and the power to impose a levy to meet any obligation. The amendment contains a minor editorial amendment in respect of the citation in the example. This section is amended so as to preserve and modernise provisions of the Act that are omitted by virtue of consequential amendments.

Clause 100 amends the Act by inserting anew Part 10 heading, “Part 10—Transitional Provisions.”

Clause 101 amends the Act by inserting a new part 10, division 2. The new section 59 will allow, if the context permits, for reference to the *Primary Producers’ Organisation and Marketing Act 1926* to be a reference to this Act.

Clause 102 amends schedule 2 of the Act. The amendment provides for the heading to read “Schedule 1—Annual General Meetings Of Growers” and that part 1 of the schedule “Board Meetings” is removed as there are no longer any boards.

Clause 103 inserts a new schedule 2 into the Act. The new schedule 2 will be the “Dictionary” provision of the Act.

PART 10—MINOR AMENDMENTS AND RENUMBERING OF ACTS

Clause 104 provides that the Acts mentioned in the schedule are amended as shown in the schedule.

Clause 105 provides for the consecutive renumbering of provisions upon the next reprints of the *Chicken Meat Industry Committee Act 1976*, the *Fruit Marketing Organisation Act 1923*, the *Grain Industry (Restructuring) Act 1991*, and the *Primary Producers' Organisation and Marketing Act 1926*. In addition it provides for any necessary consequential amendments to be made to subordinate legislation made under those Acts, when next reprinted, to take account of the renumbering in the Acts.

PART 11—EXPIRY

Clause 106 provides that this Act will expire 3 months after the last of the Acts mentioned in clause 105 is reprinted.

SCHEDULE

MINOR AMENDMENTS

The schedule omits “and Marketing” from the definition of “farm produce agent” as it appears in section 5 of the *Farm Produce Marketing Act 1964*.

It also provides for minor amendments to be made to the *Fruit Marketing Organisation Act 1923*. The amendments give effect to consequential amendments arising from amendments to that Act. By virtue of this part, where appropriate, reference to “committee of direction” and “COD” is replaced with “Queensland Fruit and Vegetable Growers” and “QFVG”. The schedule also amends reference to any section in the Act that is repealed or renumbered so as to take account of this fact. In keeping with current drafting practices the schedule also amends any reference to “money” or “moneys” to read “amount” or “amounts” respectively.

In addition, the schedule provides for consequential amendments to the *Primary Producers' Organisation and Marketing Act 1926*. The amendments remove reference to a director of marketing and replace it with reference to the chief executive. The amendments also remove any reference in the Act to any section that has been repealed. Reference to the committee of direction of fruit marketing is replaced with the appropriate reference to QFVG.

The schedule also provides for minor amendments to other Acts. Consequential amendments that relate to citations and terminology are made to the *Stamp Act 1894*, the *Sugar Industry Act 1991* and the *Wheat Marketing (Facilitation) Act 1989*.