

PRIMARY INDUSTRIES LEGISLATION AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Primary Industries Legislation Amendment Act 2002* ('the Act').

Objectives of the Legislation

The purpose of the Bill is to:

1. amend the *Animal Care and Protection Act 2001* ('the AC & P Act') to:
 - (a) provide for a consequential amendment of the *Police Powers and Responsibilities Act 2000* ('the Police Powers Act') to enable police officers to seize animals in certain circumstances; and
 - (b) to correct a number of minor drafting errors to ensure the effective operation of the AC & P Act and to avoid confusion in interpretation.
2. amend the *Chicken Meat Industry Committee Act 1973* ('the CMIC Act') to clarify that a contract registration fee is to be apportioned on a 50:50 basis between chicken meat processors and chicken meat producers ('growers').
3. amend the *Fisheries Act 1994* ('the Fisheries Act') to:
 - (a) recast the objectives of the Fisheries Act to insert a new definition of "ecologically sustainable development" and allow greater flexibility in the transfer of fishery authorities issued under the Fisheries Act in order to meet the requirements of a National Competition Policy (NCP) review; and

- (b) to clarify the meaning of some sections or to amend certain provisions to facilitate a more efficient administration of the Fisheries Act.
- 4. amend the ***Food Production (Safety) Act 2000*** ('the Food Safety Act') to:
 - (a) insert necessary transitional provisions to facilitate the transition from the existing food safety arrangements under the *Dairy Industry Act 1993* and the *Meat Industry Act 1993* to new Food Safety Schemes to be implemented by proposed regulations made under the Food Safety Act; and
 - (b) to delay the repeal of the *Dairy Industry Act 1993* and to provide for the repeal of *Meat Industry Act 1993* so that the respective dairy and meat food safety regimes remain operational until the new Food Safety Schemes for Meat and Dairy under the Food Safety Act are in place.
- 5. amend the ***Grain Industry (Restructuring) Act 1991*** ('the Grain Act') to allow a review of export marketing arrangements for the Queensland wheat crop when national arrangements for wheat marketing have been reviewed.
- 6. amend the ***Meat Industry Act 1993*** ('the Meat Act') and the ***Dairy Industry Act 1993*** ('the Dairy Act') to:
 - (a) deal with any outstanding liabilities and/or proceedings following dissolution of the Queensland Abattoir Corporation (QAC) and the Queensland Dairy Authority (QDA); and
 - (b) omit the expiry of the Meat Act to ensure that the food safety regime under the Meat Act remains operational until the new Food Safety Schemes under the Food Safety Act are proclaimed.
- 7. amend the ***Veterinary Surgeons Act 1936*** ('the Veterinary Surgeons Act') to make minor or consequential amendments to that Act.
- 8. amend the ***Primary Industry Bodies Reform Act 1999*** ('the PIBR Act') and the ***Stock Act 1915*** ('the Stock Act') to make consequential amendments to both Acts.

Alternatives to the Bill

Generally all of the proposed amendments are considered desirable for the effective operation of the Acts in question. Further, certain amendments are required to the Fisheries Act to give effect to a NCP review of the Fisheries Act. The Queensland Government is committed to the Competition Principles Agreement (CPA) under the NCP arrangements endorsed by members of the Council of Australian Governments (COAG) in April 1995.

One other alternative would be to make the amendments through separate Bills. Three of the matters are considered urgent, namely amendments to the Fisheries Act due to NCP timeline requirements, the amendments to the AC & P Act and to the Police Powers Act in regard to the effective enforcement of the new animal care and protection regime, and amendments to the Food Safety Act in light of the imminent expiry of the Dairy Act on 26 October 2002.

While the other proposed amendments are not urgent and given the fairly straightforward nature of the proposed amendments, the opportunity has been taken to make all the amendments in one Bill rather than develop a number of separate Bills. Further, in view of the volume of Parliamentary business, and the consequent workload placed on the Office of the Queensland Parliamentary Counsel, the use of an omnibus Bill is the preferred alternative.

With respect to the proposed amendments to the Dairy and Meat Acts regarding the matter of outstanding liabilities following dissolution of the QDA and QAC, the only other alternative is to delay the winding-up of the authorities for an indefinite period of time until these matters are resolved. Such an approach would impose a significant burden on government resources and it is therefore not considered as a viable alternative.

Estimated costs for government implementation

There are no financial implications for government from the proposed amendments to the AC & P Act, the Police Powers Act, the CMIC Act, the Fisheries Act, the Veterinary Surgeons Act, the PIBR Act or the Stock Act. Further, the costs of any future review emanating from the proposed amendments to the Grain Act will be met within existing resources.

The extension of the Dairy Act to allow the continued operation of the QDA may have financial implications for the government in that there may be a need to provide additional funding to the QDA Administrator to allow

the QDA to operate for the extended period beyond 30 June 2002. This is because QDA does not achieve full cost recovery at present and the reserves of QDA are expected to be run down by 31 December 2002. Any additional costs will be met within existing government resources.

In regard to the amendments proposed to facilitate the winding-up of both QDA and QAC, there will be a potential legal liability borne by the State (or Safe Food Production Queensland – ‘SFPQ’) in respect of legal matters that may continue past the time that winding-up commences for each body.

