



Protecting Primary Production Amendment Bill 2011

Report No. 9
**Environment, Agriculture, Resources
and Energy Committee**
February 2012

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Acknowledgements

The committee thanks those who briefed the committee, made submissions, gave evidence and participated in its inquiry. In particular the committee acknowledges the assistance provided by the Department of Employment, Economic Development and Innovation.

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Abbreviations and Glossary

ACDC Board	Agricultural Chemicals Distribution Control Board
AVAQ	Australian Veterinary Association
BQ	Bisecurity Queensland
BSE	Bovine spongiform encephalopathy (mad cow disease)
DEEDI	Department of Employment, Economic Development and Innovation
NRVR	National Recognition of Veterinary Registration
PIMC	Primary Industries Ministerial Council
Prions	Proteins (infectious agents) that cause deadly brain diseases
RAM	Restricted animal material
RFB	Ruminant feed ban
Ruminant	Hoofed animals that characteristically have a stomach divided into four compartments and chewing a cud consisting of regurgitated, partially digested food
QCAT	Queensland Civil and Administrative Tribunal
QRAA	Queensland Rural Adjustment Authority
VSB	Veterinary Surgeons Board

Executive summary

This Report presents the findings of the Environment, Agriculture, Resources and Energy Committee's examination of the Protecting Primary Production Amendment Bill 2011, referred by the Legislative Assembly to the committee on 6 September 2011.

The Bill has wide ranging aims, including amendments to six Acts within the portfolio jurisdiction of the Minister for Agriculture, Food and Regional Economies. The Acts amended are:

- *Agricultural Chemicals Distribution Control Act 1966*
- *Agricultural Standards Act 1994*
- *Land Protection (Pest and Stock Route Management) Act 2002*
- *Plant Protection Act 1989*
- *Rural and Regional Adjustment Act 1994* and
- *Veterinary Surgeons Act 1936*.

Three written submissions were received by the committee in response to its call for submissions. The Department of Employment, Economic Development and Innovation has assisted the committee by providing a public briefing, responding to issues raised in submissions and providing further clarification and advice when required.

The Committee resolved, on 23 November 2011, **not** to hold a public hearing as part of their inquiry into the Bill.

Recommendations

Recommendation One

The committee recommends that the Protecting Primary Production Amendment Bill 2011 be passed.

1 Introduction

Role of the committee

The Environment, Agriculture, Resources and Energy Committee is a portfolio committee of the Queensland Parliament appointed on 16 June 2011 with responsibility for the following portfolios:

- Minister for Energy and Water Utilities
- Minister for Main Roads, Fisheries and Marine Infrastructure
- Minister for Agriculture, Food and Regional Economies
- Minister for Employment, Skills and Mining
- Minister for Environment and
- Minister for Finance, Natural Resources and The Arts

In relation to Bills, section 93 of the [Parliament of Queensland Act 2001](#) provides that portfolio committees are responsible for considering:

- the policy to be given effect, and
- the application of the fundamental legislative principles.¹

The committee's areas of responsibility are food, agriculture, regional economies, mines, energy, water, natural resource management, environment and fisheries. On 6 September 2011 the Legislative Assembly referred the [Protecting Primary Production Amendment Bill 2011](#), introduced by Minister for Agriculture, Food and Regional Communities to the committee for consideration and report by 6 March 2012.

Public submissions

The committee advertised its inquiry into the Bill in *The Courier Mail* on 17 September 2011 and wrote to stakeholder groups and other interested parties inviting written submissions. The committee accepted three written submissions (listed at Appendix 1). Appendix 2 provides a summary of the points raised in submissions on the parts and clauses of the Bill.

Public briefing

The committee's consideration of the Bill included a briefing by policy officers from the Department of Employment, Economic Development and Innovation (DEEDI) on 16 November 2011. The committee opened this briefing to the general public. A transcript of the briefing is available from the committee's [web pages](#).

¹Section 4 of the *Legislative Standards Act 1992* (Qld) provides that the fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. The principles include requiring that legislation has sufficient regard to rights and liberties of individuals.

Policy objectives of Bill

The Bill proposes amendments to six Acts:

- *Agricultural Chemicals Distribution Control Act 1966*;
- *Agricultural Standards Act 1994*
- *Land Protection (Pest and Stock Route Management) Act 2002*
- *Plant Protection Act 1989*
- *Rural and Regional Adjustment Act 1994*, and
- *Veterinary Surgeons Act 1936*.

According to Hon Tim Mulherin MP, Minister for Agriculture, Food and Regional Economies, these amendments will reduce red tape, enhance biosecurity emergency responses, streamline administration, deliver legislative requirements and benefit vets and animal owners.² The following sections summarise the proposed amendments to each Act.

Agricultural Chemicals Distribution Control Act 1966

Amendments to this Act will give effect to the Government's decision to abolish the Agricultural Chemicals Distribution Control Board and transfer the relevant functions to the chief executive of DEEDI in response to the Independent Review of Queensland Government Boards, Committees and Statutory Authorities (the Webbe-Weller review).³

Agricultural Standards Act 1994

Amendments to this Act will bring Queensland into line with other Australian jurisdictions by implementing the national Ruminant Feed Ban (RFB). The RFB prohibits the feeding of restricted animal material to ruminants to prevent the spread of transmissible diseases [such as bovine spongiform encephalopathy (BSE) known as mad cow disease].

