

# Agriculture and Other Legislation Amendment Bill 2019

## Explanatory Notes

### FOR

## Amendments To Be Moved During Consideration In Detail By The Honourable Mark Furner MP

### Title of the Bill

Agriculture and Other Legislation Amendment Bill 2019

### Objectives of the amendments

#### Amendments to clause 132

The Agriculture and Other Legislation Amendment Bill 2019 is an omnibus Bill which was introduced into the Queensland Legislative Assembly on 22 August 2019. Most of the amendments in the Bill are non-controversial. The main exceptions are the amendments to address unacceptable behaviour during recent animal activist protests, including clause 132 of the Bill.

Clause 132, amends section 10A of the *Summary Offences Act 2005* to provide (broadly) that a gathering of three or more people on land used for specified purposes is unlawful if the conduct of the gathered persons, taken together, would cause a person in the vicinity to believe, on reasonable grounds, that the conduct is likely to cause economic loss to a business conducted on the land or poses a risk to the safety of any person or food, or a risk to animal welfare or biosecurity.

The objective of the amendments to clause 132 is to ensure section 10A of the *Summary Offences Act 2005*, as amended by clause 132, is not broader than necessary to achieve its intent, including to ensure it does not extend beyond conduct which is already unlawful and which actually disrupts a business or poses a risk to the safety of any person or food, or a risk to animal welfare or biosecurity.

#### Repeal of *Queensland Agricultural Training Colleges Act 2005*

Quite separately, the other objective of the amendments is to repeal the *Queensland Agricultural Training Colleges Act 2005* (QATC Act) and make necessary provision for its

assets, liabilities and other consequential matters.

In April 2018, Emeritus Professor Peter Coaldrake AO was invited to undertake a review of vocational education and training (VET) services across central west Queensland, including the Queensland Agricultural Training Colleges (QATC). The purpose of the review was to optimise the Queensland Government's investment in VET in the region to ensure students can access quality VET and employment opportunities without having to leave the region, and that regional development is supported by a locally available, appropriately skilled workforce. Professor Coaldrake provided his final report on 20 June 2018.

The Coaldrake Review found that the QATC residential training model is no longer relevant and that the Queensland Government should cease this mode of delivery and wind up the QATC. The Coaldrake Review also concluded that VET in the region could be improved through better utilisation of the existing assets and resources to support a range of offerings, not just limited to agriculture.

On 5 December 2018, the Government announced its decision on a new era of vocational training in the Central West. On the review's advice, QATC will cease operating at the end of 2019, with a transition to more modern, cost-effective training. \$7 million was provided to ensure current students can complete their qualifications or studies at QATC or through a supported transition to other training providers; to maximise employment opportunities, in consultation with staff and union representatives, which may include retraining, deployment, or redeployment; establish a project management office (PMO) with local support provided to students and staff; and work with the local communities to determine the best future use of existing college facilities.

Considerable progress has been made. The PMO has been established and is operating effectively. All QATC students have finished their training at QATC or transferred to an alternative provider at no additional cost to them. Local Community Stakeholder Committees have been established in Longreach and Emerald, and have considered over 20 proposals for the future use of the QATC facilities in each centre. A short-list of proposals has been developed for each centre, which in each case consists of a primary organisation proposing to provide training and related services, and a number of secondary proponents providing other services and commercial access to the facilities. While negotiations are continuing, this provides a good prospect that the QATC assets will be re-purposed to better benefit the communities concerned.

With QATC being wound-up, it is necessary to repeal the QATC Act and make necessary transitional arrangements. The closure of the QATC will be effected by the end of 2019 regardless of the repeal of the QATC Act. The repeal is being expedited by moving these amendments mainly to ensure there is no delay to the re-purposing of the QATC's assets, which will benefit the communities concerned.

### Other

An amendment is also proposed to address a drafting error in clause 36 of the Bill.

An amendment is also proposed to clause 2 of the Bill to fix the commencement of provisions that relate to the repeal of the QATC Act and other provisions that are being consequentially amended on its repeal. In addition, a further amendment is proposed to clause 2 that would fix

the commencement of all provisions in the Bill that seek to amend or insert a new offence provision. The objective of this latter amendment to clause 2 is to give effect to recommendation two in report number 37 following examination of the Bill by the State Development, Natural Resources and Agricultural Industry Development Committee.

A further objective of the proposed amendments is to amend the long title of the Bill to reference the QATC Act's repeal.

