

Rural Adjustment Authority Amendment Bill 2004

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Rural Adjustment Authority Amendment Bill 2004*.

Policy Objectives of the Legislation

The object of the Bill is to implement the recommendations of the review of the objectives and purpose of the *Rural Adjustment Authority Act 1994*, and the statutory powers and functions of the Queensland Rural Adjustment Authority ('QRAA'). In particular the amendments will:

- Ensure the Act covers all relevant primary industries (eg fisheries, forestry);
- Expand the functions of QRAA to include administration of schemes of assistance for State and Commonwealth bodies on the approval of the Minister for Primary Industries and Fisheries where the Authority has the necessary expertise to provide the service (for example matters connected with Rural Water Pricing Directions, which are the responsibility of Sunwater, established under the *Government Owned Corporations (State Water Projects Corporatisation) Regulation 2000*);
- Expand the Authority's ability to provide assistance to small businesses (other than rural producers), and other elements of the State's economy by removing the limitation in the Act that such assistance only be given "in periods when they are experiencing temporary difficulty". The quoted words have proved to be too restrictive.
- Require approved assistance schemes to be made by Regulation to ensure that they are drafted by Parliamentary Counsel and are tabled

and subject to disallowance in accordance with modern standards of accountability;

- Empower the Minister to give written directions to the board about the discharge of its functions;
- Revise the composition of the board to ensure members possess requisite skills;
- Empower the Minister to require the board to give the Minister stated information and reports;
- Provide appeal rights to unsuccessful applicants for assistance from QRAA;
- Provide for future reviews of the Act on a regular basis.

Reasons for the Bill

The Queensland Rural Adjustment Authority is a statutory authority established under the *Rural Adjustment Authority Act 1994* (RAA Act) to deliver financial and other assistance targeted at the development of a more productive rural sector.

QRAA's activities are principally directed at providing assistance to primary producers whose businesses show long-term viability, although assistance may also be provided to enable producers to adjust out of the industry. QRAA may also provide assistance to enable small businesses dependent on primary production to survive in the event of a temporary downturn.

A key QRAA program is the Primary Industry Productivity Enhancement Scheme (PIPES), which has three elements: productivity and development loans, landcare loans and first start farm loans. Drought programs include carry-on and recovery loans, and interest subsidies in situations where "Exceptional Circumstances" have been declared by the Federal Government. Financial assistance is available to producers and small businesses following natural disasters such as bushfires and floods. QRAA also administers three regional programs that support specific regions and industries.

The RAA Act has not been reviewed since enactment in 1994 and does not contain a requirement to do so, although Government policy now requires that legislation be reviewed at regular intervals.

A review of the Act was commenced in January 2003 with a Review Committee established under the chairmanship of Mr Tom Fenwick, the

former Director-General of the Department of Natural Resources, Mines and Energy and the Chairperson of the Bureau of Sugar Experiment Stations (now BSES Limited). The Committee also included representatives of QRAA, primary producers, an agri-business consultant and the Department. An Industry Consultative Committee and Inter-Departmental Reference Group were also established to provide input to the review. The Review Committee completed its review in May 2003 and presented its Report entitled the 'Review of the Rural Adjustment Authority Act 1994' on 5 June 2003.

The review recommended that the RAA Act be modernised to comply with current legislative standards and that QRAA functions be expanded to include administration of schemes of assistance for State and Commonwealth bodies on the approval of the Minister for Primary Industries and Fisheries. The review also identified the need for changes to the process used in the selection of Board members and their term of appointment and to corporate governance arrangements.

Achieving the objectives

Modernisation and Reviews and Appeals

The RAA Act was prepared prior to 1998 and as a consequence does not comply with modern legislative standards including the need for regular review. Government policy requires that all new legislation be reviewed at regular intervals to ensure its continued efficiency and effectiveness.

Without a process for regular review, the RAA Act would not meet current legislative standards and would therefore be in conflict with Government policy.

In circumstances where assistance is being granted or denied, or where obligations are being imposed on clients by an instrument of Government, such as QRAA, it is current legislative process to recognise appellants rights. There is no provision in the Act for a formal appeals process.

