

Queensland



# SUGAR INDUSTRY ACT 1991

**Reprinted as in force on 9 June 1998  
(includes amendments up to Act No. 20 of 1997)**

**Reprint No. 1E**

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# Information about this reprint

This Act is reprinted as at 9 June 1998. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in the reprint, including table of renumbered provisions**
- **editorial changes made in earlier reprints.**

Queensland



**SUGAR INDUSTRY ACT 1991**

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# SUGAR INDUSTRY ACT 1991

[as amended by all amendments that commenced on or before 9 June 1998]

**An Act to provide comprehensively for all matters relating to the promotion and regulation of the sugar industry in Queensland**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Sugar Industry Act 1991*.

### Commencement

2.(1) Section 1 and this section commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) The remaining provisions of this Act commence on a day or days appointed by proclamation.

### Definitions

3. In this Act—

“**acquire**” includes purchase, take on lease, licence or pursuant to any other interest.

“**adjacent**” mills include nearby mills.

“**administrator**” means a person appointed under section 188 and includes a person acting under the authority of an administrator.

“**appointed director**” means—

- (a) for the Corporation—each director of the Corporation other than the director who is chief executive of the Corporation; and

(b) for the Bureau—each director of the Bureau other than the Director.

**“approved”** means approved under guidelines made by the Corporation in writing.

**“assignment”** means an assignment within the meaning of section 136 and includes an interest in an assignment.

**“assignment holder”** means—

- (a) a person who holds an assignment; and
- (b) for the purpose of determining whether an assignment holder is within the jurisdiction of a local board or negotiating team—a person who holds an assignment the land of which is assigned to the mill for which the local board or negotiating team is established.

**“Bureau”** means the Bureau of Sugar Experiment Stations established under section 53.

**“commercial cane sugar”** means the estimated yield of cane sugar from sugarcane, determined as prescribed by the regulations.

**“Corporation”** means the Queensland Sugar Corporation constituted under section 9.

**“crushing capacity”** means the estimated maximum rate of crushing at which a mill can operate continuously while maintaining a proper level of efficiency.

**“crushing season”** means, in relation to any calendar year, the season for the harvesting and crushing of sugarcane commencing in that year.

**“determination”** includes order, direction and decision.

**“Director”** means the Director of Sugar Experiment Stations employed under section 70 and includes a person temporarily performing the duties of the Director.

**“farm peak”** means farm peak within the meaning of section 163 and includes an interest in farm peak.

**“legal practitioner”** means—

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- (a) a person duly admitted as a barrister of the Supreme Court whose name is currently on the Roll of Barristers of that Court; or
- (b) a person duly admitted as a solicitor of the Supreme Court whose name is currently on the Roll of Solicitors of that Court.

**“local board”** means—

- (a) a local board constituted under section 38; or
- (b) the Corporation when discharging the functions of a local board.

**“maintain”** includes establish.

**“mill owner”** or **“owner of a mill”** means—

- (a) a person, body or association of persons, whether corporate or unincorporate, owning or having the control of a mill and includes where necessary the manager or managing director or other person controlling the business of a mill; and
- (b) for the purpose of determining whether a mill owner is within the jurisdiction of a local board or negotiating team—the owner of the mill for which the local board or negotiating team is established.

**“mill peak”** of a mill has the meaning given by section 117.

**“mill region”** means a mill region prescribed by the regulations.

**“mill suppliers’ committee”** means a mill suppliers’ committee constituted under the *Primary Producers’ Organisation and Marketing Act 1926*.

**“negotiating team”** means a negotiating team established under part 3A.

**“non-approved sugarcane”** means sugarcane—

- (a) grown at a place where and at a time when sugarcane of the variety to which it belongs was not approved for growing under section 73; and
- (b) not grown under a permit issued under section 74; and
- (c) not grown by, on behalf of or at the request of, the Director.

**“obstructs”** includes assaults, threatens, abuses, insults, intimidates, hinders.

**“pest”** means a pest within the meaning of the *Plant Protection Act 1989*.

**“pest infestation”** means a pest infestation within the meaning of the *Plant Protection Act 1989*.

**“productivity area”** means a sugarcane productivity area declared under section 77.

**“productivity board”** means a cane protection and productivity board constituted under section 78.

**“products”** includes by-products.

**“records”** includes any information however compiled, recorded or stored and any books, accounts, documents or writings.

**“Register of Easements”** means the Register of Easements maintained under section 201.

**“repealed Regulation of Sugar Cane Prices Act”** means the *Regulation of Sugar Cane Prices Act 1962* repealed by Schedule 1 and that Act.

**“research”** includes investigation or consideration.

**“sugarcane”** means any plant or part of a plant of the genus *Saccharum* or any hybrid of sugarcane.

**“Sugar Cane Assignment Register”** means the register maintained under section 32.

**“sugarcane works”** or **“works”** means a sugar mill and any other works equipped for the manufacture of sugarcane products from sugarcane.

**“sugar mill”** or **“mill”** see section 3C.

**“Tribunal”** means the Sugar Industry Tribunal constituted under section 209.

### **References to action in relation to functions, powers and duties**

**3A.** In this Act, a reference to one of the following matters—

- (a) the discharge of a function;
- (b) the exercise of a power;
- (c) the performance of a duty;

includes a reference to each of the other matters.

**Meaning of “possession”**

**3B.** For the purposes of this Act, a person is taken to be in possession of—

- (a) a matter or thing—if the person has actual possession or custody of it or if the person has it under control in any place whether for the person’s or another’s use or benefit and although another person has actual control of it; and
- (b) information—if the person has the information in possession or is entitled to access to the information.

**Meaning of “sugar mill” or “mill”**

**3C.(1)** A “sugar mill” or “mill” is works that are—

- (a) equipped for the manufacture of sugar from sugarcane and prescribed under a regulation; or
- (b) proposed to be constructed and equipped for the manufacture of sugar from sugarcane and authorised as a new mill under section 105A.

**(2)** In this section—

“sugar” means all raw sugar, crystal sugar, sugar syrups, inverted syrups, liquid sugar and any other form of sugar other than—

- (a) final molasses; and
- (b) a form of sugar manufactured from another form of sugar previously disposed of by the corporation.

**Minister may establish advisory bodies**

**4.** The Minister may establish an advisory committee or other body to assist the Minister in the administration of this Act.

**Reports to Minister**

**6.(1)** Upon being requested to do so by the Minister—

- (a) the Corporation; or

- (b) a local board; or
- (c) a negotiating team; or
- (d) the Bureau; or
- (e) a productivity board;

is to provide to the Minister a report concerning any matter specified by the Minister relating to the discharge by it of functions under this Act or to its activities.

(2) If the Minister specifies a period of time within which a report referred to in subsection (1) is to be provided, the report is to be provided within the period.

### **Minister's power to delegate**

7. The Minister may delegate the Minister's powers under this Act to—

- (a) the chief executive; or
- (b) a body established under this Act, a member of the body or a person holding office within the body.

### **Crown bound**

8. This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities, subject to the following—

- (a) the Crown is not liable to a penalty for a contravention of this Act;
- (b) an agent of the Crown who contravenes this Act is liable for any penalty prescribed by this Act in relation to such a contravention.

## **PART 2—QUEENSLAND SUGAR CORPORATION**

### *Division 1—Constitution and membership*

#### **Constitution**

**9.(1)** A body corporate is constituted called the Queensland Sugar Corporation having perpetual succession and a common seal.

**(2)** Subject to this Act, the Corporation is capable of—

- (a) suing and being sued; and
- (b) acquiring, holding, dealing with and disposing of real and personal property; and
- (c) doing and suffering all acts and things as bodies corporate may in law do and suffer.

#### **Judicial notice of Corporation's seal**

**10.** All courts and persons acting judicially are to take judicial notice of the common seal of the Corporation and are to presume the common seal affixed to any document to have been duly affixed until the contrary is proved.

#### **Corporation does not represent the Crown**

**11.(1)** The Corporation does not represent the Crown.

**(2)** Except where it is authorised to do so by the Crown under any Act, the Corporation is not competent to render the Crown liable for the debts and obligations of the Corporation or any other person.

#### **Objectives of Corporation**

**12.** The principal objectives of the Corporation are—

- (a) to ensure that the policies for the Queensland sugar industry including those determined by the Minister are successfully implemented; and

- (b) to enhance the efficiency, competitiveness and access to markets of the Queensland sugar industry; and
- (c) to enhance the long term economy of the Queensland sugar industry; and
- (d) to enhance the benefits flowing from the Queensland sugar industry to cane growers and mill owners and to the economy of Queensland generally; and
- (e) to encourage initiative and innovation among cane growers and mill owners and others involved in the Queensland sugar industry.

### **Board of directors**

**13.(1)** The Corporation is governed by a board of directors.

**(2)** The board consists of 10 directors of whom—

- (a) 1 is to be the chief executive officer of the Corporation, who is a director without further appointment; and
- (b) 9 are to be persons appointed by the Governor in Council, 1 of whom is to be appointed as chairperson.

**(3)** Each appointed director of the Corporation is to be appointed for a term not longer than 3 years.

### **Qualifications for appointment to board of directors**

**14.** Of the appointed directors of the Corporation—

- (a) the director who is to be appointed chairperson is to be a person with extensive commercial experience relevant to the Corporation's objectives; and
- (b) 3 directors are to be persons with experience in the production of sugar cane; and
- (c) 3 directors are to be persons with experience in the milling of sugar cane; and
- (d) 2 directors are to be persons with wide commercial experience.

**Remuneration**

18. Appointed directors of the Corporation are to be paid by the Corporation such fees and allowances as the Governor in Council may determine.

*Division 2—Corporation's general functions, powers and duties***Functions of Corporation**

19. The functions of the Corporation are—

- (a) to participate in the development and implementation of policy relating to the management of the Queensland sugar industry; and
- (b) to manage the regulation of the quantity and quality of sugarcane and raw sugar produced in Queensland; and
- (c) to participate and assist in, and where authorised under this Act to do so, determine issues relating to, any matter concerning the size of the Queensland sugar industry, the production and use of sugar industry products and any other matter connected with the Queensland sugar industry; and
- (d) to manage the acquisition of raw sugar by the Corporation and market that raw sugar; and
- (e) to distribute to mill owners the net proceeds resulting from the marketing by it of raw sugar; and
- (f) to encourage and participate in the promotion, manufacture and marketing of the products of, and any value added product connected with, the sugar industry in Queensland or, if necessary to achieve its objectives, elsewhere; and
- (g) to facilitate the operation of any body established under this Act or, if necessary to achieve its objectives, within or for the sugar industry in Queensland or elsewhere; and
- (h) to mediate in negotiations within the sugar industry in Queensland or, if necessary to achieve its objectives, elsewhere; and

- (i) to act as a representative of the Queensland sugar industry generally; and
- (j) to inquire into any matter concerning the Queensland sugar industry; and
- (k) to assist local boards and negotiating teams in the discharge of their functions; and
- (l) with the consent of the Tribunal, to assist the Tribunal in the discharge of its functions; and
- (m) to take all such action within the powers conferred upon it by this Act as may be necessary to achieve its objectives; and
- (n) to discharge such other functions consistent with its objectives as it may be authorised to discharge by the Minister or by the regulations.

### **General powers of Corporation**

**20.(1)** Subject to this Act, the Corporation may do all things necessary or reasonably required to be done in connection with, or incidental to, the discharge of its functions.

**(2)** Without limiting the generality of subsection (1), the Corporation may—

- (a) purchase, sell, and participate in any form of trade or commerce concerning, the products of the sugar industry and any product connected with the sugar industry in Queensland or, with the approval of the Minister, elsewhere; and
- (b) acquire, construct, manage and maintain bulk sugar terminals and other facilities for the processing, storage and handling of the products of the Queensland sugar industry or the sugar industry elsewhere; and
- (c) fund the operation of local boards; and
- (d) undertake or fund research into the quality of, and markets for, the products of the Queensland sugar industry or any other matter connected with the industry; and

- (e) seek and accept voluntary contributions from any person to assist it in the discharge of its functions; and
- (f) collect and disseminate information relating to the operation of this Act and the activities of the Queensland sugar industry and related industry; and
- (g) provide public relations and communications programs and services for the Queensland sugar industry; and
- (h) maintain committees with the function to provide the Corporation with such assistance, advice and reports as the Corporation determines; and
- (i) use or provide the use of its terminals, facilities, or other property for the processing, storage or handling of any product or for any activity for commercial gain; and
- (j) act in the discharge of its functions both in Queensland and elsewhere.

(3) The corporation's power under subsection (2)(b) for bulk sugar terminals in Queensland is exclusive to the corporation.

### **Application of various public sector Acts**

**21.(1)** The Corporation is—

- (a) a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Administration and Audit Act 1977*; and
- (b) a unit of public administration within the meaning of the *Criminal Justice Act 1989*.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the Corporation's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*, including, for example, section 20(2)(j) of this Act.

### **Corporation may require information**

**22.(1)** In relation to any matter concerning the discharge of the Corporation's functions referred to in section 19(b) to (e), the Corporation

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by written notice may require a person—

- (a) to furnish to the Corporation any information specified in the notice, within a reasonable period and in a reasonable manner specified in the notice; or
- (b) to attend before the Corporation, at a reasonable time and place specified in the notice, and then and there answer questions concerning any matter specified in the notice; or
- (c) to furnish to the Corporation, at a reasonable time and place specified in the notice, any records or copies of records in the person's possession specified in the notice.

(2) A reference to the Corporation includes a reference to a person authorised by the Corporation.

(3) The Corporation or authorised person may require the information or answers to be verified—

- (a) on oath or affirmation; and
- (b) orally or in writing.

(4) For that purpose a member of the Corporation or a person authorised by the Corporation may administer an oath or affirmation.

(5) The oath to be taken or affirmation to be made is an oath or affirmation confirming the truth of the information or answers.

(6) The regulations may prescribe allowances payable by the Corporation to persons required to attend at any place under this section.

(7) A person—

- (a) who refuses or fails to answer a question or to furnish any information, records or a copy of records as required of the person under this section; or
- (b) who in response to a requirement made under this section provides an answer or furnishes information, records or a records copy that is or are false or misleading in a material particular;

commits an offence against this Act.

Maximum penalty—40 penalty units.

(8) Subsection (7) does not apply in respect of a refusal or failure to answer a question or furnish any information or records required of a person under subsection (1) that would tend to incriminate the person.

### **Chief executive officer and staff of Corporation**

**23.(1)** The Corporation—

- (a) is to employ a chief executive officer; and
- (b) may employ the persons, and engage the consultants, service providers, inspectors and agents, that it considers necessary.

(2) The chief executive officer of the Corporation is to perform such duties as the Corporation determines.

(3) The corporation's employees are to be employed under this Act, and not under the *Public Service Act 1996*.

### **Corporation to consult industry**

**24.(1)** The Corporation—

- (a) at least once every 3 months; and
- (b) whenever the Minister directs it to do so;

is to provide an opportunity to organisations representative of cane growers, mill owners and commercial users of sugar to meet separately or otherwise with representatives of the Corporation to discuss matters affecting the Queensland sugar industry.

(2) For the purposes of this section, the Minister may determine the organisations that generally or in relation to a particular meeting are to be regarded by the Corporation as representative of the cane growers, mill owners or commercial users of sugar.

### **Minister's directions to Corporation**

**25.(1)** Subject to subsection (3), the Minister may give written directions to the Corporation concerning the discharge of its functions.

(2) The Corporation is to comply with the directions.

(3) The Minister may only give a direction if—

- (a) the Minister is satisfied that the direction is necessary to ensure that the discharge by the Corporation of its functions does not conflict with major government policies; and
- (b) the Minister has informed the Corporation in writing that a direction is under consideration and given the Corporation an adequate opportunity to discuss with the Minister the need for the direction.

(4) The Minister is to cause a copy of the direction to be laid before the Legislative Assembly within 14 sitting days after giving the direction if the Legislative Assembly is in session, but if not then within 14 sitting days after the commencement of its next session.

(5) This section does not apply with respect to directions the Minister is authorised to give concerning particular matters under another provision of this Act or any other Act.

### **Minister's direction in annual report**

26. The Corporation is to include in each annual report prepared by it under section 46J of the *Financial Administration and Audit Act 1977*, a report of any direction given to it by the Minister during the financial year for which the report is prepared.

### **Corporation's power to delegate**

27. The Corporation may delegate its powers to—

- (a) the chairperson of the Corporation's board; or
- (b) the members of a Corporation committee; or
- (c) a Corporation officer; or
- (d) a local board.

### **Guidelines**

28.(1) The Corporation may make written guidelines—

- (a) with respect to any matter for which provision is made in this Act or any other Act for the operation of the Corporation's guidelines; and
- (b) with respect to any matter relating to the discharge of its functions for which the making of guidelines is necessary or convenient.

(2) A guideline made by the Corporation is not binding on any person except to the extent provision is made in this or any other Act for the application of the guideline.

(3) The Corporation may make guidelines for the purpose of providing standards for contracts relating to the harvesting of sugarcane by mechanical cane harvesters.

### **Guidelines that are subordinate legislation**

**29.** The following guidelines are subordinate legislation—

- (a) guidelines about awards under section 124(1)(c) or (d);
- (b) guidelines stating the matters to which regard will be had by the Corporation in granting an assignment;
- (c) guidelines stating the form of orders that may be made by local boards under Part 9;
- (d) guidelines stating the methods the Corporation will observe in adjusting mill peaks under section 171;
- (e) guidelines determining the method of calculating raw sugar equivalent for any purpose;
- (f) guidelines made under section 113(7) setting out the matters the Corporation will take into account in calculating the payments to be made to mill owners for sugar delivered to the Corporation.

### ***Division 2A—General duties and liabilities of officers of Corporation***

#### **Duty and liability of certain officers of Corporation**

**29A.(1)** A Corporation officer must act honestly in the exercise of powers, and discharge of functions, as a Corporation officer.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud the Corporation, the Corporation's creditors or creditors of another person or for another fraudulent purpose—500 penalty units or 5 years imprisonment; or
- (b) otherwise—100 penalty units.

(2) In the exercise of powers and the discharge of functions, a Corporation officer must exercise the degree of care and diligence that a reasonable person in a similar position within the Corporation would exercise.

Maximum penalty—100 penalty units.

(3) A person who is, or was, a Corporation officer must not make improper use of information acquired because of the person's position as a Corporation officer to directly or indirectly—

- (a) gain an advantage for the person or for another person; or
- (b) cause detriment to the Corporation.

Maximum penalty—500 penalty units or 5 years imprisonment.

(4) An officer of the Corporation must not make improper use of the officer's position as a Corporation officer to directly or indirectly—

- (a) gain an advantage for the officer or another person; or
- (b) cause detriment to the Corporation.

Maximum penalty—500 penalty units or 5 years imprisonment.

(5) If a person contravenes this section in relation to the Corporation, the Corporation may recover from the person as a debt due to the Corporation—

- (a) if the person or another person made a profit because of the contravention—an amount equal to the profit; and
- (b) if the Corporation suffered loss or damage because of the contravention—an amount equal to the loss or damage.

(6) An amount may be recovered from the person whether or not the person has been convicted of an offence for the contravention.

(7) Subsection (5) is in addition to, and does not limit, the *Crimes (Confiscation) Act 1989*.

(8) In deciding for subsection (2) the degree of care and diligence that a reasonable person in a similar position within the Corporation would exercise, regard must be had to—

- (a) the fact that the person is a Corporation officer; and
- (b) the application of this Act to the Corporation; and
- (c) relevant matters required or permitted to be done under this Act in relation to the Corporation including, for example any relevant directions, notifications or approvals given to the Corporation by the Minister.

(9) Subsection (8) does not limit the matters to which regard may be had for the purposes of subsection (2).

(10) In this section—

“**officer**” of the Corporation means—

- (a) a Corporation director; or
- (b) the chief executive officer; or
- (c) another person who is concerned, or takes part, in the Corporation’s management.

### *Division 3—Sugarcane and sugarcane products examination and testing programs*

#### **Programs to obtain information**

**30.(1)** The Corporation may institute a program in relation to a sugarcane works with a view to obtaining information concerning—

- (a) sugarcane received; or
- (b) sugar or other products produced;

at the sugarcane works.

(2) To institute a program, it is necessary for the Corporation to give to the owner of the sugarcane works notice in writing of the program's provisions.

