

# **Primary Industries And Fisheries Legislation Amendment Bill 2004**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the Bill is the *Primary Industries and Fisheries Legislation Amendment Bill 2004*.

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

The main purpose of the Bill is to:

1. make amendments to and subsequently repeal the *Sawmills Licensing Act 1936* (the Sawmills Act) and amend the *Fisheries Act 1994* (the Fisheries Act) to meet National Competition Policy requirements;
2. amend the *Stock Act 1915* (the Stock Act) and *Exotic Diseases in Animals Act 1981* (the Exotic Diseases Act) to clarify the appeals process under each Act;
3. amend the *Food Production (Safety) Act 2000* (the Food Safety Act) and the *Grain Industry (Restructuring) Act 1991* (the Grain Act) to clarify the policy intent in some provisions and to make formal/technical amendments;
4. make further amendments to the Fisheries Act to:
  - a. enable disclosure of information to other agencies in certain circumstances; and
  - b. to make it clear that the offence of obstructing an inspector includes assault, threaten to obstruct or attempt to obstruct; and
5. make a minor amendment to the *Police Powers and Responsibilities Act 2000* (the Police Powers Act).

## **Reasons for the policy objectives of the Bill**

### **NCP amendments to the Sawmills Act and Fisheries Act**

The key objective of the National Competition Policy (NCP) is to develop a more open and integrated market that limits anti-competitive conduct and unless justified in the public interest, to remove any special advantages previously enjoyed by government. The State, as part of its commitment under the NCP, undertook to review and change legislation that restricts competition and is not in the public interest. In its 2003 assessment report, the National Competition Council reported that certain aspects of fisheries management and the sawmills licensing legislation did not fully meet the requirements of the NCP.

### **Stock Act and Exotic Diseases Act**

As a result of a recent District Court decision, it became apparent that the appeal process under each Act had to be clarified. The matter related to a claim by an owner of cattle property seeking compensation against the State for destocking large numbers of cattle under the Stock Act. The Stock Act did not expressly refer to further rights of appeal. The District Court found that the State had no right of appeal from the Magistrates Court, which made the initial decision about payment of compensation. Despite a subsequent decision by the Court of Appeal that the State did have a further right of appeal to the District Court, it is proposed to clarify the appeals process to put the issue beyond doubt.

### **Food Safety Act**

It has been identified that an amendment made to this Act in 2003 may have an unintended consequence of excluding all game meat harvesting, including commercial harvesting. However, it was never the intention to exclude from the Act's operation the commercial activity of game meat harvesting.

### **Grain Act**

At present, a review clause provides that Queensland must review their wheat marketing arrangements soon after the Commonwealth reviews the national arrangements under the *Wheat Marketing Act 1989* (Cwth). However, the trigger for a State review is considered too broad. It is only necessary to review State wheat marketing arrangements if the

Commonwealth decides to take any action to change the arrangements, leaving the Queensland wheat industry vulnerable.

## **Other amendments to the Fisheries Act**

### **Disclosure of personal information**

An amendment to the Fisheries Act is required to provide for the disclosure of personal information with prescribed government entities whose functions under a law include enforcement of criminal law.

### **Definition of ‘obstruct’**

Currently the Fisheries Act does not define the term ‘obstruct’ and therefore it is not clear when it is an offence to obstruct a fisheries inspector. This has caused some enforcement difficulties. Also, defining ‘obstruct’ would be consistent with the protection afforded to other enforcement officers under other environmental and primary industries legislation.

### **Police Powers Act**

Following consultation with the Queensland Police Service, it was decided to make two amendments to the Police Powers Act, inserted as consequential amendments to the *Animal Care and Protection Act 2001*. These amendments were considered desirable as it will mean that the powers of police officers to respond to animal welfare incidents are more closely aligned to those of inspectors appointed under the *Animal Care and Protection Act 2001*.

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

### **NCP amendments to the Sawmills Act and Fisheries Act**

The Sawmills Act will be repealed. In regard to the Fisheries Act, amendments will be made to remove the requirement for administrative approval of authorities (including quotas) before they can be transferred.

