

PRIMARY INDUSTRIES AND NATURAL RESOURCES LEGISLATION AMENDMENT BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Short title

The short title of the Bill is the *Primary Industries and Natural Resources Legislation Amendment Bill 2000*.

Objectives of the Legislation

The objectives of the Bill are:

- To amend the *Fisheries Act 1994* to abolish the Queensland Fisheries Management Authority and facilitate new institutional arrangements relating to fisheries within the Department of Primary Industries.
- To amend the *Forestry Act 1959* to enable the conversion of the Timber Research and Development Advisory Council into a non-statutory body; and
- To repeal the *Primary Industries Corporation Act 1992*, and to make consequential amendments to 17 pieces of legislation, made necessary by the repeal of the *Primary Industries Corporation Act 1992*.

Reasons for the Bill

- (A) Amendment to *Fisheries Act 1994*: Change to Institutional Arrangements

Following concerns relating to the fragmentation of fisheries management in Queensland between two bodies—the Department of Primary Industries (Fisheries Group) and the Queensland Fisheries Management Authority—the Government initiated a review of fisheries management arrangements with a view to providing a more unified and co-operative approach for the State.

The review involved widespread consultation within Government, industry and the broader community. It confirmed that there was a perception, and in many cases strong evidence, that the management of fisheries within Queensland was fragmented, leading to duplication of activities and competition, and that there existed a real need for unified policy and fisheries management within Queensland.

As a result the Government has decided to disband the Queensland Fisheries Management Authority (the Authority) and to amalgamate it with the Department of Primary Industries (Fisheries Group) into a single body called the Queensland Fisheries Service within the Department of Primary Industries. Such a body would also provide a greater degree of accountability to the Government for the management of the important fisheries resources of Queensland.

By placing all the fisheries management powers within a single entity within Government, the process of policy formulation, industry development and resource management would be more directly related to Government policies and would facilitate Commonwealth/State fisheries management arrangements in a far more efficient and effective way.

It would also provide a greater level of comfort to industry stakeholders and the community that the management and development of the fisheries resources of Queensland would be undertaken within the overall requirements of Government policy.

On Monday 20 March 2000, the Government considered a submission in regard to the restructuring of Queensland fisheries management arrangements.

The following institutional arrangements for fisheries management in Queensland were approved:

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- (i) the creation of a semi-autonomous Queensland Fisheries Service (QFS) within the Primary Industries portfolio, by the abolition of the Authority and the Fisheries Business Unit of the Department of Primary Industries (DPI);
- (ii) the appointment of a Deputy Director-General, who will answer directly to the Minister for Primary Industries and Rural Communities, to manage the QFS;
- (iii) the appointment of a non-statutory “expertise”-based Queensland Fisheries Advisory Board to advise the Minister and DPI in the management of fisheries in Queensland; and
- (iv) the effectiveness of the proposed arrangements in managing research functions, recreational fishing and sustainable management of the fishery resource be reviewed 12 months after promulgation.

This requires amendments to the *Fisheries Act 1994*, most notably in regard to the abolition of the Authority and the transfer of its powers, functions and employees to QFS.

(B) Amendment to the *Forestry Act 1959*: The Timber Research and Development Advisory Council

Amendments are also proposed to the *Forestry Act 1959* to provide for the conversion of the Timber Research and Development Advisory Council (the Council) into a non-statutory body, funded on a voluntary contribution basis by the timber industry, in accordance with industry wishes.

The amendments will provide for the assets and liabilities of the Council to be transferred to a replacement non-statutory corporate entity, which will be a company limited by guarantee.

Relevant permit holders will be afforded the opportunity to become members of the replacement corporation.

(C) Repeal of *Primary Industries Corporation Act 1992*

The *Primary Industries Corporation Act 1992 (PIC Act)* constitutes the Primary Industries Corporation (the Corporation) which currently is jointly administered by the chief executives of the Departments of Primary Industries (DPI) and Natural Resources (DNR). The Corporation is empowered to enter into contracts on behalf of the State and exercises various functions and powers under both the *Forestry Act 1959* and the *Water Resources Act 1989* and a number of other statutes in regard to water and forestry matters.

