

Queensland



SUGAR INDUSTRY ACT 1999

Act No. 51 of 1999

Queensland



SUGAR INDUSTRY ACT 1999

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Queensland



Sugar Industry Act 1999

Act No. 51 of 1999

An Act about the sugar industry in Queensland, and for other purposes

[Assented to 18 November 1999]

The Parliament of Queensland enacts—

CHAPTER 1—PRELIMINARY

Short title

1. This Act may be cited as the *Sugar Industry Act 1999*.

Commencement

- 2.(1) Chapter 4, part 7 commences on 1 October 1999.
- (2) The remaining provisions commence on 1 January 2000.

Principal object of Act

3. The principal object of the Act is to facilitate an internationally competitive, export oriented sugar industry based on sustainable production that benefits those involved in the industry and the wider community.

Definitions

4. The dictionary in schedule 2 defines particular words used in this Act.

State bound

5. This Act binds all persons, including the State.

CHAPTER 2—PRODUCTION, SUPPLY AND MILLING

PART 1—CANE PRODUCTION AREAS

Division 1—Establishment of entitlement

Cane production area

6.(1) A person may hold an entitlement called a “**cane production area**”.

(2) A cane production area entitles the person (a “**grower**”) to enter a supply agreement with the owner of a particular mill for the supply to the mill of cane grown on a particular number of hectares situated within land of a particular description.

Example—

A cane production area owned by Smith, of 10 hectares, within land description Lot 1234 on Plan A123456, Curra, relating to the Curra Mill means that Smith is a grower and may supply to the Curra mill cane grown on 10 hectares and grown within land description Lot 1234 on Plan A123456, Curra under a supply agreement with the owner of the Curra Mill. The supply agreement may, as provided by this Act, be either an individual agreement or a collective agreement.

(3) A grower is the only person who may enter a supply agreement with a mill owner.

(4) Subsection (3) does not prevent a person entering a supply agreement with a mill owner on condition the person becomes the holder of the relevant cane production area.

(5) A cane production area is property and may, for example, be sold, leased, subleased, or otherwise transferred, subject to requirements under this part.

(6) Disposal of land included in a cane production area does not effect a disposal of the cane production area.

(7) Land included in a cane production area may be the same area as, or greater than, but not less than, the number of hectares included in the cane

production area.

Example—

The land description of grower Smith's cane production area mentioned in the example to subsection (2) may in fact encompass 20 hectares, but Smith's entitlement only relates to any 10 of those hectares at any one time.

(8) Particular land may be included in more than 1 cane production area.

(9) However, the total of all the numbers of hectares included in cane production areas in which particular land is included may not be greater than the land's actual area.

Example of subsection (8) and (9)—

Grower Smith may have 2 cane production areas, each of 10 hectares, and each with the same land description, actually encompassing 20 hectares. How Smith disposes of cane grown on the 20 hectares to a mill or mills depends on the mill or mills to which the cane production area relates and the supply agreements Smith is permitted to enter under this Act.

(10) Part 2, division 4, provides for the supply to the mill by the mill owner of cane grown on land included in the owner's cane production area.

Division 2—Applications for grant, variation or cancellation of cane production areas

Subdivision 1—General provisions

Explanation of div 2

7.(1) A cane production area may be granted, varied or cancelled by a cane production board on application to it under subdivision 2.

(2) Applications may affect each of the details of a cane production area, that is to say, they may ask a cane production board to do 1 or more of the following—

- (a) grant or cancel the cane production area;
- (b) vary the holder;
- (c) vary the description of land included in the cane production area;
- (d) vary the number of hectares by cancelling or allocating a number

of hectares;

(e) vary a cane production area's conditions.

(3) A single application may be all that is needed to achieve a desired change in cane production area entitlements.

Example—

A grower may sell the grower's cane production area to someone else in a simple transaction associated with the sale of a cane farm. In this case a single application would be made under section 12.

(4) A combination of applications may be needed to achieve a desired outcome and may, if convenient, be included in a single application form.

Example—

A grower may sell the grower's cane production area to someone else who proposes to farm in a completely different place. In this case, a combination of applications would be made under section 12 (to vary the holder) and section 13 (to vary the land description to the new farm). For some reason, the new grower may want a new cane production area, involving the cancellation of the old cane production area under section 15(1)(a) and the grant of a new cane production area under section 11 combined with the transfer of the number of hectares.

(5) An application or combination of applications may be for the purpose of changing a grower's cane production area entitlements relating to more than 1 mill by effectively achieving the following—

- (a) cancellation of a cane production area relating to 1 mill, or of a number of hectares included in it;
- (b) granting of a cane production area relating to another mill or an allocation of a number of unallocated hectares to an existing cane production area relating to the other mill.

(6) An application mentioned in subsection (5) must comply with division 3.

General provisions applying to applications

8.1 Subject to division 3, an application for the grant, variation or cancellation of a cane production area must be made to the cane production board established for the mill to which the cane production area will relate or relates.

(2) A grant or variation (other than a cancellation of a number of hectares included in a cane production area) of a cane production area, on application to a cane production board, may be for a particular period or indefinite.

(3) An application must be made in the way decided by the board, subject to this Act.

(4) The board may decide the application in the way it considers appropriate, subject to this Act.

(5) Before deciding an application, the board may require the applicant to provide particular information to the board.

(6) In granting or varying a cane production area, the board may impose conditions on the cane production area.

Examples of conditions—

1. A condition requiring the grower to contribute financially to cane railways facilitating use of the land for growing cane.

2. A condition limiting the harvesting of cane to a particular period each year.

3. A condition requiring the grower to enter into an individual agreement with the mill for a particular period or stating conditions about the grower's participation in the collective agreement made for the mill for a particular period.

4. A condition requiring the grower to use practices relating to land use, land management and environmental protection.

(7) Applications involving the grant of a number of currently unallocated hectares can not be called for or accepted by a cane production board unless it has first advertised their availability in a newspaper circulated throughout the area where cane supplied to the mill or an adjacent mill is grown.

(8) A grant, variation or cancellation on any application under this division takes effect when it is recorded in the register kept by the board under section 162,¹ unless the contrary intention appears.

Information notice must be given for refusal of application

9. If a cane production board refuses to grant an application under this part, or grants an application on a condition not sought by the applicant, the

¹ Section 162 (Cane production board to keep cane production area register)

board must give the applicant an information notice within 28 days after making the decision.

Subdivision 2—Particular applications to cane production boards

Grant of new or increased cane production area from out of unallocated hectares

10.(1) A person may apply to be granted a cane production area, or an increase in the number of hectares included in a cane production area held by the person, by the allocation of a stated number of unallocated hectares.