The amendments are intended to ensure inspectors have adequate entry powers for the routine testing of stock feed.

Land Protection (Pest and Stock Route Management) Act 2002

Amendments to this Act will replace the existing requirement for two separate strategies with a single Queensland Weed and Pest Animal Strategy.

Plant Protection Act 1989

Amendments to this Act will clarify that land and vehicle owners and persons engaged by landowners to work on the land are obliged to notify an inspector of a notifiable pest based on whether they are aware of, or ought reasonably to have been aware of, the existence of the pest. The amendments require that such notifications must be made within 24 hours, either orally or in writing.

² Mulherin, Hon Tim (Minister for Agriculture, Food and Regional Economies) 2011, *Queensland primary production protected through new Bill*, Media Release, Parliament House, Brisbane, 29 November.

³ The terms of reference for the review by Ms Simone Webbe and Professor Patrick Weller AO, as well as submissions, reports and the government's response are available from the Department of Premier and Cabinet website at <http://www.premiers.qld.gov.au/government/boards-committees/review.aspx>.

Rural and Regional Adjustment Act 1994

Amendments to this Act are in response to the report of the review of the Act tabled in the Legislative Assembly on 21 September 2010.⁴ This report made recommendations to facilitate the administration of interstate schemes by the Queensland Rural Adjustment Authority (QRAA), to streamline the appointment of, and delegation of powers by, the QRAA Chief Executive Officer and to clarify the requirements for future review of the Act.

Veterinary Surgeons Act 1936

Amendments to this Act will allow Queensland to participate in the National Recognition of Veterinary Registration (NRVR) scheme. The agreement of all Australian states and territories to legislate for participation in the national registration scheme has been achieved via the national Primary Industries Ministerial Council.

A further amendment will ensure veterinary surgeons can be contacted at any time regarding biosecurity incidents.

⁴ Department of Employment Economic Development and Innovation, *Review of the Rural and Regional Adjustment Act 1994*, DEEDI, Brisbane, 2010.
<<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2010/5310T3011.pdf>>

2 Examination of the Bill

The following section discusses the key policy issues that the Bill seeks to give effect to and which attracted the greatest volume of comment in submissions. These issues are:

- national recognition of veterinary registration
- emergency contacts for veterinarians, and
- abolition of the Agricultural Chemicals Distribution Control Board

For the remaining parts, the committee is satisfied with the advice provided by DEEDI addressing the points raised in submissions. The table at Appendix 2 provides a summary of comments on the parts and clauses of the Bill raised in submissions, together with responses to these comments provided to the committee by DEEDI.

National Recognition of Veterinary Registration (NRVR)

Part 7 of the Bill contains amendments to the *Veterinary Surgeons Act 1936* to implement the National Recognition of Veterinary Registration (NRVR) scheme in Queensland. The NRVR scheme was adopted by the Primary Industries Ministerial Council (PIMC)⁵ in November 2008. The aims of the NRVR are to:

- ensure that veterinarians, registrable in Australia, can be registered to practise nationally on the basis of a single application and single fee, while retaining current arrangements as far as possible
- provide for simple and effective implementation within current VSB structure, easily applicable in all jurisdictions
- progress nationally uniform categories of registration eg general and specialist registrants
- be achievable with minimal legislative amendment, and
- have minimal cost implications for the general public and be easy to administer.⁶

The fundamental principles of the scheme are set out in a paper, *National Recognition of Veterinary Registration Model for use in Australia*, dated 10 August 2007.⁷

In its resolution on the scheme, PIMC noted the progress since 2005 towards adoption of a national recognition of veterinary registration, and very strong support amongst the veterinary profession and stakeholder groups for the proposed change. PIMC also noted that, of the 750 submissions received in response to the regulatory impact statement for the scheme, 744 were in favour of a system of national veterinary registration.

⁵ The Primary Industries Ministerial Council is the peak government forum for consultation, coordination and, where appropriate, integration of action by governments on primary industries issues. PIMC consists of the Australian/state/territory and New Zealand government ministers responsible for agriculture, food, fibre, forestry, fisheries and aquaculture industries/production and rural adjustment policy. http://www.mincos.gov.au/about_pimc, last accessed 30 November 2011.

⁶ Department of Agriculture, Fisheries and Forestry, *National Registration of Veterinarians*, <http://www.daff.gov.au/animal-plant-health/animal/system/vets>, last accessed 30 November 2011.

⁷ Department of Employment, Economic Development and Innovation, 2011, *Queensland Amendments for the National Recognition of Veterinary Surgeons and Specialists*, briefing document provided to the committee on 9 November.

