

AGRICULTURAL COLLEGES AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The primary objective of the legislation is to amend the *Agricultural Colleges Act 1994* to:

- improve the accountability of agricultural college boards, particularly in regard to government funding;
- improve the functioning of agricultural college boards;
- update the current legislation to ensure consistency with other relevant legislation and the national training framework; and
- enhance vocational education and training for the rural industry sector and rural communities.

Reasons for the Bill

The *Agricultural Colleges Act 1994* provides the legal framework for the operation of the four agricultural colleges and the boards of trustees, which are statutory bodies that govern the colleges.

Since 1994 there have been major changes to the training system nationally which impact on the accountabilities and operation of agricultural colleges as registered training organisations.

The Bill will clarify a number of existing provisions in relation to accountability for government funds and tighten the operating and reporting guidelines for boards. The Bill will also assist the college boards in providing leadership and direction to the four colleges to enhance the quality of training provided to young Queenslanders.

Consistency with fundamental legislative principles

The provisions of the *Agricultural Colleges Amendment Bill 2002* are consistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*.

Estimated cost for government implementation

The proposed Bill amendments to the *Agricultural Colleges Act 1994* will be cost neutral.

Consultation

A legislation reference group comprising representatives from the agricultural colleges and the Department of Employment and Training was formed to guide the development of the amendment Bill.

Extensive consultation was undertaken with key stakeholders. An issues paper and a consultation paper were provided to stakeholders prior to consultations and at consultation meetings. The stakeholders included members of agricultural college boards, directors of the agricultural colleges, staff of the agricultural colleges, TAFE Institute Directors, various agency representatives including Education Queensland, Queensland Treasury and the Department of the Premier and Cabinet, unions, industry associations and interested individuals.

Following consultations a position paper, which finalised policy options for the amendments, was prepared and formed the basis for the drafting instructions for the Bill.

NOTES ON PROVISIONS

Clause 1 provides the short title for the Act.

Clause 2 states that this Act amends the *Agricultural Colleges Act 1994*.

Clause 3 inserts a definition for a new phrase “pastoral care” which clarifies the responsibility of a college board to provide appropriate care and support for all students of an agricultural college.

The clause also amends the definition for “State land” as the *Land Act 1962* has been superseded by the *Land Act 1994*.

Clause 4 replaces the existing section 4 (Declaration of agricultural colleges) with a new section 4 to enable a college to expand the breadth of training it delivers to the rural industry, rural related industries and communities. The colleges will be enabled to deliver a broader range of skills training, for example, training in natural resources and conservation practices, while retaining a primary focus on agriculture.

The new section 4 will also enable the Minister to specify a name for a college that reflects the locality the college serves, the college's main training function, or the college's core business.

Clause 5 ensures the name of the college board is consistent with the name of the college.

Clause 6 replaces the current section 7(3), which provides a list of functions of an agricultural college board. The new list of functions provides a strategic focus for an agricultural college board. The functions enhance board accountability, provide consistency with the national training agenda and clarify the responsibilities of a board in the key priority areas of: pastoral care for students; access to training for Aboriginal and Torres Strait Islander people; and school to work transitioning.

Clause 7 amends section 8, which deals with the powers of a college board, by inserting two new sub-paragraphs into section 8(1). The new paragraphs state that the powers of a board include: the provision of residential accommodation for purposes associated with the college (rather than the current hostel accommodation for students); and the appointment of college directors under section 26 of the Act.

This clause deletes the existing section 8(2). Other than the power to appoint the college director and provide residential accommodation now incorporated in section 8(1), the other powers listed under the existing section 8(2) are organisational functions rather than board powers and have been omitted.

Section 8(3)(a), which provides that a college board must not alter a building without the Minister's approval, is amended by deleting the qualification "(other than in a minor way)" to remove ambiguity. Instead a new section 8(3) will provide for the circumstances in which a college board may alter college buildings.

Section 8(3)(d) is amended to require a board to obtain Ministerial approval not just to sell land, but also to buy and lease land.

The current section 8(3) is renumbered as section 8(2).

A new section 8(3) enables a college board greater flexibility in altering, extending, building or buying a building. A board will have the power to alter, extend, build or buy a building up to an amount fixed by the Minister by Gazette notice. Fixing the amount by gazette notice provides for enhanced public accountability.

