

HORTICULTURE LEGISLATION AMENDMENT BILL 1995

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The Bill will amend the *City of Brisbane Market Act 1960* to establish an expertise-based Brisbane Market Authority to replace the Brisbane Market Trust (and to provide the Authority with the powers necessary to operate and manage the City of Brisbane Market).

The Bill will also amend the *Farm Produce Marketing Act 1964* to establish an Horticulture Industry Policy Council (which is representative of the relevant industry stake-holders) to, amongst other things, provide advice to the Minister on policy issues relating to the Queensland horticulture industry.

Reasons for the Bill

The Bill is part of the Government's program of legislative reform and review and results from a detailed review of the State's horticulture legislation (comprising the *City of Brisbane Market Act 1960*, the *Fruit and Vegetable Act 1947* and the *Farm Produce Marketing Act 1964*). This Bill addresses the more urgent matters recommendations from the review.

Estimated Cost for Government Implementation

There will be no cost to Government.

Consultation

Three public discussion papers were issued during 1993 and 1994 seeking submissions regarding the review of the State's horticulture industry legislation. Submissions were received from the relevant peak industry bodies—principally, growers (the Committee of Direction of Fruit Marketing) and wholesalers (Brismark). An interim Queensland Horticulture Industry Policy Council, comprising representatives of a wide cross-section of relevant industry sectors, was formed in July 1994 to consider the submissions and develop recommendations for Government.

The Queensland Treasury, the Office of the Cabinet, the Department of Business, Industry and Regional Development, the Department of Justice and Attorney-General and the Parliamentary Commissioner were also consulted during the drafting of the Bill.

NOTES ON PROVISIONS**PART 1—PRELIMINARY**

Clause 1 sets out the short title of the Act. The short title is the *Horticulture Legislation Amendment Act 1995*.

Clause 2 provides that, when enacted, Part 2 of the *Horticulture Legislation Amendment Act 1995* will amend the *City of Brisbane Market Act 1960* (“the Act”).

**PART 2—AMENDMENT OF CITY OF BRISBANE
MARKET ACT 1960**

Clause 3 inserts a new heading into the Act.

PART 1—PRELIMINARY

Clause 4 deletes an obsolete provision (which abrogated certain powers which the Brisbane City Council had in relation to markets) from the Act.

Clause 5 renumbers section 3 of the Act as section 2; and also makes a technical drafting change to the same provision.

Clause 6 amends the definitions' section of the Act by removing definitions which will no longer be needed after the Act is amended and by including new definitions as required as part of these amendments.

Clause 7 replaces existing sections 5 to 12 of the Act (which set up the Brisbane Market Trust, provide for the appointment of, and remuneration of, members to the Trust, etc) with a new Part 2.

PART 2—THE BRISBANE MARKET AUTHORITY

New section 4 establishes the Brisbane Market Authority (“the authority”).

New section 5 provides that the authority is a body corporate which does not represent the Crown in right of the State, and may sue and be sued in its corporate name. It also provides that the authority is an exempt public authority under the *Corporations Law*.

New section 6 sets out the functions of the authority which are to establish, maintain and operate a market in the area of the City of Brisbane for:

- the sale and storage of fruit and vegetables; and
- the accommodation and facilities for the conduct of other trade and commerce (meaning non-fruit and vegetable businesses) at the market.

The authority may also be required to perform other functions as required by the Act or another Act.

New section 7 essentially provides the authority with the powers of a natural person (which can be exercised inside and outside the State, and inside and outside Australia). Amongst other things, the authority will be able to set market access times in relation to wholesalers and market lessees under this provision.

New section 8 provides that the authority may delegate its powers.

New section 9 provides that the Minister may give the authority written notice of a public sector policy that is to apply to it if he or she considers it to be in the public interest. Prior consultation must occur and the authority must be asked to advise the Minister if complying with the policy would harm its financial or other interests. The notice must be gazetted within 21 days of issue.

Under new section 10, the Minister can give the authority a written direction if he or she considers it necessary to do so in the public interest because of exceptional circumstances. Prior consultation must occur and the authority must be asked to advise if complying with the direction would harm its financial or other interests. The direction must be gazetted within 21 days of issue.

New section 11 requires that each annual report of the authority must include a copy of each notice or direction issued (under section 9 or 10) during the financial year, the action taken by the authority and the details of what impact the notice or direction had on the financial or other interests of the authority.