Issues raised by submitters

The submission from the Veterinary Surgeons Board (VSB) raised the following concerns regarding these amendments:

The Board notes that the proposed NRVV amendments do not include a provision for recognition of a national database of registered veterinarians. The draft amendments do not represent uniformity with legislation adopted in other states in this regard. The omission of a provision for recognition of a national 'register' of veterinarians may prevent Queensland from participating to the detriment of Queensland based veterinarians.⁸

Advice from DEEDI

In its advice to the committee, DEEDI provided the following comments regarding the VSB's submission:

- the national database, about which the VSB raised an issue, is a cooperative exercise which will develop progressively as each jurisdiction legislates to allow information about registration details and disciplinary action to be supplied to other registration authorities.
- the NRVV model allows each jurisdiction the discretion to amend its legislation in a way it best thinks will support the scheme for the national recognition of veterinary registration. The Queensland amendments have been drafted to ensure that the VSB is able to provide the necessary information to fully support the operation of a national database and to allow every Queensland veterinary surgeon and specialist full access to the benefits of national registration.
- the legal power for a registering authority to provide information about registered veterinary surgeons as between each jurisdiction will be addressed by each jurisdiction within the context of that jurisdiction's own legislative framework.
- in Queensland, all of the usual registration information about veterinary surgeons and veterinary specialists is stored on the registers kept pursuant to section 16 of the *Veterinary Surgeons Act 1936*. That section requires that the registers be kept electronically and be made available for inspection on the website. Because that information is then published in the public domain there is no impediment to the Queensland VSB making that information available to other registering authorities.
- the other relevant category of information relevant to the NRVV database is the record of disciplinary action taken by either the VSB or the Queensland Civil and Administrative Tribunal (QCAT) in respect of veterinary surgeons. Because national registration is based on a mechanism which deems or mirrors the exact status of a veterinary surgeons registration in the home jurisdiction it is imperative that any change to that registration is notified to other NRVV jurisdictions.
- the VSB is authorised to supply that information to other jurisdictions through clause 58 which inserts new section 22FA (Board to notify registration authority of disciplinary action) into the VS Act. That section requires the VSB to notify other jurisdictions of any disciplinary action taken by either QCAT or the VSB under sections 22A, 22C, 22D or 22E of the Act.
- the Bill makes it mandatory for the VSB to advise other registering authorities as soon as practicable of any disciplinary action which might affect the registration status of any veterinary surgeon or veterinary specialist. The drafting instructions for the Queensland VS Act amendments clearly stated that the VSB must be authorised to supply information on the register and records of disciplinary action to other jurisdictions for the effective administration of the scheme in each jurisdiction.

⁸ Veterinary Surgeons Board, Submission no.1, p. 2.

- the clauses in this Part of the Bill as drafted are consistent with the government's position in this area. Accordingly, no changes are proposed in response to the public submission.

Committee comment

The committee notes the advice provided by DEEDI, and does not recommend amendments in view of the points raised by the VSB.

Emergency contacts for veterinarians

Clause 59 (in Part 7 of the Bill) contains a specific provision that will ensure all veterinary surgeons can be contacted at any time about actual or potential biosecurity incidents. The clause will require veterinary surgeons to provide after-hours contact information to DEEDI.

Issues raised by submitters

The Veterinary Surgeons Board raised a concern regarding this specific clause:

Having taken into consideration the information provided by DEEDI in consultation the Board notified its position not to support the progress of amendments to the Act to require veterinary surgeons to supply emergency contact detail without all Queensland registered veterinary surgeons having first been given the benefit of consultation on the proposal.

The Board's assessment of the amendments is that the incorporation of offence provisions provides the potential for significant impact on individual veterinary registrants and therefore the proposed amendments warrant individual consultation with each registrant.⁹

Advice from DEEDI

In its advice for the committee, DEEDI provided the following comments regarding the VSB's submission:

- although the VSB requires certain information on the annual renewal form the only statutory requirement for vets to update contact details is found in section 19(2) which requires notification only of a change to a business address.
- there are two elements to the amendments –
 - to ensure that privacy laws do not prevent the VSB supplying the contact information to Biosecurity Queensland (BQ); and
 - to make it mandatory for veterinary surgeons to supply emergency contact details.
- DEEDI is considering these recommendations. During a briefing session on the proposed amendments on 15 July 2011 provided by the Departmental instructing officers during the drafting phase of the Bill, the VSB indicated that it agreed that there is a need for BQ to be able to contact veterinary surgeons in the case of an emergency biosecurity incident.
- the Department officers explained to the Board that OQPC had advised that an offence provision must be included with the mandatory requirement for veterinary surgeons to provide emergency contact details. The only alternative was an administrative disciplinary process involving full natural justice.
- the Queensland Branch of the Australian Veterinary Association (AVAQ) was consulted by BQ on two occasions, 28 July 2011 and 12 August 2011, about the proposed amendments. At the first meeting, there was provisional support for the amendments. At the second meeting, concerns regarding the reasons for the provision of emergency contact details and the penalty provisions were raised. The policy basis for the amendments was provided in each meeting.

⁹ Veterinary Surgeons Board, Submission no.1, p.2.

