

# **Primary Industries Acts Amendment and Repeal Bill 2007**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of this Bill is the *Primary Industries Acts Amendment and Repeal Bill 2007* (“the Bill”).

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

The Bill has two policy objectives: to amend and repeal the *Banana Industry Protection Act 1989* and to amend the *Sugar Industry Act 1999*.

The amendment and repeal of the *Banana Industry Protection Act 1989* (“the BIP Act”) is to implement the recommendations of an independent review of the BIP Act to repeal that Act and dissolve the Banana Industry Protection Board (“the Board”). This legislation is no longer necessary or financially supported by industry and many functions of the Board are now achieved by the Department of Primary Industries and Fisheries (“DPI&F”) under the *Plant Protection Act 1989* (“the PP Act”).

The *Sugar Industry Act 1999* (“the Sugar Act”) is being amended to implement the first stage of the phase out of the role of the Sugar Industry Commissioner (“the Commissioner”). The Bill removes the functions of the Commissioner as they relate to the Commissioner acting as a mediator or arbitrator, or referring disputes in the sugar industry to mediation and arbitration for new supply contracts. This is the first stage in the process of removing the role of the Commissioner completely by June 2010. The Bill also removes the current obligation for Queensland Sugar Limited (“QSL”) to fund this position, as QSL is now a wholly private sugar marketing company with no connection to the Commissioner’s responsibilities.

## Reasons for the Bill

The amendment and repeal of the BIP Act is being progressed as a result of major changes in the circumstances under which the BIP Act and Board previously operated, and the current structure of the industry.

The BIP Act was first enacted in 1929 to provide a mechanism for the collection and management of an industry levy to fund prevention and management of pest and disease incursions, surveillance and research and development activities in the banana industry.

The BIP Act provides for the Queensland Government (through DPI&F) to contribute grant-in-aid funds to the Board, to match industry contributions dollar-for-dollar. The BIP Act establishes the Board to manage the fund. In 2000, the industry levy provisions in the *Banana Industry Protection Regulation 2000* were removed. Industry funding continued for a time as non-statutory (voluntary) contributions, but declined steadily until 2004-05, when payments ceased. Consequently, no government grant-in-aid contributions have been made to the Board since 2003-2004. The present uncertainty surrounding future contributions by industry significantly limits the ability of the Board to plan and deliver the functions for which it was originally intended.

Since industry contributions ceased, DPI&F has continued to directly fund and deliver core banana biosecurity activities under the PP Act. Over time, the PP Act and its associated regulation have evolved into the main regulatory instrument in the State for plant biosecurity, including banana biosecurity. As a result, many provisions of the BIP Act and functions of the Board have become redundant.

In 2003, the then Minister for Primary Industries and Fisheries approved an independent review of the BIP Act in response to these changes. The Review Steering Committee sought written submissions from banana growers and industry organisations and conducted public meetings in the major banana growing regions of Queensland. The Review Steering Committee recommended that the BIP Act be repealed and the Board abolished, and that Government grant-in-aid contributions paid to the Board be used in future to fund only the delivery of core (regulatory) biosecurity services by DPI&F under the PP Act.

The Bill is being progressed in keeping with these recommendations. Banana-specific biosecurity legislation is no longer needed or financially supported by industry. The Bill is also required to address the current legal and financial uncertainties surrounding operation of the Board and its

inability to perform its intended functions in the absence of industry funding.

In regard to the amendments to the Sugar Act, the Commissioner is an independent person, statutorily appointed under the Act by the Governor in Council on terms and conditions, including remuneration and allowances, stated in the instrument of appointment. The current appointed term of the Commissioner ceases on 30 June 2007.

Following the industry deregulation which formed part of the sugar industry reforms in 2004 and 2005, the responsibilities of the office of the Commissioner have been considerably reduced. The future of the office has been subject to consideration between the industry and DPI&F during this period. Prior to these reforms, the Commissioner had a range of responsibilities including keeping a register of cane production agreements, being the sole member constituting the Sugar Authority and granting exemptions from statutory vesting, assisting cane production boards and registering cane analysis systems.

