



# **Agriculture and Other Legislation Amendment Bill 2015**

**Report No. 7, 55th Parliament  
Agriculture and Environment Committee  
October 2015**

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## **Agriculture and Environment Committee:**

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### **Acknowledgements**

The committee thanks the Department of Agriculture and Fisheries for their assistance during the inquiry.

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<sup>1</sup> Mr Madden was appointed to the committee by the Leader of the House in accordance with SO 202(1) from 28 September to 6 October 2010 during the absence of the Member for Mackay, Mrs Julianne Gilbert MP.

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## Abbreviations

ACDC Act	<i>Agricultural Chemicals Distribution Control Act 1966</i>
ACPA	<i>Animal Care and Protection Act 2001</i>
AMCDA	<i>Animal Management (Cats and Dogs) Act 2008</i>
Biosecurity Act	<i>Biosecurity Act 2014</i>
BSE	Bovine Spongiform Encephalopathy - also known as mad cow disease
COAG	Council of Australian Governments
DAF	Department of Agriculture and Fisheries
EDIA	<i>Exotic Diseases in Animals Act 1981</i>
FLP	Fundamental legislative principle
Forestry Act	<i>Forestry Act 1959</i>
NCOLA	<i>Nature Conservation and Other Legislation Amendment Act (No.2) 2013</i>
PIDs	Permanent identification devices
PPIDs	Prescribed permanent identification devices
Qld Agvet Act	<i>Agricultural and Veterinary Chemicals (Queensland) Act 1994</i>
SLC	Scrutiny of Legislation Committee
Stock Act	<i>Stock Act 1915</i>

## **Chair's foreword**

This Report presents a summary of the Agriculture and Environment Committee's examination of the *Agriculture and Other Legislation Amendment Bill 2015*.

The committee has identified no issues with the Bill and recommends that it be passed without amendment.

I commend this Report to the House.

A handwritten signature in black ink that reads "J Howard". The signature is written in a cursive, flowing style.

Jennifer Howard MP

**Chair**

## **Recommendations and points for clarification**

### **Recommendation 1**

**The committee recommends that the Agriculture and Other Legislation Amendment Bill 2015 be passed.**

### **Point for clarification**

**The committee invites the Minister to clarify whether the application of agricultural chemicals by automated drones will be geographically logged.**

***Minister responsible: Minister for Agriculture and Fisheries and Minister for Sport and Racing***

## 1. Introduction

### 1.1 Role of the committee

The Agriculture and Environment Committee is a portfolio committee appointed by a resolution of the Legislative Assembly on 27 March 2015. The committee's primary areas of responsibility are: Agriculture, Fisheries, Sport and Racing; and Environment, Heritage Protection, National Parks and the Great Barrier Reef.<sup>2</sup>

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles (FLPs).<sup>3</sup> In relation to the policy aspects of Bills, the committee considers the policy intent and the effectiveness of consultation with stakeholders. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

FLPs are defined in Section 4 of the [Legislative Standards Act 1992](#) as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

### 1.2 The referral

On 14 July 2015 Hon Bill Byrne MP, Minister for Agriculture, Fisheries, Sport and Racing, introduced the Agriculture and Other Legislation Amendment Bill 2015.

The Bill was referred to the committee by the Legislative Assembly for examination and report by 2 October 2015 in accordance with SO 131.

### 1.3 The committee's processes

For its examination of the Bill, the committee:

- wrote to stakeholders inviting written submissions. The committee did not receive any submissions
- sought written briefings from the Department of Agriculture and Fisheries (DAF), and
- convened a public briefing by DAF on 20 August 2015. A list of departmental officers who appeared at the briefing is at **Appendix A**. The transcript of the briefing is available from the Parliament of Queensland website.

In the absence of submissions and concerns about the Bill, the committee did not proceed with a public hearing for the inquiry that was originally scheduled for 16 September.

### 1.4 Policy objectives of the Bill

According to the Explanatory Notes tabled with the Bill on 14 July 2015, the primary policy objective of the Bill is to make miscellaneous, non-controversial amendments to the following ten Acts administered within the portfolio jurisdiction of the Minister for Agriculture and Fisheries and Minister for Sport and Racing<sup>4</sup>:

- *Agricultural and Veterinary Chemicals (Queensland) Act 1994*
- *Agricultural Chemicals Distribution Control Act 1966*
- *Animal Care and Protection Act 2001*
- *Animal Management (Cats and Dogs) Act 2008*

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<sup>2</sup> Schedule 6 of the [Standing Rules and Orders of the Legislative Assembly of Queensland](#).

<sup>3</sup> Section 93 of the [Parliament of Queensland Act 2001](#).

<sup>4</sup> Agriculture and Other Legislation Amendment Bill 2015, Explanatory Notes, p. 1.



- *Biosecurity Act 2014 (Biosecurity Act)*
- *Brands Act 1915*
- *Chemical Usage (Agricultural and Veterinary) Control Act 1988*
- *Exotic Diseases in Animals Act 1981*
- *Forestry Act 1959, and*
- *Stock Act 1915.*

The Bill also seeks to amend the *Nature Conservation and Other Legislation Amendment Act (No.2) 2013*.<sup>5</sup>

The amendments in the Bill are designed to:

- clarify the interpretation and application of existing legislation, and address inconsistencies with Commonwealth legislation
- reduce obligations for suppliers of permanent identification devices for cats and dogs
- create efficient and flexible administrative processes in dealing with disease and other biosecurity risks
- align legislation for director's liability with the Council of Australian Governments (COAG) and implement a consistent approach to liability for persons acting under an Act, and
- remove uncommenced provisions of the *Nature Conservation and Other Legislation Amendment Act (No.2) 2013*.<sup>6</sup>

### **1.5 Consultation**

The Office of Best Practice Regulation assessed the amendments in the Bill as being either machinery in nature or unlikely to have significant adverse impacts, and did not require the department to complete a Regulatory Impact Assessment for the amendments.

The department provided the committee with a summary of its consultation with stakeholders in relation to the various provisions of the Bill.<sup>7</sup> The summary identified the main concerns raised and the outcomes of the consultation processes.

#### **Committee comment**

The committee is satisfied with the department's consultation processes for the Bill.

### **1.6 Should the Bill be passed?**

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed. After examination of the Bill and its policy objectives, and consideration of the information provided by the department, the committee recommends that the Bill be passed.

#### **Recommendation 1**

The committee recommends that the Agriculture and Other Legislation Amendment Bill 2015 be passed.

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<sup>5</sup> Agriculture and Other Legislation Bill 2015, Explanatory Notes, p.1.

<sup>6</sup> Explanatory Notes, p.1.

<sup>7</sup> Department of Agriculture and Fisheries, 2015, *Correspondence*, 14 August.

## 2. Examination of the Agriculture and Other Legislation Bill 2015

The following section discusses the Bill in detail. The information presented is based on advice provided by DAF in correspondence to the committee dated 14 August 2015 and from information provided by officers at the committee's public briefing on 20 August 2015.<sup>8</sup>

### 2.1 *Agricultural and Veterinary Chemicals (Queensland) Act 1994*

Amendments to the *Agricultural and Veterinary Chemicals (Queensland) Act 1994* (Qld Agvet Act) will clarify that certain legislative instruments made under the *Agriculture and Veterinary Chemicals Act 1994* (Cwth) are also laws of Queensland.

