

Agricultural College and Other Legislation Amendment Bill 2010

Explanatory Notes

Short Title

The short title of this Bill is the *Agricultural College and Other Legislation Amendment Bill 2010*.

Objective of the Bill

The objective of this Bill is to:

- (a) broaden the ambit of matters an appropriately skilled board may advise on in relation to the Australian Agricultural College Corporation and to implement enhanced corporate governance and accountability arrangements in line with current standards for statutory entities; and
- (b) amend the *Veterinary Surgeons Act 1936* to facilitate accreditation of the veterinary science degree courses offered by the University of Queensland and the James Cook Univeristy.

Reasons for the Objective and how it will be achieved

In July 2008, administrative responsibility for the Australian Agricultural College Corporation ('AACC') was transferred from the former Department of Education, Training and the Arts to the former Department of Primary Industries and Fisheries (now Agriculture, Food and Tourism and Regional Services ('AFT&RS')) in the Department of Employment, Economic Development and Innovation ('DEEDI') in order to strengthen the strategic alliance between the entities, and to expand agribusiness workforce skilling and training to meet industry needs into the future as part of the agency's 'Fresh Approach' initiative.

The AACC is a corporation sole (a type of legal entity consisting of a single person) created under the *Agricultural College Act 2005*, with the corporation sole currently being the Associate Director-General, AFT&RS,

DEEDI. As such, the corporation sole is accountable to the Minister for Primary Industries, Fisheries and Rural and Regional Queensland.

Like other corporation sole models in Queensland, the enabling legislation provides for a board to advise the corporation sole. Currently, under the Act, the AACC board may only consider the delivery of training to students and the needs of communities and rural industries serviced by AACC. This limited functionality is in contrast to other corporation sole models, where advisory boards have scope to advise on a range of matters affecting the corporation, including its strategic direction and operational, administrative and financial policies.

The AACC operates an agricultural college comprised of five campuses across regional Queensland. AACC aims to be the pre-eminent provider of rural skilling and training in Australia. AACC has experienced reduced student numbers and profitability in recent years due to drought and competition from the resources boom affecting the appeal of agriculture as a career choice, and missed market opportunities for new training needs due to AACC's limited response mechanisms under its current business model.

The AACC needs to reinvigorate the way it delivers training to students, boost enrolment levels and build a stronger relationship with industry to ensure industry needs are met by AACC courses. The AACC is at a critical juncture in terms of attracting more students and operating more profitably, and thus requires a new strategic direction.

A consultant's review indicated that a key step in managing these challenges is through the appointment of an appropriately skilled board with a widened advisory capacity to advise on the strategic direction and operational, administrative and financial policies of AACC, in line with other corporation sole models adopted in Queensland.

It is expected that the AACC will benefit from the inclusion in its corporate structure of a board with a broad cross-section of skills, as well as relevant industry knowledge of the training and agricultural sectors. Such a board, with a sole focus on reinvigorating the strategic direction and operational policy options of AACC, will be a crucial element in managing AACC into a more industry-relevant and profitable organisation.

The *Agricultural College and Other Legislation Amendment Bill 2010* will broaden the role of the AACC board to enable it to provide advice to AACC, among other things, on its strategic direction. Corporate governance mechanisms in relation to the AACC board will also be

enhanced. As a consequence of this enhanced role for the AACC board, remuneration for AACC advisory board members will be progressed in accordance with other corporation sole models.

There is presently no board in office as the term of the previous board expired in October 2008. Accordingly, the Bill does not need to provide for the termination of office prior to the end of an appointed term, and nor is there any need to provide for compensation for early termination.

In order to gain and continue course accreditation tertiary institutions which offer a veterinary science degree course must meet criteria applied by the Australasian Veterinary Boards Council Inc. which includes a requirement to employ a certain number of veterinary specialists as faculty teaching and research staff.

To facilitate accreditation it is proposed to amend the *Veterinary Surgeons Act 1936* to allow the Veterinary Surgeons Board of Queensland to grant special registration for overseas trained veterinary surgeons and veterinary specialists who are employed as teaching or research staff by the two Queensland universities which offer veterinary science degrees, namely the University of Queensland and James Cook University.

Estimated Cost for Government Implementation

The only financial implications of this Bill relate to the proposed remuneration of AACC board members. A formal remuneration review is currently being undertaken in accordance with the Queensland Government's approved process for remuneration of member of statutory boards and Government bodies.

It is currently estimated that the costs associated with payment of remuneration (meeting fees) for board members attending board meetings will be about \$12 200 in the first year (based on an estimated 6 board meetings in that first year) and approximately \$8 150 per annum for each subsequent year (based on 4 meetings per year).

These amounts do not include costs for payment of travel and accommodation allowances for members to attend board meetings. The costs of the board will be borne by the AACC.

There are no additional costs to Government arising from the amendments to the *Veterinary Surgeons Act 1936*.