Consistency with fundamental legislative principles

No breaches of fundamental legislative principles have been identified.

CONSULTATION

Community

No community consultation was considered necessary in respect of the AC & P Act amendments as these essentially are administrative in nature. Similarly, given the nature of the amendments, no consultation occurred on the amendments of the Veterinary Surgeons Act, the PIBR Act and the Stock Act.

The Chicken Meat Industry Committee (CIMC) and the Queensland Chicken Growers Association (QCGA) have been consulted in respect to the proposed amendments to the CMIC Act.

The Department of Primary Industries has carried out a formal NCP review of the Fisheries Act. This review involved the release of a detailed Discussion Paper and the formation of an independent review committee. Public meetings on relevant issues were held throughout the State. There has been limited consultation with stakeholder groups on the remainder of the proposed amendments to the Fisheries Act due to their administrative nature.

The proposed amendments in respect of the Food Safety Act and the delayed repeal of the Dairy Act have been discussed with SFPQ and with the Administrator of the QDA.

There has also been consultation with the Administrator of QAC and QDA in respect of amendments to the Meat Act, the Dairy Act and the Food Safety Act regarding the dissolution of these bodies.

In the case of the Grain Act, there has been consultation with AgForce Grains, Grainco (Australia) Pty Ltd (Grainco), and the Queensland Produce, Seed and Grain Merchants' Association (QPS & GMA).

Government

There has been consultation with Department of the Premier and Cabinet, Queensland Treasury, the Department of Justice and Attorney-General, the Office of Rural Communities, the Office of the Queensland Parliamentary Counsel and the Department of State Development (Business Regulation Reform Unit).

The Queensland Police Service have been consulted concerning the amendments to the Police Powers Act in respect of the operation of the AC & P Act.

RESULTS OF CONSULTATION

Community

The CMIC and the QCGA support the proposed amendment in respect of the CMIC Act.

In relation to the NCP amendments to the Fisheries Act, all stakeholders concurred that the achievement of 'Ecologically Sustainable Development' should be the primary objective of the Fisheries Act. Although limited consultation has occurred on the remaining issues, it is known that there is support for them by stakeholders. Some issues, such as the inclusion of provisions for temporary transfers of authorities, have actually been initiated by fisheries representative bodies.

SFPQ and the Administrator of the QDA and QAC support the proposed amendment to the Food Safety Act to allow extension of the Dairy Act and the Meat Act respectively.

The grain industry organisations support the proposed insertion of a review clause in the Grain Act.

Government

There was broad support for the proposed amendments from all government agencies consulted.

The Department of State Development, the Competition Reform Unit of Treasury, the Department of the Premier and Cabinet and the Department of Justice and Attorney-General have raised no issues of concern.

The Queensland Police Service agrees with the need to urgently amend the Police Powers Act.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short Title

Clause 1 provides that the short title of the Act is the *Primary Industries Legislation Amendment Act 2002* ('the Act').

Commencement

Clause 2 provides for the relevant commencement dates of the Act. All parts of the Act, except for certain provisions of the Fisheries Act 1994, commence on assent. The following provisions commence on a date to be fixed by proclamation:

- *clause 14* (insertion of new section 65A & section 65B—dealing with 'temporary transfers');
- *clause 18* (replacement of section 118—dealing with statistical returns to be kept); and
- *clause 21* (amendment of schedule (dictionary)—so far as it relates to the definition of 'temporary transfers').

PART 2—AMENDMENT OF ANIMAL CARE AND PROTECTION ACT 2001

Act amended in pt 2

Clause 3 provides that this part amends the *Animal Care and Protection Act 2001*. The schedule to the Act also includes amendments of the *Animal Care and Protection Act 2001*.

Amendment of s 155 (Information notice about forfeiture)

Clause 4 clarifies a minor drafting error to make it clear that the requirement for an inspector to give an information notice to the owner of the forfeited animal or other thing (under section 155 of the *Animal Care and Protection Act 2001*) does not apply to the situation outlined in section 150(1)(c) of the *Animal Care and Protection Act 2001*, where the seized thing is not an animal and it would be impracticable or unreasonable to expect the inspector to account for the thing given its condition, nature and value.

Amendment of s 165 (Power to require information about contravention)

Clause 5 clarifies a minor drafting error to make it clear that in section 165(2), an inspector may require a person to give information either:

- (1) when there has been a contravention against the *Animal Care and Protection Act 2001* (section 165(1)(a))—information about the contravention; or
- (2) where an animal welfare direction has been given (section 165(1)(b))—information about whether the direction has been complied with.

PART 3—AMENDMENT OF CHICKEN MEAT INDUSTRY COMMITTEE ACT 1976

Act amended in pt 3

Clause 6 provides that this part amends the *Chicken Meat Industry Committee Act 1976*.

Insertion of new s 22A

Clause 7 provides for a new clause 22A which allows for a statutory funding split between processors and chicken meat producers (or ‘growers’) on a 50:50 basis for the contract registration fee. This funding arrangement is already in existence on a non-statutory basis, as there is an agreement between the three processors and the grower representative body (Queensland Chicken Meat Growers Association) that 50% of the annual contract registration fee is recouped by processors from producers/growers by way of deduction from the contract growing fee paid by processors to producers/growers.