(2) For a grant of a cane production area, the application must state the description of land the applicant wishes to have included in it.

(3) The cane production board may grant the application only if it is satisfied that any consultation, required for the purposes of the grant under guidelines under any of the following, has happened—

- (a) a regulation;
- (b) section 149(d);
- (c) section 149(e).²

(4) Also, the cane production board may grant the application only if it is satisfied that, if the application is granted—

- (a) the total number of hectares that will be included in cane production areas relating to the mill will not be more than the limit decided for the mill under section 36;³ and
- (b) the land that will be included in the cane production area will be suitable cane land, having regard to the anticipated effect of conditions applying to the cane production area; and
- (c) for a grant of a cane production area, the grower will have, or be likely to obtain, an estate or interest in the land that will be included in it entitling the grower to use it to grow cane; and

² Section 149 (Functions and powers of a cane production board)

³ Section 36 (Negotiating team must decide expansion of cane production areas)

- (d) for a grant of a cane production area, the land that will be included in the cane production area will not include land also included in a cane production area relating to another mill, or if it will, division 3 has been complied with if it applies.

(5) Also, the cane production board may grant the application only after considering anything it is required to consider under a regulation.

(6) In this section—

“unallocated hectares” means hectares from out of the unallocated hectares relating to the mill to which the cane production area will relate or relates.

Grant of new or increased cane production area from out of transferred hectares

11.(1) An application may be made for the grant of, or for an increase in the number of hectares included in, a cane production area (the **“relevant cane production area”**) relating to a mill by the allocation of a number of hectares transferred from another cane production area relating to the mill.

(2) For the grant of the relevant cane production area, the application must state the description of land the applicant wishes to have included in it.

(3) The application must be made by the grower seeking to transfer the hectares, or if a disposition of a number of hectares from a grower to another person is involved, by the grower and the other person.

(4) The cane production board may grant the application only if it is satisfied that—

- (a) every third party consent required under section 16 has been obtained; and
- (b) any consultation, required for the purposes of the grant under guidelines under any of the following, has happened—
- (i) a regulation;
 - (ii) section 149(d);
 - (iii) section 149(e).⁴

⁴ Section 149 (Functions and powers of a cane production board)

(5) Also, the cane production board may grant the application only if it is satisfied that, if the application is granted—

- (a) the land that will be included in the relevant cane production area will be suitable cane land, having regard to the anticipated effect of conditions applying to the cane production area; and
- (b) for the grant of a cane production area, the grower will have, or be likely to obtain, an estate or interest in the land that will be included in it entitling the grower to use it to grow cane; and
- (c) the land that will be included in the cane production area will not include land also included in a cane production area relating to another mill, or if it will, division 3 has been complied with if it applies.

(6) If the total number of hectares included in a cane production area are being transferred, the cane production area must be cancelled under section 15(1)(a).

(7) Also, section 17(3) to (7) applies.

Transfer of cane production area to another person

12.(1) An application may be made to transfer the cane production area of a grower (the “**transferor**”) to another person (the “**transferee**”).

(2) The application must be made by the transferor and the transferee.

(3) The board may grant the application only if it is satisfied that every third party consent required under section 16 has been obtained.

(4) Also, the cane production board may grant the application only if it is satisfied that, if the application is granted, the transferee will have, or be likely to obtain, an estate or interest in the land that will be included in the cane production area entitling the transferee to use it to grow cane.

(5) Also, section 17(3) to (7) applies.

Variation of description of land included in cane production area

13.(1) A grower may apply for a variation of the description of land included in the grower’s cane production area.

(2) The cane production board may grant the application only if it is satisfied that—

- (a) every third party consent required under section 16 has been obtained; and
- (b) any consultation, required for the purposes of the grant under guidelines under any of the following, has happened—
 - (i) a regulation;
 - (ii) section 149(d);
 - (iii) section 149(e).⁵

(3) Also, the cane production board may grant the application only if it is satisfied that, if the application is granted—

- (a) the land that will be included in the cane production area will be suitable cane land, having regard to the anticipated effect of conditions applying to the cane production area; and
- (b) the grower will have, or be likely to obtain, an estate or interest in the land that will be included in the cane production area entitling the grower to use it to grow cane.

Variation of conditions of cane production area

14.(1) A grower may apply for a variation in the conditions on which the grower holds the grower's cane production area.

(2) The cane production board must grant the application if, by unanimous decision, it considers the variation appropriate.

Cancellation of cane production area or hectares on application

15.(1) A grower may apply to have the grower's cane production area cancelled, or to vary the cane production area by cancelling a part of its number of hectares, for the purpose of—

- (a) the grant or variation of another cane production area relating to the same mill; or

⁵ Section 149 (Functions and powers of a cane production board)

- (b) permanently ceasing to grow cane in relation to the cancelled cane production area or to the extent relevant to the cancelled number of hectares, including on land previously used to grow the cane.

(2) The cane production board must grant the application if is satisfied that—

- (a) the purpose of the cancellation or variation is as mentioned in subsection (1)(a) or (b); and
- (b) every third party consent required under section 16 has been obtained.

(3) For subsection (2)(a), the board must be satisfied that division 3 does not apply.

(4) On the grant of an application under subsection (1)(b), the number of hectares of the cancelled cane production area, or the number of hectares cancelled, become unallocated hectares for the mill to which the cane production area relates or related.

Third party consent required in particular circumstances

16.(1) This section applies to an application for the following—

- (a) transfer of a number of hectares from a cane production area;
- (b) transfer of a cane production area from a grower to another person;
- (c) variation of the description of land included in a cane production area;
- (d) cancellation of a cane production area or of a part of the number of hectares included in a cane production area.

(2) The application must provide a statutory declaration stating the following about the relevant land—

- (a) whether or not a third party has an interest in the land;
- (b) if there is a third party, whether or not the declarant has obtained the third party's written consent to the transfer, variation or cancellation.

(3) The statutory declaration must be made by the transferor, if a

disposition to another person is involved, or if not, by the applicant.

(4) If a third party has refused to give written consent, the following provisions apply—

- (a) the applicant may ask the cane production board deciding the application to dispense with the consent;
- (b) the third party must be given notice of the applicant's request and is entitled to be heard by the board on it;
- (c) the board may dispense with the consent if it considers it is being unreasonably withheld.

(5) The application can not be granted unless the consent of each third party mentioned in subsection (2) has been obtained or dispensed with under subsection (4).

(6) In this section—

“relevant land” means the land included in the cane production area mentioned in subsection (1)(a), (b) or (d) or the description of which is being varied as mentioned in subsection (1)(c).