The *Agricultural and Veterinary Chemicals (Queensland) Act 1994* gives effect to certain legislative instruments (e.g. orders) made under the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) (the Commonwealth Act).

It is unclear whether the *Qld Agvet Act* also applies to other legislative instruments made under the Commonwealth Act as laws of Queensland if they are not specifically prescribed.

**Clause 4** of the Bill therefore amends the *Qld Agvet Act* to clarify the validity and application of legislative instruments made under the Commonwealth Act as laws of Queensland.

### 2.2 *Agricultural Chemicals Distribution Control Act 1966*

Amendments to the *Agricultural Chemicals Distribution Control Act 1966* (ACDC Act) will amend Queensland's licensing framework to accommodate current Commonwealth licensing and rating arrangements for aircraft operation. The amendments will also remove impediments to, and enable use of, new technologies to aerially distribute chemicals, and omit a redundant government function.

#### Amended licensing framework and removal of impediments

According to the department, the ACDC Act has not kept pace with changes to licence requirements and authorisations for persons operating aircraft under Commonwealth legislation. Consequently, the ACDC Act is outdated such that licence application requirements refer to Commonwealth authorisations which no longer exist.

Also the ACDC Act is no longer entirely reflective of the technologies which are available for the application of agricultural chemicals. Because the ACDC Act is structured around the use of traditionally manned aircraft, it prevents the use of other technologies (e.g. unmanned aerial vehicles) from being employed in the distribution of chemicals.

**Clauses 6 to 10** of the Bill address these issues to allow for persons to apply for licences where they intend to use manned or unmanned aircraft in their chemical distribution operations. The terminology used in licence criteria in the Bill will also withstand change such that it does not specifically refer to Commonwealth licences or authorisations by their exact title. This will avoid the need to amend the legislation as Commonwealth licence titles change over time.

The committee sought clarification of how the provisions of the Bill will apply to use of unmanned aircraft for agricultural applications:

*Mr BENNETT: I just noticed earlier the increasing activity of drones in agriculture and other things. Are you able to expand on what the amendments and the proposal are about trying to regulate that component within this amendment bill? ..... It is obviously new technology and we are seeing a lot of wonderful things. I assume that we have to regulate it. Can you expand on that, if you would not mind?*

<sup>8</sup> Appendix B provides a diagrammatic summary of the Bill provided to the committee by DAF in correspondence on 14 August 2015.

**Mr Scholl:** Yes. Currently, the structure of the existing legislation that deals with the licensing of aerial distribution and aerial distribution contractors precludes the use of anything of different and emerging technologies in there. So one of the key issues that we were looking at with the amendments in the bill are to enable this technology. There has been quite a number of deliberations between state regulators that are regulating in this space and the Civil Aviation Safety Authority, including also the manufacturers of the key technology that has been approved by CASA, the Civil Aviation Safety Authority, so far for this. There is only one technology that has been approved in the UAV space, the unmanned aerial vehicles space. It is a Yamaha RMAX helicopter. I seek to tender this specification document for the committee's consideration. There are additional copies that may assist.

**Mr BENNETT:** Just to clarify, so this is the only one that is currently licensed by the department or by the agencies involved? Is that correct?

**Mr Scholl:** By the agencies involved. Principally, you can only use this technology in aerial agricultural operations if you have Commonwealth approval from the Civil Aviation Safety Authority and then in particular for use in the states and territories the particular licensing regime under state legislation comes into play.

**Mr BENNETT:** Just before you continue, is that just for chemicals or for other issues? There are people applying paints for greenhouses and positive bugs into strawberries all over the place that I am aware of. So is it just for chemicals that you have to be licensed at this point in time?<sup>9</sup>

#### **Point for clarification**

The committee invites the Minister to clarify whether the application of agricultural chemicals by automated drones will be geographically logged.

**Minister responsible: Minister for Agriculture and Fisheries and Minister for Sport and Racing**

#### Removal of redundant provisions

The department advised the committee that the provisions of the ACDC Act which enable persons to make statements on loss or damage to stock or crops under the ACDC Act have not been utilised for approximately 15 years. Consequently, there has been no requirement of inspectors to make statements to the Standards Officer on any such incidents for the same period of time.

The department believes retaining these provisions serves no useful purpose and is undesirable, as matters where overspray of chemicals is alleged are more appropriately resolved in a civil jurisdiction. The Government will, however, maintain its obligation to investigate any use of agricultural chemicals in such incidents which is not in accordance with label instructions.

**Clause 15** of the Bill addresses this issue by omitting sections 30 to 33 of the ACDC Act.

### **2.3 Animal Care and Protection Act 2001**

Amendments to the *Animal Care and Protection Act 2001* (ACPA) will update reference to the scientific use code, and clarify that an entity who is authorised under the Health (Drugs and Poisons) Regulation 1996 to administer restricted or controlled substances to kill an animal, is not liable for a relevant offence under the ACPA.

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<sup>9</sup> Bennett, S. & Scholl, R., 2015, *Briefing transcript*, p.4.

### Scientific use code

Apart from other provisions where the scientific use code is mentioned, the ACPA provides an offence exemption where a code of practice or the scientific use code states the requirements under which an act could be carried out or the circumstances under which an omission could be made.

The definition of the scientific use code in section 49 of the ACPA is now out of date because a new edition of the code has been published with a slightly different title.

**Clause 21** of the Bill updates the definition to refer to the most recent code title and the edition of it that is in force.

### Exemption from intention to kill animals where authorised under the *Health Act 1937* to administer substances

Section 36 of the ACPA currently prohibits a person administering a poisonous or harmful substance to an animal with the intention of killing or injuring it. This section also provides an exemption to the offence for three categories of person, namely:

- an inspector
- a prescribed entity, or
- a veterinary surgeon.

Prescribed entities are defined as the RSPCA or another entity prescribed by the Animal Care and Protection Regulation (such as currently a local government, the Animal Welfare League and others who run shelters and must sometimes euthanize animals).

Section 36 of the ACPA is problematic for several reasons:

Firstly, entities that demonstrate to the department that they have a need to destroy animals in their care humanely are required to be prescribed in the Animal Care and Protection Regulation to be exempt from the offence under section 36. This is a time consuming and inefficient process for both the entities applying and Government.

Secondly, each person within the entity is required to hold an authorisation under the *Health Act 1937* (specifically the Health (Drugs and Poisons) Regulation 1996) in order to administer drugs to an animal. This creates a degree of unnecessary duplication.

Thirdly, the classes of persons authorised to administer drugs to animals under *Health Act 1937* is broader than the classes of persons (inspectors and veterinary surgeons) exempted from the offence of killing an animal under section 36. For example, the Health (Drugs and Poisons) Regulation 1996 authorises those studying for a veterinary surgeon qualification to administer drugs to animals. If a veterinary student is required to administer a drug to an animal to euthanase it, they could not rely on the exemption under section 36 of the ACPA, unless the Animal Care and Protection Regulation was amended to make them a prescribed entity.

The proposed amendments to section 36 of the ACPA will address these inconsistencies by providing that the offence of administering a poisonous or harmful substance with the intent of killing or injuring an animal does not apply to a person who is authorised to administer or feed a harmful or poisonous substance to an animal under the *Health Act 1937*.

