

Primary Industries Legislation Amendment Bill 2006

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Primary Industries Legislation Amendment Bill 2006*.

Objectives of the Legislation

The objective of the Bill is to amend various Acts under the Primary Industries and Fisheries portfolio to remove redundant provisions, correct deficiencies or omissions (as well as clarify certain provisions) affecting the efficient and effective operation of the relevant legislation and the achievement of the related policy objectives.

Achieving the Objectives

The Bill achieves the objectives by a number of amendments to the following legislation.

The proposed amendments to the *Agricultural Standards Act 1994* clarify entry powers and enable seizure where entry is made to monitor the ruminant feed ban and are considered important in order to support the compliance auditing program in preventing the possible spread of Bovine Spongiform Encephalopathy (BSE) through ruminant animals consuming restricted animal material.

The amendments to the *Animal Care and Protection Act 2001* clarify the power for re-entry to care for or to transport an animal following its seizure for welfare reasons as well as to provide a mechanism for the chief executive, on behalf of the State, to accept the transfer of an animal relinquished by its owner who no longer has the means or capacity to care for it. This power will be delegated to appropriate officers.

Various amendments to the *Brands Act 1915* clarify inspectors' powers and distinguish between inspectors appointed by the chief executive and police officers who are automatically granted inspector status by the Act.

Amendments to the *Drugs Misuse Act 1986* improve the licensing processes associated with the commercial production of industrial hemp.

The *Exotic Diseases in Animals Act 1981* needs to be amended to ensure that there is only one definition for the 'avian influenza virus'.

The proposed amendments to the *Grain Research Foundation Act 1976* will convert the Grain Research Foundation from a statutory body into an industry-owned company. This is to take effect at the earliest opportunity in response to requests from industry.

The amendments to the *Veterinary Surgeons Act 1936* convert the Veterinary Tribunal of Queensland from a commission of inquiry to an administrative body adopting modern principles of administrative law. Registers kept under the Act will also be converted from hard copy to electronic files thereby increasing administrative efficiency and improving access to data.

The repeal of the *Grain Industry (Restructuring) Act 1991* is as a result of the provisions having become redundant and no longer used by the industry.

Alternatives to the Bill

All the amendments are considered desirable or necessary for the effective operation of the Acts in question.

One alternative to the composite Bill as drafted would be to amend the Acts individually. However, the individual approach is considered inefficient in terms of time and cost. Further, congestion in the Parliamentary legislative program could result in lengthy delays in processing individual Bills.

Costs for Government of implementation

The proposed amendments to the *Grain Research Foundation Act 1976* to incorporate the Grain Research Foundation (GRF) will not have any financial impact on the Department of Primary Industries and Fisheries. Government has not provided financial support to GRF. In accordance with the standard arrangements used for previous conversions of statutory bodies into limited liability companies all the assets and liabilities of GRF will be transferred to the replacement company. The State of Queensland will not take on any liability.

Stamp duty will be payable by GRF in respect of the incorporation and transfer of assets and liabilities. Although industry may seek an ex gratia 'refund' of the stamp duty amount it will be a matter for decision by Queensland Treasury. The Bill does not provide for statutory exemption from stamp duty.

There are no financial implications arising from any of the other amendments. Any additional costs would be met within existing government resources.

Fundamental Legislative Principles

The Bill is considered to be consistent with Fundamental Legislative Principles.

Consultation

The following organisations were consulted: RSPCA Queensland, Grain Research Foundation (which had also conducted an industry key stakeholder and community consultation process in respect of the GRF proposals), AgForce (for both grain and biosecurity legislation related proposals) and Veterinary Surgeons Board of Queensland.

The following (then) government departments were consulted: Departments of the Premier and Cabinet, State Development, Trade and Innovation, Justice and the Attorney-General, Communities and Employment and Training, Queensland Treasury and Queensland Police Service.

The proposed amendments have been supported.

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 2006*.

Commencement

Clause 2 provides that the commencement day for the Act will be fixed by proclamation.

Part 2 Amendment of Agricultural Standards Act 1994

Act amended in pt 2

Clause 3 states that this part amends the *Agricultural Standards Act 1994*.

Amendment of s 21 (Consent to entry)

Clause 4 makes it clear that the process for seeking consent outlined in section 21 is for the purposes of entry under subsection 20(1)(c) of the Act which permits entry to a place where the occupier has consented to that entry.