Relationship between entitlement change and supply agreement obligations

17.(1) An application under this division may be necessary to provide for a change to a supply agreement applying to a grower because a grower supplies cane to a mill under a supply agreement that depends on the grower's entitlements under a cane production area.

(2) However, a cancellation or variation of a cane production area under this division, other than as expressly provided by this Act, has no effect on the obligations under the supply agreement of anyone bound by it.⁶

(3) Subsections (4) to (6) apply to an application for the following—

- (a) transfer of a cane production area from 1 person to another;
- (b) cancellation of a cane production area or of part of the number of hectares included in a cane production area.

⁶ In relation to collective agreements, see section 43 (Collective agreement—effect).

(4) If a collective agreement applies or applied to the cane production area, the application must provide the transferor's statutory declaration stating the following about the cane production area—

- (a) whether or not the transferor has an outstanding obligation under the agreement;
- (b) if there is an outstanding obligation, its nature.

(5) The purpose of subsection (4) is to ensure that—

- (a) any relevant obligations of a grower under a collective agreement are considered by the grower before making the application; and
- (b) division 3 is complied with, if it applies.

(6) If—

- (a) the application is one mentioned in subsection (3)(a); or
- (b) the application is one mentioned in subsection (3)(b), and a disposition of a number of hectares from a grower to another person is involved;

the transferee is bound by an obligation required to be disclosed under subsection (4).

(7) In this section—

“transferee” means the person to whom another person's cane production area is being transferred, or to whose cane production area a number of hectares is being transferred under a disposition.

“transferor” means the person who holds the cane production area being transferred to another person or a number of hectares which are being cancelled.

Division 3—Applications affecting cane production areas relating to more than 1 mill effectively moving cane supply from 1 mill to another

Subdivision 1—Preliminary

Purpose and explanation of div 3

18.(1) The purpose of this division is to establish a number of processes that enable growers to move the supply of cane grown on particular land from 1 mill to another mill if—

- (a) entities associated with both mills consent; or
- (b) the move is necessary to allow growers to increase the number of hectares from which they can supply cane; or
- (c) because of a significant sustainable lengthening of the current mill's crushing season due to a significant sustainable increase in cane productivity, the move is necessary to allow growers to achieve more efficient crushing arrangements.

(2) A move by a grower under each process involves—

- (a) the grower obtaining a grant of unallocated hectares relating to a mill (the receiving mill mentioned in section 29(1)) other than the mill to which the grower's cane production area currently relates (the "**current mill**"); and
- (b) cancellation of the grower's cane production area relating to the current mill, or of a number of hectares included in it, as may be necessary to take account of the move.

(3) Each process ensures the termination of the grower's obligations under any collective agreement made for the current mill that would otherwise apply to the relevant cane.

(4) If the move is necessary to allow the grower to increase the number of hectares from which the grower is supplying cane, the process ensures the cane supply to the current mill is not reduced because it requires the resulting increase in unallocated hectares relating to the mill to be granted under section 10.

(5) Subdivisions 2 to 4 provide various processes each of which

establishes a basis for the grower to move to the receiving mill, and how this may affect other growers or potential growers.

(6) Subdivision 5 provides for the grower's application to the cane production board established for the receiving mill and the result of a grant.

Definitions for div 3

19. In this division—

“cane productivity”, in relation to a mill, means the total number of tonnes of cane crushed by the mill, calculated as the average tonnage for each hectare included in all the cane production areas that relate to the mill.

“current cane production area”, for a grower making an application under this division, means the grower's cane production area relating to the current mill.

“current cane production board”, for a grower making an application under this division, means the cane production board established for the current mill.

“current mill”, for a grower making an application under this division, means the current mill mentioned in section 18(2).

“grant of unallocated hectares” means a grant under section 10 of a cane production area, or an increase in the number of hectares included in a cane production area, from out of unallocated hectares relating to a mill.

“horizontal expansion”, in relation to a mill, means expansion in cane production areas relating to the mill.

“productivity increase”, in relation to a mill, means a sustainable increase in cane productivity relating to the mill, disregarding the effect of any horizontal expansion.

“receiving cane production board”, for a grower making an application under this division, means the cane production board established for the receiving mill.

“receiving mill”, for a grower making an application under this division, means the receiving mill mentioned in section 29(1).

“regulation process” means a process provided for under a regulation.

Subdivision 2—Consent process

Consent process

20.(1) A grower may obtain consents to the grower's application under section 29 from the owners of the current mill and the receiving mill and the mill suppliers' committees of those mills.

(2) All these consents are necessary if the grower is relying on compliance with section 29(1)(a) as the basis of the application.

Subdivision 3—Horizontal expansion process

Start of horizontal expansion process

21.(1) All references in this subdivision to the mill owner, growers, cane production areas, unallocated hectares, the cane production board (the "**board**"), the negotiating team, the mill suppliers' committee, crushing season and crushing capacity relate to the current mill, unless the contrary intention appears.

(2) To start the process under this subdivision, the mill owner or the mill suppliers' committee may ask the board to call for applications from growers for the grant of unallocated hectares.

(3) The object of the request is to find out the level of demand for expansion of cane production areas over the currently available unallocated hectares.

(4) As provided for under a regulation, the board must call for applications from growers for the grant of unallocated hectares.

(5) In response to the call, a grower may apply to the board for a grant of unallocated hectares.

(6) As provided for under a regulation, the board must—

- (a)** assess the level of demand; and
- (b)** if there is a demand, refer the assessment to the negotiating team.

(7) For subsection (6)(b), for each application, the board must make the assessment it considers appropriate of the likelihood the grower's

application would be granted if unallocated hectares were available.

(8) For subsection (7), each assessment must include consideration of whether the grower has enough suitable cane land for the grant.

(9) Each grower whose application the board considers it would grant is an “**eligible grower**”.

If the negotiating team agrees on horizontal expansion

22. If the negotiating team agrees on expansion in cane production areas, the board must grant the increased number of unallocated hectares for the mill under section 10.

If the negotiating team does not agree on horizontal expansion

23.(1) If the negotiating team does not agree on expansion in cane production areas, section 189 applies to the dispute and an arbitration process must be used.

(2) To resolve the dispute, the arbitrator must decide, after consulting with the negotiating team, everything about the expansion, including the crushing season length.

(3) Subject to subsection (4)—

- (a) the arbitrator’s decision has effect as a final decision of the negotiating team under section 189; and
- (b) if the arbitrator decides there is to be an expansion of cane production areas, for the purposes of section 22, the negotiating team is taken to have agreed to the expansion.

(4) If the mill owner rejects the arbitrator’s decision because the owner refuses to invest the capital necessary to carry out the decision, the arbitrator’s decision is of no effect as a final decision of the negotiating team under section 189.

