Farm Business Debt Mediation Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Farm Business Debt Mediation Bill 2016.

Policy objectives and the reasons for them

The policy objectives of the Bill are to:

- establish a new Farm Business Debt Mediation Act which will provide a process for the efficient and equitable resolution of farm business debt matters between mortgagees and farmers;
- replace QRAA (formerly the Queensland Rural Adjustment Authority) with the Queensland Rural and Industry Development Authority and expand its functions;
- provide more appropriately for use of viruses as biological control agents;
- provide for third party biosecurity accreditation systems as an alternative to government accreditation of certifiers or government certification for animals, animal products, plants, plant products or other biosecurity risk items; and
- enable lawful growers of cannabis in Queensland to supply seed to be used for cultivation of medicinal cannabis under a Commonwealth licencing system.

In October 2015, the Queensland Government initiated a range of actions to address rural issues faced by farm businesses in Queensland, including the convening of a Rural Debt Roundtable and establishment of a Rural Debt and Drought Taskforce (the Taskforce). Consultation undertaken by the Taskforce identified producers that felt they had been unfairly treated by banks particularly when businesses were identified as 'at risk'.

In response to the Taskforce Chairperson's Report and observations made in the Rural Debt Roundtable, the Government announced the $77.9 million Rural Assistance and Drought Package. Of this, the $36.044 million Rural Assistance Package is aimed at reducing financial stress and improving the financial sustainability of the rural sector.

The Rural Assistance Package acknowledges that the agricultural sector is vulnerable to external factors such as climate, market changes and access to rural credit. These factors can affect the viability of industries within the sector leading to enforcement action by financial institutions.

This Bill implements key components of the Rural Assistance Package, including a legislated farm business debt mediation process which provides for an efficient and equitable process which will benefit both mortgagees and farmers.

Dynamic climate conditions, market prices, rural credit policy, government policy and globalisation can adversely affect the economic returns of rural enterprises. Some of these risks

are beyond the control of the sector and not all primary producers have the capacity to withstand or adjust to the effects of these external influences over the short to medium term. This can lead to farmers defaulting on loan repayments and result in bank enforcement action. Legislating farm debt mediation can provide farmers with access to a process that is independent and consistent in its approach to resolving complex financial matters. It can provide certainty to farmers and mortgagees when such circumstances arise.

Replacing QRAA with the Queensland Rural and Industry Development Authority will reflect an expansion of the assistance it offers (which is provided by regulation) and it will be given a greater role in researching and providing advice on the financial performance of Queensland's agricultural sector to inform policy development and a better understanding of issues impacting on the sector.

Mirror biological control Acts across Australia provide for assessing and authorising biological control programs. Consideration under these Acts is generally confined to biological control activities where protection from liability and interruption by litigation are required. Most biological control agents are not a source of controversy, and all biological control agents are subject to rigorous approvals and scientific testing under other legislation.

The release of a new naturally-occurring strain of rabbit haemorrhagic disease virus (RHDV or calicivirus), known as K5 and of Cyprinid herpesvirus-3 (carp herpesvirus) for the control of common carp are proposed to occur in 2017. There is some doubt about whether these might fall within the scope of the *Biological Control Act 1987* because they are viruses and there is ongoing scientific debate about whether a virus is a living entity.

The *Biological Control Act 1984* (Cwlth) was recently amended to provide for the declaration of viruses and sub-viral agents as 'agent' and 'target' organisms under that Act. Those amendments clarify that viruses are included as organisms in the relevant definitions. The *Biological Control Act 1987* is mirror legislation to the *Biological Control Act 1984* (Cwlth). Amending the *Biological Control Act 1987* to reflect the amendments to the *Biological Control Act 1984* (Cwlth) will support a nationally consistent approach to the relevant definitions to expressly provide for viruses or sub-viral agents to be an organism and a prescribed organism to ensure that the protections from liability and injunctions provided by that Act would apply.

Biosecurity accreditation systems enable Queensland producers to conduct activities and access markets from which they might otherwise be excluded by law or other requirements.

Biosecurity certificates issued by accredited certifiers under the *Biosecurity Act 2014* are accepted by interstate quarantine authorities as assurance that their phytosanitary requirements have been met (e.g. for plants and plant products that can carry pests). Similarly, biosecurity certificates can be used to give assurance where there are restrictions on movement of risk items within Queensland.

Currently biosecurity certificates can only be issued by inspectors appointed under the *Biosecurity Act 2014* or alternatively by private certifiers accredited under the Act. To become accredited, a business or individual must demonstrate to the chief executive that they have effective procedures to meet intrastate or interstate requirements. Their accreditation is subject to conditions (including auditing requirements), amendment, suspension and cancellation on grounds specified in legislation. Compliance with accreditation conditions is typically motivated by the need to maintain access to markets with quarantine entry conditions.

Industry-led accreditation systems, such as 'BioSecure HACCP', are considered to be the future of plant health certification systems by biosecurity authorities in all Australian jurisdictions. However, the *Biosecurity Act 2014* does not provide an appropriate framework for allowing such industry-led assurance schemes to operate alongside existing accreditation systems.

The Bill would provide for recognition of third party biosecurity accreditation systems, such as BioSecure HACCP, and for certificates issued in accordance with an approved third party accreditation system to be a biosecurity certificate for the purposes of the *Biosecurity Act 2014*.

Queensland's *Drugs Misuse Act 1986*, Part 5B, currently allows for the processing and marketing of, and trade in, industrial cannabis fibre and fibre products and cannabis seed and seed products, other than for the purpose, directly or indirectly, of producing anything for administration to, or consumption or smoking by, a person.

In February 2016, the Commonwealth passed the Narcotics Drugs Amendment Bill 2016 to amend the *Narcotic Drugs Act 1967* (Cwlth) to enable the cultivation and production of cannabis and cannabis resin for medicinal cannabis, or research relating to medicinal cannabis under a strictly controlled national licensing and permit system administered by the Commonwealth. Under the amended Act, the Commonwealth will have responsibility for licensing the cultivation of cannabis for medicinal and related scientific purposes.

A key issue is the supply of suitable cannabis seed to licence holders authorised under the Commonwealth's legislation. The Commonwealth is considering allowing seed to be sourced from licit Australian sources, including industrial cannabis growers licensed in Queensland under the *Drugs Misuse Act 1986*, Part 5B. The Queensland industry has developed valuable cannabis seed lines for which it holds plant breeder rights.

Achievement of policy objectives

Farm Business Debt Mediation Act

The Bill will establish the Farm Business Debt Mediation Act. This Act will provide for the equitable resolution of farm business debt matters and disputes.

The legislation will provide a framework in which creditors and farmers can constructively resolve complex financial disputes. Legislation that is similar to farm debt mediation process legislation in New South Wales and Victoria would provide for more consistent outcomes for rural communities.

The legislation requires all providers of rural credit in respect of a farm mortgage, to offer primary producers access to farm debt mediation prior to the creditor commencing enforcement action.

The voluntary Queensland Farm Finance Strategy is the current mechanism in place. However this process consists of a set of guiding protocols for farm debt mediation. In addition, while many large lenders readily participate in mediation under the Queensland Farm Finance Strategy, not all providers of rural credit participate. Despite their similarity, there are some discrepancies between the applications of the voluntary scheme and the NSW legislated farm debt mediation process.

The Bill does not stop farmers resolving issues informally with banks or seeking legal processes to resolve disputes. However, mediation is an alternative to resorting to expensive and drawn out legal processes to resolve financial disputes.

Amendment of the *Rural and Regional Adjustment Act 1994*

The Bill will continue QRAA (formerly the Queensland Rural Adjustment Authority) as the Queensland Rural and Industry Development Authority (the authority) and expand its functions. The expanded functions will include providing advice on the financial performance of Queensland's agricultural sector, undertaking policy research and partnering with the private banking sector. An example of this would be providing policy advice concerning rural credit matters such as proactively promoting joint lending options and negotiating security rankings or priorities.

The Bill will also allow the authority to be more flexible and improve its efficiency by providing assistance to communities in the State where government agencies want to use the authority's services. For example future assistance could include grants to community service providers, sporting, cultural and other community organisations should an appropriate scheme be provided by regulation.

Amendment of the *Biological Control Act 1987*

To provide more appropriately for the use of viruses, the Bill will remove the ambiguity about the classification of viruses and their use as agent organisms and target organisms for biological control activities. This will be achieved primarily by prescribing viruses and sub-viral agents as organisms and prescribed organisms for the purposes of the *Biological Control Act 1987*.

Amendment of the *Biosecurity Act 2014*

The objective of providing for third party biosecurity accreditation systems as an alternative to government accreditation systems will be achieved by amending the *Biosecurity Act 2014* to allow third party accreditation schemes to be recognised as a framework under which biosecurity certificates may be issued. Persons can then be approved as an operator of such a scheme, provided they have the requisite systems in place. The Bill provides that persons operating within an approved scheme can issue biosecurity certificates for the purposes of the *Biosecurity Act 2014*. The Bill provides that persons can only issue certificates in accordance with the rules of the approved scheme. Any such scheme is intended to be completely distinct from the government accreditation systems, with its own governance and administration arrangements, including auditing systems and procedural controls. It will remain accountable to Government through the monitoring of the scheme operator through auditing arrangements.

Amendment of the *Drugs Misuse Act 1986*

Part 5B of the *Drugs Misuse Act 1986* would be amended to allow Queensland growers and researchers to supply certain cannabis seed to persons licensed to cultivate medicinal cannabis under the *Narcotic Drugs Act 1967* (Cwlth).

Alternative ways of achieving policy objectives

Farm Business Debt Mediation Act

An alternative mediation model to the proposed legislation exists in the form of the current voluntary negotiated farm debt mediation framework. This model forms part of the Queensland Farm Finance Strategy, which emphasises principles supporting the early recognition and co-operative resolution of financial problems as they arise. It was developed by the Queensland Farmers' Federation (QFF) and the Australian Bankers' Association (ABA) in 1996 and updated in 2008.

This voluntary agreement lacks independence as there is no separation between the ownership of the agreement and its operation. A further issue is that not all ABA member banks agree to participate, and the agreement does not apply to second-tier providers of rural credit such as small banks and credit unions.

Maintaining the *status quo* therefore will not address issues identified by the agriculture sector.

Similarly, other non-legislative means of addressing the predicament faced by farmers in a debt crisis are considered ineffective and it is only legislation which will ensure that creditors enter mediation with farmers to investigate alternatives. A legislated mediation framework is cost neutral to the community as both farmers and creditors to mediation are required to pay their own costs of attending mediation. The legislation will also provide consistency across jurisdictions with NSW and Victoria having similar legislation in place.

Amendment of the *Rural and Regional Adjustment Act 1994*

As the authority is established in the Act and its functions are detailed in the Act, an Act amendment is required to replace it and significantly vary its functions.

On 26 May 2016, Mr Rob Katter MP, Member for Mount Isa, introduced the Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016 to the Parliament. This Bill would rename QRAA as the Rural and Industries Development Bank and expand its functions beyond administering schemes of financial assistance to include the ability to both borrow and lend money. It represents an alternative proposal for the future of QRAA.

Amendment of the *Biological Control Act 1987*

Legislative amendment is the only way to achieve the objectives in relation to consistent biological control legislation across jurisdictions. Legislative amendment is necessary in order for viruses and sub-viruses to be used as biological control agents in Queensland and also the protections from liability on the use of these as biological agents to be availed.