- as a result of the second meeting with AVAQ, the provisions relating to the purpose for obtaining the out of hours contact details for veterinarians was narrowed to only allow BQ to contact veterinarians 'out of hours' to provide information during an emergency response. This was to address concerns by the AVAQ that private veterinarians may be 'called' out by BQ on a weekend to respond to a biosecurity emergency.
- in regard to the penalty for non-compliance, the VSB was also advised that it is clearly within its own discretion as to whether an infringement notice is applied in any case.
- the clauses in this Part of the Bill as drafted are consistent with the government's position in this area. Accordingly, no changes are proposed in response to the public submission.

Committee comment

The committee notes the concerns raised by the VSB and the advice provided by DEEDI. The committee strongly supports the collection of veterinary surgeons' emergency contact details. In our view, it is a reasonable expectation that veterinary surgeons should be contactable after hours by departmental officials given the serious health, economic and social implications of disease outbreaks and other biosecurity incidents.

The committee requests that the Minister give consideration to sharing veterinarians' emergency contact details with Queensland Health and Occupational Health and Safety Queensland to be used in biosecurity incidents. This point was raised by the Member for Hinchinbrook during the departmental briefing on the Bill.

Abolition of the Agriculture Chemicals Distribution Control Board

As noted above, the amendments to the *Agricultural Chemicals Distribution Control Act 1966* will abolish the ACDC Board. This is in line with the findings of the Webbe-Weller Review, an independent review of Queensland Government boards, committees and statutory authorities conducted between July 2008 and March 2009.¹⁰ The aim of the review was to:

- reduce bureaucracy and unnecessary red tape
- improve the overall efficiency of government bodies, and
- maintain the integrity and security of necessary regulatory functions.

The review report, *Brokering Balance: A Public Interest Map for Queensland Government Bodies*, contained 210 recommendations.¹¹ In relation to the Agriculture Chemicals Distribution Control Board, the review noted:

*When bodies have not met for some time, or when the positions on the bodies have remained unfilled, it is reasonable to assume that there is no pressing need for these bodies and that they can be abolished. The terms of the members of the Agricultural Chemicals Distribution Control Board have expired and there is no identified need for its continuance.*¹²

Also in line with the findings, the functions of the ACDC Board would transfer to the chief executive of DEEDI. In his introductory speech, the Minister foreshadowed that these functions would be administered by Biosecurity Queensland.¹³

¹⁰ Information on the review is available at <http://www.premiers.qld.gov.au/government/boards-committees/review.aspx>, last accessed 29 November 2011.

¹¹ Bligh, Hon Anna (Premier and Minister for The Arts) 2009, *Wide-ranging recommendations contained in Weller review*, Media Release, Parliament House, Brisbane, 31 March <<http://www.cabinet.qld.gov.au/mms/StatementDisplaySingle.aspx?id=63187>>.

¹² Webbe, Simone and Weller, Patrick, 2009, *Brokering Balance: A Public Interest Map for Queensland Government Bodies An Independent Review of Queensland Government Boards, Committees and Statutory Authorities* p.93 (available at <http://www.premiers.qld.gov.au/government/assets/part-b-report-brokering-balance.pdf>).

Issues raised by submitters

The Queensland Murray-Darling Committee objected to the proposed transfer of the ACDC Board functions to DEEDI. They wrote:

QMDC does not support the transfer of the relevant functions to the Chief Executive Of DEEDI on the grounds that DEEDI's functions are primarily focused on economic development...Reliance on regulation of licensing and inspection by DEEDI is considered by QMDC to not be the most effective way of meeting the objectives of responsible chemical use, although QMDC supports that some form of legislation and government role will always be required, particularly when community or environmental protection is needed.

QMDC submits that one agency (an agency with appropriate legislative power and technical expertise) should assume the lead control and management role and have the right to call upon other agencies to assist in a technical capacity, as required by the circumstances of the case.¹⁴

Advice from DEEDI¹⁵

In its advice on the submissions, DEEDI commented on the points raised by QMDC:

- the abolition of the ACDC Board was a key recommendation of the 2009 Independent Review of Queensland Government Boards, Committees and Statutory Authorities
- with the abolition of the Board, the transfer of these mostly licensing powers fall to the chief executive in accord with modern contemporary drafting practice
- however, the abolition of the ACDC Board does not mean the dismantling of the existing regulation of the use of agricultural and veterinary chemical products. The regulatory controls remain predominantly under the Chemical Usage Act, as well as under retained provisions of the ACDC Act, both administered by Biosecurity Queensland
- accordingly Biosecurity Queensland assumes the lead agency role for reported incidents of misuse of agricultural chemicals, such as failing to observe product label instructions. Where necessary Biosecurity Queensland may also refer a particular incident to another agency best placed to deal with a specific aspect of chemical misuse. For example misuse incidents affecting rivers or streams may be referred to the Department of Environment and Resource Management, and
- the clauses in this Part of the Bill as drafted are consistent with the government's position in this area. Accordingly, no changes are proposed in response to the public submission.

Committee comment

The committee is satisfied with the responses provided by DEEDI during the public briefing and in response to the submissions.

Requirements to notify an inspector of notifiable pests

The proposed amendments to the *Plant Protection Act 1989* will clarify that land and vehicle owners and persons engaged by landowners to work on the land are obliged to notify an inspector of a notifiable pest based on whether they are aware of or ought reasonably to have been aware of the existence of the pest.