It is important to ensure transparency and accountability in Government processes and in that regard, the review recommended it would be more appropriate for appeal rights to be clearly set out in the RAA Act. It is proposed therefore to make provision for a formal appeals mechanism under the RAA Act.

QRAA does have an internal review process enabling applicants to appeal against decisions. The great majority of cases concern appeals against the quantum of funds approved and applicants wishing to appeal against the

process by which decisions have been made, have recourse to the Ombudsman. At present, there are no fees and charges involved in appealing against decisions about the quantum of loan funds approved by QRAA, although applicants may seek advice from accountants or banks in which case applicants meet the associated costs.

While there is no reason to consider that the current appeals process is ineffective, it does not provide transparency for appellants. It is also current legislative practice to recognise appellant rights against decisions.

Objectives and Functions

The review identified several issues with the current objectives of the RAA Act:

1. The Act specifies that only “rural” producers are eligible for assistance through QRAA schemes. This implicitly excludes some primary industries that exploit existing resources as well as other industries to which QRAA could potentially provide a service. For example, the commercial fishing industry, which exploits existing fish stocks rather than working the land to produce food and fibre products, does not come within the normal meaning of “rural” and therefore QRAA is unable to provide services such as commercial loans to commercial fishers affected by any changes to fisheries management arrangements;
2. Additionally, the current legislation imposes a potential constraint to enabling QRAA to broaden its scope from rural adjustment schemes to providing services to primary producers and small business in rural and regional communities. Under the legislation (section 3 (3) of the RAA Act) this is for ‘periods when they are “experiencing temporary difficulties” which is unnecessarily restrictive.
3. The review noted that the expertise of QRAA should be more widely used by the Government sector on a contractual basis. The review therefore recommended that QRAA should be empowered to administer schemes of assistance for other State and the Commonwealth governments with the proviso that the Minister’s approval would be required for this to occur so as to preserve QRAA’s strategic direction and to ensure proper cost recovery arrangements.

Additional potential constraints have been identified since the review was completed. As noted above, the review recommended that QRAA should be empowered to administer schemes of assistance for the Commonwealth and other State governments.

Amending the objective of the Act to:

“The objective of the RAA Act is to establish a body to deliver financial and other assistance and primarily targeted at fostering the development of a more productive rural and regional sector.”

as recommended by the review, may not be sufficiently broad to cover the administration of incentives schemes such as a scheme to encourage primary producers to adopt environmental protection measures or to enable QRAA to administer schemes that do not specifically target rural or regional clients on behalf of other agencies such as the Department of Housing.

The Bill will therefore expand the objective of the Act to allow the cover such other schemes whilst ensuring that the primary focus of the Authority to deliver financial and other assistance and incentives schemes targeted at fostering the development of a more productive and sustainable rural and regional sector.

It should be noted that any decision to amend or expand the scope of a service is a decision the Government alone, not QRAA, has the power to make. Further, simply amending the RAA Act will not enable fishers, foresters or other categories of applicants to access existing QRAA schemes. New schemes must be created to enable this to occur and the financial implications of establishing any new schemes will be determined on a case-by-case basis.

Approved Assistance Schemes

Schemes of assistance are not subordinate legislation and therefore are not drafted by the Office of the Queensland Parliamentary Counsel, are not published by GoPrint, subject to automatic expiry, regulatory impact statements or tabling in Parliament. Currently, amendments to schemes require the whole scheme to be re-approved.

To ensure the quality of future scheme and to ensure adequate public access and accountability, future schemes will be subordinate legislation.

Strategic policy and reporting

The Act requires that the relevant Minister approve QRAA's administration budget on an annual basis. However, there is no requirement for the Minister to give directions to QRAA, if need be, concerning organisational strategies in line with government policy of the day and as applies to, for example, Government Owned Corporations, nor is there a legislative

requirement for QRAA to obtain the Minister's support for strategic planning activities or to report to the Minister, although it does provide an annual report to the Parliament. The Minister does not have the power under the current legislation to direct QRAA to provide services to a particular industry as a priority. Proposed changes would enable the Minister to give a strategic direction to QRAA.

Corporate Governance

The Bill will amend the RAA Act in respect of corporate governance so that the provisions reflect current standards. The amendments will ensure that the board:

- is skills based;
- sets strategic direction for QRAA;
- reviews the performance of the Chief Executive Officer;
- is subject to the direction of the Minister in relation to strategic matters; and
- presents business plans to the Minister.