(3) A program may be instituted for the purpose of—

- (a) supervising the payment to mill owners, cane growers or other persons of amounts due to them under the scheme for the acquisition of sugar provided for by the Act; or
- (b) ascertaining the amount of any levy or other money payable by the owner of a sugarcane works, cane grower or other person to any body constituted under this Act; or
- (c) for the discharge by the Corporation of any of its functions.

(4) A program may provide for or with respect to—

- (a) the weighing, examining or testing of sugarcane received at the sugarcane works or the sugar or sugarcane products produced at the sugarcane works for its quantity, quality or any other condition; and
- (b) the appointment by the Corporation or by any other body or person of any person to perform the duty of weighing, examining or testing sugarcane or sugar or sugarcane products under the program and the qualifications of such a person; and
- (c) the observation and checking of performance of duties by persons referred to in paragraph (b) by other persons appointed under the program; and
- (d) facilities to be provided and duties to be performed by the owner of the sugarcane works or other persons employed by the owner; and
- (e) directions that may be given by persons authorised under the program where those directions are reasonably necessary to facilitate the program; and
- (f) returns to be furnished to the Corporation, or any other body constituted under this Act of information obtained under the program; and

- (g) monitoring procedures calculated to provide reasonable and regular verification that the provisions of the program and directions given under the program are being complied with; and
- (h) matters prescribed by the regulations.

(5) Upon its institution, a program becomes binding on the persons to whom it applies according to its tenor.

(6) The Corporation, by notice in writing given to the sugarcane works for which a program is instituted, may vary the provisions of a program.

(7) A person who fails to comply with the provisions of a program applying to the person or with directions given pursuant to it commits an offence against this Act.

Maximum penalty—40 penalty units.

(8) The regulations may provide for the payment and recovery of costs associated with a program by the Corporation or by any other person.

### **Request for program**

**31.(1)** A mill suppliers' committee constituted for a mill or the owner of a mill may request the Corporation to institute with respect to the mill a program under section 30.

(2) If the Corporation is satisfied that the request is reasonable, it is to institute the program as requested.

(3) The costs associated with the operation of the program instituted at the request of a mill owner or mill suppliers' committee are to be shared equally between the owner of the mill and the mill suppliers' committee constituted for the mill.

(4) Any person incurring costs payable by the owner of a mill or a mill suppliers' committee under subsection (3) may recover the costs by action against the owner or committee by action as for a debt in any court of competent jurisdiction.

(5) This section does not derogate from the power of the Corporation to institute a program under section 30.

***Division 4—Sugar Cane Assignment Register*****Sugar Cane Assignment Register**

**32.(1)** The Corporation is to maintain a register called the Sugar Cane Assignment Register showing—

- (a) particulars of every assignment including—
  - (i) the names and addresses of persons holding interests in the assignment and the nature of the interest; and
  - (ii) the assignment's area; and
  - (iii) the assignment's presently assigned description; and
  - (iv) the mill to which is assigned the land within the boundaries of the assignment's presently assigned description; and
- (b) particulars of every farm peak, including—
  - (i) the names and addresses of persons holding interests in the farm peak and the nature of the interest; and
  - (ii) the quantity of farm peak; and
  - (iii) the assignment to which the farm peak relates; and
- (c) grants, variations and cancellations of assignments and farm peaks; and
- (d) information prescribed by regulation or determined by the Corporation.

**(2)** The register is to be kept in such form and manner that the particulars referred to in subsection (1)(a) and (b) may be inspected at the principal office of the Corporation during the ordinary working hours of the office.

**(3)** Any person may inspect the register upon payment of any fee prescribed by the regulations.

**Notice of mortgage and other interests**

**33.(1)** The mortgagee, lessor or sublessor of land assigned to a mill may lodge notice of the mortgage, lease or sublease, in the approved form, with the Corporation upon payment to the Corporation of a fee prescribed by the

regulations.

(2) Upon receipt of a notice, the Corporation is to record in the Sugar Cane Assignment Register that the notice has been received and the tenor of the notice.

### **Notice of cessation of interest**

**34.(1)** If a person whose interest is recorded in the Sugar Cane Assignment Register under section 33 ceases to hold the interest the person is to lodge forthwith notice to that effect with the Corporation.

(2) A person who contravenes subsection (1) commits an offence against this Act.

Maximum penalty—40 penalty units.

(3) Upon receipt of a notice, the Corporation is to record in the Sugar Cane Assignment Register that the notice has been received and the tenor of the notice.

### **Entry in register is notice to subsequent dealers in land**

**35.** An entry in the Sugar Cane Assignment Register of any particular is sufficient notice of the particular to all persons who subsequently have dealings with respect to an assignment, farm peak or land to which the particular relates.

### **Certificates**

**36.(1)** In any proceedings, a certificate purporting to be signed by a person authorised by the Corporation stating any information relating to matters authorised by this Division to be shown on the Sugar Cane Assignment Register is evidence, and in the absence of evidence to the contrary, conclusive evidence, of the matters stated in the certificate.

(2) A certificate referred to in subsection (1) may be issued at any time by the Corporation to any person upon payment to the Corporation of a fee prescribed by the regulations.

**Register may be maintained as prescribed**

**37.(1)** The Governor in Council may make regulations providing for the transfer of the Sugar Cane Assignment Register in whole or in part from the custody of the Corporation to the custody of another body or person.

**(2)** The power to make the regulations includes power to provide for or with respect to—

- (a) the maintenance of the register in an accurate form and as prescribed; and
- (b) authorising a body or person to take any action in relation to the register or part of the register in the custody of the body or person in the place of the Corporation; and
- (c) the effectiveness of any action taken by a body or person under paragraph (b), including the effectiveness of any certificate issued by or on behalf of the body or person in relation to matters appearing on the register.

**PART 3—LOCAL BOARDS***Division 1—Constitution and membership***Establishment of local boards**

**38.(1)** The Governor in Council may constitute local boards for the purposes of this Act.

**(2)** A local board may be constituted under this section for 1 mill or for adjacent mills.

**Objectives of a local board**

**39.** The principal objectives of a local board are—

- (a) to ensure the efficient participation by assignment holders and mill owners within its jurisdiction in the scheme prescribed by

this Act for the production, acquisition and marketing of, and payment for, the products of the Queensland sugar industry; and

- (b) to enhance the benefits flowing from the production and milling of sugarcane to the assignment holders and mill owners within its jurisdiction and to the Queensland economy generally.

### **Membership of local board**

**40.(1)** A local board is to consist of 5 members appointed by the Governor in Council by notification published in the Gazette, of whom—

- (a) 1 is to be appointed upon the recommendation of the Minister after consultation with the Corporation; and
- (b) 2 are to be appointed upon being nominated by the owner or owners of the mill or mills for which the local board is to be constituted; and
- (c) 2 are to be appointed upon being nominated by the mill suppliers' committee or committees constituted for the mill or mills referred to in paragraph (b).

**(2)** The member referred to in paragraph (a) of subsection (1)—

- (a) is to be appointed as chairperson of the local board; and
- (b) is to be a person whom the Governor in Council is satisfied will act independently in the discharge of the chairperson's functions.

**(3)** A member of a local board is to be appointed for a term of 3 years ending on the same date as the term not longer than 3 years.

**(4)** The Minister may give such directions to the owners of mills and to mill suppliers' committees as are necessary to ensure that the nominations authorised by subsection (1)(b) and (c) are provided.

**(5)** The directions may not require the nomination of a person specified by the Minister for appointment as a member of a local board.

**(6)** If a nomination for any office is not provided in accordance with the directions, the Governor in Council may appoint any person to the office.

**Deputies of members**

**43.(1)** A person who is not a member of a local board may be appointed as a deputy of a member—

- (a) in the case of the member who is chairperson—by the Governor in Council; and
- (b) in the case of a member nominated by a mill owner—by the mill owner; and
- (c) in the case of a member nominated by the mill suppliers' committee—by the committee;

for any meeting or meetings of the local board determined by the Governor in Council, mill owner or committee appointing the deputy.

**(2)** At a meeting for which a person is appointed the deputy of a member, the deputy may attend and act as the member and, if the member is chairperson of a local board, the chairperson.

**Remuneration of members**

**44.(1)** The chairperson of a local board is to be paid by the Corporation such fees and allowances for service as chairperson as the Governor in Council may determine.

**(2)** A member of a local board who is appointed upon the nomination of a mill owner is to be paid by the mill owner such fees and allowances for service as a member as are determined by the mill owner.

**(3)** A member of a local board who is appointed upon the nomination of a mill suppliers' committee is to be paid by the committee such fees and allowances for service as a member as are determined by the committee.

**(4)** The payment of the fees and allowances is an administrative cost of the committee.

**(5)** The Crown is not liable to pay to a member of a local board fees and allowances for service as a member.

***Division 2—Local board’s general functions, powers and duties*****Functions of local board**

**45.** The functions of a local board are—

- (a) to provide a convenient local forum for mediation or settling of disputes and issues within the Queensland sugar industry; and
- (b) to advise the Corporation concerning any matter relating to the local sugar industry; and
- (c) to take all such action within the powers conferred upon it by this Act as may be necessary to achieve its objectives.

**General powers of local board**

**46.** Subject to this Act, a local board may do all things necessary or reasonably required to be done in connection with, or incidental to, the discharge of its functions.

**Power of chairperson to mediate**

**47.(1)** The chairperson of a local board may act as mediator in any matter relating to the discharge of the board’s functions if—

- (a) all parties to the matter accept the mediation; and
- (b) the chairperson is satisfied that the mediation is desirable.

**(2)** The chairperson of a local board, subject to the consent of the parties to a mediation being first obtained, may authorise any other person to act in the chairperson’s place for a mediation.

**(3)** A local board may fix a reasonable fee for payment by parties to a mediation.

***Division 3—Amalgamation of local boards*****Application to Minister for amalgamation**

**48.(1)** Owners of adjacent mills may make an application to the Minister

for the amalgamation of the local boards constituted for the mills.

(2) An application pursuant to subsection (1)—

- (a) is to be made by or on behalf of every owner of the mills for which the local boards to be amalgamated are constituted; and
- (b) is to be in a form approved by the Minister.

(3) The applicants are to provide to the Minister such information concerning the application as the Minister requires.

(4) If the Minister is satisfied—

- (a) that the amalgamation of the local boards is desirable in all the circumstances; and
- (b) that the application is likely to be supported generally by assignment holders within the jurisdictions of the local boards;

the Minister is to give such directions as are necessary to ascertain the views of the assignment holders by means of a poll.

(5) If the Minister is not satisfied of the matters referred to in subsection (4)(a) and (b), the Minister is to refuse the application by notification in writing given to the applicants.

(6) If not less than 60% of the total number of assignment holders within each jurisdiction of the local boards cast votes in the poll in favour of the amalgamation of the local boards, the boards are to be amalgamated in accordance with this Act.

### **Poll for amalgamation**

**49.(1)** For the purposes of the poll referred to in section 48(4), the Corporation, in accordance with the Minister's directions, is—

- (a) to compile a list of the names of every person that it believes is entitled to vote in the poll; and
- (b) to make the list available for inspection for at least 21 days by any member of the public for periods of time and at places that the Corporation considers likely to be convenient to persons entitled to vote in the poll.

(2) After considering any objections received by it to the list, the Corporation is—

- (a) to determine the list of persons entitled to vote in the poll; and
- (b) to publish a notification in the Gazette stating the places where and periods of time when the list may be examined for 21 days after the date of the notification.

(3) The notification in the Gazette is taken to be notification to all persons of the Corporation's determination of the list.

(4) A person may not exercise an entitlement to vote in the poll unless the person's name appears in the list determined by the Corporation.

### **Amalgamation**

**50.(1)** For the purpose of amalgamating local boards (“**existing local boards**”), the Governor in Council may exercise the powers conferred by Division 1 to establish, for all the mills for which those boards were established, 1 local board (the “**new local board**”).

(2) On and from the date on which the first appointment of the whole number of members of the new local board takes effect—

- (a) each of the existing local boards ceases to exist and the members cease to hold office; and
- (b) proceedings commenced by or against an existing local board or that might have been taken by or against an existing local board had it remained in existence may be continued or taken by or against the new local board; and
- (c) any reference in any instrument or document to an existing local board is taken to be a reference to the new local board.

### **Increase in membership for amalgamated board**

**51.(1)** For any term of office of the whole of the members of a local board constituted under section 50, the Governor in Council may determine that the number of its members to be appointed upon the nomination of the mill owner or mill owners concerned and the mill suppliers' committee or committees concerned is to be greater than 4.

(2) A determination made under subsection (1) is to provide for an equal number of members to be appointed upon the nomination of the mill owner or mill owners concerned and upon the nomination of the mill suppliers' committee or committees concerned.

(3) Except to the extent necessary to take into account the increase in membership, the provisions of Division 1 concerning the appointment of members apply.

#### *Division 4—Where there is no local board*

#### **Corporation may act as local board**

52. If there is no local board duly constituted under this Act for a mill, the Corporation is taken to be the local board for the mill and may discharge all the functions of a local board.

### **PART 3A—NEGOTIATING TEAMS**

#### *Division 1—Constitution and membership*

#### **Establishment**

52A. The Governor in Council may establish a negotiating team for a mill or for 2 or more adjacent mills.

#### **Membership**

52B.(1) A negotiating team for a mill, or 2 or more adjacent mills, is to consist of 4 members appointed by the Governor in Council.

(2) Two of the members are to be nominated by the mill owner, or jointly by the mill owners, and 2 are to be nominated by the mill suppliers' committee, or jointly by the mill suppliers' committees.

(3) A member may be appointed for a period up to 1 year.

(4) The Minister may give the owner or committee the directions necessary to ensure the nominations are provided.

(5) However, the directions may not require that a person specified by the Minister be nominated.

(6) If a nomination for any office is not provided in accordance with the directions, the Governor in Council may appoint someone to the office without receiving a nomination.

### **Removal of members**

**52C.** The Governor in Council may at any time remove a member of a negotiating team from office as member.

### **Acting appointments**

**52D.** A person who is not a member of a negotiating team may be appointed to act as a member for any meeting of the team by the entity, or jointly by the entities, that nominated the member for appointment.<sup>1</sup>

### **Remuneration of members**

**52E.(1)** A member of a negotiating team is entitled to be paid the fees and allowances decided by the entity or entities that nominated the member for appointment.

(2) The fees and allowances are payable by the nominating entity or jointly by the nominating entities.

## ***Division 2—Functions and powers***

### **Functions and powers**

**52F.(1)** The function of a negotiating team is to make an award for the mill or mills for which the team is established.

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<sup>1</sup> The *Acts Interpretation Act 1954*, section 24B contains provisions about acting appointments.

(2) A negotiating team may do all things necessary or convenient to be done for, or incidental to, the performance of its function.

### **Dispute resolution**

**52G.(1)** If a dispute arises about a provision to be included in an award, the negotiating team must refer the dispute to mediation.

(2) The mediator is to be appointed by the relevant negotiating team or, if the team cannot decide on a mediator, by the corporation.

(3) If, after mediation, the dispute is not resolved, the negotiating team must refer the dispute to arbitration.

(4) The arbitrator is to be appointed by the team or, if the negotiating team cannot decide on an arbitrator, by the corporation.

(5) A provision decided by the arbitrator must be included in the award by the negotiating team.

(6) The *Commercial Arbitration Act 1990* does not apply to an arbitration under this section.

(7) The arbitrator must give written reasons for the arbitrator's decision.

(8) The provision included in an award under subsection (5) is taken to have been decided by the negotiating team.

(9) To remove doubt, it is declared that for the *Judicial Review Act 1991*, sections 4 and 20(1), the decision mentioned in subsection (8) is “**a decision to which this Act applies**”.

### *Division 3—Amalgamation of negotiating teams*

#### **Negotiating teams must be amalgamated if local boards are amalgamated**

**52H.** If local boards established for mills are amalgamated, negotiating teams established for the mills must be amalgamated.

**Amalgamation process**

**52I.(1)** To amalgamate negotiating teams (“**existing teams**”), the Governor in Council may use powers under division 1 to establish, for all the mills for which the teams were established, a single negotiating team (the “**new team**”).

**(2)** From the day of the first appointment of the members of the new team—

- (a) each of the existing teams is abolished; and
- (b) a proceeding started by or against an existing team, or that might have been taken by or against an existing team had it remained in existence, may be continued or taken by or against the new team; and
- (c) a reference in an Act or document to the existing team may, if the context permits, be taken as a reference to the new team.

**Increasing membership of new negotiating team**

**52J.(1)** The Governor in Council may, by gazette notice, decide that the number of members of a negotiating team established under section 52I is to be more than 4.

**(2)** However, an equal number of members must be appointed by mill owners and mill suppliers’ committees.

**(3)** Division 1 applies to the appointment of the members subject to subsections (1) and (2).

## **PART 4—BUREAU OF SUGAR EXPERIMENT STATIONS**

### *Division 1—Constitution and membership*

#### **Establishment of Bureau**

- 53.**(1) The Bureau of Sugar Experiment Stations is established.
- (2) The Bureau is a body corporate.
- (3) Subject to this Act, the Bureau is capable of—
- (a) suing and being sued; and
  - (b) acquiring, holding, dealing with and disposing of real and personal property; and
  - (c) doing and suffering all acts and things as bodies corporate may in law do and suffer.

#### **Judicial notice of Bureau's seal**

**54.** All courts and persons acting judicially are to take judicial notice of the common seal of the Bureau and are to presume the common seal affixed to any document to have been duly affixed until the contrary is proved.

#### **Objectives of Bureau**

- 55.** The principal objectives of the Bureau are to enhance the productivity of the Queensland sugar industry by—
- (a) increasing the quantity and improving the quality of sugarcane produced by crops grown within the State; and
  - (b) improving methods of producing sugarcane products; and
  - (c) increasing the number and diversity of sugarcane products.

**Board of directors**

**56.(1)** The Bureau is governed by a board of directors.

**(2)** The board consists of 8 directors of whom—

- (a) 1 is to be the Director of Sugar Experiment Stations who is a director without further appointment; and
- (b) 7 are to be persons appointed by the Governor in Council, 1 of whom is to be appointed as chairperson.

**(3)** Each appointed director mentioned in subsection (2)(b) is to be appointed for a term of 3 years.

**Qualifications for appointment to board of directors**

**57.** Of the appointed directors of the Bureau—

- (a) the director who is to be appointed chairperson is to be a person with extensive commercial experience relevant to the Bureau's objectives; and
- (b) 2 directors are to be persons with experience in the production of sugar cane; and
- (c) 2 directors are to be persons with experience in the milling of sugar cane; and
- (d) 1 director is to be person with wide research and development experience; and
- (e) 1 director is to be person with wide commercial experience.

**Fees and allowances**

**61.** Appointed directors of the Bureau are to be paid by the Bureau such fees and allowances as the Governor in Council may determine from time to time.

*Division 2—The Bureau's general functions, powers and duties***Functions of Bureau**

**62.** The functions of the Bureau are—

- (a) to investigate and evaluate the requirements for research relating to the growing of sugarcane in Queensland; and
- (b) to prevent, control and eradicate pest infestation of sugarcane; and
- (c) to conduct, arrange for, or fund, research concerning any matter related to the production, harvesting, transport or processing of sugarcane or related to the production of sugarcane products; and
- (d) to develop and assist in the development of methods of production, harvesting and processing of sugarcane and of the products of sugarcane; and
- (e) to provide training, advice and information to any person concerning any matter related to the production, harvesting and processing of sugarcane or related to the production of sugarcane products; and
- (g) to monitor and improve the quality of sugarcane and sugarcane products; and
- (h) to provide a service for the checking and certification of the accuracy of laboratory equipment used in determining the relative quality of sugar for the purposes of payments made under this Act; and
- (i) to preserve and enhance the ability of land to sustain crops of sugarcane; and
- (j) to assist in keeping to a minimum any damage to the environment that may be caused by the activities of the Queensland sugar industry; and
- (k) to assist productivity boards in the discharge of their functions; and
- (l) to take all such action within the powers conferred upon it by this Act as may be necessary to achieve its objectives; and

- (m) to discharge such other functions consistent with its objectives as it may be authorised to discharge by the Minister or by the regulations.

### **General powers of Bureau**

**63.** Subject to this Act, the Bureau may do all things necessary or reasonably required to be done in connection with, or incidental to, the discharge of its functions.