The committee sought clarification of the amendments from the department at the briefing on 20 August 2015.

**CHAIR:** *With regard to the amendment of the offence exception for administering harmful substances and the correction of the reference to the Scientific Use Code for animal care and protection, can you just tell me what that includes?*

**Dr Bunce:** *Certainly. In terms of the change to the scientific code, just to clarify, the change is really to reflect a change in the name of the code that occurred recently. So*

*in the Animal Care and Protection Act it refers to the previous name of the code, so the code name has changed so the change that we are proposing just reflects the change in the name.*

**CHAIR:** *Okay, the Scientific Use Code?*

**Mr Coyne:** *Currently under the Animal Care and Protection Act there is a provision regarding the killing or the intent to kill an animal by the feeding or administration of a substance which is a substance or a poison. There is an exception to that offence for different categories of person, and they are a prescribed entity and two others, one being an inspector and the third one which escapes me.*

**Dr Bunce:** *Veterinary surgeon.*

**Mr Coyne:** *Yes, veterinary surgeon; thank you. So the issue at hand here is to become a prescribed entity. For example, if officers of the RSPCA want to euthanise an animal they are required to, if they do not want to be subject to this penalty of killing an animal by administering a substance to it, apply to us to become a prescribed entity and every organisation or person or individual or whatever that wants to become a prescribed entity to afford themselves of that exception to the offence needs to approach our department and we need to make an amendment to the regulation. That is of course an inefficient use of government resources. It is also not ideal for agencies that have a need to humanely dispose of animals to wait until legislation gets amended so they can be prescribed. There is also another element to the argument or the issue inasmuch as a person or an entity that is lawfully able to administer a substance that can kill an animal humanely is required to, under the Health Act 1937 and more particularly the Health (Drugs and Poisons) Regulation, get an authorisation under that legislation to possess and use that substance on animals.*

*So there is a little bit of duplication inasmuch as the people that approach us to become prescribed entities have already got authorisation under the Health Act to obtain and use these substances and barbiturates to euthanise animals, but then of course in order to not be subject to the offence under our legislation of killing an animal they are required for us to prescribe them as a prescribed entity. So what the amendment does is it amends the legislation such that it also includes under the categories of people exempted from the offence those who have an authorisation under the Health Act 1937.<sup>10</sup>*

## **2.4 Animal Management (Cats and Dogs) Act 2008**

Amendments to the *Animal Management (Cats and Dogs) Act 2008* (AMCDA) will reduce the legislative impost on suppliers of permanent identification devices, and continue to enable landowners to destroy dogs attacking or about to attack stock on their land. The amendments also omit unnecessary supply restrictions on permanent identification devices (PIDs) and prescribed permanent identification devices (PPIDs).

### Prescribed Permanent Identification Devices

The AMCDA is currently structured such that it distinguishes between PIDs with certain characteristics i.e. microchips and PPIDs i.e. microchips which are prescribed by Regulation. The AMCDA imposes legislative obligations upon suppliers of PIDs which are inadequate in ensuring cats and dogs are only implanted with PIDs prescribed by Regulation. The Bill makes amendments which simplify these provisions by omitting the definition of PID and combining the requirements for a PID into the

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<sup>10</sup> Bunce, A. & Coyne, P., 2015, *Briefing transcript*, pp.4-5.

definition of a PPID. The objectives of the AMCDA are maintained by retaining obligations on those implanting microchips in cats and dogs.

#### Destruction of particular dogs

Section 95 of the *Land Protection (Pest and Stock Route Management) Act 2002* (Land Protection Act) currently authorises a landowner or an authorised person to destroy a dog that is attacking or about to attack stock if the dog is not under someone's control. It protects the landowner from criminal liability or having to pay compensation for the dog's destruction.

When the *Biosecurity Act 2014* commences, provisions of the Land Protection Act that do not relate to stock routes, including section 95, will be repealed. Consequently amendments are required to preserve the ability for landowners to protect their stock from stray dogs.

**Clause 37** of the Bill will insert a similar provision (section 197A) in the AMCDA that will protect the landowner from criminal liability or having to pay compensation for destruction of the dog. Like the current section 95, the destruction cannot be indiscriminate - a person must reasonably believe that the dog is not under someone's control and is about to attack or is attacking animals on their land. Thus a person who knowingly or unknowingly allows their animals to wander (i.e. onto public land or another person's property) could not rely on this provision to destroy a dog attacking or about to attack the animals.

There are slight differences between the new provision (section 197A of the AMCDA) and the current section 95 of the Land Protection Act.

Firstly, section 95 of the Land Protection Act applies to "stock" the definition of which excludes some animals, for example, ponies. The proposed section 197A applies to most "designated animals" as defined in the *Biosecurity Act 2014* which is more inclusive including, for example, cattle, sheep, goats, deer, llamas and horses. The only animals excluded from the protection of the new proposed section 197A are bees, pigs and captive birds.

Secondly, section 95 of the Land Protection Act applies to an owner of land that is not in an "urban district". The term "urban district" is no longer defined in Queensland legislation, so in order to achieve a similar outcome, the proposed section 197A of the AMCDA refers to land zoned rural land under the *Land Valuation Act 2010*.

Thirdly, section 95 of the Land Protection Act allows only the owner of the land (including a person in charge of stock), or an authorised person, to destroy the dog. The current provision doesn't recognise arrangements where there may be more than one owner of the land or where a land owner is not physically capable or equipped to destroy a dog and must rely on assistance in order to protect animals on their land. The proposed section 197A provides for one or more owners, either individually or jointly, to destroy the dog but only if they have a reasonable belief the dog is about to attack or is attacking stock on the land. It also extends the destruction power to agents or other persons who can assist in the destruction.

#### Omission of supply restrictions

The AMCDA currently imposes restrictions on persons supplying PIDs which are not PPIDs and also supplying PPIDs to anyone other than an authorised implanter. These restrictions are unnecessary as PIDs can be obtained by persons on-line from interstate or overseas and are currently being implanted into animals other than cats and dogs. To impose a restriction on Queensland suppliers of PIDs when they can be readily sourced elsewhere, is an unnecessary impost on business and a restriction on competition.

Also, once a person has supplied a PPID they have no control over the animal into which it may ultimately be implanted. A person to whom a PPID has been supplied may end up implanting it into an animal other than a cat or a dog. The supply provisions as they are currently, do nothing to achieve the objective of ensuring cats and dogs are only implanted with PPIDs.

**Clause 26** of the Bill omits the provisions of Chapter, 2, Part 1, Division 2 of the AMCDA.

**Clause 22** achieves the objective of ensuring cats and dogs are only implanted with PPIDs. This clause inserts an amended provision which provides that an authorised implanter must not implant an electronic identification device that is not a PPID into a cat or a dog.

## **2.5 Biosecurity Act 2014**

The Biosecurity Act is scheduled to commence on 1 July 2016, if a proclamation on its commencement has not been made by that date. A number of deficiencies in the Act are proposed to be addressed in this Bill.