Board Composition

The RAA Act allows for up to 7 Directors not including the Chairperson. The composition of the QRAA present Board is seven, which includes two public servants (from Queensland Treasury and the Department of Primary Industries and Fisheries), although there is no mandatory requirement for these appointments.

The Bill implements the RAA Act review recommendation that Board membership be capped at seven members comprising an independent chair, two government representatives – with it being specified that one be from the controlling Minister's portfolio and one from Treasury, and four other members with a nominated range of appropriate skills to be selected by an independent process. Appointments will be staggered to assist in retaining corporate knowledge.

Organisational identity

QRAA was originally the Government Schemes Division of Queensland Industry Development Corporation. The name "Queensland Rural Adjustment Authority" was originally adopted because at the time of

inception, the majority of concessional lending was primarily into the primary industries/rural sector.

This title may have inadvertently limited the scope of QRAA's activities and its future ability to expand into other sectors. A new corporate name, simply "QRAA", should be adopted with the objective and purpose of QRAA being spelt out in the Act to reflect the new and broadened scope of the organisation.

Alternatives to the Bill

The options are to proceed to amend the RAA Act to implement the Review Committee recommendations, or to not to amend the RAA Act, which would negate the entire review exercise and not provide for the necessary modernisation of the Act.

Administrative costs

The amendments do not in themselves have any financial implications other than the minor costs identified below.

The adoption of a new internal appeals mechanism will require both QRAA and its clients who appeal against QRAA processes to meet costs. QRAA estimates the costs of implementing and communicating changes in the internal appeals process to be up to \$5,000 in the first year only. There will be no additional operating costs, as QRAA has previously operated an internal review process

Enabling QRAA to broaden the scope of its activities by administering schemes of assistance for other State and the Commonwealth governments could result in a need for additional staff. However, subject to Government policy, new activities would only occur on a full cost recovery basis, and therefore significant additional resources would not be required.

Empowering QRAA to administer schemes of assistance, as subordinate legislation, will not require significant additional operating funds to be provided by the Government.

The adoption of QRAA as the new name of the Authority will result in a short-term increase in administrative costs, which QRAA estimates would be in the vicinity of \$80,000. Additional costs will be met from within QRAA's existing budget.

Fundamental Legislative Principles

No breaches of fundamental principles have been identified in relation to this Bill.

Consultation

Community

There has been consultation with AgForce Queensland Union of Employers Ltd (AgForce), Queensland Farmers Federation (QFF) and Queensland Seafood Industry Association (QSIA).

Government

National Competition Policy - Treasury Department

The proposed changes to the RAA Act have been examined for potential National Competition Policy (NCP) issues. As the RAA Act is establishment legislation, there are no NCP issues. It is anticipated however, that subordinate legislation will be subject to Regulatory Impact Assessments and this will occur as subordinate legislation is put in place. Given that it is the schemes that directly impact on the community, this is a more appropriate time to consider the likely costs and benefits resulting from the schemes.

Other Departments consulted were:

- Department of the Premier and Cabinet;
- Department of Natural Resources, Mines and Energy
- Department of State Development and Innovation

Results of Consultation

Community

Generally, industry organisations support the proposed changes to the RAA Act.

AgForce supports the recommendation to ensure an effective appeals mechanism is established but is concerned to ensure that the mechanism is cost efficient and easy to access. AgForce also considers that the Board membership should contain a director with practical farm business experience.

The Queensland Seafood Industry Association supports the expanded scope of QRAA's activities but is concerned to ensure that the process for establishing new schemes or approving QRAA to deliver schemes on behalf of other agencies is transparent and timely.

The Queensland Farmers Federation also supports the proposed changes.

Government

The Departments' consulted support the proposed changes.

Notes on Provisions

Short title

Clause 1 provides that the short title of the Act may be cited as the *Rural Adjustment Authority Amendment Act 2004*.

Act Amended

Clause 2 provides that this Act amends the *Rural Adjustment Authority Act 1994*.

Amendment of title

Clause 3 amends the title of the principal Act by inserting "and regional" after "rural".