Following implementation of the 2004 and 2005 industry reforms, the Commissioner's two remaining responsibilities involve the granting of access rights (cane railway easements and permits to pass) over land to facilitate harvest and supply of cane to a mill and the mediation or arbitration, on request, of sugar industry disputes.

The Commissioner's mediation role was more frequently used by industry when disputes arose regarding regulated industry matters, such as cane analysis principles. With deregulation, these responsibilities no longer exist. As the industry develops a more commercial focus, it is anticipated that there will continue to be little demand for the Commissioner's mediation services.

The position of the Commissioner is funded by QSL in accordance with the requirements of section 228 of the Sugar Act. With the 2005 removal of statutory vesting of the Queensland sugar crop in QSL, this requirement is not sustainable. QSL is now a wholly private sugar marketing company with no connection to the Commissioner's responsibilities, no statutory obligations to the Queensland Government and deals only with the mills that choose to now market their sugar through QSL. There is now no single sugar pool against which to charge these costs as was the case under statutory vesting. It is therefore appropriate to remove the statutory obligation on QSL to fund the Commissioner's position.

Due to the reduced role of the Commissioner following deregulation, and after consultation with stakeholders, a plan for the phasing out of the position of the Commissioner is being implemented. It is proposed that on 30 June 2007, the first of the remaining two roles of the Commissioner, the acting as a mediator or arbitrator in disputes, will be phased out for new supply contracts after that date and the final role regarding granting access rights will be removed via further amendment to come into force on 30 June 2010.

### **Achieving the Objectives**

The Bill achieves the objectives:

- (1) by amending and repealing the BIP Act and dissolving the Board. The Bill also contains provisions to close down the operation of the Board and to ensure that any proceedings against the Board that may exist at the time of the commencement of the Bill can be continued and any breaches of the BIP Act can be continued or started by DPI&F; and
- (2) by amending the Sugar Act to remove the provisions that relate to mediation and arbitration by the Commissioner for new supply contracts and the provisions that relate to QSL funding the position.

### **Administrative Costs**

There will be no appreciable administrative costs in relation to the Bill.

### **Fundamental Legislative Principles**

The Office of the Queensland Parliamentary Counsel provided comments in regard to the fact that all members of the Board under the BIP Act will go out of office with no compensation payable to them. The Scrutiny of Legislation Committee has previously commented on similar provisions providing for the dissolution of statutory bodies and queried whether current members of the bodies being dissolved would suffer financial detriment as a result of the provisions.

However, membership of the Board is undertaken part-time only and members are paid sitting fees and allowances for attendance at board meetings. The fees are low and designed to compensate members for the time absent from normal employment. As Board members will not need to

be absent from employment when the Board is dissolved, compensation is not justified.

Furthermore, the Bill provides that employees of the Board are terminated at the Bill's commencement. However, there are currently no employees and there is no intention to hire any employees before the commencement date. This provision was put in the proposal to address the slim chance that employees will be hired between the writing of the Bill and the commencement of the Act, and will put any potential employees on notice that their employment will terminate at that time.

The Office of the Queensland Parliamentary Counsel has stated that they believe these provisions are reasonable.

## **Consultation**

Consultation about the repeal of the BIP Act was undertaken when banana industry organisations submitted their views on the report and recommendations of the 2003 independent review of that Act.

The 'Queensland Government Position Paper: Repeal of the *Banana Industry Protection Act 1989*' ("the Position Paper") was developed in response to the recommendations of the review, and to the views and issues raised by industry organisations in response to the review recommendations. The Position Paper was formally announced and made available for industry and community comment with the Premier's approval on 12 December 2006. Comments on the Position Paper were sought from the community and industry, including major industry bodies Growcom (representing the Queensland horticulture industry), the Australian Banana Grower's Council (ABGC) and Banana Growers Queensland (BGQ). Overall, industry's response indicated support for the proposal to repeal the BIP Act and dissolve the Board.

Members of the Board advised of their support for the proposal to repeal the Act and dissolve the Board.

Consultation for the Sugar Act was undertaken by correspondence and discussions with the major sugar milling, growing and marketing organisations, namely the Australian Sugar Milling Council ("ASMC"), CANEGROWERS, Australian Cane Farmers Association ("ACFA") and QSL.