The *PIC Act* was originally only intended to be a temporary or interim measure pending the development of a proposed integrated “*Natural Resource Management Act*”. This is no longer Government policy.

Administration of the *PIC Act* has been complicated by the transfer of administrative responsibility for water resources and the *Water Resources Act 1989* from DPI to DNR in 1996, and further compounded by the joint administration of the *Forestry Act 1959* by DPI and DNR.

A consultant engaged by DPI to advise on the implications for the department of the introduction of the new Commonwealth tax regime, namely the Goods and Services Tax (GST), has advised that there will be adverse GST consequences if the present Corporation arrangements are retained.

The Corporation is accounted for via DPI, DPI Forestry, DNR and DNR State Water Projects. However, transactions take place between these accounting entities and also with external parties in the name of the Corporation. The Commonwealth’s GST legislation requires registration of businesses with an Australian Business Number.

The changes in accounting necessary to accommodate this for the embedded Corporation transactions under the GST regime would be difficult to achieve. Furthermore, it would be necessary to compile separate asset registries within DPI and DNR in regard to the Corporation and to maintain separate accounts in future for each part of the Corporation’s business.

All of this would impose additional costs that are simply not warranted in view of the fact that the Corporation has outlived its original purpose.

The way in which the policy objectives are to be achieved by the Bill

The policy objectives will be achieved by the Bill as follows:-

- The *Fisheries Act 1994* will be amended so that the Authority is abolished. The powers and functions of the Authority will be vested in the chief executive. This will provide a legislative environment such that a semi-autonomous Queensland Fisheries Service may be created within the Primary Industries portfolio, in accordance with the Government's decision of 20 March 2000.
- The Timber Research and Development Advisory Council will be converted into a non-statutory body, namely a company limited by guarantee. Funding for the Council will be on a voluntary basis by the timber industry. The Bill will provide that relevant permit holders are eligible to become members of the replacement corporation.
- The *Primary Industries Corporation Act 1992* will be repealed. All assets, rights and liabilities of the Corporation will be vested in the State of Queensland.

Alternatives to the Bill

Part 2 of the Bill, which relates to institutional changes to Queensland fisheries management, is necessary to give effect to the Government's decision of 20 March 2000. This decision was made after consideration of a number of possible means to rectify what was perceived as a fragmented approach to fisheries management.

The alternative to these provisions is to not make these legislative changes. This is considered unacceptable given the Government's decision to abolish the Authority and establish a new Queensland Fisheries Service, in order to provide unified management of Queensland fisheries.

Part 3 of the Bill relates to the incorporation of the Timber Research and Development Advisory Council, converting it to a non-statutory body corporate with voluntary industry funding. Industry has requested that this be achieved through the conversion of the Council as a statutory body to a corporation limited by guarantee. The only means by which this can be achieved is through legislative amendment.

There is no viable alternative to part 4 of the Bill, which relates to the repeal of the Primary Industries Corporation Act 1992. The repeal is required given the Corporation's structural inadequacies and the incompatibility of the Corporation's accounting arrangements with those required for administration of the Goods and Services Tax.

Estimated costs for government implementation

With respect to the repeal of Primary Industries Corporation and the restructuring of DPI Fisheries, there is no immediate financial impact on the State.

There is no foreseeable cost to the Government arising out of the conversion of the Timber Research and Development Advisory Council from a statutory body to a corporation limited by guarantee.

Consistency with fundamental legislative principles

The Bill, at Clause 8, new section 116, provides for the dissolution of the Timber Research and Development Advisory Council. It states that, on dissolution, members of the Council go out of office, and further, that no compensation is payable to members due to the dissolution. It may be suggested that this provision breaches section 4(2)(a) of the *Legislative Standards Act 1992*—whether the Bill has sufficient regard to the rights and liberties of individuals—as this provision may deprive members of payment for services and, hence, potentially have an adverse effect on their income.