¹³ Queensland, *Record of Proceedings*, Legislative Assembly, 6 September 2011, p.2773 (Hon Tim Mulherin MP, Minister for Agriculture, Food and regional Economies) – available <http://www.parliament.qld.gov.au/documents/tableOffice/HALnks/110906/Protect.pdf>

¹⁴ Queensland Murray-Darling Committee, Submission no.2, p.1.

¹⁵ Department of Employment, Economic Development and Innovation, 2011, *Report of the Department of Employment, Economic Development and Innovation in response to public submissions on the Bill to the Environment, Agriculture, Resources and Energy Committee*, provided to the committee on 25 November.

Issues raised by submitters

The Queensland Murray-Darling Committee (QMDC) and Growcom raised concerns about these amendments in their submissions.

QMDC supports the proposed amendments, but seeks clarification as to whether the legal definition of 'pest' aligns to the meaning proposed by the new 'Biosecurity Act' (currently the *Biosecurity Bill 2011*)¹⁶.

Growcom, representing the State's fruit and vegetable growing industry, expressed concern about the time period line for notification of a 'notifiable pest', and have suggested an amendment to the proposed new section 12 subsection (3) to allow further time for notification beyond the 24 hour period provided for in the amendments as drafted¹⁷.

Advice from DEEDI¹⁸

In their advice on the submissions, DEEDI made the following comments on the points raised by the QMDC:

- the *Plant Protection Act 1989* defines pest to mean any organism of the plant or animal kingdom (excluding vertebrates) or any virus or viroid or disorder or condition or cause of specified symptoms that is declared to be a pest under section 4 of that Act
- however, 'pest' is not defined in the Biosecurity Bill. Rather, the Biosecurity Bill adopts a broad scope for pests, diseases etc under the term 'biosecurity matter'. Under Clause 14 of the Biosecurity Bill, 'biosecurity matter' includes any living thing other than a human or part of a human; a prion or other thing prescribed under a regulation that can cause disease in an animal or a human, by transmission of the prion or other thing from animal to human; or a disease; or a contaminant
- furthermore, provisions under the Biosecurity Bill allow for action to be taken even if the biosecurity matter is not prescribed. Carriers of biosecurity matter can also be regulated.
- the definition of 'biosecurity matter', will in future, capture the matters addressed in the current definition of 'pest', and
- the clauses in this Part of the Bill as drafted are consistent with the government's position in this area. Accordingly, no changes are proposed in response to the public submission

On the points raised by Growcom, DEEDI advised:

- the proposed amendment will clarify the obligation on persons to notify an inspector of a notifiable pest's existence as soon as practicable within 24 hours of becoming aware, or where they ought reasonably have been aware, of the pest's existence.
- the proposed amendment reduces red tape and makes the process of notification simpler by removing the requirement to provide follow up written confirmation of the notification within seven days which is impracticable.
- the proposed amendment assists with enforcement of the provision and is consistent with the national approach for reporting exotic pests.
- the proposed amendment provides that an inspector may be notified either orally or in writing. Notifications made orally could be made, for example, in person or via telephone/mobile. Examples of written notifications could be email, SMS message or equivalent.

¹⁶ Queensland Murray-Darling Committee, submission no.2, p.2.

¹⁷ Growcom, submission no.3, pp.1-2.

¹⁸ DEEDI, 2011, *Report of the Department of Employment, Economic Development and Innovation in response to public submissions on the Bill to the Environment, Agriculture, Resources and Energy Committee*.

- a person may also discharge their obligation to notify an inspector of the existence of a notifiable pest orally by calling the Department's Business Information Centre, the normal operating hours of which are from 8:00am to 6:00pm Monday to Friday. Outside of these normal operating hours the Business Information Centre is staffed by a contract service.
- in view of the important, time critical nature of the obligation on persons, the Department is satisfied for the obligation to notify an inspector to be discharged in this manner.
- the Chief Executive of DEEDI can exercise discretion as to whether to prosecute a person under the proposed provision based on an assessment of whether the person is aware, or ought reasonably have been aware, of the pest's existence as evidenced by the amount of information the person has received from the Department or had available or generally been exposed to.
- the intent of the proposed amendment is to ensure that an inspector is notified of the presence of a pest as soon as practicable in order that, where appropriate, a response can be mounted.
- this clause as drafted is consistent with the government's position in this area. Accordingly, no changes are proposed in response to the public submission.

Committee comment

The committee is satisfied with the advice provided by DEEDI on the points raised by the QMDC and Growcom.

3 Fundamental legislative principles

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

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

The committee sought advice from DEEDI in relation to possible fundamental legislative principle issues and other issues affecting clause 39 and the explanatory notes of the Bill. The following section discusses the issues raised by the committee and the subsequent advice provided by DEEDI on 27 January 2012.

Clause 39

Clause 39 amends section 12 of the *Plant Protection Act 1989* (PPA) to require a land or vehicle owner, or a person engaged by a landowner to carry out activities on the land, to notify an inspector under the PPA of the existence of notifiable pests on the land or vehicle. Such notification must occur as soon as practicable, but not more than 24 hours after they become aware, or ought reasonably to have become aware, of the existence of the pest. A substantial penalty of 1,000 penalty units (\$100,000) applies for a failure to so notify.