### **Stock Act and Exotic Diseases Act**

The proposed amendment will involve providing for another level of appeal beyond the Magistrates Court (in the case of the Stock Act) and the District Court (in the case of the Exotic Diseases Act). The amendments will also change the first level of appeal in compensation matters from the Magistrates Court to the District Court in the case of the Stock Act.

### **Food Safety Act**

A minor amendment is made to make it clear that the Act covers commercial game meat harvesting.

### **Grain Act**

Amendments are made to only require a State review of wheat marketing arrangements if the Federal government takes any action to dismantle the national 'single desk' export arrangements.

### **Other amendments to the Fisheries Act**

#### **Disclosure of personal information**

Amendments to the Act are to be made to provide for the disclosure of personal information, in accordance with a guideline approved by the chief executive, between prescribed government entities for enforcement of the criminal law.

#### **Definition of 'obstruct'**

A definition of 'obstruct' is included to make it clear that this term includes to assault, attempt or threaten to obstruct an inspector.

### **Police Powers Act**

A minor amendment is made so that the powers of police officers to respond to animal welfare incidents are more closely aligned to those of inspectors appointed under the *Animal Care and Protection Act 2001*.

## **Alternatives to the Bill**

Generally all the amendments are considered desirable or necessary for the effective operation of the Acts in question. Further, certain amendments (under the Fisheries Act and the Sawmills Act) are to give effect to NCP arrangements endorsed by members of the Council of Australian Governments in April 1995 and the option of 'doing nothing' is not appropriate.

Another alternative to the Bill would be to amend these Acts (and repeal the Sawmills Act) individually. However, it is considered this process would be time-consuming and costly. Further, given the volume of Parliamentary business, it could be some years before all these amendments could be made.

## **Estimated costs for government implementation**

The repeal of the Sawmills Act will result in annual revenue loss for government through loss of annual licence fees. However, this is less than the total cost of maintaining the licence registry.

There are no financial implications resulting from the other proposed amendments and if there were any additional costs, these would be met within existing government resources.

## **Consistency with fundamental legislative principles**

No breaches of fundamental legislative principles have been identified.

## **Consultation**

### **Community**

The proposed repeal of the Sawmills Act has been discussed on a number of occasions with the recognised body representing the timber processing industry, Timber Queensland Limited (formerly the Queensland Timber Board) and the Australian Rainforest Conservation Society.

The Queensland Seafood Industry Association has been consulted in regard to the amendments to the Fisheries Act. Also, the Queensland Public Sector Union has been consulted in regard to the proposed amendment to the Fisheries Act defining 'obstruct'.

The Queensland Biosecurity Advisory Council has been advised of the need for amendments to the Stock Act and the Exotic Diseases Act.

AgForce Grains was consulted in 2003 in regard to the proposed amendments to the Grain Act.

## **Government**

There has been consultation on the development of this submission with Queensland Treasury (Treasury), Department of Communities, Queensland Police Service, Office of the Queensland Parliamentary Counsel, Department of the Premier & Cabinet, Department of Justice and the Attorney-General (DJAG) and the Department of State Development and Innovation.

## **Results Of Consultation**

### **Community**

The industry bodies that were consulted in respect of the amendments to the Fisheries Act, Stock Act, Exotic Diseases Act and the Grain Act have raised no objections to the proposed Bill.

### **Government**

There was broad support from government that the amendments should proceed.

In particular, Treasury is supportive of the NCP amendments to the Sawmills Act and the Fisheries Act. The repeal of the Sawmills Act completes the process of implementing the outcome of the NCP review of the Sawmills Act, and the amendment to section 65 of the Fisheries Act resolves one of the major issues identified by the National Competition Council.

Also, DJAG has been consulted on, and is supportive of, the insertion of a definition of 'obstruct' into the Fisheries Act. The wording of the provision is consistent with current drafting practice. DJAG has also indicated broad support for the amendment to the Fisheries Act for disclosure of personal information between enforcement agencies.