The proposed legislation ensures that the future use in Queensland of viruses and sub-viruses in biological control is cost neutral to the community. If the amendments were not made, biological control activities using viruses and sub-viruses in Queensland would not be subject to liability protection. In that circumstance, the Queensland Government could be liable for litigation costs arising from their use and these costs would ultimately be borne by the community.

Amendment of the *Biosecurity Act 2014*

Biosecurity accreditation systems enable Queensland producers to conduct activities and access markets from which they might otherwise be excluded by law or other requirements. Biosecurity certificates issued by accredited certifiers under the *Biosecurity Act 2014* are accepted by interstate quarantine authorities as assurance that their biosecurity (e.g. phytosanitary) requirements have been met. However, currently biosecurity certificates can only be issued by inspectors appointed under the *Biosecurity Act 2014* or alternatively by certifiers, accredited as such by government officers.

The policy objective of this proposal is to allow for third party-managed accreditation schemes. This would involve a framework for the chief executive to approve accreditation schemes, and to approve the operators (individuals or organisations) of these schemes. No significant negative impacts have been identified. The proposal would provide opportunities and efficiencies by providing the option of third party operators, and would be consistent with approaches being pursued nationally.

Industry-led accreditation arrangements, such as BioSecure HACCP, are considered to be the future of plant health certification systems by biosecurity authorities in all Australian jurisdictions. Amending the Act to accommodate such accreditation systems is therefore the preferred option and would ensure enhanced flexibility and greater industry-led participation in managing biosecurity risks. Producers who prefer to obtain biosecurity certificates from inspectors appointed under the Act or by becoming an accredited certifier under the existing government-led systems, would still be able to do so.

Under a ‘do nothing’ option, the Government would continue to be a major provider of biosecurity accreditation systems. This would maintain the existing constraints on government accreditation systems, and deny industry the opportunity to provide effective third party accreditation schemes. It would also be inconsistent with approaches being pursued nationally.

Amendment of the *Drugs Misuse Act 1986*

If Part 5B of the *Drugs Misuse Act 1986* is not amended, Queensland could only rely on the Commonwealth to license the supply of seed by Queensland growers under section 8E of the amended *Narcotic Drugs Act 1967* (Cwlth). However, the Commonwealth has indicated it is considering doing so only for seed that produces cannabis plants with a high (1% or over) THC content. Many valuable seed lines are for low (less than 1%) THC cannabis plants and therefore potentially, may not be able to supplied by Queensland growers.

Estimated cost for government implementation

Farm Business Debt Mediation Act

QRAA proposes to implement a governance framework for the new authority's functions in relation to farm business debt mediation that is informed by, and aligned to, that of the NSW Rural Adjustment Authority with particular attention to maintaining information barriers between the lending and farm business debt mediation functions. Elements include:

- Separated service delivery - A Farm Business Debt Mediation Unit will be established to implement the requirements of the new Act. It will be located in a separate part of the authority's office - physically distant from the lending team. All system and information access and record keeping relating to its functions under this Act will be secured and controlled via individual user approval and authentication processes. Collectively these will achieve physical and digital locked-down security.
- Delegated authority for internal reviews - As the chief executive officer is involved in the lending and internal appeal process, responsibility for internal reviews related to farm business debt mediation will be delegated to the General Manager, Corporate Strategy and Operations.
- Compliance audits – the authority's service delivery of the farm business debt mediation functions and the effectiveness of its approach to the information barrier requirements will be subject to both periodic internal and external audit.
- Ongoing education - On-going education and training will be provided for all authority staff to support compliance.

The authority will incur costs estimated at approximately $250,000 per year in undertaking its functions in relation to farm business debt mediation under the Bill. Funding to meet the costs associated with these functions of the authority were allocated as part of the Rural Assistance Package.

No fees are proposed to be introduced at this time to recover these costs from farmers applying for an enforcement action suspension certificate, mortgagees applying for an exemption certificate and mediators applying for accreditation. Farmers applying for an enforcement action suspension certificate would already be in financial difficulty and would have limited capacity to pay. Not charging mortgagees a fee will minimise the impost on the normal conduct of their business where they have fulfilled their obligations under the Bill. Not charging mediators a fee at this time will facilitate implementation of the Bill.

Amendment of the *Rural and Regional Adjustment Act 1994*

The authority will also incur one-off costs of approximately $300,000 for the internal direct costs to transition from QRAA to the Queensland Rural and Industry Development Authority – including Information Communication Technology costs, legal costs, communications and marketing, and form redesign. Funding to meet these costs were allocated as part of the Rural Assistance Package.

Amendment of the *Biological Control Act 1987*

There are no costs to Government as a consequence of the amendments to the *Biological Control Act 1987* but there could be costs that are not incurred as a result of reduced risk of State liability related to biological control agents that are viruses.

Amendment of the *Biosecurity Act 2014*

The Department of Agriculture and Fisheries (DAF) will meet any costs associated with the amendments to the *Biosecurity Act 2014*. The impost on government is not expected to be significant, with few accreditation schemes expected to be put forward for approval. Furthermore, DAF has invested significantly in supporting industry to develop third-party accreditation schemes as an alternative to government arrangements. No government fees are proposed to be introduced for those applying to operate a biosecurity accreditation system, nor are they proposed to be payable by applicants seeking to become certifiers within such a system. The operator of the system may however choose to impose a charge. The policy position is that there should be no disincentive for industry or the private sector to demonstrate leadership in the management of biosecurity risks. These groups should be encouraged to pursue the development of such systems and producers should be encouraged to become certifiers under them. This approach will ensure that DAF can focus its biosecurity effort on public-benefit activities and that private-benefit market access activities are appropriately placed with industry. This is consistent with the recommendations of the Queensland Biosecurity Capability Review. DAF will charge fees for auditing of the system, and the Act currently provides for fees in that regard.

Amendment of the *Drugs Misuse Act 1986*

There are no costs to Government as a consequence of the amendments to the *Drugs Misuse Act 1986*.

Consistency with fundamental legislative principles

The Bill has been drafted with due regard to the fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA). Potential breaches of FLPs are addressed below.

Potential FLPs in parts 1-8 of the Bill

Legislation should not, without sufficient justification, unduly restrict ordinary activity – LSA s4(2)(a)

Part 3 of the Bill provides, in effect, for a farmer to be able to require a mortgagee to participate in mediation prior to the exercise of a right with respect to a farm mortgage due to a farm business debt. A mortgagee who is owed money must not take action to enforce the mortgage until they serve a notice on the farmer advising of the proposed enforcement action and the availability of mediation and has entered into mediation in good faith if requested by the farmer. Where a farmer is in default and a mortgagee refuses to participate in mediation or does not participate in good faith, the farmer may apply for an enforcement action suspension certificate which blocks the enforcement of the mortgage.

Taking enforcement action under a farm business mortgage could be considered an ordinary activity governed by lawful contractual obligations. This activity would be restricted by the obligations in the proposed Act. The potential FLP issue is whether the legislation unduly restricts ordinary activity without sufficient justification and the right to conduct business without interference.

Further, the Office of Queensland Parliamentary Counsel's (OQPC) publication *Fundamental Legislative Principles: the OQPC Notebook* (the OQPC Notebook) states on page 118, "Regulation of business, although prolific, is an interference in a right to conduct business in the way in which the persons involved consider appropriate".

The restrictions are justified, however, because of the extreme imbalance of power in these situations. The proposed provisions seek to balance mortgagee's rights to enforcement under farm business mortgages, against the interests of farmers to address actual or perceived issues or disempowerment in negotiating alternative solutions in debt disputes. The proposed provisions seek to achieve a mutually agreed position.

There are also safeguards on the interference – specific boundaries surrounding applications for, and the issue of, enforcement action suspension certificates.

The OQPC Notebook states in regard to *Contracts controlled by legislation* "the former Scrutiny Committee has considered that provisions restraining exercise of rights under contracts as not being without precedence, noting that there are many legislative controls over commerce". Alert Digest 2003/7, p. 7, paras 3–9 and p 118 of the Notebook.

Whether legislation confers immunity from proceeding without adequate justification – LSA, subsection 4(3)(h).

Clause 84 of the Bill will protect a mediator or person acting at their direction from liability.

Although mediators under the proposed Bill are not State employees under the *Public Service Act 2008*, they will be fulfilling a legislated role and are compelled to act in accordance with the legislation. It is therefore appropriate to extend to them the same immunities from civil liability as apply to State employees. The conferral of immunity in this Bill is consistent with other Queensland statutes where civil liability immunity is afforded to persons other than State employees. Other statutes afford liability to other persons who may, for example, act under the direction of an inspector.

The conferral of immunity is balanced by the fact that where any civil liability would otherwise be attached to the person it instead attaches to the State. The State may then recover a contribution from the person but only if the conduct was not undertaken in good faith or was grossly negligent.

Whether legislation has sufficient regard to the institution of Parliament - LSA, subsection 4(2)(b)

Clause 34 of the Bill provides that the authority can make guidelines concerning the general conduct of mediation.

The potential FLP issue is whether the guidelines, made under the proposed legislation, will have adequate scrutiny of the Parliament.

However, delegation of these powers to the authority in this instance is justified as the guidelines will be of a technical and procedural nature.

Whether legislation has sufficient regard to rights and liberties of individuals and does not reverse the onus of proof in criminal proceedings without adequate justification – LSA, subsection 4(3)(d)

Clause 89 of the Bill includes a deemed executive liability provision for two offences where a mortgagee as a corporation, takes enforcement action under a farm mortgage contrary to the provisions of the Act; and where the mortgagee does not ensure that a contract, mortgage or other document gives effect to a heads of agreement accurately. If a corporation is found guilty of either of these offences, then the executive officer of the corporation is also taken to have committed the offence in certain circumstances.

The potential FLP issue is that a provision for guilt by association is inappropriate and in effect constitutes a reverse onus of proof of offending.

However, the potential FLP is mitigated by the fact that the executive officer is only liable if they authorised or permitted the corporation's conduct constituting the offence or they were directly or indirectly, knowingly concerned in the corporation's conduct constituting the offence. In both cases the executive officer is in a position to have direct influence over the behaviour of the corporation and has the power to avert the offending action. It is justified in these circumstances, and given the seriousness of the offences, to also deem the executive officer liable for the offence. The executive liability provision in the proposed Bill is consistent with the approach taken in the New South Wales *Farm Debt Mediation Act 1994* upon which the Bill has largely been modelled.

Potential FLPs in part 9 of the Bill

Whether legislation has sufficient regard to the institution of Parliament - LSA, subsection 4(2)(b)

The former Scrutiny of Legislation Committee and portfolio committees have expressed concerns about national scheme legislation potentially breaching FLPs. The amendments to the *Biological Control Act 1987* in part 9, division 2 of the Bill have been prepared based on a predetermined form based on amendments to the *Biological Control Act 1984* (Cwlth), which does limit the Parliament's ability to influence the amendments.

The concern is that administrative agreements among Australian governments that bind parties to specific laws compromise the Queensland Parliament's sovereign power to make laws for Queensland. However, as the *Biological Control Act 1987* implements a national law scheme through mirror legislation, the Legislative Assembly is able to scrutinise the amendments.