The explanatory notes offer an explanation for why this lowering of the evidential threshold is considered necessary (EN pages 4-6). The EN states that Biosecurity Queensland will provide persons with information to enable awareness of the presence of notifiable pests based upon key, specific criteria. The notes advise that this may include on-site visits and the distribution of other educational material or campaigns either directly to individuals or to the community generally through various media. The notes caution that, where a person has received or been exposed to one or more of these sources of information, it can be more successfully argued that a person ought reasonably to have been aware of a pest’s existence and consequently should have notified an inspector.

The clause amends section 12 to provide for a range of states of mind when establishing culpability for a failure to notify (from ‘aware’ to ‘ought reasonably to have been aware’). Although the explanatory notes suggest exposure to educational material might be considered to contribute to a state of reasonable awareness, the Bill as drafted does not itself specify what factors might be taken into account when determining whether a person ‘ought reasonably to have been aware’, including whether or not any other factors (apart from exposure to educational material) might be considered to contribute to a person’s presumed/constructive knowledge about the existence of notifiable pests on their property.

It is also unclear as to what level of exposure to educational material might be deemed sufficient to establish that a person ought reasonably to have known/been able to identify a suspected notifiable pest.

The committee’s request for advice

The committee sought advice from DEEDI on factors that might be taken into account when determining whether a person ‘ought reasonably to have been aware’, including whether or not any other factors (apart from exposure to educational material) might be considered to contribute to a person’s presumed/constructive knowledge about the existence of notifiable pests on their property.

The committee also sought advice as to the circumstances in which a person could be deemed to have been adequately informed of the possible existence/nature of notifiable pests such as could ground their liability if they failed to notify an inspector about the existence of such pests on their property. On this point, the committee invited the department to provide scenarios to explain the threshold for what would constitute providing adequate information. The committee asked specifically whether providing landholders a leaflet with pictures and descriptions of notifiable pests would be considered adequate information for the purposes of prosecuting an offence, and whether merely providing a web link to, or the existence of, information on notifiable pests published on the department's website would be sufficient.

The committee also requested that DEEDI provide copies of the department's printed educational material that is disseminated to households/landowners regarding notifiable pests in order to promote general awareness and reporting.

Advice from DEEDI

DEEDI provided the following advice:

On other factors, apart from exposure to educational material that might be considered to contribute to a person's presumed/constructive knowledge about the existence of a notifiable pest on their property -

Further examples upon which reasonable awareness may be determined may be, but not limited to, general discussions the person had with inspectors over time on the pest in question, enquiries the person may have made through the DEEDI Business Information Centre, whether any previous treatments (either by air or ground distribution) or surveillance were conducted on the person's property. I advise that page five of the Explanatory Notes to the Bill also mentions on-site visits by an inspector and various media coverage of the pest in the area (impliedly through either TV or newspaper).

In order to determine a person's reasonable awareness of a pest, an inspector would be mindful of various considerations which would differ depending on the pest and the circumstances leading to its detection. It should be noted therefore that the above examples are not an exhaustive list. It is relevant to note that for this reason it is seen as impractical for the legislation to prescribe every possible factor which may be taken into consideration to determine a person's awareness or reasonable awareness.

On the circumstances in which a person could be deemed to have been adequately informed of the possible existence/nature of notifiable pests such as could ground their liability if they failed to notify an inspector about the existence of such pests on their property -

In view of the nature and extent of potential factors which may be taken into consideration to determine a person's awareness or reasonable awareness of a pest, it is not possible to simply identify circumstances where a person could be considered "adequately informed". However, the Committee's enquiry in this regard could possibly best be answered by the actual fire ant detection scenario provided in response to the following query.

On scenarios to explain the threshold for what would constitute providing adequate information -

The Committee's query in this regard can best be answered by providing details of the fire ant detection which gave rise to the proposed amendment of section 12 of the PPA in the first place, details of which are:

In May 2010, a significant detection of red imported fire ant infestation was made on a property at Purga, near Ipswich in South-East Queensland. The infested property was a rural residential property and included a private residence, cattle yards and some cultivation. The infestation was clearly apparent and located in open grassed paddocks, along fence lines and along the banks of the creek running through the property.

One thousand two hundred and forty one fire ant mounds were counted by DEEDI inspectors on eight hectares of the 37 hectares inspected and were located at places where it is reasonable to believe that they would have been obvious to the property owner, for example, near yards, stored hay, farm dams, fences and internal roads. It was clear that the fire ant mounds had developed within the timeframe that the National Red Imported Fire Ant Eradication Program was conducting operations in the area, including seeking consent from owners to conduct prophylactic treatment of the area for fire ants.

This infestation was not reported to DEEDI by the owner of the property and was ultimately reported by a person who was slashing the road verge in front of the property who noted the nests and suspected them to be fire ants.

The property owner was first exposed to information on fire ant in the area when Biosecurity staff visited the property to conduct surveillance for fire ant in 2003 and 2005. The property was also treated seven times between 2003 and 2005. Fire ant awareness material was delivered to the property and consent was sought from the occupier to inspect or treat for fire ant prior to each entry on to the property over this period.