## **Notes On Provisions**

### **Part 1 Preliminary**

#### **Short title**

Clause 1 provides that the short title of the Act is the *Primary Industries and Fisheries Legislation Amendment Act 2004* (the Act).

#### **Commencement**

Clause 2 provides for the relevant commencement dates of the Act. All parts of the Act, except for the amendment to the Sawmills Act and subsequent repeal, commence on assent.

The following parts commence on other dates:

- Part 9 (which deals with the repeal of the Sawmills Act) - commences on 1 January 2005. This is to allow sufficient time for the Act to be passed.
- Part 7 (which provides for transitional provisions relating to the Sawmills Act) - commences on 30 September 2004. This is to allow current licences, which expire on 30 September 2004, to continue until the Sawmills Act is repealed.

### **Part 2 Amendment of Exotic Diseases in Animals Act 1981**

#### **Act amended in pt 2**

Clause 3 provides that this part amends the *Exotic Diseases in Animals Act 1981* (the Exotic Diseases Act).

#### **Insertion of new ss 33A–33D**

Clause 4 inserts new sections 33A to 33D to provide an appeal to the Court of Appeal against a District Court's decision under section 33.

Section 33 provides that, if the Minister and a claimant have failed to agree upon the market value of any animal or property in respect of which compensation is payable under the Exotic Diseases Act or upon the appointment of a valuer to fix the market value or if the market value fixed by a valuer is unacceptable to the Minister or claimant, the market value is to be fixed by a District Court judge.

Section 33A allows an appeal to the Court of Appeal against the District Court's decision. Section 33B sets out how an appeal is started and section 33C provides for hearing procedures. Section 33D provides that the Court of Appeal can confirm, amend or substitute another decision for the decision appealed against.

## **Part 3 Amendment of Fisheries Act 1994**

### **Act amended in pt 3**

Clause 5 provides that this part amends the *Fisheries Act 1994* (the Fisheries Act).

### **Renumbering of ss 65A–65C**

Clause 6 renumbers sections 65A, 65B and 65C.

### **Replacement of s 65 (Transfer of authority (other than permit))**

Clause 7 omits section 65 and provides for a new subdivision relating to the transfer of authorities. This clause effectively removes the requirement for transfers to be approved by the chief executive and substitutes this with a process of transfer registration. Now a transfer application will be made to the chief executive to amend the register of authorities, which must be kept by the chief executive under section 73 of the Fisheries Act.

In other words, the main change is that it removes the discretion of the chief executive to approve (or refuse) the transfer of an authority. The current application process for transfers remains essentially the same and is necessary to ensure that the conveyance of authorities, which are rights akin to property rights, is both auditable and secure.



The requirement for prior approval of the chief executive is considered unduly restrictive to authority holders and contrary to the National Competition Policy.

The new section 65 provides that this subdivision applies to the transfer of an authority, other than the permit, unless a regulation or management plan states that this authority is not transferable. Also, it makes it clear that an authority cannot be transferred in the circumstances relating to the particular authority. For example, a person cannot transfer reef line quota units to another licence if that other licence does not have the relevant reef line fishery symbol. This application is the same as the previous section 65.

Section 65A outlines how to apply to register the transfer of an authority and includes the following mandatory requirements for the application:

- to complete a form approved by the chief executive (the form must include a sufficient description of the authority to be transferred);
- made jointly by each holder of the authority (transferor) and each person to whom the authority will be transferred to (transferee); and
- provide a written declaration by the transferor and transferee that the information in or accompanying their application is true and that they have complied with all requirements under the Fisheries Act or subordinate legislation, for example, logbooks for the authority are up to date and submitted to the chief executive as required. This declaration is important as it is critical for administration and enforcement purposes that the information provided is accurate.

Also, the application must be accompanied by the following:

- prescribed fees;
- written approval of each third party noted on the public register of authorities kept by the chief executive under section 73;
- the authority to be transferred (if the authority to be transferred is quota then the quota certificate for each applicant is required); and
- any other document or information prescribed under a regulation.