Legislation should allow the delegation of legislative power only in appropriate cases and to appropriate persons - LSA s4(4)(a)

The amendments to the *Biosecurity Act 2014* in part 9, division 3 of the Bill will allow the chief executive to approve a third party biosecurity accreditation scheme and a person to operate an approved scheme. The potential FLP issue is that approving a third party to operate an approved

accreditation scheme will effectively allow them to determine who will be accredited and thus be able to issue biosecurity certificates. Biosecurity certificates are the basis on which a producer may be permitted to do certain things (e.g. move a potential carrier of a pest or disease) that otherwise might be prohibited under the Act.

Allowing operators of systems to control when biosecurity certificates are issued is justified, however, because it acknowledges that those issuing the certificates are the main beneficiaries of accreditation systems and should take a proportionate share in operating them. The scheme under which the certificates may be issued, including the rules of the scheme, will be approved by the chief executive and the Act will include specific requirements for approved schemes. The approval of the operator will be subject to suitability considerations.

The need to maintain access to markets with quarantine entry conditions would motivate behaviour that was also in the public interest by both the operator of the scheme and any businesses certifying it. Nevertheless, there are safeguards to ensure that the operation of the scheme remains consistent with the Government's intent, such as an ability to refuse, suspend or cancel the approval. The operation of the scheme would also be subject to government auditing.

Legislation should sufficiently subject the exercise of a delegated power to the scrutiny of the legislative Assembly - LSA s4(4)(b)

The amendments to the *Biosecurity Act 2014* in part 9, division 3 of the Bill will allow the chief executive to approve a third party biosecurity accreditation scheme and approve a person to operate an approved scheme. The potential FLP issue is whether the approval of third party biosecurity accreditation schemes and operators of those schemes by the chief executive is sufficiently subject to the scrutiny of the Legislative Assembly.

The provisions are justified to allow the industry to share responsibility for accreditation of which they are a major beneficiary. Recognising third party accreditation schemes and their operators in legislation would not provide the same proportional controls over the approval (such as the power to amend, suspend or cancel an approval where appropriate). Such reactive controls could be necessary in response to changes in biosecurity threat levels, non-conformance or market access requirements of other jurisdictions.

Although a broad range of schemes could be developed, the Act will require that specific matters are provided for in the rules of the scheme and the chief executive must be satisfied that the scheme will provide sufficient assurance of the matters stated in any biosecurity certificate issued under it. Further, the chief executive will have regard to the level of endorsement of the scheme provided by other relevant jurisdictions.

Also, it is not proposed that an approved operator's scheme would have a monopoly in providing certification for certain produce – there would be alternative options for obtaining certification should a particular producer choose not to participate or be excluded from participating in a particular scheme.

Consultation

Farm Business Debt Mediation Act

The ABA is committed to supporting a model for national farm debt mediation, and at least the harmonisation of State-based frameworks. Its view is that the NSW legislation is working very well, and the Queensland legislation should not depart from it unless a very strong policy case can be made for the proposed change.

QFF supports in principle a consistent approach to farm business debt mediation.

AgForce is not opposed to a mandatory approach to farm debt mediation where it can be shown to provide clear benefits over the current voluntary approach. This includes ensuring costs to producers are not significantly increased; that producers have access to adequate support, professional advice and representation; and comprehensive information on their position so that they can negotiate on an equal footing with their creditors. They have stated they are unaware of any significant or systemic problems with the Queensland Farm Finance Strategy to which they are a signatory and any mandated approach should not detract from the capacity for borrowers and creditors to resolve issues informally.

Targeted consultation on aspects of a working draft of the Bill relevant to farm debt mediation was undertaken by DAF in late July 2016 with the QFF, AgForce, Canegrowers, ABA, Suncorp Bank, Rabobank Australia, Australian and New Zealand Banking Group Limited (ANZ), Bank of Queensland, Commonwealth Bank, National Australia Bank, QRAA and Westpac Banking Corporation. These stakeholders raised concerns about specific provisions of the working draft of the Bill relevant to the legislated farm debt mediation at the workshop convened to discuss it and in written feedback afterwards. Many of these concerns have since been addressed in the Bill. However, there were differing views on some matters including documentation requirements and how notices should be given. Many stakeholders at the workshop requested more time to review and comment on the working draft but DAF could not extend the consultation due to the timeframes for development of the Bill.

Amendments to the *Biological Control Act 1987*

Senior agriculture department officers and departmental heads from all State and Territory Government jurisdictions who sit on AGSOC (Agriculture Senior Officials Committee), considered the potential issues arising from inconsistent definitions in each jurisdiction's biological control legislation. AGSOC's primary role is to support the Agriculture Ministers' Forum (AGMIN) on issues of national interest in the agriculture portfolio. AGSOC members agreed in 2016 to pursue equivalent amendments to mirror biological control legislation within each jurisdiction to achieve national consistency and avoid the risks of making ineffective biological control agent declarations under different definitions.

Amendments to the *Biosecurity Act 2014*

DAF has previously engaged with the Nursery and Garden Industry Association (NGIA), the Australian Banana Growers' Council (ABGC), QFF and Growcom about the introduction of third party accreditation models. NGIA, ABGC, Growcom and AgForce all support third party accreditation schemes. The flagship system, BioSecure HACCP, is the result of over 10 years

work by NGIA, and they have an expectation that Queensland will make legislative changes to facilitate these arrangements. BioSecure HACCP is now being explored by other industry groups, including Growcom and ABGC, as a model for industry-led management of biosecurity risks. The national Plant Health Committee has also supported the adoption of third party accreditation schemes.

Amendment of the *Drugs Misuse Act 1986*

Queensland Health, supported by DAF, hosted eight regional public Roundtables across the State to discuss the Federal Government's licensing scheme for the cultivation of cannabis for medicinal and related scientific purposes. These Roundtables were conducted throughout May and June 2016. The issue of sourcing seed was consistently raised by stakeholders. In addition, outside of the Roundtable process the industrial cannabis industry has expressed frustration that the industry cannot supply seed from Queensland for licit medicinal cannabis purposes due to the current legislative constraints.

The issue of seed supply has been raised with the Commonwealth's Office of Drug Control on a number of occasions, including during their public consultation forums held across Australia. Their proposed response is to allow licensed industrial cannabis growers under State legislation to supply low THC seed to parties that are licensed under the Commonwealth's scheme.

Consistency with legislation of other jurisdictions

Farm Business Debt Mediation Act

The proposed legislation is largely consistent with farm debt mediation legislation of both New South Wales and Victoria as it provides a process for the efficient and equitable resolution of farm debt disputes between creditors and farmers. However there are some differences between the proposed legislation and the legislation in other jurisdictions. Principally these are that the Bill:

- applies to a *farm mortgage* which is defined as a mortgage on farm property. In NSW, this term and hence the Act includes farm machinery. Similarly, in Victoria a farm mortgage includes any interest over farm property which is defined to include farm machinery. In Queensland, the *Credit (Rural Finance) Act 1996* applies to the enforcement of mortgages over farm equipment so farm equipment has not been included in the definition of farm property.
- uses terminology for certificates that are closer to the Victorian than the NSW farm debt mediation legislation. The *enforcement suspension certificate* in the proposed Bill is the equivalent of an *exemption certificate* in NSW farm debt mediation legislation. An *exemption certificate* in the proposed Bill exempts the mortgagee from the obligation to offer mediation before taking enforcement action.
- provides more detail about aspects of the framework, especially how the authority can exercise its powers to accredit mediators and issue exemption certificates and enforcement action suspension certificates and timeframes for its decisions. It also provides for the review of the decisions made by the authority – first internally and then externally (by the Queensland Civil and Administrative Tribunal). These safeguards are for consistency with FLPs and protect the interests of both farmers and mortgagees but add complexity to the Bill compared to NSW and Victoria.

- allows a farmer to require a mortgagee to provide certain documents concerning a farm mortgage and require the farmer to provide certain documents to the mortgagee.
- provides an offence to take enforcement action where the Act applies unless there is an exemption certificate in place.

Amendment of the *Biological Control Act 1987*

Biological control Acts across Australia, including Queensland's *Biological Control Act 1987* mirror the *Biological Control Act 1984* (Cwlth).

The Commonwealth Act was recently amended to provide for the declaration of viruses and sub-viral agents as agent and target organisms. The Bill will make the *Biological Control Act 1987* consistent with the Commonwealth Act and with mirror legislation in other Australian jurisdictions that is being similarly amended to support a nationally consistent approach to the relevant definitions and expressly provide for viruses or sub-viral agents to be classified as organism and prescribed organisms for the purposes of biological control.

Amendments of the *Biosecurity Act 2014*

Queensland is the first State to introduce a Bill to recognise third party accreditation systems in this way. However, other jurisdictions, including New South Wales are expected to introduce legislation to facilitate third party accreditation systems in the near future. It has been nationally agreed that all jurisdictions will make legislative changes necessary to implement third party accreditation systems for plant health certification.

Amendment of the *Drugs Misuse Act 1986*

The proposed amendments to Part 5B of the *Drugs Misuse Act 1986* will harmonise with the proposed requirement for licence holders under the Commonwealth Act to source cannabis seed from a licit source. At this stage, it is unclear whether or not other States would need to, or are considering, introducing legislation to allow for the supply of cannabis seed to Commonwealth licence holders.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Clause 1 provides that, when enacted, the Bill will be cited as the *Farm Business Debt Mediation Act 2016*.

Clause 2 provides that those parts of the Bill that establish the Farm Business Debt Mediation Act – parts 1 - 8, part 9, div 1 (amendment of this Act) and schedule 1 (Dictionary) – and part 9, div 5 (amendment of *Rural and Regional Adjustment Act 1994*) will commence on 1 July 2017. The Bill is silent on commencement of the remainder of the Bill, which means the amendments to the *Biological Control Act 1987*, *Biosecurity Act 2014* and *Drugs Misuse Act 1986* (part 9, divisions 2 - 4) will commence on assent.

Division 2 Purpose

Clause 3 details the purpose of the Bill which is to provide an efficient and equitable way for farmers and mortgagees to resolve matters relating to farm business debt. The Bill provides that this purpose is achieved mainly by providing for mediation as a way for farmers and mortgagees to efficiently and equitably resolve matters relating to farm business debts and ensuring that mortgagees: offer mediation to farmers before taking enforcement action; take part in mediation in good faith ; and cannot enforce a mortgage in contravention of the Act.

Division 3 Interpretation

Clause 4 provides that Schedule 1 defines particular words used in the Act.

Clause 5 defines the term *farm business debt*. The term covers amounts owed by a farmer but only where the amount was borrowed for the purpose of conducting a farming business and is secured by a farm mortgage. Amounts borrowed by farmers for other purposes or not secured by a farm mortgage do not come within the definition.

Clause 6 defines the term *mediation* in the context of a farm business debt. The term covers meetings between a farmer and a mortgagee that occur when the farmer has defaulted, or is at risk of defaulting, under the farm mortgage. These meetings are conducted by a mediator to facilitate discussion to achieve agreement on matters related to the farm business debt. The objective of mediation is to ensure farmers and mortgagees reach agreement on matters concerning farm business debts, such as the way for the farmer to remedy a default or how the mortgage will be enforced. The clause also provides that anything done or said in preparation for a mediation meeting or related follow up action is taken to be part of mediation.

Clause 7 defines the term *satisfactory* in the context of mediation. It provides that mediation is satisfactory where the farmer and mortgagee enter into a heads of agreement as a result or where the mediation has proceeded as far as it reasonably can but a heads of agreement is not

entered into. The clause also provides that mediation is satisfactory where the mediation is other mediation prescribed by regulation.

