

Queensland Food Farmers' Commissioner Bill 2024

Explanatory Notes

Short title

The short title of the Bill is the Queensland Food Farmers' Commissioner Bill 2024.

Policy objectives and the reasons for them

The main objective of the Queensland Food Farmers' Commissioner Bill 2024 (the Bill) is to establish the Queensland Food Farmers' Commissioner (the QFF Commissioner). The proposed legislation will provide a statutory basis for the QFF Commissioner's functions.

The QFF Commissioner is to be a statutory appointment, independent of government and report to the Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities (the Minister). The QFF Commissioner will improve price transparency, redress the imbalance of power between the major supermarkets and their suppliers, and provide a safe environment for complaints to be considered and acted upon.

On 12 August 2024, the Premier and the Minister announced that an interim QFF Commissioner is to be appointed to support Queensland farmers. The announcement was part of the Government's response in accepting all recommendations of the Supermarket Pricing Select Committee report.

Achievement of policy objectives

The Bill will achieve the broad policy objectives by establishing the QFF Commissioner in standalone legislation that provides the commissioner with the functions of assisting farmers to navigate supplier arrangements with supermarkets, and scope a range of consultative, advisory, mediation, transparency and advocacy functions.

The Bill will achieve its objectives by:

- providing the power to appoint a QFF Commissioner;
- providing the functions and powers of the QFF Commissioner; and,
- providing other miscellaneous provisions to support the operation of the Act.

Provide for the appointment of a Queensland Food Farmers' Commissioner

The Bill:

- provides that there is to be a QFF Commissioner and provides the details of the appointment process and appointment term;
- provides the Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities authority to appoint an acting QFF Commissioner if the role is or becomes vacant; and,
- provides for the resignation and removal of the QFF Commissioner.

Provide for the functions and powers of the Queensland Food Farmers' Commissioner

The Bill:

- provides the functions of the QFF Commissioner, which are broadly to support Queensland farmers, and consumers, and provide reports and advice to the Minister on issues or matters affecting Queensland farmers, and consumers;
- specifies that the Minister can give the QFF Commissioner a direction relating to the functions and activities of the commissioner;
- provides that the Minister can issue the QFF Commissioner with a written statement of expectations about the Minister's expectations for the commissioner's performance of its functions and activities; and
- provides the reporting required of the QFF Commissioner, which includes regular reporting to the Minister and tabling of an annual report in the Legislative Assembly.

Miscellaneous provisions

The Bill provides for miscellaneous matters:

- provides that the QFF Commissioner may enter into information-sharing arrangements for the purposes of the commissioner's functions under this Act or for the purposes of another Act;
- provides that the QFF commissioner must not disclose confidential information unless certain circumstances are met;
- provides that the Governor in Council may make regulations under this Act; and,
- provides the Act must be reviewed after four years.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative amendment.

The alternative option of appointing a commissioner as a non-statutory position was considered. This option would involve appointing the Commissioner under the *Public Service Act 2022* as an officer within the Department of Agriculture and Fisheries (the department), or engaging a commissioner through a professional services contract for a specified term.

However, it was considered important to the role of the Queensland Food Farmers' Commissioner that the Commissioner be independent from the Government. Any real or perceived lack of independence would negatively impact the ability of the QFF Commissioner to be as effective as possible at carrying out their support and advisory functions.

Further, engaging a commissioner through a professional services contract for a specified term was considered to be a more costly option. A non-statutory commissioner model is also not consistent with the other contemporary commissioner models within Queensland and other States or Territories.

As such, this option was not considered a suitable way to achieve the identified policy objectives.

Estimated cost for government intervention

Any costs incurred through the implementation of amendments to the Bill will be met through existing budgets.

Consistency with fundamental legislative principles

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

Right to privacy – Publication of reports

Clause 5 of the Bill provides that the QFF Commissioner's functions include to publish reports on particular issues or general matters affecting farmers or consumers, or the commissioner's functions, where the commissioner and the Minister consider publication is appropriate. This function may infringe the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals to the extent that a report may contain private information relating to individuals or farm businesses and could be published.