(5) If subsection (4) applies and the arbitrator decides that the mill owner, in connection with the arbitration, has not offered to increase crushing capacity by an amount that in all the circumstances is measurable, the arbitrator must also make the following declaration to the board about the measurable increase—

- (a) the mill owner has failed to agree to it;
- (b) the amount, expressed as a number of hectares calculated under a regulation (the “**declared measurable increase**”).

(6) The board must then as soon as practicable give a notice to the eligible growers and the mill owner.

(7) The notice must state that the board will follow a regulation process stated in the notice, and used to prevent any significant decrease in the total number of hectares included in cane production areas relating to the mill—

- (a) to facilitate cancellations of eligible growers’ cane production areas, or numbers of hectares included in them, in support of the growers applications under section 29; and
- (b) to grant unallocated hectares arising from the cancellations to other eligible growers in priority to other persons.

(8) The board must comply with the process.

(9) However, the process is subject to a resolution of the dispute within the negotiating team at any time.

Process for moving supply from current mill

24.(1) The regulation process under section 23(7) must provide for at least the process stated in the following subsections.

(2) An eligible grower may apply to the board for the board to—

- (a) give the grower a notice that it will take the action mentioned in section 23(7)(a) in relation to a stated number of hectares included in the grower’s cane production area (a “**move consent notice**”); or
- (b) make a grant mentioned in section 23(7)(b) applied for by the grower under section 21(5).

(3) As eligible growers make applications mentioned in subsection (2), a reasonably fair way of selecting each eligible grower in priority to other eligible growers must be used to give move consent notices or make the grants mentioned in subsection (2)(b).

(4) The selection process mentioned in subsection (3) applied to a grower must depend on whether unallocated hectares arising out of the cancellation

mentioned in section 23(7)(a) relating to the grower will be able to be granted to another eligible grower.

(5) Also, the process mentioned in subsection (3) must involve a grower's application under subsection (2) being refused, if—

- (a) the board considers that unallocated hectares arising out of the cancellation mentioned in section 23(7)(a) relating to the grower will not be able to be granted to another eligible grower; or
- (b) the process has ended.

(6) As the applications of eligible growers under subsection (2) are processed—

- (a) eligible growers are to be issued with move consent notices; and
- (b) other eligible growers are to be given notices that their applications under subsection (2)(b) will be granted as particular cancellations mentioned in section 23(7) are recorded by the board.

(7) An eligible grower given a notice mentioned in subsection (6)(b) may withdraw the grower's application under subsection (2)(b) at any time before the cancellation relating to the grant is made, but afterwards may only withdraw it as provided under a regulation.

(8) As cancellations under section 30 are made based on move consent notices under this subdivision, the board must exercise its powers under section 10 to grant unallocated hectares, arising out of the cancellations, to growers previously given notice of the grant as mentioned in subsection (6)(b).

(9) The process must end when the first of the following happens—

- (a) there are no more applications under subsection (2) to be processed;
- (b) the total of the numbers of unallocated hectares granted by the following boards equal the amount of the declared measurable increase—
 - (i) the current cane production board, in exercising its powers under section 10 to grant unallocated hectares arising from cancellations under section 30;

- (ii) receiving cane production boards, in exercising their powers under section 29 based on move consent notices.

(10) An application under subsection (2) must be made by an eligible grower within 5 years after the arbitrator's declaration under section 23(5) or before the end of the process under subsection (9)(b), whichever happens first.

Other provisions that may be included in the process

25.(1) A regulation under section 23(7) may provide for time limits, including—

- (a) a time limit in a move consent notice after which the notice ceases to have effect; or
- (b) a time limit within which a grower must make an application under section 29.

(2) For section 24(8), the regulation may permit the grants mentioned in the subsection to be made, and to be binding on the growers, unless the growers withdraw their applications as provided under the regulation.

(3) Subsection (1) and (2) and section 24 do not limit the matters that may be included in the process under a regulation under section 23(7).

Subdivision 4—Productivity increase process

Establishment of productivity increase process

26.(1) All references in this subdivision to the mill owner, growers, cane production areas, unallocated hectares, the cane production board (the “**board**”), the negotiating team, the mill suppliers' committee, crushing capacity and crushing season relate to the current mill, unless the contrary intention appears.

(2) To start the process under this subdivision, the circumstances mentioned in subsection (3) must exist arising from an arbitrated dispute within the negotiating team about the framing or variation of a collective agreement.

(3) The circumstances are as follows—

- (a) for a particular crushing season, the mill suppliers' committee asks the mill owner to increase the crushing capacity;
- (b) the basis is that the length of the crushing season has significantly increased because of a significant sustainable increase in cane productivity;
- (c) the arbitrator's final decision is that—
 - (i) the crushing season length has significantly increased because of a significant sustainable increase in cane productivity of a particular amount (the “**sustainable increase**”); and
 - (ii) the mill's crushing capacity should be increased by a stated amount;
- (d) the mill owner rejects the arbitrator's decision;
- (e) the arbitrator decides the mill owner, in connection with the arbitration, has not offered to increase crushing capacity by an amount that in all the circumstances is measurable.

(4) The arbitrator must make the following declaration to the board about the sustainable increase—

- (a) the mill owner has failed to agree to it;
- (b) the amount, expressed as a number of hectares calculated under a regulation (the “**declared sustainable increase**”).

(5) The board must then as soon as practicable give a notice to growers and to the mill owner.

(6) The notice must state that the board will follow a regulation process stated in the notice to facilitate cancellations of growers' cane production areas, or numbers of hectares included in them, in support of growers applications under section 29.

(7) The notice must state that the cancellations relate to a stated total number of hectares included in existing cane productions areas that is no more than the declared sustainable increase.

(8) The board must comply with the process.

(9) However, the process is subject to a resolution of the dispute within the negotiating team at any time.

(10) To give notice to growers under subsection (5), it is enough to advertise, in a newspaper circulating in the area where cane supplied to the mill is grown, information on how a copy of the notice may be obtained.

(11) In this section—

“**arbitrated dispute**” means a dispute that has been arbitrated under section 189.

Process of moving supply from current mill

27.(1) The regulation process provided for under section 26(6) must provide for at least the process stated in the following subsections.

(2) A grower may apply to the board for the board to give the grower a notice that it will take the action mentioned in section 26(6) in relation to a stated number of hectares included in the grower’s cane production area (a “**move consent notice**”).

(3) As growers make applications mentioned in subsection (2), a reasonably fair way of selecting each grower in priority to other growers must be used to give move consent notices.

(4) Also, the process mentioned in subsection (3) must involve a grower’s application under subsection (2) being refused if the process has ended.