Clause 8 provides the meaning of particular references to the terms *farm mortgage*, *farm business debt*, *farmer*, *mortgagee* and *farm property*. The purpose of the clause is to clarify the relationship between the farmer, the farm business debt, the farm mortgage, the mortgagee and the farm property for the purposes of interpreting the Act. The clause provides clarity that the Act relates to farmers who owe farm business debts to mortgagees in relation to farm mortgages which have the farmer's farm property as security. Mortgages secured by things other than farm land are not relevant to the provisions in the Act. (Note that *farm property* is defined in schedule 1 to include a water allocation under the *Water Act 2000* held by a farmer for carrying on a farming business.)

Division 4 Operation of Act

Clause 9 provides that the Bill binds all persons, including the State but nothing in the Bill makes the State liable to be prosecuted for an offence.

Clause 10 provides that the Bill will not interfere with any other Act or law relating to the enforcement of mortgages.

Clause 11 provides the situations in which the Bill will not apply in relation to a farmer. The Bill will not apply where the farmer is bankrupt, is subject to a petition under a bankruptcy law that was not made by the mortgagee or the farmer is an externally-administered corporation. Also, the Bill will not apply where the farmer and mortgagee entered into a contract, mortgage or other document to give effect to a heads of agreement entered into as a result of previously taking part in mediation under the Bill and the farmer has defaulted in relation to the contract, mortgage or other document.

Part 2 Enforcement action by mortgagee

Clause 12 provides that a mortgagee must not take enforcement action under a farm mortgage unless this Bill does not apply or an exemption certificate has been obtained. The maximum penalty for the offence is 100 penalty units. Furthermore, the provision deems as void any enforcement action taken where the Bill did apply.

Part 3 Mediation

Division 1 Preliminary

Clause 13 provides that part 3 does not apply if an exemption certificate is in force for the farm mortgage.

Division 2 Starting Mediation

Clause 14 prescribes the procedures for a mortgagee who intends to take enforcement action under a farm mortgage. The mortgagee must serve the farmer with an enforcement action notice and give them a copy of the mediation information package, whilst also providing a copy of

the notice to the authority. An enforcement action notice must, among other things, state the name of the farmer and the mortgagee, identify the farm property and state the enforcement action the mortgagee intends to take, and state that the farmer may ask for mediation and by when they may do this. The notice must also advise the farmer of consequences under the Act for not asking for mediation by a day stated in the notice which must be no later than 15 business days after the notice is served on the farmer.

Clause 15 allows a farmer to ask for mediation through a *request for mediation notice* where the farmer has been served with an enforcement action notice or where the farmer owes a farm business debt, whether or not the farmer is in default, or at risk of default. A request for mediation notice asking for mediation need not be in the approved form but must include the farmer's name and contact details, or if the farmer is a corporation, the name and contact details of the person authorised to act for the farmer and the address for service of notices. The approved form must provide for the farmer to nominate (under clause 18) one or three mediators for the mortgagee to choose to conduct mediation. It must also provide for the farmer to request the mortgagee to provide documents relating to the farm business debt and mortgage (under clause 21).

Clause 16 allows a mortgagee who has received a request for mediation notice, to agree to or refuse the mediation. The mortgagee agrees by providing a notice to the farmer and the authority that states that the parties have agreed to the mediation. The notice must be given in the approved form within 15 business days of receiving the request for mediation notice. Among other things, it must include the name and contact details of both parties and their addresses for service of documents. The approved form must provide for a request from the mortgagee to the farmer for documents relating to the farm mortgage and the farmer's financial position (under clause 22(1)). Where the mortgagee did not give an enforcement notice to the farmer, a copy of the notice agreeing to mediation that is given to the farmer must be accompanied by a copy of the mediation information package prepared by the authority. The mortgagee refuses the mediation by giving a notice refusing mediation to the farmer.

Division 3 Conducting mediation

Clause 17 provides that division 3 applies where a farmer and mortgagee have agreed to mediation for the debt. This agreement occurs when the mortgagee gives a notice of the parties' agreement under clause 16(3)(b).

Clause 18 provides the process for nominating, choosing or rejecting a nomination for a mediator. A farmer may initially nominate one or at least three mediators. Where only one mediator has been nominated and the mortgagee rejects that mediator, the farmer must nominate at least three mediators. Where three mediators have been nominated and the mortgagee does not choose one within 7 business days, the authority must choose a mediator. This process of the farmer nominating and the mortgagee choosing or rejecting nominated mediators is followed again where both parties agreed to a mediator but the mediator is not available or where the parties agree to choose another mediator. The nomination, choice or rejection of a nomination must be made by giving a notice to the other party and a copy to the authority within 7 business days.

Clause 19 prescribes that the mortgagee must ask the mediator to arrange for mediation under clause 18. If the mediator is available to conduct the mediation, they must arrange it. The

procedure for arranging and conducting mediation and mediation meetings is the procedure in the mediation guidelines or, if these do not cover a particular matter, the procedure can be decided by the mediator.

Clause 20 provides that the main function of the mediator is to mediate impartially between the farmer and mortgagee with the aim of bringing about an agreement about one or more matters relating to the farm business debt. The mediator also has other functions given under an Act. This provision also clarifies what is not a function of the mediator, which includes advising either party about the law or acting as an adjudicator or arbitrator.

Clause 21 provides for a farmer to require a mortgagee to produce certain documents related to the farm business debt and the farm mortgage. A notice requesting documents may be given when the farmer requests mediation or at any later time before the mediation ends. The clause provides for how the mortgagee can comply with the request within 30 business days or a longer period agreed between the parties in consultation with the mediator. If the mortgagee does not comply with the request in that period, or fails to make reasonable efforts to comply, the mortgagee is also taken to have failed to take part in the mediation in good faith.

Clause 22 provides that a farmer must give certain documents to the mortgagee within a period of 30 business days after the farmer receives the *enforcement action notice* or a longer period agreed between with the parties in consultation the mediator. If the farmer fails to comply, or make reasonable attempts to comply, the farmer is also taken to have failed to take part in the mediation in good faith.

Clause 23 provides that parties to mediation may have representation at mediation meetings in certain circumstances. A corporation may have an officer or employee of the corporation as a representative and such representation does not require the mediator's approval. A person may have an agent to represent them with the mediator's approval. The mediator may approve representation of a person by an agent if the mediator is satisfied that the representative would assist mediation and has sufficient knowledge of the issues. An approval for representation by an agent may be conditional and may be withdrawn if the representative does not comply with the conditions.

Clause 23 also provides that a person representing a party at mediation must be authorised in writing to enter into a heads of agreement. If a representative does not have written authorisation and a further mediation meeting is required the respective party must pay for the other party's costs and the mediator's fee and costs to attend the further mediation.

Clause 24 provides that an advisor, who may or may not be a lawyer or otherwise professionally qualified, may attend a mediation meeting to provide advice to a farmer.

Clause 25 provides that a mediator may call a pre-mediation conference and adjourn a mediation meeting where the mediator considers a party would be significantly disadvantaged by the mediation continuing. Mediation meetings are to be conducted as quickly as possible and with as little formality and technicality as possible.

Division 4 Agreement reached in mediation

Clause 26 provides that a heads of agreement document must be prepared by the mediator in the approved form when the mediator considers the parties to mediation have agreed or are about to agree on a matter relating to the farm business debt. The document must be given to each of the parties during the mediation meeting and if they are satisfied the document sets out their main points of agreement, they may both sign the document which then becomes the heads of agreement. The clause provides that the heads of agreement has effect if the signed document or each signed copy of the document is given to the mediator within 10 business days after the conclusion of the mediation meeting.

Clause 27 provides for a cooling-off period for a heads of agreement. The cooling-off period commences when the heads of agreement is signed by both parties and ends 10 business days after the parties entered the agreement or another agreed day noted in the heads of agreement, whichever is the later.

Clause 27 also provides that the approved form for a heads of agreement must state certain information relating to the cooling-off period, including the ability of the farmer to revoke the heads of agreement during the cooling-off period and subsequent rights to compensation if the heads of agreement is revoked during that period.

Clause 28 provides for the obligations of the mediator who receives a signed heads of agreement from the farmer and the mortgagee. The mediator must ensure that each party has a signed copy of the heads of agreement that states the starting and ending days of the cooling-off period and any extended cooling-off period agreed to by the parties.

Clause 29 provides that the farmer may revoke the heads of agreement within the cooling-off period by serving the mortgagee with a signed notice of the revocation. Once this notice is served, the heads of agreement has no effect.

Clause 30 allows compensation to be claimed by a party to the heads of agreement where the farmer has revoked the heads of agreement under clause 29. However, under this provision, a claim can only be made for reasonable compensation for a benefit received by the other party under the heads of agreement until it was revoked and a mortgagee has no right to compensation merely because the agreement was revoked. This clause and clause 29 do not affect any other right or remedy available to a party to the agreement arising from the farm business debt or the farm mortgage.

Clause 31 applies where a farmer and mortgagee are parties to a heads of agreement and then enter into a contract, mortgage or other document to give effect to the heads of agreement. The mortgagee must ensure the contract, mortgage or document gives effect to the heads of agreement accurately. The maximum penalty for the offence is 100 penalty units.

Division 5 Ending Mediation

Clause 32 provides that mediation ends when the parties have resolved all matters relating to the debt and enter into a heads of agreement. Mediation can also end where the parties have not entered into a heads of agreement, but only where: one of the parties does not intend to continue taking part in the mediation; the parties agree or the mediator is satisfied that

mediation has proceeded as far as it can with agreement unlikely; or, the mediator is satisfied that either or both parties are not taking part in the mediation in good faith as per clauses 21 and 22, or are unreasonably delaying the mediation, and agreement is unlikely.

Clause 33 imposes a requirement on the mediator to provide to each party and the authority a summary of the mediation within 10 business days after it ends. The summary must state a number of matters, including the date when the first mediation meeting was held and the reason the mediation ended if no heads of agreement was reached. The mediator is also required to provide their opinion on whether the mediation was satisfactory and if it was not, the mediator's reasons for this opinion. If the parties do not agree with the mediator's opinion or reasons for it, the parties may ask the mediator to note their disagreement on the summary.

Division 6 General

Clause 34 requires the authority to make guidelines about the conduct of mediation. The guidelines must be made in consultation with at least one organisation representing Queensland farmers' interests and one organisation representing banks or other entities providing finance to farmers. Matters that can be covered by the guidelines include the procedure for starting mediation and arranging mediation meetings. All guidelines must published on the authority's website.

Clause 35 makes it a requirement for the authority to prepare a *mediation information package* which includes information about mediation under the Bill, copies of the approved mediation-related forms under the Bill and information about mediators who may conduct mediations under the Bill including how to access mediators' information on the register under clause 76. A copy of this package must be given to parties on request and at no cost.

Clause 36 provides that the rules of evidence do not apply to mediation meetings.

Clause 37 provides that a mediation meeting is not open to the public, and only parties authorised as agents or representatives under clauses 23 or advisors under 24 of the Bill or other persons approved by the mediator may be present at meetings.

Clause 38 deems inadmissible in any civil, criminal or administrative proceeding, matters relating to anything said or done during a mediation meeting, a document prepared for the meeting or a document given to a party under clauses 21 or 22. This confidentiality blanket does not extend to a heads of agreement, a contract, mortgage or other document prepared to give effect to a heads of agreement or a summary of the mediation prepared under clause 33.