However, any potential departure from this fundamental legislative principle is justified as the publication of reports where appropriate, particularly into broad issues affecting farm businesses or consumers will be crucial to ensuring public confidence in the QFF Commissioner. Clause 5 includes the safeguards that both the QFF Commissioner and the Minister must consider publication to be appropriate, and only about particular issues or general matters affecting farmers or consumers, or the commissioner's functions.

The nature and extent of any personal information contained in a report, and whether the relevant person had consented to publication would be relevant considerations for the QFF Commissioner and the Minister in deciding whether publication is appropriate.

Right to privacy – Information-sharing arrangements

Clause 26 of the Bill provides that the QFF Commissioner may enter information-sharing arrangements with other relevant government agencies for the purpose of assisting the commissioner or the other agencies to carry out its functions. This power may infringe the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals by permitting potentially private information relating to individuals or farm businesses to be shared.

However, any potential departure from this fundamental legislative principle is justified as the sharing of information is necessary for the QFF Commissioner to adequately undertake their core functions, such as providing a key point of contact in relation to matters affecting Queensland farmers.

To adequately perform its role, it is anticipated that the QFF Commissioner may need to share information with other agencies to engage with and represent the interests of farmers. The potential infringement of this fundamental legislative principle is mitigated by clause 27, which provides that it is an offence to disclose confidential information other than where necessary to

perform a function or relating to the administration of this Act, or where otherwise required or permitted by law.

Further, the QFF Commissioner and other agencies will remain subject to the *Information Privacy Act 2009*, which will provide safeguards for the use and management of any information obtained through the information-sharing arrangements.

Consultation

No consultation with key stakeholders occurred due to the urgent nature of the Bill to provide immediate support to Queensland farmers, and consumers in the current cost of living crisis.

However, a number of key stakeholders participated in the Supermarket Pricing Select Committee process, the results of which recommended that the Government investigate the establishment of an Office of the Queensland Farmers' Commissioner.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with legislation of the Commonwealth or other States or Territories.

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 provides that the Act may be cited as the *Queensland Food Farmers' Commissioner Act 2024*.

2 Main object

Clause 2 provides the main objects of the Act are to establish the office of Queensland food farmers' Commissioner (the QFF Commissioner) to support Queensland farmers and consumers in their dealings with supermarkets for the purpose of:

- a) improving transparency of those dealings, including, for example, dealings related to food supply chains and pricing of products;
- b) redressing power imbalances; and,
- c) supporting sustainability and stability of the food supply chain.

3 Definitions

Clause 3 provides definitions for particular words used in the Act. The intention is that this will provide the sector with certainty of the scope of application of the QFF Commissioner's functions.

The following terms are defined:

- *commissioner* – means the Queensland food farmers' commissioner appointed under Part 2.
- *Commissioner for fair trading* – means the commissioner for fair trading established under the *Fair Trading Act 1989*.
- *farmer* – means a person or entity whose sole or main business is a farming business located in Queensland.
- *Farming business* – includes:
 - a) an agricultural, apicultural, dairy farming, horticultural, land-based aquacultural, pastoral, poultry keeping or viticultural business; or
 - b) another business that involves cultivating the soil, gathering crops or rearing livestock; or
 - c) another business prescribed by regulation to be a farming business.

Part 2 Queensland food farmers' commissioner

Division 1 Establishment

4 Queensland food farmers' commissioner

Clause 4 provides that there is to be a QFF commissioner.

5 Functions and powers

Clause 5 provides for the main functions of the QFF Commissioner, which are:

- a) to provide a primary point of contact for matters affecting farmers;
- b) to provide information and advice to help farmers understand and manage arrangements that govern relationships between supermarkets and their suppliers;
- c) to work collaboratively with State and Commonwealth entities and other persons responsible for regulating farmers, including, for example:
 - i. the commissioner for fair trading;
 - ii. the Australian Competition and Consumer Commission established by the *Competition and Consumer Act 2010* (Cwlth), section 6A (including supermarket Code Arbiters); and,
 - iii. Food Standards Australia New Zealand under the *Food Standards Australia New Zealand Act 1991* (Cwlth).
- d) to monitor and advise the Queensland Government on developments in national arrangements that govern the relationships between supermarkets and their suppliers;
- e) to report to the Minister about a particular issue or general matter affecting farmers or consumers, including, for example, improper behaviours and business practices adversely impacting farmers or consumers;
- f) to prepare reports about particular issues or general matters affecting farmers or consumers, or the commissioner's functions;
- g) to publish reports mentioned in paragraph (f) if the commissioner and the Minister consider publication is appropriate; and,
- h) to perform any other function given to the commissioner under this Act or another Act.