Amendments to the Biosecurity Act will:

- more appropriately provide for restrictions on feeding animal matter to certain animals
- clarify the appropriate instrument for which to apply to authorise activities which are the subject of biosecurity zone regulatory provisions
- provide for the immediate suspension of an auditor's approval where there is a serious risk to trade in a particular commodity, and
- provide for other minor amendments.

### Restrictions on feeding animal matter to certain animals

There are two feeding bans implemented across Australia including in Queensland legislation - the ruminant feed ban and the swill feed ban.

The ruminant feed ban is in place to ensure that Australian meat and meat products continue to have strong access to domestic and international markets. It prohibits the feeding of any animal meal or fish meal to all ruminant animals to prevent the potential spread of the bovine spongiform encephalopathy (BSE) disease agent. BSE is also known as mad cow disease. Ingestion of animal meals contaminated with the BSE disease agent is the major cause of BSE-spread in outbreaks overseas. Australia is BSE-free. However, should BSE enter the country, an important second line of defence is the prevention of animal matter being fed to ruminants. This measure has been in place since 1997, following agreement by the Australian, state and territory governments. There are certain exceptions to the ban that have also been agreed.

The swill feeding ban operates in parallel to the ruminant feed ban. Australia has strict quarantine laws to prevent the introduction of exotic diseases such as foot and mouth disease. These viruses could be found even in small amounts of meat or dairy product and if these are fed to pigs, poultry or ruminants, could establish these diseases in our country. Even vegetable oils that have been used to cook meats could harbour viruses in food particles and cannot be fed to pigs and poultry unless they have been appropriately treated. Nationally agreed definitions for prohibited pig feed and feeding prohibited pig feed were endorsed in June 2014. In Queensland, prohibited pig feed is also extended to poultry to address the risk of introduction and spread of Newcastle disease and Infectious Bursal Disease in poultry.

Both the ruminant feed ban and the swill feeding ban are currently implemented under the *Stock Act 1915* (specifically in the Stock Regulation 1988). *The Stock Act 1915* is to be repealed when the Biosecurity Act commences. Section 46 of the Biosecurity Act was intended to ensure these bans continued. However, section 46 attempts to combine the bans together which is problematic because the exceptions to the ruminant feed ban are not the same as the exceptions to the swill feed ban. Also section 46 doesn't adequately provide for regulations to state the exceptions that have been agreed at a national level. Further, it applies to 'designated animals' which includes some animals that do not need to be regulated. Consequently, section 46 is proposed to be replaced in its entirety by clauses that state the bans separately for 'ruminants' and 'pigs and poultry' and provide more broadly for

exceptions to be stated separately in regulation or (in stated circumstances) for the chief executive to give approval for treatments that would make its feeding acceptable.

#### Appropriate instrument to authorise activities the subject of biosecurity zone regulatory provisions

Section 132 of the Biosecurity Act provides that a person may apply to an inspector for a biosecurity instrument permit to enable them to perform (or not perform) an activity other than in compliance with a movement control order or biosecurity zone to manage a pest, disease or contaminant.

A certification scheme may also be developed to facilitate the performance (or non-performance) of an activity under biosecurity zone regulatory provisions. Such a scheme would be self-funding with a fee payable if certification was undertaken by a third party.

The amendments in **clause 48** of the Bill will provide that a biosecurity instrument permit is not available to be applied for in circumstances where a biosecurity certificate is the more appropriate instrument to be issued to authorise activities which are the subject of biosecurity zone regulatory provisions. The proposed amendments will also avoid exploitation of the ability to obtain a permit for an activity at no cost to avoid the fee for certification.

#### Immediate suspension of an auditor's approval

Section 488 of the Biosecurity Act provides that the chief executive may immediately suspend an auditor's approval, if there is an immediate and serious risk to a biosecurity consideration, if the holder continues to conduct audits. Human health, social amenity, the economy and the environment are each a "biosecurity consideration".

However, if a trading partner in another jurisdiction provided evidence to the chief executive indicating there were serious flaws in audits conducted by an auditor and advised that they would not continue to accept certified produce from Queensland unless the matter was dealt with immediately, the chief executive would be unable to immediately suspend the auditor's approval. The impact to trade in particular produce, may not represent a serious risk to the economy and thus may not come within the scope of 'a serious risk to a biosecurity consideration'.

The amendment in **clause 53** of the Bill provides that an auditor's approval can also be suspended immediately if there are grounds to cancel or suspend the authority and there would be an immediate and serious risk to the trade in a particular commodity if the holder of the approval were to continue to conduct audits.

## **2.6 Exotic Diseases in Animals Act 1981**

Amendments to the *Exotic Diseases in Animals Act 1981* (EDIA) will provide for more timely notification of restricted area and standstill zones.

The EDIA currently allows the Minister to notify the establishment of restricted areas and standstill zones to address the spread of exotic disease. Such notifications are currently subordinate legislation and are therefore required to be drafted by the Office of the Queensland Parliamentary Counsel and approved by the Governor in Council.

According to the department, these amendments will ensure more efficient and timely implementation of restricted areas and standstill zones to stop the spread of exotic diseases into or within an area. The amendments will provide that notifications for each can be made by the Chief Executive instead of the Minister. The amendments also provide that the notifications will not be subordinate legislation – enabling such notifications to be made at short notice without delay in recognition of the urgent nature of the issue to be addressed.



## **2.7 Forestry Act 1959**

Amendments to the *Forestry Act 1959* (Forestry Act) will provide that a person who interferes with or destroys a forest product in discharging their general biosecurity obligation, or under the direction of an inspector under the Biosecurity Act, is not amenable to certain offences under the Forestry Act.

The substantive amendments to the Forestry Act concern interference with forest products on Crown holdings and forest consent areas. The amendments are necessary because of the potential conflict between the Forestry Act and the Biosecurity Act.

The Biosecurity Act, due to commence by 1 July 2016, will impose a general biosecurity obligation on all persons who deal with biosecurity matter or a carrier, to take all reasonable and practical measures to prevent or minimise the risk where they know or ought to reasonably know that it poses a biosecurity risk.

Under the Forestry Act, interference with or destruction of forest products or quarry material on Crown holdings, forest consent areas and other particular entitlements is prohibited, unless specifically authorised under a permit, lease, licence or grant under the Forestry Act.

Once the Biosecurity Act commences it is possible that a person might have to interfere or destroy a forest product in order to fulfil their general biosecurity obligation. For example, a person who becomes aware of prickly acacia in a forest consent area might burn off in the area to eradicate the pest. However, the offences created in sections 86-88 of the Forestry Act would provide a disincentive to persons to discharge their biosecurity obligation if they were to remain unamended.

Consequently, the amendments to the Forestry Act in **clauses 86 to 88** of the Bill amend each of those three sections to broadly provide that the offences created in each do not apply where the person interferes, destroys or gets a forest product, but only where they are acting under the Biosecurity Act.

The exemption to the offences in each of these sections is constrained in that the interference or destruction of forest products is limited to those forest products which are "restricted matter" under the Biosecurity Act. This will mean that a person cannot indiscriminately destroy or interfere with any or all forest products under the excuse of fulfilling their general biosecurity obligation.

This constraint will have the effect that a person can act only to the extent necessary to deal with the biosecurity risk to fulfil their obligation. In the example quoted, where a person becomes aware of prickly acacia, a person could only deal with the pest that is listed as restricted matter and wouldn't be able to argue that in burning hectares of forest he was fulfilling his obligation to deal with this isolated plant pest.

