

Agriculture and Other Legislation Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Agriculture and Other Legislation Amendment Bill 2015.

Policy objectives and the reasons for them

The primary policy objective of the Bill is to make miscellaneous, non-controversial amendments to the following 10 Acts administered within the portfolio jurisdiction of the Minister for Agriculture and Fisheries and Minister for Sport and Racing:

- *Agricultural and Veterinary Chemicals (Queensland) Act 1994*;
- *Agricultural Chemicals Distribution Control Act 1966*;
- *Animal Care and Protection Act 2001*;
- *Animal Management (Cats and Dogs) Act 2008*;
- *Biosecurity Act 2014*;
- *Brands Act 1915*;
- *Chemical Usage (Agricultural and Veterinary) Control Act 1988*;
- *Exotic Diseases in Animals Act 1981*;
- *Forestry Act 1959*; and
- *Stock Act 1915*.

These amendments will clarify the interpretation and application of existing legislation, and address inconsistencies with Commonwealth legislation. The amendments will reduce obligations for suppliers of permanent identification devices for cats and dogs, and create efficient administrative and flexible processes in dealing with disease and other biosecurity risks. They will also align legislation for director's liability with the Council of Australian Governments' (COAG guidelines), and implement a consistent approach to liability for persons acting under an Act.

The Bill also makes amendments to remove uncommenced provisions of the *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013* (NCOLA (No. 2) 2013). The objective of these amendments is to continue existing legislative provisions in the *Nature Conservation Act 1992* (NCA) and other Queensland legislation, that provide for the ongoing management and administration of forest reserves, while work continues to finalise the transfer of remaining forest reserves to another tenure.

Following the commencement of Statewide forest transfer processes in South East Queensland in 1999, and subsequently in other regions of the State in 2000, a new transitional tenure called forest reserve was created under the NCA to facilitate the transfer of State lands (predominantly State Forests) into the protected area estate. This process has been ongoing since that time, and the final land transfers are approaching completion.

In 2013, the NCOLA (No. 2) 2013 provided for the repeal of forest reserve provisions from the NCA and references to the tenure in other Queensland legislation. These provisions were to be commenced by proclamation in anticipation of the completed transfer of the remaining forest reserves and as part of a process to rationalise the number of tenures under the NCA.

However, there are still 38 forest reserves remaining, and not all transfers can occur by 7 November 2015 when the forest reserve provisions will be automatically repealed as a consequence of automatic commencement of provisions in the NCOLA (No. 2) 2013.

It is therefore necessary to continue the existing legislative framework for managing forest reserves beyond 7 November 2015. This will ensure the continued ability to effectively manage these lands beyond this date. Management of forest reserves includes for example, managing uses such as commercial tourism, recreational activities, the take of natural resources and undertaking activities such as fire management.

Achievement of policy objectives

The *Agricultural and Veterinary Chemicals (Queensland) Act 1994* (Qld Agvet Act) gives effect to certain legislative instruments (e.g. orders) made under the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) (the Commonwealth Act). Amendments to the Qld Agvet Act will remove doubt and clarify the validity and application of legislative instruments made under the Commonwealth Act as laws of Queensland.

Amendments to the *Agricultural Chemicals Distribution Control Act 1966* (ACDC Act) will bring it up to date with the Commonwealth's licensing framework for persons operating aircraft and the use of new technologies to apply agricultural chemicals. These amendments to the ACDC Act will remove impediments to the use of remotely piloted aircraft for chemical distribution in Queensland, through the alignment with current Commonwealth licensing and agricultural rating arrangements.

Amendments to the ACDC Act will also alleviate the Government of the redundant function of having to produce statements on crop and stock losses or damage connected to the distribution of agricultural chemicals. The ACDC Act currently imposes an obligation on Government to provide a service which is more appropriately delivered by industry-based agronomists and application technology experts and is no longer used.

Amendments to the *Animal Care and Protection Act 2001* (ACPA) will update reference to the Scientific Use Code to the current version of the code. Currently, the

Act cites an outdated version of the Scientific Use Code and potentially confuses stakeholders as to the requirements with which to comply.

Currently, amendments are continually required to subordinate legislation to prescribe additional entities or persons who demonstrate a need and wish to use barbiturates to euthanase animals and avail of the exemption under section 36 of the ACPA of the offence to administer or feed a substance to an animal that the person knows is harmful or poisonous with the intention to kill the animal. The *Health (Drugs and Poisons) Regulation 1996* (the Health Regulation) authorises persons to administer restricted and controlled substances to animals. Amendments to the ACPA will clarify that an entity who is authorised under the Health Regulation to administer restricted and controlled substances to kill an animal, is not liable to an offence under the ACPA.

Amendments to the *Animal Management (Cats and Dogs) Act 2008* (AMCDA) will reduce the legislative impost on suppliers of permanent identification devices. The AMCDA currently imposes legislative obligations upon suppliers of permanent identification devices which are inadequate in ensuring cats and dogs are only implanted with permanent identification devices prescribed by regulation.

The *Land Protection (Pest and Stock Route Management) Act 2002* (LPPSRM Act) currently provides for landowners to destroy dogs attacking or about to attack stock. This will cease once section 95 is repealed from the LPPSRM Act upon commencement of the *Biosecurity Act 2014* (Biosecurity Act). The amendments will insert in the AMCDA a comparable provision that will continue to enable landowners to destroy dogs attacking or about to attack stock once existing provisions are repealed from the LPPSRM Act.

Amendments to the Biosecurity Act will provide that a biosecurity instrument permit is not available to be applied for in circumstances where a biosecurity certificate is the more appropriate instrument to be issued to authorise activities which are the subject of biosecurity zone regulatory provisions. The potential currently exists for persons to apply for a biosecurity instrument permit to enable them to perform (or not perform) an activity other than in compliance with a movement control order or biosecurity zone made under the Biosecurity Act to manage a pest, disease or contaminant. In circumstances where a certification scheme is established for movements affected by biosecurity zone regulatory provisions, the availability of a permit could unnecessarily divert resources to the issuing of large numbers of permits. This amendment will avoid an exploitation of the ability to obtain an approval for an activity which is not subject to the payment of a fee.

Other amendments to the Biosecurity Act will streamline the process for amendment of auditors' approvals and avoid duplication by averting the need to give both a show cause notice and an information notice for such amendments. Amendments to the Biosecurity Act will also provide for the immediate suspension of an auditor's approval where there is a serious risk to trade in a particular commodity, without having to first issue a show cause notice.

Amendments to the Biosecurity Act will also provide for a continuation of the restrictions and exemptions to the feeding of animal matter to specific animals, once

the Biosecurity Act commences.

Further miscellaneous amendments to the Biosecurity Act of a minor and technical nature are also proposed. These will make grammatical changes, change authorised persons to authorised officers, amend the scientific description of prohibited matter, amend the description of restricted matter and amend definitions.

Amendments to the *Exotic Diseases in Animals Act 1981* (EDIA) concerns notifications regarding restricted areas and standstill zones. The EDIA currently provides the Minister with the ability to notify the establishment of restricted areas and standstill zones to address the spread of exotic disease. Such notifications are currently subordinate legislation and are therefore required to be drafted by the Office of the Queensland Parliamentary Counsel and approved by the Governor in Council.

Amendments to the EDIA will ensure more efficient and timely implementation of restricted areas and standstill zones to stop the spread of exotic diseases into or within an area. The amendments will provide that notifications for each can be made by the chief executive instead of the Minister and will not be subordinate legislation. Consequently, such notifications will be able to be made at short notice without delay in recognition of the urgent nature of the issue to be addressed.

The amendments to the *Forestry Act 1959* (Forestry Act) will provide that a person who interferes with or destroys a forest product in discharging their general biosecurity obligation or under the direction of an inspector under the Biosecurity Act is not amenable to certain offences under the Forestry Act. The amendments do not provide a blanket exemption to any offence under the Forestry Act but relate only to actions to interfere with trees or forest products on Crown land or holdings or forest consent areas where the trees or forest products are restricted matter under the Biosecurity Act. More broadly on State forests or timber reserves, occupiers such as lessees are generally able to address their general biosecurity obligations under the conditions of their lease or other authority, and such actions are already exempted from offences for interfering with forest products in the Forestry Act.

Minor amendments are also being made to the Forestry Act to correct errors in lot and plan numbers for two conservation value areas to be removed from State plantation forest. These errors are typographic in nature and are inconsistent with details provided in the *Forestry Regulation 1998* and the respective plantation licences.

The *Stock Act 1915* (Stock Act) currently provides that an inspector, once he is satisfied that stock in an area are known or suspected of having a disease, shall define the boundaries of the area and place it in quarantine. This is disruptive to individuals' livestock operations and a quarantine may be an extreme response to animals which are at low risk of spreading disease. The amendment will provide inspectors with the flexibility and discretion to impose other measures rather than issuing quarantine notices when stock are diseased or suspected of being diseased. The amendment will therefore support business continuity and ensure reduced disruption to livestock operations in circumstances where disease risks can be adequately managed without the need to quarantine a property.

Amendments to the ACDC Act and the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Chemical Usage Act) are necessary to align provisions dealing with company director liability, with provisions in other Queensland statutes and bring them into line with COAG's agreed principles. The amendments will impose a lesser degree of liability on executive officers of corporations where the corporation commits an offence under the respective Act.