Clause 8 amends section 10 by inserting a new subsection (2) requiring a college board to report, in the college's annual report, all Ministerial directions given to the board and the board's response to the directions.

Clause 9 inserts a new section 10A, which enables the Minister to request a board to provide information and reports in the way and within the timeframe the Minister requires (section 10A(1)). A college board is required to comply with the request to the extent that it is able (section 10A(2)). If a board is not able to comply, it is required to provide the Minister with the reasons that it is not able to comply (section 10A(3)).

New section 10A(4) requires a board to give the Minister a report on any matter that the board becomes aware of that may significantly affect its ability to achieve its objectives. The board is required to provide this report as soon as practicable, but no later than one month after becoming aware of the matter (section 10A(5)).

Clause 10 replaces section 13 with a new section that increases the number of official members on an agricultural college board from three to five. As the appointed member category has been reduced by two members the overall size of the board is not altered.

The appointed member category "nominee of the chief executive of the department responsible for the administration of the *Forestry Act 1959*" has been replaced by a new official member category "nominee of the chief executive of the department that deals with matters under the *Stock Act 1915*" as there are currently three chief executives who are responsible for the administration of the *Forestry Act 1959* and it is desirable to ensure that these nominees to the agricultural college boards are nominated by the chief executive with responsibility for primary industries matters.

New section 13(2)(e) will enable the student advisory council established under the Act to nominate a member of the advisory council to sit on the board. The nominee may be a current student or a person who has graduated from the college in the past five years (section 13(3)(a)). This provision will generally lead to enhanced youth representation on college boards as this person is often likely to be under the age of 25.

The clause also inserts a new section 13(4) that allows for the specification of the term of appointment of official members nominated by

the chief executive, the chief executive of the department that deals with matters under the *Stock Act 1915*, or college staff, and allows for the withdrawal of the nomination of these official members. The amendment is designed to ensure that these official members are accountable to their nominating organisations.

Clause 11 amends section 14 to reduce the number of appointed members from 9 to 7. It deletes the provision that provides for the college staff nominee to be an appointed member as they are now official members. Reference to the nominee of the department with responsibility for the *Forestry Act 1959* has been removed as these members will now be official members appointed by the Department with responsibility for the *Stock Act 1915*.

The clause also amends the requirements for appointed members. While retaining a focus on rural experience, appointed members can be drawn from a wider spectrum of the area served by a college (section 14(5)). Appointed members will also be required to have the range of skills and experience that the Minister considers necessary to enable them to contribute to the board's ability to perform its functions (section 14(6)).

Clause 12 amends section 15 so that the term of appointment for appointed members is a term of not more than three years.

Clause 13 includes a technical amendment to reflect current drafting practice and deletes reference to a casual vacancy as such vacancies will be filled by members being appointed under section 15.

Clause 14 amends section 19(2), by removing the requirement for the chairperson to be a member with experience in a rural industry and replacing it with the requirement for the Minister to ensure the chairperson has the skills and experience necessary to lead the college board in the performance of its functions.

Clause 15 amends the definition of a quorum to reflect new provisions on conflict of interest.

Clause 16 inserts two new sections. New section 22A provides the members and the chairperson with clear guidelines in regard to voting at meetings of the college board.

New section 22B deals with conflicts of interest. A member with a material personal interest in an issue being considered by the board is prohibited from voting on the issue, being present during consideration of the issue or taking part in decisions about the issue unless the board has

passed a resolution that the member's interest in the issue should not disqualify the member. Section 22B(3) allows the disqualification of any members from considering or voting on issues to be taking into account in determining the number required for a quorum.

A maximum penalty of 100 penalty units applies to breaches of this provision.

Clause 17 amends section 23 to enable a board to conduct meetings by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Clause 18 inserts new Part 2A relating to the appointment of an administrator.

New section 25A enables the Minister to appoint an administrator if satisfied that a board has stopped functioning effectively. Examples of circumstances where a board may cease to function effectively include:

- the inability to achieve a quorum on a regular basis;
- the resignation of a majority of board members;
- a continuing impasse in board decision making on major areas critical to the operation of the college.

The Minister may also appoint an administrator if a board is acting in a way that is prejudicial to the interests of its college (section 25A(1)(b)).