Amendment of section 25 (Power to seize)

Clause 5 ensures that the seizure powers under section 25 are available to an inspector whose entry to property is authorised by any of the grounds specified in section 20 (Entry to places) of the Act.

Section 25 is also being amended to ensure that the section 25(4) power to seize ‘another thing’ is only available where the inspector enters a place in the circumstances described in sections 25(2) and (3). This amendment is

not intended to limit the number of things an inspector may seize under section 25(1).

The amendments made by clauses 5(3) and 5(4) renumber provisions as a consequence of the earlier amendments to section 25.

Part 3 Amendment of Animal Care and Protection Act 2001

Act amended in pt 3 and schedule

Clause 6 states that this part and the schedule amend the *Animal Care and Protection Act 2001* (the ACPA).

Amendment of s 87 (Reporting obligations of registered persons)

Clause 7 alters the annual reporting period for scientific users [registered persons] *from* 1 May to 30 April *to* 1 January to 31 December.

Amendment of s 125 (Procedure for other entries without warrant)

Clause 8 is an amendment made necessary by the amendment to section 148 which allows re-entry for certain purposes. The amendment to subsection 125(1)(a) to include a reference to new section 148(2) ensures that the procedures imposed by section 125 apply to re-entry allowed by section 148(2).

Amendment of s 136 (Application of div 3)

Clause 9 inserts a reference to the new re-entry provision [section 148(2)] so that the general powers of inspectors granted under section 136 are not available on re-entry. The reason is that the purpose of re-entry is limited to the grounds set out in subsections 148(2)(a) and (b).

Amendment of s 148 (Powers for seized things)

Clause 10 inserts sections 148(2) and (3) to provide a limited power of re-entry to property after initial entry has been made under section 122 and where animals or things have been subsequently seized. Although it would

seem that there is an implied power to complete the actions associated with seizure under section 142 (transporting animals, caring for animals or overlooking animals cared for in situ), experience has shown that it is not always possible nor desirable to move animals immediately they have been seized. It is then necessary to re-enter the property to finalise seizure arrangements, to transport animals and/or to continue care which, as a result of seizure, has become the responsibility of the relevant agency.

Amendment of s 154 (Power to forfeit)

Clause 11 extends the forfeiture powers of an inspector under section 154 to police officers. This adjustment is made necessary by section 154(1) of the Act as it applies the forfeiture provisions to animals or things seized pursuant to the Act as well as under the *Police Powers and Responsibilities Act 2000*. Clearly, police officers need identical powers to inspectors under the ACPA in order to deal in the same way with animals or things seized under the *Police Powers and Responsibilities Act 2000*.

Amendment of s 156 (When transfer takes effect)

Clause 12 firstly makes it clear that this provision relates to seizure under section 142(3) where a person has consented to seizure of an animal or thing and has also consented to the voluntary transfer of ownership to the State. Secondly, clause 12 allows the chief executive to accept, on behalf of the State, ownership of animals or things voluntarily surrendered. The chief executive will be able to delegate this power to appropriate officers which will enhance administrative efficiency.

Insertion of new s 214A

Clause 13 inserts new section 214A (Transferring ownership of animal in particular circumstances) which provides for the circumstance where, after an inspector has entered a property under chapter 6, part 2 of the Act, the owner of an animal agrees to the voluntary transfer of ownership of that animal in the best interests of the animal's welfare. The transfer takes effect when the chief executive or prescribed entity agrees in writing to the transfer.

Insertion of new ch 9

Clause 14 inserts new Chapter 9 (Transitional provision for Primary Industries Legislation Amendment Act 2006) which provides for new section 218 (Reporting obligation of registered person). This is a

transitional provision relating to the revised annual reporting period inserted in section 87 by this Act. This provision is necessary so that, for the first report due in 2007, the reporting period starts on the day after the day up to which the previous report was given. The provision also contemplates a change to the reporting day, under section 87, for a 2006 report.

Part 4 Amendment of Brands Act 1915

Act amended in pt 4 and schedule

Clause 15 states that this part and the schedule amend the *Brands Act 1915*.

Amendment of s 3 (Definitions)

Clause 16 relocates the definitions for the Act in section 3 to a schedule. Clause 16(3) inserts definitions for two (2) categories of inspector to distinguish between departmental inspectors appointed by the chief executive and police officers who are deemed to be inspectors under the Act without the need for appointment. Hence the amendment makes the distinction between an inspector who is appointed by the chief executive [“appointed inspector”] and a police officer who is deemed to be an inspector [“inspector”] by virtue of section 4(1A) [renumbered by clause 17 as section 4(2)] of the Act.