New section 12 provides for the composition of an expertise-based Brisbane Market Authority, the members of which are to be appointed by the Governor in Council. While the chairperson of the authority will be nominated by the Minister, the other members will be nominated by a selection committee (as constituted under new section 13). The same nomination procedure will be followed when casual vacancies on the authority are filled.

New section 13 requires the Minister to set up a selection committee to nominate the members (excluding the chairperson) for the authority. The selection committee is to have 7 persons:

- a chairperson nominated by the Minister; and
- 6 other members to be chosen by the Minister, after consultation with the Policy Council, from nominations submitted on invitation by organisations that are, in the Minister's opinion, representative of the interests of:
 - fruit and vegetable wholesalers or the farm produce trade (2 persons);
 - fruit and vegetable growers (2 persons);
 - fruit and vegetable buyers or retailers (2 persons).

The new provision also provides that members of the Horticulture Industry Policy Council ("the policy council") may be members of the selection committee, and that the chairperson of the selection committee is entitled to be paid by the authority the fees and allowances the Governor in Council may decide.

Under new sections 14(1) and (2), the Minister may give directions regarding procedures, timing and criteria to be applied by the committee in selecting nominees for appointment to the authority; however, these may not require a particular person to be nominated.

New section 14(3) stipulates that:

- members of the policy council;
- members of the selection committee; or
- a chairperson, deputy chairperson or chief executive (regardless of the title used) of an organisation representing:
 - fruit and vegetable growers;
 - fruit and vegetable wholesalers or the farm produce trade; or
 - fruit and vegetable buyers or retailers;

cannot be nominated by the committee.

New section 15 relates to matters dealing with the appointment of members to the authority:

- section 15(1) provides that a member of the authority cannot be appointed for a term which is longer than 3 years;
- section 15(2) provides the grounds on which the office of a member of the authority becomes vacant; and
- sections 15(3) and (4) provide the grounds on which the Governor in Council may remove a member from office.

Under new section 16, the Governor in Council decides the fees and allowances which the members of the authority are entitled to be paid by the authority.

New sections 17(1) and (2) provide that the authority decides the time and place of its meetings, although meetings must occur at least once every 3 months. New section 17(3) goes on to provide that the Chairperson can call a meeting at any time and must call a meeting if requested by at least 4 members.

New section 18 deals with the procedures governing the conduct of the authority's meetings. In particular, when he or she is present at a meeting, the chairperson must preside at a meeting—otherwise, the members which are present must select a presiding member. Under new section 18(3), 4 members form a quorum, and a motion is decided by a majority of votes (with the presiding member having the casting vote if necessary).

New section 18 also provides that the authority may conduct its meetings as it considers appropriate and may hold meetings by phone, closed circuit TV etc. If all members agree in writing to a proposed resolution, which was given under an authority approved procedure, the resolution is valid even if not passed at a meeting.

New section 19 provides that a member who has a direct or indirect financial interest in an issue being or about to be considered by the authority (and that interest could conflict with the proper performance of the member's duties) must disclose his or her interest to the meeting. The disclosure must be recorded in the minutes and the member must not be present during consideration of the issue or take part in a decision on the issue unless the authority otherwise agrees. New section 19(4) further provides that another member who has a direct or indirect financial interest in the issue must not be present (or take part in the making of the decision) when the authority decides whether the first member can:

- be present when the authority considers the issue; or
- vote on the issue.

New section 20 requires minutes to be kept of proceedings of the authority.

New section 21 provides that the authority may employ staff as it considers necessary to perform its functions on terms it may decide, but subject to any relevant industrial award or agreement.

Under new section 22, the authority must employ a chief executive officer and a secretary—although the one person may hold both positions. The chairperson of the authority cannot also be the chief executive officer.

New section 23 requires that judicial notice must be taken of the imprint of the authority's seal on a document.

New section 24 provides that the authority may establish committees as it considers appropriate to advise it. When establishing a committee, the authority can determine the committee's functions, membership, appointment conditions and methods of operation. A committee's recommendations must be given proper consideration by the authority.

New sections 25 and 27 deal with the application of certain Acts to the authority. New section 25 essentially provides that the usual range of public sector accountability legislation is to apply to the authority with the exception that the *Public Sector Management Commission Act 1990* does not apply to the authority or its employees (new section 27).