Clause 39 imposes an obligation on each party to a mediation to pay for their own costs for the mediation and half of the mediator's fee and costs for the mediation. This obligation is subject to clause 23(5) which requires a party to pay the other's party's costs and the mediator's fee and costs if another mediation meeting is required because a person representing a party does not have the authority required.

Part 4 Action by authority

Division 1 Suspending enforcement action

Clause 40 provides that where a farmer is in default of a farm mortgage and has given a request for mediation notice to the mortgagee and the mortgagee has failed to mediate, the farmer may apply to the authority for an *enforcement action suspension certificate*. The application must be made in the approved form, state the facts and circumstances forming the basis of the farmer's claim the mortgagee has failed to mediate and must be accompanied by the prescribed fee.

Clause 41 provides for administrative fairness in the decision making process on the application for the enforcement action suspension certificate. The clause requires the authority to give a show cause notice to the mortgagee which states that written representations may be made as to why the enforcement action suspension certificate should not be issued, before a decision is made on the application. The *show cause period* in which representations must be made must end no less than 20 business days after the notice is given to the mortgagee. The show cause notice must be accompanied by a copy of the farmer's application for the certificate.

Clause 42 provides that the mortgagee may make written representations to the authority during the show cause period and the authority must provide copies of all representations made to the farmer as soon as practicable after they are made.

Clause 43 provides that the authority must consider the farmer's application and all representations made and decide to approve or refuse the application. The application must be approved if the authority is satisfied that the farmer is in default under the farm mortgage and the farmer has given the mortgagee a mediation request and an exemption is not in force for the mortgage and the mortgagee has failed to and does not intend to mediate. If the authority decides to approve the application, it must give an information notice to the mortgagee as soon as practicable after making the decision. Where the authority decides to refuse the application, it must give an information notice to the farmer as soon as practicable after the decision is made.

Clause 44 provides that where a farmer gives a request for mediation to a mortgagee, the mortgagee has failed to mediate, for the purposes of clause 43, if the mortgagee does not respond to the farmer's notice requesting mediation within 15 business days after being given the notice, or the mortgagee gives the farmer notice refusing mediation, or the mortgagee has failed to take part in mediation in good faith or unreasonably delayed mediation or all of the following criteria apply:

- the farmer and the mortgagee agreed to mediate;
- three months have passed since the mediation request notice was given;
- during the period after the notice was given, the farmer has attempted to mediate with the mortgagee in good faith; and
- there has been no satisfactory mediation between the farmer and the mortgagee.

Clause 45 provides that where the authority fails to decide the farmer's application for an enforcement action suspension certificate within 20 business days after the end of the show cause period under clause 41, the authority is taken to have decided to refuse the application.

In this situation, the farmer is entitled to be given an information notice for the decision by the authority which triggers the internal review provisions in part 6, division 2 and hence enables them to escalate consideration of their application if they choose.

Clause 46 provides that if the authority decides to approve the farmer's application, it must issue the enforcement action suspension certificate in the approved form. The certificate must state the name of the farmer and the mortgagee, identify the farm property the subject of the mortgage and when the certificate ends. The authority must give a copy of the certificate to the mortgagee. The authority must comply with the provisions of this clause as soon as practicable after deciding to approve the farmer's application.

Clause 47 provides for the duration of an enforcement action suspension certificate. If the farmer and the mortgagee engaged in mediation and it was satisfactory, the certificate ends on the last day of mediation. Otherwise the certificate ends on the day that is six months after the mortgagee's notice refusing mediation was given or 15 business days after the farmer gave a mediation request to the mortgagee.

Division 2 Exemption from obligation to mediation

Clause 48 provides for the mortgagee to apply to the authority for an *exemption certificate*. An exemption certificate exempts the mortgagee from the obligation to offer mediation before taking enforcement action under the farm mortgage. The application must be in the approved form, state the facts and circumstances forming the basis of the ground on which the mortgagee claims an exemption certificate should be issued and be accompanied by the prescribed fee.

Clause 49 provides that grounds for the authority to issue an exemption certificate are that satisfactory mediation for the farm business debt has occurred or the farmer has failed to and does not intend to mediate in relation to the farm business debt. A further ground for issue of an exemption certificate is where the farmer and the mortgagee agreed to mediate but three months or a longer agreed period have passed since the mortgagee gave an enforcement action notice to the farmer and during this period, the mortgagee has attempted to mediate in good faith but there has been no satisfactory mediation between the farmer and the mortgagee. The clause also clarifies that where a mortgagee does not agree to reduce or forgive a debt, it does not mean the mortgagee has not attempted to mediate in good faith.

Clause 49 also provides that where the farm business debt is secured in part by a farm mortgage of farm property in another State, it is grounds for issuing an exemption certificate if the authority is satisfied that there has been satisfactory mediation under a corresponding law of the other State which considered the impacts on the farm business mortgage relevant to Queensland.

Clause 50 provides that before deciding an application for the issue of an exemption certificate, the authority must give a show cause notice to the farmer. The show cause notice must state that the farmer may, within the show cause period, make written representations to the authority as to why the certificate should not be issued. The show cause period must end no less than 20 business days after the farmer is given the notice. The show cause notice must be accompanied by a copy of the mortgagee's application for the exemption certificate.

Clause 51 provides that the farmer may make written representations about the show cause notice to the authority within the show cause period. The clause also provides that the authority

must give copies of all representations to the mortgagee as soon as practicable after they are made.

Clause 52 provides that the authority must consider the mortgagee's application and all representations made and decide to approve or refuse the application. Where the authority is satisfied the farmer is in default under the farm mortgage and a ground exists to issue the certificate and there is no enforcement action suspension certificate in force, the authority must decide to issue the exemption certificate to the mortgagee. Even if there is an enforcement action suspension certificate in force, the exemption certificate may be granted if there was satisfactory mediation or satisfactory mediation under the corresponding law of another State.

Clause 52 also provides that where the authority is satisfied a heads of agreement is in force for the farm business debt and the cooling-off period has not ended, the authority must decide to refuse the application.

Clause 52 also provides that where the authority decides to approve the application for issue of an exemption certificate, the authority must give an information notice for the decision to the farmer as soon as practicable after making the decision. Where the authority decides to refuse the application the authority must give an information notice of the decision to the mortgagee as soon as practicable.

Clause 53 provides for when the farmer has failed to mediate in relation to a farm business debt if a mortgagee has given an enforcement action notice to the farmer. The farmer has failed to mediate if the farmer did not, within 15 business days after being given the notice, ask for mediation by giving a notice to the mortgagee, or the farmer gave notice to the mortgagee or the authority stating that the farmer declines mediation. The farmer has also failed to mediate if the farmer has failed to take part in mediation in good faith or has unreasonably delayed mediation, or has not responded in writing within 20 business days to the mortgagee's notice inviting the farmer to attend a mediation meeting. Subclause (3) provides some flexibility in decision making by the authority where the farmer has not responded within the required timeframes if particular circumstances apply and the farmer still intends to ask for mediation within a reasonable period in light of those circumstances. For example, the authority may be satisfied the farmer has not failed to mediate where the farmer is prevented from complying within the period due to flooding or a cyclone. The clause also provides that the notice the mortgagee provides to the farmer inviting attendance at a mediation meeting, must state the notice is an invitation and that the farmer's failure to respond within 20 business days may be taken as the farmer declining the invitation and may be grounds for issue of an exemption certificate by the authority.

Clause 54 provides that where the authority fails to decide the mortgagee's application for an exemption certificate within 20 business days after the end of the show cause period under clause 50, the authority is taken to have decided to refuse the application. In this situation, the mortgagee is entitled to be given an information notice for the decision by the authority which triggers the internal review provisions in part 6, division 2 and hence enables them to escalate consideration of their application if they choose.

Clause 55 provides that where the authority decides to approve a mortgagee's application it must issue the exemption certificate in the approved form. The exemption certificate must state the name of the farmer and the mortgagee and identify the farm property and state the duration of the certificate which is either when the circumstances in clause 56 are met or alternatively,

when the farm business debt has been discharged or no longer secured by the farm mortgage. The authority must give a copy of the certificate to the farmer. The authority must comply with the provisions of this clause as soon as practicable after approving the mortgagee's application.

Clause 56 provides for when an exemption certificate takes effect and ends.

Clause 56(1) provides that the certificate takes effect from when the authority's decision to approve the mortgagee's application for the certificate takes effect under clause 77. Because the Bill provides provisions for review of decisions both internally and externally and for certain decisions not to take effect until these options pass, an original decision may take effect at different times depending upon whether an internal review or external review or both has been applied for or no review has been applied for at all. This in turn affects when the certificate takes effect.

Clause 56(2) provides that if the parties entered into a heads of agreement and then entered into a contract, mortgage or other document to give effect to the heads of agreement, the exemption certificate ends on the earlier of the following:

- the day the farm business debt is discharged; or
- the day the farm business debt stops being secured by a farm mortgage over the farm property.

If the parties did not enter into a heads of agreement and then into a contract, mortgage or other document to give effect to the heads of agreement, then the exemption certificate ends on the date stated in the certificate.

Clause 56(3) provides that the end date stated on an exemption certificate must be the date that is three years after the date of either of the following events;

- the last day of mediation if there was satisfactory mediation;
- the last day of mediation if the farmer failed to take part in mediation in good faith;
- the day the notice was given if the farmer gave notice to the mortgagee declining mediation;
- the day that is 20 business days after the notice was given if the farmer failed to respond to a notice from the mortgagee inviting the farmer to attend a mediation meeting;
- if the mortgagee gave an enforcement action notice to the farmer and none of the above events apply, the day that is three months after the notice was given; or
- in any other circumstance, the day the certificate was issued.

Clause 57 provides that court or tribunal proceedings taken or started by the mortgagee while the exemption certificate was in force are unaffected by the ending of an exemption certificate. This covers proceedings to recover the farm business debt or to exercise or enforce a right under the farm mortgage but does not include a reference to giving a statutory enforcement notice or taking any other action that must be taken by the mortgagee before a right under the farm mortgage can be exercised or enforced.

Part 5 Mediators

Division 1 Accreditation

Clause 58 allows an individual to apply to the authority to be accredited as a mediator. The application must be in the approved form and accompanied by the prescribed fee.

Clause 59 provides that the authority must consult with at least 1 organisation that represents the interests of Queensland farmers and at least 1 organisation that represents the interests of banks or other entities that provide finance to Queensland farmers before deciding the application. Additionally, the authority may make inquiries to decide if the applicant is a suitable person for accreditation and may, through a notice, require the applicant to give more information or a document the authority reasonably requires within a period of at least 20 business days. The notice must be given to the applicant as soon as practicable after the authority receives the application and, if required by the notice, the applicant must verify the information or document by statutory declaration. The applicant is taken to have withdrawn the application if the applicant fails to comply with such a notice within the stated period.

Clause 60 provides the matters the authority must consider in deciding whether the applicant is appropriately qualified to perform functions of a mediator and in deciding whether the applicant is a suitable person to be accredited as a mediator. In deciding whether the applicant is appropriately qualified to perform functions of a mediator, the authority must have regard to whether the applicant is an accredited mediator under an accreditation Act or the national mediator accreditation system and the applicant's knowledge about, or experience in, primary industries, business finance and financial management. In deciding whether the applicant is a suitable person to be accredited as a mediator, the authority may consider a number of matters which include whether the applicant has been refused accreditation as a mediator under this Bill, an accreditation Act or the national mediator accreditation system and any other matter considered relevant to the applicant's ability to perform the functions of a mediator. An applicant who is a bankrupt or an officer of an externally-administered body corporate under the *Corporations Act 2001* (Cwlth) is not suitable for accreditation as a mediator.