ASMC and CANEGROWERS, the major grower representative body, have given support to the proposal based on a three year transition.

Both bodies consider that further consideration is required in regard to access rights in the longer term and an industry/Government working group is to be established to consider longer term alternatives for the future administration of access rights.

ACFA has not supported the removal of the statutory office.

QSL is seeking the removal of its funding obligation from 30 June 2007.

Queensland Treasury and the Departments of Premier and Cabinet, Communities, Employment and Industrial Relations and State Development were consulted during the development of this Bill. All matters raised by these agencies were addressed and the agencies expressed their support for the proposals.

## **Notes on Provisions**

### **Part 1                      Preliminary**

#### **Short Title**

Clause 1 states that the short title of this Act is the *Primary Industries Acts Amendment and Repeal Act 2007*.

#### **Commencement**

Clause 2 provides that Part 3 of the Act commences on 1 July 2007 or the day of assent, whichever is the later.

### **Part 2                      Amendment of Banana Industry Protection Act 1989**

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

Clause 3 provides that Part 2 of the Act amends the *Banana Industry Protection Act 1989*.

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

Clause 4 inserts new definitions in section 3 of the BIP Act.

### **Insertion of new ss 31-38**

Clause 5 inserts the new sections 31-38 in the BIP Act.

Section 31 provides that on the dissolution day (the day of assent of the *Primary Industries Acts Amendment and Repeal Act 2007*), the assets and liabilities of the former fund become the assets and liabilities of the State. The fund referred to is that administered by the Board for delivery of the Board's banana biosecurity services. The Board holds no separate assets and does not report to Parliament. Its financial affairs are combined with, and audited as part of, the DPI&F's Annual Report. It is expected that the assets of the fund will be almost zero at the time of assent.

Section 32 provides for continuity of proceedings and matters by or against the Board for the purposes of allowing the start or completion of proceedings and matters which could have been, or were, started before dissolution. No proceedings by or against the Board were underway prior to the drafting of this legislation.

Section 33 provides that persons employed by the Board will have their employment terminated lawfully under the *Industrial Relations Act 1999* on the dissolution day. No compensation is payable to a person whose employment ceases. No persons are currently employed by the Board at the time of the drafting of this legislation. The only persons receiving finance from the Board immediately prior to the drafting of this legislation were Board members. This is dealt with separately under section 34.

Section 34 states that each person who was a member of the Board, immediately before the dissolution day goes out of office on that day, and that no compensation is payable to a Board member when this occurs. The Board is a part-time body and members are only paid sitting fees. The sitting fees paid are 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 35 provides for the person appointed as secretary to the Board to go out of office on the dissolution day and that no compensation is payable for the dismissal. The person currently appointed as the secretary to the Board is a public servant and is not paid for holding the office. As section 34(4)

provides that a Board secretary who is a public servant will not have their employment as a public servant affected, there will be no disadvantage to that officer in no longer holding that role.

Section 36 provides that a person authorised by the Board to exercise on its behalf the powers conferred by section 21 of the BIP Act ceases, on dissolution day, to be authorised to exercise the powers. No authorisations of persons made under section 21 of the BIP Act were in force immediately prior to the drafting of this legislation.

Section 37 provides for the continuity and commencement of proceedings for an offence against the repealed Act by the State and for the provisions of the repealed Act relevant to the proceedings to continue to apply after the repeal. There were no current or outstanding proceedings as instigated by inspectors or otherwise in relation to the repealed Act immediately prior to the drafting of this legislation.

Section 38 repeals the BIP Act immediately after the dissolution day.

## **Part 3                      Amendment of Sugar Industry Act 1999**

### **Act Amended in pt 3**

Clause 6 provides that Part 3 of the Act amends the *Sugar Industry Act 1999*.

### **Omission of s 5 (Notes in text)**

Clause 7 omits section 5 of the Sugar Act. Section 14(4) of the *Acts Interpretation Act 1954* states that notes in the text of an Act are part of the Act. Therefore there is now no need to have a section stating this. It is contemporary drafting practice to remove provisions of this type.