Except for the chairperson, members of the Council do not receive any payment for services, nor do they receive any entitlements or fees in relation to attendance. It is considered that no loss will therefore be incurred by these members as a result of the dissolution of the Council.

The chairperson (a part-time position) receives an allowance which is designed to compensate for time spent carrying out the responsibilities of the position. The allowance the chairperson receives is not designed to provide additional income. Any loss to the chairperson will be of a minimal nature.

Consultation

Government

The Department of the Premier and Cabinet, Queensland Treasury, the Department of State Development, the Department of Employment, Training, and Industrial Relations, the Department of Natural Resources, the Office of the Public Service and the Queensland Fisheries Management Authority were consulted in the preparation of this Bill.

The Office of Queensland Parliamentary Council prepared the Bill.

Industry

Following consultation with industry, the Timber Research and Development Advisory Council has requested the Minister to allow it to convert to a company limited by guarantee so that it can establish a permanent structure to service the timber industry's requirements.

Results of consultation

There is agreement between government agencies and industry bodies regarding the proposals in the Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 provides that the short title of the Act will be the *Primary Industries and Natural Resources Legislation Amendment Act 2000*.

Commencement

Clause 2 provides the relevant commencement dates, which are as follows:-

- Part 2, which provides for amendments to the *Fisheries Act 1994*, in order to abolish the Queensland Fishing Management Authority and facilitate new institutional arrangements relating to fisheries, will commence on 30 June 2000;
- Section 13, which provides that schedule 2 of the Bill amends the Acts it mentions, also commences on 30 June 2000;
- Section 7, which omits part 2A of the *Forestry Act 1959*, relating to the Timber Research Development Advisory Council, will commence on a date to be fixed by proclamation;
- Section 8, to the extent that it inserts part 9, division 3 in the *Forestry Act 1959*, will commence on a date to be fixed by proclamation;
- The remaining provisions commence on assent.

PART 2—AMENDMENT OF FISHERIES ACT 1994

Act amended in pt 2 and sch 2

Clause 3 states that this part, and schedule 2 of the Bill, amend the *Fisheries Act 1994*.

Omission of Pt 4, div 1

Clause 4 provides that part 4, division 1, of the *Fisheries Act 1994* is omitted. This division establishes the Queensland Fisheries Management Authority, and provides that it is a body corporate which does not represent the State.

Omission of s 227 (Other references)

Clause 5 omits section 227 of the *Fisheries Act 1994*, that makes provision for references to the Queensland Fish Management Authority in the *Fishing Industry Organisation and Marketing Act 1982*, which was repealed in 1994. It also inserts a new division 2 into part 12 of the *Fisheries Act 1994*, which provides transitional provisions. These transitional provisions relate to the abolition of the Queensland Fisheries Management Authority (the Authority). They provide for the vesting of assets, rights and liabilities in the State, and also for the transfer of the employment of the Authority's employees to the State.

Division 2—Savings and transitional provisions for Primary Industries and Natural Resources Legislation Amendment Act 2000

Definitions for div 2

New section 227 provides definitions for the new division 2.

Dissolution of Authority

New section 228 provides for the dissolution of the Authority.

Vesting of assets, rights and liabilities

New section 229 states that all assets, rights and liabilities of the Authority vest in the State, and that the State is substituted for the Authority in all contracts to which the Authority is a party.

Decisions, documents etc. of Authority

New section 230 provides that any decision or recommendation, licence, notice or other document made or given, or other action taken by the Authority before the commencement of this section is taken to be made, given or taken by the chief executive.

Legal proceedings

New section 231 provides that existing legal proceedings, or proceedings which could have been started, by or against the Authority, may be continued or started by or against the State. This preserves the rights of litigants, or potential litigants who may have a cause of action against the Authority.

References to Authority

New Section 232 provides that a reference in an Act or document to the Authority in existence immediately before the commencement of this section is taken to be a reference to the State if it is a reference to the ownership or vesting of property in the Authority or, in any other case, a reference to the chief executive.