Clause 61 requires the authority to consider and decide the application. The authority may approve the application if the authority is satisfied the applicant is appropriately qualified to perform the functions of a mediator and is a suitable person to be accredited as a mediator. If the authority decides to approve the application it must issue the applicant an accreditation document stating that the applicant is accredited and the term of the accreditation. If the authority decides to refuse the application, an information notice for the decision must be given to the applicant.

Clause 62 provides that the authority is taken to have refused the application if a decision is not made within 20 business days after the authority either receives the application or the information or document under clause 59. In this situation, the applicant is entitled to be given an information notice for the decision by the authority which triggers the internal review provisions in part 6, division 2 and hence enables them to escalate consideration of their application if they choose.

Clause 63 provides that a person's accreditation ends at the end of the term decided by the authority, which is to be not more than two years. It can also end where the person gives a notice to the authority that states the person intends to stop being an accredited mediator or when the accreditation is suspended or cancelled.

Division 2 Renewing accreditation

Clause 64 provides that accreditation as a mediator can be renewed by applying to the authority within 40 business days before it ends. The application must be in the approved form and accompanied by the prescribed fee.

Clause 65 allows the authority, in deciding a renewal application, to require the applicant to give more information or a document the authority reasonably requires to decide the application. The information or document can be required to be given within a reasonable period of at least 20 business days and must be verified by statutory declaration if the notice requires. The applicant will be taken to have withdrawn the application if the applicant does not comply with the notice within the stated period.

Clause 66 requires the authority to consider a renewal application and decide to approve or refuse the application. In deciding the application, the authority may consider the same matters as when deciding whether the person is suitable to be accredited as a mediator. If the application to renew the accreditation is approved, the authority must give the applicant a new accreditation document stating the new term of the accreditation. If the application to renew the accreditation is refused, the authority must give the applicant an information notice for the decision.

Clause 67 provides that the authority is taken to have refused the application if a decision is not made within 20 business days from when the application was received, or from the information or document requested by the authority under clause 65. In this situation, the applicant is entitled to be given an information notice for the decision by the authority which triggers the internal review provisions in part 6, division 2 and hence enables them to escalate consideration of their application if they choose.

Clause 68 provides that where a renewal application is made within 40 business days before the end of its term, the accreditation continues until the application is decided, taken to have been decided or the applicant withdraws or is taken to have withdrawn the application. If the authority decides to refuse the application, or is taken to have refused the application, the accreditation stands until the authority gives the applicant an information notice.

Division 3 Suspending and cancelling accreditation

Clause 69 provides that the provisions of the division regarding the suspending or cancelling an accreditation, apply to a person who is a mediator under this Act or a corresponding law. If a person is accredited as a mediator under a corresponding law of another jurisdiction, references to the person's accreditation in the Bill are references to the accreditation of the other jurisdiction to the extent it is recognised under the Bill.

Clause 70 sets out the grounds for suspending or cancelling a person's accreditation as a mediator. The grounds are that the person has contravened the Act in relation to the mediator's functions or the mediation guidelines, the accreditation was obtained by mistake or on the basis of incorrect or misleading information, the authority becomes aware the person has been refused accreditation or the accreditation was suspended or cancelled under this or another Act or the national mediator accreditation system, is no longer suitable to be accredited as mediator. In determining whether a person is a suitable person to be accredited, the authority may consider the matters it would consider when deciding whether the person is a suitable person

to be accredited as a mediator initially (i.e. whether they are bankrupt or an officer of an externally administered body corporate).

Clause 71 provides that if the authority believes a ground exists to suspend or cancel a person's accreditation (the *proposed action*), the authority must give a show cause notice to the person. Amongst other information, the show cause notice must state the proposed action and give the person at least 20 business days after it is issued (the *show cause* period) to make written representations as to why the proposed action should not be taken.

Clause 72 allows the person to make written representations in response to the show cause notice and requires the authority to consider all the representations made within the show cause period.

Clause 73 provides that, if upon consideration of all representations made in response to a show cause notice, the authority finds that grounds for the proposed action no longer exist, then the authority must take no further action about the show cause notice and must notify the mediator by giving a notice that no further action is to be taken about the show cause notice.

Clause 74 is triggered where the authority has considered representations, if any, made in response to the show cause notice and still believes a ground exits to suspend or cancel a person's accreditation as a mediator and that suspension or cancellation is warranted. The authority may suspend the accreditation if the proposed action was to suspend it or suspend or cancel the accreditation if the proposed action was to cancel it. The authority must give the person an information notice for the decision as soon as practicable. The decision takes effect on the day the information notice is given to the person or on a later day stated in the notice for the purpose.

Clause 75 allows the authority to immediately suspend a person's accreditation where the authority believes grounds exist to cancel or suspend the accreditation and there is an immediate and serious risk that the person may compromise the success of a mediation. Such risks include where the mediator has shown partiality to either of the parties to a mediation or whether the mediator has engaged in conduct that is not a function of a mediator under clause 20(3). The authority may suspend the accreditation by giving the person a show cause notice and an information notice for the decision. Once these notices are issued, the suspension begins and operates until the earlier of the following: the authority cancels the suspension, the show cause notice has been finally dealt with, or 30 business days after the notices were given to the person.

Division 4 Register of mediators

Clause 76 provides that the authority must keep a register of mediators which contains certain particulars for each mediator, including their name and contact details, a summary of their qualifications and experience and the term of their accreditation. The register may be kept in the form the authority considers appropriate and information from the register may be published on the authority's website.

Part 6 Reviewing decisions

Division 1 Effect of original decision

Clause 77 provides for when an original decision to refuse an application for an enforcement action suspension certificate or to issue an exemption certificate take effect. If an application for internal review has been made, these original decisions do not take effect until an application for an external review of the internal review decision is made to QCAT or otherwise the end of the last day to apply for an external review of the internal review decision. If an application for internal review has not been made, the original decision takes effect at the end of the last day to apply for an internal review of the decision. These delays in commencement have the effect of automatically staying the original decisions until the potentially aggrieved party has had an opportunity to apply for review of the decision.

Clause 78 provides for the stay of an original decision under the Bill by QCAT other than a decision that does not come into effect immediately due to the operation of clause 77. A person who has a right of review for one of these original decisions may apply to QCAT for a stay of the operation of the original decision. QCAT may stay the operation of the original decision, make conditions on the stay QCAT grants and the stay operates for the period decided by QCAT. However, the period cannot extend beyond the last day to apply for an external review of a decision on an internal review of the original decision.

Division 2 Internal review

Clause 79 provides that a person cannot apply for the review of an original decision unless there has been an internal review of the decision.

Clause 80 allows a person who has received, or is entitled to receive, an information notice for an original decision, to make application to the chief executive officer (of the authority) for internal review of that decision. The person must apply to the chief executive officer in the approved form within 20 business days from when they were given the information notice for the decision or, if the person is not given an information notice, the day they become aware of the decision. The chief executive officer has the discretion to extend the period in which the application can be made. An application for internal review of an original decision which is not automatically stayed by clause 77, does not affect or prevent the operation or implementation of the decision.

Clause 81 provides an obligation on the chief executive officer to review the original decision and make a decision confirming, amending or substituting another decision for the original decision within 30 business days of receiving the application for internal review. A *review notice* must be given to the applicant advising of the decision. Where an original decision is confirmed or amended, that confirmed or amended decision is to be taken to be the internal review decision. The person conducting the review must not be the original decision maker and must not be a person in a less senior office than the original decision maker except where the original decision maker was the chief executive officer. Where the chief executive officer does not give a review notice to the applicant within 30 business days after the internal review application is made, the chief executive officer is taken to have confirmed the original decision which triggers the external review provisions in part 6, division 3 and hence enables the aggrieved person to escalate consideration of their application to QCAT if they choose.

Division 3 External review

Clause 82 provides that a person who must be given a review notice for an internal review decision may apply to QCAT for a review of the decision.

Part 7 General

Clause 83 provides that it is an offence, with a maximum penalty of 20 penalty units or 6 months imprisonment, to disclose any information obtained in a mediation meeting or in connection with administering the Bill, unless the disclosure is made:

- with the consent of the person to whom the information relates;
- with the consent of the person from whom it was obtained;
- because it is necessary to perform a person's functions under or in relation to the Bill;
- because it is reasonably required to refer parties to mediation to another person, agency or body to aid the resolution of the issue between the parties;
- as required or allowed under another law; or
- with another lawful excuse.

Clause 84 provides protection to a mediator, or a person acting under the direction of a mediator, from civil liability for conduct under or arising from conduct taken under the Bill. Liability instead attaches to the State. However the State may recover contributions from the mediator or other person where they have acted other than in good faith and with gross negligence. The amount of such contributions attempted to be recovered are those found by the court to be just and equitable in the circumstances. This clause does not apply to public service employees as they are provided immunity from civil liability under the *Public Service Act 2008*.

Clause 85 provides that contracts or agreements have no effect if they contravene the Bill or purport to vary its operation.

Clause 86 explicitly provides that a waiver or purported waiver of a farmer's rights under the Bill, such as the right to apply to the authority for the issue of an enforcement action suspension certificate, has no effect.

Clause 87 provides that where another Act requires a mortgagee to give notice to a farmer as mortgagor, prior to exercising a right under that Act over farm property that is the subject of a farm mortgage under this Bill, the requirements of this Bill do not affect the giving of the notice under the other Act. Also, a notice to exercise a right or power under this Bill does not fail to comply with this Bill simply because it includes a matter also required under the other Act before exercising the power or right.

Clause 88 provides that an offence against this Bill is a summary offence and that proceedings for an offence must start within either one year after the offence is committed or six months after the offence comes to the complainant's knowledge, but not longer than two years after the offence is committed. The clause clarifies that in a complaint starting a proceeding for an offence against this Bill, the complainant's statement that the matter of the complaint came to their knowledge on a stated day, is evidence that the matter came to the complainant's knowledge on that day.

Clause 89 provides a deemed executive liability provision whereby offences by a corporation against specific provisions of the Bill are also taken to have been committed by the executive officer of the corporation. The relevant offences are taking enforcement action under a farm mortgage contrary to the Bill and a mortgagee not ensuring a contract, mortgage or other document accurately gives effect to the heads of agreement. However, the clause provides that this only applies if the executive officer authorised or permitted the corporation's conduct constituting the offence or the executive officer was, directly or indirectly, knowingly concerned in the corporation's conduct constituting the offence. The executive officer may be pursued for the offence, irrespective of whether the corporation has been proceeded against or convicted of the offence. However, this clause does not affect the corporation's liability for the offence against the deemed executive liability provision or the liability of any person in the corporation, including the executive officer under the Criminal Code, chapter 2 for the offence against the deemed executive liability provision.

Clause 90 provides for the authority to approve forms for use under the Bill.

Clause 91 provides that the Governor in Council may make regulations under this Bill. A regulation may be about fees and provide for a maximum penalty (20 penalty units) for contravening a regulation.