### **Amendment of s 34 (Parties must use dispute resolution process stated in supply contract)**

Clause 8(1) omits section 34(2) of the Sugar Act which refers to sections 38 and 39 of that Act. As there will no longer be dispute resolution



processes that refer to the Commissioner, it is necessary to omit this reference to them in that Act.

Clause 8(2) renumbers section 34(3) as section 34(2).

### **Omission of ss 38 and 39**

Clause 9 omits sections 38 and 39 of the Sugar Act. In line with the gradual phasing out of the role of the Commissioner, from commencement there will no longer be dispute resolution services as envisioned by those two sections available for future supply contracts. The Commissioner will no longer have the power to refer parties to mediation or act as a mediator and will no longer be able to refer disputes to arbitration or act as an arbitrator.

Dispute resolution services in supply contracts entered into on or after 1 July 2007, will now be commercially decided as negotiated between the parties. This is the usual process between parties in other industries.

### **Amendment of s 72 (Variation and cancellation of access right, dispute resolution and enforcement)**

Clause 10(1) omits section 72(9) of the Sugar Act. Section 72(9) of that Act provides for the Commissioner to mediate in disputes about the exercise of an access right. In line with the phasing out of the role of that office, the Commissioner will no longer be mediating in these disputes.

Clause 10(2) renumbers section 72(10) and (11) as section 72(9) and (10).

### **Amendment of s 223 (Functions of commissioner)**

Clause 11(1) omits section 223(b) and (c) of the Sugar Act. Section 223(b) is being repealed as part of the phasing out of the Commissioner's functions to do with mediation. Section 223(c) is being repealed because it is a spent provision and no longer has any legal application.

Clause 11(2) renumbers section 223(d) as section 223(b).

### **Amendment of s 228 (Commissioner's budget)**

Clause 12(1) and (2) omit section 228(3) and (4) of the Sugar Act to remove the reference to QSL funding the position of the Commissioner. QSL is now a wholly private sugar marketing company with no connection to the Commissioner's responsibilities, no statutory obligations to the

Queensland Government and only deals with mills who choose to now market their sugar through QSL. It is no longer appropriate for the position to be funded by this body.

Clause 12(2) also omits section 228(6) which is a spent provision which no longer has any legal effect.

Clause 12(3) renumbers section 228(5) and (7) as section 228(4) and (5).

### **Amendment of s 230 (Commissioner's power to delegate)**

Clause 13 omits section 230(2) of the Sugar Act which provides for the Commissioner to be able to delegate the Commissioner's powers to mediate under section 72(9). As this section is being repealed, this delegation power is unnecessary.

### **Insertion of new ch 9**

Clause 14 inserts a new Chapter 9, (sections 288-292) into the Sugar Act. Chapter 9 contains transitional provisions that relate to the *Primary Industries Acts Amendment and Repeal Act 2007*.

Section 288 provides for definitions for the new Chapter 9 in the Sugar Act.

Section 289 is a transitional provision that allows for any existing mediation or arbitration for dispute about terms of a supply contract in place before commencement to continue as if the dispute resolution provisions had not been repealed. This provision ensures that there is no disadvantage to parties who were already in the process of initiating action before that date.

Section 290 is a transitional provision that allows parties who have supply contracts that list the procedure in the repealed sections 38 and 39 of the Sugar Act as their dispute resolution procedure, to continue to use the provisions as if they had not expired. This transitional provision will only apply for three years. As most supply contracts have a period of less than three years, this should aid a smooth transition for parties to supply contracts and will enable those contracts to continue. Parties to supply contracts will then be able to negotiate a new procedure for dispute resolution when the term of their current contract ends.

Section 291 is a transitional provision that states that if there are any supply contracts that still contain reference to the Commissioner at the end of the transitional period, the contracts will have to be varied under section 35 of the Sugar Act to provide for a different dispute resolution process.

Section 292 is a transitional provision that states that any new supply contract that is entered into after commencement cannot refer to the procedure for dispute resolution under the repealed sections 38 and 39 of the Sugar Act.