Replacement of s 1 (Short title)

Clause 4 changes the short title of the principal Act to the *Rural and Regional Adjustment Act 1994*.

Omission of s 2 (Commencement)

Clause 5 omits section 2 of the Act. That provision dealt with the commencement of the principal Act in 1994 and is now redundant.

Amendment of s 3 (Objective of Act)

Clause 6 amends the objects of the Act set out in section 3. The amendment rectifies two problems with the current objectives of the Act identified by the review, those being:

- arguably the Act does not cover all relevant primary industries (eg fisheries, forestry); and
- may not extend to activities outside of the primary industry area where the Queensland Rural Adjustment Authority (QRAA) may have the expertise to provide a service.

The amendments overcome these problems by providing that QRAA is established to deliver financial and other assistance and incentives primarily targeted at fostering the development of a more productive rural and regional sector.

Amendment of s 4 (Definitions)

Clause 7 amends the definitions in section 4 of the Act consequent on the amendments made by this Bill.

Replacement of pt 2, hdg

Clause 8 replaces the heading of part 2 of the Act to reflect the fact that clause 9 of this Bill will change the name of the Authority under the Act to QRAA.

Replacement of s 5 (Establishment of authority)

Clause 9 Amends section 5 of the Act (establishment of Authority) by changing the name of the Authority to QRAA. QRAA was originally the Government Schemes Division of Queensland Industry Development Corporation. The name “Queensland Rural Adjustment Authority” was originally adopted because at the time of inception, the majority of concessional lending was primarily into the primary industries/rural sector. This title may have inadvertently limited the scope of QRAA’s activities and its future ability to expand into other sectors. A new corporate name, simply “QRAA”, should be adopted with the objective and purpose of QRAA being spelt out in the Act to reflect the new and broadened scope of the organisation.

Amendment of s 8 (Authority's functions)

Clause 10 amends the functions of the Authority set out in section 9 by altering references to “rural” to references to “rural and regional”. This amendment is consequent on the amendment to the Authority’s objectives made by clause 5 of the Bill.

Insertion of new s 9A

Clause 11 inserts a new section 9A into the Act empowering the Minister to give QRAA a written strategic direction about the performance of QRAA’s functions or exercise of its powers, or written notice of a public sector policy, if satisfied it is necessary to give the direction or notice in the public interest.

QRAA must ensure the direction or policy is complied with. However, before giving the direction or notice the Minister must—

- (a) consult with QRAA; and
- (b) ask QRAA to advise whether, in its opinion, complying with the direction or notice would not be in its financial interest.

The Minister should be required to gazette a copy of the direction or notice within 21 days after the direction or notice is given.

QRAA must include in each annual report prepared by it under the *Financial Administration and Audit Act 1977*, section 46J, a report of any direction or notice given to it by the Minister during the financial year for which the report is prepared and is entitled to comment upon the effect of the direction upon its activities.

Amendment of s 11 (Approved assistance schemes)

Clause 12 amends section 11 of the Act which requires that approved assistance schemes be made by Regulation to ensure that they are drafted by Parliamentary Counsel and are tabled and subject to disallowance in accordance with modern standards of accountability.

The section is also being amended to enable a regulation to approve a scheme if the scheme is established by the Commonwealth or another State or an entity that represents the State, the Commonwealth or another State. That amendment is consequential on the amendments made to the objectives of the Act by clause 6 of the Bill.

Insertion of new pt 3A

Clause 13 inserts new part 3A into the Act providing a mechanism for review of decisions. The Act is currently completely silent on appeal rights with the matter being handled by way of administrative guidelines. The review committee concluded that appeal rights should be clearly set out in the Act. The appeal processes will be by way of internal review. Internal review is considered to be an adequate appeal process for decisions of the authority because:

- decisions of the authority do not infringe anyone's rights or liberties;
- the Act is dealing with the allocation of government funds; and
- the cost of external review is not justified, particularly since non legislative review is currently the only mechanism used and there have been no problems or complaints.

New section 13A Who may apply for internal review

New section 13A sets out who may apply for internal review. A person who has been unsuccessful in an application for financial assistance or a person who has had their loan called up by QRAA because QRAA asserts it was obtained by a false statement may apply for internal review.