New section 26 requires the authority to consult with the policy council after it has prepared a strategic plan as required by the public finance standards issued under section 46L of the *Financial Administration and Audit Act 1977*.

Clause 8 renumbers section 12A of the Act as section 28.

Clause 9 deletes sections which are no longer needed in the Act, specifically:

- section 13 which deals with the filling of casual vacancies on the Brisbane Market Trust;

- section 14 which establishes the Brisbane Market Trust;
- section 15 which provides the Brisbane Market Trust with the power to acquire land and provides that the Trust's land is not rateable;
- section 16 which provides the Brisbane Market Trust with certain powers and functions and requires it to establish and maintain a public market in the City of Brisbane; and
- section 16A which provides the mechanism by which the Brisbane Market Trust may dispose of surplus land.

Clause 10 essentially:

- deletes sections 17(1) to 17(4) of the Act (these provisions are now not necessary given the powers and functions provided to the authority in new sections 6 & 7);
- deletes a spent provision (section 17(6)); and
- revises the remainder of section 17 in line with current legislative drafting policy.

Clause 11 replaces sections 18 to 25B with new Parts. The provisions being replaced (sections 18 to 21A) deal with financial matters which are now covered by the *Financial Administration and Audit Act 1977*.

PART 3—REVIEW OF ADMINISTRATIVE DECISIONS

New section 30 provides that a person who is aggrieved by an administrative decision of the authority can apply to the authority for a reconsideration of the decision. (Note that the person is entitled to receive a statement of reasons for the decision under the *Judicial Review Act 1991*.)

New section 31 provides that, when reconsidering its decision, the authority has the power to confirm, amend or reverse its original decision.

New section 32 provides a person who is aggrieved by a decision made by the authority under section 31 may appeal to the Magistrates Court against that decision.

New section 33 sets out the procedure for initiating an appeal. The appellant must file the notice of appeal within 28 days of receipt of the decision. The court, however, may extend the time for lodging the notice of appeal. New section 33(4) requires that the notice of appeal state the grounds of the appeal.

New section 34 provides the court with the power to grant a stay of a decision which is being appealed against to secure the effectiveness of the appeal. The operation of a decision which is being appealed against is not affected unless the court has granted a stay.

New section 35 sets out the hearing procedures to be adopted by the court when it deals with the appeal. In particular, it requires that the appeal be by way of a rehearing of the matter, and that, in deciding the appeal, the court is not bound by the rules of evidence. Furthermore, when the court hears the decision it must observe the rules of natural justice, and it may hear the matter in court or in chambers.

New section 36 sets out the court's powers when hearing the appeal: the court may confirm the decision, set aside the decision and substitute it with an another decision, or set aside the decision and return the matter to the authority for reconsideration with any directions which the court considers appropriate.

Under new section 37, a person aggrieved by the decision of the Magistrates Court is provided with a right of appeal to the District Court on a question of law.

PART 4—MISCELLANEOUS

Clause 12 renumbers sections 25C to 25H in the Act.

Clause 13 deletes the regulation-making provision of the Act (section 26 of the Act). Note that a new regulation-making provision is inserted by clause 18.

Clause 14 amends the by-law making power of the Act (section 27 of the Act). Under the amended provision, the authority will be able to make by-laws. By-laws are subordinate legislation, and must be approved by the Governor in Council.

Clause 14(13) amends section 27(1A)(a) to provide that a by-law can be made which targets either the registered owner of a vehicle or the actual offender. (Note that a number of by-laws relate to the use, parking, etc of vehicles at the market.)

Clause 15 essentially updates the wording of section 28 of the Act—to provide that an offence under the Act is a summary offence.

Clause 16 renumbers section 28A of the Act.

Clause 17 makes some minor technical revisions to section 28B and also renumbers this provision as section 47.

Clause 18 inserts a new regulation-making provision (section 48) into the Act.

Clause 19 inserts a new Part.

PART 5—TRANSITIONAL PROVISIONS

New section 49 defines some terms for the purposes of this new Part.

New section 50 provides for the continuation of the Brisbane Market Trust (“the former authority” for the purposes of Part 5) until the changeover day (which will be 6 months after commencement of this Bill unless an earlier date is fixed by regulation).

New section 51 provides for the vesting of assets, rights and liabilities of the Brisbane Market Trust with the new authority.