The application must also be properly executed by the transferor and transferee which means in accordance with the *Land Titles Act 1994* (section 161). This is an additional legislative requirement. However, it is considered important as fisheries authorities are treated as valuable, tradable commodities and have some characteristics akin to property.

Once the application is registered by the chief executive, the section makes it clear that all rights and liabilities attaching to the authority will vest in the transferee as the new holder of the authority. For example, if the authority transferred is suspended, the new authority holder cannot act under that authority until the suspension period has lapsed.

The new section 65B provides for when the chief executive must register an application to register the transfer of an authority.

The chief executive must register a ‘properly made application’. A ‘properly made application’ is made when the application complies with the requirements set out in section 65A and the transferor and transferee provides any further information requested by the chief executive under section 65B. Under this section, the chief executive may ask (in writing) for any further documents or information to enable them to register the transfer.

### **Amendment of s 65C (Temporary transfers)**

Clause 8 makes consequential amendments to section 65C, which deals with temporary transfers, as a result of the new registration of transfer provisions, including making the temporary transfer commence no earlier than the day the details of the transfer are entered in the register of authorities. Also, if the temporary transfer is a quota, the amendment makes it clear that the length of the transfer cannot be longer than a quota year. The chief executive is still required to give written notice to the applicant of the temporary transfer.

### **Amendment of s 65D (Effect of temporary transfer)**

Clause 9 makes consequential amendments to section 65D, which deals with the effect of temporary transfers, as a result of the new transfer registration provisions. Importantly, the temporary transfer takes effect upon registration.

### **Amendment of s 65E (Waiver of fee or requirement on transfer or amendment)**

Clause 10 makes consequential amendments to section 65E, which deals with when an application can be made to waive the transfer fee. This is as a result of the new transfer registration provisions. In practice, this application form can be supplied at the same time an application to register a transfer is sought under the new section 65A.

### **Amendment of s 76 (Offences about registers)**

Clause 11 makes a technical amendment to make it clear that the offence about registers refers to the public register kept by the chief executive, as required under section 73 of the Fisheries Act.

### **Amendment of s 175 (False or misleading information)**

Clause 12 includes a reference to the chief executive to now make it an offence to provide false or misleading information to the chief executive (or a delegate of the chief executive). It previously only covered supplying false or misleading information to an inspector.

It is important to expand this offence given the new registration provisions. As the chief executive must register a properly made application for transfer, it is vital for an effective transfer and registration that the information provided in the document is true and correct. The onus is on the transferee and transferor to provide accurate and proper information and to ensure they have complied with all requirements under Act that relate to the authority to be transferred (see section 65A(2)(b) & (c)).

There is already a similar offence provision in the Fisheries Act (section 176) concerning giving false, misleading or incomplete documents to the chief executive (or an inspector).

### **Amendment of s 182 (Obstruction etc. of inspector)**

Clause 13 provides for a definition of 'obstruct'. Section 182 provides that it is an offence to obstruct, hinder or resist an inspector unless the person has a reasonable excuse. However, the Fisheries Act did not define 'obstruct'. The insertion of a definition of 'obstruct' makes it clear that the term includes assault and attempting or threatening to obstruct an inspector.

### **Insertion of new s 217A**

Clause 14 provides a power for the chief executive to disclose certain information in circumstances where it is considered necessary or desirable in the public interest to assist external agencies to perform compliance functions. The disclosure of information will be confined to government entities with enforcement functions in relation to the criminal law.

To safeguard the use of this power:

- Disclosure of information under this section will occur in accordance with a policy approved by the chief executive of the entity administering the Fisheries Act.
- the chief executive must exercise the power personally

### **Amendment of schedule (Dictionary)**

Clause 15 makes a minor amendment to the definition of ‘temporary transfer’ as this section has been renumbered.

## **Part 4 Amendment of Food Production (Safety) Act 2000**

### **Act amended in pt 4**

Clause 16 provides that this part amends the *Food Production (Safety) Act 2000* (the Food Safety Act).