## **Achievement of the objectives**

The objectives will be achieved by:

- amending clause 132 to impose a more direct requirement that the conduct:
  - unlawfully happens on, or unlawfully affects, the land; or
  - poses a risk to the safety of a person or food, or a risk to animal welfare or biosecurity or is likely to directly disrupt the operation of a business operated on the land; and
- repealing the QATC Act and providing transitional arrangements for relevant matters including:
  - transfer of QATC assets to the State so that these assets can be re-purposed as appropriate;
  - transfer of QATC liabilities, records and other obligations to the State;
  - continuation of agreements made by QATC, such as agreements made pursuant to the transition arrangements;
  - agreed arrangements regarding the staff transition;
  - consequential amendments to other legislation in Schedule 1.
- replacing 'insert' with 'omit, insert' in clause 36 of the Bill to clarify that the relevant words are being replaced rather than added to.
- amending clause 2 to provide that all provisions that relate to the repeal of the QATC, including amendments consequential to its repeal, commence at the end of 29 February 2020.
- In addition, this clause achieves its further objective by providing that all provisions that amend or insert offence provisions, commence on 1 March 2020.
- amending the long title of the Bill to incorporate reference to the repeal of the QATC Act and amendments consequential to its repeal.

## **Alternative ways of achieving objectives**

### Amendment to clause 132

The Queensland Law Society, in their submission on the Bill, suggested that the provisions around economic loss need to be more clearly drafted and confined to the conduct which the Bill seeks to address. They suggested the provision be amended to "causes economic loss, reasonably arising in the circumstances". However, the amendment suggested by the Queensland Law Society may not be sufficient to clarify that it is not intended that offence extend to conduct which indirectly causes economic loss.

Another option would be to omit clause 132 entirely but take elements of the behaviour that it proposed to constitute the expanded section 10A (Unlawful assembly) offence, and provide that if that behaviour occurs when someone unlawfully enters or remains on relevant land then

a higher maximum penalty would apply for the section 13 (Unlawfully entering or remaining on relevant land) offence under the *Summary Offences Act 2005*, introduced by clause 133. That is, an aggravated offence would apply if a person unlawfully enters, or remains on, relevant land in a group of 3 or more who are gathered for a common purpose and their conduct poses a risk to the safety of any person or food, or a risk to animal welfare or biosecurity or disrupts the operation of a business conducted on the land. The problem with this option is that it does not address any inappropriate behaviour that is not already criminalised under the expanded section 13 (Unlawfully entering or remaining on relevant land), introduced by section 133. In particular, it does not criminalise any additional civil wrongs affecting relevant land, such as nuisance and besetting, which pose a risk to the safety of a person or food, or a risk to animal welfare or biosecurity or is likely to disrupt the operation of a business.

#### Repeal of *Queensland Agricultural Training Colleges Act 2005*

The dissolution or winding up of QATC can only be achieved by legislation and the legislation needs to deal with all of the issues that arise on the winding up of QATC. The QATC Act does not deal with how QATC can be wound up and QATC itself cannot transfer the whole of its undertaking, property and liabilities to another entity and effect its own dissolution.

#### Amended commencement provisions

An alternative to commencing the provisions on a fixed date is to commence the provisions that relate to the insertion of a new or amended offence provision on a date fixed by proclamation. This was the recommendation of the State Development, Natural Resources and Agricultural Industry Development Committee, however, commencing these provisions on a date set by proclamation would require the drafting of a new legislative instrument and be less administratively effective than fixing their commencement to a specific date.

## **Estimated cost for government implementation**

#### Amendments to clause 132

The amendments will have no significant impact on implementation costs. It could be argued that by clarifying some aspects of section 10A of the *Summary Offences Act 2005*, as introduced by clause 132, they could avoid unnecessary legal argument about its scope and the associated impact on the workload of the courts.

#### Repeal of *Queensland Agricultural Training Colleges Act 2005*

There is no additional implementation cost to Government.

#### Other amendments

These is no additional implementation cost to Government.

## **Consistency with fundamental legislative principles**

#### Amendments to clause 132

The amendments to clause 132 may pose the same or possibly reduce the potential breaches fundamental legislative principles by existing clause 132. Because they alter clause 132 they also impact the justification provided for the potential breaches by that clause in the Explanatory Notes for the Agriculture and Other Legislation Amendments Bill 2019. The revised justification is provided below.