(5) The process must end when the first of the following happens—

- (a) there are no more applications under subsection (2) to be processed;
- (b) receiving cane production boards, in exercising their powers under section 29 based on move consent notices issued under the process, make grants of unallocated hectares equal to the amount of the declared sustainable increase.

(6) An application under subsection (2) must be made by a grower within 5 years after the arbitrator’s declaration under section 26(4) or before the end of the process under subsection (5)(b), whichever happens first.

(7) Despite cancellations under section 30 based on move consent notices under this subdivision, the number of hectares that are cancelled do not become unallocated hectares available to be granted under section 10.

Other provisions that may be included in the process

28.(1) A regulation under section 26(6) may provide for time limits, including—

- (a) a time limit in a move consent notice after which the notice ceases to have effect; or
- (b) a time limit within which a grower must make an application under section 29.

(2) Subsection (1) and section 27 do not limit the matters that may be included in the process provided for under a regulation under section 26(2).

Subdivision 5—Applications relating to receiving mill**Application allowing supply to receiving mill**

29.(1) If a grower—

- (a) has obtained the consents mentioned in section 20; or
- (b) has received a move consent notice mentioned in section 24(2) or 27(2);

the grower may apply under section 10 to a cane production board established for a mill other than the current mill (the “**receiving mill**”) to be granted unallocated hectares relating to the receiving mill.

(2) In addition to the other requirements for the application under division 2, the application must provide the following—

- (a) the consents or move consent notice mentioned in subsection (1);
- (b) particulars of the land from which the grower intends to supply cane to the receiving mill, if the application is granted;
- (c) the number of hectares on which is grown the cane that the grower intends to cease supplying to the current mill and start supplying to the receiving mill, if the application is granted;
- (d) the particulars of the current cane production area and a request for its cancellation, or of a stated number of hectares included in it, as may be necessary to ensure—

- (i) consistency between cane production area entitlements; and
- (ii) that the grower may comply with each collective agreement applying to the grower, if the application is granted.

(3) The information provided under subsection (2)(b) to (d) must be consistent with the corresponding information included in the consents or move consent notice provided under subsection (2)(a).

(4) The receiving cane production board can not act on a move consent notice unless it is in force when the board acts.

(5) The receiving cane production board may, under section 10, grant the application effective from the start of the crushing season for the next year.

Cancellation of supply to current mill

30.(1) If the receiving cane production board grants the application, it must give notice to the current cane production board to cancel the current cane production area or the number of hectares mentioned in section 29(2)(d) included in it, effective from the start of the crushing season for the next year.

(2) When it receives the notice, the current cane production board must record the cancellation in its register effective from the start of the crushing season for the next year.

(3) The cancellation takes effect from the start of the crushing season for the next year.

(4) On cancellation, the grower is not bound by a collective agreement made for the current mill, so far as it relates to the activities of the grower after the cancellation in growing, harvesting and supplying cane in the exercise of the entitlement granted by the application.

(5) The obligations of the grower under an individual agreement are not affected only because the application has been granted.

(6) This section does not limit the number of different applications that may be made under division 2 in support of the purpose mentioned in section 18.⁷

⁷ Section 18 (Purpose and explanation of div 3)

Example—

An application under section 13 to vary the description of land included in a relevant cane production area may be necessary or convenient.

(7) A number of hectares cancelled under subsection (3) on the grant of an application based on consents mentioned in section 20, or a move consent notice mentioned in section 24(2) become unallocated hectares for the current mill.

*Division 4—Cancellation of cane production area without application***Cane production board may cancel a cane production area for particular reasons**

31.(1) The cane production board established for a mill to which a cane production area relates may cancel the cane production area, or vary the cane production area by cancelling part of its number of hectares, if satisfied that—

- (a) land included in the cane production area has become permanently used for another purpose excluding cane growing; or
- (b) no cane has been supplied to the mill under a supply agreement for at least 2 years; or
- (c) the grower has not complied with a condition of the cane production area.

(2) For subsection (1)(b), a period must not be counted if an agreement under section 39 provided that no cane need be supplied to the mill for the period.

(3) Before the board cancels the cane production area or part of the cane production area's number of hectares, it must give notice to the grower calling on the grower to show cause why the cancellation should not happen.⁸

(4) If the grower does not show as required cause or enough cause why the cancellation should not happen, the board may proceed with the cancellation.

⁸ Section 218 contains general provisions about show cause proceedings.

(5) If the board is satisfied as mentioned in subsection (1)(a) to (c), it may, instead of immediately ordering the cancellation, allow the grower a period to dispose of the cane production area or the part of its number of hectares.

(6) The cancellation takes effect when it is recorded in the register kept by the board under section 162.⁹

(7) Within 21 days after the board makes a decision under subsection (1) or (5), it must give an information notice to the grower.

(8) The cancellation has no effect on any right the mill owner may have to take proceedings against the grower to recover an amount under, or for breach of, a supply agreement.

(9) The number of hectares of the cancelled cane production area, or the number of hectares cancelled, become unallocated hectares for the mill to which the cane production area relates or related.

Division 5—Registration requirements for grant, variation or cancellation of cane production areas

Giving effect to cane production board's decisions

32.(1) A cane production board must, as required under a regulation, record in its register kept under section 162¹⁰ the effect of the decision of any cane production board granting an application or cancelling a cane production area or part of the number of hectares of a cane production area under this part.

(2) However, if the decision is made on an application made in anticipation of an agreement being made or other event happening in relation to a cane production area, on the applicant's request the cane production board may delay recording the effect of the decision until it receives a request from the applicant to record it.

Example—

An application may be made for a variation needed for an anticipated commercial

⁹ Section 162 (Cane production board to keep cane production area register)

¹⁰ Section 162 (Cane production board to keep cane production area register)

transaction that afterwards may fail to proceed. The cane production board may delay recording the effect of the decision until it receives confirmation that the transaction has proceeded.

Division 6—Cane production area plans

Agreed cane production area plan is evidence

33. A plan verified by a grower and the owner of the mill to which the grower's cane production area relates, showing for a date or period the boundaries of the description of land included in the cane production area or where cane is being, or proposed to be, grown on the land for supply to the mill, is evidence of those things.

Submission of plan to cane production board

34.(1) If a grower or mill owner is not satisfied of the accuracy of a plan mentioned in section 33 submitted by the one to the other for verification, the dissatisfied grower or owner may submit an alternative plan to the cane production board established for the mill.

(2) If satisfied the plan is accurate, the cane production board must certify to that effect.

(3) If dissatisfied, the cane production board may reject the plan or certify a plan amended by it.