Part 8 Transitional provision

Clause 92 provides that this Bill applies to a farm mortgage for a farm business debt whether or not the mortgage was entered into or the debt incurred before or after commencement of this provision. However, the Bill does not apply if the farmer and the mortgagee took part in mediation for the farm business debt under the Queensland Farm Finance Strategy and entered into a heads of agreement as a result of that mediation. The Bill also does not apply if, prior to the commencement of this provision, the mortgagee or their agent entered into possession under the mortgage or the mortgagee exercised power of sale under the farm mortgage and a contract of sale was entered or a judgement was obtained for the farm business debt.

Part 9 Amendment of Acts

Division 1 Amendment of this Act

Clause 93 provides that division 1 amends this Act.

Clause 94 amends the long title of the Bill such that, immediately after commencement, reference to the amendment of all other Acts in the Bill unrelated to mediation for farm business debts, will not appear in the long title.

Division 2 Amendment of Biological Control Act 1987

Clause 95 states that division 2 of part 9 amends the *Biological Control Act 1987*.

Clause 96 amends section 3(1) by omitting the definition of 'prescribed live organism' and replacing it with a definition for 'prescribed organisms'. The new defined term supports declarations of viruses or sub-viral agents as agent organisms or target organism under the

Biological Control Act 1987 despite ongoing scientific debate about whether a virus is a 'living' organism.

Clause 96 also amends the definition of 'kind' in section 3(1) to include 'viruses or sub-viral agents'. This will clarify that 'kind' relates to viruses and sub-viral agents in addition to live organisms, taking into account the ongoing scientific debate about whether a virus is a living entity.

Clause 96 also amends the definition of 'organism' in section 3(1) to include 'a virus or sub-viral agent' to clarify that they are an organism for the purposes of the *Biological Control Act 1987*.

Clause 97 amends sections 19(1), 20(1), 24(1), 28(1)(b), 29(1)(a), 32(2)(a) and 35(3) by omitting 'prescribed live organisms' and inserting 'prescribed organisms'. These amendments reflect the omission of the definition of 'prescribed live organism' and the insertion of a new definition for 'prescribed organism' by clause 96.

Clause 98 inserts new section 58, a transitional provision that forms a new Part 10 to the *Biological Control Act 1987*. It provides for the continuation of declarations made by the Queensland Biological Control Authority under section 5 of the Act that a law of another State or the Commonwealth is a relevant law for the Act. Section 5(3) provides that such declarations cease if, among other things, the law ceases to be a law that establishes an authority having similar functions to those of the Queensland Biological Control Authority. The transitional provision removes any doubt about whether the declarations have ceased because the amendments in the Bill have affected the functions of the authority.

Division 3 Amendment of Biosecurity Act 2014

Clause 99 provides that division 3 amends the *Biosecurity Act 2014*.

Clause 100 amends section 411 by inserting definitions for new terms used in chapter 15 as amended by this Bill.

Clause 101 inserts a new heading for part 4 of chapter 15 that is more appropriate to the broader scope of part 4 as amended by this Bill to include provisions currently in part 5 of chapter 15. It also partitions the current sections 420 – 430, which concern applying to the chief executive for accreditation as a certifier, into their own division within part 4 of chapter 15 and inserts a heading for new division 1.

Clause 102 inserts the heading of new division 2 which consists only of current section 431 which provides for the register of persons accredited as a certifier by the chief executive.

Clause 103 renumbers chapter 15, part 5 (Renewal of accreditations) as chapter 15, part 4, division 3. The relevant provisions, which provide for renewal of accreditations, are otherwise unchanged.

Clause 104 inserts new section 431A which clarifies that newly created division 3 does not apply to an accredited certifier who holds an accreditation under an approved biosecurity accreditation scheme.

Clause 105 inserts a new chapter 15, part 5 concerning approved biosecurity accreditation schemes.

Division 1 Preliminary

New section 435A defines a biosecurity accreditation scheme by providing the functions the scheme must contain.

Division 2 Application for approval

New section 435B provides that the owner of a biosecurity accreditation scheme may apply to the chief executive for approval of the scheme. The application must be accompanied by documents which set out the governance and administration arrangements for the ownership, operation and management of the scheme and the arrangements, procedures and controls for each of the scheme's functions listed in new section 435A.

New section 435C provides the matters of which the chief executive is to be satisfied to approve a biosecurity accreditation scheme. These include that the chief executive is satisfied that the scheme has appropriate governance and administrative arrangements and has arrangements, procedures and controls that provide a sound basis for the operation of a scheme that provides for each of the functions mentioned in the definition of biosecurity accreditation scheme in new section 435A.

Division 3 Approval to operate approved biosecurity accreditation scheme

New section 435D provides that a person may apply to the chief executive for approval to operate an approved biosecurity accreditation scheme. The application must include, among other things, details of the applicant's biosecurity accreditation system relevant to the scheme. Biosecurity accreditation system is defined in section 411 as amended and means the processes, equipment, personnel and resources developed for operating the scheme.

New section 435E provides that the chief executive may approve a person to operate an approved biosecurity accreditation scheme only if satisfied the person has the necessary expertise and experience to implement and operate the scheme and is a suitable person to operate the scheme. In order to assess the applicant's capacity to operate the scheme, the chief executive must conduct an audit of the applicant's biosecurity accreditation system to ensure that the approved scheme will be implemented and operated effectively.

New section 435F provides for the considerations the chief executive may have in deciding whether an applicant is a suitable person to operate an approved biosecurity accreditation scheme.

New section 435G provides that the term of an approval to operate an approved biosecurity accreditation scheme is not more than three years as decided by the chief executive, unless sooner suspended or cancelled.

New section 435H provides that if the chief executive approves a person to operate an approved biosecurity accreditation scheme the approval is granted with approval conditions. Some conditions are provided in the section that apply to all approvals to operate a system. Other conditions may be imposed by the chief executive when the approval is granted, amended or renewed.

Division 4 Renewal of approval to operate scheme

New section 435I provides that an approved operator of an approved biosecurity accreditation scheme may apply to the chief executive for renewal of the approval to operate the scheme. The application must be made not more than 60 days prior to the approval's expiry.

New section 435J provides that when considering an application for renewal of an approval to operate an approved biosecurity accreditation scheme, the chief executive may have regard to the matters in new section 435F he may consider when considering the initial application for approval. An approval is renewed by issuing another approval to replace it.

New section 435K provides that where the approved operator of an approved biosecurity accreditation scheme applies for renewal of the approval to operate, the approval continues until such time as the application is either withdrawn or taken to be withdrawn, approved, or the chief executive gives an information notice for the decision to refuse the application or for the decision being taken to be refused. Also, the continuation of the approval ends if the approval is either cancelled or suspended.

Division 5 General provisions for applications

New section 435L provides that division 5 applies for making and deciding applications under part 5 of chapter 15.

New section 435M provides for applications to be made in the approved form. There is no requirement for a fee. If the applicant, the executive officer of a corporation that is an applicant of a member of an incorporated association's management committee that is an applicant has any convictions, other than spent convictions, the details must be provided with the application. The section also provides that an application for an approval of a biosecurity accreditation scheme and an application by the owner of a biosecurity accreditation scheme to be an accredited operator of the scheme may be combined. This is to reduce the administrative burden on both the applicant and chief executive in these circumstances.

New section 435N provides that it is an offence, with a maximum penalty of 200 penalty units, for a person who makes application to the chief executive under this division, to give false or misleading in relation to their application.

New section 435O provides that the chief executive must consider an application and may either approve the application, approve the application on conditions or refuse it.

New section 435P provides that before deciding an application, the chief executive may make inquiries to determine the suitability of the applicant. The chief executive may also, by notice, request the applicant to provide within 30 days, further information the chief executive reasonably requires to decide the application. The further information must, if the notice requires, be verified by a statutory declaration. The applicant is taken to have withdrawn the application if the applicant does not comply within the 30 days.

New section 435Q provides that the chief executive must give an approval to the applicant if the chief executive decides to approve the application. The chief executive must give an information notice as soon as practicable after making the decision, if the chief executive decides to refuse the application or impose conditions on the person's approval.

New section 435R provides that an approval by the chief executive may take various forms as the chief executive considers appropriate, such as a certificate or an agreement or arrangement with the approved operator.

New section 435S provides that generally an application is deemed refused if the chief executive fails to decide the application within 30 days after the chief executive receives it. Where the chief executive requests further information to decide an application for approval to operate an approved biosecurity accreditation scheme, the chief executive is deemed to have refused the application if the chief executive doesn't decide the application within 30 days after receipt of the further information. The chief executive must give an information notice to the applicant for refusals under this section.

Division 6 Register

New section 435T provides for the chief executive to keep a register of approved accreditation schemes which must contain the scheme's name, date of approval of the scheme, and the name and contact details of the scheme's owner. For each approved operator of the scheme the register must also contain the name and contact details of the approved operator, the term of the approved operator's approval and the approval conditions of the approved operator's approval. The register may be kept in the form considered appropriate by the chief executive, including in electronic form and the chief executive may publish all or part of the register on the department's website.

Clause 106 inserts a new section 436A which provides that it is an offence, with a maximum penalty of 200 penalty units, for an operator of an approved biosecurity accreditation scheme to contravene an approval condition without a reasonable excuse.

Clause 107 amends section 442 to insert additional auditor's functions – to conduct audits of applicants' biosecurity accreditation systems in relation to applications to operate approved biosecurity accreditation schemes and to conduct audits of approved operators' operation of approved biosecurity accreditation schemes.

Clause 108 inserts new chapter 16, part 2, division 4 for auditing operators of approved biosecurity accreditation schemes.

Division 4 Auditing for operators of approved biosecurity accreditation schemes

New section 470A provides that where a person applies for approval to operate an approved biosecurity accreditation scheme, the chief executive must audit the applicant's biosecurity accreditation system to ensure the applicant has the processes, equipment, personnel and resources to operate the scheme and the applicant can implement and operate the scheme and comply with any proposed conditions.

New section 470B provides that the chief executive may require an additional compliance audit to be conducted within a reasonable time if a compliance audit of an approved operator's operations of an approved biosecurity accreditation scheme, for each noncompliance identified. It is an offence, with a maximum penalty of 100 penalty units, if the approved operator does not comply and have compliance audits conducted within the stated reasonable period without a reasonable excuse.

New section 470C enables the chief executive to decide to conduct a check audit of the approved operator's operation of the approved biosecurity accreditation scheme, if the chief executive considers it appropriate.

New section 470D enables the chief executive to arrange a nonconformance audit of an approved operator's operation of an approved biosecurity accreditation scheme. A nonconformance audit may occur if the chief executive has received at least three audit reports about the approved operator's operations in one year showing the approved operator has not remedied a particular noncompliance in relation to the operations. The nonconformance audit may be done by an employee of the department or another person decided by the chief executive. If there are costs to government from the nonconformance audit being undertaken, then the chief executive may recover the cost as a debt payable by the other party to the State.

Clause 109 inserts new chapter 16, part 3, division 2A.

Division 2A Approved operator reports

New section 474A provides that it is an offence, with a maximum penalty of 100 penalty units, if an auditor conducts an audit of an applicant's biosecurity accreditation systems relevant to an application to operate an approved biosecurity accreditation scheme, and the auditor does not give, without a reasonable excuse, a report within 14 days after completing the audit, to the applicant and the chief executive. The report must include all of the following information:

- the auditor's name;
- the start and end dates of the audit and the time spent conducting the audit;
- the address or other sufficient identification information of the place where the audit was conducted;
- details of the applicant's biosecurity accreditation systems audited;
- whether in the auditor's opinion, the biosecurity accreditation system includes processes, equipment, personnel and resources necessary for the applicant to operate the scheme; and
- other information prescribed by regulation.