**Legislation should have sufficient regard to the rights and liberties of individuals -  
*Legislative Standards Act 1992 (LSA), section 4(2)(a)***

***Freedom of movement and association***

The impact of the amended clause 132 on freedom of movement and association is justified by the need to balance this right against the rights of persons who work and live on the land and the interests of these persons and businesses whose lawful activities are being directly interfered with. The amended clause also protects the public interest in human health and safety, food safety, animal welfare, biosecurity. It is arguable that if there is disruption to a business conducted on the land or a risk to the safety of any person, food safety, animal welfare, or a biosecurity risk, then the assembly is not peaceful. Section 10A does not affect lawful industrial action because it is subject to the *Industrial Relations Act 2016*.

***Recognition and equality before the law***

By expanding the circumstances in which unlawful assemblies occur on land used for certain purposes, the amended clause 132 may adversely affect certain groups more than others, due to the beliefs and activities associated with particular social groups about those purposes, such as certain animal activist groupings. This could be seen to be incompatible with the general concept that people hold the same human rights by virtue of being human and not because of some particular characteristic or membership of a particular social group.

Although the amendments to sections 10A were prompted by the recent actions of animal rights activists, the behaviour these offences seek to regulate is not unique to those groups. It is the manner of the conduct not the view of those gathering which attracts the offence. The beliefs of the persons and their membership of a particular group is not relevant to determining whether the conduct of a gathering poses a risk to the safety of a person or food, or a risk to animal welfare or biosecurity or is likely to disrupt the operation of a business.

The amended clause 132 only criminalises behaviour which is already a civil wrong such as conduct committed while trespassing (which would be conduct that unlawfully happened on the land) and nuisance (which would be conduct unlawfully affecting the land). In this way, the amendments allow the State to share the burden of enforcing the property and other interests of those involved in farming and other relevant activities. This protection from interference is justified given their value to the community generally.

***Freedom of expression***

The amended clause 132 potentially limits the freedom of expression at certain places in a medium chosen by the person. This is justified because of the potential adverse effects resulting from their expression on human health and safety, food safety, animal welfare and biosecurity or for a business carried on the land. The amended section 10A does not affect lawful industrial action because it is subject to the *Industrial Relations Act 2016*.

### ***Proportion and relevance of the penalty to the offence***

The amended clause 132 would amend s10A (Unlawful assembly) of the *Summary Offences Act 2005* with the effect that the existing maximum penalty of one year's imprisonment also applies to a gathering of three or more persons on particular land specified in section 13(1) if their conduct poses a risk to the health and safety of a person or food, or a risk to animal welfare or biosecurity or is likely to directly disrupt the operation of a business on the land.

The extension of when 'unlawful assembly' occurs serves to protect the rights of persons who work and live on the land and the interests of these persons and businesses whose lawful activities are being directly interfered with. The amended clause also protects the public interest in human health and safety, food safety, animal welfare, biosecurity.

While a custodial sentence could be imposed, the courts will retain the capacity to impose alternative penalties including a monetary penalty or a community service order where considered appropriate under the *Penalties and Sentences Act 1992*.

### **Repeal of *Queensland Agricultural Training Colleges Act 2005***

**Legislation should have sufficient regard to the rights and liberties of individuals - *Legislative Standards Act 1992 (LSA)*, section 4(2)(a)**

### ***Compensation upon loss of office***

Amendments would provide that all board and board committee members and the principal executive officer and college directors go out of office on commencement and that no compensation would be paid for the loss of office. The lack of compensation, on its face, may appear to offend the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, section 4(2)(a)). However, the current transitional board are all unpaid and had no expectations of continuing when they agreed to be nominated. The principal executive's temporary contract has also expired. Hence, there is no actual or perceived loss that will be suffered by the non-payment of compensation

### ***Students***

The dissolution of the QATC as a training entity through the repeal of the QATC Act may have had an adverse impact on some students engaged in training through the colleges and as such, may offend the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals. The potential infringement on this fundamental legislative principle is justified in the context of the Coaldrake Review's findings that the residential-based agricultural education model operated by QATC was unsustainable in Central Western Queensland and has placed a significant public burden on the State. Moreover, any potential infringement is mitigated by the fact either that all QATC students had completed their studies at the time of the closure or have been transferred to another education provider at no cost to themselves.

## ***Employees***

The dissolution of QATC as a training entity and subsequent closure of the college has affected employees appointed under the Act, which may also be seen to infringe the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals. While certain employees were affected, the repeal of the Act is justified in the context of the public interest in reducing the financial burden associated with the ongoing operation of the college. In addition, any potential infringement is limited as assistance was provided to employees to mitigate any potential impact. This included the Employee Assistance Program which was implemented to help staff affected find alternative employment. In addition, any QATC remaining at the time of the repeal will transfer to the Department of Agriculture and Fisheries.