The proposed amendment will allow a processor to be able to deduct 50% of the fee paid by the processor (under section 24B(2) of the *Chicken Meat Industry Committee Act 1976*) from payments due and owing by a grower to the processor under an agreement made under section 20 of the *Chicken Meat Industry Committee Act 1976*.

This new section was inserted as a result of concerns raised by the Chicken Meat Industry Committee, who believe that it is preferable to have this arrangement detailed in legislation so that there is no doubt as to the relative financial contributions of processors and producers/growers.

PART 4—AMENDMENT OF DAIRY INDUSTRY ACT 1993

Act amended in pt 4

Clause 8 provides this part of the Act amends the *Dairy Industry Act 1993*.

Amendment of s 99I (Dissolution of authority)

Clause 9 provides that on the dissolution of the Queensland Dairy Authority (QDA) all liabilities of the authority, apart from those relating to parts 3 or 4 of the *Dairy Industry Act 1993*, become liabilities of the State. Liabilities concerning parts 3 or 4 of the *Dairy Industry Act 1993* have been dealt with in Part 6 of the Act.

The amendments are necessary because the matter of outstanding liabilities (for example unresolved legal proceedings) following the winding-up of the QDA are not currently addressed in the Act. This legislative approach is considered to be reasonable and appropriate because it provides that any persons with a legitimate claim for outstanding liabilities against QDA are not unfairly prejudiced by its dissolution and can pursue satisfaction of their claims as against the State.

Insertion of new s 99J

Clause 10 inserts a new section 99J which preserves the rights of persons or parties (including the State) to pursue proceedings in respect of an event that occurred prior to the dissolution of the QDA that does not relate to Part 3 or 4 of the *Dairy Industry Act 1993*. The proposed amendment also preserves the rights of any person or party who has commenced proceedings against the QDA.

PART 5—AMENDMENT OF FISHERIES ACT 1994**Act amended in pt 5**

Clause 11 provides that this part amends the *Fisheries Act 1994*. The schedule to this Act also includes amendments of the *Fisheries Act 1994*.

Replacement of s 3 (Objectives of Act and their achievement)

Clause 12 replaces the current three key objectives of the *Fisheries Act 1994* with a singular clearly expressed objective of ‘Ecologically Sustainable Development’ (ESD) and provides for a comprehensive definition of ESD. The amendments are based on the ‘definition and

guiding principles of ESD' as set out in the "National Strategy for Ecologically Sustainable Development".

This amendment was as a result of a review of the *Fisheries Act 1994* in accordance with the Queensland's Government's obligations under the legislation review component of the National Competition Policy ('NCP'). The review was conducted by the Fisheries Regulation Review Committee ('the Review Committee').

It is a fundamental tenet of NCP that the objectives of a statute be clearly expressed. The Review Committee noted that the current objectives have necessitated a difficult balancing exercise that has resulted in some uncertainty for both users of fisheries resources and those charged with administering the *Fisheries Act 1994*. Further, with increasing community concerns over environmental issues, the objectives of the *Fisheries Act 1994* should be more focussed on the management of fisheries resources in an ecologically sustainable manner.

The new provision provides for the meaning of ESD and an explanation of the principles underpinning ESD.

The clause also inserts a new section 3A, which provides how the main purpose of the *Fisheries Act 1994* will be primarily achieved. The main purpose will be achieved by giving the chief executive appropriate powers to perform the chief executive's functions under this Act and providing for the following—

- the management and protection of fish habitats;
- the management of commercial, recreational and indigenous fishing;
- the prevention, control and eradication of disease in fish; and
- the management of aquaculture.

Amendment of s 65 (Transfer of authority (other than permit))

Clause 13 provides for an amendment of section 65 of the *Fisheries Act 1994* to outline the process that must be followed to apply for a temporary or permanent transfer of an authority. At present the *Fisheries Act 1994* is silent as to the process. The amendment makes it clear that the application for a transfer of an authority must be made to the chief executive jointly, by each holder of the authority and the proposed transferee, in the approved form. The new concept of temporary transfers is discussed further in clause 14.

Insertion of new ss 65A and 65B

Clause 14 inserts a new section 65A and section 65B which effectively removes references to leasing under the *Fisheries Act 1994* and introduces a new concept of ‘temporary transfer’ of an authority, which includes a lease as well as other temporary transfer arrangements, however described. The proposed amendments will allow an administrative decision for temporary transfers to be approved, unless they are specifically excluded by, and subject to any conditions imposed under, a regulation or management plan. The existing provisions in the *Fisheries Act 1994* have the effect of generally preventing leasing, or any other temporary (as distinct to a permanent) transfer of an authority, unless it is specifically allowed under a management plan or regulation.

A new section 65A is inserted that provides for temporary transfers of an authority at the discretion of the chief executive, exercised subject to any relevant provisions of a regulation or management plan. The transfer may be approved on conditions and the chief executive must give written notice of the terms of approval. The temporary transfer must be for at least 28 days in order to ensure that the Department is administratively able to process applications within a reasonable time frame. This method of a temporary transfer is the simplest and quickest way of administering temporary transfers and ensures that there is documentary evidence of the transaction, which is important for certainty for the parties and from an enforcement perspective.