Amendment of s 4 (Officers and districts)

Clause 17 transfers the power to appoint a registrar and deputy registrar of brands from the Governor in Council to the chief executive as well as other administrative powers relating to the management of the department’s regulatory function (for example, the distribution of inspectors across the State). This adjustment reflects the contemporary approach to administrative appointments and the delegation of administrative decision making.

Amendment of s 7A (Manner of imprinting horse and cattle brands)

Clause 18 broadens section 7A of the Act so that the requirements in relation to imprinting brands extend to pigs.

Insertion of new pt 3, div 1, and div 2 hdg

Clause 19 inserts new Part 3 (Inspectors), Division 1 (Appointment and related provisions) and Division 2 (Powers) headings and new sections 22A to 22H into the Act. These new provisions deal specifically with matters relating to the appointment, resignation and powers of inspectors.

Section 22A names the categories of persons who may be appointed, applies the necessary condition for appointment of ‘necessary expertise or experience’ and also allows for a regulation to further define categories of persons who may be appointed as inspectors.

Section 22B provides that the exercise of inspectors’ powers may be subject to certain stated conditions.

Section 22C makes it mandatory to issue identity cards to appointed inspectors [i.e. excluding police officers].

Section 22D states that the identity card for a police officer will be the police officer’s identity card.

Section 22E outlines how inspectors must produce and display their identity cards.

Section 22F specifies when an appointed inspector ceases to hold office.

Section 22G sets out the way in which an appointed inspector should resign.

Section 22H mandates that an appointed inspector must return the identity card within 21 days of ceasing to hold office as an inspector.

Amendment of s 34 (Regulation making power)

Clause 20 amends section 34 to insert a hyphen in the term ‘Regulation-making’ and to transfer the regulation making power relating to districts from section 4(2) to section 34(3).

Insertion of new pt 7

Clause 21 inserts new Part 7 (Transitional provision for Primary Industries Legislation Amendment Act 2006) and new section 35 (Particular inspectors continue in office) which is a transitional provision that ensures that current inspectors, appointed under section 4(1), will remain as inspectors under the Act on commencement of this Act.

Part 5 Amendment of Drugs Misuse Act 1986

Act amended in pt 5 and schedule

Clause 22 states that this part and the schedule amend the *Drugs Misuse Act 1986*.

Amendment of s 46 (Definitions for pt 5B)

Clause 23 inserts a new definition of ‘prescribed photograph’ into section 46 for the new requirements for applicants under section 54 (Application for licence).

Amendment of s 52 (What grower licence authorises)

Clause 24 revises the note to section 52(b) to more accurately describe “certified cannabis seed”.

Amendment of s 54 (Application for licence)

Clause 25 amends section 54(2) so that certified photographs must be supplied with an application for an initial licence. This will achieve consistency with the requirements for an application for renewal of a licence.

Amendment of s 57 (Eligibility for researcher licence)

Clause 26 expands section 57(2) to include that a person is not eligible for a researcher licence if affected by bankruptcy action, as is the case with section 58(b) for a grower licence.

Amendment of s 65 (Application for renewal)

Clause 27 extends the requirements found in subsections 65(2)(c) and (d) relating to licence renewal applications by natural persons to the executive officers of corporations.

Insertion of new pt 7, div 4

Clause 28 inserts new Division 4 (Provision for Primary Industries Legislation Amendment Act 2006) and new section 138 (Provision about

particular applications) which is a provision to save applications which predate the commencement of the section for either a licence or a licence renewal from the operation of the amended sections 54(2) as well as 65(2)(c) and (d). In other words, existing applications will be processed under the former sections 54 and 65.

Part 6 Amendment of Exotic Diseases in Animals Act 1981

Act amended in pt 6 and schedule

Clause 29 states that this part and the schedule amend the *Exotic Diseases in Animals Act 1981*.

Amendment of sch 2 (Dictionary)

Clause 30 omits the term 'fowl plague' from the definition of 'exotic disease'. The reason for this amendment is that the term 'fowl plague' is now considered to be an archaic and redundant description for what is now known as the 'avian influenza virus'. The latter term is currently defined as an 'exotic disease' in the *Exotic Diseases in Animals Regulation 1998*. The purpose of the amendment is confined to removing any ambiguity caused by using two (2) different descriptions for the 'avian influenza virus'.