## **Consultation**

### Amendments to clause 132

On 22 August 2019, the Committee of the Legislative Assembly resolved that the State Development, Natural Resources and Agricultural Industry Development Committee should examine and report on the Agriculture and Other Legislation Amendment Bill 2019. The Committee inquiry received 18 written submissions and held a public hearing on Friday 13 September 2019. Many of the written submissions mentioned clause 132. In particular, written submissions by Animal Liberation Queensland and the Queensland Law Society (QLS) raised concerns about the wording of clause 132 being too vague.

### Repeal of *Queensland Agricultural Training Colleges Act 2005*

More than 70 key stakeholders, as well as local mayors and local MPs, were consulted during the Coaldrake Review. Local community stakeholder committees (LCSCs) have been formed in Emerald and Longreach to provide advice and inform the development of the transition arrangements. The LCSCs have received over 20 proposals for the future use of the QATC facilities in each Centre, and has short-listed a number of the most attractive proposals. The PMO is now negotiating with the proponents concerned.

### Commencement Clause

During the consultation process for the Bill, the QLS expressed concern that many of the proposed amendments relating to provisions that amend or insert an offence provision commence on assent. The QLS further suggested that it would be desirable if these provisions commenced on a date set by proclamation. The State Development, Natural Resources and Agricultural Industry Development Committee recommended this suggestion in their report on the examination of the Bill.

## **Notes on provisions**

*Amendment 1* amends clause 2 to provide that sections 128A and 128B, inserted by Amendment 5, provide for the repeal of the *Queensland Agricultural Training Colleges Act 2005* and relevant transitional arrangements. Amendment 1 also provides that amendments to other legislation that are consequential to the repeal of the *Queensland Agricultural Training*

*Colleges Act 2005* inserted by amendments 10 - 13 in Schedule 1 of the Bill, will also commence at the end of 29 February 2020 .

Clauses 7, 13, 14, 20, 21, 40, 46, 49, 66, 68, 69, 70, 72, 73, 76, 78, 79 and 83, and parts 17 and 18, that relate to new offences or amend existing offences or are consequential to relevant provisions, commence on 1 March 2020.

*Amendment 2* amends the heading of part 2, division 2 (Amendments commencing on assent) to reflect that the provisions commence either on assent or on 1 March 2020.

*Amendment 3* amends the heading of part 3, division 2 (Amendments commencing on assent) to reflect that the provisions commence either on assent or on 1 March 2020.

*Amendment 4* corrects a drafting error in the Bill. Clause 36 was intended to replace some wording in section 198 (Movement record for receiving designated animals) of the *Biosecurity Act 2014* to reflect that movement records may be kept in electronic form and only the serial number for the record need be kept or produced. However, subsection 36(4) provided the new words without omitting the existing words. The amendment clarifies that the relevant words are being replaced rather than added to.

*Amendment 5* inserts new clauses 128A and 128B in part 16 of the Bill which provides for the repeal of the *Queensland Agricultural Training Colleges Act 2005* and transitional arrangements for the dissolution of the Queensland Agricultural Training Colleges.

#### **Clause 128A Amendment of pt 8, hdg (Other transitional provisions)**

Clause 128A changes the heading of part 8 of the *Rural and Regional Adjustment Act 1994* to reflect that clause 128B inserts new division 3 which includes the repeal of the *Queensland Agricultural Training Colleges Act 2005* and savings provisions for the repeal.

#### **Clause 128B Insertion of new Part 8, division 3**

Clause 128B inserts new division 3 into Part 8 of the *Rural and Regional Adjustment Act 1994*. Division 3 comprises new sections 57 – 70.

### **Division 3 Repeal, savings and transitional provisions for repeal of Queensland Agricultural Training Colleges Act 2005**

Subdivision 1 (Repeal) comprises proposed section 57 which provides for the repeal of the *Queensland Agricultural Training Colleges Act 2005*, No. 20.

Subdivision 2 (Savings and transitional provisions) comprises new sections 58 – 70 of the *Rural and Regional Adjustment Act 1994*.

Proposed section 58 provides definitions for subdivision 2.

Proposed section 59 gives words in this subdivision the same meaning as they have in the repealed Act.

Proposed section 60 provides that on commencement the Queensland Agricultural Training Colleges (QATC) and its board are dissolved and the principal executive officer and each board member go out of office. No compensation is payable as a result. Subsection (3) clarifies that this does not limit or otherwise affect a person's right to a benefit or entitlement that had accrued before commencement.