The new section 65B deals with the effect of a temporary transfer. The effect is that, for the period of the transfer, only the transferee can act under the transferred authority. At the end of the temporary transfer, the entitlement to act under the authority simply reverts to the owner, without the need for further approval or administrative action.

Also, both the transferee and the transferor will be taken to be the holder for the period of the transfer in so far as the context of the *Fisheries Act 1994* permits and other than for the purpose of certain specified provisions. This is to ensure that both parties are responsible for complying with the conditions of the authority and are subject to the requirements and processes of the *Fisheries Act 1994*.

Omission of pt 5, div 3, sdiv 5A (Leases)

Clause 15 omits Part 5, division 3, subdivision 5A of the *Fisheries Act 1994*, which deals with leases. This is a minor amendment as a consequence of the new temporary transfer provisions, outlined in clause 14.

Amendment of s 67 (Suspension or cancellation of authorities by chief executive)

Clause 16 provides for a minor amendment to section 67 of the *Fisheries Act 1994* to make it clear that the chief executive may suspend or cancel an authority issued by the chief executive if they are satisfied that one or both grounds outlined in section 67(1) have been made out. In the past, there has been some confusion as to when the chief executive may suspend or cancel an authority.

Insertion of new pt 5, div 3, sdiv 6A

Clause 17 inserts a new Part 5, division 3, subdivision 6A, which provides for the effect of the death of the authority holder on the entitlement conferred by authorities.

New section 70A provides that the subdivision applies when an individual who holds an authority dies.

New section 70B provides that the general position when death occurs is that the entitlement under the authority ceases. This is considered appropriate given the personal nature of the entitlement conferred by fisheries authorities, such as commercial fisher licences and crew licences as well as in the case of non-transferable permits.

The situation in respect of other authorities, such as commercial fishing boat licences and aquaculture authorities, which are often held as part of a family run business, is far less clear. Presently, the *Fisheries Act 1994* is silent and there is significant legal doubt as to whether the statutory entitlements conferred by licences issued under the Act are, by nature, capable of vesting in the estate of a deceased authority holder.

The purpose of this amendment is to remove that doubt and provide certainty to authority holders and their families through express provisions that clearly set out the effect of a holder's death on the various statutory entitlements issues under the *Fisheries Act 1994*.

New section 70C achieves this by deeming the entitlement conferred by certain authorities (those prescribed under a regulation or management plan) to be held by an individual's personal representative upon the individual's death.

The prescription of appropriate authorities will assist in the proper administration of the deceased estate, for example by ensuring that as the person taken to be the holder, the personal representative may:

- apply to the chief executive to transfer the authority when distributing estate assets to beneficiaries;
- apply to the chief executive to transfer the authority when disposing of business assets related to the authority, for example, by selling a commercial fishing business as a going concern;
- continue to undertake the activities authorised to be done by the holder of an authority during the period in which the estate is being administered. For example, the personal representative will be entitled to continue to undertake or authorise the work needed to maintain an aquaculture business;
- elect to surrender the authority if activities previously undertaken under it are to cease.

In the case of prescribed authorities held by more than one person, one of whom was an individual who has died, the section provides that the personal representative assumes the interest of the deceased holder. The interest of the surviving holders is not affected by the changeover.

New section 70D provides for the administrative matters necessary to reflect the change in holder by requiring the change to be notified to the chief executive so that the register of authorities held under section 72 of the *Fisheries Act 1994* can be updated. Also, until the change is recorded, the section provides that notices issued by the chief executive can continue to be given to the last known address of the deceased individual.

Replacement of s 118 (Statistical returns to be kept)

Clause 18 provides for an amendment to section 118 to allow for the chief executive to specify time limits and other matters about keeping and giving of statistical returns under a regulation or management plan or some other subordinate legislation.

Currently under section 118, the chief executive can only determine the way and form in which statistical returns must be kept and given, such as prescribing time limits for records, documents or other information about fisheries in a code of practice, guideline or other document. However, the section does not provide that such requirements can be introduced by way of subordinate legislation. Ordinarily, the chief executive provides written notice to each relevant authority holder.

The amendment has been made because in some circumstances the identity of authority holders engaging in particular fishing activities can not be determined and therefore it is not possible to provide written notice. In

these cases, for a requirement to be imposed, the most appropriate option would be to impose the requirement by way of subordinate legislation. This would be beneficial, for example, where similar requirements were developed for a large group of people where their identity is not known or where the chief executive is not in a position to correspond individually with the people concerned to advise of the requirements.

The offence and penalty under this section has not been amended and remains unchanged.

Also, a minor amendment is made to clarify and amplify the ambit of this section by adding the words 'fishery or fisheries resources'. The purpose of this amendment is to remove from doubt the proposition that a regulation or management plan may require persons engaged in non-fishing activities in relation to fisheries resources to keep statistical returns.