## **2.8 Stock Act 1915**

Amendments to the *Stock Act 1915* (Stock Act) will provide inspectors with the flexibility to impose measures other than issuing quarantine notices when stock are diseased or suspected of being diseased.

Section 14 of the Stock Act currently provides that inspectors must quarantine an area once they are satisfied or suspect that stock in the area are infected with a disease.

Placing a property in quarantine can have dramatic implications for the viability of a business, particularly as stock are potentially not able to be moved from the property to sell or on-pasture. But section 14 currently does not accommodate a more flexible risk-based approach to dealing with disease incidents, this is particularly so as different diseases present different risks of transmission and not all animals on a property may be at risk of infection.

**Clause 98** of the Bill amends the Stock Act to provide inspectors with greater flexibility to deal with stock disease incidents. It will allow disease incidents to be flexibly managed on a case-by-case basis without imposing an absolute quarantine over an entire area or over an entire category of stock.

## 2.9 *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013*

Amendments to the *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013* (NCOLA) will provide for the ongoing management and administration of forest reserves until such time as the transfer of remaining forest reserves to another tenure has been finalised.

The purpose of the forest reserve tenure, created in 2000, was to allow for further assessment of the values and uses on forest reserves before final tenure recommendations were developed, and prior to transferring the land into a final tenure - generally a class of protected area.

Provisions providing for the ongoing management of forest reserves were to be abolished as part of a tenure rationalisation in the *Nature Conservation Act 1992*, and are scheduled for automatic repeal on 7 November 2015 by the NCOLA. However, there are 38 forest reserves awaiting resolution of outstanding issues and subsequent transfer to a final tenure. While this work is being undertaken, the existing legislative framework to manage these lands must remain in place.

The Bill will remove uncommenced provisions of the NCOLA to ensure that existing legislative provisions for the administration and management of forest reserve land are maintained in the *Nature Conservation Act 1992* while the work to transfer the remaining 38 forest reserves is completed.

The amendments to NCOLA must commence before 7 November 2015, to ensure the continued ability to effectively manage the 38 remaining forest reserves.

The committee clarified at the briefing held on 20 August 2015 that the 38 forest reserves will be managed under the provisions of the *Nature Conservation Act* and the *Forestry Act* in combination, and that the amendments to NCOLA will enable current activities in these reserves to continue.<sup>11</sup>

## 2.10 *Omission of immunity provisions for State employees*

Amendments to the *Agricultural Chemicals Distribution Act 1996* (ACDC Act), *Biosecurity Act 2014*, *Brands Act 1915* and *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Chemical usage Act) will omit immunity provisions for State employees where they are now covered by the provisions of the *Public Service Act*. The amendments will also retain cover for those persons who do not come within the definition of a State employee under the *Public Service Act 2008* (Public Service Act) but for whom protection would be reasonable (e.g. persons acting under direction of an inspector).

Up until 2013, the issue of civil liability for State employees acting under Queensland legislation was dealt with somewhat inconsistently between each statute.

In 2013, the *Public Service Act* was amended with the objective of providing:

1. protection from civil liability for State employees for engaging in, or as a result of engaging in, conduct in an official capacity
2. preservation of the rights of potential claimants by transferring civil liability of State employees to the State, and
3. for the State to have a right to recover financial contributions from State employees who have engaged in conduct other than in good faith, and with gross negligence.

**Clause 16** amends the five abovementioned Acts to make them consistent with these objectives.

The ACPA also protects persons where they act under a direction of an inspector, an order or a requirement. The *Biosecurity Act* also provides protection to a broader range of persons who do not fall within the definition of 'State employees'. Providing civil protection to persons compelled to act, even though they are not State employees, is reasonable particularly as individuals could incur a penalty for not complying. For this reason, protection from civil liability is proposed to be retained in the ACPA and *Biosecurity Act* for persons who do not fall within the definition of 'State employees' and hence are not protected by the provisions of the *Public Service Act*. However, the protection is

<sup>11</sup> Kelly, T., 2015, *Briefing transcript*, p.3.

being amended to be more consistent with the provisions of the Public Service Act , such as to enable either the local government or the State to whom liability would, instead attach, to recover contributions from a person where they have acted other than in good faith and with gross negligence.

### **2.11 Changes to company director liability provisions**

Amendments to the *Agricultural Chemicals Distribution Act 1996* (ACDC Act), and *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Chemical Usage Act) will amend company director liability provisions consistent with COAG-agreed principles.

Amendments to the ACDC Act and the Chemical Usage Act are necessary to ensure company director liability provisions are consistent with other Queensland statutes and COAG agreed principles.

The amendments in the Bill in **clauses 16 and 73** will reduce the liability on executive officers of corporations where the corporation commits an offence under the Act for some offences and reduce the range of offences for which they may be liable.

Both the ACDC Act and the Chemical Usage Act provide that where a corporation commits an offence, the executive officer of the corporation also automatically commits the offence. The onus is placed on the executive officer to prove that they took all reasonable steps to ensure the corporation complied or that the executive officer was not in a position to influence the conduct of the corporation in relation to the offence, before they can avail themselves of the defence provision in each Act.

The proposed amendments in **clauses 16 and 73** of the Bill instead provide that an executive officer commits an offence under the ACDC Act and the Chemical Usage Act respectively where the corporation commits only certain serious offences, and only if they did not take all reasonable steps to ensure the corporation didn't engage in the conduct constituting the offence. The critical difference is that the executive officer no longer must prove they took reasonable steps to avail themselves of a defence. Instead, the prosecution must prove that they did not take reasonable steps.

**Clause 73** also provides that an executive officer is liable for certain other offences under the Chemical Usage Act but only if they authorised or permitted the corporations illegal conduct or were knowingly concerned in it.

### 3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee sought advice from the department in relation to a number of possible fundamental legislative principles issues. The following sections discuss the issues raised by the committee and the advice provided by the department.<sup>12</sup>

#### 3.1 Administrative power

##### Section 4(3)(a) *Legislative Standards Act 1992*

**Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?**

**Clause 44** replaces section 46 of the Biosecurity Act with four new provisions (46, 46A, 46B and 46C) which concern the feeding or supply of restricted animal material for ruminants to ruminants and restricted animal material for pigs and poultry to a pig or poultry. The chief executive has discretion to exercise powers under 46B and 46C that have the effect of exempting persons from the prohibitions on feeding restricted animal material to ruminants under new section 46 and restricted animal material for pigs and poultry under new section 46A.

**Clause 52** of the Bill omits the requirement to give a show cause notice under section 484 if the chief executive amends the approval under section 454(3)(b) by imposing a condition because the chief executive considers it necessary to ensure an audit is conducted appropriately.

##### Potential FLP issues

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states:

*Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*<sup>13</sup>

The Explanatory Notes state in respect of **clause 44**:

*It is arguable whether the chief executive has to consider any requests to exercise these powers that are presented to him, as there is no prescribed application process provided for in the clause. Also, the absence of a merit based right of review may give rise to questions of inappropriate administrative decision making.*

*The absence of specific review provisions in this clause however can be justified particularly as the matters for decision are of significantly high importance to public health and safety. The implications of feeding restricted animal material to relevant designated animals, particular ruminants, are significant. Aside from health and safety concerns where the spread and transmission of exotic diseases such as mad cow disease to humans is possible, the potential impacts on livestock industries, trade and*

<sup>12</sup> Department of Agriculture and Fisheries, 2015, *Correspondence*, 25 September.