Duty to register transfer of property

New section 233 provides that the registrar of titles and all persons who keep registers of dealings in property must, if requested by the State, make in the register all entries necessary to record the vesting of stated properties in the State by this division.

Employees of the Authority

New section 234 provides that persons who are employees of the Authority immediately before the commencement of this section, will become public service employees on the date of commencement. It states that these employees will have a right to a salary or wage not lower than the person's salary or wage prior to commencement. It also provides that, on the commencement of the section—

- A person who was a permanent employee of the Authority immediately before the commencement of the section is taken to be a public service officer;
- A person who was a temporary employee of the Authority immediately before the commencement of the section is taken to be a temporary employee; and

- A person who was a casual employee of the Authority immediately before the commencement of the section is taken to be a temporary employee on a casual basis.

The purpose of this section is to ensure that the rights of the Authority's employees are not prejudiced by the abolition of the Authority, and the transfer of their employment to the public service. This section does not apply to a contract employee of the Authority, which is defined in new section 227.

Contract employees

New section 235 provides that on the commencement of this section, a person who was a contract employee immediately before commencement becomes a public service officer. A contract employee is defined in new section 227 as a person who, immediately before commencement, was employed by the Authority under a written contract, whether or not for a fixed term.

New section 235 provides that persons who were contract employees immediately before the commencement date, continue after that date to be engaged and employed in the department under the terms and conditions of the person's contract with the Authority. The purpose of this section is to ensure that the rights of contract employees pursuant to their contracts with the Authority are not prejudiced by the abolition of the Authority.

This section also provides that the contracts of these employees are taken to be contracts under *the Public Service Act 1996*, and that section 71 of the *Public Service Act 1996* does not apply. Section 71 provides for officers on contract to revert to a tenured position at the same classification level and salary that applies prior to their contract commencing, if their contract expires.

Accrued entitlements

New section 236 provides that a person who becomes a public service employee under the new division 2 keeps all entitlements to recreation, sick, long service and other leave, superannuation and other benefits accrued by the person as an employee of the Authority.

Industrial instruments

New section 237 states that any industrial instruments under the *Industrial Relations Act 1999* in force immediately before the commencement of this section, which apply to an employee of the Authority, continue in force after the commencement of the section. This preserves industrial instruments, such as certified agreements, which may be in place immediately prior to the commencement of this section, and employees' rights pursuant to these instruments.

Amendment of management plan

New section 238 states that sections 33 and 39(1) of the *Fisheries Act 1994* do not apply to an amendment of a management plan that is merely consequential on the enactment of this Bill. Section 33 sets out the procedure for making a management plan and section 39(1) states that a management plan may be amended or repealed only in accordance with the management plan about how it may be amended or repealed. This new section is designed to facilitate the timely amendment of management plans to reflect the provisions of this Bill, in particular, the abolition of the Authority.

PART 3—AMENDMENT OF FORESTRY ACT 1959

Act amended in pt 3 and sch 1

Clause 6 states that this part, and schedule 1 of the Bill, amend the *Forestry Act 1959*.

Omission of pt 2A (Timber Research and Development Advisory Council)

Clause 7 omits part 2A of the *Forestry Act 1959*. This part establishes as a statutory body the Timber Research and Development Advisory Council (the Council). Part 2A creates the Council as a body corporate with perpetual succession and a common seal. The operational objects, composition, functions as well as administrative matters are also set out in this part. Removal of part 2A is in line with the creation of a non-statutory replacement corporation.

Insertion of new pt 9

Clause 8 inserts a new part 9 into the *Forestry Act 1959*. This new part provides for savings and transitional provisions for the operation of the *Primary Industries and Natural Resources Legislation Amendment Act 2000*. Specifically, part 9 facilitates the Council’s transition to a non-profit non-statutory company limited by guarantee.