(4) The chairperson must sign the cane production board's certificate.

(5) The certified plan may be filed by the grower or mill owner in the cane production board's office.

(6) The certified plan is evidence of the things in the plan.

Cane production board may interpret disputed plans

35.(1) If there is a dispute between a mill owner and a grower or between growers about the accuracy or interpretation of a plan verified under section 33 or certified under section 34, the owner or a grower may apply to the cane production board established for the mill to decide the issue.

(2) The board may decide the issue.

(3) The cane production board's decision is binding on the owner and grower and anyone else relying on a right or obligation of the owner or grower that is established by the plan.

Division 7—Expansion generally

Negotiating team must decide expansion of cane production areas

36.(1) A negotiating team established for a mill must decide everything about the size of expansion of cane production areas relating to the mill and the length of a crushing season (“**expansion**”).

(2) In deciding anything about expansion, the negotiating team's objective is to enhance the profit of the mill owner and the growers supplying cane, while taking full account of local circumstances.

Disputes

37.(1) This section applies if—

- (a) there is a dispute about expansion; and
- (b) a final decision under section 189¹¹ is made.

(2) The decision is binding on the mill owner and growers.

(3) However, if the decision requires capital investment by the mill owner, and the mill owner refuses to invest the capital, the decision is of no effect.

(4) Nothing in this division requires a grower to accept an allocation of hectares to the grower's cane production area without making an application.

(5) This section does not apply if the processes under division 3, subdivision 3 or 4, are being used.

¹¹ Section 189 (Dispute resolution about functions)

PART 2—CANE SUPPLY AND PROCESSING AGREEMENTS

Division 1—Cane supply is governed by supply agreements

Object of pt 2

38.(1) The object of this part is to ensure that the supply by growers of cane to a mill, the cane's crushing and the payment to growers in return are governed by agreements (each a **“cane supply and processing agreement”** or **“supply agreement”**) between growers and mill owners.

(2) A supply agreement may be either an individual agreement or a collective agreement.

(3) A supply agreement may be for 1 or more crushing seasons.

Individual agreement

39.(1) An individual agreement is a supply agreement made directly between 1 or more growers and a mill owner.

(2) An individual agreement between a grower and a mill owner may provide that the grower need not supply cane to the owner's mill.

(3) An individual agreement may be for more than or for all or part of the period of the collective agreement otherwise applying to the grower and for all or part of the supply of cane grown by the grower.

Collective agreement—nature

40.(1) A collective agreement is a supply agreement made by a negotiating team.

(2) A negotiating team must make a collective agreement for the mill for which it is established.

(3) There may only be 1 collective agreement in force at any 1 time for a mill.

(4) A negotiating team established for more than 1 mill may make a collective agreement applying to more than 1 of the mills.

Collective agreement—before the start of negotiations

41.(1) No later than 28 days before starting negotiations for a collective agreement, the negotiating team must publish in a newspaper circulating in the area where the cane to which the agreement will apply is grown a notice, stating the following—

- (a) the intention to start negotiations;
- (b) the day negotiations will start;
- (c) the negotiating team's address for service;
- (d) the period or range of periods the collective agreement may possibly cover.

(2) The cost of publishing the notice must be paid in equal amounts by the mill suppliers' committee and the mill owner.

(3) If the notice is not published as required under subsection (1), the agreement can not be made.

(4) However, for subsection (1)(d), the negotiating team may, without giving public notice, have preliminary discussions to decide the period or range of periods the collective agreement may possibly cover.

Collective agreement—making

42.(1) A collective agreement made for a mill must be signed by the members of the negotiating team or by the commissioner under subsection (3).

(2) Within 21 days after a collective agreement is made, the negotiating team must publish, in a newspaper circulating in the area from which cane will be supplied to the mill under the agreement, a notice of the signing of the agreement and how a copy can be obtained.

(3) If a member of a negotiating team does not sign a collective agreement, despite the fact that there are no disputes on its content or that any dispute has been decided under section 189, the commissioner may

sign the agreement in the member's place, on the application of another member, the mill suppliers' committee or the mill owner.

Collective agreement—effect

43.(1) A collective agreement made for a mill is binding and enforceable in any court of competent jurisdiction as a contract on—

- (a) the mill owner; and
- (b) each grower who enters, or who is taken to have entered into, the agreement; and
- (c) each person having title to, or interest in, the mill or the land from which cane is to be supplied to the mill, or the cane.

(2) Under subsection (1)(b), unless excused under section 46 or a relevant supply agreement, any grower who grows cane on land included in the grower's cane production area has a contractual obligation to supply the cane to the mill to which the grower's cane production relates.

Variation of collective agreement

44.(1) This section applies to a collective agreement made for a mill and to the negotiating team established for the mill.

(2) The negotiating team may vary the agreement on application, made within 21 days after the agreement is published as required under section 42(2), by 20 or more growers bound by the agreement.

(3) Also, the negotiating team may vary the agreement on application made at any time by the mill owner or the mill suppliers' committee on the grounds of a change of circumstances.

(4) An agreement provision that has been made or confirmed by a final decision under section 189¹² can not be affected under subsection (2).

(5) Sections 41(1) to (4) and 42 apply to the variation in the same way as they apply to the agreement.

¹² Section 189 (Dispute resolution about functions)

Which agreement applies to particular grower

45.(1) Each grower must have a supply agreement with a mill owner for each season.

(2) A grower may enter an individual agreement with the owner of the mill, or a collective agreement made for the mill, to which the grower's cane production area relates.

(3) A grower who does not voluntarily enter a supply agreement is taken to have entered the collective agreement made for the mill to which the grower's cane production area relates.

(4) Subject to this Act, a grower may, under subsection (2), enter into an individual agreement with a mill owner at any time.

Grower may give notice of change of entitlement

46.(1) This section applies only to a collective agreement made for a mill for a period longer than 4 years.

(2) Before the collective agreement is made, a grower may give notice to the negotiating team of a proposed cancellation of the grower's cane production area, or of a number of hectares included in it, to take effect from a day after the end of the 4 year period.

(3) If the cancellation is granted, the grower is excused from any obligation under the agreement to grow cane or supply cane to the mill after the cancellation takes effect in relation to the cancelled cane production area or number of hectares.

(4) This section does not limit part 1, division 3.¹³

(5) In this section—

“grower” means a grower whose cane production area relates to the mill.

“negotiating team” means the negotiating team established for the mill.

¹³ Part 1, division 3 (Applications affecting cane production areas relating to more than 1 mill effectively moving cane supply from 1 mill to another)

Division 2—Process for entering individual agreements

Individual agreement entered by grower with mill owner

47.(1) Notice must be given under this section of an individual agreement between a grower and the mill owner.