Proposed section 61 provides that the State is the successor in law of QATC.

Proposed section 62 provides that on commencement, the assets and liabilities of QATC immediately before the commencement becomes the assets and liabilities of the State held in the department.

Proposed section 63 provides that on commencement, QATC's records and other documents held by QATC immediately before commencement become the records and other documents of the State held in the department.

Proposed section 64 provides that the State is a party to current instruments in place of QATC. Current instruments are contracts and other instruments to which QATC was a party immediately before the commencement or that otherwise applied to QATC immediately before the commencement. These include employment contracts, goods and services contracts and lease arrangements for the hire of training facilities.

Proposed section 65 provides that a reference to QATC in an Act or document is taken to be a reference to the State, if the context permits.

Proposed section 66 provides that in relation to a proceeding that immediately before commencement had not ended and to which QATC was a party - the State becomes a party to the proceeding in place of QATC.

Proposed section 67 provides that if immediately before commencement a proceeding could have been started by or against QATC, the proceeding may be started by or against the State.

Proposed section 68 provides for the registering authority to register or record the transfer of, or other dealing affecting, an asset, liability or instrument, without charge.

Proposed section 69 provides that on commencement a member of staff employed by the organisation, apart from a director or the principal executive officer, becomes a public service employee, and that a work performance arrangement or an interchange arrangement under the QATC Act ends. The proposed section further provides that Queensland Agricultural Training Colleges Certified Agreement and Queensland Agricultural Training Colleges Certified Agreement 2016 stop having effect on commencement of the Act.

Proposed section 70 provides for the effect on legal relationships of a thing done under this Act.

*Amendment 6* omits some of the lead in words in subsection (1) of section 10A (Unlawful assembly) of the *Summary Offences Act 2005*, as amended by clause 132, and provides those words only in relation to subsection (1)(a). Subsection (1)(a) is equivalent to the existing offence and the amendment makes no substantive change to the test for this aspect of the offence – the offence will apply where “the conduct ... would cause a person in the vicinity ... to reasonably fear that unlawful violence will be used to a person or property”. The effect of the amendment is on subsection (1)(b) which provides the new aspect of the offence relevant to conduct that happens on land mentioned in section 13(1). In this case, the offence would no longer be subject to a test that the conduct “the conduct ... would cause a person in the vicinity ... to believe, on reasonable grounds” that the conduct (broadly) poses a risk to the health and safety of a person or food, or a risk to animal welfare or biosecurity or is likely to cause economic loss to a business on the land.

*Amendment 7* replaces ‘cause economic loss to’ with ‘directly disrupt the operation of’ in subsection (1)(b)(D) of section 10A (Unlawful assembly) of the *Summary Offences Act 2005*, as inserted by clause 132.

*Amendment 8* is a consequence of amendment 4. Subsection 10A(2)(c) provides that it is immaterial to the offence whether there is or is likely to be a person in the vicinity. Given that amendment 6 would mean there is no longer a test about the reasonable belief of a person in the vicinity that is relevant to subsection (1)(b)(ii), amendment 8 removes mention of that test in subsection 10A(2)(c) of section 10A (Unlawful assembly) of the *Summary Offences Act 2005* as amended by clause 132.

*Amendment 9* is a consequence of amendment 6. New subsection (2A) of section 10A (Unlawful assembly) of the *Summary Offences Act 2005*, as inserted by clause 132, provides that subsections (1)(b)(ii) and (2)(c)(ii) are subject to the *Industrial Relations Act 2016*. Amendment 9 omits subsection (2)(c)(ii).

*Amendments 10 – 13* amend Schedule 1 (Other amendments) of the Bill to delete references to the QATC in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, *Education (Work Experience) Act 1996*, *Industrial Relations Regulation 2018*, *Public Interest Disclosure Act 2010*, *Public Sector Ethics Act 1994*, *Public Sector Ethics Regulation 2010*, *Public Service Regulation 2018*, *Statutory Bodies Financial Arrangements Regulation 2019*, and *Superannuation (State Public Sector) Notice 2010*, as a consequence of the repeal of the *Queensland Agricultural Training Colleges Act 2005*.

*Amendment 14* amends the long title of the Bill to provide for the amendments to the *Rural and Regional Adjustment Act 1994* which repeal the *Queensland Agricultural Training Colleges Act 2005* and provide for savings and transitional matters.