### **Amendment of s 6 (Exemption from application of Act)**

Clause 17 amends section 6 to clarify that only wild game caught for personal use is excluded from the operation of the Food Safety Act. It was always the intention of the Food Safety Act that it covered commercial game meat harvesting.

## **Part 5 Amendment Of Grain Industry (Restructuring) Act 1991**

### **Act amended in pt 5**

Clause 18 provides that this part amends the *Grain Industry (Restructuring) Act 1991* (the Grain Act).

### **Amendment of s 2 (Objects of this Act)**

Clause 19 makes two main amendments: (1) removes the provisions relating to Grainco; and (2) amends the provision dealing with the review of Queensland wheat marketing arrangements.

The references to Grainco have been removed because since October 2003, Grainco no longer exists having been acquired by a New South Wales

based company, Graincorp Limited (ACN 057 186 035). Consequently, any references to Grainco are no longer relevant.

The other amendment relates to the review of Queensland wheat marketing arrangements. The amendment triggers a State review only if the Commonwealth reviews national arrangements for wheat marketing (under the *Wheat Marketing Act 1989* (Cwlth)) and the Commonwealth decides to change the national ('single desk') arrangements for the export of wheat. It was previously the case that a State review was activated upon a Commonwealth review of national arrangements under the *Wheat Marketing Act 1989*. A State review is considered necessary only if the Commonwealth, upon its review, decides to dismantle the current national arrangements or makes any amendment that would allow unrestricted export of wheat in bulk from Australia, or if they were to repeal that part of the *Wheat Marketing Act 1989*, which deals with the national arrangements for wheat. In fact, clause 20(2) defines 'change...(in)...national arrangements for the export of wheat' to define these limited circumstances when a State review will follow.

### **Amendment of s 3 (Definitions)**

Clause 20 makes two amendments: (1) removes the definition of 'asset' and 'Grainco' as a result of Grainco being acquired by Graincorp Limited (see clause 19); and (2) introduces a new definition for the term 'change the national arrangements for the export of wheat' as a result of the amended review provisions (see clause 19).

### **Omission of s 4 (Grainco does not represent the State)**

Clause 21 omits section 4 as Grainco has ceased to exist, having been acquired by a New South Wales based company, Graincorp Limited (see clause 19).

### **Omission of pt 2, div 1**

Clause 22 omits part 2, division 1, which deals with the administration of Grainco. This division is no longer relevant since Grainco has been taken over by Graincorp Limited (see clause 19).

### **Omission of pt 2, div 2, hdg**

Clause 23 makes a consequential amendment as a result of clause 22 and omits the heading of part 2, division 2.

### **Amendment of s 34 (Review of export wheat marketing arrangements)**

Clause 24 amends section 34 to provide for an amended State review of export wheat marketing arrangements. The amendment triggers a State review only if the Commonwealth reviews national arrangements for wheat marketing (under the *Wheat Marketing Act 1989* (Cwlth)) and the Commonwealth decides to change the national ('single desk',) arrangements for the export of wheat, leaving the Queensland wheat industry vulnerable. It was previously the case that the review was activated upon a Commonwealth review of national arrangements under the *Wheat Marketing Act 1989*. Clause 20(2) makes it clear that a State review commences only if the Commonwealth, upon its review, decides to dismantle the current national arrangements or makes any amendment that would allow unrestricted export of wheat in bulk from Australia, or if they were to repeal that part of the *Wheat Marketing Act 1989*, which deals with the national arrangements for wheat.

The clause also makes an amendment to remove reference to the entity 'Grainco' as it no longer exists (see clause 19).

### **Omission of ss 57–61**

Clause 25 omits sections 57 to 61 which relate to enforcement measures for the former statutory marketing (vesting) arrangements, which used to operate under the Grain Act. As these arrangements have ceased (repealed by the *Primary Industries and Other Legislation Amendment Act 2003*), these sections are redundant.

### **Omission of pt hdgs**

Clause 26 makes minor drafting amendments by omitting the headings of part 1, 2, 5 and 7 of the Grain Act.