Amendments to the ACDC Act, ACPA, Biosecurity Act, *Brands Act 1915* and Chemical Usage Act will omit immunity provisions for State employees from each of these respective Acts where they are now covered by the provisions of the *Public Service Act 2008* (Public Service Act). Provisions will either be retained or extended to cover those persons who do not come within the definition of a State employee under the Public Service Act, and for whom immunity from civil liability should apply, such as persons acting under the direction of an inspector.

The NCOLA (No. 2) 2013 will be amended to repeal uncommenced provisions in Part 4 '*Amendments about forest reserves commencing by proclamation*' and uncommenced provisions in Part 3 of Schedule 1 '*Consequential and minor amendments about forest reserves commencing by proclamation*'. This will achieve the policy objective of enabling the continuation of the existing arrangements for managing forest reserve lands which have been in place in Queensland since 2000, until the transfer of the remaining 38 forest reserves to another tenure is completed.

The uncommenced forest reserve provisions scheduled for repeal in NCOLA (No. 2) 2013 are contained in two separate parts:

- Part 4 – Amendments about forest reserves commencing by proclamation;
- Part 3 of Schedule 1 - Consequential and minor amendments about forest reserves commencing by proclamation.

Uncommenced provisions in Part 4 of NCOLA (No. 2) 2013 – 'Amendments about forest reserves commencing by proclamation'

Part 4 of the NCOLA (No. 2) 2013 contains uncommenced amendments that repeal Part 4A of the NCA, which contains the provisions for management and administration of forest reserves, including, for example, sections for revoking forest reserves prior to their dedication as another tenure. The remaining uncommenced provisions in this Part are of a predominantly minor nature and amend the Forestry Act, the *Petroleum Act 1923*, the *Petroleum and Gas (Production and Safety) Act 2004* and the *Sustainable Planning Act 2009* to remove sections related to forest reserves. The effect of the NCOLA (No. 2) 2013 amendments is outlined below:

- Amendments to the Forestry Act

Section 165 of the NCOLA (No. 2) 2013 would omit section 25(c) of the Forestry Act to remove a reference to land in a forest reserve being land that may be dedicated as a State forest. It also omits an editor's note referencing provisions regarding declaration of State forest land as a forest reserve in the NCA.

- Amendments to the *Nature Conservation Act 1992*

Section 167 of the NCOLA (No. 2) 2013 would omit Part 4A of the NCA. This Part contains the specific provisions enabling the management and administration of forest reserves, including their management principles, the process for progressing from forest reserve to protected area, the process for revocation of a forest reserve, and the interpretation of references to forest reserves in other particular legislation. Section 168 of the NCOLA (No. 2) 2013 would insert a new section 183A clarifying what a reference to a forest reserve in the savings and transitional provisions means, in recognition of the planned repeal of forest reserve provisions in the NCA.

- Amendments to the *Petroleum Act 1923*

Section 170 of the NCOLA (No. 2) 2013 would remove from section 4 of the *Petroleum Act 1923* a reference to section 70QA in the NCA. Section 70QA prevents the grant of a mining interest, geothermal tenure or greenhouse gas authority over a forest reserve, consistent with the intent for these lands to be progressed to a protected area.

- Amendments to the *Petroleum and Gas (Production and Safety) Act 2004*

Section 172 of the NCOLA (No. 2) 2013 would remove from section 6A of the *Petroleum and Gas (Production and Safety) Act 2004* a reference to section 70QA in the NCA. Section 70QA prevents the grant of a mining interest, geothermal tenure or greenhouse gas authority over a forest reserve, consistent with the intent for these lands to be progressed to a protected area.

- Amendments to the *Sustainable Planning Act 2009*

Section 174 of the NCOLA (No. 2) 2013 would remove a reference to a forest reserve in the definition of *operational work* under section 10(1) of the *Sustainable Planning Act 2009*.

Uncommenced provisions in Part 3 of Schedule 1 – ‘Consequential and minor amendments about forest reserves commencing by proclamation’

Schedule 1 Part 3 of the NCOLA (No. 2) 2013 contains uncommenced amendments of a minor and consequential nature to the *Environmental Protection Act 1994*, the *Geothermal Energy Act 2010*, the *Greenhouse Gas Storage Act 2009*, the *Land Act 1994*, the NCA, the *Petroleum Act 1923*, the *Petroleum and Gas (Production and Safety) Act 2004*, the *Recreation Areas Management Act 2006*, the *Survey and Mapping Infrastructure Act 2003* and the *Vegetation Management Act 1999* to remove sections related to forest reserves as outlined below:

- Amendments to the *Environmental Protection Act 1994*

Section 1 would remove a reference to forest reserve from section 38(2)(k)(iii) of the *Environmental Protection Act 1994*, which relates to the definition of an affected person in relation to specific projects subject to an Environmental Impact Statement. The State is nominated as an affected person if the project involves land in a forest

reserve.

Section 2 would remove a reference to forest reserve from section 579(6) of the *Environmental Protection Act 1994*, which relates to the definition of an owner of land for which compensation is payable when a person triggers such payment when complying with an environmental requirement.

- Amendments to the *Geothermal Energy Act 2010*

Section 1 would remove a reference under section 7 of the *Geothermal Energy Act 2010* to section 70QA of the NCA which prevents the grant of a mining interest, geothermal tenure or greenhouse gas authority over a forest reserve, consistent with the intent for these lands to be progressed to a protected area.

Section 2 would remove a reference in the editor's note under section 7 of the *Geothermal Energy Act 2010* to section 70QA of the NCA which prevents the grant of a mining interest, geothermal tenure or greenhouse gas authority over a forest reserve, consistent with the intent for these lands to be progressed to a protected area.

Section 3 would remove a reference to forest reserve from the list of land under the NCA for which the State is defined as the owner in the dictionary of the *Geothermal Energy Act 2010*.

- Amendments to the *Greenhouse Gas Storage Act 2009*

Section 1 would remove a reference under section 7 of the *Greenhouse Gas Storage Act 2009* to section 70QA of the NCA which prevents the grant of a mining interest, geothermal tenure or greenhouse gas authority over a forest reserve, consistent with the intent for these lands to be progressed to a protected area.

Section 2 would remove a reference in the editor's note under section 7 of the *Greenhouse Gas Storage Act 2009* to section 70QA of the NCA which prevents the grant of a mining interest, geothermal tenure or greenhouse gas authority over a forest reserve, consistent with the intent for these lands to be progressed to a protected area.

Section 3 would remove a reference to forest reserve from the list of land under the NCA for which the State is defined as the owner in the dictionary of the *Greenhouse Gas Storage Act 2009*.

- Amendments to the *Land Act 1994*

Sections 1, 2, and 3 would remove references to forest reserves in relation to applications made for licences and permits under section 481B and 481H of the *Land Act 1994*. References to forest reserves will also be removed in relation to land over which a designated occupation licence relates.

Sections 4, 5, and 6 would remove the definition of forest reserve from the dictionary in the *Land Act 1994*, remove forest reserve from the definition of nature

conservation area in the *Land Act 1994*, and remove forest reserve from land that is not rural leasehold land in the definition in the *Land Act 1994*.

- Amendments to the *Nature Conservation Act 1992*

Section 1 would remove reference to forest reserve relating to protected areas that were forest reserves immediately before dedication to recognise that no new forest reserves will be dedicated, therefore the reference is redundant.

Section 2 would remove a reference to forest reserve in section 173P(1)(b) of the NCA regarding chief executive powers as the reference would become redundant once all forest reserves are moved to another tenure.

Section 3 would remove a reference to section 70E in the heading of section 173Q of the NCA which relates to publishing notices for lands revoked or amalgamated under the NCA.

Section 4 would remove the reference to forest reserve in the definition of relevant area in section 173Q of the NCA.

Section 5 would remove reference to section 70E(2) from the list in section 174(1) relating to the application of the *Statutory Instruments Act 1992*. The reference would become redundant once Part 4A of the NCA (relating to forest reserves) is removed.

Section 6 would remove the reference to forest reserves under section 174A(1)(b) which specifies particular things for which the chief executive may make codes of practice.

Section 7 would renumber section 174A(1)(c) to reflect removal of the reference to forest reserve at 174A(1)(b).

Section 8 would remove the definitions of forest reserve and SEQ horse riding trail network which become redundant when Part 4A of the NCA (relating to forest reserves) is removed.

Section 9 would remove the reference to 'unless the land is in a forest reserve' in the definition of State land in the dictionary of the NCA.

- Amendments to the *Petroleum Act 1923*

Section 1 would remove forest reserve from the list of land under the administration of the chief executive of the NCA with regard to the definition of owner under the *Petroleum Act 1923*.

- Amendments to the *Petroleum and Gas (Production and Safety) Act 2004*

Section 1 would amend the definition of owner under the *Petroleum and Gas (Production and Safety) Act 2004* by removing forest reserve from the list of land under the administration of the chief executive of the NCA.

- Amendments to the *Recreation Areas Management Act 2006*

Section 1 would remove a reference to forest reserve in sections 66(1)(d) and 66(5) in relation to the things that must be considered in relation to making a decision about an application, which includes an offence under the NCA relating to a forest reserve or protected area.