### **Commercial disposal of research capacity**

**64.** The Bureau may enter contracts, agreements or arrangements with any person on such terms and conditions as it determines for—

- (a) the disposal of the products of its research activities; or
- (b) the provision of its services; or
- (c) the use of its facilities.

### **Bureau or Director may require information**

**65.(1)** In relation to any matter concerning the discharge of the Bureau's functions referred to in section 62(b), (g) and (j), the Bureau or the Director, by written notice may require a person—

- (a) to furnish to the Bureau or the Director any information specified in the notice, within a reasonable period and in a reasonable manner specified in the notice; or
- (b) to attend before the Bureau or the Director, at a reasonable time and place specified in the notice, and then and there answer questions concerning any matter specified in the notice; or
- (c) to furnish to the Bureau or to the Director, at a reasonable time and place specified in the notice, any records or copies of records in the person's possession specified in the notice.

**(2)** A reference to the Bureau or the Director includes a reference to a person authorised by the Bureau, or as the case may be, the Director.

(3) The Bureau, Director or authorised person may require the information or answers to be verified—

- (a) on oath or affirmation; and
- (b) orally or in writing.

(4) For that purpose a director of the Bureau or a person authorised by the Bureau or Director may administer an oath or affirmation.

(5) The oath to be taken or affirmation to be made is an oath or affirmation confirming the truth of the information or answers.

(6) The regulations may prescribe allowances payable by the Bureau to persons required to attend at any place pursuant to this section.

(7) A person—

- (a) who refuses or fails to answer a question or to furnish any information, records or a copy of records as required of the person under this section; or
- (b) who, in response to a requirement made under this section, provides an answer or furnishes information, records or a copy of records that is or are false or misleading in a material particular,

commits an offence against this Act.

Maximum penalty—40 penalty units.

(8) Subsection (7) does not apply in respect of a refusal or failure to answer a question or furnish any information or records required of a person under subsection (1) that would tend to incriminate the person.

## **Committees**

66. The Bureau may maintain such committees as the Bureau thinks fit for the purpose of assisting it in the discharge of its functions.

## **Bureau's power to delegate**

67. The Bureau may delegate its powers to—

- (a) a director; or

- (b) a member of the Bureau's staff; or
- (c) a productivity board.

### **Application of various public sector Acts**

**68.(1)** The Bureau is—

- (a) a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Administration and Audit Act 1977*; and
- (b) a unit of public administration within the meaning of the *Criminal Justice Act 1989*.

**(2)** The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the Bureau's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### ***Division 3—Organisation and funding***

#### **Director and staff**

**70.(1)** The Bureau—

- (a) is to employ a Director of Sugar Experiment Stations; and
- (b) may employ the persons, and engage the consultants, service providers, inspectors and agents, that it considers necessary.

**(2)** The Director is to be the chief executive of the Bureau and, subject to the directions of the board of directors, to control and manage the Bureau.

**(3)** The Bureau's employees are to be employed under this Act, and not under the *Public Service Act 1996*.

#### **Sugar experiment stations**

**71.(1)** The Bureau may—

- (a) maintain such sugar experiment stations; and

- (b) provide sugar experiment stations maintained by it with such buildings, laboratories, facilities, equipment, property and staff;

as the Board determines are necessary for the discharge of its functions.

(2) A sugar experiment station forms part of the organisation of the Bureau.

### **Regulations may levy assessment in relation to sugarcane**

**72.(1)** The Governor in Council, by regulations, may levy an assessment in relation to every tonne of sugarcane received at every sugarcane works.

(2) The regulations may prescribe—

- (a) the period for which sugarcane received at a sugarcane works is subject to the assessment; and
- (b) the time and manner of payment of the assessment; and
- (c) such matters as may be necessary to enforce the assessment.

(3) The amount of any assessment—

- (a) is to be the same in relation to every tonne of sugarcane to which the assessment applies; and
- (b) is to be no greater than is necessary to fund the discharge by the Bureau of its functions and to pay or make provision for the costs associated with its continued operation.

(4) Payment of an assessment is to be made to the Bureau by the owner of the sugarcane works that receives the sugarcane subject to the assessment.

(5) An owner of a sugarcane works who fails to pay an assessment as prescribed commits an offence against this Act.

Maximum penalty—40 penalty units.

(6) To the extent that an assessment is not paid, the Bureau may recover the amount unpaid by action against the owner as for a debt in any court of competent jurisdiction.

(7) An owner of a sugarcane works who makes a payment of an assessment to the Bureau under subsection (4), is entitled to recover an

amount of money equal to  $\frac{1}{2}$  the assessment so paid as a debt from the grower of the sugarcane in relation to which the assessment was made.

(8) For this purpose the owner may deduct this amount from any money due by the owner to the grower for the sugarcane and may recover any unpaid portion of the amount by action against the grower as for a debt in any court of competent jurisdiction.

#### *Division 4—Control over sugarcane varieties*

### **Approved sugarcane**

**73.(1)** The Director, by notification published in the Gazette—

- (a) may approve for growing in an area defined in the notification a variety of sugarcane specified in the notification or cancel the approval of the variety; and
- (b) impose conditions regulating when sugarcane of a variety the subject of a notification under paragraph (a) commences, or ceases, to be approved for growing.

(2) In approving a variety of sugarcane for growing in an area, the Director is to have regard to its—

- (a) agricultural qualities; and
- (b) milling characteristics; and
- (c) resistance to pests; and
- (d) impact upon the environment.

### **Permit to grow sugarcane of non-approved variety**

**74.(1)** A person may apply to the Director for a permit authorising the person to grow sugarcane at a place where and during a period when the variety of sugarcane to which it belongs is not approved for growing pursuant to section 73.

(2) An application—

- (a) is to be in a form and to furnish particulars approved by the Bureau; and

(b) is to be accompanied by any fee that may be prescribed by the regulations.

(3) The Director or a person authorised by the Director is to consider the application and—

- (a) may grant a permit to the applicant subject to any reasonable conditions; or
- (b) refuse the application by notice in writing given to the applicant stating reasons for the refusal.

### **Offences concerning non-approved sugarcane**

**75.(1)** A person who grows non-approved sugarcane commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) A person who is convicted of an offence defined in subsection (1)—

- (a) commits a continuous offence for each day after the day of conviction during which the person grows any part of the sugarcane the subject of the conviction; and
- (b) is liable to a penalty of 5 penalty units for each day after conviction during which the offence continues; and
- (c) may be prosecuted from time to time for the continuing offence.

(3) A person who—

- (a) disposes of non-approved sugarcane to any other person; or
- (b) delivers non-approved sugarcane to a sugarcane works; or
- (c) accepts non-approved sugarcane at a sugarcane works;

or attempts to do so, commits an offence against this Act.

Maximum penalty—40 penalty units.

***Division 5—Application of Plant Protection Act 1989*****Plant Protection Act**

**76.(1)** The *Plant Protection Act 1989* applies in relation to sugarcane as a plant within the meaning of that Act.

**(2)** For the purpose of applying the *Plant Protection Act 1989* in relation to sugarcane—

- (a) a reference in that Act to the Minister is taken to be a reference to the Minister within the meaning of this Act; and
- (b) a reference in that Act to the chief executive is taken to be a reference to the Director within the meaning of this Act; and
- (c) if, under section 16 of that Act, an inspector takes measures on behalf of a body constituted under this Act, the provisions of sections 17 and 18 of that Act apply as if a reference to the Crown were a reference to the body; and
- (d) if any matter or thing is seized under that Act by an inspector acting on behalf of a body constituted under this Act, sections 25 and 26 of that Act apply as if reference to the Crown were a reference to the body; and
- (e) a reference in section 28 of that Act to the Crown includes a reference to a body constituted under this Act; and
- (f) non-approved sugarcane is taken to be a pest.

**PART 5—CANE PROTECTION AND  
PRODUCTIVITY BOARDS*****Division 1—Constitution and membership*****Productivity areas**

**77.** The Minister, on the recommendation of the Bureau, by notification

published in the Gazette, may—

- (a) declare an area or more than 1 area within the State where sugarcane is grown, to be a sugarcane productivity area; or
- (b) vary the boundaries of a productivity area; or
- (c) abolish a productivity area.

### **Constitution of productivity boards**

**78.(1)** The Minister, on the recommendation of the Bureau, by notification published in the Gazette, may constitute for a productivity area a cane protection and productivity board.

**(2)** A productivity board—

- (a) is constituted on and from the day on which the first appointment of the whole number of its members takes effect; and
- (b) is a body corporate having perpetual succession and a common seal; and
- (c) is capable of—
  - (i) suing and being sued; and
  - (ii) acquiring, holding and disposing of property both real and personal; and
  - (iii) doing and suffering all such acts and things as bodies corporate may in law do and suffer.

### **Judicial notice of a productivity board's seal**

**79.** All courts and persons acting judicially are to take judicial notice of the common seal of a productivity board and are to presume the common seal affixed to any document to have been duly affixed until the contrary is proved.

### **Objective of a productivity board**

**80.** The principal objective of a productivity board is to enhance the

productivity of the sugar industry by increasing the quantity and improving the quality of sugarcane produced by crops grown in its area.

### **Membership of a productivity board**

**81.(1)** Subject to the provisions of subsection (2), a productivity board is to consist of 6 members of whom—

- (a) 3 are to be representatives of cane growers elected by the cane growers of the area for which the productivity board is constituted in a poll conducted in accordance with the Bureau's directions; and
- (b) 2 are to be representatives of mill owners nominated in accordance with directions of the Bureau by the owners of the mills of the area for which the productivity board is constituted; and
- (c) 1 is to be an officer of the Bureau nominated by the Bureau.

**(2)** If, upon petition by cane growers and mill owners, the Minister is satisfied that at least a majority of the cane growers and a majority of the owners of the mills of a productivity area wish to—

- (a) vary the number of representatives of cane growers or mill owners who are members of the productivity board constituted for that area; or
- (b) vary the representation of organisations on the productivity board constituted for that area so as to include representatives of an organisation nominated in the petition;

the Minister is to vary in writing the membership accordingly.

**(3)** Appointed members of a productivity board are to be appointed by the Minister in writing.

**(4)** Subject to section 82, each appointed member is to be appointed for a period of 3 years ending on the same date as the terms of every other appointed member of the productivity board.

**(5)** The member of the productivity board referred to in subsection (1)(c) may be nominated from time to time.

(6) A variation in the membership of a productivity board under subsection (2) is to take effect from the commencement of the next 3 year term of membership following the variation.

(7) If a cane growers' representative is not able to be elected for appointment as a member of the productivity board because insufficient nominations are received for the poll referred to in subsection (1)(a), the Minister may appoint any person to be the representative of cane growers.

(8) If mill owners fail to nominate any representative for appointment to a productivity board in accordance with directions of the Bureau, the Minister may appoint any person to be the representative of the mill owners on the productivity board.

(9) The members of a productivity board may from time to time elect one of their number as chairperson.

(10) In this section—

“**appointed member**” means a member of the board other than the member mentioned in subsection (1)(c).

### **Casual vacancies**

**82.** A person appointed to fill the vacancy in the office of a productivity board member during the member's term (the “**vacancy term**”)—

- (a) is to be appointed as prescribed by regulation; and
- (b) holds office from the day specified by the Minister until the end of the vacancy term.

### **Fees and allowances of members**

**83.** A member of a productivity board is to be paid by the productivity board such fees and allowances for service as the Governor in Council may determine.

### **Polls for election of cane growers' representative**

**84.(1)** For the purposes of the poll referred to in section 81(1)(a), the Bureau, in accordance with the Minister's direction, is—

- (a) to compile a list of the names of every person who it believes is entitled to vote in the poll; and
  - (b) to make the list available for inspection for at least 21 days by any member of the public for periods of time and at places that the Bureau considers likely to be reasonably convenient to persons entitled to vote in the poll.
- (2) After considering any objections received by it to the list, the Bureau is—
- (a) to determine the list of persons entitled to vote in the poll; and
  - (b) to publish a notification in the Gazette stating the places where and periods of time when the list may be examined for 21 days after the date of notification.
- (3) The notification is taken to be notice, on the date of its publication, to all persons of the Bureau's determination of the list.
- (4) A person may not exercise an entitlement to vote in the poll unless the person's name appears in the list determined by the Bureau.

### *Division 2—Productivity board's functions, powers and duties*

#### **Functions of productivity boards**

**85.** The functions of a productivity board are—

- (a) to take all necessary steps to prevent, control and eradicate pest infestation of sugarcane grown within its area or any other matter or thing that adversely affects the quantity or quality of crops of sugarcane within its area; and
- (b) to assist and cooperate with the Bureau in research concerning any matter related to the production, harvesting, transport and processing of sugarcane or related to the production of sugarcane products; and
- (c) to provide such advice and assistance as it thinks fit to cane growers within its area concerning any matter related to—
  - (i) the production and harvesting of sugarcane; or

- (ii) the prevention, control and eradication of pest infestation of sugarcane or any other matter or thing that adversely affects the quantity or quality of crops of sugarcane; or
- (iii) the business of sugarcane farming; and
- (d) to provide advice and information concerning the preservation and enhancement of the capacity of land to sustain crops of sugarcane; and
- (e) to assist in keeping to a minimum any damage to the environment that may be caused by activities of the sugar industry within its area; and
- (f) to discharge such functions consistent with its objectives as may be delegated to the productivity board to discharge under this Act; and
- (g) to take all such action within the powers conferred upon it by this Act as may be necessary to achieve its objectives.

### **General powers of productivity boards**

**86.(1)** Subject to this Act, a productivity board may do all things necessary or reasonably required to be done in connection with, or incidental to, the discharge of its functions.

**(2)** Without limiting the generality of subsection (1), a productivity board, in relation to the prevention, control or eradication of the pest infestation of sugarcane crops within its area or any other matter or thing adversely affecting the quantity or quality of sugarcane produced within its area may provide to cane growers—

- (a) baits, chemicals or other materials or equipment; or
- (b) services; or
- (c) subsidies for the provision of baits, chemicals, materials, equipment or services; or
- (d) compensation for any actions taken by or on behalf of the productivity board.

**Power to engage assistance**

**87.(1)** A productivity board may employ the persons, and engage the consultants, service providers and agents, that it considers necessary.

**(2)** The employees of a productivity board are to be employed under this Act, and not under the *Public Service Act 1996*.

**Trade in local requirements**

**88.(1)** A productivity board, within the area for which it is constituted, may trade in agricultural requirements or carry on any business for the purpose of discharging its functions.

**(2)** The charges of a productivity board for providing any service, matter or thing in the course of carrying on the trade or business referred to in subsection (1) are to be reasonably related to the expenses incurred or to be incurred by it in carrying on trade and business under that subsection.

**Application of various public sector Acts**

**89.(1)** A productivity board is—

- (a) a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Administration and Audit Act 1977*; and
- (b) a unit of public administration within the meaning of the *Criminal Justice Act 1989*.

**(2)** The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which a productivity board's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

**Regulations may levy assessment in relation to sugarcane**

**90.(1)** The Governor in Council, by regulations, may levy an assessment in relation to every tonne of sugarcane received at every sugarcane works within the area of a productivity board.

**(2)** The regulations may prescribe—

*Sugar Industry Act 1991*

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- (a) the period for which sugarcane received at a sugarcane works is subject to the assessment; and
- (b) the time and manner of payment of the assessment; and
- (c) such matters as may be necessary to enforce the assessment.

**(3)** The amount of any assessment—

- (a) is to be the same in relation to every tonne of sugarcane to which the assessment applies; and
- (b) is to be no greater than is necessary to fund the discharge by the productivity board of its functions and to pay or make provision for the costs associated with its continued operation.

**(4)** Payment of an assessment is to be made to the productivity board by the owner of the sugarcane works that receives the sugarcane subject to the assessment.

**(5)** A person who fails to pay an assessment as prescribed by this section commits an offence against this Act.

Maximum penalty—40 penalty units.

**(6)** To the extent that an assessment is not paid, the productivity board may recover the amount unpaid by action against the owner as for a debt in any court of competent jurisdiction.

**(7)** An owner of a sugarcane works who makes a payment of an assessment to the productivity board pursuant to subsection (4), is entitled to recover an amount of money equal to  $\frac{1}{2}$  the assessment so paid as a debt from the grower of the sugarcane in relation to which the assessment was made.

**(8)** For this purpose the owner may deduct this amount from any money due by the owner to the grower for the sugarcane and may recover any unpaid portion of the amount in action against the grower as for a debt in any court of competent jurisdiction.

***Division 3—Dissolution of productivity boards*****Dissolution**

**91.** The Minister, on the recommendation of the Bureau, may by notification published in the Gazette dissolve a productivity board on a date defined in the notification.

**Bureau to take place of dissolved productivity board**

**92.(1)** On the date when a productivity board is dissolved—

- (a) all assets and rights vested in the productivity board immediately before that date divest from the productivity board and vest in the Bureau; and
- (b) all liabilities and obligations attached to the productivity board immediately before that date cease to be the liabilities and obligations of the productivity board and become and are the liabilities and obligations of the Bureau.

**(2)** Any proceedings that, but for the dissolution of the productivity board, might have been continued or taken by or against the productivity board, on and from the date it is dissolved, may be continued or taken by or against the Bureau.

**(3)** All matters commenced by a productivity board before the date on which it is dissolved may be completed by the Bureau after that date.

**(4)** Any reference to a productivity board dissolved under section 91 in any Act, agreement, contract or other instrument or document subsisting immediately before the date on which it is dissolved, on and from that date has effect as if it were a reference to the Bureau.

**Change to registers**

**93.** The Registrar of Titles and all other persons charged with keeping any register with respect to dealings with property, upon request made by the Bureau, are to make in the register all endorsements necessary to record the vesting of property in the Bureau under section 92.

## **PART 6—GENERAL PROVISIONS RELATING TO SUGAR INDUSTRY BODIES**

### **Definitions for pt 6**

**94.** In this Part—

**“appointed member”** means—

- (a) in relation to the Corporation—each director of the Corporation other than the director who is chief executive of the Corporation; and
- (b) in relation to a local board—each member of the local board; and
- (c) in relation to the Bureau—each director of the Bureau other than the Director; and
- (d) in relation to a productivity board—each member of the productivity board except the person nominated by the Bureau.

**“body”** means—

- (a) the board of directors of the Corporation; or
- (b) a local board; or
- (b) a negotiating team; or
- (d) the board of directors of the Bureau.

**“business manager”** for an industry participant, means—

- (a) a director, employee or officer of an industry participant; or
- (b) a manager or trustee of, or a partner in, an entity that is an industry participant.

**“disclosure body”** means a body other than a negotiating team.

**“domestic marketing matter”** means a matter about the sale by the Corporation of raw sugar for consumption or processing in the domestic market.

**“industry participant”** means—

- (a) a person who—
  - (i) grows sugar cane; or

- (ii) mills sugar cane; or
- (iii) produces, refines or manufactures sugar; or
- (iv) other than the Corporation, sells sugar solely by wholesale or retail; or
- (b) an entity representing the interests of persons carrying on any of the things mentioned in paragraph (a); or
- (c) a business manager of a person or entity mentioned in paragraph (a) or (b).

**“material personal interest”** in a matter, includes an interest in the matter that arises because a member is a business manager of another person who has a material personal interest in the matter.

**“member”** of a body, means—

- (a) for the board of directors of the Corporation—a director of the Corporation; or
- (b) for the board of directors of the Bureau—a director of the Bureau.

**“prescribed authority”** means—

- (a) in relation to the Corporation, a local board or the Bureau—the Governor in Council; and
- (b) in relation to a productivity board—the Minister.

### **Disqualifications for appointment**

**95.** A person who—

- (a) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (b) is convicted in Queensland of an indictable offence (whether on indictment or summarily); or
- (c) is a patient within the meaning of the *Mental Health Act 1974*; or
- (d) commits an offence against this Act;

is not qualified to be or to continue as an appointed member of a body.

**Vacation of office**

**96.(1)** The office of an appointed member of a body becomes vacant if the appointed member—

- (a) dies; or
- (b) resigns office by giving a written resignation to the Minister; or
- (c) is absent without prior leave granted by the body from 3 consecutive meetings of the body of which due notice has been given; or
- (d) ceases to be qualified to continue as an appointed member; or
- (e) is removed from office as prescribed.