## **Part 6 Amendment of Police Powers and Responsibilities Act 2000**

### **Act amended in pt 6**

Clause 27 provides for the amendment of the *Police Powers and Responsibilities Act 2000*.

### **Amendment of s 65B (Power to give animal welfare direction)**

Clause 28 amends section 65B(2)(e) to correct the reference to section 65(2)(d), which should be section 66(2)(d), and to align the powers of police officers in responding to animal welfare incidents more closely to those of inspectors under the *Animal Care and Protection Act 2001*.

Section 65B provides the circumstances in which a police officer can issue an animal welfare direction. The amendment will mean that the reference to the sections under which an animal has been seized will include all the relevant sections under which an animal may have been seized by a police officer.

### **Amendment of s 66B (Power to destroy animal)**

Clause 29 amends section 66B(a), which sets out the circumstances in which a police officer can destroy an animal, to refer to all the relevant sections under which an animal may have been seized by a police officer.

## **Part 7 Amendment Of Sawmills Licensing Act 1936**

### **Act amended in pt 7**

Clause 30 provides that this part amends the *Sawmills Licensing Act 1936* (the Sawmills Act).

### **Insertion of new s 21**

Clause 31 inserts a new section 21, which is a transitional provision relating to the subsequent repeal of the Sawmills Act (see Part 9).

The National Competition Council who assessed this legislation did not fully comply with Queensland's obligations under the National Competition Policy and therefore the Sawmills Act is being repealed on 1 January 2005. However, until this time, provision needs to be made for those 2003/2004 licences granted under the Sawmills Act and which expire on 30 September 2004. This section allows for the renewal of these licences until the Act is repealed and waives the requirement for the payment of a renewal fee.

## **Part 8 Amendment of Stock Act 1915**

### **Act amended in pt 8**

Clause 32 provides for the amendment of the *Stock Act 1915*.

### **Amendment of s 36 (Appeals to Magistrates Courts)**

Clause 33 (1) deletes section 36(1) containing the definitions of 'decision' and 'public official'. These definitions are inserted in the dictionary in Schedule 2 by clause 35; and (2) amends section 36(2) so that a person aggrieved about a decision about compensation cannot appeal to the Magistrates Court.

### **Insertion of new ss 36A–36K**

Clause 34 inserts new sections 36A to 36K to provide for appeals to the District Court and Court of Appeal.

Section 36A provides an appeal to the District Court to a person aggrieved by a decision about compensation. In addition, a person who has appealed to the Magistrates Court against a decision, other than a decision about compensation, may appeal to the District Court against the Magistrates Court decision.

Section 36B sets out how an appeal is started and section 36D provides for hearing procedures. Section 36C allows the District Court to grant a stay of the operation of the decision being appealed against to secure the effectiveness of the appeal. Section 36E provides that the District Court



may confirm, amend or substitute another decision for the decision appealed against.

Section 36F allows for an appeal to the Court of Appeal against the District Court's decision. This appeal may be made only on a question of law.

Section 36H sets out how an appeal is started and section 36J provides for hearing procedures. Section 36I allows the Court of Appeal to grant a stay of the operation of the decision being appealed against to secure the effectiveness of the appeal. Section 36K provides that the Court of Appeal may confirm, amend or substitute another decision for the decision appealed against.

### **Amendment of sch 2 (Dictionary)**

Clause 35 makes consequential amendments to definitions as a result of the amended appeal provisions.

## **Part 9 Repeal**

### **Repeal**

Clause 36 provides that the *Sawmills Licensing Act 1936* is repealed. The Sawmills Act will be repealed on 1 January 2005 to allow sufficient time for this Act to be passed.

The Sawmills Act makes provision for the stabilization of the timber industry by the licensing of sawmills and veneer and plywood mills. As mentioned earlier, the National Competition Council has assessed that this legislation is not fully compliant with the National Competition Policy. Therefore, it is being repealed.

Until the Sawmills Act is repealed, transitional provisions have been made for those licences currently granted under the Sawmills Act (see clause 31).