

PRIMARY INDUSTRIES LEGISLATION AMENDMENT BILL (No. 2) 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives for the legislation

The objectives of the Bill are to—

- repeal provisions from various Acts that prevent certain primary industry leaders from participating fully in industry administrative and regulatory bodies
- repeal provisions from various Acts that add unnecessary burdens to the administration of industry administrative and regulatory bodies
- repeal provisions from various Acts relating to policy councils, substituting flexible consultative mechanisms
- remove “Henry VIII” clauses from the *Primary Producers’ Organisation and Marketing Act 1926*
- provide options for reform of the Queensland Livestock and Meat Authority
- effect minor statute law revision of a number of Acts.

Reasons for the Bill

There are serious deficiencies in some legislation relating to key primary industry bodies and associated advisory and consultative structures implemented in legislation introduced between 1990 and 1995.

The most serious deficiency is the exclusion of certain industry leaders from membership of some bodies. Second, the process for selection of members is rigid, complex, time consuming and incurs unnecessary costs.

Third, existing statutory policy councils and related bodies do not necessarily reflect industry and government needs, and are inflexible. The Bill amends a number of Acts to remedy these defects.

Additionally, the *Primary Producers' Organisation and Marketing Act 1926* operates using a system of “Henry VIII” clauses. These clauses allow the Governor in Council to create or amend laws about statutory bodies (eg mill suppliers' committees) by regulation that amends the principal Act. This process is contrary to the fundamental legislative principles stated in the *Legislative Standards Act 1992*, particularly section 4(4)(c), providing that an Act should be amended only by another Act. The required outcomes can be achieved entirely under regulations without offending the fundamental legislative principles. The Bill amends the Act accordingly.

Further, the Queensland Livestock and Meat Authority is facing a serious financial crisis. In order to contain the anticipated problems, the Authority's structure, performance and future role must be examined and adjusted as a matter of priority to ensure the public safety aspects for which it is responsible are viable and capable of being effectively implemented.

Ways in which the objectives are to be achieved in the Bill

The objectives are achieved by—

- repealing provisions that preclude industry leader participation as members of industry administrative and regulatory bodies;
- repealing provisions about policy councils;
- repealing provisions about selection committees;
- inserting provisions about industry consultative mechanisms;
- repealing “Henry VIII” clauses from the *Primary Producers' Organisation and Marketing Act 1926*, and inserting appropriate heads of power to make regulations that do not offend the fundamental legislative principles;
- providing the potential for reforming the Queensland Livestock and Meat Authority, including a period of administration, and restructuring the Authority.

Alternatives to the Bill

The policy objectives about industry leader participation, more flexible consultative arrangements and removal of the unnecessary burden created by the selection processes can only be achieved by amending the relevant Acts.

Removing the “Henry VIII” provisions also requires amendment of the relevant Act, because there is no other mechanism permitted by that Act for orderly management of the producer representative bodies.

Estimated cost for government implementation

Nil.

Consistency with fundamental legislative principles

The provisions of the Bill are consistent with fundamental legislative principles as set out in the *Legislative Standards Act 1992*.

In particular, the Bill removes a number of “Henry VIII” provisions that are contrary to the fundamental legislative principles, and substitutes new regulation-making powers that do not contravene the principles, and are still consistent with the policy objectives of the authorising Act.

The Bill allows the Biological Control Authority or the Minister to authorise subdelegation of powers. This is considered to be appropriate, given that the Authority now has three Ministerial members and the Act is administered jointly by two of those Ministers, but the Act was drafted with only one Minister in mind. Subdelegation is intended as a means by which the relevant Ministers may efficiently manage the affairs of the Authority. The delegations may be to another Minister, or an appropriately qualified officer of a department, and may only be subdelegated if the delegation expressly authorises it.

Consultation

Industry leaders and existing policy councils have been advised of the Government’s intention to proceed with the amendments to selection processes, policy councils and inclusion of industry leaders in the pool of possible members of the affected bodies.