Amendment of s 136 (Exercise of powers for Joint Authority fishery under Queensland law)

Clause 19 clarifies a minor amendment to section 136 to remove an inadvertent reference to the term 'fisheries agencies'. The inclusion of 'fisheries agencies' in the *Fisheries Act 1994* was previously necessary to allow for reference in various provisions to the former Queensland Fisheries Management Authority (QFMA) and the chief executive of the Department of Primary Industries collectively known as the 'fisheries agencies'. The QFMA is now abolished and the *Fisheries Act 1994* is administered solely by the chief executive. This amendment reflects this change.

Insertion of new s 221A

Clause 20 provides for a new section 221A which deals with a general provision allowing the chief executive to approve forms for use under the *Fisheries Act 1994* so that any forms to be used under the *Fisheries Act 1994* will be administratively approved by the chief executive. This amendment follows current practice.

Amendment of schedule (Dictionary)

Clause 21 amends the dictionary in the schedule of the *Fisheries Act 1994* as a result of the new amendments relating to temporary transfers

(clause 14), transfer of authorities upon the death of an authority holder (clause 17) and approved forms (clause 20). The additional definitions are:

- ‘**approved form**’ means a form approved by the chief executive as outlined in the new section 221A;
- ‘**entitlement**’, for the holder of an authority, means the things that the holder is authorised to do as the holder of the authority; and
- ‘**temporary transfer**’ has the meaning provided in the new section 65A(1).

PART 6—AMENDMENT OF FOOD PRODUCTION (SAFETY) ACT 2000

Act amended in pt 6

Clause 22 provides that part 6 amends the *Food Production (Safety) Act 2000*.

Replacement of s 2 (Commencement)

Clause 23 provides that part 12 will commence on a day to be fixed by proclamation. If a date for commencement is not set by proclamation, section 2(2) fixes the commencement date as 1 January 2004. Unless this amendment is made the *Dairy Industry Act 1993*, including the existing dairy food safety regime, will expire on 26 October 2002. As it is most unlikely that the proposed Dairy Produce Food Safety Scheme to be introduced under regulations to the *Food Production (Safety) Act 2000* will be operational by October 2002, it is reasonable and appropriate to ensure that the *Dairy Industry Act 1993* food safety regime remains in place pending the commencement of the proposed scheme.

The proposed amendments also specifically exempt the *Food Production (Safety) Act 2000* from the operation of section 15DA of the *Acts Interpretation Act 1954*, which provides for the automatic commencement of a postponed law one year from the assent day. The exemption allows for an extension of time, if needed. It is a precautionary measure taken in light of the complexities associated with the introduction and implementation of the proposed Dairy Produce Food Safety Scheme and Food Safety Scheme

for Meat. It is reasonable and appropriate to provide for a possible extension of the operation of the *Dairy Industry Act 1993* and the *Meat Industry Act 1993* in order to circumvent the need for any future legislative amendments in the event that the introduction of the Food Safety Schemes for meat and dairy experience further delays.

Amendment of s 14 (Functions)

Clause 24 provides that in section 14(h), ‘carry out’ is to be replaced with ‘conduct’.

Replacement of pt 11, hdg

Clause 25 amends the Part 11 heading of the *Food Production (Safety) Act 2000*. This is to reflect the insertion of savings provisions into the part.

Amendment of s 136 (Definitions for pt 8)

Clause 26 makes necessary amendments as a consequence of the changes introduced by Clauses 25 and 26.

Insertion of new pt 11, divs 2 and 3

Clause 27 inserts a new division heading after section 140 for transitional and savings provisions for the repeal of the *Dairy Industry Act 1993*.

140A Definitions for div 2

Section 140A sets out a number of definitions necessary to the interpretation of Part 11 Division 2.

140B Existing licences

The provisions set out in section 140B are necessary in order to facilitate a smooth transition from the food safety licence arrangements required by the *Dairy Industry Act 1993* to the proposed, Dairy Produce Food Safety Scheme to be introduced under regulations to the *Food Production (Safety) Act 2000*.

The proposed amendments in section 140B (1) and (2) aim to continue the effect of licences issued to persons under the *Dairy Industry Act 1993* immediately prior to the commencement of the new Part 11, as they relate to the requirements of the proposed Dairy Produce Food Safety Scheme. The new section 140B(7) provides that the effect of the licences continues until they expire or Safe Food Production Queensland (Safe Food) grants licence holders an accreditation under the *Food Production (Safety) Act 2000*.

This legislative approach is considered to be reasonable and appropriate as it ensures that persons currently licensed under the *Dairy Industry Act 1993* are not unfairly prejudiced or inconvenienced by the commencement of the proposed Dairy Produce Food Safety Scheme. The proposed section 140B(3) provides that those persons who, under the *Dairy Industry Act 1993*, were required to hold an approved Quality Assurance Program that was in place immediately prior to commencement; those parts of their approved Quality Assurance Program relating to food safety issues will be deemed to be an approved program for the purposes of the *Food Production (Safety) Act 2000*.