Consistency with Fundamental Legislative Principles

The Bill does not contain any provisions that conflict with any fundamental legislative principles.

Consultation

Community

There has been extensive consultation with a wide range of stakeholders across the agricultural sector about a range of issues affecting the AACC, including the future role of the AACC board. There has been consultation with the Meat and Livestock Association, AgForce, CSR Sugar, Growcom, Queensland regional councils, and individual industry representatives.

Six 'Dialogue for Action' forums were conducted by the Minister for Primary Industries, Fisheries and Rural and Regional Queensland and the Associate Director-General, AFT&RS, DEEDI and jointly managed by DEEDI and AACC across Queensland from 29 May 2009 to 25 August 2009, which were aimed at profiling and enhancing the draft AACC Strategic Plan. It was agreed that the results of these community engagement activities would be incorporated in to any proposals relating to the proposed governance arrangements and strategic direction for AACC. More than 140 participants attended the six forums from local and state government representatives, agribusinesses, producers, peak industry bodies, training and education providers, AACC staff and the local community. The forums were held in Brisbane, the Burdekin, Mareeba, Dalby, Emerald and Longreach. The three largest groups represented at the forums were agribusiness, producers and community members and industry bodies making up a total of 68% of attendees.

It was acknowledged by forum participants that any new AACC board would require an independent voice, a wide mandate in terms of what issues such a board could provide advice to the AACC Executive and corporation sole on, and a board that is supported by, and engaged, with industry.

The proposed amendments to the *Veterinary Surgeons Act 1936* are supported by the Veterinary Surgeons Board of Queensland and the veterinary science faculties at University of Queensland and James Cook University.

Government

Relevant State agencies, including Treasury and the Department of the Premier and Cabinet, have been consulted on the legislation.

Notes on Provisions of the Bill

Clause 1 in Part 1 of the Bill states that the Bill, once enacted, may be cited as the *Agricultural College and Other Legislation Amendment Act 2010*.

Clause 2 indicates that the Act being amended in **Part 2** of the Bill is the *Agricultural College Act 2005*.

Clause 3 changes the heading to Part 3 of the Act which includes the sections of the Act that deal with activities of the board of the AACC.

Clause 4 replaces the existing section 21 of the Act with a new section that has the effect of changing the name of the entity that was previously called the 'Australian Agricultural College Corporation Advisory Board' to the new name of the 'Board of the Australian Agricultural College Corporation' ('the board').

Clause 5 expands the functions of the board set out in section 22 of the Act by inserting a new provision '(a)' (as a consequence of which the existing provisions '(a)' to '(c)' are renumbered). The new provision specifically empowers the board to advise the corporation sole of the AACC on the performance of the corporation's functions, in particular regarding the functions mentioned in section 11 provisions '(a)' to '(e)' of the Act. Section 11 enumerates specific functions of the corporation sole with regard to the agricultural college.

Clause 6 replaces section 23 of the Act which deals with board membership. Two new sections are inserted.

Firstly, new section 23 specifies that the board will in future consist of between five and eight members, appointed by the Minister by written notice, of whom one may be a person nominated by the corporation sole (that is, nominated by the Associate Director-General, AFT&RS, DEEDI). The existing section 23 did not specify either the minimum or maximum numbers of Board members

Secondly, new section 23A titled ‘Eligibility for membership’ contains three subsections setting out requirements that must be met before a board is appointed, namely that:

- a person can not become a member of the board if the person has been convicted of an indictable offence, or is an insolvent under administration;
- a person to be appointed must have the qualifications, skills, experience or standing the Minister considers appropriate for membership of the board; and
- in considering the qualifications, skills, experience or standing, the Minister must consult with the corporation sole.

Clause 7 amends section 24 of the Act to specify that the term of office of the chairperson or deputy chairperson is no more than three years (consistent with the following amendment to section 25).

Clause 8 amends section 25 of the Act to specify that the term of a board member is no more than three years. However, a new provision is also included in section 25 to make it clear that the three year appointment provision does not prevent a person from being reappointed for a subsequent term or terms.

Clause 9 deals with remuneration arrangements. Currently, section 26 of the Act states that a board member is not entitled to any remuneration, other than the reimbursement of reasonable expenses and travel allowance, unless approved by the Minister. This provision will be replaced by a positive entitlement to remuneration as new subsection (1) states that a board member is entitled to be paid the remuneration decided by the Minister.

However, new subsection (2) clarifies the situation in regard to any public service employee who may be appointed to the board, and provides that such a person is only entitled for remuneration in regard to his/her membership of the board where the remuneration relates to the employee’s attendance at a board meeting outside of normal work hours and is approved in writing by the Minister. As a consequence of the insertion of the new subsection (2), the existing subsection (2) is renumbered.

Clause 10 inserts a new section 26A titled ‘Removal from office’. This new section allows the Minister the discretion to remove a board member from office if the member becomes incapable of performing the member’s functions because of physical or mental incapacity, or if he/she is guilty of

misconduct of a kind that could warrant dismissal from the public service if the member were a public service employee.