The Queensland Livestock and Meat Authority was consulted on their financial situation and the need to move urgently on reforming the Authority's operations.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 provides the short title of the Act will be *Primary Industries Legislation Amendment Act (No. 2) 1996*.

Clause 2 provides for commencement of the Act.

PART 2—AMENDMENT OF BIOLOGICAL CONTROL ACT 1987

Clause 3 provides that this part amends the *Biological Control Act 1987*.

Clause 4 amends the definition section of the Act and restructures the subsections as separate sections in accordance with current drafting practice. The substantive amendment is to change the name of the relevant ministerial council to the Agriculture and Resource Management Council of Australia and New Zealand.

Clause 5 inserts a new delegation power in keeping with current drafting practice, and utilising the delegation provision of the *Acts Interpretation Act 1954*. The new delegation section allows for subdelegation. The need for this power arises from the authority consisting of several ministers whereas in the past it has only consisted of one minister. The intention is that the Authority or one or more ministers may delegate power to one particular minister or an officer, who may then if so permitted, subdelegate powers to officers of public service departments.

Clause 6 replaces the regulation making power with a more simply worded provision in keeping with current drafting practice, and adopting the general provisions contained in the *Acts Interpretation Act 1954*.

PART 3—AMENDMENT OF CITY OF BRISBANE MARKET ACT 1960

Clause 7 provides that this part amends the *City of Brisbane Market Act 1960*.

Clause 8 omits unnecessary definitions from section 3 of the Act.

Clause 9 inserts a new provision that allows the Minister to establish advisory bodies.

Clause 10 omits a reference to the selection committee consequential upon the selection committee being abolished.

Clause 11 omits sections 13 and 14 relating to selection committees.

Clause 12 removes the provision that prohibits industry leaders from being nominated for appointment to the authority.

Clause 13 omits the provision that requires consultation with the policy council about the strategic plan. The authority must still prepare a strategic plan under the Public Finance Standards despite repeal of this section.

PART 4—AMENDMENT OF DAIRY INDUSTRY ACT 1993

Clause 14 provides that this part amends the *Dairy Industry Act 1993*.

Clause 15 omits from the objectives of the act a reference to the Queensland Dairy Industry Policy Council.

Clause 16 omits the definition “council” from the definition provision.

Clause 17 omits division 1 of part 2, relating to the policy council, and inserts a new provision empowering the Minister to establish advisory bodies.

Clause 18 omits section 15, relating to the policy council.

Clause 19 omits from section 17 references to the selection committee.

Clause 20 omits section 18, relating to selection committees.

Clause 21 alters the incapacity provision in section 19 to bring the provision into line with anti-discrimination laws.

Clause 22 amends section 28 by removing references to the policy council.

Clause 23 removes the requirement in section 30 for any regulation vesting milk in the authority to be made on the joint recommendation of the policy council, the authority and the Minister. This subsection is unnecessary with the abolition of the policy council.

Clause 24 removes a reference to the policy council from section 42.

Clause 25 removes from section 53 a reference to the policy council.

Clause 26 removes from section 119 a reference to the policy council.

PART 5—AMENDMENT OF FARM PRODUCE MARKETING ACT 1964

Clause 27 provides that this part amends the *Farm Produce Marketing Act 1964*.

Clause 28 removes the definition of “policy council” from the definition section.

Clause 29 removes part 3 from the Act, relating to the Horticulture Industry Policy Council, and inserts a provision empowering the Minister to establish advisory bodies.

Clause 30 omits section 49A, relating to advisors. This provision is unnecessary given the new section 46 inserted by this Bill.

PART 6—AMENDMENT OF FISHERIES ACT 1994

Clause 31 provides that this part amends the *Fisheries Act 1994*.

Clause 32 omits from the objectives provision of the Act a reference to the Policy Council.

Clause 33 omits the definition “Policy Council” from the definition section of the Act.