The proposed section 140B(4) and (5) provide that the deemed program is to be reviewed by Safe Food within the 12 months following commencement unless earlier approved following a desk or on-site audit conducted by Safe Food. Until Safe Food carries out such a review or approves the program, it is to be treated as the approved program for the purposes of the Act. This legislative approach is considered to be reasonable and appropriate in the circumstances as it allows for a gradual transition from the *Dairy Industry Act 1993* to the *Food Production (Safety) Act 2000*. This approach is preferable to requiring all dairy producers to apply for accreditation and convert their Quality Assurance Programs to approved programs under the new Dairy Produce Food Safety Scheme prior to commencement. Such an approach would have a significant impact on the resources of dairy producers and Safe Food.

New sub-section 140B(6) ensures as much consistency as possible between the terms and conditions of the licence held prior to commencement and the deemed accreditation.

New sub-section 140B(8) ensures that if Safe Food grants an accreditation under section 48 to a person to whom section 140B applies, fees paid for the un-expired portion of the licence period will be refunded. This provision is considered reasonable as it provides that persons granted an accreditation by Safe Food do not forfeit the value of any licence fees paid in advance.

New sub-section 140B(9) sets out a number of definitions necessary to the interpretation of the new section 140B.

140C Variation, suspension and cancellation of licences

New section 140C preserves the operation of the repealed Act with respect to decisions concerning variations, suspensions or cancellations of licences where they remain outstanding as at the commencement of this Part. This legislative approach is considered to be reasonable and appropriate as it ensures that those affected are not unfairly prejudiced by commencement.

140D Existing tribunal appeals about part 3 or 4 matter

This new section 140D provides that following commencement of this Part, any outstanding appeals to the tribunal relating to part 3 or 4 matters can be continued before and finished by the tribunal. It is considered reasonable and appropriate in the circumstances to preserve the rights of any litigants, to continue and conclude any pending appeals before the tribunal.

140E Appeals to court about part 3 or 4 matters

The new section 140E provides that an appeal started prior to commencement against a decision of the former authority or tribunal under the repealed Act can be progressed by the relevant court as if the Act had not been repealed.

Section 140E also preserves the rights of any potential litigants to bring legal proceedings in respect of an event that occurred prior to commencement, unless they have previously appealed in respect of that same event.

This approach is considered to be reasonable and appropriate as it provides that those affected are not unfairly prejudiced by commencement.

140F Proceedings by or against former authority about part 3 or 4 matters

Provides that existing proceedings, or proceedings which could have been started by or against the former authority because of an event that

occurred prior to commencement, may be continued or started by or against Safe Food.

This legislative approach is considered to be reasonable and appropriate because it provides that those affected are not unfairly prejudiced by commencement.

140G Liabilities of former authority for part 3 or 4 matters

This provision makes Safe Food responsible for any liabilities of the former authority arising out of part 3 or 4 of the repealed Act, following dissolution day.

140H Existing authorised persons

Provides that existing authorised persons under the repealed *Dairy Industry Act 1993* can continue as authorised persons for the purposes of the *Food Production (Safety) Act 2000*.

140I References to repealed Act

Provides that references to the repealed *Dairy Industry Act 1993* in any legislation or documents may be taken as references to the *Food Production (Safety) Act 2000* provided that the context in which the repealed Act is referred to falls within the scope of the *Food Production (Safety) Act 2000*.

140J Safe Food taken to be the former authority

Provides that references to the former authority in any legislation or documents must be taken to be a reference to Safe Food where the context permits.

Division 3—Transitional and savings provisions for repeal of Meat Industry Act 1993

140K Definitions for div 3

This section sets out a number of definitions required to interpret the provisions of Part 11 Division 3.

140L Existing accreditations

The provisions set out in section 140L are necessary in order to facilitate a smooth transition from the food safety licence arrangements required by the *Meat Industry Act 1993* to the proposed Food Safety Scheme for meat to be introduced under regulations to the *Food Production (Safety) Act 2000*.

The provisions aim to continue the effect of accreditations issued to persons under the *Meat Industry Act 1993* immediately prior to the commencement of the new Part 11 as they relate to the requirements of the proposed Food Safety Scheme for meat. The new section 140L(7) provides that the effect of the accreditations continues until they expire or Safe Food grants accreditation holders an accreditation under the *Food Production (Safety) Act 2000*.

This legislative approach is considered to be reasonable and appropriate as it provides that persons currently accredited under the *Meat Industry Act 1993* are not unfairly prejudiced or inconvenienced by the commencement of the proposed Food Safety Scheme for meat.

The provisions of section 140L(3) apply to those persons who held an approved program of production under the *Meat Industry Act 1993* immediately prior to commencement. Those parts of their approved program of production relating to food safety issues will be deemed to be an approved program for the purposes of the *Food Production (Safety) Act 2000*.

The proposed section 140L(4) and (5) provide that the deemed program is to be reviewed by Safe Food within the 12 months following commencement unless earlier approved following a desk or on-site audit conducted by Safe Food. Until Safe Food carries out such a review or approves the program, it is to be treated as the approved program for the purposes of the *Food Production (Safety) Act 2000*. This allows for a gradual transition from the *Meat Industry Act 1993* to the *Food Production (Safety) Act 2000*. This approach is preferable to requiring all meat producers to apply for accreditation and convert their programs of production prior to commencement of the Food Safety Scheme for Meat. Such an approach would have a significant impact on the resources of meat producers and Safe Food.