**(2)** For the purposes of subsection (1)(c)—

- (a) the non-attendance of an appointed member at the time and place appointed for the meeting does not constitute absence from the meeting unless a meeting of the body at which a quorum is present is actually held on that day; and
- (b) the attendance of a member at the time and place appointed for a meeting is taken to constitute presence at a meeting notwithstanding that, by reason of the lack of quorum, a meeting is not actually held on that day.

**Convening meetings**

**97.(1)** A negotiating team is to meet as often as it decides is necessary.

**(2)** Another body is to meet as often as its chairperson decides is necessary.

**(3)** Subsection (1) does not limit the powers or functions of a mediator or arbitrator resolving a dispute about an award.

**Quorum**

**98.(1)** The quorum at a meeting of a local board is to include at least—

- (a) 1 member nominated by mill owners; and
- (b) 1 member nominated by mill suppliers' committees.

(2) The quorum at a meeting of a negotiating team is all the members of the team.

(3) The quorum at a meeting of another body is half the number of members appointed to the body plus 1.

### **Presiding member**

**99.** The chairperson, or in the absence of the chairperson and any deputy of the chairperson, a member elected by members present at a meeting, is to preside at any meeting of the body.

### **Voting**

**100.(1)** At any meeting of the body, all questions are to be decided by a majority of votes of the members present.

(2) If a member abstains from voting, the member is taken to vote for the negative.

(3) The member presiding at a meeting is to have a vote, and in the event of an equality of votes, a second or casting vote.

### **Meetings of dispersed members**

**101.(1)** Notwithstanding any provision of this Act, a member of a negotiating team or the chairperson of another body may refer any question requiring consideration by the body to all the members of the body in writing and a decision made by the members in writing is taken to be a decision of the body at a duly constituted meeting of the body.

(2) For the purposes of subsection (1)—

- (a) a reference by telegram, telex, facsimile, or similar transmission to members is sufficient reference in writing; and
- (b) a reply by telegram, telex, facsimile or similar transmission to a reference is a sufficient decision in writing.

### **General procedure at meetings**

**102.(1)** Subject to the provisions of this Act, procedure at meetings of a

body is to be determined by the body.

(2) Subsection (1) does not limit the powers or functions of a mediator or arbitrator resolving a dispute about an award.

### **Members of disclosure body to disclose interests**

**103.(1)** If a member of a disclosure body has a direct or indirect interest in a matter being considered, or about to be considered, by the body, the member must disclose the nature of the interest to a meeting of the body as soon as practicable after the relevant facts come to the member's knowledge.

Maximum penalty—100 penalty units.

(2) The disclosure must be recorded in the minutes of the meeting of the body.

### **Voting etc. by interested member of disclosure body**

**103A.(1)** A member of a disclosure body who has a material personal interest in a matter that is being considered by the body must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a “**related resolution**”) under subsection (2)(a) in relation to the matter (whether in relation to the member or another member); or
- (c) be present while the matter, or a related resolution, is being considered by the body; or
- (d) otherwise take part in any decision of the body in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to the matter if—

- (a) the body has at any time passed a resolution that—
  - (i) specifies the member, the interest and the matter; and
  - (ii) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from

considering or voting on the matter; or

- (b) if a quorum of the body can not be formed because of subsection (1)—the Minister has given a written direction to that effect for the matter.

### **Voting etc. by Corporation directors on domestic marketing matter**

**103B.(1)** This section applies if—

- (a) a matter before the Corporation is a domestic marketing matter; and
- (b) a director at the meeting at which the matter is to be considered is an industry participant.

**(2)** The director is taken to have a material personal interest in the matter.

**(3)** Section 103A(2) does not apply to the matter.

**(4)** However, if because of subsection (2) there are not enough members to form the quorum required under section 98(3), at least 2 appointed directors who do not have a material personal interest in the matter constitute a quorum for the meeting.

### **Prohibition on political activity**

**104.** A body is not—

- (a) to use any of its funds for any purpose in connection with the politics of any political party or any candidate for political office; or
- (b) to become affiliated in any way with any body, association or organisation that has as its object or any of its objects the support of the politics, program or aims of any political party.

### **Removal of member**

**105.** If at any time the prescribed authority of a body is satisfied that the body has contravened section 104, the prescribed authority, without any further proceedings being required, may remove all or any of the members of the body from office by notice in writing to any member so removed.

## PART 6A—NEW MILLS

### Establishment of new mills

**105A.(1)** A regulation may authorise the establishment of a new mill.

**(2)** The regulation must state—

- (a) the name of the person (the “**authorised person**”) authorised to establish the mill; and
- (b) where the mill is to be established.

**(3)** The regulation may state—

- (a) the name of the new mill; and
- (b) reasonable and relevant conditions about establishing the mill with which the authorised person must comply.

**(4)** A new mill may be authorised only if the Minister is satisfied—

- (a) the authorised person has demonstrated the person’s commitment to establishing the mill; and
- (b) satisfactory arrangements are in place between the authorised person and cane growers under which the growers are to supply the proposed mill with sugarcane.

*Example of subsection (4)(a)—*

By producing—

- (a) any local government or other government approvals for the proposed mill; or
- (b) plans and specifications for the proposed mill.

## **PART 7—ACQUISITION OF SUGAR**

### *Division 1—Acquisition and delivery*

#### **Definitions for pt 7**

**106.** In this Part—

“**raw sugar equivalent**” means the amount of raw sugar that, in accordance with approved calculations, is to be treated as the equivalent of any sugar vested in the Corporation.

“**sugar**” means all raw sugar, crystal sugar, sugar syrups, inverted syrups, liquid sugar and any other form of sugar manufactured at mills with the exception of—

- (a) final molasses; and
- (b) a form of sugar manufactured from another form of sugar previously disposed of by the Corporation.

#### **Vesting of sugar in Corporation**

**107.(1)** Subject to section 109, all sugar upon manufacture becomes and is the absolute property of the Corporation free from all mortgages, charges, liens, pledges and trusts.

**(2)** Property divested from any person because of this section is changed to a right to receive payments in accordance with this Act.

**(3)** To the extent that a contract, agreement, security or other document, whether made before or after this Act, is contrary to this section, it is of no effect.

#### **Delivery to and acceptance by Corporation of sugar**

**108.(1)** All sugar vested in the Corporation pursuant to section 107 is to be delivered to the Corporation in accordance with this section.

**(2)** The Corporation may make such determinations and authorise its employees, its agents and other bodies and persons to give such directions as it thinks fit concerning—

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- (a) the manner in which sugar vested in it is to be kept prior to delivery to the Corporation; or
- (b) the delivery to the Corporation of sugar vested in it including—
  - (i) the times, places and method of delivery; or
  - (ii) delivery to places or persons that will be treated as delivery to the Corporation; or
  - (iii) any action that will be treated as delivery to the Corporation; or
- (c) the payment by the manufacturer of sugar of costs associated with its delivery to the Corporation; or
- (d) the conditions upon which the Corporation will accept sugar vested in it under this Part; or
- (e) information to be furnished to the Corporation by any person concerned in the delivery to and acceptance by the Corporation of sugar under this Part, and the form and manner in which the information is to be furnished; or
- (f) any other matter for which determinations or directions are necessary to facilitate the discharge by the Corporation of its functions in relation to sugar vested in it.

(3) A person who fails to comply with a direction given under this section commits an offence against this Act.

Maximum penalty—40 penalty units.

(4) Without prejudice to any proceedings for an offence under this Act relating to the failure in question, a person who fails to comply with a direction given under this section is liable to pay to the Corporation the amount of any loss or damage suffered by the Corporation as a consequence of the failure.

(5) The amount may be recovered by the Corporation by action as for a debt in any court of competent jurisdiction.

**Exemption of approved amount**

**109.(1)** Notwithstanding section 107, an owner of a mill may retain for

local consumption and not deliver to the Corporation a quantity of sugar manufactured at the mill.

(2) The quantity is not to exceed a proportion in no case more than 1%, determined by the Minister in writing on the recommendation of the Corporation, of the aggregate quantity of the sugar vested in the Corporation by section 107.

(3) The sugar so retained is taken to be an exemption from the sugar vested in the Corporation by section 107.

(4) The Corporation by notice in writing given to the owner of a mill may impose conditions upon the exemption provided for by subsection (1) including—

- (a) the period for which the exempted quantity is to be calculated; or
- (b) the method of calculating the aggregate quantity of sugar vested in the Corporation during the period for which the exempted quantity is to be calculated; or
- (c) the price for which the exempted quantity may be sold.

(5) The owner of a mill may only sell sugar exempted from delivery to the Corporation by this section—

- (a) to assignment holders and to workers connected with the mill; and
- (b) in quantities not less than a single bag of 30 kg at any one time; and
- (c) subject to and in accordance with conditions imposed by the Corporation under subsection (4).

(6) An owner of a mill who sells sugar under this section is to keep a record of each sale noting particulars of the quantity of each sale and the name of the purchaser.

(7) The record is to be kept at the sugar mill in such form and manner that it may be inspected at any time upon reasonable request being made to the owner of the mill by a person authorised to do so by the Corporation.

(8) An owner of a mill who contravenes subsection (5) or (6) commits an offence against this Act.

Maximum penalty for subsection (8)—40 penalty units.

**Directions on brand of raw sugar**

**110.(1)** The Corporation, for the purpose of facilitating the marketing of sugar vested in it by section 107, may give directions in writing to the owner of a mill about sugar produced at the mill requiring the owner to produce a particular brand of raw sugar specified in the directions.

(2) The owner of the mill is to comply with the directions.

Maximum penalty—40 penalty units.

(3) If an owner of a mill fails to comply with the directions, the owner is liable to pay to the Corporation the amount of any loss or damage suffered by the Corporation consequent upon the failure to comply with the directions.

(4) The amount may be recovered by the Corporation by action as for a debt in any court of competent jurisdiction.

***Division 2—Payment for sugar*****Pools of sugar for which payment is to be calculated and made**

**111.(1)** Payment for sugar vested in the Corporation is to be calculated and made by reference to sugar that is—

- (a) the product of sugarcane harvested in each crushing season; and
- (b) manufactured in the year of harvest and the next following year;

considered in pools called ‘No. 1 Sugar Pool’, ‘No. 2 Sugar Pool’ and ‘penalty sugar’.

(2) Of the raw sugar equivalent of sugar that each sugar mill owner delivers to the Corporation—

- (a) included in No. 1 Sugar Pool is—
  - (i) the raw sugar equivalent of sugar produced from sugarcane grown on adjusted areas of all assignments the lands of which are assigned to the mill, within the mill peak of the mill; and
  - (ii) the raw sugar equivalent of sugar produced from sugarcane delivered to the mill by the Director; and

- (b) included in No. 2 Sugar Pool is the raw sugar equivalent of sugar produced from sugarcane grown on adjusted areas of all assignments the lands of which are assigned to the mill, less the mill peak of the sugar mill; and
- (c) included in penalty sugar is the raw sugar equivalent of all other sugar delivered to the Corporation.

(3) If, by arrangement between the owners of mills or of the owner of mills, sugar is manufactured at a mill from sugarcane grown on land assigned to another mill, that sugar for the purposes of this section is taken to be manufactured at the mill to which is assigned the land on which the sugarcane was grown.

### **Corporation's operating costs**

**112.(1)** From out of the proceeds received by it from the sale of sugar vested in it by section 107, the Corporation is to make provision for—

- (a) all costs of the sale of the sugar; and
- (b) all costs of the Corporation in the discharge of its functions; and
- (c) payments to accounts established under subsection (2).

(2) The Corporation may maintain such reserve accounts as may be necessary to fund its operation in accordance with accounting principles generally applied in commercial practice.

### **Calculation of price payable to owners of sugar mills**

**113.(1)** Whenever the Corporation considers sufficient information is available for the purpose, the Corporation is to calculate the net values per tonne of No. 1 Sugar Pool sugar and No. 2 Sugar Pool sugar.

(2) In calculating the net value per tonne of sugar in No. 1 Sugar Pool and No. 2 Sugar Pool the Corporation is to have regard to—

- (a) the net proceeds from sales of sugar in the pools; and
- (b) all relevant circumstances then affecting and likely to affect the amount of the net proceeds referred to in paragraph (a); and

- (c) in relation to sugar unsold or reserved for stocks, special purposes or later sale—all known factors and possible markets and risks.

(3) For the crushing seasons from 1993 to 1996, the net value for each tonne of sugar included in No. 1 Sugar Pool is to be the relevant percentage more than the net value for each tonne of sugar included in No. 2 Sugar Pool.

(4) In subsection (3)—

**“relevant percentage”** means—

- (a) for the 1993 crushing season—10%; and
- (b) for the 1994 crushing season—8%; and
- (c) for the 1995 and 1996 crushing seasons—6%.

(5) The net value per tonne of sugar included in No. 1 Sugar Pool calculated by the Corporation in relation to each crushing season after the crushing season for 1996 is to bear to the net value per tonne of sugar included in No. 2 Sugar Pool calculated by the Corporation in relation to each of those seasons a relativity that is prescribed by the regulations.

(6) After the Corporation has estimated the net values of No. 1 Sugar Pool sugar and No. 2 Sugar Pool sugar, it is to calculate the payments due to each mill owner by applying guidelines made by it under subsection (7).

(7) The Corporation is to make guidelines in writing setting out matters, limited to—

- (a) the weight of sugar delivered by a mill owner to the Corporation; and
- (b) the quality of sugar delivered by a mill owner to the Corporation; and
- (c) the costs incurred by a mill owner in complying with directions under section 110; and
- (d) other relevant matters affecting the proceeds of sale by the Corporation of sugar delivered by a mill owner to the Corporation;

that the Corporation will take into account in calculating the payments due to a mill owner for sugar delivered to the Corporation.

(8) The regulations may fix the payments to be made for sugar included in penalty sugar.

### **Minister's standards**

**114.(1)** For the purposes of a guideline under section 113(7)(b), the Corporation may make a standard about how sugar quality—

- (a) is decided; and
- (b) affects amounts payable to a mill owner.

(2) The standard may include, for example—

- (a) specified quality criteria and tests for the criteria; and
- (b) a financial incentive scheme of bonuses, penalties and allowances depending on sugar quality.

(3) The standard may also include matters prescribed by regulation.

(4) To take effect, the standard must be—

- (a) approved by the Minister; and
- (b) notified by the Minister to mill owners.

(5) The Minister may notify the standard in a way the Minister considers appropriate, including, for example—

- (a) by directing the Corporation to notify the mill owners; and
- (b) in a way that preserves its commercial confidentiality.

(6) A guideline under section 113(7)(b) may incorporate the standard by reference.

### **Payments to sugar mill owners**

**115.(1)** The Corporation is to pay to the owners of mills the net value of sugar manufactured by them and vested in the Corporation and calculated under section 113 by means of progressive payments made—

- (a) of amounts; and
- (b) at times;

determined by the Corporation subject to this Act.

(2) The Minister may give directions to the Corporation affecting its determinations under this section.

### **Mill peak**

**117.(1)** The mill peak of a mill is the amount of sugar, expressed as raw sugar equivalent, manufactured by the mill owner from sugarcane harvested in any crushing season from lands assigned to the mill and delivered to the mill under this Act for which the mill owner is entitled to be paid from out of the proceeds of the sale of No. 1 Sugar Pool sugar.

(2) The mill peak of each mill is the mill peak as adjusted under section 171.

(3) No other sugar mill has mill peak allocated to it.

## **PART 8—AWARDS**

### *Division 1—Awards generally*

#### **Making of awards**

**118.(1)** Before a date determined in writing by the Corporation in each calendar year, a negotiating team is to make an award in accordance with this Act—

- (a) for the crushing season commencing in that year; and
- (b) for the mill for which it is constituted and the lands assigned to the mill.

(2) If a negotiating team is constituted for more than 1 mill it may make 1 award or more than 1 award for the mills but not so that any mill has more than 1 award made for it.

(3) The award is to be signed by the members of the negotiating team and lodged for registration with the Corporation on or before the date determined by the Corporation under subsection (1).

(4) When an award is registered with the Corporation, the Corporation is to arrange for the award to be published in the Gazette.

(5) Upon being published in the Gazette, an award made for a mill—

- (a) is to be judicially noticed; and
- (b) subject to Division 2, on and from a date specified in the award, is binding upon—
  - (i) the owner of the mill; and
  - (ii) the assignment holders growing sugarcane upon the lands assigned to the mill; and
  - (iii) any mortgagee, licensee, transferee and any other person having any title to or interest in the mill or lands or the sugarcane on the lands.

(6) A negotiating team may vary an award if it considers a variation is necessary to take into account a change in circumstances since the award was made.

(7) The provisions of this section (other than the provision requiring the negotiating team to make an award before a date determined by the Corporation) apply to the variation.

(8) The variation may be expressed to take effect retrospectively so as to apply to a part of a crushing season occurring before the negotiating team makes the variation.

### **Matters to which award extends**

**119.(1)** An award made for a mill is to provide for—

- (a) all matters relating to the harvesting and delivery to the mill by assignment holders of sugarcane grown on lands assigned to the mill; and
- (b) all matters relating to the transport, handling and crushing of the sugarcane by the mill owner; and
- (c) all matters relating to the payment for the sugarcane by the mill owner.

(2) In respect of the matters referred to in subsection (1), an award may provide for penalty payments in terms of money or in terms referable to money, by the mill owner to an assignment holder or by an assignment holder to the mill owner for a breach of the conditions laid down in the award.

(3) Such a provision does not prejudice proceedings for an offence against this Act constituted by the breach of the conditions of the award.

(4) An award made for a crushing season (the “**award season**”) may also—

- (a) require information to be given to the negotiating team about an earlier crushing season or the next crushing season; and
- (b) apply by reference to information required to be given under an award made for an earlier crushing season.

### **Matters relevant to making of award**

**120.(1)** A negotiating team, in making an award for a mill may take into consideration all or any of the following matters—

- (a) the estimated quantity of sugarcane to be treated at the mill;
- (b) the estimated commercial cane sugar content of the sugarcane;
- (c) the cost of production of sugarcane and the cost of manufacture of sugar;
- (d) the crushing capacity of the mill;
- (e) the selling price of raw sugar and refined sugar;
- (f) any local conditions;
- (g) any prescribed matters;
- (h) any matters deducible from any or all of these matters.

(2) In making an award for a mill, a negotiating team must consider ways the mill owner and the assignment holders can jointly—

- (a) improve productivity; or
- (b) reduce costs.

**Award to determine crushing times**

**121.** An award made for a mill—

- (a) is to fix a date on and after which the owner of the mill is to take delivery of and crush sugarcane; and
- (b) is to provide for the termination of crushing operations by the mill, including at the discretion of the owner of the mill in the event that the supply of sugarcane to the mill falls below a rate specified in the award.

**Award to regulate price of and payment for sugarcane to assignment holders**

**122.(1)** An award made for a mill is to specify—

- (a) a base price to be paid for sugarcane; or
- (b) base prices to be paid for sugarcane of different qualities;

accepted by the mill owner according to the content of commercial cane sugar or on such other basis or bases as the negotiating team making the award may specify.

**(2)** An award made for a mill may provide for a relative scheme of payment, that is to say—

- (a) for payment for sugarcane of the average quality of sugarcane accepted by the mill owner during any week or other specified period of time at a price equal to that payable for sugarcane of the average quality of all sugarcane accepted by the mill owner during the crushing season in question; and
- (b) for the determination of the price to be paid to each assignment holder for the holder's sugarcane accepted by the mill owner during any week or specified period of time according to the relation the quality of that sugarcane bears to the quality of all sugarcane accepted by the mill owner during that week or, as the case may be, other specified period of time.

**(3)** The base price or base prices for sugarcane specified in the award are to be associated with an estimated selling price of sugar stated in the award.

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(4) Provision may be made in the award for the actual price or prices for sugarcane to vary from the base price or base prices as the actual selling price of sugar varies from the estimated price.

(5) An award is to provide a basis for determining the price payable for sugarcane that is the same for every assignment holder bound by the award.

(6) An award is to determine an interim minimum price or interim minimum prices for sugarcane.

(7) The interim minimum price or interim minimum prices are not to exceed 80% of the base price or base prices, as the case may be, unless a higher interim minimum price or interim minimum prices are authorised under the Corporation's guidelines.