<sup>13</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p.18.

*the economy are enormous. Consequently, not requiring the chief executive to consider applications and not providing for review are justified.*

The Explanatory Notes state in respect of **clause 52**:

*The auditor must still be given an information notice under section 454 and has recourse to both internal and external reviews under Chapter 12 of the Biosecurity Act.*

Committee comment

The committee considers that, on balance, clause 44 is reasonable, and that clause 52 has sufficient regard to rights and liberties given that the auditor will still be provided with an information notice under section 454 and would have recourse to both internal and external review.

### **3.2 Natural justice**

#### **Section 4(3)(b) Legislative Standards Act 1992**

##### **Is the Bill consistent with principles of natural justice?**

The Biosecurity Act currently provides for the immediate suspension of relevant authorities in certain circumstances. Clause 53 expands the circumstances under section 488 of the Biosecurity Act for immediate suspension of an auditor's approval (a relevant authority) to include an immediate or serious risk to the trade of a particular commodity.

##### Potential FLP issues

Legislation should be consistent with the principles of natural justice which are developed by the common law and incorporate the following three principles: (1) something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker; (2) the decision maker must be unbiased; (3) procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.<sup>14</sup>

Here, contaminated produce or agricultural products which do not meet required market standards have the potential to directly or indirectly affect human health and the environment. Auditors have a significant role to play in the quality assurance of agricultural products. Their action or inaction in fulfilling their role under the Biosecurity Act can have serious ramifications for domestic or international trade in those products. The potential impacts on individuals and the community in extreme circumstances can be long-standing and financially devastating.

The Explanatory Notes state:

*The immediate suspension without prior opportunity for an auditor to show cause or provide information is considered in the circumstances to be justified as a means to address the risk.*

*Consistent with other immediate suspension provisions in the Biosecurity Act, the power can only be exercised by the chief executive if they consider a ground exists and there is an immediate and serious risk posed by the auditor continuing to provide audits. An auditor's right to natural justice is not extinguished as the Biosecurity Act provides that the auditor must be provided with both an information notice and a show cause notice with the decision to suspend the approval.*

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<sup>14</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p.25.

Committee comment

Given the limitations on the power of the chief executive to suspend and the fact that an auditor's right to natural justice is not extinguished by the Biosecurity Act, the committee considers that clause 53 which provides for the immediate suspension of relevant authorities in certain circumstances is sufficiently constrained, and is justified in the interests of biosecurity.

**3.3 Delegation of administrative power****Section 4(3)(c) Legislative Standards Act 1992**

**Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?**

**Clause 10** amends the *Agricultural Chemicals Distribution Control Act 1966* to enable the chief executive to impose conditions on a pilot chemical rating licence or an aerial distribution contractor licence. For example, a condition may state that a person holding the licence must undergo additional training in a particular aspect of chemical application to ensure the application of chemicals is in accordance with best management practice.

**Clause 44** replaces section 46 of the Biosecurity Act with four new provisions (46, 46A, 46B and 46C) which concern offences and exemptions regarding the feeding and supply of restricted animal material for ruminants and restricted animal material for pigs and poultry to a pig or poultry.

Potential FLP issues

Powers should only be delegated to appropriately qualified officers or employees. The OQPC Notebook provides that the appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.<sup>15</sup>

The Explanatory Notes state in relation to **clause 10** that:

*The intent is to provide further safeguards against the wrongful application of agricultural chemicals. The penalty for the offence and the delegation of power to the chief executive are well justified, given the serious risk which the misuse of agricultural chemicals poses on human or animal health, the environment and trade.*

The Explanatory Notes provide context and detail for **clause 44** and attempt to mitigate a potential FLP breach:

*New sections 46 and 46A impose an obligation on a person who deals with ruminants or pigs and poultry (respectively) to ensure that they do not feed on restricted animal material for ruminants or restricted animal material for pigs and poultry (respectively). This clause maintains restrictions in accordance with nationally agreed protocols for the ruminant feed ban and those restrictions applicable to feeding restricted animal material for pigs and poultry.*

*New sections 46 and 46A, provide an exemption for the offences relating to restricted animal material to ruminants and restricted animal material for pigs or poultry (respectively) if it has been treated using a process approved under new section 46B. New section 46B provides the chief executive with the power to approve a process for treating restricted animal material for ruminants and restricted animal material for pigs and poultry. Subsection 46B(3) limits the chief executive's power to approve a treatment process – the chief executive may approve a treatment process only if he is*

<sup>15</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p.33.

*satisfied on reasonable grounds the process will ensure the level of biosecurity risk posed by the material is no more than the maximum allowable level of risk.*

*New sections 46 and 46A provide an exemption for the offences relating to restricted animal material to ruminants and restricted animal material for pigs or poultry (respectively) if it is permitted by the chief executive under new section 46C. New section 46C gives the chief executive power to permit a person to feed restricted animal material for ruminants to a ruminant that is used lawfully for a scientific purpose or restricted animal material for pigs and poultry to a pig or poultry lawfully used for scientific purposes.*

*However, the chief executive's power to approve a treatment process is limited including by the requirement that the chief executive must be satisfied on reasonable grounds the research or other scientific purpose will be conducted under controls to ensure that any risks can be managed to protect the health and safety of humans and animals.*

*There could be complex technical considerations for the exercise of powers under new sections 46B and 46C requiring expertise not possessed by the chief executive. In these circumstances, the chief executive may either delegate the power to an appropriately qualified public service employee under section 495 of the Biosecurity Act or, in exercising the power in an administratively sound manner, draw upon the advice of an employee who possesses the relevant expertise.*

Committee comment

The Committee considers that, on balance, the potential breach in the above clauses is justified in the circumstances.

### **3.4 Immunity from proceedings**

#### **Section 4(3)(h) Legislative Standards Act 1992**

##### **Does the Bill confer immunity from proceeding or prosecution without adequate justification?**

Clauses 16, 23, 54 and 59 will omit immunity provisions for State employees from three separate Acts amended by this Bill.

##### Potential FLP issues

Provisions in the *Agricultural Chemicals Distribution Control Act 1966*, *Animal Care and Protection Act 2001*, *Biosecurity Act* and *Brands Act 1915* currently contain differing degrees of immunity from civil liability for a range of persons. The *Public Service Act 2008* was amended in 2014 to provide broad legislative immunities from civil liability for State employees. Accordingly, the immunity provided in these Acts is no longer required for certain persons.

Certain provisions will be retained to cover those persons who do not come within the definition of a State employee under the *Public Service Act 2008*. These classes of persons often involve those acting under the direction of an inspector.

The explanatory notes state:

*It is appropriate to provide immunity to these additional persons as they are compelled to act by virtue of a direction of an inspector. Immunity will only apply where the person acts in good faith and without gross negligence. The conferral of immunity in these amendments is consistent with other Queensland statutes where civil liability immunity is afforded to persons other than State employees.*

Committee comment

On balance the potential breach of fundamental legislative principle appears justified in the circumstances.