Clause 5 also provides that the QFF Commissioner has the power to do anything necessary or convenient to be done for the performance of the commissioner's functions.

6 Not a statutory body for particular Acts

Clause 6 provides that, to remove any doubt, the QFF Commissioner is not a statutory body for the *Financial Accountability Act 2009* or the *Statutory Bodies Financial Arrangements Act 1982*.

7 Extraterritoriality

Clause 7 provides that the QFF Commissioner may perform the commissioner's functions inside and outside Queensland. This will enable the QFF Commissioner to work across all Queensland regions, and to work with other jurisdictions, such as the New South Wales or the Commonwealth, involved in administering matters relevant to Queensland food farmers.

8 Delegation

Clause 8 provides that the QFF Commissioner may delegate the commissioner's functions under this Act or another Act to an appropriately qualified public service officer.

9 Relationship with commissioner for fair trading

Clause 9 provides that nothing in this Act limits the functions of the commissioner for fair trading.

Division 2 Appointment

10 Appointment

Clause 10 provides that Governor in Council is to appoint the QFF Commissioner upon recommendation by the Minister, and the Minister may only recommend a person if that person is appropriately qualified to perform the functions of the commissioner.

11 Term of appointment

Clause 11 provides that the QFF Commissioner holds the office for a term of not more than three years. It further provides that a person can be reappointed as the QFF Commissioner only once for a further term of not more than three years.

12 Conditions of appointment

Clause 12 provides the QFF Commissioner is to be paid the remuneration, allowances and holds the office on conditions decided by Governor in Council. It further provides that the QFF Commissioner is appointed under this Act and not the *Public Sector Act 2022* to provide independence to the commissioner.

13 Preservation of rights of commissioner

Clause 13 only applies if a person who is a public service officer is appointed as QFF Commissioner. *Clause 13* provides that if a public service officer is appointed as QFF Commissioner, they will keep all rights accrued, such as long service leave, and continue to accrue rights while in the commissioner position.

The effect of this clause is that at the end of the person's term or on the person's resignation as QFF Commissioner, the person's service as the commissioner is taken to be service of a like nature in the public service.

14 Vacancy in office of commissioner

Clause 14 provides that the office of QFF Commissioner becomes vacant if the commissioner resigns under clause 15 or is removed by Governor in Council under clause 16.

15 Resignation

Clause 15 provides that the QFF Commissioner may resign by way of letter to the Minister, and this resignation takes effect when the Minister receives the resignation or if a later day is stated in the letter, the later day.

16 Removal

Clause 16 provides that the Governor in Council may remove a person from the office of QFF Commissioner under certain circumstances. These circumstances are if the person:

- is guilty of misconduct;
- is incapable of performing the functions of the QFF Commissioner; or,
- has neglected the duties of the commissioner, or performed the duties of the commissioner incompetently.

This clause does not limit section 25 of the *Acts Interpretation Act 1954*.

17 Acting commissioner

Clause 17 provides that when there is a vacancy in the office of QFF Commissioner or a period when the commissioner is absent from duty, or cannot, for another reason, perform the functions of the office, the Minister may appoint a person to act in the office of commissioner during this time. The intent of this provision is to ensure a continuity of support and advocacy during a vacancy period.

Division 3 Office of the Queensland food farmers' commissioner

18 Office of the Queensland food farmers' commissioner

Clause 18 provides that the office of the QFF Commissioner is established, that the office's function is to help the QFF Commissioner perform their functions, and that the office consists of the commissioner and their staff.