- Amendments to the *Survey and Mapping Infrastructure Act 2003*

Section 1 would remove the reference to forest reserve in relation to specifying land that is not subject to provisions regarding the location of tidal boundaries of land.

Section 2 would remove section 66(4) of the *Survey and Mapping Infrastructure Act 2003* as the section becomes redundant once all forest reserves are moved to another tenure.

Section 3 would remove the reference to forest reserve in section 95(1)(b) *Survey and Mapping Infrastructure Act 2003* in relation to specification of land that is not subject to provisions regarding the location of non-tidal boundaries of land.

Section 4 would remove section 95(3) of the *Survey and Mapping Infrastructure Act 2003* as the section becomes redundant once all forest reserves are moved to another tenure.

- Amendments to the *Vegetation Management Act 1999*

Section 1 would remove the reference to forest reserves from the list of the lands in section 7 to which the *Vegetation Management Act 1999* does not apply.

Section 2 renumbers section 7 as a consequence of the removal of the reference to forest reserve.

Alternative ways of achieving policy objectives

Legislative amendment is the only way in which to achieve the objectives, therefore other options were not considered. This is particularly so for the amendments to the Qld Agvet Act to clarify the validity and application of legislative instruments made under the Commonwealth Act as laws of Queensland; and the ACDC Act to align provisions with the Commonwealth's licensing arrangements and provisions involving new technology. Other amendments to the ACDC Act and the Chemical Usage Act are the only option to align provisions dealing with company directors' liability with those in other Queensland statutes and bring them into line with COAG's agreed principles. Continuing the legislative framework for managing forest reserves can also only be achieved through specific amendment of NCOLA (No. 2) 2013.

Other amendments such as those to the Biosecurity Act and EDIA are the most appropriate way to achieve policy objectives. For example, it is essential to ensure timely notification of restricted area and standstill zones can occur under the EDIA.

The alternative to amending all of these Acts by the one Bill is to amend each Act separately. This is not considered a good use of Parliamentary time as there is no

good reason why the amendments cannot be handled together in a single Bill.

Estimated cost for government implementation

There will be no negative financial impact to the State Government arising from these amendments. There will be no or minimal costs associated with the implementation of the proposed amendments which will be managed from within existing budgets.

Consistency with fundamental legislative principles

The Bill potentially departs from fundamental legislative principles (FLPs) as outlined in section 4 of the *Legislative Standards Act 1992* (LSA). Such departures only occur in the context of balancing FLPs with the competing policy objective of safeguarding agricultural industries, human health, the economy and the environment.

Whether the Bill has sufficient regard to the rights and liberties of individuals in that it allows the delegation of administrative power only in appropriate cases and to appropriate persons – LSA, subsection 4(3)(c)

Clause 10 amends the *Agricultural Chemicals Distribution Control Act 1966* to enable the chief executive to impose conditions on a pilot chemical rating licence or an aerial distribution contractor licence. For example, a condition may state that a person holding the licence must undergo additional training in a particular aspect of chemical application to ensure the application of chemicals is in accordance with best management practice. The intent is to provide further safeguards against the wrongful application of agricultural chemicals. It will mitigate potential risks from the application of agricultural chemicals. The penalty for the offence and the delegation of power to the chief executive are well justified, given the serious risk which the misuse of agricultural chemicals poses on human or animal health, the environment and trade.

Clause 44 replaces section 46 of the Biosecurity Act with four new provisions (46, 46A, 46B and 46C) which concern offences and exemptions regarding the feeding and supply of restricted animal material for ruminants to ruminants and restricted animal material for pigs and poultry to a pig or poultry. New sections 46 and 46A impose an obligation on a person who deals with ruminants or pigs and poultry (respectively) to ensure that they do not feed on restricted animal material for ruminants or restricted animal material for pigs and poultry (respectively). Importantly, through the insertion of these new sections, this clause maintains restrictions in accordance with nationally agreed protocols for the ruminant feed ban and those restrictions applicable to feeding restricted animal material for pigs and poultry.

New sections 46 and 46A, provide an exemption for the offences relating to restricted animal material to ruminants and restricted animal material for pigs or poultry (respectively) if it has been treated using a process approved under new section 46B. New section 46B provides the chief executive with the power to approve a process for treating restricted animal material for ruminants and restricted animal material for pigs and poultry. Subsection 46B(3) limits the chief executive's

power to approve a treatment process - the chief executive may approve a treatment process only if he is satisfied on reasonable grounds the process will ensure the level of biosecurity risk posed by the material is no more than the maximum allowable level of risk.

New sections 46 and 46A, provide an exemption for the offences relating to restricted animal material to ruminants and restricted animal material for pigs or poultry (respectively) if it is permitted by the chief executive under new section 46C. New section 46C gives the chief executive power to permit a person to feed restricted animal material for ruminants to a ruminant that is used lawfully for a scientific purpose or restricted animal material for pigs and poultry to a pig or poultry lawfully used for scientific purposes. However, the chief executive's power to approve a treatment process is limited including by the requirement that the chief executive must be satisfied on reasonable grounds the research or other scientific purpose will be conducted under controls to ensure that any risks can be managed to protect the health and safety of humans and animals.

There could be complex technical considerations for the exercise of powers under new sections 46B and 46C requiring expertise not possessed by the chief executive. In these circumstances, the chief executive may either delegate the power to an appropriately qualified public service employee under section 495 of the Biosecurity Act or, in exercising the power in an administratively sound manner, draw upon the advice of an employee who possesses the relevant expertise.

Whether the Bill has sufficient regard to the rights and liberties of individuals – LSA, subsection 4(3)

Transitional provisions are proposed to the *Agricultural Chemicals Distribution Control Act 1966* in clause 17 which inserts a new part 8.

Sections 51 and 53 of part 8 provide that a person, who had submitted an application for a pilot chemical rating licence or aerial distribution contractor licence immediately before commencement but not had the application decided, may continue to have the application decided under the former criteria. This process upholds principles of procedural fairness to a person. It enables the person to still have their application decided without having to obtain a different type of civil aviation licence.

Clause 44 replaces section 46 of the Biosecurity Act with four new provisions (46, 46A, 46B and 46C) which concern the feeding or supply of restricted animal material for ruminants to ruminants and restricted animal material for pigs and poultry to a pig or poultry. The chief executive has discretion to exercise powers under 46B and 46C that have the effect of exempting persons from the prohibitions on feeding restricted animal material to ruminants under new section 46 and restricted animal material for pigs and poultry under new section 46A.

It is arguable whether the chief executive has to consider any requests to exercise these powers that are presented to him, as there is no prescribed application process provided for in the clause. Also, the absence of a merit's based right of review may give rise to questions of inappropriate administrative decision making.

The absence of specific review provisions in this clause however can be justified particularly as the matters for decision are of significantly high importance to public health and safety. The implications of feeding restricted animal material to relevant designated animals, particularly ruminants, are significant. Aside from health and safety concerns where the spread and transmission of exotic diseases such as mad cow disease to humans is possible, the potential impacts on livestock industries, trade and the economy are enormous. Consequently, not requiring the chief executive to consider applications and not providing for review are justified.

Section 95 of the *Land Protection (Pest and Stock Route Management) Act 2002* currently authorises a landowner or authorised person to destroy a dog attacking or about to attack stock. This power is limited to certain circumstances, and without payment of compensation for the destruction of the dog. This provision will be repealed upon the commencement of the Biosecurity Act.

Clause 37 of the Bill inserts a similar provision in the *Animal Management (Cats and Dogs) Act 2008* to preserve this power once section 95 is repealed. The new provision also does not provide compensation for destruction of a dog. The destruction cannot be indiscriminate - a person must reasonably believe that the dog is not under someone's control and is about to attack or is attacking stock on the land. In limited circumstances under this provision, the destruction without compensation is justified.

A person who knowingly or unknowingly allows their stock to wander onto public land or another person's property could not rely on this provision to destroy a dog attacking or about to attack his stock.

Whether the Bill has sufficient regard to the institution of Parliament and whether the Bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly – LSA, subsection 4(4)(b)

The *Exotic Diseases in Animals Act 1981* currently provides that the Minister may make a notice about a restricted area and a standstill zone. These notices are subordinate legislation and are therefore currently the subject of review and disallowance. Clauses 76 and 77 provide for the chief executive to make these notices instead of the Minister and further remove the requirement for these notices to be made as subordinate legislation, thereby avoiding review and scrutiny of the Parliament. When considered against the need to protect livestock, livestock industries, human health, the economy and the environment in the event of an exotic disease outbreak, the proposed amendments are considered to be justified.

To mitigate potential FLP concerns, the amendments provide that the chief executive must first satisfy himself that the criteria for the making of the notification are met. The chief executive must be satisfied that the restricted area or the standstill zone is necessary having regard to the degree of seriousness or potential degree of seriousness of the exotic disease and the extent of its likely impact on animal or human health, the economy or the environment. In addition, the amendments prescribe a definitive "lifespan" for these notifications such that they will eventually expire if they are not earlier repealed or a separate regulation is not made to insert them into subordinate legislation.

To ensure that information on the restricted area or standstill zone is sufficiently described and available in the public domain, the amendments provide that the chief executive must take all reasonable steps to ensure all persons affected by the notification are made aware of its existence. This may include advertising in newspapers, television, radio, text or email.