Clause 34 omits part 2 of the Act relating to the Queensland Fisheries Policy Council, and inserts a provision empowering the Minister to establish advisory bodies.

Clause 35 removes from section 26 a reference to the Policy Council.

Clause 36 removes from section 186 references to the Policy Council and the selection committee.

Clause 37 omits subsection 200(4) relating to the selection committee process.

Clause 38 omits sections 201 and 202, relating to the selection committee process, and prohibiting industry leaders from being members of the authority.

Clause 39 omits a provision that is unnecessary because of the repeal of the Policy Council and selection committee provisions.

**PART 7—AMENDMENT OF GRAIN INDUSTRY
(RESTRUCTURING) ACT 1991**

Clause 40 provides that this Part amends the *Grain Industry (Restructuring) Act 1991*.

Clause 41 omits from section 2 a reference to the Policy Council.

Clause 42 omits division 3 of part 3 relating to the Queensland Grain Industry Policy Council and inserts a provision empowering the Minister to establish advisory bodies.

**PART 8—AMENDMENT OF MEAT INDUSTRY ACT
1993**

Clause 43 provides that this part amends the *Meat Industry Act 1993*.

Clause 44 omits from the objectives of the Act a reference to the Policy Council.

Clause 45 omits the definition of Policy Council from the definition section.

Clause 46 omits part 2 of the Act relating to the Queensland Livestock and Meat Industry Policy Council and inserts a provision empowering the Minister to establish advisory bodies.

Clause 47 clarifies that the functions of the Queensland Livestock and Meat Authority listed in section 24(3) are the Authority's secondary functions. The clause also omits references to the Policy Council, inserts additional functions, and requires the Authority to perform its functions efficiently and effectively.

Clause 48 restructures the Authority.

Clause 49 omits sections 31 and 32 relating to selection committees.

Clause 50 omits provisions relating to the Policy Council and selection committee and also the prohibition against industry leaders participating as members of the authority. Subsection (5) is omitted consequentially upon amendments to section 30.

Clause 51 changes the number of members who may require a meeting from three members to half the members, consequential on the Authority being restructured.

Clause 52 adjusts the quorum of the Authority to be a majority of the members, consequential on the Authority being restructured.

Clause 53 omits a provision about the chief executive officer and secretary consequential upon amendments to section 30.

Clause 54 omits provisions about the selection committee.

Clause 55 omits provisions relating to the selection committee.

Clause 56 omits a provision relating to the Policy Council and the selection committee and also removes the prohibition against industry leader participation as members of the Queensland Abattoir Corporation.

Clause 57 inserts a new part 7A that provides for administration of the Authority for a period not exceeding 2 years. The effect of part 7A is that an administrator may be appointed by the Governor in Council to administer the Authority and to restructure its affairs.

The new section 162A provides that if the Authority is under administration, although part 3 of the Act applies, it is subject to this part.

New section 162B provides for the appointment of the administrator by the Governor in Council.

New section 162C provides that members of the existing Authority go out of office on the appointment of the administrator.

New section 162D provides that the administrator assumes all the powers and the responsibilities of the Authority except for those provisions that are not applicable if the Authority consists only of the administrator.

Proposed section 162E requires the administrator to implement a program of structural change to the Authority, and to provide certain reports to the Minister, including a final report that the Minister must table in the Legislative Assembly.

New section 162F provides that this part expires 2 years after it commences.

PART 9—AMENDMENT OF PRIMARY PRODUCERS’ ORGANISATION AND MARKETING ACT 1926

Clause 58 provides that this Part amends *the Primary Producers’ Organisation and Marketing Act 1926*.

The amendments to the Act are primarily concerned with removing provisions that allow amendment of the Act by regulation, and are therefore contrary to the *Legislative Standards Act 1992*. The amendments also remove references to the council of agriculture, and other material that is spent.

The amendments that remove the “Henry VIII” provisions operate by a combination of inserting new heads of power under which regulations may

be made for producer representative bodies and their subsidiary bodies, and by clarifying application of the existing heads of regulation making power in section 56 of the Act.