However, the section also states that the Minister must remove a board member from office if the member is convicted of an indictable offence or becomes an insolvent under administration.

Clause 11 amends section 29 of the Act to require the board to meet at least four times a year in future, whereas the present provisions call for a minimum of only two meetings per year.

Clause 12 inserts a new section 33A titled ‘Disclosure of interests’ and is similar to provisions commonly found in other statutory body legislation relating to the conduct of board members to avoid ‘conflict of interest’ situations.

The new section 33A is to apply where a member has a direct or indirect interest in an issue being considered, or about to be considered, by the board, and where the interest could conflict with the proper performance of the member’s duties about the consideration of the issue.

The section provides that as soon as practicable after the relevant facts come to the member’s knowledge, the member must disclose the nature of the interest to a board meeting. Any such disclosure must be recorded in the board’s minutes.

Unless the board otherwise directs, the member must not be present when the board considers the issue, or take part in a decision of the board about the issue. Also, the member must not be present when the board is considering whether to give a direction.

Furthermore, if there is a second member who also has to disclose an interest in the issue, the other member must not be present when the board is considering whether to give a direction to the first member, and must not take part in making the decision about giving the direction to the first member.

However, if because of these exclusion provisions, a member is not present at a board meeting for considering or deciding an issue, or for considering or deciding whether to give a direction, and if that means that there would not be a quorum, then the remaining members present at the meeting will be taken to be a quorum of the board for considering or deciding the issue, or for considering or deciding whether to give the direction.

Clause 13 inserts a new section 34A titled ‘Chairperson’s reporting requirements’ as a new Division 4 termed ‘Additional functions of board chairperson’ in Part 3 of the Act.

The new section places a requirement on the chairperson of the board who in future must, within one month after the end of each quarter, give a report to the corporation sole and the Minister on the performance of the corporation’s functions in relation to the agricultural college (termed in the Bill the ‘relevant functions’).

A ‘quarter’ is defined to mean the three month period ending on 31 March, 30 June, 30 September or 31 December in each year.

Also, if the corporation sole or the Minister requires the chairperson to give a report, advice or stated information about a matter relating to the corporation’s relevant functions, the chairperson must comply with the requirement to the extent the chairperson is able to comply.

If the chairperson can not comply with such a requirement, the chairperson must give the corporation sole and the Minister written reasons for not being able to comply.

Furthermore, if the chairperson becomes aware of a matter the chairperson is satisfied may adversely affect the corporation’s ability to perform its relevant functions, the chairperson must report the matter to the corporation and the Minister as soon as practicable, and this must be within one month after the chairperson first becomes aware of the matter.

Also, as a consequence of inserting the new Division 4 provision, the existing Division 4, containing section 35, becomes Division 5 of the Act, and is retitled ‘Board committees’ instead of ‘Other provisions’ as the only section in the Division deals with the establishment of committees by the board.

Clause 14 corrects an error in subsection (4) of section 37 which incorrectly refers to another subsection - the reference should be to ‘subsection (3)’.

Clause 15 inserts a new section 64 in the Act titled ‘References to board by its former name’ as a new ‘Division 4’ (dealing with transitional provisions) in Part 6 of the Act. This new section simply provides that in any document, a reference to the board by its former name may, if the context permits, be taken to be a reference to the board under its new name (as per the clause 4 amendment to section 21).

Clause 16 amends Schedule 2 of the Act which defines certain terms as they apply in the Act. Definitions are inserted for ‘board’, ‘corporation’, ‘indictable offence’ (cross referencing the Criminal Code) and ‘insolvent under administration’ (cross referencing the Commonwealth *Bankruptcy Act 1966*).

Clause 17 indicates that the Act being amended in **Part 3** of the Bill is the *Veterinary Surgeons Act 1936*.

Clause 18 amends section 19E of the Act to provide for the employment of overseas trained veterinary surgeons and veterinary specialists by Queensland universities which need to employ sufficient numbers of veterinary surgeons and veterinary specialists to achieve and maintain veterinary science degree course accreditation.

Amended section 19E(1) will allow the Veterinary Surgeons Board to grant special registration to overseas trained veterinary surgeons and veterinary specialists employed by the University of Queensland or James Cook University for the purpose of engaging in research or teaching veterinary science. This section will allow the Board to assess whether an applicant’s qualifications or experience in the practice of veterinary science are appropriate for research into, or for teaching, veterinary science.

New section 19E(2) removes the requirement for applications for special registration to be made by universities on behalf of overseas applicants so that applicants will now apply for registration.

The short term limits on the period of special registration have been removed with new section 19E(3) making special registration conditional on payment of a prescribed fee for each 12 month registration period and compliance with any conditions either prescribed by regulation or imposed by the Board.

Finally, amended subsection 19E(4)(c) provides that the Board may remove, from the registrar of veterinary surgeons, the name of any special registrant who contravenes a condition of registration.