19 Staff

Clause 19 provides that the QFF Commissioner's staff are employed under the *Public Sector Act 2022*.

20 Control of office

Clause 20 provides that the QFF Commissioner controls the office of the QFF Commissioner. However, this does not prevent the attachment of the office to the department to ensure the office is supplied with the administrative support services the office requires to perform its function effectively and efficiently.

21 Staff not subject to outside direction

Clause 21 provides that staff of the office of the QFF Commissioner are not subject to direction by any person, other than from within the office, about the way the QFF Commissioner's functions are to be performed. Clause 21 applies despite the *Public Sector Act 2022*.

Division 4 Role of Minister and reporting requirements

22 Ministerial direction

Clause 22 provides that the Minister may give the QFF Commissioner a written direction about a matter relevant to the performance of the commissioner's functions and that the commissioner must comply with this direction.

The clause further provides that if the Minister gives the QFF Commissioner a written direction under subclause (1), the commissioner must include details in their annual report including the actions taken by the commissioner as a result of the direction.

23 Statement of expectations

Clause 23 provides that the Minister may give the QFF Commissioner a written statement of expectations for the performance of the commissioner's functions. This statement may state a particular period for which the statement applies; and provide for the nature and scope of the QFF Commissioner's activities for a particular period. It further provides that the QFF Commissioner must have regard to the statement of expectations in performing the commissioner's functions.

The intent of this clause is to ensure that the QFF Commissioner is able to respond effectively to emerging issues impacting Queensland farmers, and consumers and in turn, that the government is able to receive timely advice.

24 Reporting to Minister

Clause 24 requires the QFF Commissioner to keep the Minister reasonably informed about the functions the commissioner has performed. It further provides that the QFF Commissioner must comply with a reasonable request by the Minister to give the Minister stated information at a stated time about the functions performed or inquiries conducted by the commissioner.

The effect of this clause is that the QFF Commissioner will report to the Minister and will be separate to the department.

25 Annual report

Clause 25 provides that the QFF Commissioner must prepare and give to the Minister, within 3 months after the end of each financial year, a report that outlines the functions performed. It further provides that the Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

The intent of this clause is to ensure there is transparency to Queenslanders on the functions that the QFF Commissioner has undertaken and the directions the Minister has given to the commissioner for each financial year. The requirement to table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report ensures there is timeliness to this transparency.

Part 3 Miscellaneous

26 Exchange of information

Clause 26 provides that the commissioner may enter into an information-sharing arrangement with a relevant agency for the purpose of sharing information held or able to be accessed by the QFF Commissioner or relevant agency that assists the commissioner or relevant agency to perform their functions.

Clause 26 further provides that the QFF Commissioner and the relevant agency can ask for and receive information, disclose information to the other party, and use information disclosed. A relevant agency for this clause includes a chief executive of a department, a local government, or another entity established for a State government purpose that performs functions or administers matters relevant to farmers or consumers.

27 Confidentiality

Clause 27 applies to a person who is, or has been, performing functions under or relating to the administration of this Act and in doing so, has acquired or has access to personal information about another person.

Clause 27 provides that it is an offence to disclose confidential information to anyone else or use the information unless it is:

- necessary to perform a function under or relating to the administration of this Act; or
- otherwise required or permitted by this Act or another law; or
- with the consent of the person to whom the information relates; or
- in compliance with a lawful process requiring documents or evidence to be given to a court or tribunal.

A maximum penalty of 50 penalty units is provided.

This clause is intended to protect confidential information obtained in performing functions under the Act.

28 Protection from liability

Clause 28 provides that the QFF Commissioner is not civilly liable for an act done, or omission made, honestly and without negligence under this Act. Further, if clause 28 prevents civil liability attaching to the QFF Commissioner, the liability attaches instead to the State.

29 Review of Act

Clause 29 provides that the Act must be reviewed as soon as practicable after the day that is four years after commencement. It further provides that the Minister must table a report about the outcome of the review in the Legislative Assembly.

This clause is intended to ensure the effectiveness of the Act is considered.

30 Regulation-making power

Clause 30 provides that the Governor in Council may make regulations under this Act.

©The State of Queensland 2024