‘PART 9—SAVINGS AND TRANSITIONAL PROVISIONS FOR PRIMARY INDUSTRIES AND NATURAL RESOURCES LEGISLATION AMENDMENT ACT 2000

Division 1—Preliminary

Purposes of pt 9

New section 104 provides that the purposes of Part 9 are—

- (a) to transfer the assets and liabilities of the Council to a body corporate appointed by the council (its “**replacement corporation**”) that is not a public authority; and
- (b) to dissolve the Council.

Definitions for pt 9

New section 105 provides definitions of particular words used in Part 9.

Division 2—Appointment of replacement corporation

Council must appoint its replacement corporation

New section 106 states that the Council must appoint its replacement corporation. At the time of the appointment the constitution, membership, membership conditions and officers are to be resolved.

Conditions for appointment

New section 107 provides that the replacement corporation must be a company limited by guarantee. The replacement corporation may only be appointed if it has agreed to the appointment and its constitution allows the transfer of all of the assets and liabilities of the Council to the corporation.

Notice of appointment

New section 108 provides that as soon as possible after the Council has appointed its replacement corporation, it must give the Minister notice of the appointment and provide specified information about the appointment. This specified information includes constitutional requirements as well as membership eligibility.

The notice must state the objects of the replacement corporation as prescribed in the new section. The notice must also state that the Council considered various elements of the replacement corporation to be appropriate and that each eligible participant will be given an opportunity to become a member.

Division 3—Transfer to replacement corporation

Application of div 3

New section 109 provides that this division applies on the transfer day.

Transfer of council's assets and liabilities

New section 110 provides that the Council's assets and liabilities are transferred to its replacement corporation and become assets and liabilities of the corporation.

Registration of transferred assets

New section 111 sets out evidentiary provisions relating to the transfer of assets from the Council to the replacement corporation.

References to council

New section 112 provides that a reference to the Council in an Act or document existing before its dissolution, has effect from its dissolution as if it were a reference to the replacement corporation, if the context permits.

Continuity of proceedings

New section 113 provides that a proceeding (other than a proceeding that has ended) that may have been taken or continued by or against the council may be taken or continued by or against its replacement corporation.

Employees

New section 114 provides that, on the transfer date, employees of the Council become employees of the replacement corporation. An employee's entitlements, such as superannuation and leave, are carried over to the replacement corporation with no interruption to the employee's continuity of service.

Minister's directions to give effect to transfer

New section 115 enables the Minister to give written directions to the Council or the replacement corporation to give effect to the transfer of the Council's assets and liabilities. The direction must be gazetted as soon as practical and tabled in the Legislative Assembly within 14 sitting days after it is given.

Dissolution of council

New section 116 provides that on the transfer day, the Council is dissolved. This clause also provides that each person who was an officer of Council goes out of office on the transfer day. No compensation is payable for a person losing office on the transfer day.

PART 4—AMENDMENT AND REPEAL OF PRIMARY INDUSTRIES CORPORATION ACT 1992

Act amended in pt 4

Clause 9 provides that part 4 amends and repeals the *Primary Industries Corporation Act 1992*.

Omission of s 3

Clause 10 omits section 3 of the *Primary Industries Corporation Act 1992*, which sets out the definitions for the Act.

Replacement of pts 2 and 4

Clause 11 omits parts 2 and 4 of the *Primary Industries Corporation Act 1992*. Part 2 of the Act establishes the Primary Industry Corporation (the Corporation) and sets out the powers and functions of the Corporation. Part 4 of the Act provides savings and transitional provisions with respect to the operation of the Act.

This clause also inserts a new part 2, which sets out the saving and transitional provisions for the *Primary Industries and Natural Resources Legislation Amendment Act 2000*. These provisions dissolve the Corporation, make provision for the vesting of the Corporation's assets, rights and liabilities in the State, and repeal the *Primary Industries Corporation Act 1992*.

‘PART 2—SAVINGS AND TRANSITIONAL PROVISIONS FOR PRIMARY INDUSTRIES AND NATURAL RESOURCES LEGISLATION AMENDMENT ACT 2000

Definitions for pt 2

New section 3 provides the definitions for the new part 2.

