



Queensland

Brands Regulation 2012

Explanatory Notes for SL 2012 No. 127

made under the
Brands Act 1915

General outline

Short title

Brands Regulation 2012.

Authorising law

Section 34 of the *Brands Act 1915* (the Act).

Policy objectives and the reasons for them

The purpose of the subordinate legislation is to remake the *Brands Regulation 1998* (the Regulation) prior to its automatic expiry to prescribe the system of permanently and uniquely marking and identifying various livestock for the purposes of the Act and to detail the fees that apply to the registration and transfer of brands and earmarks.

Achievement of policy objectives

The Act establishes a framework for uniquely marking and identifying livestock with brands and earmarks which serves primarily to establish prima facie ownership. Brands are used to prove ownership of livestock whilst earmarks generally serve as an aid to animal identification.

However, for some livestock, for example sheep and goats, earmarks can also provide evidence of ownership.

The Brands Registration System is primarily concerned with livestock ownership, and forms the statutory basis, under the Act and the Regulation, for stockowners to permanently identify their stock as their property with a unique brand.

Section 34 of the Act provides that a regulation may make provision about the shape or pattern of the letters, signs, characters, numerals, symbols, and marks to be used for brands and earmarks of any kind whatever and the arrangement and position on livestock. It also prescribes various matters which underpin the operation of the brands registration process.

The overarching purpose of these requirements which are prescriptively detailed in the subordinate legislation, is to ensure that brands and earmarks registered for use under the Act are unique, thereby enabling the ownership of livestock to be readily identified.

Consistency with policy objectives of authorising law

This subordinate legislation is consistent with the provisions of the Act as a whole which establishes a framework for uniquely marking and identifying livestock.

Inconsistency with policy objectives of other legislation

This subordinate legislation is not inconsistent with the policy objectives of any other legislation.

Benefits and costs of implementation

The benefit of this subordinate legislation is that it provides a unique system of marking and identifying livestock as evidence of ownership and in some circumstances provides limited traceback of livestock for biosecurity purposes. The primary benefit is in the policing of livestock theft by the Queensland Police Service where brand or earmark identification is a relevant consideration in establishing an offence. The subordinate legislation will therefore continue to support industry profitability and viability.

The subordinate legislation prescribes the same fees as provided for under the Regulation for registering and transferring brands and earmarks.

Consistency with fundamental legislative principles

This subordinate legislation has relevance to the rights and liberties of individuals and may be seen to potentially contradict the principles of natural justice as it allows for a cancellation of brand or earmark to be effected without the registered owner being afforded the opportunity to make submissions concerning the cancellation before it occurs.

Furthermore, the subordinate legislation may also be seen to contradict natural justice principles as it does not provide for the registrar to give reasons for the cancellation of the brand or earmark.

However, the potential impacts on rights and liberties are balanced by the fact that cancellation of the brand or earmark is justified by virtue of the registered owner being convicted of a disqualifying offence within the requisite period. The fact that a registered owner has been convicted of a disqualifying offence is sufficient to justify the cancellation action and negates the need to invite information about an offence, the result of which is already established.

Although there are no express provisions for appeal of decisions under the legislation, potential impacts on rights and liberties are mitigated by the fact that a registered owner who has had a brand or earmark cancelled may still apply for a review of the cancellation decision under the *Judicial Review Act 1991*.

The additional requirement for the Minister to provide his approval to cancel the brand or earmark, also mitigates the potential impacts on rights and liberties. This additional level of approval adds, in effect, a procedural safeguard which ensures that the registrar cannot take such actions without first justifying them to higher authority.

For these reasons it is considered that the subordinate legislation mitigates potential impacts on fundamental legislative principles and is drafted with sufficient regard to natural justice.

Consultation

Consultation on the subordinate legislation was undertaken with the Regulatory Review Branch, Queensland Treasury with regard to regulatory assessment statement (RAS) requirements.

Queensland Treasury advised that a RAS is not required as the subordinate legislation does not impose significant impacts on business, community or government and is machinery in nature.

As the subordinate legislation seeks merely to remake the Regulation prior to its expiry to preserve the current system of marking and identifying livestock and as it imposes no additional costs, general consultation was not undertaken.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Agriculture, Fisheries and Forestry.

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