Clause 44 in part, inserts new sections 46 and 46A in the Biosecurity Act which introduce offences on feeding and supplying restricted animal material for ruminants to ruminants and restricted animal material for pigs and poultry to a pig or poultry.

Subsections 46(4) and 46A(4) create exemptions to these offences as subsection 46(4)(b) provides in part, a person does not commit an offence if a regulation states the subsection does not apply in a stated circumstance. Similarly, subsection 46A(4)(b) provides in part, a person does not commit an offence if a regulation states the subsection does not apply in a stated circumstance. The fact that a regulation can disapply the operation of the offences prescribed in the Act is a departure from fundamental legislative principles.

However, such departure can be justified in the circumstances given the significance of the subject matter (i.e. restricted animal material) and the potential impacts disease transmission could have on livestock and human health should feeding of restricted animal material be undertaken in a manner that is not in accord with current science or best practice. Although offences reside in the Act there is a need for a mechanism to provide exemptions to those offences that is responsive and flexible enough to be implemented quickly without having to rely on a protracted process to amend the Act. By necessity the regulation therefore needs to disapply those offences in circumstances where they can be justified to keep pace with changing science, technical advances or evolving industry practice.

Whether the Bill is consistent with principles of natural justice – LSA, subsection 4(3)(b).

The *Biosecurity Act 2014* (Biosecurity Act) currently provides for the immediate suspension of relevant authorities in certain circumstances. Clause 53 expands the circumstances under section 488 of the Biosecurity Act for immediate suspension of an auditor's approval (a relevant authority) to include an immediate or serious risk to the trade of a particular commodity.

Contaminated produce or agricultural products which do not meet required market standards have the potential to directly or indirectly affect human health and the environment. Auditors have a significant role to play in the quality assurance of agricultural products. Their action or inaction in fulfilling their role under the Biosecurity Act can have serious ramifications for domestic or international trade in those products. The potential impacts on individuals and the community in extreme circumstances can be long-lasting and financially devastating. The immediate suspension without prior opportunity for an auditor to show cause or provide information is considered in the circumstances to be justified as a means to address the risk.

Consistent with other immediate suspension provisions in the Biosecurity Act, the power can only be exercised by the chief executive if they consider a ground exists and there is an immediate and serious risk posed by the auditor continuing to provide audits. An auditor's right to natural justice is not extinguished as the Biosecurity Act provides that the auditor must be provided with both an information notice and a show cause notice with the decision to suspend the approval.

Whether the Bill makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review – LSA, subsection 4(3)(a).

Section 454 of the Biosecurity Act currently provides that the chief executive must provide an information notice to an auditor when an amendment to include a condition on the auditor's approval is proposed to be made. Section 484 of the Biosecurity Act currently provides that the chief executive must also give the holder of an authority a show cause notice when an amendment of an authority is proposed.

Clause 52 of the Bill omits the requirement to give a show cause notice under section 484 if the chief executive amends the approval under section 454(3)(b) by imposing a condition because the chief executive considers it necessary to ensure an audit is conducted appropriately. The auditor must still be given an information notice under section 454 and has recourse to both internal and external reviews under Chapter 12 of the Biosecurity Act.

Whether legislation confers immunity from proceeding without adequate justification – LSA, subsection 4(3)(h).

Provisions in the *Agricultural Chemicals Distribution Control Act 1966*, *Animal Care and Protection Act 2001*, *Biosecurity Act* and *Brands Act 1915* currently contain differing degrees of immunity from civil liability for a range of persons. The *Public Service Act 2008* was amended in 2014 to provide broad legislative immunities from civil liability for State employees.

The Bill in clauses 16, 23, 54 and 59 will omit immunity provisions for State employees from each of these respective Acts where they are now covered by the provisions of the Public Service Act. Certain provisions will be retained to cover those persons who do not come within the definition of a State employee under the Public Service Act. These classes of persons often involve those acting under the direction of an inspector. It is appropriate to provide immunity to these additional persons as they are compelled to act by virtue of a direction of an inspector. Immunity will only apply where the person acts in good faith and without gross negligence. The conferral of immunity in these amendments is consistent with other Queensland statutes where civil liability immunity is afforded to persons other than State employees.

Consultation

The Office of Best Practice Regulation (OBPR) in the Queensland Competition Authority was consulted in regard to each of the amendments. The OBPR advised

that the amendments do not require a Regulatory Impact Statement as they are either machinery in nature or are unlikely to have significant adverse impacts.

Where amendments are of a purely administrative nature, they have not been the subject of external consultation.

HQ Plantations Pty Ltd (HQP), a private company that has been granted a plantation licence to manage State plantation forests, was consulted about the proposed amendments to lot and plan numbers for the two conservation value areas of State plantation forests. HQP supports the proposed amendments.

The Local Government Association of Queensland was consulted about continuing to allow destruction of dogs attacking or about to attack stock. The South East Queensland Regional Animal Management Group was consulted on the proposed amendments relating to animal dog identification. These bodies supported the respective amendments.

Where the Bill amends the NCOLA (No. 2) 2013, no new policy is created and consequently no consultation with the community was undertaken. This is because the Bill simply maintains the existing framework for managing forest reserves in Queensland. This framework was consulted on prior to its introduction in 2000, with key stakeholder organisations and across relevant government departments. The Bill will maintain the same provisions for managing and administering the use of the remaining 38 forest reserves until they are transferred to another tenure.

Consistency with legislation of other jurisdictions

Amendments to the Qld Agvet Act will clarify that certain legislative instruments made under the Commonwealth Act are also laws of Queensland. Amendments to the ACDC Act and the Chemical Usage Act will amend company director liability provisions consistent with COAG-agreed principles.

Amendments to the ACDC Act will bring it up to date with the Commonwealth's licensing framework for persons operating aircraft and the use of new technologies to apply agricultural chemicals. Amendments to the ACDC Act will also remove impediments to the use of remotely piloted aircraft for chemical distribution in Queensland, through the alignment with current Commonwealth licensing and rating arrangements.

These amendments will ensure that Queensland's legislation is generally consistent with legislation of other States and the Commonwealth in regard to agricultural and veterinary chemicals and COAG principles on director's liability.

Amendments to the ACDC Act, ACPA, Biosecurity Act, Brands Act and Chemical Usage Act will provide immunity from civil liability for persons acting under those Acts consistent with provisions of the Public Service Act for State employees acting in an official capacity.

Amendments to the NCOLA (No. 2) 2013 are specific to the State of Queensland and as such uniformity or complementarity with legislation of the Commonwealth or another Australian State or Territory is not sought.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that, when the Bill is enacted, the Act may be cited as the *Agriculture and Other Legislation Amendment Act 2015*.

Clause 2 provides that particular provisions of the Act are to commence on a date to be fixed by proclamation. *Clause 37* (which, in effect, replaces a provision of the *Land Protection (Pest and Stock Route Management) Act 2002* that is being repealed by the *Biosecurity Act 2014* (Biosecurity Act)) will commence in alignment with commencement of section 550 (the repealing provision) of the Biosecurity Act. The provisions inserted by clauses 86 – 88 and 93(2) refer to the Biosecurity Act and Part 7 omits a provision amended by the Biosecurity Act, hence the commencement of these provisions will be linked to the relevant sections of the Biosecurity Act. Other amendments will commence on assent.

Provision for commencement has been made for some clauses on proclamation in this way because it is desirable for them to commence as soon as necessary arrangements, including consequential amendments to subordinate legislation, can be completed. This includes amendments to the *Exotic Diseases in Animals Act 1981* and *Stock Act 1915*, both of which will be repealed by the Biosecurity Act.

The Biosecurity Act commences on a date to be fixed by proclamation, or if no date has been fixed, by 1 July 2016.

Part 2 Amendment of Agricultural and Veterinary Chemicals (Queensland) Act 1994

Clause 3 provides that Part 2 amends the *Agricultural and Veterinary Chemicals (Queensland) Act 1994* (Qld Agvet Act).

Clause 4 inserts a new section 6A into the Act. The insertion ensures consistency between Commonwealth and Queensland agricultural and veterinary chemical legislation. It provides that a legislative instrument in force under the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) applies as a legislative instrument for the purposes of the Agvet Code of Queensland and the Agvet Regulations of Queensland. The intent is to clarify the status of all legislative instruments under the Commonwealth Agvet Code Act under State law.

Part 3 Amendment of Agricultural Chemicals Distribution Control Act 1966

Clause 5 provides that Part 3 amends the *Agricultural Chemicals Distribution Control Act 1966*.

Clause 6 amends section 12 which provides that a person may apply under section 17 for a pilot chemical rating licence if the person gives the chief executive evidence that the person holds particular authorisations.

If the person intends to pilot a manned aircraft under the licence, they must provide a civil aviation authorisation under which the person may pilot (as pilot in command) the manned aircraft the person intends to use, in the way the person intends to carry out the aerial distribution.

If the person intends to use an unmanned aircraft under the licence, other than a balloon or kite, which also come within the definition of an unmanned aerial vehicle (UAV) the person must provide a civil aviation authorisation under which the person may act as the controller of the UAV the person intends to use in the way the person intends to carry out the aerial distribution.

This amendment creates consistency with the Commonwealth licencing framework for persons operating aircraft and the use of new technologies to apply agricultural chemicals. The amendment removes impediments to persons using remotely piloted aircraft for chemical distribution in agricultural areas of Queensland.