Dissolution of corporation

New section 4 provides that, on commencement, the Corporation is dissolved.

Vesting of assets, rights and liabilities

New section 5 states that all assets, rights and liabilities of the Corporation vest in the State, and that the State is substituted for the Corporation in all contracts to which the Corporation is a party.

Decisions, documents etc. of corporation

New section 6 provides that any decision or recommendation, licence, notice or other document made or given, or other action taken by the Corporation before the commencement of this section is taken to be made, given or taken by the chief executive.

Legal proceedings

New section 7 provides that existing legal proceedings, or proceedings which could have been started, by or against the Corporation, may be continued or started by or against the State. This preserves the rights of litigants, or potential litigants who may have a cause of action against the Corporation.

References to corporation

New Section 8 provides that a reference in an Act or document to the Corporation in existence immediately before the commencement of this section is taken to be a reference to the State if it is a reference to the ownership or vesting of property in the Corporation or, in any other case, a reference to the chief executive.

Duty to register transfer of property

New section 9 provides that the registrar of titles and all persons who keep registers of dealings in property must, if requested by the State, make in the register all entries necessary to record the vesting of stated properties in the State by this part.

Expiry of Act

New section 10 states that the *Primary Industries Corporation Act 1992* expires on the day after commencement.

PART 5—CONSEQUENTIAL AMENDMENTS

Consequential amendments commencing on assent

Clause 12 states that schedule 1 amends the Act it mentions.

Consequential amendments commencing on 30 June 2000

Clause 13 states that schedule 2 amends the Act it mentions.

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS COMMENCING ON ASSENT

The repeal of the *Primary Industries Corporation Act 1992* has necessitated consequential amendments to seventeen pieces of legislation which make reference to the Corporation. These are:-

- (i) *Agricultural Colleges Act 1994*;
- (ii) *Dividing Fences Act 1953*;
- (iii) *Forestry Act 1959*;
- (iv) *Irvinebank State Treatment Works (Sale and Operation) Act 1990*;
- (v) *Land Act 1994*;
- (vi) *Local Government Act 1993*;

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- (vii) *Mineral Resources Act 1989*;
- (viii) *New South Wales-Queensland Border Rivers Act 1946*;
- (ix) *Petroleum Act 1923*;
- (x) *Queensland Heritage Act 1992*;
- (xi) *Recreation Areas Management Act 1988*;
- (xii) *River Improvement Trust Act 1940*;
- (xiii) *Rural Lands Protection Act 1985*;
- (xiv) *Sawmills Licensing Act 1936*;
- (xv) *Soil Conservation Act 1986*;
- (xvi) *Valuation of Land Act 1944*; and
- (xvii) *Water Resources Act 1989*.

Section 6 of the *Primary Industries Corporation Act 1992* states that the functions of the Corporation include carrying out such functions conferred on it by that Act, the *Forestry Act 1959*, the *Water Resources Act 1989* and any other Act. Section 7 of the *Primary Industries Corporation Act 1992* states that the Corporation may acquire, hold, dispose of and deal with property.

Generally, the consequential amendments contained in schedule 1, which relate to the repeal of the *Primary Industries Corporation Act 1992*, replace references to the Corporation with references to:

- (i) the State, where the reference is with respect to the ownership or vesting of property in the Corporation; or
- (ii) in any other case, a reference to the chief executive.

Further, if a provision of an Act that makes reference to the Corporation is redundant, that provision is repealed.

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS COMMENCING ON 30 JUNE 2000

The amendments made to the *Fisheries Act 1994* by part 2 of the Bill, which effect the abolition of the Queensland Fisheries Management Authority, also necessitate consequential amendments. References to the Authority in the *Fisheries Act 1994* have largely been replaced with references to the chief executive, so that the functions and powers which belonged to the Authority immediately before the commencement of part 2 are transferred to the chief executive on the commencement date. Minor amendments have also been made to the *Torres Strait Fisheries Act 1984*, so that references to the Authority are omitted.

Consequential amendments in schedule 2 commence on 30 June 2000.