A restricted area was declared for fire ant in the area and information that specified the obligations of persons within that area were published in the local paper. Following fire ant detections in Purga, Yamanto and Ripley in 2003, public meetings were held in each location with a media release to local papers and advertised in the Queensland Times and the free community papers three times during 2003.

DEEDI officers are of the opinion that if section 12 of the PPA had been amended in the manner proposed, the number of factors outlined in the above circumstance would have provided sufficient basis for an inspector to determine that the property owner was aware or ought reasonably have been aware of the existence of fire ant on his property. In this particular circumstance it is likely that a breach would have been pursued.

I am advised that in practical terms, enforcement of the proposed amendment relies in the first instance upon an inspector's judgement as to whether a person was aware or ought reasonably be aware of the pest. In order to exercise this judgement, policy/operational guidelines would be developed by DEEDI to ensure that the proposed provision is enforced in an appropriate and consistent manner.

From DEEDI's perspective, the amendment of section 12 of the PPA as it is currently drafted is appropriate, recognising that it would not be possible to foresee and prescribe all relevant considerations/thresholds to make a determination of a breach of this provision.

On whether merely providing a web link to information on notifiable pests would be considered adequate information for the purposes of prosecuting an offence –

I advise that it is not likely that evidence solely of this nature could be relied upon to prosecute an offence.

Committee comment

The committee is satisfied with the advice provided by DEEDI. The committee is also of the view that the material disseminated to households and landholders is of an appropriate, adequately detailed standard to promote general awareness and reporting of notifiable pests.

Appendices

Appendix 1 – List of Submissions

Sub #	Name
1	Veterinary Surgeons Board of Queensland
2	Queensland Murray-Darling Committee
3	Growcom

Appendix 2 – Summary of Submissions

REPORT OF THE DEPARTMENT OF EMPLOYMENT, ECONOMIC DEVELOPMENT AND INNOVATION IN RESPONSE TO PUBLIC SUBMISSIONS ON THE BILL TO THE ENVIRONMENT, AGRICULTURE, RESOURCES AND ENERGY COMMITTEE

Clause/Topic	Summary of Issues in Submissions	Departmental Advice
<p>Part 1 of Bill Preliminary provisions (Short title of the Bill and Commencement)</p>	<p>No submissions raised any issues</p>	<p>No changes are proposed</p>
<p>Part 2 of the Bill Amendment of the <i>Agricultural Chemicals Distribution Control Act 1966</i></p> <p>Note: the submission spoke in general terms and did not identify any specific Clauses of the Bill for proposed amendment or reconsideration.</p>	<p>Submission #2: Queensland Murray-Darling Committee Inc. (QMDC)</p> <p>The QMDC does not support the transfer of the functions of the Agricultural Chemicals Distribution Control Board (ACDC) to the Chief Executive of DEEDI (the dissolution of the Board is proposed in the Bill).</p> <p>The QMDC submission outlined the views of that body in regard to the control of usage of agricultural chemicals, and argued for the retention of the ACDC Board, but with membership increased to include ‘key stakeholders’.</p> <p>QMDC also submitted that one agency (with appropriate legislative power and technical expertise) should assume the lead control and management role with respect to responsible agricultural chemical use.</p>	<p>Background</p> <ul style="list-style-type: none"> • The amendments in this part of the Bill will transfer the powers of the former Agricultural Chemicals Distribution Control Board (the Board), to the chief executive, DEEDI. Appointments to the Board expired on 7 December 2007. • DEEDI is made up of a number of former departments including the former Department of Primary Industries and Fisheries (DPI&F) which incorporated Biosecurity Queensland. • With the creation of DEEDI all functions of the former DPI&F, including Biosecurity Queensland, have been retained within DEEDI, including licensing for ground and aerial distribution of agricultural chemicals under the <i>Agricultural Chemicals Distribution Control Act 1966</i> (ACDC Act) carried out on behalf of the Board, and other associated functions of the Board. • Successive Boards have delegated their powers to the Standards Officer who is an officer of Biosecurity Queensland as provided in section 10B of the ACDC Act. This power has been further delegated under the provisions of the <i>Chemical Usage (Agricultural and Veterinary) Control Act 1988</i> (Chemical Usage Act) to experienced licensing officers within Biosecurity Queensland who assess applications for licences on behalf of the Board. • The Standards officer as an ex officio member of the Board has held responsibility for the secretarial duties associated with the Board since the commencement of the ACDC Act in 1970. • The assessment of applications for licensing and other functions of the Board have been handled by officers of Biosecurity Queensland or its predecessors, the Animal and Plant Health Service and Standards Branch of DPI&F since the ACDC Act’s commencement. • Accordingly the area of responsibility in dealing with matters associated with the Board that has been in place since 1970 remains unchanged as a consequence of the incorporation of