Civil Aviation Safety Authority (CASA) uses the terms licence, certificate and endorsement for the range of authorisations that it issues. The use of the broad term 'authorisation' in the provision will avert the need to continually update the ACDC Act each time that CASA authorisation titles change over time.

Clause 7 amends section 13 to update the reference to the licence required to pilot a manned aircraft or use an unmanned aircraft pursuant to section 12. The amendment updates the previous 'licence' to 'civil aviation authorisation' mentioned in section 12(3) or (4). This means that once a person ceases to hold a Commonwealth authorisation to operate either a manned aircraft or a UAV, the pilot chemical rating licence also ceases. The amendment provides for consistency with overarching amendments for consistency with the Commonwealth licencing framework.

Clause 8 amends section 15 which provides that a person may apply under section 17 for an aerial distribution contractor licence if the person gives the chief executive evidence that the person holds particular authorisations.

If the person intends to use a manned aircraft under the licence, they must provide a civil aviation authorisation that is an Air Operator's Certificate (AOC) under which the aircraft the person intends to use under the licence to carry out the aerial distribution of agricultural chemicals may operate for commercial purposes.

If the person intends to use a UAV under the licence, the person must provide a civil aviation authorisation under which the person may operate for hire or reward the UAV the person intends to use in the way the person intends to carry out the aerial distribution of agricultural chemicals.

This amendment creates consistency with the Commonwealth licencing framework for persons operating aircraft and the use of new technologies to apply agricultural

chemicals. The amendment removes impediments to persons operating businesses or who wish to operate a business using remotely piloted aircraft for chemical distribution in Queensland.

Clause 9 amends section 17 so that if a chief executive decides to impose a condition on the issue or renewal of a licence for a pilot chemical rating licence or an aerial distribution contractor licence, pursuant to sections 17A(2)(a) or 17B(2)(a) respectively, the chief executive must give the licensee an information notice for the decision. This amendment is consistent with principles of natural justice and procedural fairness, giving applicants the right to justification for decisions concerning their application.

Clause 10 inserts new sections 17A-17C, which impose conditions on a licensee holding a pilot chemical rating licence or an aerial distribution contractor licence. The amendment gives the chief executive the power to impose a condition when the licence is issued or renewed, or at another time if the chief executive considers there is a risk relating to the licence that warrants the condition being imposed at that time. If the chief executive decides to impose a condition at another time other than upon issue or renewal, the chief executive must, as soon as practicable, give the licensee an information notice for the decision. This provision protects the licensee's rights to natural justice and procedural fairness. The clause also provides a penalty for non-compliance with the conditions of the licence.

Clause 11 amends section 19 so that if a chief executive decides to impose a condition on the renewal of a licence pursuant to sections 17A(2)(a) or 17B(2)(a), the chief executive must give the licensee an information notice for the decision. This amendment is consistent with principles of natural justice and procedural fairness, allowing applicants the right to justification for decisions concerning their application.

Clause 12 amends section 21 to provide that a contravention of a condition of the licence by the licensee is a further ground for suspension or cancellation of the licence by the chief executive.

Clause 13 amends section 22 to allow licensees the right to review by QCAT in the event that the chief executive imposes a condition on the issue or renewal of a licence or suspends or cancels a licence. This amendment is consistent with principles of natural justice and procedural fairness, allowing applicants the right to appeal a decision made by the chief executive.

Clause 14 inserts a note into section 26(3), to cross reference this provision with section 44 which imposes an obligation on executive officers of a corporation to ensure the corporation complies with the Act.

Clause 15 omits sections 30-33 of the Act as they are redundant functions of the Department. The clause removes the option for persons to submit details of loss or damage connected to the distribution of agricultural chemicals to the Department's standards officer. This amendment provides that Departmental officers are not involved in consideration relating to loss or damage arising from the distribution of agricultural chemicals. In the absence of these provisions, investigations involving Departmental officers into the use of agricultural chemicals (either by aerial or

ground distribution) will be focused on ascertaining whether persons hold appropriate licences and had adhered to their legislative obligations to follow approved label instructions. Matters of liability for loss or damage would continue to be resolved between the parties or through civil proceedings.

Previously, section 31 relied on the mandate given in section 30 to give notice of damage by agricultural chemicals. As the amendment removes section 30, section 31 becomes redundant, giving rise to its omission from the Act.

Previously, section 32 prescribed the powers of inspection in circumstances of damage to crops or stock. The amendment omits this provision as it is no longer relevant to prescribe specific powers of inspectors for investigation into such loss or damage. The necessary general powers of inspectors contained within section 34 are sufficient to enforce the remainder of the Act.

Previously, section 33 of the Act obliged the standards officer to make a statement on alleged loss or damage to crops or stock and provide discretion to issue this to interested parties. This statement is based on the report which was required to be provided under section 32. Given the removal of section 32 from the Act, the requirement by the standards officer to make a statement is also redundant and is removed.

Clause 16 replaces section 44 which relates to the liability of executive officers of corporations. The previous provision provided a blanket liability for directors such that an executive officer must have ensured that a corporation complied with the Act and if the corporation committed an offence against a provision of the Act, each of the executive officers of the corporation also committed an offence. New section 44 (a 'Type 2: Executive liability (evidential burden) provision' that is similar to section 209 of the *Animal Care and Protection Act 2001* and provisions of other Queensland Acts) deems the director liable for the corporation's criminal conduct. However, directors have a defence if they have taken reasonable steps to avoid the contravention. While directors bear the onus of bringing evidence to show that they did take reasonable steps, the prosecution is required to prove beyond reasonable doubt that either those reasonable steps were not taken, or other steps should have been taken. In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps, a court must have regard to whether the officer was in a position to influence the corporation's conduct in relation to the offence.

Clause 16 also omits section 44A. Currently, section 44A provides protection from liability for the chief executive, standards officer, deputy standards officer, inspector, analyst or another appointed officer. These classes of persons fall within the definition of 'State employee' as in section 26B of the *Public Service Act 2008* (Public Service Act). Consequently, these persons are covered by the Public Service Act, which protects State employees from civil liability. The removal of section 44A from the Act removes the unnecessary overlap, whilst ensuring that State employees continue to receive protection from civil liability while acting under the powers of the Act, where they engage in or as a result of engaging in, conduct in an official capacity.

Clause 17 inserts a new part 8 into the Act, providing for transitional provisions for the Agriculture and Other Legislation Amendment Act 2015 (AOLA Act). The amendment provides that if, immediately before the commencement of the AOLA Act, a person held a licence or had applied for a licence, the former relevant provisions continue to apply as if the ALOA Act had not been enacted.

Clause 18 amends the schedule (Dictionary) to define a ‘civil aviation authorisation’ as a civil aviation authorisation under the *Civil Aviation Act 1988*, section 3. This definition includes an authorisation made under the *Civil Aviation Act 1988* (Cth) or its regulations, to undertake a particular activity (whether the authorisation is called an AOC, permission, authority, licence, certificate, rating or endorsement or is known by some other name). The amendment provides sufficient scope for other types of authorisation which may become valid under the *Civil Aviation Act 1988* from time to time without having to amend the Act each time.

Clause 18 also redefines “executive officer” of a corporation as a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer. This definition captures a larger class of persons than the previous provision, including all persons acting in the management affairs of the corporation. It is consistent with the definition of ‘executive officer’ generally used in Queensland legislation in relation to director’s liability provisions.

Part 4 Amendment of *Animal Care and Protection Act 2001*

Clause 19 provides that Part 4 amends the *Animal Care and Protection Act 2001*.

Clause 20 omits the specific classes of person prescribed in subsection 36(1) of the Act and inserts a new subsection (2). New subsection (2) provides that persons who are authorised to administer or feed substances to animals under the *Health Act 1937* are exempt from the offence in subsection (1) of feeding or administering a harmful or poisonous substance with the intention of injuring or killing an animal. This reflects that there are some additional classes of persons, such as veterinary nurses, who may be permitted to administer the substances in certain circumstances. It also reflects that approvals may be issued to additional persons under the *Health Act 1937* to administer or feed these substances from time to time.

Clause 21 amends section 49 and clarifies the current version of the scientific use code to which various provisions, including offence exemptions under section 40 of the Act relate. The amendment also provides for enduring reference to the most contemporary version of the scientific use code. This avoids the need for amendment of the Act each time that the title of the scientific use code changes.

Clause 22 amends subsection 209A(4) to reflect the changed subsection numbering of section 36 effected by clause 20 for the purposes of the definition of ‘deemed executive liability provision’.

Clause 23 amends section 215 to remove the protection from liability for State employees that is currently provided under the Act in recognition that State employees now have protection from liability under section 26B of the Public Service

Act. However, the clause preserves protection from liability for those persons compelled to act under the Act who are not State employees. It provides that they do not incur civil liability for engaging, or for the result of engaging, in conduct in an official capacity and that liability instead attaches to the State. In situations where the conduct was engaged in other than in good faith and with gross negligence, the amendment further provides that the State may recover contributions from the relevant person. These amendments establish legislative consistency for relevant persons in cases of public liability indemnity.