**3.5 Compulsory acquisition of property****Section 4(3)(i) Legislative Standards Act 1992****Does the Bill provide for the compulsory acquisition of property only with fair compensation?**

Section 95 of the *Land Protection (Pest and Stock Route Management) Act 2002* currently authorises a landowner or authorised person to destroy a dog attacking or about to attack stock. This power is limited to certain circumstances, and without payment of compensation for the destruction of the dog. This provision will be repealed upon commencement of the Biosecurity Act.

**Clause 37** of the Bill inserts a similar provision in the *Animal Management (Cats and Dogs) Act 2008* to preserve this power once section 95 is repealed. The new provision also does not provide compensation for destruction of a dog.

Potential FLP issues

Legislation should provide for the compulsory acquisition of property only with fair compensation.<sup>16</sup> The OQPC states:

*A legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason.<sup>17</sup>*

In this instance it could be considered that an act of destruction is akin to an act of acquisition in that the actions of a person destroying property (in this instance a dog) have the consequence of permanently depriving the owner of its property (in the same manner as would a compulsory acquisition). For such an action it would be reasonable to expect fair compensation for the loss of that property.

In respect of clause 37 the Explanatory Notes state:

*The destruction cannot be indiscriminate – a person must reasonably believe that the dog is not under someone's control and is about to attack or is attacking stock on the land. In limited circumstances under this provision, the destruction without compensation is justified.*

*A person who knowingly or unknowingly allows their stock to wander onto public land or another person's property could not rely on this provision to destroy a dog attacking or about to attack his stock.*

Committee comment

The committee considers the absence of compensation to be, on balance, justified in the limited range of circumstances outlined in the Explanatory Notes.

**3.6 Scrutiny of the Legislative Assembly****Section 4(4)(b) Legislative Standards Act 1992****Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly?**

<sup>16</sup> *Legislative Standards Act 1992*, section 4(3)(i).

<sup>17</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p.73.



**Clauses 76 and 77** provide for the chief executive to make notices instead of the Minister and removes the requirement for these notices to be made as subordinate legislation.

**Clause 44** in part, inserts new sections 46 and 46A in the Biosecurity Act which introduce offences of feeding and supplying restricted animal material for ruminants to ruminants and restricted animal material for pigs and poultry to a pig or poultry.

#### Potential FLP issues

A Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.<sup>18</sup>

The OQPC Notebook states:

*For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.<sup>19</sup>*

The matter involves consideration of whether the delegate may only make rules that are subordinate legislation, and are thus subject to disallowance.

The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny.<sup>20</sup>

The *Exotic Diseases in Animals Act 1981* currently provides that the Minister may make a notice about a restricted area and a standstill zone. These notices are subordinate legislation and are therefore currently the subject of review and disallowance. **Clauses 76 and 77** provide for the chief executive to make these notices instead of the Minister and further remove the requirement for these notices to be made as subordinate legislation, thereby avoiding review and scrutiny of the Parliament.

The Explanatory Notes provided the following justification:

*When considered against the need to protect livestock, livestock industries, human health, the economy and the environment in the event of an exotic disease outbreak, the proposed amendments are considered to be justified.*

The Explanatory Notes state in relation to mitigation:

*To mitigate potential FLP concerns, the amendments provide that the chief executive must first satisfy himself that the criteria for the making of the notification are met. The chief executive must be satisfied that the restricted area or the standstill zone is necessary having regard to the degree of seriousness or potential degree of seriousness of the exotic disease and the extent of its likely impact on animal or human health, the economy or the environment. In addition, the amendments prescribe a definitive "lifespan" for these notifications such that they will eventually expire if they are not earlier repealed or a separate regulation is not made to insert them into subordinate legislation.*

*To ensure that information on the restricted area or standstill zone is sufficiently described and available in the public domain, the amendments provide that the chief executive must take all reasonable steps to ensure all persons affected by the*

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<sup>18</sup> *Legislative Standards Act 1992*, section 4(4)(b).

<sup>19</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p.154.

<sup>20</sup> Office of the Queensland Parliamentary Counsel, p.155.

*notification are made aware of its existence. This may include advertising in newspapers, television, radio, text or email.*

Subsections 46(4) and 46A(4) create exemptions to certain offences set out in **clause 44** as subsection 46(4)(b) provides in part, a person does not commit an offence if a regulation states the subsection does not apply in a stated circumstance. Similarly, subsection 46A(4)(b) provides in part, a person does not commit an offence if a regulation states the subsection does not apply in a stated circumstance. The fact that a regulation can disapply the operation of the offences prescribed in the Act is a departure from fundamental legislative principles.

The Explanatory Notes state:

*...such departure [from FLPs] can be justified in the circumstances given the significance of the subject matter (i.e. restricted animal material) and the potential impacts disease transmission could have on livestock and human health should feeding of restricted animal material be undertaken in a manner that is not in accord with current science or best practice. Although offences reside in the Act there is a need for a mechanism to provide exemptions to those offences that is responsive and flexible enough to be implemented quickly without having to rely on a protracted process to amend the Act. By necessity the regulation therefore needs to disapply those offences in circumstances where they can be justified to keep pace with changing science, technical advances or evolving industry practice.*

#### Request for advice

To assist its consideration of these clauses, the committee sought advice from the department as follows:

1. the administrative steps that would be taken by the department under current arrangements, and the likely time period involved, for the Minister to make a notice about a restricted area or a standstill zone, and whether the current ministerial declaration process has led to unreasonable delays in the initiation of protection measures or caused unreasonable risks to public safety, animal or human health or the environment
2. what 'reasonable steps' the chief executive would take to inform persons who may be affected by his or her notifications about restricted areas or standstill zones
3. in relation to the intent of clause 44, sections 46(4) and 46A(4), examples of: scenarios in which the department envisages these provisions may apply, and the potential impacts of disease transmission if emergency controls cannot be established quickly by the chief executive; and what would constitute a 'reasonable excuse' in relation to 46(4)(a) and 46A(4)(a).

#### DAF advice

*The administrative steps that would be taken by the department under current legislation in the making of a notice for a restricted area under section 10 or a standstill zone under section 16 of the Exotic Diseases in Animals Act 1981 would include:*

*Developing drafting instructions and seeking the approval of the Minister for the drafting of a notice.*

*Forwarding the drafting instructions to the Office of the Queensland Parliamentary Counsel (OQPC) once approval had been obtained.*

*Reviewing and commenting on drafts of the notice. Drafting is an iterative process involving liaison between the departmental instructing officer and the drafter. OQPC also have internal quality assurance processes including review by a second drafter.*

*Collection of certified copies of the notice.*

*Making of the notice.*

*The department would then liaise with OQPC to ensure the notice is 'notified' by publication on the Queensland legislation website and that it is tabled in the Legislative Assembly within 14 sitting days after it is notified.*

*Where a significant disease outbreak occurred, such as foot and mouth disease (FMD), it would be desirable that the above process is completed within hours. However, a number of variables, not the least of which is the availability of the Minister or OQPC drafting resources, may hinder this. This is particularly so where emergency disease incidents occur over a week-end or out of hours, such as with the detection of equine influenza in horses at an event held in Warwick in 2007.*

