

# **AGRICULTURAL AND VETERINARY CHEMICALS (QUEENSLAND) AMENDMENT BILL 2001**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Short Title**

The short title of the Bill is the Agricultural and Veterinary Chemicals (Queensland) Amendment Act 2001 (the 'Amendment Act').

#### **Objectives of the Legislation**

The objectives of the Bill are to amend the Agricultural and Veterinary Chemicals (Queensland) Act 1994 (the 'Act') to:

- validate things done or omitted to be done by certain Commonwealth authorities or officers under the National Registration Scheme ('NRS') for agricultural and veterinary chemicals that are potentially invalid following the decision of the High Court in *The Queen v Hughes* (2000) 171 ALR 155 ('Hughes');
- validate things done or omitted to be done by certain Commonwealth authorities or officers that are potentially invalid due to certain gaps in the NRS legislative scheme that have arisen independently of the decision in *Hughes*; and
- ensure that things done or omitted to be done in the future by Commonwealth authorities or officers under the NRS have a constitutionally sound basis.

## **Reasons for the Bill**

This Bill is part of a legislative response to the decision of the High Court in *Hughes* and other related matters, which includes the Co-operative Schemes (Administrative Actions) Bill 2001 (the 'CSAA Bill') and the Agricultural and Veterinary Chemicals Legislation Amendment Act 2001 (Cth).

The decision of the High Court in *Hughes* cast doubt on the ability of Commonwealth authorities and officers to exercise powers and perform functions under State laws in relation to several inter-governmental legislative schemes. In *Hughes*, the High Court indicated that, where a State gave a Commonwealth authority or officer a power to undertake a function under State law together with a duty to exercise the function, there must be a clear nexus between the exercise of the function and one or more of the legislative heads of power of the Commonwealth Parliament set out in the Commonwealth Constitution.

*Hughes* also highlighted the need for the Commonwealth Parliament to authorise the conferral of duties, powers or functions by a State on Commonwealth authorities and officers.

The decision in *Hughes* affects the NRS by casting doubts on the validity of the exercise of powers in relation to the NRS by the National Registration Authority for Agricultural and Veterinary Chemicals, the Commonwealth Director of Public Prosecutions, the Commonwealth Administrative Appeals Tribunal and Commonwealth inspectors and analysts.

The Amendment Act makes changes to the NRS to place it on a more secure constitutional footing and closes certain gaps in the conferral of duties, functions and powers on Commonwealth authorities and officers relating to the Commonwealth Administrative Appeals Tribunal and inspectors and analysts appointed under Commonwealth law.

The Amendment Act complements the CSAA Bill. That Bill validates past actions of Commonwealth authorities and officers that were not linked to a head of power under the Commonwealth Constitution, and ensures that no duty, function or power conferred on a Commonwealth authority or officer is beyond the legislative power of the State.

The Amendment Act is supported by the Agricultural and Veterinary Chemicals Legislation Amendment Act 2001 (Cth). That Act clarifies the powers, functions and duties of Commonwealth authorities and officers within the NRS, and also addresses the gaps in the NRS legislative scheme arising independently of the decision in Hughes. The Commonwealth Act was given assent on 11 July 2001.

### **Estimated costs for government implementation**

There is no administrative cost to government on implementation.

### **Consistency with fundamental legislative principles**

The Bill is generally consistent with the fundamental legislative principles outlined in section 4 of the Legislative Standards Act 1992.

However, it may be considered that clause 6 of the Bill may adversely affect the rights and liberties of individuals retrospectively. The new section 28A confers functions and powers on Commonwealth inspectors and analysts and remedies a potential deficiency in the NRS scheme identified in the wake of the Hughes decision. Further, new section 28B has the effect of validating any actions done or omitted to be done by Commonwealth inspectors and analysts prior to the commencement of the new Part 5 of the Act.

The Bill seeks to implement measures to avoid any potential deficiency the decision in Hughes might reveal. The amendments to the Act are curative in nature and are necessary to confirm and continue the operation of the NRS.

Importantly, the amendments will remove any uncertainty about the NRS. The current NRS has been operating for over seven years on the assumption that the scheme had a sound constitutional footing. The Bill is necessary to overcome the serious consequences that would otherwise flow from a potential determination that the administrative actions of Commonwealth authorities and officers under the scheme were invalid.