Part 5 Amendment of Animal Management (Cats and Dogs) Act 2008

Clause 24 provides that Part 5 amends the *Animal Management (Cats and Dogs) Act 2008*.

Clause 25 replaces the definitions in section 12 of the Act. It combines the requirements for devices implanted into a cat or dog. Previously, a 'permanent identification device' (PID) was defined and a 'prescribed permanent identification device' (PPID) was defined as a PID that complies with the additional requirements prescribed under a regulation. The new section 12 dispenses with a definition of PID and rolls the requirements for a PID into the definition of a PPID. The intent is to make the Act easier to follow.

Clause 26 omits Chapter 2, part 1, division 2 relating to the supply of PIDs. The amendments remove these provisions which are considered restrictive and unnecessary when read in the context of the Act. One of the purposes of the Act is to provide for the identification of cats and dogs. Imposing obligations on sellers of identification devices is ineffective in fulfilling this purpose as identification devices which are not PPIDs can be easily obtained by persons from interstate or overseas. These provisions are also restrictive to business as persons implanting devices in animals other than cats and dogs are not required to implant them with PPIDs. The objectives of identification can therefore be achieved more appropriately through obligations imposed on implanters of cats and dogs.

Clause 27 amends the heading of Chapter 2, part 1, division 3 (which relates to the implanting of PIDs), to provide for consistency in terminology by replacing PID with PPID.

Clause 28 replaces section 22 and prescribes that an authorised implanter must only implant a PPID into a cat or dog.

Clause 29 amends section 23 regarding requirements for PPIDs. As the Act removes reference to PIDs, the amendment requires authorised implanters to ensure the PPID they are about to implant stores the unique identification number for the PPID.

Clauses 30 - 34 provide for consistency with the change of terminology from PID to PPID.

Clause 35 amends section 103 to insert a reference to the Act which supersedes the *Residential Tenancies Act 1994*.

Clause 36 replaces the heading of Chapter 6, providing for consistency with the change of terminology from PID to PPID.

Clause 37 inserts a new provision at Chapter 9, Part 2A, which allows a person in control of stock or an authorised person to destroy a dog that is or is about to attack stock. This amendment replaces a similar power in section 95 of the *Land Protection (Pest and Stock Route Management) Act 2002*.

However, the amendment is not a direct replica of section 95 which refers to it applying to owners of land 'not in an urban district' (i.e. rural landowners). 'Urban district' is defined in section 94 by reference to districts for which levies are paid under the *Fire and Emergency Services Act 1990*. However, levies no longer apply only to urban districts, but apply to all properties in Queensland so urban districts are no longer defined under the *Fire and Emergency Services Act 1990*. Consequently, the amendment provides that a person in control of stock on land that is zoned rural land under the *Land Valuation Act 2010* (section 10) may destroy stock if they satisfy the criteria given in the provision.

New section 197A applies if the animal is a designated animal under the Biosecurity Act other than a bee, pig or captive bird. A designated animal under the Biosecurity Act includes cattle, sheep, goats, deer, llamas and horses. With the exclusion of bees, pigs and captive birds, it is broadly analogous to 'stock' under the *Land Protection (Pest and Stock Route Management) Act 2002* but has a more inclusive definition. For example, 'stock' does not include ponies but these are captured by the definition of 'designated animal'.

A person is an 'authorised person' as per the definition provided in the *Animal Management (Cats and Dogs) Act 2008*.

Clause 38 amends section 208, thereby updating the provision to be consistent with the current *Local Government Act 2009*, replacing reference to the repealed *Local Government Act 1993*.

Clause 39 amends section 210 providing consistency with the change of terminology from PID to PPID.

Clause 40 amends Schedule 2 (Dictionary), providing for consistency with the change of terminology from PID to PPID.

Part 6 Amendment of Biosecurity Act 2014

Clause 41 provides that Part 6 amends the *Biosecurity Act 2014*.

Clause 42 amends the definition of 'appropriate authorised officer' in subsection 42(6). The effect is that category 2 restricted matter must be notified to an 'authorised officer' rather than an 'authorised person'. An 'authorised officer' means an inspector or an authorised person. The Biosecurity Act provides for three types of 'designated officers'. In order of their decreasing powers they are: 'inspectors', 'authorised persons' and 'barrier fence employees'.

Category 1 restricted matter (such as red imported fire ants) is considered a greater biosecurity risk than category 2 restricted matter, hence the requirement that category 1 restricted matter to be notified only to an inspector. Currently however, the unamended definition means that category 2 restricted matter could only be notified to an authorised person appointed by the chief executive (i.e. it excludes notifications being made to inspectors).

The amendment allows category 2 restricted matter to be able to be notified to either an inspector or authorised person appointed by the chief executive.

Clause 43 amends section 43 to allow the distribution or disposal of category 3 restricted matter if the purpose of the distribution or disposal is prescribed under a regulation. The current provision already provides category 3 biosecurity may be distributed or disposed of in a 'way' prescribed in regulation. However, this regulation making power is not sufficient to allow the making of regulations to prescribe all the circumstances in which an exception might be appropriate.

Clause 43 also amends section 43 to allow the distribution or disposal of category 3 restricted matter for the purposes of its identification by the Queensland Museum or the Queensland Herbarium or by or at the request of another government entity with expertise in its identification.

Clause 44 replaces section 46 with four new sections (46, 46A, 46B and 46C) concerning restricted animal material for ruminants and restricted animal material for pigs and poultry.

New subsections 46(1), (2) and (3) establish offences for feeding or supplying restricted animal material for ruminants to ruminants and not taking all reasonable steps to ensure a ruminant does not feed on restricted animal material for ruminants.

New subsection (4) provides for exemptions from the offences in subsections (1), (2) or (3). A person does not commit an offence if they have a reasonable excuse. Also a person does not commit an offence in circumstances or a state of affairs prescribed by regulation.

New subsection (5) provides a further exemption from the offences under subsections (1), (2) or (3) where the restricted animal material being fed has been treated under a process approved by the chief executive under section 46B. Subsection (5) also exempts a person from the offences if they are acting under a permit approved by the chief executive under section 46C. Subsection (5) also provides an exemption from the offences under subsections 46(1), (2) or (3) where feeding of a ruminant is authorised under another Act or a law of the Commonwealth.

New section 46A is very similar to section 46, but relates to pigs and poultry rather than ruminants. It establishes offences for the feeding and supply of restricted animal material for pigs and poultry to pigs and poultry and not taking all reasonable steps to ensure that pigs and poultry do not feed on restricted animal material for pigs and poultry.

Similarly subsection 46A(4) provides for exemptions from these offences. A person does not commit an offence against subsections 46A(1), (2) or (3) if they have a reasonable excuse. A person does not commit an offence if they have a reasonable excuse. Also a person does not commit an offence in circumstances or a state of affairs prescribed by regulation.

New subsection 46A(5) provides a further exemption from the offences under subsections (1), (2) or (3) where the restricted animal material being fed has been treated under a process approved by the chief executive under section 46B. Subsection (5) also exempts a person from an offence if the person feeds restricted animal material under a permit approved by the chief executive under 46C where the animal is used lawfully for scientific purposes and only where the person feeds the animal in the way approved. Subsection (5) also provides an exemption from an offence where feeding of a ruminant is authorised under another Act or a law of the Commonwealth.

New subsection 46A(6) provides further exemptions from the offences established in subsections 46A(1), (2) or (3). A person who feeds restricted animal material for pigs or poultry to a pig for the purposes of disease control, also does not commit an offence if the feeding is done by or carried out under the written direction of a veterinary surgeon and the material being fed is derived from a pig and the pig from which the material is derived was kept at the same place as the pig being fed.

The exemptions of feeding restricted animal material for pigs and poultry for the purposes of disease control only apply to feeding of pigs. Different risks apply to the feeding of restricted animal material for pigs and poultry to pigs as opposed to poultry. It is therefore not appropriate to extend the exemptions for the feeding of pigs to also include poultry.

New section 46B provides the power for the chief executive to approve a treatment process for restricted animal material if satisfied on reasonable grounds that the process will ensure the level of biosecurity risk posed by the material (i.e. after treatment) is no more than the maximum allowable level of biosecurity risk for either restricted animal material for ruminants or restricted animal material for pigs or poultry.

The maximum level of biosecurity risk is the same level of biosecurity risk that would be posed by used cooking oil if it had been treated under a process prescribed by regulation for the restricted animal material for ruminants (if the treatment is being approved for section 46) or restricted animal material for pigs and poultry (if the treatment is being approved for section 46A).

New section 46C provides the power for the chief executive to permit the feeding of particular animals. Subsection 46C(2) provides that the chief executive may, in writing, permit a person to feed restricted animal material for ruminants to a ruminant or restricted animal material for pigs and poultry to a pig or poultry where the ruminant or the pig or poultry is used lawfully for scientific purposes.

New subsection 46C(3) provides that the chief executive may permit, in writing, the feeding where satisfied on reasonable grounds the research or scientific purpose will be conducted under controls that ensure any risks posed can be managed to protect the health and safety of humans or animals and the person conducting the research will know the location of and have control of the animal at all times during the research.

Clause 45 amends the wording of the example to subsection 115(4)(a) to reflect the change of “animal matter” to “restricted animal material”.