(8) Except as hereinafter provided, every award is taken to provide—

- (a) that, except where the mill is in the possession of an administrator under this Act, the mill owner is to pay to each assignment holder, in respect of the holder's sugarcane accepted in each month of the season, a sum equal to the interim minimum price for the sugarcane under the award; and
- (b) unless the award provides for payment within a lesser period of time—that the payment is to be made within 30 days after the end of the month to which it applies; and
- (c) that if the mill owner fails to make the payment within the specified time, the mill owner commits a breach of the award.

(9) Subsection (8) does not affect a provision in an award prescribing payments for sugarcane at more frequent intervals.

(10) Deductions from the base price payable for sugarcane may be provided for in the award in respect of—

- (a) burnt, frosted, dried-up, diseased, pest infested, decayed, badly topped, trashy, or dirty sugarcane; or
- (b) sugarcane of a variety certified by the Director to have a material milling disability; or
- (c) overloading of trucks; or
- (d) matters prescribed by the regulations.

(11) Notwithstanding the provisions of subsection (10), an award may provide that if the quality or condition of sugarcane does not comply with standards specified in the award, the mill owner may refuse, or may defer acceptance of, the sugarcane.

### **Award to be displayed**

**123.(1)** Every owner of a mill is to display a legible copy of every award in force with respect to the mill in some conspicuous place in or near the main office of the mill.

(2) All assignment holders whose lands are assigned to the mill are to have free access, at all reasonable times, to the copy of the award.

(3) A mill owner who fails to comply with this section commits an offence against this Act.

Maximum penalty for subsection (3)—40 penalty units.

### **Guidelines about awards**

**124.(1)** The corporation may make guidelines about—

- (a) the selection of mediators or arbitrators; and
- (b) standards for contracts between negotiating teams and mediators or arbitrators, including, for example, contracts for fees; and
- (c) anything else about resolving disputes about an award by negotiation, mediation or arbitration; and
- (d) the form of an award.

(2) Guidelines under subsection (1)(c) and (d) are binding on a negotiating team or other person to whom it applies.

### ***Division 2—Applications about awards***

#### **Application for review of award**

**126.(1)** The holders of 20 or more assignments for a mill may apply to the mill's negotiating team for review of a non-arbitrated provision of the

award applying to the mill.

(2) An application must be made—

- (a) no later than 21 days after the award is published in the gazette; or
- (b) if an application is for the review of an award provision as varied under this part—no later than 21 days after the decision to vary the award.

(3) If the members of the negotiating team do not unanimously agree to review the provision, the dispute is to be resolved as if it were a dispute arising in the making of an award.

(4) The negotiating team may decide that a variation takes effect retrospectively to apply to a part of a crushing season happening before the decision.

(5) In this section—

**“non-arbitrated provision”** means a provision that was not the subject of arbitration.

### *Division 3—Breaches of award*

#### **Proceedings for offence against award**

**127.(1)** A person who contravenes an award binding on the person commits an offence against this Act.

Maximum penalty—40 penalty units.

(2) Proceedings for the offence are not prejudiced by proceedings concerning the contravention that are taken to enforce the award as a contract.

#### **Civil proceedings to enforce award as contract**

**128.(1)** An award is taken to be a contract between each assignment holder and the mill owner bound by the award and may be enforced by action in any court of competent jurisdiction.

(2) Proceedings to enforce an award as a contract are not prejudiced by proceedings concerning the contravention that are taken for an offence constituted by the contravention.

### **Mill owner may harvest sugarcane**

**129.(1)** If an assignment holder fails to harvest sugarcane from the assignment's land and deliver it to a mill for crushing in accordance with an award, the mill owner may apply to the local board constituted for the mill for an order authorising the mill owner to harvest the sugarcane and deliver it to the mill for crushing.

(2) The mill owner is to give notice of the application to the assignment holder unless the local board dispenses with notice.

(3) The assignment holder is entitled to make written submissions to, and be heard by, the local board in relation to the application.

(4) If upon considering the application the local board is satisfied—

- (a) that the assignment holder has failed to harvest the sugarcane in question and deliver it to the mill in accordance with the award; and
- (b) that in all the circumstances the mill owner should be authorised to harvest the sugarcane and deliver it to the mill for crushing;

it may make, subject to such conditions as it thinks fit, an order authorising the mill owner to harvest the sugarcane and deliver it to the mill for crushing.

(5) The mill owner may then, with such vehicles and equipment as may be necessary, enter the assignment's land, harvest the sugarcane, deliver it to the mill and crush it.

(6) **“Mill owner”** includes any person authorised by the mill owner.

(7) The assignment holder is entitled to be paid by the mill owner for the sugarcane in accordance with provisions of the award relating to payment for sugarcane delivered by an assignment holder to the mill owner.

(8) Subject to the local board's order, the mill owner is entitled to be paid by the assignment holder the cost of harvesting the sugarcane including incidental costs.

(9) The amount of the costs may be retained by the mill owner from payments due to the assignment holder under subsection (7).

(10) To the extent that the costs are not paid by the assignment holder or retained by the mill owner from payments made to the assignment holder under subsection (7), they may be recovered by the mill owner by action as for a debt against the assignment holder in any court of competent jurisdiction.

#### *Division 4—Contracts outside award*

### **Mill supply contracts**

**130.(1)** This Division applies to a contract or agreement—

- (a) that is made between a mill owner and an assignment holder or group of assignment holders in relation to the supply of sugarcane to the mill by the assignment holder or holders and the payment for the sugarcane by the mill owner; and
- (b) that has the effect of varying, or operating in the place of, a provision of an award, including a provision taken to be contained in the award under this Act.

(2) Such a contract or agreement is referred to in this Division as a mill supply contract.

(3) This Division applies whether a contract or agreement is made before or after the commencement of this section.

### **Procedure for making effective mill supply contract**

**131.(1)** A mill supply contract, to the extent that if valid, it would have the effect referred to in section 130(1)(b), is of no effect unless—

- (a) a copy of the contract is lodged with the Corporation no later than 30 days after the contract's execution; and
- (b) the Corporation approves the contract.

(2) The Corporation is to approve a mill supply contract lodged with it under subsection (1) unless in its opinion it is unfair and unreasonable.

(3) If the Corporation determines not to approve a mill supply contract lodged with it under subsection (1), it is to give notice in writing to the parties stating its reasons.

### **Application of contract to all assignment holders supplying to a mill**

**133.(1)** A mill supply contract made between a mill owner and a mill suppliers' committee or other body acting or purporting to act on behalf of all assignment holders supplying sugarcane to the mill is not valid and binding upon all the assignment holders and the mill owner unless and until—

- (a) it is approved in writing by 85% of the assignment holders; and
- (b) lodged with and approved by the Corporation in accordance with section 131(1).

(2) The Corporation is not to approve the mill supply contract unless it is satisfied that the provisions of this section have been complied with.

### **Contracts limited to 3 years**

**134.(1)** A mill supply contract is not to continue in effect for a period exceeding 3 years from the date of its execution and is of no effect to the extent that it purports to be effective for a longer period.

(2) The Corporation is not to approve a mill supply contract that purports to be effective for a period exceeding 3 years from the date of its execution.

### **Exemption from controls over agreements**

**134A.** A regulation may exempt a contract or agreement from section 131 or 134.

### **Mill supply contracts for unduly lengthy crushing season**

**135.(1)** If a mill suppliers' committee fails in an attempt to negotiate with the owner of the mill for which it is constituted a mill supply contract under which all assignment holders supplying sugarcane to the mill for a crushing season under an award would receive, in the event of unreasonable delay on the part of the mill owner in crushing sugarcane, payments for the

sugarcane higher than those payable under the award, the mill suppliers' committee may request the Corporation to assist in the negotiations.

(2) Upon receiving such a request the Corporation is to enter the negotiations and attempt to bring the parties to an agreement.

(3) If negotiations fail, or if, in the opinion of the Corporation, insufficient progress is made in bringing the parties to an agreement, the Corporation may apply to the Tribunal for a variation of the award in relation to the matters that were the subject of the negotiations.

(4) Notice of the application is to be given by the Corporation to—

- (a) the owner of the mill to which the award relates; and
- (b) the mill suppliers' committee constituted for the mill to which the award relates.

(5) The owner and the committee are entitled to be heard by the Tribunal upon the application.

(6) Upon hearing the application the Tribunal may vary the award in such manner as it thinks fit.

(7) The Tribunal may order the variation of the award to take effect retrospectively so as to apply to a part of the crushing season occurring before the order is made.

## **PART 9—ASSIGNMENTS AND FARM PEAKS**

### *Division 1—Assignments generally*

#### **The assignment entitlement**

**136.(1)** A cane grower may hold, in accordance with this Act, an entitlement called an assignment.

(2) An assignment confers upon the holder an entitlement, subject to this Act, to deliver to a mill for payment in accordance with this Act sugarcane grown on a number of hectares situated within the boundaries of a description of land assigned to the mill.

(3) In this Act—

- (a) the number of hectares is referred to as the assignment's area; and
- (b) the description of land is referred to as the assignment's presently assigned description; and
- (c) the land is referred to as the assignment's land.

(4) The area of land within the boundaries of an assignment's presently assigned description may be the same area as, or greater than, the assignment's area but not less than the assignment's area.

(5) An assignment may be disposed of, wholly or partially by the holder by way of sale, lease, sublease, or other form of transfer in accordance with this Act.

(6) A disposal of an assignment's land does not effect a disposal of the assignment.

(7) This section does not prevent land included within a description of land assigned to 1 mill also being included in a description of land being assigned to another mill.

### *Division 2—Grant by Corporation of assignment*

#### **Corporation's general authority over assignments**

**137.(1)** The Corporation may grant, vary or cancel assignments but is not competent to exercise its power to do so except in circumstances prescribed by this Act.

(2) For the purpose of exercising the power to grant, vary or cancel assignments the Corporation may—

- (a) assign land to a mill or vary or cancel the assignment of land to a mill; or
- (b) allocate assignment area to an assignment or vary or cancel the allocation of assignment area to an assignment.

(3) The Corporation may impose conditions on the grant or variation of an assignment.

(4) Without limiting subsection (3), a condition may—

- (a) prohibit a specified authorised transaction affecting the assignment or any other purported dealing in the assignment; or
- (b) prohibit a specified authorised transaction affecting the assignment or any other purported dealing in the assignment unless it complies with a specified condition.

(5) A condition may provide for an exemption from a condition.

### **Grant of assignment by Corporation**

**138.(1)** The Corporation at any time may grant assignments to the extent of—

- (a) any increase in the aggregate of all assignments' areas determined by it under section 149; and
- (b) any assignment's area cancelled by it under section 147 or 151.

(2) A reference to the grant of an assignment includes a reference to the grant of a variation of an assignment by the allocation of further assignment area to it.

(3) The Corporation may only grant an assignment to the extent of the cancelled area referred to in subsection (1)(b)—

- (a) if that assignment's land is assigned to the same mill as the land of the assignment to which the cancelled area related; and
- (b) if the applicant is not the person who held the assignment to which the cancelled area related; and
- (c) if the Corporation considers the grant desirable because it would enhance the economy of the existing sugarcane farm or farms relating to the applicant's existing assignment.

### **Guidelines for grant of assignment**

**139.(1)** The Corporation is to make written guidelines stating—

- (a) the manner and form of application for the grant of an assignment under section 138; and
- (b) the matters to which it will have regard in determining an application for the grant of an assignment under section 138; and

- (c) the conditions imposed, or that may be imposed, on the grant of an assignment under section 138.

(2) The guidelines, with respect to the aggregate of all assignments' areas referred to in section 138(1)(a) available to be granted in any calendar year—

- (a) are to provide that a prescribed proportion at least is to be offered in the first instance to holders of existing assignments for the purpose of enhancing the economy of existing sugarcane farms; and
- (b) may provide that a proportion not exceeding a prescribed maximum is to be reserved for the establishment of new sugarcane farms.

(3) The guidelines are binding on every applicant for the grant of an assignment and on the Corporation.

### *Division 3—Grant and variation of assignments pursuant to authorised transactions*

#### **Variations to assignment entitlements**

**140.** Entitlements to assignments may be varied by means of the authorised transactions referred to in section 141, but a matter authorised by that section to be provided for does not take effect unless and until—

- (a) a local board or local boards make the order or orders necessary to give effect to the matter; and
- (b) the matter is noted on the Sugar Cane Assignment Register pursuant to the order or orders.

#### **Authorised transactions concerning assignments**

**141.(1)** An authorised transaction concerning assignments may provide for 1 or more of the following matters—

- (a) the transfer of an assignment from an existing holder to another person;

- (b) a variation of an assignment's presently assigned description by cancellation of the assignment to a mill of whole or part of the assignment's land or by the assignment of land to a mill for inclusion as whole or part of the assignment's land or both;
  - (c) a variation of the mill to which is assigned the land within the boundaries of the assignment's presently assigned description by cancellation of the assignment to a mill of the whole of the assignment's land and its assignment to another mill;
  - (d) a transfer of an assignment's area from one assignment to another by cancellation of the whole or part of the area of one assignment and its allocation to another assignment;
  - (e) the cancellation of an assignment together with the transfer of its area to another assignment;
  - (f) the grant of an assignment by the assignment of land to a mill and the transfer to the assignment of whole or part of the area of another assignment for the purpose.
- (2) An authorised transaction may—
- (a) involve the holder of an existing assignment as the only party or involve more than 1 party where a disposition of assignment is involved; or
  - (b) provide for a matter to take effect for a period limited by time or indefinitely.

### **Orders by local board**

**142.(1)** A local board, upon application by a party or parties to an authorised transaction may make orders in an approved form directing the Corporation—

- (a) to transfer an assignment from an existing holder to another person; or
- (b) to cancel the assignment of land to a mill; or
- (c) to assign land to a mill; or
- (d) to cancel an assignment's area wholly or partly; or

- (e) to allocate to an assignment the whole or part of another assignment's area subject to cancellation under an order referred to in paragraph (d); or
- (f) to cancel an assignment; or
- (g) to grant an assignment.

(2) An order of a local board made for the purposes of an authorised transaction only has effect upon an assignment the land of which is assigned to the mill for which the local board is constituted.

(3) If an authorised transaction—

- (a) provides for the cancellation of the assignment to a mill of the whole of an assignment's land and its assignment to another mill; or
- (b) provides for matters having effect in relation to more than 1 assignment and the lands of those assignments are assigned to different mills;

the orders necessary to give effect to those matters are to be obtained by applications to the local boards constituted for those mills.

(4) An order of a local board under this section may include conditions restricting or prohibiting the use of part of the land of an assignment for the growing of sugarcane.

(5) The regulations may regulate further the procedures referred to in this section.

### **Applications for local board orders**

**143.** An application to a local board for an order to give effect to an authorised transaction concerning an assignment—

- (a) is to be in the approved form; and
- (b) is to be signed by every party to the authorised transaction to which effect is sought to be given by the order.

### **Limitations upon power of local board to issue particular orders**

**144.(1)** A local board, under section 142, may not order the transfer of

an assignment from its existing holder to another person unless it is satisfied that the holder of the assignment after the authorised transaction in question takes effect will have an estate or interest in the assignment's land entitling the holder to use it for the purposes of the assignment.

(2) A local board, under section 142, may not order land to be assigned to the mill for which it is constituted unless it is satisfied—

- (a) that the holder of the assignment for which the land is so assigned, after the authorised transaction in question takes effect, will have an estate or interest in the land entitling the assignment holder to use it for the purposes of the assignment; and
- (b) that the land is situated in a location from which sugarcane grown on the land may be efficiently delivered to the mill; and
- (c) that the land may be prepared and utilised for the growing of sugarcane without undue damage to the environment.

(3) A local board under section 142 may not make any order requiring the establishment or variation of an assignment unless it is satisfied that after the authorised transaction in question takes effect the land of the assignment so established or varied will be capable of producing commercial crops of sugarcane when subjected to correct agricultural practices.

### **Local board to grant application or give reasons for refusal**

**145.(1)** Subject to subsection (2), a local board that receives an application under section 143, upon being satisfied that the provisions of this Act have been complied with, is to grant the order or orders sought.

(2) If, for the purpose of giving effect to an authorised transaction, it is necessary for orders under section 142 to be obtained from more than 1 local board—

- (a) the decision of each of the local boards whether or not to make an order sought is to be by the unanimous decision of all the local board's members; and
- (b) each of the local boards may exercise a discretion to make or to refuse to make an order sought.

(3) If a local board refuses an application, it is to give notice in writing to the applicant specifying the reasons for the refusal.

### **Lodgement with Corporation of local board's orders**

**146.(1)** Upon lodgement with the Corporation in accordance with the Corporation's guidelines of a notice signed by every party to an authorised transaction of an order or orders of a local board or local boards sufficient to give effect to the authorised transaction, the Corporation is to note in the Sugar Cane Assignment Register the effect of the authorised transaction in accordance with the order or orders.

(2) The authorised transaction then takes effect and not beforehand.

(3) The noting by the Corporation in the register of the effect of a local board's order is taken to be an order by the Corporation giving effect to the local board's order.

### **Application to Corporation for transfer of assignment to another mill**

**147.(1)** Notwithstanding any other provision of this Act an assignment holder may apply to the Corporation to give effect to the authorised transaction referred to in subsection (2).

(2) The authorised transaction to which this section applies is one in which—

- (a) the only party is the holder of an existing assignment; and
- (b) the transaction provides for—
  - (i) the cancellation of the existing assignment; and
  - (ii) the grant of a new assignment the land of which is to be assigned to a mill other than the mill to which is assigned the existing assignment's land; and
  - (iii) the transfer to the new assignment of the area of the existing assignment.

(3) The Corporation is to consider the application and may grant or refuse it.

(4) The Corporation is not to grant the application unless it is satisfied that after the authorised transaction takes effect—

- (a) the new assignment's land—
  - (i) will be capable of producing commercial crops of sugarcane when subjected to correct agricultural practices; and
  - (ii) will be situated in a location from which sugarcane may be efficiently delivered to the mill to which the land is assigned; and
  - (iii) will be able to be prepared and utilised for the growing of sugarcane without undue damage to the environment; and
- (b) the holder of the new assignment will have an estate or interest in the assignment's land entitling the holder to use it for the purposes of the assignment.

(5) If the Corporation grants the application it is to exercise the powers conferred upon it by section 137 to—

- (a) cancel the existing assignment and its area; and
- (b) grant the new assignment and allocate to it an area equal to the number of hectares of the area subject to cancellation under paragraph (a).

(6) The Corporation is to note the effect of its orders in the Sugar Cane Assignment Register.

(7) The Corporation is to apply the existing assignment's area cancelled under subsection (5)(a) against future increases of the aggregate of all assignments' areas determined under section 149 so as to reduce those increases by the area cancelled.

#### *Division 4—Annual increase in aggregate of assignment areas*

### **Annual determination of increase in the aggregate of assignments' areas**

**149.(1)** On or before 31 January of each calendar year, commencing with 1996, the Corporation is to determine—

- (a) whether or not the aggregate area of all assignments' areas in existence at the commencement of the calendar year should be increased; and
- (b) if it determines that the aggregate area should be increased—the extent of the increase.

(2) Before making a determination, the Corporation is to consult with the Minister and with such other organisations as the Minister directs.

(3) In making its determination, the Corporation is to have regard to all relevant matters including—

- (a) the availability of suitable land; and
- (b) the capacity of mills to crush additional sugarcane, including the proposed capacity of any new mill to be established; and
- (c) reductions required to be made by the Corporation in compliance with section 147(7) to take into account all cancellations of assignments' areas under section 147(5)(a) not previously so taken into account.

(4) When a determination is made, the Corporation is to forthwith inform the Minister by notice in writing.

### **Government project land**

**150.(1)** For the purpose of enabling the Crown or a Crown instrumentality to sell, lease or otherwise dispose of land together with an assignment, the Minister may give directions to the Corporation—

- (a) requiring it to reserve to the Crown in any calendar year a proportion, to a prescribed maximum, of the increase in assignments' areas determined by the Corporation under section 149; and
- (b) requiring it to exercise its powers under Division 2 to ensure that the persons to whom the land is disposed of will be granted an assignment or to ensure that the Crown or a Crown instrumentality will be able to dispose of an assignment to those persons together with the land.

(2) Directions referred to in subsection (1)(a) are to be given—

- (a) in the case of the calendar years 1992 to 1995—before 31 January in each year; and
- (b) in the case of each calendar year commencing with 1996— within 28 days after receipt by the Minister of the Corporation’s notice under section 149(4).