New sub-section 140L(6) ensures as much consistency as possible between the terms and conditions of the accreditation held prior to commencement and the deemed accreditation.

New sub-section 140L(8) ensures that if Safe Food grants an accreditation under section 48 to a person to whom section 140K applies, fees paid for the unexpired portion of the accreditation period will be refunded. This provision is considered reasonable as it provides that persons granted an accreditation by Safe Food do not forfeit the value of any accreditation fees paid in advance.

New sub-section 140L(9) sets out a number of definitions necessary to the interpretation of the new section 140L.

140M Existing temporary accreditations

Preserves the rights and interests of those persons who held a temporary accreditation under the *Meat Industry Act 1993* immediately prior to commencement on the same terms and conditions until the expiry of the temporary accreditation or a decision is made by Safe Food to grant or refuse that person an accreditation under the *Food Production (Safety) Act 2000*. For those temporary accreditations requiring a program of production, only those parts of the program concerning food safety issues will be deemed to be the approved program for the purposes of the Act.

The terms of this provision are consistent with the objectives of section 140K to provide a gradual transition for those who held accreditations under the *Meat Industry Act 1993* immediately prior to commencement.

140N Variation, suspension and cancellation of accreditation

New section 140N preserves the operation of the repealed Act with respect to decisions concerning variations, suspensions or cancellations of accreditations that remain outstanding as at commencement of this Part. This legislative approach is considered to be reasonable and appropriate as it provides that those affected are not unfairly prejudiced by commencement.

140O Existing appeals to tribunal

Section 140O provides that if following commencement, an appeal to the tribunal remains outstanding, the proceeding can be continued before and concluded by the tribunal in accordance with the provisions of the repealed Act. It is considered reasonable and appropriate to preserve the

powers of the tribunal with respect to any pending appeals as a failure to do so could prejudice an affected party.

The *Meat Industry Act 1993* section 166A provides that Safe Food stands in the place of the former Queensland Livestock and Meat Authority for all purposes of the *Food Production (Safety) Act 2000* on commencement of that Part.

140P Appeals to court

The new section 140P preserves the rights of litigants and potential litigants to continue or commence legal action because of an event that happened before commencement under the repealed Act. This approach is considered to be reasonable and appropriate as it provides that those affected are not unfairly prejudiced by commencement.

140Q Proceedings by or against former authority

Provides that existing proceedings, or proceedings which could have been started by or against the former authority because of an event that occurred prior to commencement, may be continued or started by or against Safe Food.

This approach is considered to be reasonable and appropriate as it provides that those affected are not unfairly prejudiced by commencement.

140R Existing meat safety persons

Provides that existing authorised persons under the repealed Act can continue as authorised persons for the purposes of this Act.

140S References to repealed Act

Provides that references to the repealed Act in any legislation or documents may be taken as references to the *Food Production (Safety) Act 2000* provided that the context in which the repealed Act is referred to falls within the scope of the *Food Production (Safety) Act 2000*.

140T Safe Food taken to be the former authority

Provides that a reference to the former authority in an Act or document must be taken to be a reference to Safe Food where the context permits.

Replacement of pt 12 (Repeal and amendment of Acts)

Clause 28 provides for the repeal of the *Dairy Industry Act 1993* and specifically declares that sections 99I and 99J of the *Dairy Industry Act 1993* are subject to section 20A of the *Acts Interpretation Act 1954*. The effect is that the repeal of the *Dairy Industry Act 1993* will not have an affect on the operation of sections 99I and 99J (please refer to Clauses 9 and 10 above for the meaning and effect of sections 99I and 99J).

The clause also provides for the repeal of the *Meat Industry Act 1993* and preserves the operation of Parts 7 and 7B of that Act. Parts 7 and 7B enable the administrator of the Queensland Abattoir Corporation (QAC) to continue to attend to any matters preceding the dissolution of QAC.

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

Act amended in pt 7

Clause 29 provides that this part amends the *Grain Industry (Restructuring) Act 1991*. The schedule to the Act also includes some minor amendments to the *Grain Industry (Restructuring) Act 1991*.

Amendment of s 21 (Objects of this Act)

Clause 30 provides for an amendment to the *Grain Industry (Restructuring) Act 1991* to add a further objective to the *Grain Industry (Restructuring) Act 1991*. The amendment relates to the review of export marketing arrangements for wheat produced in the State when national arrangements for wheat marketing have been reviewed. This is a consequential amendment as a result of the insertion of a review provision of export marketing arrangements for Queensland wheat in certain circumstances. The proposed review is detailed in clause 32.

By way of background, the *Grain Industry (Restructuring) Act 1991* includes a provision for the continuation of statutory grain marketing arrangements, known as ‘vesting’ (also called ‘compulsory acquisition’), for certain grains, notably wheat and barley.

The wheat vesting arrangements do not operate unless activated by regulation. This is because of Queensland’s continued participation in the

national export arrangements under the Commonwealth's *Wheat Marketing Act 1989*, which in effect allow a national grower-owned body, AWB Limited (formerly the Australian Wheat Board) to exercise control over all wheat exports, usually called 'single desk selling' (SDS).