Clause 46 amends section 118 to replace ‘inspector or authorised person’ with ‘authorised officer’. The amendment reflects that ‘authorised officers’ encompass both ‘inspectors’ and ‘authorised persons’. The Biosecurity Act provides for three types of ‘designated officers’. In order of their decreasing powers they are: ‘inspectors’, ‘authorised persons’ and ‘barrier fence employees’. The difference between inspectors and authorised persons relates principally to emergency powers but there are also some other differences (for example, only inspectors can give a biosecurity instrument permit – section 132). Only the State can appoint ‘inspectors’. “Authorised persons” can also be appointed by local governments and an invasive animal board but there are provisions which in effect limit the powers of persons these entities appoint to the scope of responsibility of those entities under the Act.

Clause 47 amends section 126 to update the note in subsection 126(2) to reflect the changed section numbering which clause 48 effects to section 132.

Clause 48 amends section 132 so that persons are not able to apply for a *biosecurity instrument permit* for biosecurity zone regulatory provisions in lieu of applying for a *biosecurity certificate* if a biosecurity certificate could facilitate the movement of animals or matter into or from an area. It is preferable in such circumstances for persons to apply for a biosecurity certificate (issued by an accredited certifier and for which a fee is payable), as the basis to prove that they comply with and hence are exempted from particular requirements of a biosecurity zone regulatory provision. This will ensure inspectors are not distracted by dealing with a large number of permit applications (for which no fee is payable) when an appropriate certification scheme has already been established.

Clause 49 amends section 236, which prescribes the matters which a program authorisation for a biosecurity program must state. The amendment removes unnecessary reference to ‘authorised persons’ as the provision relates to the powers of an ‘authorised officer’ under the program. ‘Authorised officer’ includes an ‘authorised person’.

Clause 49 also replaces reference to ‘animal matter’ with ‘restricted animal material’ to reflect the replacement of section 46 with 46, 46A, 46B and 46C that is effected by clause 44.

Clause 50 amends section 237, which specifies the powers an authorised officer may use in an area to which a prevention control program applies. Subsection 237(3) refers to the direction given under subsection 237(1)(a) and provides that the authorised person must give the occupier an offence warning for the direction. The

direction may be given by an authorised officer, so it is appropriate for the offence warning for the direction to be given by an authorised officer, not only an authorised person. The amendment replaces 'authorised person' with 'authorised officer'. 'Authorised officer' means an inspector or an authorised person.

Clause 51 amends section 391, which empowers the Minister or the chief executive, on behalf of the State, to enter into an agreement with other jurisdictions (the Commonwealth or another State), local governments, industry bodies and natural resource management bodies for the purposes of enhancing the objects of the Act. These agreements are referred to as government and industry agreements. It is considered important that some additional types of bodies are able to contribute to Queensland's biosecurity efforts, such as through surveillance, control and education programs and the provision of advice about scientific and technical matters. As such, the amendment provides that one or more such entities can also enter into agreements with the Minister or chief executive to further the objects of the Act.

Clause 52 amends section 484 to disapply the section if the proposed action is to amend an auditor's approval by imposing a condition under section 454(3).

Section 454 provides that an auditor's approval is subject to specific conditions concerning disclosure of anything which could conflict with the proper performance of the auditor's functions. Subsection 454(1)(b) further provides that other reasonable conditions the chief executive considers appropriate for the proper conduct of an audit may be imposed. Under subsection 454(3), conditions imposed under subsection 454(1) may be imposed on issue or renewal of the auditor's approval or at another time if considered necessary by the chief executive. Imposing conditions on an auditor's approval can be considered as amending the approval.

Subsection 454(4) provides that if the chief executive decides to impose conditions on the auditor's approval he must give the auditor an information notice for the decision as soon as practicable. An information notice given under this provision is amenable to internal review under Chapter 12, Part 3, Division 1 of the Biosecurity Act and subsequently to external review by QCAT under Chapter 12, Part 3, Division 2 of the Biosecurity Act.

Separately, section 484 provides the processes to be followed when the chief executive believes grounds exist for the cancellation, suspension or amendment of relevant authorities (relevant authorities are defined in section 478 and include an auditor's approval). If the chief executive considers the amendment, suspension or cancellation of a relevant authority, he must first send a show cause notice. Once the chief executive acts to amend, suspend or cancel a relevant authority, the chief executive must, under section 487, give an information notice to the holder.

When read together therefore, sections 454 and 484 provide that the chief executive must, when deciding to amend a relevant authority, give an information notice and a show cause notice. This duplication of notices is unnecessary.

Therefore in order to address this duplication, the amendment provides for the exclusion of amendments of authorities under subsection 454(3)(b) from the application of section 484. An authority holder who is given an information notice

under section 454 must still be afforded natural justice and the decision is still subject to the review processes in Chapter 12.

Clause 53 amends section 488 to provide that an auditor's approval can be suspended immediately if there is a ground to cancel or suspend the authority and there would be an immediate and serious risk to the trade in a particular commodity if the holder of the approval were to continue to conduct audits.

The amendment is considered necessary as currently, if a trading partner in another jurisdiction provided evidence to the Department suggesting there were serious flaws in audits conducted by an auditor and advised that they would not continue to accept certified produce from Queensland unless the matter was dealt with immediately, the Department would be unable to immediately suspend the auditor's approval.

The Biosecurity Act currently prevents an immediate suspension occurring in such a circumstance because section 484 requires a show cause process to be followed and although section 488 provides for suspension of an auditor's approval, under subsection 488(1)(b)(iii) immediate suspension is only necessary because of an immediate and serious risk to a biosecurity consideration (i.e. a serious risk to trade in a particular commodity is not a current consideration for immediate suspension).

The term 'biosecurity consideration' is defined in section 5(a) of the Biosecurity Act (i.e. human health, social amenity, the economy and the environment). The impact to trade in particular produce, as outlined above, may not have come within the scope of presenting an immediate and serious risk to the economy. The amendment therefore recognises the threat to trade in a particular commodity.

Clause 54 amends section 496 to remove the protection from liability for State employees that is currently provided under the Biosecurity Act in recognition that State employees now have protection from liability under section 26B of the Public Service Act. However, this clause preserves protection from liability for those persons compelled to act under the Biosecurity Act who are not State employees. It provides that they do not incur civil liability for engaging, or for the result of engaging, in conduct in an official capacity and that liability instead attaches to the State. In situations where the conduct was engaged in other than in good faith and with gross negligence, the amendment further provides that the State may recover contributions from the relevant person. These amendments establish legislative consistency for relevant persons in cases of public liability indemnity.

Clause 55 amends Schedule 1, Parts 6 and 7 of the Biosecurity Act, which prescribe prohibited matter for the purposes of the Act, including noxious fish and prohibited matter affecting plants. The amendment updates the scientific terminology regarding the entry for piranhas, mango malformation disease and oriental fruit fly.

Clause 56 amends Schedule 2, Part 2 of the Biosecurity Act, which prescribes restricted matter which is invasive biosecurity matter for the purposes of the Act. The amendment updates the scientific terminology regarding the entry for Mexican bean tree and thunbergia.

Clause 57 amends Schedule 5 (Dictionary) of the Biosecurity Act, which prescribes the meaning of terms and words used in the Act. The Dictionary currently defines the term 'designated animal transit facility'. It broadly refers to certain places where designated animals are transited but the definition is ambiguous and it is only used in the Biosecurity Act in the definition of 'holding facility'. The amendment removes the term and the associated ambiguity.

The clause also removes 'designated animal transit facility' from the definition of 'holding facility'. The inclusive definition of 'holding facility' already captures those places which would be captured by the definition of 'designated animal transit facility'.

The clause also inserts definitions of 'poultry' and 'restricted animal material' and amends the definition of 'tallow'. The differences between the definitions of restricted animal material for ruminants and restricted animal material for pigs and poultry highlight the materials which present different disease risks to each. For ruminants, essentially the material of concern (aside from that excluded) is any carcass of a vertebrate or any material derived from an animal that is a vertebrate. For pigs and poultry, essentially the material of concern (aside from that excluded) is the carcass of a mammal or a bird or any material derived from a mammal or a bird.

Part 7 Amendment of Brands Act 1915

Clause 58 provides that Part 7 amends the *Brands Act 1915*.

Clause 59 omits section 32 which currently protects only the chief inspector and an inspector from liability while performing acts reasonably done for the purposes of carrying out the Act. There are however, other persons who exercise powers under the Act to which the current protection does not extend protection from liability. Section 26B of the Public Service Act already affords protection from liability for the chief inspector, inspector, registrar and deputy registrar of brands where these persons exercise functions under the Act.

Part 8 Amendment of Chemical Usage (Agricultural and Veterinary) Control Act 1988

Clause 60 provides that Part 8 amends the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

Clause 61, 62 and *63* insert a note in sections 9, 12 and 12E respectively, to highlight that each of these provisions is an executive liability provision as per section 30A. Section 30A of the Act, as amended by clause 73 of this Bill, provides for a 'Type 2: Executive liability (evidential burden) provision' as explained below at clause 73.

Clause 64 inserts a note in section 12I which highlights that the provision is a deemed executive liability provision as per section 31. New section 31 inserted by clause 73 of this Bill provides for an 'Executive (deemed) liability provision' as explained below at clause 73

Clauses 65, 66 and 67 insert a note in sections 12V, 13 and 13A respectively to highlight that each of these provisions is an executive liability provision as per section 30A, as explained below at clause 73.