### *Division 5—Cancellation of assignment*

#### **Cancellation of assignment**

**151.** The Corporation may cancel an assignment or vary an assignment by cancelling part of its area—

- (a) in the event of the holder applying to the Corporation for such a cancellation or variation; or
- (b) upon wilful failure of the holder to grow sugarcane on the assignment’s land for delivery to a mill pursuant to the assignment or to grow sugarcane on the land sufficient to exercise fully the entitlement conferred by the assignment; or
- (c) upon failure of the holder to obtain or retain an estate or interest in the assignment’s land enabling the holder to grow sugarcane on the land for delivery to a mill pursuant to the assignment or to grow sugarcane on the land sufficient to exercise fully the entitlement conferred by the assignment; or
- (d) upon conviction of the holder of an offence constituted by a contravention of an award consisting of a failure to deliver to a mill sugarcane grown on the assignment’s land.

#### **Show cause to precede cancellation or variation**

**152.(1)** Before the Corporation cancels an assignment or part of an assignment’s area under section 151(b), (c) or (d), it is to give written notice to the assignment holder calling upon the holder to show cause why the cancellation should not occur.

**(2)** The notice to show cause is to allow the assignment holder at least 30 days in which to respond.

(3) The Corporation is to consider any written submissions made by the assignment holder and afford the assignment holder a reasonable opportunity to be heard in relation to the matter.

(4) If by the expiration of the period of 30 days or such greater period allowed by the Corporation at any time, the assignment holder has not shown cause or sufficient cause why the assignment should not be cancelled or varied, the Corporation may proceed to cancel the assignment or part of the assignment's area.

### **Time for disposal may be allowed**

**153.** If the Corporation determines that an assignment or part of an assignment's area should be cancelled under section 152(4), it may instead of proceeding immediately to order the cancellation allow the assignment holder a period of time in which to dispose of the assignment or the part of the assignment's area.

### ***Division 6—Relationship between assignment holders and mill owners***

### **Obligation of assignment holder to dispose of sugarcane to mill to which land assigned**

**154.(1)** An assignment holder is not to dispose of the sugarcane grown by the holder on the assignment's land except by delivery to the mill to which the land is assigned.

(2) This section does not apply—

- (a) if the business of manufacturing sugar from sugarcane is not being carried on at the mill; or
- (b) in relation to sugarcane referred to in section 155.

(3) A person who disposes of sugarcane in contravention of this section commits an offence against this Act.

Maximum penalty for subsection (3)—40 penalty units.

**Sugarcane not required to be delivered by assignment holder**

**155.** Section 154 does not apply in relation to—

- (a) sugarcane that is infested with a pest; or
- (b) sugarcane that has present in or on it the residue of a chemical in an amount exceeding the maximum residue limit of the chemical prescribed for sugarcane under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* or sugarcane that has been exposed to or has present on or in it a chemical as prescribed by the regulations under this Act; or
- (c) sugarcane that the assignment holder on reasonable grounds considers is unfit for harvest and delivery because of damage, low commercial cane sugar content or other defect; or
- (d) sugarcane that is disposed of after the assignment holder has already had accepted at a mill or mills the greater of either—
  - (i) the quantity of sugarcane that represents the farm peak held by the assignment holder in relation to the assignment; or
  - (ii) the quantity of sugarcane harvested from the adjusted area of the assignment; or
- (e) sugarcane that is delivered to a mill other than the mill to which is assigned the land on which the sugarcane is grown with the written consent of the owner of the last mentioned mill; or
- (f) sugarcane retained by an assignment holder, or disposed of by an assignment holder to a cane grower, for the purpose of providing plants for new crops of sugarcane.

**Obligation of mill owner to accept sugarcane**

**156.(1)** Sugarcane grown by an assignment holder on the assignment's land upon delivery to the mill to which the land is assigned is to be accepted by the owner of the mill in accordance with the relevant award.

**(2)** This section does not apply—

- (a) if the owner of the mill has been exempted under this Act from the obligation of carrying on the business of manufacturing sugar from sugarcane at the mill and has ceased to carry on that

business pursuant to that exemption; or

(b) in relation to sugarcane referred to in section 157.

(3) A mill owner who refuses or fails to accept sugarcane in contravention of this section commits an offence against this Act.

Maximum penalty for subsection (3)—40 penalty units.

### **Sugarcane not required to be accepted by mill**

**157.** Section 156 does not apply in relation to—

- (a) sugarcane that is infested with a pest; or
- (b) sugarcane that has present in or on it the residue of a chemical in an amount that exceeds the maximum residue limit of the chemical prescribed for sugarcane under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* or sugarcane that has been exposed to or has present on or in it a chemical as prescribed by the regulations; or
- (c) sugarcane that contains less than 7% of commercial cane sugar; or
- (d) sugarcane of a quality or condition that entitles the mill owner to defer or refuse to accept it under the relevant award; or
- (e) sugarcane that is delivered to the mill in question after the assignment holder has already had accepted at the mill or mills the greater of either—
  - (i) the quantity of sugarcane that represents the farm peak held by the assignment holder in relation to the assignment; or
  - (ii) the quantity of sugarcane harvested from the adjusted area of the assignment; or
- (f) sugarcane grown in contravention of any condition imposed under this Act with respect to the assignment in question.

### **Delivery and acceptance of sugarcane**

**158.(1)** Sugarcane is delivered to a mill for the purposes of this Act if it is delivered or tendered for delivery in accordance with the relevant award.

(2) Acceptance of sugarcane by a mill owner for the purposes of this Act comprises—

- (a) the handling of sugarcane from the point of delivery to the mill; and
- (b) its crushing; and
- (c) the acceptance of liability for its payment in accordance with the relevant award.

(3) No action taken with respect to sugarcane prior to a determination by the mill owner that it is or is not acceptable in accordance with section 156 and 157 of this Act constitutes acceptance of the sugarcane.

(4) Reference in this Act to delivery to a mill or acceptance by a mill owner of sugarcane includes a reference to the delivery to a mill or acceptance by a mill owner of sugarcane delivered on behalf of the mill owner.

### **Mill owner may enter upon assigned lands**

**159.(1)** A mill owner, with such vehicles and equipment as may be necessary and after giving reasonable notice in writing to the occupier, may enter upon land assigned to the mill for the purpose of—

- (a) ascertaining the boundaries of the land assigned to the mill; or
- (b) ascertaining whether sugarcane delivered to the mill has been, or sugarcane proposed to be delivered to the mill will be, harvested—
  - (i) from land assigned to the mill; or
  - (ii) from the adjusted area of the assignment to which the land relates; or
  - (iii) in accordance with any conditions imposed under this Act with respect to the assignment in question; or
- (c) estimating yields of sugarcane.

(2) Upon entering the land, the mill owner may—

- (a) make such measurements, observations or estimates; and
- (b) take such samples of sugarcane;

as may be necessary for the purposes for which entry was made.

(3) A person who obstructs a mill owner in the exercise of powers under this section commits an offence against this Act.

Maximum penalty for subsection (3)—40 penalty units.

(4) In this section a reference to a mill owner includes a reference to the mill owner's employees and agents acting under the mill owner's authority.

### **Agreed assignment plan is evidence**

**160.** In any proceedings, a plan of land in the approved form acknowledged in writing as correct within the limit of their knowledge by the holder of an assignment and the owner of the mill to which is assigned the assignment's land, showing—

- (a) the boundaries of the assignment's presently assigned description; or
- (b) the land being used or proposed to be used by the holder for the growing of sugarcane for harvesting and delivery to the mill pursuant to the assignment;

as at a date or during a period of time specified in the plan is prima facie evidence of the matters contained in the plan.

### **Submission of plan to local board**

**161.(1)** If—

- (a) an assignment holder is not satisfied of the accuracy of a plan referred to in section 160 submitted by a mill owner to the assignment holder for an acknowledgment of its accuracy; or
- (b) a mill owner is not satisfied of the accuracy of a plan referred to in section 160 submitted by an assignment holder to the mill owner for an acknowledgment of its accuracy;

the assignment holder or mill owner not so satisfied may submit to the local board constituted for the mill an alternative plan in the approved form.

(2) The local board, if satisfied that the plan is correct, is to certify to that effect.

(3) If not satisfied, the local board may—

- (a) reject the plan; or
- (b) certify a plan amended by it.

(4) The certificate of the local board is to be under the hand of the chairperson.

(5) A plan certified by a local board under this section may be filed by the assignment holder or mill owner in the office of the Corporation, and be produced in any proceeding.

(6) In any proceedings, a plan certified by a local board under this section is prima facie evidence of the matters contained in the plan.

### **Local board may construe and interpret plans of assignments in dispute**

**162.(1)** Where a dispute arises—

- (a) between an owner of a mill and an assignment holder; or
- (b) between assignment holders;

concerning the accuracy or interpretation of a plan referred to in section 160, whether or not the plan has been certified by a local board under section 161, the local board constituted for the mill to which is assigned the land shown on the plan has jurisdiction to determine the accuracy or interpretation of the plan for the purpose of resolving the dispute.

(2) A local board may exercise this jurisdiction of its own motion or upon reference of the dispute to it by any party.

### ***Division 7—Farm peaks generally***

#### **Farm peak as property**

**163.(1)** An assignment holder may hold in accordance with this Act an entitlement called a farm peak.

(2) A farm peak confers upon the assignment holder an entitlement, subject to this Act, to deliver to a mill pursuant to the assignment a quantity of sugarcane harvested from the assignment's land in any crushing season

for the manufacture of sugar within the mill peak of the sugar mill.

(3) Farm peak may be disposed of, wholly or partially, by the holder by way of sale, lease, sublease, letting, or other form of transfer in accordance with this Act.

(4) A disposal of an assignment to which farm peak relates does not effect a disposal of the farm peak.

***Division 8—Variation of entitlement to farm peak pursuant to authorised transactions***

**Variation of farm peak entitlement**

**164.** Entitlements to farm peak may be varied by means of the authorised transactions referred to in section 165, but a matter provided for by such a transaction does not take effect unless and until—

- (a) a local board or local boards make the order or orders necessary to give effect to the matter; and
- (b) the matter is noted on the Sugar Cane Assignment Register.

**Authorised transactions concerning farm peak**

**165.(1)** An authorised transaction concerning farm peak may provide for 1 or more of the following matters—

- (a) a transfer of farm peak from an existing holder to another person;
- (b) a transfer of farm peak from one assignment to another by cancellation of the whole or part of the farm peak relating to one assignment and its allocation to another assignment.

**(2)** An authorised transaction may—

- (a) involve the holder of an existing farm peak as the only party or involve more than 1 party where a disposition of farm peak is involved; or
- (b) provide for a matter to take effect for a period limited by time or indefinitely.

**Orders by local board**

**166.(1)** A local board, upon application by a party or parties to an authorised transaction, may make orders in an approved form directing the Corporation—

- (a) to transfer farm peak existing in relation to an assignment from an existing holder to another person; or
- (b) to cancel, wholly or partly, farm peak existing in relation to an assignment; or
- (c) to allocate to an assignment the whole or part of farm peak relating to another assignment that is subject to cancellation pursuant to an order referred to in paragraph (b).

**(2)** An order of a local board made for the purpose of an authorised transaction only has effect in relation to farm peak to the extent of its effect upon farm peak existing in relation to an assignment the land of which is assigned to the mill for which the local board is constituted.

**(3)** If the matters provided for by an authorised transaction have effect upon the farm peak existing in relation to more than 1 assignment, and the lands of those assignments are assigned to different mills, the orders necessary to give effect to those matters are to be obtained by applications to the local boards constituted for those mills.

**(4)** The regulations may further regulate the procedure referred to in this section.

**Application for local board orders**

**167.** An application to a local board for an order to give effect to an authorised transaction concerning farm peak—

- (a) is to be in the approved form; and
- (b) is to be signed by every party to the authorised transaction to which effect is sought to be given by the order.

**Limitation upon power of local board to issue particular orders**

**168.** A local board, under section 166, may not order the transfer of farm peak from its existing holder to another person unless it is satisfied that the

holder of the farm peak after the authorised transaction in question takes effect will be the holder of the assignment in relation to which the farm peak will then exist.

### **Local board to grant application**

**169.(1)** Subject to subsection (2), a local board that receives an application under section 167, upon being satisfied that the provisions of this Act have been complied with, is to grant the order or orders sought.

**(2)** If, for the purpose of giving effect to an authorised transaction, it is necessary for orders under section 166 to be obtained from more than 1 local board—

- (a) the decision of each of the local boards whether or not to make an order sought is to be by the unanimous decision of all the local board's members; and
- (b) each of the local boards may exercise a discretion to make or to refuse to make the order sought.

**(3)** If a local board refuses an application, it is to give notice in writing to the applicant specifying the reasons for the refusal.

### **Lodgement with Corporation of local board's orders**

**170.(1)** Upon lodgement with the Corporation in accordance with the Corporation's guidelines of a notice signed by every party to an authorised transaction of an order or orders of a local board or local boards sufficient to give effect to the authorised transaction, the Corporation is to note in the Sugar Cane Assignment Register the effect of the authorised transactions in accordance with the order or orders.

**(2)** The authorised transaction then takes effect and not beforehand.

### **Adjustment of mill peaks**

**171.(1)** From time to time the Corporation is to adjust the mill peak of a mill so as to take into account variations in the quantity of sugarcane the owner of the mill is required to accept for the manufacture of sugar within

the mill peak of the mill consequent upon variations to entitlements to farm peaks.

(2) The Corporation is to make guidelines stating the methods that it will observe in calculating the adjustments required to be made to the mill peaks of mills under subsection (1).

(3) The guidelines are binding on the Corporation.

(4) Before adjusting the mill peak of a mill the Corporation is to give notice of the proposed adjustment to the owner of the mill affording the owner a reasonable opportunity to make written submissions and to be heard in relation to the matter.

(5) After considering any submissions that may be made by the owner of a mill, the Corporation may adjust the mill peak of the mill by notice in writing given to the owner.

### *Division 9—Protection of mortgagees and lessors generally*

#### **Statutory declaration verifying protection of interests of third parties**

**172.(1)** In every case where an application is made—

- (a) to a local board for an order directing the Corporation to take action referred to in subsection (3); or
- (b) to the Corporation to take action referred to in subsection (3);

the application is to be endorsed with or accompanied by the statutory declaration referred to in subsection (4) by the holder of the assignment with respect to which the action is to be taken.

(2) In every case the statutory declaration is to state that the person making the declaration is the holder of that assignment.

(3) The statutory declaration referred to in subsection (4) is required in relation to—

- (a) the transfer of an assignment from an existing holder to another person; and
- (b) the cancellation of the assignment of land to a mill; and

- (c) the assignment of land to a mill for the purpose of an authorised transaction that has the effect of increasing the total extent of an assignment's land; and
- (d) the cancellation of an assignment's area, wholly or partly; and
- (e) the cancellation, wholly or partly, of any farm peak existing in relation to an assignment.

(4) The statutory declaration is to state in relation to—

- (a) in the case of cancellation of the assignment of land to a mill—that land; or
- (b) in any other case—the land of the assignment with respect to which the action is to be taken;

the following, that is to say—

- (c) that the land is not subject to any mortgage or lease or sublease; or
- (d) if the land is so subject to any mortgage or lease or sublease—that either the deponent has obtained the written consent of every mortgagee, lessor or sublessor of the land to the action or in lieu of any such consent, the deponent has obtained the dispensation of the chairperson of the Tribunal.

(5) If the statutory declaration is false in any material particular the provisions of this section are taken not to have been complied with.

### **Dispensation from obtaining consent of mortgagee, lessor or sublessor**

**173.(1)** If a mortgagee, lessor or sublessor of land referred to in section 172(4) refuses or fails to give to an assignment holder the written consent referred to in section 172(4)(d), the assignment holder may apply to the chairperson of the Tribunal for dispensation from obtaining the consent.

(2) The mortgagee, lessor or sublessor is to be given notice of the application by the assignment holder and is entitled to be heard by the chairperson in relation to the application.

(3) The chairperson of the Tribunal, upon being satisfied by the assignment holder that the consent is being unreasonably withheld, may grant to the assignment holder dispensation from obtaining the consent.

## **PART 10—GENERAL PROVISIONS RELATING TO MANAGEMENT OF SUGAR HARVEST**

### *Division 1—Adjusted area of assignments*

#### **Corporation to determine adjusted area**

**174.(1)** On or before 31 March in each calendar year, the Corporation is to determine—

- (a) for all assignments; and
- (b) for the crushing season commencing in the calendar year;

a maximum area, expressed as a proportion greater than, lesser than, or equal to 100% of the area of an assignment, from which sugarcane may be harvested for delivery to mills for payment in accordance with this Act.

**(2)** The same proportion is to be determined for all assignments.

**(3)** The maximum area so determined is not to be greater than 100% of the area of an assignment unless the Minister, after consultation with bodies the Minister believes represent relevant sugar industry interests, approves in writing.

**(4)** The maximum area so determined is in this Act referred to as the adjusted area of an assignment.

#### **Variation of determination**

**175.** The Corporation may at any time vary its determination under section 174 so as to increase the area of assignments from which sugarcane may be harvested for delivery to mills for payment in accordance with this Act.

#### **Consultation**

**176.** Before making or varying a determination under this Division the Corporation is to consult with organisations referred to in section 24 as directed by the Minister.

***Division 2—Redirection of sugarcane*****Corporation may redirect sugarcane**

**177.** The Corporation, upon an application made to it under this Division, may order that in relation to a particular period sugarcane specified by it grown on land assigned to a mill is to be delivered to, and accepted for crushing by, another mill.

**Applicants**

**178.** An application may be made by—

- (a) the owner of the mill to which is assigned the land on which the sugarcane in question is grown; or
- (b) the mill suppliers' committee for the mill referred to in paragraph (a); or
- (c) the owner of the mill to which sugarcane is to be delivered in accordance with the order sought.

**Commencement of application**

**179.** An application is to be commenced by notice in writing lodged with the Corporation in accordance with guidelines made by the Corporation.

**Notification of interested persons**

**180.(1)** The Corporation is to give notice in writing of the applications to persons appearing to the Corporation to have a sufficient interest in the matter affording those persons a reasonable opportunity to make written submissions and to be heard in relation to the application.

(2) Notification published in the Gazette is sufficient notice to all persons.

(3) The Corporation is not to determine an application until after it has considered any submissions that may be made consequent upon the giving of the notice referred to in subsection (1).

**Order to be reasonable and not cause economic detriment**

**181.** The Corporation is not to grant an application under this section unless it is satisfied that—

- (a) the order sought is reasonable; and
- (b) the directions given, and conditions imposed by the Corporation in relation to the order, are such as will provide sufficient protection to individual assignment holders from economic detriment arising as a result of the order.

**Variations and conditions**

**182.(1)** If the Corporation grants an application under this Division it is to make the order sought with such variations as it thinks fit and may impose such conditions as it thinks fit.

**(2)** Notification published in the Gazette of a determination by the Corporation to grant an application under this Division or of any determination by the Corporation made for the purpose of granting the application is taken to be notice, on the date of its publication, to all persons of the determination.

**(3)** If the Corporation refuses to grant an application under the Division it is to give notice in writing to the applicant stating the reasons for the refusal.

**Directions**

**183.(1)** For the purpose of facilitating an order requiring the delivery of sugarcane grown on an assignment's land to a mill other than the mill to which the land is assigned, the Corporation may give directions—

- (a) varying awards made in relation to the mills; or
- (b) determining the extent to which the assignment holder may claim in relation to the mill to which the sugarcane is to be delivered any farm peak held with respect to the assignment; or
- (c) varying the mill peaks of both mills to take into account any farm peak that may be claimed in relation to the mill to which the sugarcane is to be delivered by virtue of the order; or

- (d) concerning any prescribed matter or any matter on which directions are required to ensure the sensible operation of this Act in relation to the order.

(2) The directions of the Corporation have effect according to their tenor.

### *Division 3—Obligation of mill owner to manufacture sugar*

#### **General obligations**

**184.(1)** The owner of a mill is to carry on the business of manufacturing sugar from the sugarcane grown on lands assigned to the mill.

(2) Carrying on the business of manufacturing sugar includes—

- (a) maintaining the mill; and
- (b) preparing for the acceptance and crushing of sugarcane; and
- (c) accepting and crushing sugarcane;

in a reasonable and proper manner and in accordance with this Act.