Part 7 Amendment of Grain Research Foundation Act 1976

Act amended in pt 7 and schedule

Clause 31 states that this part and the schedule amend the *Grain Research Foundation Act 1976*.

Insertion of new pts 4 and 5

Clause 32 inserts new Part 4 (Matters about dissolution of the foundation) and Part 5 (Repeal of Act) into the Act to:-

- (a) dissolve the statutory body named the Grain Research Foundation and replace it with an industry owned company (limited by guarantee) incorporated under the Corporations Act;
- (b) transfer the assets and liabilities of the foundation to a replacement company after Ministerial approval;
- (c) continue the employment rights of employees of the foundation;
- (d) provide for the members of the foundation to leave office on the day of transfer without compensation being payable to members for termination; and
- (e) repeal the Act immediately after the transfer day.

Section 29 (new Division 1) sets out the definitions for new part 4.

New Division 2, subdivision 1 of Part 4 (Sections 30 to 36) sets out the steps for transfer and dissolution of the foundation.

Section 30 compels the foundation to decide to dissolve itself and to transfer its assets and liabilities to a non statutory body.

Section 31 instructs the foundation to decide on which day, and to which corporation (“the replacement corporation”), those assets and liabilities will be transferred.

Section 32 imposes certain mandatory conditions for transfer in respect of the replacement corporation.

Section 33 ensures that the Minister is notified of all relevant matters relating to the transfer.

Section 34 outlines the process for Ministerial approval of the transfer.

Section 35 is a mechanical provision which dissolves the foundation on the day the assets and liabilities are transferred to the replacement corporation.

Section 36 ensures that the State is not responsible for any actions of the replacement corporation.

New Division 2, subdivision 2 of Part 4 (Sections 37 to 41) facilitates the transfer arrangements.

Section 37 provides for the legal recognition of the transfer of the ownership of the assets to the replacement corporation so that those assets may be registered under relevant State and Commonwealth laws.

Section 38 is a transitional provision which automatically translates existing references to the foundation, in legislation and documents, to the replacement corporation.

Section 39 provides continuity between the dissolved entity and the replacement entity for the purposes of allowing the start or completion of proceedings and matters which could have been, or were, started before dissolution.

Section 40 safeguards the employees of the foundation so that the terms of the employment relationship between the foundation are replicated as between the employees and the replacement corporation.

Section 41 provides that a member of the foundation goes out of office on the transfer day and that no compensation is payable. The foundation is a part time body and members are only paid sitting fees. The amount of sitting fees paid is low and designed merely to compensate a member for the time absent from normal employment. Since termination of the appointment means that a member will no longer need to be absent from normal employment, compensation for loss of the sitting fees is not justified.

Section 42 provides that the provisions of section 20A (Repeal does not end saving, transitional or validating effect etc.) of the *Acts Interpretation Act 1954* applies for the new Part 4 and are not affected by repeal of the Act after the transfer day.

Section 43 (new Part 5) provides that the Act is repealed immediately after the transfer day.

Part 8 Amendment of Veterinary Surgeons Act 1936

Act amended in pt 8 and schedule

Clause 33 states that this part and the schedule amend the *Veterinary Surgeons Act 1936*.

Amendment of s 8 (Board to hold triennial election)

Clause 34 amends section 8 to give the Board a discretion as to the day upon which each triennial election shall be held so long as it is no later than 30 June in the relevant year.

Amendment of s 15E (Jurisdiction and decisions of tribunal)

Clause 35 deletes section 15E(4) as new section 15R deals with matters in regard to costs.

Amendment of s 15F (Proceedings of tribunal)

Clause 36 amends section 15F(1) so that the tribunal has full discretion to manage its business and proceedings in the way it decides by removing the power to prescribe by regulation how its business is conducted.

Replacement of 15G (Registrar of tribunal)

Clause 37 inserts new sections 15G to 15U which outline how the tribunal will operate from the date of enactment. The new sections recharacterise the tribunal as an administrative body which complies with natural justice, which can exercise powers relating to proceedings of the tribunal and which must keep records of evidence. Offences relating to obstruction and contempt are also created.

Section 15G provides that the registrar of the Veterinary Surgeons Board is the registrar of the Veterinary Tribunal.

Section 15H defines the nature of the tribunal by declaring that it must comply with the rules of natural justice, act quickly with as little formality and technicality in giving fair and proper consideration of the issue before it and is not bound by the rules of evidence.