New section 474B provides that it is an offence, with a maximum penalty of 100 penalty units, for an auditor of a compliance, nonconformance or check audit not to provide a copy of the audit report to the approved operator and the chief executive within 14 days after completing the audit, unless the auditor has a reasonable excuse. The audit report must include the following information:

- auditor's name;
- the start and end days of the audit and the time spent conducting the audit;
- the address or other sufficient identification information of the place where the audit was conducted;
- details of the operations audited;
- whether in the auditor's opinion, the operations do or do not comply with conditions of the approval or the scheme;
- the reasons the auditor considers the operations do or do not comply with the conditions of the approval or the scheme;
- details of the action taken, or proposed to remedy the noncompliance where the operations do not comply with the conditions of the approval or the scheme; and
- whether, in the auditor's option, an auditor needs to conduct a non-conformance audit of the operations in relation to any noncompliance identified in the audit or whether the frequency of compliance audits for the operations should be changed and the auditor's reasons for this.

Clause 110 amends section 478 to insert an approval of a biosecurity accreditation scheme and an approval to operate a biosecurity accreditation scheme, into the definition of 'relevant authority' for chapter 17. This ensures that all the provisions of chapter 17, which relate to amendment, suspension and cancellation, also apply to an approval of a biosecurity accreditation scheme and an approval to operate a biosecurity accreditation scheme.

Clause 111 amends section 479 and the heading to expand the application of the section to include applications to the chief executive to amend an approval of a biosecurity accreditation scheme in addition to applications to amend the conditions of an authority.

Clause 112 amends section 481 to expand the application of the provision to apply to a failure to decide an application to amend an authority, not just an application to amend the conditions of an authority.

Clause 113 amends section 482 to expand the existing grounds for cancellation or suspension of a relevant authority to apply to an approval to operate an approved biosecurity accreditation scheme. Grounds include:

- that the holder has committed an offence against section 436A or a relevant accreditation offence;
- the chief executive becomes aware that the holder of the authority held a similar authority in another jurisdiction within the last two years and that authority was cancelled; and
- that the chief executive becomes aware that a circumstance in which a biosecurity certificate may be given under the scheme is inconsistent with a legal requirement because the legal requirement, or the circumstance, has changed since the approval was originally granted.

Clause 114 amends section 488 to insert a ground for immediate suspension of an approval to operate an approved biosecurity accreditation scheme – that there would be an immediate and serious risk to a biosecurity consideration or to the trade in a particular commodity if the holder of an approval were to continue to operate .

Clause 115 amends schedule 4 (Dictionary) to insert definitions of 'accredited certifier', 'approval conditions', 'approved biosecurity accreditation scheme', 'approved operator', 'biosecurity accreditation scheme', 'biosecurity accreditation system', 'compliance audit', 'nonconformance audit', operational procedures' and 'owner'. Clause 115 also amends the definition of 'check audit'. The amended definition of 'accredited certifier' has the effect of varying and applying the application of certain offences in chapter 15 , part 6 to a person who is a certifier under an approved biosecurity accreditation scheme (as well as currently to a certifier accredited by the chief executive).

Division 4 Amendment of Drugs Misuse Act 1986

Clause 116 provides that division 4 amends the *Drugs Misuse Act 1986*.

Clause 117 amends section 44 which provides for the object of part 5B of that Act. Currently the object excludes processing and marketing of, and trade in, industrial cannabis seed and seed products for purposes which, directly or indirectly, include producing anything for administration to, or consumption or smoking by, a person. The amendment will, in effect, make an exception to that exclusion to allow the activities for the purpose of supplying industrial cannabis seed to people who hold cannabis research licences or medicinal cannabis licences under the *Narcotic Drugs Act 1967* (Cwlth) to use as allowed under that Act.

Clause 118 replaces section 50(1)(f) which currently allows a category 1 researcher licence holder to supply class A or class B research cannabis seed or industrial cannabis seed to a person in another State who is authorised under the law of that State to possess cannabis seed that, if grown, will produce cannabis plants with a THC concentration in their leaves and flowering heads that the person in the other State may possess. The new provision will also allow a category 1 researcher licence holder to supply the seed to a person who holds a cannabis research licence or a medicinal cannabis licence under the *Narcotic Drugs Act 1967* (Cwlth).

Clause 119 replaces section 51(1)(f) which currently allows a category 2 researcher licence holder to supply class B research cannabis seed or industrial cannabis seed to a person in another State who is authorised under the law of that State to possess cannabis seed that, if grown, will produce cannabis plants with a THC concentration in their leaves and flowering heads that the person in the other State may possess. The new provision will also allow a category 1 researcher licence holder to supply the seed to a person who holds a cannabis research licence or a medicinal cannabis licence under the *Narcotic Drugs Act 1967* (Cwlth). The clause also amends the heading of section 51 for greater consistency with the heading of section 50.

Clause 120 replaces section 52(g) which currently allows a grower licence holder to supply industrial cannabis seed to a person in another State who is authorised under the law of that State to possess cannabis seed that, if grown, will produce cannabis plants with a THC concentration in their leaves and flowering heads that the person in the other State may possess. The new provision will also allow a category 1 researcher licence holder to supply the seed to

a person who holds a cannabis research licence or a medicinal cannabis licence under the *Narcotic Drugs Act 1967* (Cwlth). The clause also amends the heading of section 52 for greater consistency with the heading of section 50.

Clause 121 replaces section 60(c) which currently provides that the chief executive must consider whether a person held a licence under part 5B of the *Drugs Misuse Act 1986* that was suspended or cancelled, when deciding whether the person is a suitable person to hold a licence. The new provisions will expand this to require the chief executive to also consider whether the person held a licence or permit that was suspended or cancelled under the *Narcotic Drugs Act 1967* (Cwlth) or a law of another State that corresponds, or substantially corresponds, to part 5B of the *Drugs Misuse Act 1986*.

Division 5 Amendment of Rural and Regional Adjustment Act 1994

Clause 122 provides that division 5 amends the *Rural and Regional Adjustment Act 1994*.

Clause 123 amends section 3 which provides for the object of that Act. It replaces 'QRAA' with 'the Queensland Rural and Industry Development Authority' in subsection 3(1) and with 'the authority' in subsection 3(2). It inserts a new provision to allow the Queensland Rural and Industry Development Authority to provide assistance to benefit communities in the State. Although this is not the primary reason for establishing the authority, the authority may also provide this assistance to support communities in the State and to build its own effectiveness. The amendment would open up the possibility of the authority providing such assistance but would not, of itself, allow it to administer any assistance to communities – it could only do so when a scheme had been approved which would ensure appropriate consideration of the costs and benefits of the authority providing the assistance.

Clause 124 replaces 'QRAA' with 'the Queensland Rural and Industry Development Authority' in the definition of the term 'authority' in section 4. It adds a cross-reference to the definition of the term 'financial assistance' in section 10(2) as inserted by the Bill. It then moves all the definitions currently in section 4 into a new schedule (schedule 1) to the Act and provides that the dictionary in that schedule defines particular words used in the Act.

Clause 125 replaces 'QRAA' in the heading of part 2 with 'Queensland Rural and Industry Development Authority'.

Clause 126 amends section 5 which currently establishes QRAA with a provision that establishes the Queensland Rural and Industry Development Authority.

Clause 127 amends section 8 which provides for the functions of the authority.

Subsection 8(2)(c) currently provides that it is a function to carry out research into, and develop policies on, issues affecting persons likely to receive assistance under this Act. Clause 127 replaces the current subsection 8(2)(c) with a new provision that expands this function to advising the Minister on these matters and extends it to carrying out research into, developing polices on and giving advice to the Minister about the financial performance and sustainability of the rural and regional sector in Queensland, in particular, primary producers, small business and other components of the State's economy.

Clause 127 also provides that it is a function of the authority to partner with commercial lenders and financial advisors to perform another function under subsection 8(2) and further the object of the Act. This provision is inserted as subsection 8(2)(f) and the current subsections 8(2)(f) to (i) are renumbered as 8(g) to (j).

Clause 128 amends section 9 which provides for the powers of the authority. The amendment clarifies that the powers of the authority extend to entering into contracts for loans. Currently, the authority's ability to lend amounts under the Act is not absolutely clear, because the Act does not specifically state that it has a power to lend, but it can be envisaged that it was intended it can lend under an approved assistance scheme particularly as some other provisions refer to loans made by the authority (see, for example, the definition of 'authority's assistance funds' in section 4 of the Act). Clarification that the authority has the power to lend money is highly desirable because some of the most important approved assistance schemes administered by the authority, including the Primary Industry Productivity Enhancement Scheme (PIPES) scheme and some Commonwealth schemes, including the Commonwealth Farm Finance Concessional Loans Scheme, involve loans.

Clause 129 amends section 10 which restricts the authority to giving financial assistance only under an approved scheme. It clarifies that financial assistance includes making loans on terms allowed under an approved scheme. This will give a firmer legal basis to the activities of the authority for lending money in the context of an approved assistance scheme or authorised interstate scheme. Approved assistance schemes must be prescribed by Regulation while authorised interstate schemes must be approved by the Minister.

Clause 130 amends section 27 which currently provides for the delegation of the authority's powers. The amendment extends the delegation power to the authority's functions and powers under this Act or another Act, thereby ensuring that functions and powers under the Farm Business Debt Mediation Act, and any future legislation which gives the authority functions and powers, can be delegated. The amendment also clarifies that the functions and powers can only be delegated to an 'appropriately qualified' officer of the authority. 'Appropriately qualified' is defined in schedule 1 of the *Acts Interpretation Act 1954* for a function or power as 'having the qualifications, experience or standing appropriate to perform the function or exercise the power'.

Clause 131 amends section 35 which provides for the appointment of an acting chief executive officer. The amendment will allow the appointment to be made by the board of the authority rather than the Minister. This will avert delays and improve efficiency in appointing an acting chief executive officer.

The amendment also clarifies that section 24B of the *Acts Interpretation Act 1954* (which provides that the power to appoint implies certain incidental powers) and section 25 of the *Acts Interpretation Act 1954* (which provides that an appointment to act in an office is not invalid merely because of a defect or irregularity in relation to the appointment) apply to the power to appoint an acting chief executive officer.

Clause 132 amends section 35B which provides for delegation of the functions of the chief executive officer. The amendment extends the delegation power to functions under another Act, thereby ensuring that functions under the Farm Business Debt Mediation Act, and any future legislation which gives the authority functions, can be delegated.

Clause 133 inserts a new heading which partitions the current transitional provisions – sections 52 - 54 which were inserted by the *Rural Adjustment Authority Amendment Act 2004* – into their own division within part 8 of the Act. The new division 1 is called 'Transitional provisions for Rural Adjustment Authority Amendment Act 2004'.

Clause 134 inserts transitional provisions – new sections 55 and 56 - for the Farm Business Debt Mediation Act 2016 as a new division (division 2) within part 8 of the Act. The new section 55 provides that QRAA is continued as the Queensland Rural and Industry Development Authority. The new section 56 provides that a reference in a document to QRAA may be taken to be a reference to the Queensland Rural and Industry Development Authority.

Clause 135 creates the heading for a new schedule to the *Rural and Regional Adjustment Act 1994* into which the definitions currently in section 4 of that Act are being moved by clause 124.

Schedule 1 Dictionary

Schedule 1 defines terms used in the Farm Business Debt Mediation Act.