Clauses 68 and 69 insert a note in sections 13E and 14 respectively, to highlight that each of these provisions is a deemed executive liability provision as per section 31, as explained below at clause 73.

Clauses 70, 71 and 72 insert a note in sections 16, 17 and 18 respectively to highlight that each of these provisions is an executive liability provision as per section 30A, as explained below at clause 73.

Clause 73 omits sections 30A and 31 and inserts a new section 30A and 31.

New section 30A and section 31 replace the current section 30A of the Act which provided a blanket liability for directors such that a chief executive must ensure a corporation complies with the Act and if the corporation commits an offence against a provision of the Act, each of the executive officers of the corporation also commits and offence. New section 30A and 31 impose different levels of liability on executive officers for a narrower range of offences.

For the most serious offences, new section 30A (a ‘Type 2: Executive liability (evidential burden) provision’ that is similar to section 209 of the *Animal Care and Protection Act 2001* and provisions of other Queensland Acts) deems the director liable for the corporation’s criminal conduct. However, directors have a defence if they have taken reasonable steps to avoid the contravention. While directors bear the onus of bringing evidence to show that they did take reasonable steps, the prosecution is required to prove beyond reasonable doubt that either those reasonable steps were not taken, or other steps should have been taken. In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps, a court must have regard to whether the officer was in a position to influence the corporation’s conduct in relation to the offence.

New section 31 applies to some slightly less serious offences and hence generally makes an executive officer liable for an offence committed by the corporation (an ‘executive (deemed) liability provision’ that is similar to section 209A of the *Animal Care and Protection Act 2001* and provisions of other Queensland Acts) if the officer authorised or permitted the corporation’s conduct constituting the offence; or was, directly or indirectly, knowingly concerned in the corporation’s conduct.

Clause 73 also omits the current section 31 which provided protection from civil liability to the chief executive or an “officer” (defined as the standards officer, deputy standards officer, an inspector or an analyst) for acts done or omissions made under the Act honestly and without negligence. These protections are now covered by s26B and 26C of the Public Service Act.

Clause 74 amends the schedule (Dictionary) to redefine an “executive officer” of a corporation as a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer. This definition captures a larger class of persons than

the previous provision, including all persons acting in the management affairs of the corporation.

Part 9 Amendment of Exotic Diseases in Animals Act 1981

Clause 75 provides that Part 9 amends the *Exotic Diseases in Animals Act 1981*.

Clause 76 amends section 10 of the Act. It provides that a chief executive may notify a stated area as a restricted area for a stated exotic disease by publishing the notice on the department's website.

Currently, the Minister must make such a notification of this nature and it is subordinate legislation, so it must be drafted by the Office of the Queensland Parliamentary Counsel. Currently, drafting and Ministerial notification can create a significant barrier to its timely implementation. This is particularly pertinent in situations where a biosecurity response needed to occur outside normal business hours.

As a restricted area is only applicable when there is an urgent need to stop the spread of disease, the process for imposing a restricted area needs to be responsive and flexible. This requirement is satisfied by removing the need for a restricted area to be established by subordinate legislation.

The clause provides that a restricted area notice stays in force for a period of 3 months if not earlier revoked or replaced. The chief executive is also required to table a copy of a restricted area notice in the Legislative Assembly within 14 sitting days after giving the notice.

Clause 77 amends section 16 and provides similarly for the chief executive to notify a stated area as a standstill zone for a stated exotic disease by publishing the notice on the department's website, without having to make the notification as subordinate legislation.

The clause provides that a standstill zone notice stays in force for a period of 3 months if not earlier revoked or replaced. The chief executive is also required to table a copy of a standstill zone notice in the Legislative Assembly within 14 sitting days after giving the notice.

Part 10 Amendment of Forestry Act 1959

Clause 78 provides that Part 10 amends the *Forestry Act 1959*.

Clause 79 amends section 32B which contains typographical errors in lot and plan numbers of the Palen Creek and Broowena State Forests. The amended references will accurately describe the areas of State Plantation Forest which will revert to State Forest tenure on the dates prescribed following harvesting and rehabilitation.

Clauses 80-85 amend sections 33, 34, 34C, 34D, 34E and 34F by inserting "and" into the lists contained within the provisions for grammatical correctness and to align with current drafting practice.

Clause 86 amends section 53 to provide an exemption to the offence of destroying a tree or getting forest products on Crown holdings or particular entitlements which are subject to an agreement, lease, licence, permit or other entitlement. The exemption applies to a person who is acting under the Biosecurity Act including, for example, a person acting under the direction of an inspector or complying with the person's general biosecurity obligation. The extent of this exemption is limited such that it only applies where the tree destroyed or other forest products dealt with are restricted matter as defined in the Biosecurity Act.

Clause 86 also corrects an error by renumbering the subsections under 53(1).

Clause 87 amends section 53A to provide an exemption to the offence of interfering with forest products on forest consent areas. The exemption applies to a person who is acting under the Biosecurity Act including, for example, a person acting under the direction of an inspector or complying with the person's general biosecurity obligation. The extent of this exemption is limited such that it only applies where the forest products interfered with are restricted matter as defined in the Biosecurity Act.

Clause 88 amends section 54 to provide a similar exemption to the offence of interfering with forest products on Crown lands or on any land reserved for or dedicated to public purposes (including any road, save a State-controlled road under the Transport Infrastructure Act 1994). The exemption applies to a person who is acting under the Biosecurity Act and only if the forest products interfered with are restricted matter as defined in the Biosecurity Act.

Clause 89 corrects an error by amending section 69H to renumber subsections in the provision. The *Forestry and Another Act Amendment Act 2014*, which will commence on 16 August 2015, will insert section 69H in the *Forestry Act 1959*. The numbering of new section 69H is not continuous.

Clause 90 omits subsection 69J(5). The *Forestry and Another Act Amendment Act 2014*, which will commence on 16 August 2015, will insert section 69J in the *Forestry Act 1959*. The new subsection 69J(5) provides a definition of 'other litter' which is redundant.

Clause 91 corrects an error by amending section 69N to renumber subsections in the provision. The *Forestry and Another Act Amendment Act 2014*, which will commence on 16 August 2015, will insert section 69N in the *Forestry Act 1959*. The new subsection 69N(1) includes two subsections '(a)'.

Clause 92 corrects an error and amends section 73E to place the maximum penalty in the subsection to which it applies. The *Forestry and Another Act Amendment Act 2014*, which will commence on 16 August 2015, will insert section 73E in the *Forestry Act 1959*. The penalty for the offence established in subsection 73E(1) is currently in subsection 73E(2).

Clause 93 amends Schedule 3 (Dictionary) to insert references to particular permits the definitions of which reside in section 35. Subclause (2) inserts a reference to restricted matter which is defined in section 21 of the Biosecurity Act. Subclause (3)

removes “ship” from within the definition of “place” as the definition of “place” also includes “vessel” which encompasses “ship”.

Part 11 Amendment of Nature Conservation and Other Legislation Amendment Act (No. 2) 2013

Clause 94 provides that Part 11 of the Bill amends the *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013* (NCOLA (No. 2) 2013).

Clause 95 omits Part 4 of NCOLA (No. 2) 2013. (Part 4 of NCOLA (No. 2) 2013 is scheduled to commence automatically on 7 November 2015, and on commencement, will repeal provisions relating to forest reserves in various Acts, including the *Nature Conservation Act 1992*). By omitting Part 4 of NCOLA (No. 2) 2013 before it commences, clause 95 will ensure that the provisions relating to forest reserves in the various Acts will not be repealed and will remain in effect. The retention of these provisions will allow for the ongoing management of existing forest reserves until their transfer to another tenure can be finalised.

Clause 96 omits Part 3 of schedule 1 of NCOLA (No. 2) 2013. (This is a schedule of consequential and minor references to forest reserves in various Acts.) Clause 96 therefore has a similar effect to clause 95 – it prevents the repeal of these references to forest reserve, and ensures that they continue in effect.

Part 12 Amendment of Stock Act 1915

Clause 97 provides that Part 12 amends the *Stock Act 1915*.

Clause 98 amends section 14. It removes the mandate for inspectors to define the boundaries of an area in question and quarantine particular stock, should they be satisfied that stock is or is suspected to be infected with a disease. The amendment provides inspectors with discretion to either impose a quarantine or not, based, for example, on the risk of spread of the disease.

Part 13 Other amendments of Animal Management (Cats and Dogs) Act 2008

Clause 99 provides that Schedule 1 amends the *Animal Management (Cats and Dogs) Act 2008*.

Schedule 1 Other amendments of Animal Management (Cats and Dogs) Act 2008

Item 1 replaces the term ‘PID’ (permanent identification device) with ‘PPID’ (prescribed permanent identification device) in a number of sections of the Act. This reflects the replacement by clause 25 of the current definitions for ‘PID’ and ‘PPID’ with a single definition of ‘PPID’ which includes all the former requirements of a ‘PID’.

Item 2 replaces the term ‘PID service’ in section 168 with ‘PPID registry service’ to reflect changes made throughout the Act.

Item 3 amends Schedule 1 to remove the note following subsection 2(1). The omission is necessary for consistency with the newly amended section 214 which no longer refers to PIDs.