(2) At least 14 days before the start of negotiations for the collective agreement for the mill, the grower must give notice to the mill suppliers' committee of an individual agreement the grower intends to enter with the mill owner for all or part of any period to which the collective agreement may apply.

(3) Within 7 days after a collective agreement is made, the mill owner must give to the mill suppliers' committee notice of every individual agreement the owner has entered with growers for all or part of the period to which the collective agreement applies.

(4) If, during the period to which a collective agreement applies, the mill owner enters an individual agreement with a grower for all or part of the period to which the collective agreement applies, the owner must give notice of the agreement to the mill suppliers' committee within 7 days after the agreement is entered into.

(5) Notice of an individual agreement must give enough details of the agreement to allow the effect of the agreement on the collective agreement to be decided for the purposes of section 48.

(6) However, the details need not include details of the price payable to the grower for cane under the individual agreement.

(7) If notice of an individual agreement is not given as required under subsections (2) to (5), the application of the collective agreement to the grower and the mill owner is unaffected by the individual agreement and the collective agreement applies to them.

Individual agreement—stopping or cancelling

48.(1) Within 21 days after it receives notice of an individual agreement, the mill suppliers' committee may refer to mediation the issue of whether the agreement should not be made, or, if made, cancelled.

(2) To refer the issue to mediation, the mill suppliers' committee must

give notice to the parties to the mediation.

(3) The parties to the mediation are the mill suppliers' committee and the parties to the individual agreement.

(4) The mediator must be—

- (a) a person agreed to by the parties to the mediation; or
- (b) if the parties can not agree—the commissioner or a person nominated by the commissioner.

(5) A person nominated by the commissioner under subsection (4)(b) must have appropriate qualifications or experience for the mediation.

(6) In the mediation, the only ground to be considered is whether the individual agreement's provisions will have a significant adverse effect on growers supplying cane to the mill under the collective agreement.

Example—

Provisions that may result in a cane grower who supplies cane to the mill under the collective agreement being excluded from harvesting during peak ccs levels.

(7) For subsection (6), the individual agreement is not taken to have the mentioned significant adverse effect only because it provides for a price payable to the grower for cane under the individual agreement other than as decided under the collective agreement.

(8) If the mediation ends with the parties in dispute, the mill suppliers' committee may apply within 21 days to a Magistrates Court sitting in the magistrates court district in which the mill is situated for an order stopping the making of, or cancelling, the agreement.

(9) The only ground of the application is the ground mentioned in subsection (6).

(10) The parties to the application are the mill suppliers' committee and the parties to the individual agreement.

(11) The court may decide the application and make or refuse to make the order sought and, to facilitate the proceeding before the court, make any other order the court considers appropriate.

(12) If the individual agreement is cancelled, the relevant grower is taken to have entered the collective agreement.

Division 3—Content of supply agreements

Content of agreement

49.(1) A supply agreement must provide for the rights and obligations of any grower and mill owner, in relation to the following, about cane to be supplied to the mill by the grower under the agreement—

- (a) harvesting;
- (b) delivery to the mill;
- (c) transport and handling;
- (d) acceptance and crushing by the mill;
- (e) payment by the mill owner.

(2) A collective agreement must include payment arrangements linking the price of cane to the selling price of sugar, unless the negotiating team decides otherwise.

(3) For subsection (2), the selling price of sugar is the selling price declared by the corporation.

(4) A collective agreement must provide that growers must grow cane on a stated minimum percentage of the number of hectares included in their cane production areas.

(5) A collective agreement may provide for different provisions for different growers.

(6) A supply agreement may provide for the following—

- (a) a financial incentive scheme of premiums, discounts and allowances relating to cane and sugar quality or to anything that may affect cane and sugar quality, having regard to best practice;
- (b) penalty payments in amounts, or referable to amounts, for a contravention of the agreement.

Cane required to be accepted by a mill

50.(1) If a grower delivers cane grown by the grower to a mill in accordance with the relevant supply agreement, the mill owner is

contractually obliged to accept the cane for crushing.

(2) However, every supply agreement is taken to include a provision that the mill owner is not required to accept the following for crushing—

- (a) cane infested with a pest;
- (b) cane having in or on it a chemical residue in an amount more than the maximum residue limit of the chemical prescribed for cane under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*;
- (c) cane exposed to or having on or in it a chemical as prescribed under a regulation;
- (d) cane containing less than 7 units of commercial cane sugar;
- (e) cane grown, harvested, transported, handled, delivered or supplied in contravention of this Act or an applicable supply agreement.

Delivery and acceptance of cane

51. Every supply agreement is taken to include the following provisions—

- (a) cane is delivered to a mill if it is delivered or tendered for delivery in accordance with the agreement;
- (b) acceptance of cane by the mill owner comprises—
 - (i) the handling of cane from the point of delivery to the mill; and
 - (ii) its crushing; and
 - (iii) the acceptance of liability for its payment in accordance with the agreement;
- (c) no action taken about cane before the mill owner decides it is or is not acceptable, in accordance with the agreement provisions mentioned in section 50 or in the relevant supply agreement, is acceptance of the cane.

Emergency and natural disaster

52. Every collective agreement is taken to include a provision excusing a party from an obligation under the agreement the party is unable to fulfil because of natural disaster or other emergency affecting cane growing, harvesting, delivering, transporting or crushing.

Dispute resolution

53.(1) A collective agreement must provide for a final decision if there is—

- (a) a dispute within the negotiating team about a variation of the agreement; or
- (b) a dispute within a future negotiating team during the negotiations for the next collective agreement made for the mill.

(2) The negotiating team mentioned in subsection (1)(b) is bound by the provision mentioned in subsection (1)(b).

(3) Also, if there is no provision for resolution of a dispute within a negotiation team as provided under subsection (1), then the dispute resolution process provided under a regulation must be followed.

General considerations

54.(1) In negotiating a collective agreement for a mill, a negotiating team's objective is to enhance the profit of the mill owner and the growers supplying cane, while taking full account of local circumstances.

(2) Matters the negotiating team may consider include the following—

- (a) the amount of existing and proposed crushing capacity of the mill;
- (b) mill reliability;
- (c) likely loss of harvesting and crushing time because of weather conditions;
- (d) crushing season length and the risk of being unable to complete harvesting;
- (e) increases in the amount of cane to be crushed at the mill because

of increases in productivity or the total number of hectares used to grow cane;

- (f) commercial cane sugar yield patterns, cane growing patterns and the effect of a harvesting date on future yields;
- (g) raw sugar marketing commitments and the likely selling price of sugar;
- (h) bulk raw sugar storage capacity limits;
- (i) cane payment arrangements;
- (j) cane and sugar quality;
- (k) crop size;
- (l) industrial dispute risk;
- (m) procedures requiring the mill owner to notify a grower that the grower's cane has not been accepted for crushing for a reason mentioned in section 50(2);
- (n) mill closure;
- (o) anything relevant to the harvesting, delivery, transport, handling and crushing of cane;
- (p) anything else relevant.