Clause 59 omits from the long title of the Act a reference to the council of agriculture.

Clause 60 omits several definitions that are no longer required; inserts a new definition of “producer representative body” to encompass the four existing producer representative bodies and any other bodies established by regulation; inserts a new definition of “State council” meaning the four existing State councils and any new State council created by regulation; and inserts a definition of “subsidiary body” by referring to section 30E.

Clause 61 omits references to the council of agriculture.

Clause 62 omits references to the council of agriculture.

Clause 63 omits a reference to the council of agriculture.

Clause 64 omits a reference to the council of agriculture.

Clause 65 omits a reference to the council of agriculture.

Clause 66 omits a reference to the council of agriculture.

Clause 67 omits a reference to the council of agriculture.

Clause 68 omits a reference to the council of agriculture.

Clause 69 omits provisions that empower the Governor in Council to amend the Act by way of regulation and are therefore contrary to the *Legislative Standards Act*. The clause inserts provisions empowering the Governor in Council to make regulations relevant to the producer representative body for the commodity cane and its subsidiary bodies, without offending the *Legislative Standards Act*. The omission of subsection 30(9), a clear “Henry VIII” clause, necessitates subsequent amendments to be made to other provisions and the general regulation making head of power. The intention of the amendment is not to change this producer representative body, but merely to remove the offensive material

Clause 70 changes a section reference consequential upon the amendments to section 30.

Clause 71 omits references to the council of agriculture, and a transitional provision. The clause also inserts a general head of power for

a regulation to establish a producer representative body in lieu of the “Henry VIII” provision omitted from section 30.

Clause 72 omits a cross-reference to subsection 30(9) that has been repealed under this Bill, and a definition that is no longer necessary with insertion by this Bill of a definition of “State council”.

Clause 73 omits a cross-reference to subsection 30(9) that has been repealed under this Bill.

Clause 74 omits a reference to the council of agriculture.

Clause 75 changes cross-references consequential upon amendments made in this Bill.

Clause 76 amend section 37 consequentially upon changes made by this Bill.

Clause 77 omits a reference to the council of agriculture.

Clause 78 makes numerous amendments to the regulation making powers given by the Act to the Governor in Council in order to allow regulations to be made in a way that does not effect an amendment to the Act. The amendments also remove references to the council of agriculture, and utilise the new definitions of “State council”, “producer representative body” and “subsidiary body”. Most of the amendments relate to the constitution and powers of producer representative bodies, State councils and subsidiary bodies.

Clause 79 omits from the Act a schedule that is spent.

PART 10—AMENDMENT OF STOCK ACT 1915

Clause 80 provides that this Part amends the *Stock Act 1915*.

Clause 81 corrects a minor error by removing the words “However, such discovery was made within three months after the ground of complaint arose” and substitutes the words “However, the discovery must be made within three months from when the ground of complaint arose”.

PART 11—AMENDMENT OF SUGAR INDUSTRY ACT 1991

Clause 82 provides that this part amends the *Sugar Industry Act 1991*.

Clause 83 omits provisions relating to the Sugar Industry Policy Council and other advisory committees and inserts a provision empowering the Minister to establish advisory bodies.

Clause 84 omits a reference to the Policy Council.

Clause 85 omits provisions relating to the selection committee.

Clause 86 removes a reference to selection committees.

Clause 87 inserts a new subsection into section 136, clarifying that a particular portion of land may contain more than one assignment. This new subsection is intended to remove doubt that may have existed about existing and future multiple assignments attaching to an allotment.

Clause 88 omits a spent provision.

Clause 89 omits a cross-reference to a spent provision.

Clause 90 omits a cross-reference to a spent provision.

Clause 91 omits a spent provision.

Clause 92 omits a cross-reference to a spent provision.

Clause 93 omits a reference to the Sugar Industry Policy Council and substitutes alternative consultation arrangements.