*When equine influenza was detected on a Saturday, the department was required to put a standstill in place as soon as possible. After making several unsuccessful attempts to contact OQPC, the department had to draft a standstill notice and publish it by gazette without the assistance of OQPC. Legally, there were no adverse consequences of the department putting a standstill notice in place this way. Nor were there any conceivable adverse consequences for those people affected by the notice. It did however, create a significant issue in terms of uncertainty about putting the notice in place within the required timeframe. The objective of making this amendment is to reduce the uncertainty if there is another outbreak of an exotic animal disease.*

*It is essential during the early stages of a response to an emergency animal disease to take prompt action to reduce the risk of spreading a disease. Any delay in establishing an appropriate response, can make the job of eradicating a disease much more difficult and ultimately adds to the cost of responding to a disease outbreak.*

*It is in the interests of the department to inform affected persons about the restrictions under a notice for a restricted area or a standstill zone. Informing affected persons would secure the effectiveness of the notice as a means for controlling an outbreak of disease. The reasonable steps the Chief Executive would take to inform persons who would be affected by a notice would depend on the circumstances. A notice could be quite localised in its effect or have far-reaching effect and attract widespread media coverage. Consequently, what would be 'reasonable' would also vary. The sorts of steps the Chief Executive could take to inform persons affected by the making of notifications for either a restricted area or a standstill zone would be to publish or distribute notifications via any of the following:*

*face-to-face contact with affected persons within the subject area by departmental officers*

*hand delivery (letterbox drop) to all residents in the subject area*

*direct contact with affected persons in the subject area via telephone or mobile numbers sourced from various registers maintained by the department*

*postal services*

*various media such as local, regional or statewide distribution newspapers, television, radio*

*Department of Agriculture and Fisheries' website*

*email, short message service (SMS), Facebook and Twitter*

*mobile roadside signage*

*via representative stakeholder groups.*

*As clarified with your Research Director, the committee seeks examples of scenarios in which the department envisages subsections 46(4) and 46A(4) may apply, and the*

*potential impacts of disease transmission if emergency controls cannot be established quickly by the Chief Executive and what would constitute a 'reasonable excuse' for 46(4)(a) and 46A(4)(a).*

*Proposed sections 46 and 46A create offences for feeding and supplying restricted animal material for ruminants to ruminants and restricted animal material for pigs or poultry to pigs or poultry respectively. Proposed subsections 46(4) and 46A(4) exclude certain circumstances from the respective offences.*

*Proposed subsections 46(4)(a) and 46A(4)(a) propose that a person does not commit the offences of feeding and supply of restricted animal material to ruminants and pigs or poultry if they have a reasonable excuse. Generally speaking, 'reasonable excuse' means an excuse that an ordinary and prudent member of the community would accept as reasonable in the circumstances. The department suggests it would be a reasonable excuse for the feeding of restricted animal material for ruminants to a ruminant under subsection 46(4)(a) if the person reasonably believed that the material was not restricted animal material for a ruminant (e.g. because it was labelled as not containing restricted animal matter). The department suggests a person would not have a reasonable excuse if the person simply forgot or did not think the law should prevent them feeding the material to an animal.*

*The effect of regulations made under subsections 46(4)(b) and 46A(4)(b) would be to allow restricted animal material that poses a low disease transmission risk to be fed or supplied to ruminants or pigs and poultry respectively, despite the general prohibitions. In so doing, the regulations would minimise the burden of the prohibitions on industry. Proposed subsections 46(4)(b) and 46A(4)(b) do not, of themselves, provide an emergency disease control measure.*

*The timeliness issue in relation to proposed subsections 46(4)(b) and 46A(4)(b) is the time taken to amend the Biosecurity Act each time a new circumstance that should be excluded from the prohibitions on feeding or supply of restricted animal material is identified and agreed nationally. The time taken to develop a regulation under subsections 46(4)(b) and 46A(4)(b) would be much less than to amend the Act to effect the exclusion.*

*An example of a scenario where proposed subsection 46(4)(b) would apply is that the department will recommend the making of a regulation prescribing the feeding of mineralised sea bird guano to a ruminant as excluded under subsection 46(4)(b). Sea bird guano falls within the definition of 'restricted animal material for ruminants' as it is material derived from a vertebrate. However, sea bird guano, by virtue of its mineralised form, poses sufficiently little disease transmission risk to ruminants that it has been agreed nationally that mineralized sea bird guano should be excluded from the ruminant feed ban. Sea bird guano is a source of phosphorous and is added to ruminant food to provide dietary phosphorus.*

*An example of a scenario where proposed subsection 46A(4) would apply is that the department will recommend the making of a regulation prescribing the feeding of animal matter rendered according to an Australian Standard to a pig or poultry as excluded under subsection 46(4)(b). Animal matter falls within the definition of 'restricted animal material for pigs and poultry'. However, if it has been rendered in accordance with the Australian Standard, it poses sufficiently little disease transmission risk to pigs and poultry that it has been agreed nationally that it should be excluded from the prohibited pig feed ban.*

*The most relevant disease transmission risk for feeding of restricted animal material to ruminants is transmissible spongiform encephalopathies (TSE), the most notable among which is commonly known as 'mad cow disease'. If a TSE were to occur in cattle,*

*the predicted impact is expected to be the immediate loss of greater than 75 per cent of Australia's export markets. The recovery of market access would likely take many years to achieve.*

*The most relevant disease transmission risk for feeding of restricted animal material to pigs is FMD and for poultry is highly pathogenic avian influenza (HPAI). An outbreak of FMD caused by the feeding of prohibited pig feed would be devastating, with serious adverse, long term socio-economic effects including restricted international market access for livestock and livestock products. Certain subtypes of avian influenza viruses pose a public health risk (as has occurred in Asia and Europe). The emergence of any HPAI would result in extensive production and eradication losses (death and culling of birds) and loss of market access and consumers' confidence.*

Committee comment

The committee notes the department's advice. The committee is satisfied that Clauses 76 and 77 will provide for a more certain and immediate response by the department to emergency disease incidents, and notes the steps that the department has advised it will take to notify affected persons of restricted area and standstill zone notices made by the chief executive.

In relation to clause 44 which departs from fundamental legislative principles in providing that regulations can disapply the operation of offences prescribed in the *Biosecurity Act 2014*, the committee is satisfied the departure is justified as it relates to restricted animal material and the potential impacts of disease transmission to livestock and human health depending on how that restricted material is handled. The amendments will provide a more responsive mechanism for the department to provide offence exemptions. The committee notes that the timeliness of imposing exemptions can be critical to public safety and the welfare of entire industries.

## **Appendix A: Departmental briefing officers**

**Public briefing 20 August 2015 –**

### **Department of Agriculture and Fisheries**

Dr Ashley Bunce, Director, Animal Biosecurity and Welfare

Mr Russel Scholl, Principal Policy Officer, Plant Biosecurity and Product Integrity

Ms Marguerite Clarke, Director, Legislation and Regulatory Reform

Mr Pat Coyne, Principal Policy Officer, Legislation and Regulatory Reform

### **Department of National Parks Sport and Racing**

Mr Todd Kelly, Manager, Policy and Legislation Unit

**Appendix B: Diagrammatic summary of the Bill**

**Summary of the Agriculture and Other Legislation Amendment Bill 2015**