#### **Exemption from obligation to manufacture sugar**

**185.(1)** The owner of a mill may apply to the Corporation for an exemption from the obligations imposed by section 184.

(2) An application is to be made on or before the last day of December next preceding the period to which the exemption is to relate or on such later date as the Corporation may at any time allow.

(3) The Corporation is to consider the application and either grant or refuse it.

(4) If the Corporation is satisfied that the exemption sought is reasonable in the circumstances, it is to grant the exemption for such period and subject to such conditions as it thinks fit.

(5) The Corporation is to arrange for the publication in the Gazette of notification of the determination to grant the exemption.

(6) The notification is taken to be notice to all persons of the determination on the date the notification is published in the Gazette.

(7) If the Corporation refuses the application it is to notify the owner of the mill in writing, stating its reasons.

### **Declaration of failure to mill**

**186.(1)** If the Corporation is satisfied that the owner of a mill—

- (a) has failed to carry on the business of manufacturing sugar in accordance with the obligations imposed by section 184; and
- (b) has not been granted an exemption in relation to the failure under section 185;

it may recommend to the Minister that a declaration to that effect be published in the Gazette.

(2) The Minister upon the recommendation of the Corporation may publish that declaration in the Gazette.

(3) The Corporation may make a recommendation under subsection (1) on its own motion or on application by a mill suppliers' committee constituted with respect to the mill in question.

### **Show cause to precede declaration**

**187.(1)** Before the Corporation makes a recommendation under section 186(1), it is to give written notice to the mill owner calling upon the mill owner to show cause why the recommendation should not be made.

(2) The notice to show cause is to allow the mill owner at least 30 days in which to respond.

(3) The Corporation is to consider any written submissions made by the mill owner and afford the mill owner a reasonable opportunity to be heard in relation to the matter.

(4) If by the expiration of the period of 30 days or such greater period allowed by the Corporation at any time, the mill owner has not shown cause or sufficient cause why the recommendation should not be made, the Corporation may proceed to make the recommendation.

(5) In making the recommendation, the Corporation is to forward to the Minister an account of any submissions made to the Corporation by the mill owner.

**Appointment of administrator**

**188.** The Minister may appoint an administrator to administer the affairs of a mill in relation to which a declaration has been published in the Gazette under section 186.

**Power of administrator**

**189.(1)** An administrator appointed to administer the affairs of a mill may—

- (a) enter any place at any time and take possession of the mill and all property used, occupied or held by or on behalf of the owner in connection with the business of the mill; and
- (b) carry on the business of the mill; and
- (c) make use of the property taken into possession and exercise all the rights of the owner in relation to the business of the mill.

**(2)** The owner of the mill and the owner's employees and agents upon demand are to forthwith deliver possession of the mill and property referred to in subsection (1) and facilitate the exercise by the administrator of the powers conferred by subsection (1).

**Obstruction of administrator**

**190.(1)** A person who obstructs an administrator in the exercise of the powers conferred by section 189 commits an offence against this Act.

Maximum penalty—40 penalty units.

**(2)** A person obstructs an administrator if the person fails to comply with section 189(2) or in any other way obstructs or attempts to obstruct the administrator.

**Compensation for seized property**

**191.(1)** All property taken and used by an administrator is to be taken and used on just terms.

**(2)** The owner of the property is entitled to be paid by the administrator a

reasonable amount for any loss or damage suffered by reason of the taking and using of the property.

(3) In assessing the compensation due allowance is to be made for any loss or damage due to disturbance of any business of the owner of the property, whether carried on in Queensland or elsewhere, or to severance of any property.

(4) The amount of the compensation is to be determined by the Corporation.

### **Appeal against compensation determination**

**192.(1)** An owner of property aggrieved by the Corporation's determination of the amount of compensation payable to the owner under section 191 may appeal to the Supreme Court within 21 days of the determination.

(2) The appeal is to be by way of fresh determination on the merits.

(3) The Supreme Court or a Judge thereof has jurisdiction to hear and determine the appeal by way of rehearing and to—

- (a) confirm or vary the determination; or
- (b) make such other orders as are just and reasonable.

### **Accounting**

**193.(1)** An administrator who carries on the business of a mill under this section, is—

- (a) to keep an account of all income and expenditure of and in connection with the mill or any property while it remains in the administrator's possession; and
- (b) to cause the account to be audited from time to time by the Auditor-General or in accordance with the directions of the Auditor-General.

(2) Expenditure is to include all expenses relating to—

- (a) taking possession of the mill and any property including all compensation payable under section 191; and

- (b) the carrying on of the business of the mill; and
- (c) the keeping of the account and the carrying out of its audit.

(3) As soon as is reasonably practicable after the termination of any crushing season the administrator is to certify to the Corporation and declare the state of the account and the amount of the profit or loss, as the case may be.

(4) If there is a profit, the administrator is to pay the amount of the profit to the mill owner.

(5) If there is a loss, the Corporation is to pay the amount of the loss to the administrator.

### **Liability of mill owner not affected**

**194.** No declaration under section 186 and no action purporting to have been taken under this Division by the Minister or the administrator, relieves the mill owner from liability for any penalty or damages in any civil or other proceedings to which the mill owner would be liable by reason of any failure referred to in section 186.

## **PART 11—EASEMENTS AND PERMITS TO USE LAND**

### **Easements**

**195.** An easement for tramway, road, or other like purposes may be granted under this Part, whether or not the easement is annexed to or used and enjoyed together with any other land.

### **Grant of easement**

**196.(1)** An easement referred to in section 195 may be granted to a mill owner—

- (a) by the holder of land affected by the easement; or

(b) by the Corporation upon the application of the mill owner.

(2) The easement may be granted subject to conditions.

(3) An easement so granted may be varied in the same manner as an easement may be granted.

(4) The provisions of this Part applying to a grant also apply, with necessary adaptations, to a variation.

### **Service of copy of application**

**197.(1)** A mill owner who has made an application under section 196(1)(b) is to serve a copy of that application on every person who, to the mill owner's knowledge, is entitled to claim compensation.

(2) The Corporation may direct a mill owner to serve a copy of the application on any other person who, in the opinion of the Corporation, may have an interest in the application, and the mill owner is to serve a copy on that other person.

(3) Every person served with a copy of the application is entitled to make written submissions to and be heard by the Corporation in relation to the application.

### **Grant by holder of land**

**198.(1)** For the grant by the holder of land to a mill owner of an easement under this Part to take effect, a notice is to be lodged with the Corporation.

(2) The notice is to be—

(a) in the approved form; and

(b) signed by the mill owner and the land-holder; and

(c) accompanied by any fee that may be prescribed by the regulations.

(3) Upon receipt of the notice, the Corporation is to note particulars of the easement in the Register of Easements.

(4) The easement then takes effect and not beforehand.

(5) Nothing in this Part derogates from the right of any person to transfer to the owner of a mill an easement over any land other than by the procedure provided by this Part.

### **Grant by Corporation**

**199.(1)** Where the Corporation grants an easement under section 196, the Corporation is to note the easement in the Register of Easements.

(2) The easement then takes effect and not beforehand.

### **Compensation**

**200.(1)** Where the Corporation grants an easement under section 196, any person who, if the mill owner in question were empowered to take and took the easement as a constructing authority under the *Acquisition of Land Act 1967*, would be entitled to claim compensation, may claim compensation in respect of the easement.

(2) For the purposes of the claim for compensation, the provisions of Part 4 of the *Acquisition of Land Act 1967* apply as if a reference to a constructing authority were a reference to the mill owner.

### **Register of Easements**

**201.(1)** The Corporation is to maintain a register called the Register of Easements in which it is to record particulars of easements granted under this Part in the order of the granting.

(2) The Corporation is to assign to each easement, upon registration, a consecutive number.

(3) If an easement is relinquished, both the mill owner and the land-holder concerned are to lodge notice to that effect immediately with the Corporation.

(4) Upon receipt of a notice under this subsection, the Corporation is to record in the register that the notice has been received and the tenor of the notice.

(5) Particulars recorded under subsection (1) are to include—

- (a) the number of the easement; and
- (b) the date of registration; and
- (c) the name of the mill owner and the mill; and
- (d) the names and the addresses of the holders of the lands upon or in respect of which the easement has been granted; and
- (e) the description of the lands affected; and
- (f) such other particulars as may be prescribed.

(6) The registration of an easement is taken to be sufficient notice to all persons of its existence.

(7) The *Land Title Act 1994* is to be read subject to this subsection.

(8) The register is to be kept in such form and manner that it may be inspected at the principal office of the Corporation during the ordinary working hours of the office.

(9) Any person may inspect the register upon payment of any fee that may be prescribed by the regulations.

### **Certificates**

**202.(1)** In any proceedings, a certificate purporting to be signed by a person authorised by the Corporation stating any information relating to matters authorised by this Part to be shown on the Register of Easements is evidence, and in the absence of evidence to the contrary, conclusive evidence, of the matters stated in the certificate.

(2) A certificate referred to in subsection (1) may be issued at any time by the Corporation to any person upon payment to the Corporation of any fee that may be prescribed by the regulations.

### **Continuation of existing easement rights**

**203.(1)** Every easement preserved under section 84 of the repealed Regulation of Sugar Cane Prices Act continues under this Act for such period of time as the tramline referred to in that section is required or used by a mill owner for the carriage of sugarcane, and the sole and exclusive

ownership of every bridge referred to in that section continues to be vested in the mill owner.

(2) Notwithstanding subsection (1), the mill owner may apply to the Corporation under section 196(1)(b) to grant the easement in accordance with this Part.

(3) If the Corporation is satisfied that the easement exists, it may grant the easement in accordance with this Part.

(4) Compensation is not payable in respect of an easement so granted.

(5) An easement preserved under subsection (1) ceases to exist if it has not been registered on the Register of Easements on or before 30 June 1996.

### **Notation of easement on other registers**

**204.(1)** The Registrar of Titles or other person charged with keeping a register of title to land that is the subject of an easement granted under this Part, upon notice by the mill owner to whom the easement is granted, is to enter in the register a note warning of the existence of the easement on the Register of Easements.

(2) The note is not taken to be registration of the easement on the register kept by the Registrar of Titles or other person to whom notice is given.

(3) If the easement is relinquished, the mill owner is to lodge a notice of that fact with the Registrar of Titles or other person to whom notice of the easement was previously given under subsection (1).

(4) A mill owner who fails to comply with subsection (3) commits an offence against this Act.

Maximum penalty for subsection (4)—40 penalty units.

### **Construction of cattle grids etc.**

**205.(1)** On application by the owner of land—

- (a) on which there is a tramline or road constructed under section 206 or under the corresponding provision of the repealed Regulation of Sugar Cane Prices Act or pursuant to an easement preserved by this Part; or

(b) adjacent to a tramline or road referred to in paragraph (a);

the Corporation may order the mill owner concerned to construct and maintain at or near the boundaries of the land such cattle grids, structures or other facilities as are reasonably necessary, in the opinion of the Corporation, to prevent livestock from straying over the tramline or road from the land of 1 owner onto the land of another.

(2) “**Owner**” includes an occupier.

(3) A mill owner who fails to comply with an order of the Corporation under this section commits an offence against this Act.

Maximum penalty for subsection (3)—40 penalty units.

### **Construction etc. of tramlines**

**206.(1)** For the purposes of harvesting sugarcane or delivery to a mill of sugarcane, a mill owner or any person authorised by the mill owner, may—

- (a) construct, maintain, alter and use a tramway or road, and carry out any other necessary works—
  - (i) upon any land the property of the mill owner or over which the mill owner holds an easement or other interest under this Act or otherwise, for tramway, road or other like purposes; or
  - (ii) subject to the provisions of section 515 (Ancillary works and encroachments on roads) of the *Local Government Act 1993*, upon any road in respect of which that mill owner holds a permit under that section; or
  - (iii) subject to the *Transport Infrastructure Act 1994*, on a declared road for which the mill owner holds an approval under section 45 of that Act; and
- (b) use on the tramway or road such vehicles or rolling stock and other machinery and equipment as the mill owner considers necessary.

(2) A person who obstructs a mill owner or any person authorised by a mill owner in the exercise of the authority conferred by subsection (1)

commits an offence against this Act.

Maximum penalty for subsection (2)—40 penalty units.

### **Permits to pass over land**

**207.(1)** The Corporation, upon such terms and conditions as the Corporation may determine, may grant to a mill owner or a cane grower a permit to use the land of any person, for the purpose of harvesting sugarcane or the delivery of sugarcane to a mill.

(2) A permit may be varied or rescinded by the Corporation.

(3) A permit is sufficient authorisation to the person to whom it is granted and any person acting on the person's behalf to use the land of any other person in accordance with the terms of the permit.

(4) A copy of every permit is to be kept by the Corporation and may be inspected at the principal office of the Corporation during the ordinary working hours of the office upon payment of a fee prescribed by the regulations.

### **Appeal to Land Court or Tribunal**

**208.(1)** A land-holder or a mill owner aggrieved by a determination of the Corporation to grant or not to grant an easement or permit to pass over land may apply for a review of the determination to—

(a) the Tribunal; or

(b) at the election of an aggrieved land-holder—the Land Court.

(2) An application to the Land Court must be made within 21 days after the day notice of the determination is given to the applicant.

(3) If a mill owner applies to the Tribunal under subsection (1) for a review of a determination of the Corporation, before the Tribunal hears and determines the application the land-holder whose land would be affected by the grant of the easement or, as the case may be, permit to pass over land, may apply to the chairperson of the Tribunal for the transfer of the proceedings to the Land Court.

(4) If such an application is made the chairperson is to make such orders as are necessary to transfer the proceedings to the Land Court.

- (5) The orders have effect according to their tenor.
- (6) The Land Court has jurisdiction to hear and determine an application by way of fresh determination on the merits and may—
- (a) confirm the determination of the Corporation; or
  - (b) set the determination aside and remit the matter to the Corporation with such directions as it thinks fit.

## **PART 12—SUGAR INDUSTRY TRIBUNAL**

### **Sugar Industry Tribunal**

- 209.(1)** A tribunal is to be constituted called the Sugar Industry Tribunal.
- (2) The Tribunal is to consist of 3 members appointed by the Governor in Council by notification published in the Gazette, of whom—
- (a) 1 is to be a legal practitioner who is to be appointed as the chairperson; and
  - (b) 1 is to be a person, nominated by the Minister, who is to be well versed in matters relating to the sugar industry and who does not have any pecuniary interest, direct or indirect in the production, manufacture or marketing of sugarcane or sugarcane products; and
  - (c) 1 is to be a person, nominated by the Minister, who has special qualifications considered by the Minister to be relevant and appropriate to the Tribunal's functions.
- (3) A member of the Tribunal is to hold office from the date the member's appointment takes effect for a term of 3 years ending on the same date as the term of each of the other members.
- (4) A member of the Tribunal whose term of office has expired is eligible for reappointment if otherwise qualified.

**Disqualification**

**210.** A person who—

- (a) is a member of the Legislative Assembly or of any House of the Parliament of the Commonwealth or of another State or any Territory; or
- (b) has attained the age of 70 years; or
- (c) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (d) has been convicted in Queensland of an indictable offence (whether on indictment or summarily); or
- (e) is a patient within the meaning of the *Mental Health Act 1974*;

is not qualified to be or to continue as a member of the Tribunal.

**Vacation of office**

**211.** The office of a member of the Tribunal becomes vacant if the member—

- (a) dies; or
- (b) ceases to be or is not qualified to be a member; or
- (c) resigns office by giving a written resignation to the Minister; or
- (d) is absent without prior leave granted by the chairperson, from 3 consecutive sittings of the Tribunal of which due notice has been given; or
- (e) is removed from office as a member by the Governor in Council.

**Acting members**

**212.(1)** If any member of the Tribunal is temporarily unable to perform the duties of office, the Governor in Council, by notification published in the Gazette, may appoint another person to temporarily act in the office of that member.

(2) A person appointed to act in the office of a member of the Tribunal must satisfy the requirements of the paragraph of section 209(2) under which the member was appointed.

### **Casual vacancies**

**213.(1)** Provisions of section 209(2) applying to the appointment of a Tribunal member whose office falls vacant during the member's term (the "**vacancy term**") also apply to the appointment of another person to fill the vacancy.

(2) A person appointed to fill the vacancy holds office from the date specified by the Governor in Council until the end of the vacancy term.

### **Remuneration of members**

**214.** Members of the Tribunal are to be paid such fees and allowances as the Governor in Council may determine from time to time.

### **Secretary and staff**

**215.(1)** The Tribunal may appoint and employ, or arrange for the provision of, a secretary and such other staff as is necessary for the proper discharge of the Tribunal's functions.

(2) The *Public Service Management and Employment Act 1988* does not apply in relation to the appointment or employment by the Tribunal of staff and other persons pursuant to this section except in so far as it authorises the making of arrangements for the performance of duties by an officer of the public service in any other employment.

(3) Arrangements may be made by the Tribunal with the Corporation for employees of the Corporation to perform duties for the Tribunal.

### **Accounts and finance**

**216.(1)** Records of all sums received or paid by or on the Tribunal's behalf and of the purposes for which such sums were received or paid are to be kept by the Corporation in accordance with arrangements made between the Corporation and the chairperson.

(2) The Corporation is to defray from its funds all costs (including fees, allowances and expenses) properly incurred in respect of the discharge by the Tribunal of its functions.

### **Proceedings of Tribunal**

**217.(1)** The Tribunal is to sit at such times and at such places as the chairperson appoints.

(2) The Tribunal is taken to be duly constituted and may exercise its jurisdiction if at least 2 of its members, including the chairperson, are present.

(3) If more than 2 members are present, the decision of the Tribunal, in the event of disagreement among its members, is to be that of the majority of its members.

(4) If only 2 members are present, the decision of the Tribunal, in the event of disagreement between the members, is to be that of the chairperson.

(5) A person may appear before the Tribunal in person or represented by a legal practitioner or by agent duly appointed in writing.

(6) Subject to subsection (7), the Tribunal may inform itself on any matter in such manner as it thinks fit and is not bound by rules or practice as to evidence.

(7) Proceedings before the Tribunal are to be instituted and conducted—

- (a) in accordance with the principles of natural justice; and
- (b) as prescribed or, where this Act makes no or insufficient provision, in accordance with the directions of the chairperson given generally or in a particular case.

### **Jurisdiction of Tribunal**

**218.(1)** Jurisdiction is conferred on the Tribunal to hear and determine every application made to it in accordance with this Act.

(2) In the exercise of its jurisdiction, the Tribunal is to act independently, impartially and fairly.

(3) The Tribunal is not competent to make any order as to costs except against a person who is found by it to have instituted a frivolous or vexatious application.

### **Review of determination**

**219.** An application may be made to the Tribunal for review of the following determinations—

- (a) a determination of a poll list made by the Corporation under section 49 or made by the Bureau under section 84;
- (b) a determination made by the Corporation refusing to register any matter on a register kept by the Corporation under this Act;
- (c) a determination made by the Corporation under section 131 not to approve a contract or agreement;
- (d) a determination made by a local board to grant or refuse an application to it under Part 9, Division 3 or 8, except a determination required to be made by unanimous decision of the members of the Board;
- (e) a determination made by the Corporation under section 152(4) to cancel an assignment or part of an assignment area;
- (f) a determination made by a local board under section 162(1);
- (g) a determination made by the Corporation adjusting the mill peak of a mill under section 171(5);
- (h) a determination made by the Corporation under Part 10, Division 2;
- (i) a determination made by the Corporation to grant or refuse an application under section 185;
- (j) a determination made by the Corporation under Part 11.

### **Procedure**

**220.(1)** Subject to this Act, an application for review of a determination is to be instituted before the expiration of 21 days after the date on which the aggrieved person receives notice of the determination under this Act or by

such later date as the Tribunal may at any time allow.

(2) Institution of an application is to be by lodgement in the office of the Tribunal of a notice of the application in the form approved by the Tribunal chairperson accompanied by any fee that may be prescribed by the regulations.

(3) The grounds of an application are to be clearly and briefly set out in the notice of appeal.

(4) An applicant may withdraw an application by notice in writing lodged in the office of the Tribunal.

### **Decision on review**

**221.(1)** A review by the Tribunal of a determination by the Corporation or a local board is to be by fresh determination on the merits.