New section 13B How to apply for internal review

New section 13B sets out the requirements for making an application for a review of a decision.

New section 13C Review decision

New section 13C sets out the procedures for a review by the chief executive of an original decision.

Amendment of s 15 (Role of the board)

Clause 14 amends section 15 of the Act to clarify the board's strategic leadership of QRAA. The amendments provide that it is the board's role:

- to decide the strategies and the operational, administrative and financial policies to be followed by QRAA;

- to ensure QRAA performs its functions in a proper, effective and efficient way; and
- review annually the performance of its chief executive officer.

Replacement of s 16 (Composition of board)

Clause 15 replaces section 16 of the Act and inserts new sections 16A to 16C into the Act.

New Section 16

New section 16 provides that the board is to consist of a maximum of 7 members. Those members are to comprise:

- the chief executive of the department that deals with matters under the *Rural Adjustment Authority Act 1994*;
- a nominee of the chief executive of the department that deals with matters under the *Financial Administration and Audit Act 1977*;
- not more than 5 persons appointed by the Governor in Council who must be persons the Minister considers have the skills and experience necessary to enable them to contribute effectively to the authority board's ability to perform its functions.

New section 16A Chairperson to report to Minister

New section 16A will clarify and strengthen QRAA's accountability to the Minister. The new section will require the chairperson to provide regular written reports to the Minister on the performance of QRAA's functions or the exercise of its powers.

A report must be given—

- (a) within 1 month after the end of each quarter; and
- (b) at any other time at the Minister's request.

Also, the chairperson must, immediately after becoming aware of a matter the chairperson is satisfied may adversely affect QRAA's ability to perform its functions, report the matter to the Minister.

New section 16B Chairperson to give business plan to Minister

New section 16B will also strengthen the accountability of QRAA by requiring the chairperson to give the Minister a copy of each business plan,

prepared by the chief executive officer, by 30 April in the year for which the plan is prepared.

The section ensures that the board maintains its strategic control of QRAA by providing that the chairperson must not give a copy of a business plan to the Minister unless the board has approved the business plan.

New section 16C Reporting and accountability

New section 16C enables the Minister to require from the chairperson, at any time, stated information or reports. The chairperson must comply, if possible, with the Minister's requirements. If the chairperson cannot comply the chairperson must give the Minister the reasons for non compliance.

Amendment of s 17 (Duration of appointment)

Clause 16 amends section 17 of the Act (Duration of appointment) to require staggered appointment so that only half the number of directors are eligible for retirement at any one time. This will ensure that corporate knowledge is retained on the board.

Replacement of s 31 (Chief executive appointed under this Act)

Clause 17 amends section 31 of the Act to correct an error. The section previously referred to the "chief executive". Under section 33 of the *Acts Interpretation Act 1954* this would mean the chief executive of the Department whose Minister administers the *Rural Adjustment Authority Act 1994*. In fact reference should be to the "chief executive officer" which is defined in section 4 of the Act to mean the authority's chief executive officer.

Insertion of new s 35A

Clause 18 Inserts a new section 35A that requires the chief executive officer to prepare a business plan each year covering the authority's operations for the year in which the plan is prepared and the following two years.

Insertion of new s 45

Clause 19 inserts a new section 45 that requires that the Act be reviewed within 5 years to decide whether its provisions remain appropriate and for the results of the review to be tabled in the Legislative Assembly.

Amendment of pt 7, hdg

Clause 20 amends the heading of pt 7 of the Act (Savings, Transitional and Validation Provisions) to reflect the fact that new savings and transitional provisions will be added to the Act by this Bill. The clause will add the words “for Act No.50 of 1994” to the heading.

Insertion of new pt 8

Clause 21 inserts a new part 8 that provides transitional provisions for the *Rural Adjustment Authority Amendment Act 2004*.

New section 52 Continuance of authority

New section 52 provides that the Queensland Rural Adjustment Authority will be continued in existence after the commencement of this Act under the new name of ‘QRAA’.

New section 53 Transitional appointments of directors of board

New section 53 will continue the appointment of current directors of the authority.

New section 54 Existing approved assistance schemes

New section 54 sets out transitional provisions relating to existing approved assistance schemes. The transitional provision will allow a period of two years in which to convert those schemes to regulation.