New section 52 provides that legal proceedings instituted by or against the Brisbane Market Trust may be continued and finished by or against the new authority.

New section 53 provides for the transfer of staff of the Brisbane Market Trust to the new authority.

New section 54 deems that a superannuation scheme to which the Brisbane Market Trust contributed becomes a scheme to which the authority contributed.

New section 55 provides for the transfer of officers appointed as market officers to the new authority.

New section 56 provides that approvals, permits and licences of the Brisbane Market Trust continue to be in force (subject to any conditions or terms of the approval, permit or licence) for a year after the changeover day.

New section 57 requires that all entries which must be made to register the transfer of property from the Brisbane Market Trust to the new authority must be made at the request of the authority, and that no fees are payable for such registration.

New section 58 provides that this new Part expires 1 year after the Bill commences.

New section 59 provides that a reference to the Trust is taken to be a reference to the authority. This section expires when the Act is first reprinted under the *Reprints Act 1992*.

New section 60 sets out requirements relating to the reprinting of the Act.

Clause 20 removes an obsolete schedule from the Act.

PART 3—AMENDMENTS OF THE FARM PRODUCE MARKETING ACT 1964

Clause 21 provides that this Part amends the *Farm Produce Marketing Act 1964* (“the Act”).

Clause 22 inserts a new Part heading into the Act.

PART 1—PRELIMINARY

Clause 23 omits a redundant provision from the Act.

Clause 24 amends the definitions' section of the Act. All of the new definitions (with the exception of the definition of the "policy council") do not directly result from policy changes stemming from the Bill, but rather are in the nature of statute revision.

Clause 25 inserts a new Part into the Act.

PART 2—FARM PRODUCE COMMERCIAL SELLERS

Clause 26 to 46 revise various sections of the Act in line with current legislative drafting practice. In particular:

- clauses 27, 28, 36 & 44 replace references to prescribed forms with approved forms;
- clauses 30 & 46 omit redundant headings;
- clause 31 removes a superfluous sentence from section 15;
- clauses 40 and 41 remedy provisions which discriminate against financial institutions which are not banks; and
- clauses 33 to 45 revise offence provisions in line with current legislative drafting practice.

Clause 48 inserts a new Part into the Act.

PART 3—THE HORTICULTURE INDUSTRY POLICY COUNCIL

New section 46 establishes the Horticulture Industry Policy Council (“the policy council”).

Under new section 46A, the functions of the policy council are to:

- (i) address, and advise on, the long term strategic issues facing the horticulture industry, and to develop appropriate policy responses;
- (ii) examine, and make recommendations to the Minister on industry issues, either on its own initiative or if asked by the Minister or authority;
- (iii) examine, and make recommendations to the Minister on the operation of the State’s horticulture industry legislation and the achievement of the objectives of that legislation;
- (iv) examine and make recommendations to the Minister on the authority’s strategic plan;
- (v) find out industry views on industry administration and pass them on to the Minister; and
- (vi) assist in the selection of members of the authority as provided for in the *City of Brisbane Market Act 1960* as amended by the Bill.

New section 46B deals with the membership of the policy council. The policy council will include:

- the Minister (or his or her nominee) who is to be chairperson; and
- other persons the Minister considers necessary and appropriate to adequately represent all sections of the industry.

Under new section 46C, the policy council may meet whenever it is necessary for it to conduct its business, but it must meet at least once every 6 months. The Minister may convene a meeting at any time, and he or she must convene a meeting if requested to by at least three quarters of members of the policy council.

New section 46D provides that the policy council may establish committees to advise it and may decide membership, functions and how a committee is to operate.

Clause 49 inserts a new Part heading.

PART 4—MISCELLANEOUS

Clauses 50 to 53 are in the nature of statute revision. In particular:

- redundant headings are removed;
- offence provisions are revised in line with current legislative drafting practice;
- the regulation-making provision is revised in line with current legislative drafting practice;
- references to prescribed forms are changed to approved forms (ie, forms approved by the chief executive of the Department); and
- provisions which discriminate against financial institutions which are not banks are rectified.

Clause 53 omits a superfluous provision and replaces it with new section:

- 51—which provides that the chief executive may approve forms for use under the Act; and
- 51A—which provides that existing prescribed forms continue for 6 months after commencement unless they are revised and issued as prescribed forms sooner.

Clause 54 inserts a new section 54 which provides that the Act expires on 31 December 1999.