The administrator is to be appointed for the term, and on the conditions declared by the Minister, and holds office until the term of the appointment ends, an earlier day fixed by the Minister, or the administrator dies or resigns.

New section 25B provides that college board members go out of office on the appointment of an administrator. No compensation is payable to members whose term is ended through the appointment of an administrator. As a board member is only remunerated for attendance at board meetings and special meetings, the appointment of an administrator will not disadvantage a board member.

Any person who is aggrieved by the Minister's decision to appoint an administrator may seek a remedy under the *Judicial Review Act 1991*.

New section 25C provides that the administrator of a college is the college board for the purposes of the Act in appropriate circumstances.

New section 25D (1)(a) provides that the administrator is able to exercise the powers and authorities of the board until the purpose of the

administration is achieved and appropriate arrangements can be made for the appointment of a new college board. Section 25D(1)(b) and (c) provides for the reporting by the administrator to the Minister. The Minister is to table the final report of the Administrator in the Legislative Assembly within 28 days after receiving it.

New section 25E provides that on completion of the administration the administrator is released from responsibility to account for the administration of the college in the absence of fraud or dishonesty.

Clause 19 amends section 26 which provides for the appointment and functions of the college director. It provides that the college director, rather than the college board, appoints the college's staff.

Clause 20 inserts new Part 3A relating to the establishment of a student advisory council at each agricultural college.

The student advisory council is established to enhance youth representation in the agricultural colleges and support effective youth representation on the agricultural college boards.

New Section 27A provides that the student advisory council consists of not more than 8 members made up of no more than 5 students, 1 former student and 2 staff members.

New Section 27B provides for eligibility to be members of the student advisory council. Members of the college board, other than the nominee of the student advisory council, are not eligible for appointment. (section 27B(2)).

The student representatives on the student advisory council are selected by the students of the college. The staff member representatives are to be selected by the college staff and the college board is to decide the way that a former student representative is selected.

The student advisory council is to advise the college board or the director on matters referred to it by the board or the director, or on matters about the college or students that it considers should be referred to the board or director (section 27C).

Members of the student advisory council hold office until the end of the calendar year unless they resign. Student and staff representatives also stop holding office if they stop being a student or staff member (27D).

The chairperson of the council must be a student member (section 27E).

Clause 21 amends a reference to the repealed *Land Act 1962*.

Clause 22 amends section 32(3) to remove the current ambiguity surrounding the use of funds held in a college's general account. The colleges will be able to pay for capital works to which funding has been allocated as well as the college's operating costs from the general fund.

Clause 23 is a minor technical amendment to reflect current drafting practice.

Clause 24 removes the word "college" from the heading of Part 5, as the part will now relate to both college and operational rules.

Clause 25 provides a new title for the existing provisions of Part 5 that relate to college rules. The college rules are at a strategic policy level and made by the college board.

Clause 26 inserts a new division within Part 5, 'Division 2 – Operational rules'.

New section 37A provides that the college director may make operational rules for any purpose authorised by a college rule or that are necessary or convenient for the day-to-day management of the college. Operational rules that are inconsistent with a college rule are invalid to the extent of the inconsistency.

The director is to publish operational rules in a manner that provides all affected persons appropriate notice of the rule and its effect.

Clause 27 inserts new section 39A that allows the Minister to delegate powers to the chief executive.

Clause 28 inserts new section 41 dealing with renumbering of the Act in accordance with the *Reprints Act 1992*.

Clause 29 replaces the title of Part 7 and inserts a title for the current provisions that relate to the transitional arrangements for the Act when passed in 1994.

Clause 30 inserts a new Part 7, Division 2 relating to transitional arrangements for the *Agricultural Colleges Amendment Act 2002*.

The clause provides transitional arrangements for the nominee of the chief executive and the current student body nominee to continue in their current capacities.

New section 49 maintains the status of the existing agricultural colleges.

New section 50 maintains the status of the appointment of members of college boards who were the nominees of the chief executive or presidents of the student body.

New section 51 provides that persons who were appointed as members by college staff or the chief executive of the department responsible for the administration of the *Forestry Act 1958* will become official members of the relevant college board.

New section 52 provides that the terms of appointed members do not end before the member's term would otherwise have ended.