		<p>Biosecurity Queensland into DEEDI.</p> <p>Comments</p> <ul style="list-style-type: none"> • The abolition of the ACDC Board was a key recommendation of the 2009 Independent Review of Queensland Government Boards, Committees and Statutory Authorities. • With the abolition of the Board, the transfer of these mostly licensing powers fall to the chief executive in accord with modern contemporary drafting practice. • However, the abolition of the ACDC Board does <u>not</u> mean the dismantling of the existing regulation of the use of agricultural and veterinary chemical products. The regulatory controls remain predominantly under the Chemical Usage Act, as well as under retained provisions of the ACDC Act, both administered by Biosecurity Queensland. • Accordingly Biosecurity Queensland assumes the lead agency role for reported incidents of misuse of agricultural chemicals, such as failing to observe product label instructions. Where necessary Biosecurity Queensland may also refer a particular incident to another agency best placed to deal with a specific aspect of chemical misuse. For example misuse incidents affecting rivers or streams may be referred to the Department of Environment and Resource Management. • The clauses in this Part of the Bill as drafted are consistent with the government's position in this area. Accordingly, no changes are proposed in response to the public submission.
<p>Part 3 of the Bill Amendment of the <i>Agricultural Standards Act 1994</i></p>	<p>No submissions raised any issues. QMDC expressed support.</p>	<p>No changes are proposed</p>
<p>Part 4 of the Bill Amendment of the <i>Land Protection (Pest and Stock Routes Management) Act 2002</i></p>	<p>No submissions raised any issues. QMDC expressed support.</p>	<p>No changes are proposed</p>

	<p>fruit and vegetable growing industry, has expressed concern over the 24-hour time line for notification of a 'notifiable pest.' They have suggested an amendment to the proposed new section 12 subsection (3) to allow further time for notification beyond the 24 hour period provided for in the amendments as drafted.</p>	<ul style="list-style-type: none"> • Section 12 of the Act currently imposes an obligation on the owner of land or a vehicle or someone engaged by a landowner to work on their land, to notify an inspector of the presence of a notifiable pest within 24 hours of becoming aware of the pest's existence. • The proposed amendment retains the current obligation to notify an inspector within 24 hours but expands the basis upon which a person must notify an inspector, to include if they ought reasonably be aware of the pest's existence. • 24 hours is considered a reasonable timeframe in which someone is to provide notification. A longer period would delay a response which could mean the difference between eradication and the pest becoming endemic. • Assessments of persons' awareness or reasonable awareness of the existence of a pest are based on various factors, educational material or identification information available to the person, direct communication or contact between the person and inspectors and general media coverage on the pest. <p>Comments</p> <ul style="list-style-type: none"> • The proposed amendment will clarify the obligation on persons to notify an inspector of a notifiable pest's existence as soon as practicable within 24 hours of becoming aware or ought reasonably becoming aware of the pest's existence. • The proposed amendment reduces red tape and makes the process of notification simpler by removing the requirement to provide follow up written confirmation of the notification within seven days which is impracticable. • The proposed amendment assists with enforcement of the provision and is consistent with the national approach for reporting exotic pests. • The proposed amendment provides that an inspector may be notified either orally or in writing. Notifications made orally could be made, for example, in person or via telephone/mobile. Examples of written notifications could be email, SMS message or equivalent. • A person may also discharge their obligation to notify an inspector of the existence of a notifiable pest orally by calling the Department's Business Information Centre, the normal operating hours of which are from 8:00am to 6:00pm Monday to Friday. Outside of these normal operating hours the Business Information Centre is staffed by a contract service. • In view of the important, time critical nature of the obligation on persons, the Department is satisfied for the obligation to notify an inspector to be discharged in this manner.
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		<ul style="list-style-type: none"> • The Chief Executive of DEEDI can exercise discretion as to whether to prosecute a person under the proposed provision based on an assessment of whether the person is aware or ought reasonably have been aware of the pest’s existence as evidenced by the amount of information the person has received from the Department or had available or generally been exposed to. • The intent of the proposed amendment is to ensure that an inspector is notified of the presence of a pest as soon as practicable in order that, where appropriate, a response can be mounted. • This clause as drafted is consistent with the government’s position in this area. Accordingly, no changes are proposed in response to the public submission.
Part 6 of the Bill Amendment of the <i>Rural and Regional Adjustment Act 1994</i>	No submissions raised any issues. QMDC expressed support.	No changes are proposed

Appendix 3 – Departmental officers at the public briefing on 16 November 2011

Officer	Position, Department
Mr Elton Miller	General Manager, Food and Agribusiness, Department of Employment, Economic Development and Innovation
Mr John Darlington	Principal Policy Officer, Animal Industries Branch, Department of Employment Economic Development and Innovation
Ms Fiona Ferguson	Legislative Support, Biosecurity Queensland, Department of Employment Economic Development and Innovation
Mr Pat Coyne	Acting Principal Policy and Legislation Officer, Legislation Coordination, Agriculture and Food, Department of Employment Economic Development and Innovation
Mrs Robyn Chapman	Principal Legislation Officer, Legislation Coordination, Agriculture and Food, Department of Employment Economic Development and Innovation
Mr Harold Brown - Manager, Legislation Coordination, Food and Agribusiness	Manager, Legislation Coordination, Food and Agribusiness, Department of Employment Economic Development and Innovation