(2) Upon reviewing a determination the Tribunal may—

- (a) affirm the determination; or
- (b) remit the matter to the Corporation or, as the case may be, the local board for reconsideration having regard to the matters specified by the Tribunal; or
- (c) set aside the determination; or
- (d) substitute its own determination for that reviewed, which substituted determination is to take effect as if it were that of the Corporation or, as the case may be, the local board; or
- (e) vary as it thinks fit the determination which determination as varied is to take effect as if it were that of the Corporation or, as the case may be, the local board.

(3) A determination made by the Tribunal upon an application is to be given effect by all persons concerned.

### **Preliminary hearing**

**222.(1)** In relation to an application made to the Tribunal, the chairperson may, at the chairperson's discretion, and on such terms as the chairperson thinks fit, require the parties to the application to attend at a preliminary

hearing.

(2) The preliminary hearing may be conducted by the Tribunal or by the chairperson sitting alone.

(3) Upon a preliminary hearing, the Tribunal or, if the chairperson conducts the preliminary hearing, the chairperson may—

- (a) order notice of the application to be given by a party to the application to any person; or
- (b) make such orders relating to procedure in the conduct of the application as are necessary or desirable; or
- (c) require the parties to the application to permit discovery or to file pleadings; or
- (d) strike out an application if the Tribunal or, as the case may be, the chairperson considers it to be frivolous or vexatious; or
- (e) in the case of an application for a review remit the matter to the body whose determination is the subject of the application for further consideration.

(4) Subsection (3) is not taken to limit the power of the chairperson to regulate the proceedings of the Tribunal.

(5) Section 217(5) to (7) applies to a preliminary hearing.

### **Power to summon witnesses**

**224.** The chairperson, or a person authorised in writing by the chairperson, may summon a person to appear at a hearing of the Tribunal at a time and place specified in the summons to give evidence and produce any records specified in the summons.

### **Failure of witness to attend**

**225.** A person served with a summons to appear as a witness at a hearing of the Tribunal, who without reasonable excuse—

- (a) fails to attend as required by the summons; or
- (b) fails to appear from time to time in the course of the hearing as required by the chairperson;

commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Power to administer oath or affirmation**

**226.** The chairperson, or a person authorised by the chairperson, may administer an oath to or take an affirmation of any person appearing as a witness before a hearing of the Tribunal.

### **Refusal to be sworn or to answer questions**

**227.(1)** A person appearing as a witness at a hearing of the Tribunal who—

- (a) refuses or fails to be sworn or to make an affirmation; or
- (b) refuses or fails to answer a question that the person is required to answer by the chairperson; or
- (c) refuses or fails to produce records that the person was required to produce by a summons under section 224 served on the person;

commits an offence against this Act.

Maximum penalty—40 penalty units.

**(2)** This section does not apply in respect of a refusal or failure to answer a question or produce records that would tend to incriminate the person.

### **Contempt of hearing**

**228.(1)** A person who obstructs or improperly influences the conduct of a hearing of the Tribunal, or attempts so to do, commits an offence against this Act.

Maximum penalty—40 penalty units.

**(2)** The chairperson may order to be removed from a hearing any person who obstructs, or improperly influences the conduct of a hearing, or attempts so to do.

**(3)** For this purpose the chairperson may authorise any person to use such force as is reasonably necessary.

**Allowances to witnesses**

**229.** A witness summoned to appear at a hearing of the Tribunal is entitled to be paid such allowances and expenses—

- (a) as are prescribed by the regulations; or
- (b) as the chairperson determines in the absence of any regulations.

**PART 13—MISCELLANEOUS****Records to be kept**

**230.** A body constituted under this Act—

- (a) is to keep such records as are necessary for the proper discharge of its functions; and
- (b) is a public authority within the meaning of the *Libraries and Archives Act 1988*.

**Superannuation schemes**

**231.(1)** A body constituted under this Act may—

- (a) establish or amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

**(2)** The Auditor-General may audit the schemes.

**(3)** Subsection (2) is subject to the *Financial Administration and Audit Act 1977*, part 6.<sup>2</sup>

**Application fees to be reasonable**

**232.** The amount of any fee imposed under this Act as a condition for the

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<sup>2</sup> Part 6 (Audit of public accounts and public sector entities)

acceptance of any application made to, or any notice or document lodged with, any person or body under this Act is to be reasonably related to the expenses incurred, or to be incurred in connection with the processing of the application or lodgement.

### **Statutory declaration may be required**

**233.(1)** A body or person authorised under this Act to determine any application made under this Act may require that information provided in relation to the application is to be in the form of a statutory declaration.

**(2)** The body or person may then refuse to consider any information not provided in the form of the statutory declaration when determining the application.

### **Requirements to furnish**

**234.(1)** Records furnished by any person pursuant to a requirement made under this Act may be retained for so long as it is necessary to do so for the purposes of this Act, but a person otherwise entitled to possession of the records is entitled to be furnished as soon as practicable with a copy of the records certified by the person in possession of them under this Act to be a true copy.

**(2)** Such a certified copy is admissible in all courts and elsewhere as evidence of the matters contained therein as if it were the original.

**(3)** A person to whom records or a copy of records are furnished under this Act may take notes or copies of or extracts from the records.

### **Offence to make false statement in application**

**235.** A person who, in any application made for the purpose of this Act, makes any false or misleading statement without reasonable excuse commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Improper use of information prohibited**

**236.(1)** A person who is, or formerly was, a member, officer or

employee of a body constituted under this Act is not to make improper use of information acquired by virtue of the person's position as such a member, officer or employee to gain directly or indirectly, an advantage for any person or to cause detriment to the body.

(2) A person who contravenes subsection (1) commits an offence against this Act.

Maximum penalty—40 penalty units.

### **Indemnity**

**237.(1)** Every member, employee and agent of a body constituted under this Act is to be indemnified against all actions, proceedings and claims in relation to—

- (a) acts done, or omitted to be done, by the person without negligence under this Act; or
- (b) acts done, or omitted to be done by the person in good faith and without negligence for the purposes of this Act.

(2) If the body is constituted as a body corporate, the member, employee or agent is to be indemnified by the body.

(3) If the body is not constituted as a body corporate, the member, employee or agent is to be indemnified by the Corporation.

### **Proceedings for offences**

**238.(1)** Proceedings for an offence against this Act are to be taken in a summary way under the *Justices Act 1886* within 1 year after the offence is committed or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever period is the later to expire upon the complaint of a person authorised by the Minister.

(2) This section applies subject to section 238A.

### **Proceedings for indictable offences**

**238A.(1)** A proceeding for an offence against part 2, division 2A (a “prescribed offence”) may, at the election of the prosecution, be taken—

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- (a) by way of summary proceedings under section 238; or
- (b) on indictment.

(2) A proceeding must be before a magistrate if it is a proceeding—

- (a) with a view to the summary conviction of a person on a charge of a prescribed offence; or
- (b) for an examination of witnesses in relation to a charge for a prescribed offence.

(3) If a proceeding for a prescribed offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(4) If—

- (a) a person charged with a prescribed offence, in relation to which a proceeding is taken by way of a summary proceeding, asks, at the start of the proceeding, that the charge be prosecuted on indictment; or
- (b) the magistrate hearing and deciding a charge of a prescribed offence is of the opinion that the charge ought to be prosecuted on indictment;

the magistrate—

- (c) must not hear and decide the charge as a summary offence; but
- (d) must proceed by way of an examination of witnesses in relation to an indictable offence.

(5) If a magistrate acts under subsection (4)—

- (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
- (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (6) is taken to be evidence in the proceeding with a view to the committal of the person for trial or sentence; and

- (c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).<sup>3</sup>

(6) The maximum penalty that may be imposed on a summary conviction of a prescribed offence is 100 penalty units or 1 years imprisonment.

### **Appropriation of penalties etc.**

**239.(1)** Unless otherwise expressly provided by this Act, all penalties, costs and other moneys recovered under this Act pursuant to a complaint for an offence are to be paid into and form part of the funds of the Corporation to be applied to its use for the purposes of this Act.

(2) Moneys recovered pursuant to a complaint for an offence made by a person acting on behalf of the Bureau are to be paid into and form part of the funds of the Bureau to be applied to its use for the purposes of this Act.

### **Evidence**

**240.(1)** For the purposes of proceedings for an offence against this Act—

- (a) the authority of the complainant to make the complaint is to be presumed unless the contrary is proved; and
- (b) a statement in a complaint stating when it was that the commission of the offence came to the knowledge of the complainant is to be prima facie evidence of that fact.

(2) In any proceedings—

- (a) a certificate purporting to be signed by a person authorised to do so by a body constituted under this Act stating that any document specified in the certificate is a document lodged with or held by the body, or a copy of the document, is prima facie evidence of the matters stated in the certificate; and

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<sup>3</sup> *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

- (b) a certificate purporting to be signed by a person authorised to do so by the Corporation stating the mill peak of a mill at a date or during a period specified in the certificate is prima facie evidence of the matter stated in the certificate; and
- (c) a certificate purporting to be signed by the Director or a person authorised by the Director stating in relation to a date or period of time specified in the certificate and in relation to a place specified in the certificate that sugarcane of a particular variety was non-approved sugarcane, is prima facie evidence of the matters stated in the certificate.

### **Service of documents**

**241.(1)** Any document authorised or required by this Act to be given to any person is duly given if—

- (a) it is served personally on the person to whom it is directed or on a person authorised by the person to whom it is directed to accept service; or
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it; or
- (c) it is sent by post, telex, facsimile or similar facility to the place of residence or business of the person to whom it is directed last known to the person who gives it; or
- (d) where a manner of service is prescribed by any other Act or law in relation to a class of person—it is served in that manner.

**(2)** Where a person gives a document under this section, the person may attend before a justice and depose on oath and in writing endorsed on a copy of the document as to the manner and date of the giving.

**(3)** Such a deposition, upon production in any proceedings is evidence of the matters stated in the deposition.

### **Regulation-making power**

**242.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may be made with respect to the matters mentioned in the Schedule.

(3) Regulations may be made so as to provide for any matter for which the Corporation is authorised to issue a guideline or institute a program.

(4) To the extent that the regulations are inconsistent with any such guideline or program, the regulations prevail.

## **PART 14—TRANSITIONAL PROVISIONS**

### **References to certain boards etc.**

**243.** In an Act or document—

- (a) a reference to a cane pest and disease control board may, if the context permits, be taken to be a reference to a cane protection and productivity board; and
- (b) a reference to the Sugar Board may, if the context permits, be taken to be a reference to the corporation.

### **Transitional arrangements for bulk sugar terminal organisations**

**244.(1)** The *Transport Infrastructure Act 1994*, section 237<sup>4</sup> is repealed.

(2) To remove doubt, it is declared that the corporation is the successor in law of each BSTO.

(3) Without limiting subsection (2)—

- (a) an asset or liability of a BSTO immediately before the repeal mentioned in subsection (1) becomes an asset or liability of the corporation; and

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<sup>4</sup> Section 237 (Continuation of certain provisions of Harbours Act about Queensland Sugar Corporation)

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- (b) a person employed by a BSTO immediately before the repeal becomes an employee of the corporation and is taken always to have been employed by the corporation instead of the BSTO; and
- (c) a legal proceeding by or against a BSTO may be continued or finished by or against the corporation; and
- (d) an instrument that, apart from the repeal, would apply to a BSTO (whether as a party or otherwise) applies to the corporation instead of the BSTO; and
- (e) an industrial award that, apart from the repeal, would apply to a BSTO (whether as a party or otherwise) applies to the corporation instead of the BSTO.

(4) After the repeal, an employee mentioned in subsection (3)(b) is entitled to the same pay and entitlements (including for example, superannuation, long service leave, recreation leave and sick leave) as the employee would have been entitled to apart from the repeal.

(5) In an Act or document, a reference to a BSTO may, if the context permits, be taken as a reference to the corporation.

(6) This section is a law to which the *Acts Interpretation Act 1954*, section 20A<sup>5</sup> applies.

(7) This section expires 2 years after it commences.

(8) In this section—

**“bulk sugar terminal organisation”** or **“BSTO”** means any of the following—

- (a) Brisbane Bulk Sugar Terminal Organisation;
- (b) Bundaberg Bulk Sugar Terminal Organisation;
- (c) Cairns Bulk Sugar Terminal Organisation;
- (d) Lucinda Bulk Sugar Terminal Organisation;
- (e) Mackay Bulk Sugar Terminal Organisation;
- (f) Mourilyan Bulk Sugar Terminal Organisation;

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<sup>5</sup> *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional or validating effect etc.)

(g) Townsville Bulk Sugar Terminal Organisation.

**“industrial award”** includes a certified agreement and an industrial agreement.

### **Transitional provisions for Primary Industries Legislation Amendment Act 1997**

**245.(1)** The previous Board is renamed and continues in existence as the Bureau of Sugar Experiment Stations mentioned in section 53.

**(2)** In an Act or document, a reference to the previous Board may, if the context permits, be taken as a reference to the Bureau.

**(3)** The registrar of titles, and all other persons charged with keeping any register with respect to dealings with property, at the Bureau’s request are to make in the register all endorsements necessary to record the change in name of the previous Board under this section.

**(4)** In this section—

**“previous Board”** means the Sugar Experiment Stations Board established under this Act immediately before the commencement of section 45 of the *Primary Industries Legislation Amendment Act 1997*.

## **SCHEDULE**

### **SUBJECT MATTER OF REGULATIONS**

section 242(2)

#### **Functions**

1. The discharge of any functions, the exercise of any power and the performance of any duty under this Act.

#### **Qualifications and appointments**

2. The qualifications required before a person may be appointed, engaged or employed pursuant to this Act.

#### **Instruments**

3. The forms required or authorised in respect of any notice or instrument or other matter under this Act.

#### **Fees etc.**

4. The fees and other amounts payable in respect of any matter provided for by this Act.

#### **Licences, permits, approvals**

5. Requirements that a licence, permit or another form of approval be obtained from any person in relation to any matter authorised to be regulated.

#### **Exercise of discretion**

6. Authorising the exercise of a discretion by any person in relation to any matter being regulated.

## SCHEDULE (continued)

**Information**

7. Returns of information required to be given to any person or body where necessary or convenient for the administration of this Act.

**Confidentiality**

8. The preservation of confidentiality in relation to particular classes of information acquired by any person as a member, officer or employee of a body constituted under this Act or as a person concerned in the administration of this Act.

**Control over bodies**

9. The regulation of bodies constituted or established under the Act in the discharge of functions.

**Guidelines**

10. Any matter with respect to which a guideline may be issued by the Corporation.

**Programs**

11. The form and provisions of a program instituted under section 30.

**Awards**

12. The matters to be included in awards or which may be included in awards generally or in particular awards.

**Polls**

13. The conduct of polls and determination of poll lists.

## SCHEDULE (continued)

**Transfers**

**14.** The transfer of an easement or permit granted under Part 11 from the person to whom it was granted to another and the alteration of the mill with respect to which such an easement or permit is used.

**Penalties**

**15.** Maximum penalties of not more than 40 penalty units for contraventions of the regulations.

## **ENDNOTES**

### **1 Index to endnotes**

|   | Page |
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| 2 Date to which amendments incorporated . . . . . | 141  |
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### **2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 9 June 1998. Future amendments of the Sugar Industry Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

|        |   |                              |        |   |                                |
|--------|---|------------------------------|--------|---|--------------------------------|
| AIA    | = | Acts Interpretation Act 1954 | prev   | = | previous                       |
| amd    | = | amended                      | (prev) | = | previously                     |
| amdt   | = | amendment                    | proc   | = | proclamation                   |
| ch     | = | chapter                      | prov   | = | provision                      |
| def    | = | definition                   | pt     | = | part                           |
| div    | = | division                     | pubd   | = | published                      |
| exp    | = | expires/expired              | R[X]   | = | Reprint No.[X]                 |
| gaz    | = | gazette                      | RA     | = | Reprints Act 1992              |
| hdg    | = | heading                      | reloc  | = | relocated                      |
| ins    | = | inserted                     | renum  | = | renumbered                     |
| lap    | = | lapsed                       | rep    | = | repealed                       |
| notfd  | = | notified                     | s      | = | section                        |
| o in c | = | order in council             | sch    | = | schedule                       |
| om     | = | omitted                      | sdiv   | = | subdivision                    |
| p      | = | page                         | SIA    | = | Statutory Instruments Act 1992 |
| para   | = | paragraph                    | SL     | = | subordinate legislation        |
| prec   | = | preceding                    | sub    | = | substituted                    |
| pres   | = | present                      | unnum  | = | unnumbered                     |

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

| Reprint No. | Amendments included   | Reprint date    |
|-------------|-----------------------|-----------------|
| 1           | to Act No. 39 of 1994 | 1 November 1994 |
| 1A          | to Act No. 57 of 1995 | 28 June 1996    |
| 1B          | to Act No. 19 of 1996 | 6 August 1996   |
| 1C          | to Act No. 25 of 1996 | 21 August 1996  |
| 1D          | to Act No. 59 of 1996 | 21 March 1997   |

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

| Name of table                     | Reprint No. |
|-----------------------------------|-------------|
| Changed citations and remade laws | 1           |
| Changed names and titles          | 1           |
| Corrected minor errors            | 1           |
| Obsolete and redundant provisions | 1           |
| Renumbered provisions             | 1           |

## 6 List of legislation

### **Sugar Industry Act 1991 No. 20**

date of assent 1 May 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 15 July 1991 (1991 SL No. 19)

as amended by—

### **Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 1**

date of assent 17 December 1991

commenced on date of assent

### **Local Government Act 1993 No. 70 pt 1, s 804 sch**

date of assent 7 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 26 March 1994 (see s 2(5))

### **Sugar Industry Amendment Act 1994 No. 3**

date of assent 7 March 1994

commenced on date of assent

### **Land Title Act 1994 No. 11 ss 1–2, 194 sch 2**

date of assent 7 March 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 24 April 1994 (1994 SL No. 132)

### **Anti-Discrimination Amendment Act 1994 No. 29 ss 1–3 sch**

date of assent 28 June 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1994 (see s 2)

### **Sugar Industry Amendment Act (No. 2) 1994 No. 39**

date of assent 14 September 1994

commenced on date of assent

**Statutory Authorities Superannuation Legislation Amendment Act 1995 No. 36 ss 1–2, 9 sch 2**

date of assent 16 June 1995  
commenced on date of assent

**Statute Law (Minor Amendments) Act (No. 2) 1995 No. 51 ss 1, 4 sch**

date of assent 22 November 1995  
commenced on date of assent

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1**

date of assent 28 November 1995  
commenced on date of assent

**Sugar Industry Amendment Act 1996 No. 19**

date of assent 30 July 1996  
commenced on date of assent

**Tobacco Industry (Restructuring) Act 1996 No. 25 ss 1, 28 sch 1**

date of assent 15 August 1996  
commenced on date of assent

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch**

date of assent 20 November 1996  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 June 1997 (1997 SL No. 128)

**Primary Industries Legislation Amendment Act (No. 2) 1996 No. 59 pts 1, 11**

date of assent 5 December 1996  
pt 1 commenced on date of assent  
remaining provisions commenced 4 July 1997 (1997 SL No. 200)

**Primary Industries Legislation Amendment Act 1997 No. 20 pts 1, 4 s 25 sch**

date of assent 15 May 1997  
ss 1–2 commenced on date of assent  
ss 25 (but only for ss 26–32, 39–43), 26–32, 39–43 commenced 4 August 1997 (1997 SL No. 242)  
remaining provisions commenced 24 September 1997 (1997 SL No. 242)

## **7 List of annotations**

This reprint has been renumbered—see table of renumbered provisions in endnote 8.

**Repeals**

**s 1.3** om 1994 No. 3 s 2 sch

**Definitions**

- prov hdg** sub 1996 No. 19 s 3(1)
- s 3** (2) renum as s 3A 1996 No. 19 s 3(6)  
 (3) renum as s 3B 1996 No. 19 s 3(8)  
 def “**adjacent**” ins 1996 No. 19 s 3(3)  
 def “**appointed director**” ins 1997 No. 20 s 26(2)  
 def “**appointed member**” om 1997 No. 20 s 26(1)  
 def “**assignment holder**” amd 1996 No. 19 s 3(4)  
 def “**Board**” om 1997 No. 20 s 26(1)  
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 def “**mill owner**” or “**owner of a mill**” amd 1996 No. 19 s 3(4)  
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 def “**repealed Sugar Acquisition Act**” om 1994 No. 3 s 2 sch  
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