Section 15I allows the tribunal to take evidence under oath.

Section 15J authorises the tribunal to compel witnesses to attend to give evidence or answer questions or to produce a stated thing.

Section 15K lets the tribunal exclude a prospective witness from sitting in on the tribunal proceedings before giving evidence if the tribunal believes that the fairness of the proceedings may be prejudiced.

Section 15L details how witness expenses and allowances should be paid.

Section 15M provides for inspection, access and copying of things produced to the tribunal.

Section 15N ensures that the tribunal keeps a record of evidence given to it in proceedings.

Section 15O compels the tribunal to consider certain matters when making a decision in relation to the professional misconduct of a veterinary

surgeon or in relation to whether a veterinary surgeon should be deregistered because he or she is medically unfit to practise.

Section 15P ensures that the parties to a matter before the tribunal are given notice in writing as to the decision of the tribunal, the reasons for that decision and whether the party involved may appeal to the District Court.

Section 15Q states that a tribunal decision is binding on the parties to the relevant proceeding.

Section 15R sets out the way in which costs in a proceeding before the tribunal should be decided.

Section 15S grants District Court type immunity to the tribunal members, parties and witnesses in a proceeding.

Section 15T creates an offence for contempt of the tribunal.

Section 15U creates an offence for obstructing or improperly influencing the conduct of a proceeding before the tribunal.

Amendment of s 16 (Keeping registers)

Clause 38 makes several changes to section 16 to modernise the process of managing the registers of veterinary surgeons and veterinary specialists in Queensland by requiring the registrar to keep the registers in electronic form and to make those registers accessible on the website of the Veterinary Surgeons Board.

Subsections 16(2)(d) and (2A)(d) are being amended to allow the board to include other particulars in the registers at its discretion replacing the requirement for those other particulars to be prescribed by regulation.

The omission of sections 16(3), (5) and (6) reflects the decision to remove the requirement to keep a hard copy version of the registers of veterinary surgeons and veterinary specialists.

Amendment of s 17 (Roll fee)

Clause 39 changes the heading to Annual Fee and makes changes made necessary by the amendments to section 16 to replace hard copy registers with electronic versions.

Amendment of s 19 (Application for registration)

Clause 40 amends subsection 19(1)(a) to make it clear that the application form is not one prescribed by regulation. Section 19(3) is amended to

allow notification of change of address etc. to be given to the registrar by any means, that is, not restricted to using the post. Section 19(4) is deleted as it is no longer necessary.

Amendment of s 19A (Provisional registration)

Clause 41 amends section 19A(1) to make it clear that it is the registrar who must issue the certificate of provisional registration upon request by a member of the board. The further amendments to section 19A are drafting changes.

Amendment of s 20 (Certificates of registration)

Clause 42 amends section 20 to make it clear that certificates of registration are not prescribed by regulation.

Amendment of s 23 (Surrender of certificate)

Clause 43 amends section 23(1) so that the requirement to surrender certificates of registration to the board does not apply where a person voluntarily requests removal from the register or where a person is deceased.

Further, a maximum penalty of 10 penalty units may be incurred where certificates are not surrendered to the board as required by the Act or by request of the board.

Amendment of s 25Q (Using titles etc.)

Clause 44 expands the prohibition on using title, name or initials by a non veterinary surgeon or specialist by including “words”.

Omission of s 29 (Tribunal deemed to be commission of inquiry)

Clause 45 removes the section 29 deeming provision so that the tribunal is no longer a commission of inquiry. This change reflects the administrative nature of the tribunal established by the new provisions inserted by clause 37 of this Act.

Insertion of new pt 6, div 2

Clause 46 inserts new Division 2 (Provision for Primary Industries Legislation Amendment Act 2006) and new section 40 (Particular

proceedings before the tribunal) which is a transitional provision which continues the application of the Act as it was before the commencement of this Act to proceedings before the Tribunal, and not decided, before the commencement of this Act.

Part 9 Repeal of Grain Industry (Restructuring) Act 1991

Repeal

Clause 47 repeals the Grain Industry (Restructuring) Act 1991 No. 91 as the provisions of the Act are no longer operative.

Part 10 Minor and Consequential Amendments

Acts amended in schedule

Clause 48 inserts a schedule of amendments which amend each Act mentioned in the schedule. The changes include minor and consequential drafting changes to effect technical wording changes, cross referencing or updated references to renamed bodies or entities.