The wheat and barley powers expired on 30 June 2002. Due to the uncertainty surrounding the Commonwealth's intentions with the national arrangements, a review provision is proposed that would allow the Minister for Primary Industries and Rural Communities to arrange for a public review of options for the export marketing of Queensland wheat, especially, if the Commonwealth Act was ever repealed.

Amendment of s 3 (Definitions)

Clause 31 makes a minor consequential amendment and deletes the definition of 'inspector' in the definition section, section 3 of the *Grain Industry (Restructuring) Act 1991*.

Insertion of new pt 5

Clause 32 provides for a new Part 5 which inserts a review clause into the *Grain Industry (Restructuring) Act 1991*, which would be activated after the Commonwealth government's review (and report) regarding the national arrangements for wheat under the *Wheat Marketing Act 1989*. This option for review is of particular significance if the Commonwealth government were to dismantle the current national arrangements for wheat or were to repeal or suspend that part of the *Wheat Marketing Act 1989*, which deals with the national arrangements for wheat.

The review provision will allow the Minister administering the *Grain Industry (Restructuring) Act 1991* (currently the Minister for Primary Industries and Rural Communities) to initiate a public review of the options for future export marketing arrangements for Queensland wheat to replace the national arrangements, if necessary.

The new section 34 outlines how the review is to be conducted by the Minister for Primary Industries and Rural Communities, including the procedure for fixing the terms of reference. Further, to allow maximum public debate, the review would include a public benefit test for all options and would also be laid before Parliament.

There is also a new section 35, which provides that the Minister for Primary Industries and Rural Communities must review the new review provision in section 34 within five years of the commencement of the Act.

PART 8—AMENDMENT OF MEAT INDUSTRY ACT 1993

Act amended in pt 8

Clause 33 provides that part 8 amends the *Meat Industry Act 1993*.

Amendment of s 162N (Dissolution of abattoir corporation)

Clause 34 provides that on the dissolution of the Queensland Abattoir Corporation (QAC) all liabilities of the authority become liabilities of the State. The amendment is necessary as the matter of any outstanding liabilities such as unresolved court actions following the winding-up of the authority are not currently addressed in the *Meat Industry Act 1993*. This legislative approach is considered to be reasonable and appropriate because it provides that any persons with a legitimate claim for outstanding liabilities against QAC are not unfairly prejudiced by its dissolution and can pursue satisfaction of their claims as against the State.

Insertion of new s162O

Clause 35 provides that outstanding proceedings commenced prior to the dissolution of QAC can be continued and finished by or against the State.

The clause also preserves the rights of any persons, including the State, to pursue legal proceedings in respect of an event that occurred before dissolution of the authority.

Omission of pt 9 (Expiry)

Clause 36 omits the sunset clause in the *Meat Industry Act 1993*. The expiry date was removed as a precautionary measure in the event that the introduction of the Food Safety Scheme for meat is delayed.

PART 9—MINOR AND CONSEQUENTIAL AMENDMENTS

Clause 37 provides that the Schedule amends the Acts it mentions.

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

The Act has necessitated a number of minor and consequential amendments to the following Acts:

- *Animal Care and Protection Act 2001*;
- *Fisheries Act 1994*;
- *Grain Industry (Restructuring) Act 1991*;
- *Police Powers and Responsibilities Act 2000*;
- *Primary Industry Bodies Reform Act 1999*;
- *Stock Act 1915*; and
- *Veterinary Surgeons Act 1936*

The consequential amendment to the *Police Powers and Responsibilities Act 2000* corrects a drafting error to make section 66(2) workable to allow police officers to exercise their powers of seizure under that section. The effect of the amendment allows police officers to seize animals in one of two situations:

- (1) to prevent imminent risk of injury or death to an animal or to provide veterinary treatment or to prevent undue pain to an animal and the interests of its welfare require its immediate seizure; or
- (2) to prevent an animal welfare offence or breach of a court order about the animal.

This amendment does not reflect a change in any policy.

In relation to the *Primary Industry Bodies Reform Act 1999*, an amendment is made to references to the *Dairy Industry Act 1993* in section 84(2)(c) and section 84(3)(c) of the *Primary Industries Bodies Reform Act 1999*, in anticipation of the repeal of the *Dairy Industry Act 1993*.

In relation to the *Stock Act 1915*, an amendment is made to the reference to a meat safety officer under the *Meat Industry Act 1993* to reflect the appropriate officer under the *Food Production (Safety) Act 2000*.

The opportunity has also been made to make some minor or consequential amendments to the *Veterinary Surgeons Act 1936*.

The term 'surgery' in section 18(3) has been replaced with 'science' to reflect current industry terminology and to be consistent with the remaining provisions of the *Veterinary Surgeons Act 1936*.

There is also a consequential amendment to section 25(c) of the *Veterinary Surgeons Act 1936* to reflect the commencement of the *Animal Care and Protection Act 2001* on 1 March 2002.

There is also a minor amendment made to section 34, which deals with savings provisions, to remove a redundant reference to the *Agricultural Standards Act 1952*, which has been replaced with the *Agricultural Standards Act 1994*.