The Bill has no effect on the rights or liabilities of parties to proceedings that have been heard and determined. Section 8 of the CSAA Bill provides that Part 2 of that Bill (which provides for the validation of invalid administrative actions) does not affect rights and liabilities arising between parties to legal proceedings heard and finally determined. Section 8(3) of

the CSAA Bill provides specifically that the operation of Part 2 of that Bill will extend to administrative actions affected by the operation of the new section 24B of the Act.

Also clause 5, which reenacts section 16, may be considered a potential breach of the fundamental legislative principle of legislation having sufficient regard to the institution of Parliament. Reenacted section 16(5) provides that a regulation may limit the operation of section 16(4), which provides that a matter arising in relation to applicable provisions (as defined in section 3) is taken to be a matter arising in relation to the laws of the Commonwealth in the same way as if the provisions were laws of the Commonwealth only. Reenacted section 16(5) effectively allows the amendment of the Act by way of a regulation. However this provision is a reenactment and is necessary to ensure the Queensland legislation remains uniform with the Commonwealth and the other States and Territories.

### **Consultation**

There has been consultation with the Commonwealth Government and with other States through the Standing Committee of Attorney-Generals and the Standing Committee on Agriculture and Resource Management and the Agriculture and Resource Management Council of Australia and New Zealand.

Consultation within the Queensland Government was undertaken with the following stakeholders:

- Department of Justice and Attorney-General;
- Department of the Premier and Cabinet; and
- The Office of the Queensland Parliamentary Counsel.

### **Results of consultation**

All bodies consulted support the preparation of the legislation.

## NOTES ON PROVISIONS

*Clause 1* sets out the short title of the Amendment Act.

*Clause 2* provides for the commencement of the Amendment Act immediately before clause 4(1) of the CSAA Bill. Clause 4(1) of that bill refers to the Act as a relevant State Act for the purposes of the CSAA Bill. The prior commencement of these amendments before the CSAA Bill will ensure the effective operation of the CSAA Bill.

*Clause 3* provides that the Amendment Act amends the Agricultural and Veterinary Chemicals (Queensland) Act 1994 (the Act).

*Clause 4* inserts a definition of “confer” into the Act. The word “confer” is defined in the Acts Interpretation Act 1954, in relation to a function, to include impose. However, the Act contemplates the conferral not only of functions, but also of duties. Insertion of the definition ensures that the concept of “impose” is incorporated where the Act contemplates the conferral of duties.

*Clause 5* repeals and re-enacts Part 5 of the Act, which contains provisions that apply certain Commonwealth administrative laws as laws of the State. The effect is to re-apply those laws and to re-confer functions and powers on Commonwealth authorities and officers. There is doubt about the effectiveness of the previous purported conferral of functions and powers by Part 5, since the Commonwealth has not expressly authorised the conferral of those powers and functions by the States and the Northern Territory. The re-enactment of Part 5 complements the express authorisation of conferral provisions in the Agricultural and Veterinary Chemicals Legislation Amendment Act 2001 (Cth).

*Clause 6* inserts new sections 28A and 28B into the Principal Act.

### **New Section 28A – Inspectors and analysts**

New section 28A confers functions and powers on Commonwealth inspectors and analysts. This closes a gap in the NRS. The Act as it stands does not confer functions and powers on Commonwealth inspectors and analysts as it was considered that such incidental matters were impliedly conferred. This view has now been questioned as a result of the Hughes decision.

### **New Section 28B – Validation of actions of inspectors and analysts**

New section 28B validates things done or omitted to be done by inspectors and analysts before the commencement of proposed section 28A. This provision is retrospective and so a potential breach of fundamental legislative principles. However, it can be justified to overcome the serious consequences that would otherwise flow from a potential determination that the administrative actions of Commonwealth authorities and officers under this scheme were invalid.

*Clause 7* inserts a transitional provision.

### **New section 36 – Transitional provision for Agricultural and Veterinary Chemicals (Queensland) Amendment Act 2001**

New section 36 provides that the re-enacted Part 5 applies to matters arising and things done or omitted to be done before, on and after the repeal and re-enactment of Part 5.

## **SCHEDULE**

### **MINOR AMENDMENTS**

Paragraph 1 amends section 3 of the Act to provide that the dictionary in the Schedule defines particular words used in the Act.

Paragraph 2 relocates the definitions contained under section 3 to the Schedule.

Paragraph 3 amends the heading of section 32 of the Act to read “Regulation-making Power”.

Paragraph 4 inserts the Schedule that contains the dictionary into the Act after part 11.