(3) The negotiating team must consider ways in which the growers and the mill owner may jointly improve profitability.

Division 4—Mill owner's cane

Object of div 4

55. The object of this division is to place the owner of a mill supplying cane to the mill in as similar a position, to any grower supplying cane to the mill, as can sensibly be achieved having regard to the provisions of this Act under which supply agreements govern the supply of cane to a mill.

Owner may hold cane production area and supply cane

56.(1) Under section 6(1), the owner may hold a cane production area relating to the mill.

(2) Nothing in this Act prevents the owner from supplying to the mill cane grown on land included in the cane production area (the “**owner’s cane**”).

Owner may opt to supply as if under provisions of individual agreement

57.(1) The owner may opt to be treated as if the owner’s cane is being supplied to the mill under an individual agreement, for more than or for all or part of the period of the collective agreement made for the mill.

(2) The owner may opt to be treated as mentioned in subsection (1) by giving notice under section 47(1) or (4) to the mill suppliers’ committee as the grower and mill owner mentioned in the subsections.

(3) The notice must state particulars of the following—

- (a) the number of hectares from which cane will be supplied;
- (b) the period when the cane will be supplied;
- (c) the cane to be supplied.

(4) Sections 47 and 48 apply as if the notice were notice of an individual agreement.

(5) However, for section 48, the provision for mediation does not apply and application may be made to a Magistrates Court under the section without proof of mediation ending with the parties in dispute.

(6) The application to the Magistrates Court must be made within 14 days after the notice mentioned in subsection (2) is given.

(7) Also, for section 48, the only significant adverse effect that may be relied on is one arising because the rate of cane supply to the mill has changed due to the supply of the owner’s cane.

Application of collective agreement and notice

58.(1) To the extent the owner does not opt to be treated as mentioned in section 57(1), the provisions of the collective agreement made for the mill apply to the supply of the owner's cane to the mill.

(2) The provisions of the collective agreement apply to the extent they can sensibly be applied and on the basis that the owner is both the grower and the owner.

(3) The owner must, before the start of negotiations for the collective agreement, give to the mill suppliers' committee notice of the number of hectares from which, and when, the cane will be supplied.

Maximum penalty for subsection (3)—20 penalty units.

PART 3—CANE VARIETY CONTROL**Approved cane**

59.(1) The BSES may, by gazette notice—

- (a) approve for growing in an area defined in the notice a variety of cane stated in the notice, or cancel the approval of the variety; and
- (b) impose conditions regulating when cane of a variety the subject of the notice starts, or stops, being approved for growing.

(2) In approving a variety of cane for growing in an area, the BSES must have regard to its—

- (a) agricultural qualities; and
- (b) mill processing characteristics; and
- (c) resistance to pests; and
- (d) effect on the environment.

Permit to grow cane of non-approved variety

60.(1) A person may apply to the BSES for a permit authorising the

person to grow cane at a place where, and during a period when, the variety of cane to which it belongs is not approved for growing under section 59.

(2) An application must be—

- (a) in a form, and give particulars, approved by the BSES; and
- (b) accompanied by the fee prescribed under a regulation.

(3) The BSES must consider the application and may—

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

Offences concerning non-approved cane

61.(1) A person must not grow non-approved cane.

Maximum penalty—100 penalty units.

(2) A person must not—

- (a) dispose of, or attempt to dispose of, non-approved cane to another person; or
- (b) deliver, or attempt to deliver, non-approved cane to a mill; or
- (c) accept non-approved cane at a mill.

Maximum penalty—100 penalty units.

PART 4—CANE ACCESS, HARVESTING AND MILL SUPPLY

Access right to harvest and supply cane

62.(1) This part provides for the grant by a land-holder or the commissioner of 2 types of right (each an “**access right**”)—

- (a) a permit to pass; and

(b) a cane railway easement.

(2) A permit (a “**permit to pass**”) may be granted to—

(a) a grower to facilitate harvest of cane and supply to a mill; or

(b) a mill owner to facilitate harvest of cane and supply of cane to any mill or between any mills or to service a cane railway easement.

(3) A permit to pass authorises the person to whom it is granted and a person acting on the person’s behalf to use another person’s land under the permit’s conditions.

(4) An easement (a “**cane railway easement**”) may be granted to a mill owner to facilitate harvest of cane and supply of cane to any mill or between any mills.

(5) A cane railway easement may be granted whether or not it is annexed to or used and enjoyed together with any other land.

(6) The grant of an access right is subject to the powers under the *Transport Infrastructure Act 1994* of the chief executive or a railway manager within the meaning of that Act.

Land-holder may grant an access right

63. A land-holder may grant an access right affecting the holder’s land under an agreement with a mill owner or a grower.

Commissioner may grant an access right

64.(1) This section applies if—

(a) a person seeking an access right affecting land does not reach agreement with the land-holder for the grant, after reasonable negotiation or attempts to negotiate; and

(b) the commissioner considers the grant necessary for a purpose mentioned in section 62(2) or (4) in relation to the person; and

(c) the grant, if made, would not affect native title, or if it would, there is an indigenous land use agreement consenting to the grant.

(2) A person may make an application to the commissioner to be granted the access right.

(3) The applicant must give a copy of the application to—

- (a) every person the applicant knows will be entitled to claim compensation if the right is granted; and
- (b) anyone the commissioner directs should be given a copy.

(4) A person given a copy of the application is entitled to make written submissions to, and be heard by, the commissioner about the application.

(5) The commissioner may grant the application and may impose reasonable conditions on the grant.

Examples of conditions—

A condition that the mill owner or grower construct and maintain at or near the boundaries of the land cattle grids or other structures.

(6) However, the commissioner must not grant the application unless the commissioner is satisfied on reasonable grounds that the grant, if made, would not affect native title, or, if it would, there is an indigenous land use agreement consenting to the grant.

(7) In this section—

“indigenous land use agreement” means an indigenous land use agreement under the *Native Title Act 1993* of the Commonwealth registered on the register of indigenous land use agreements.

Notice of decision

65. The commissioner must, within 21 days after the decision, give the applicant an information notice of the decision under section 64 and, if the access right is granted, any person the commissioner considers may be entitled to claim compensation.

Grant of access right takes effect on registration

66.(1) For the grant of an access right by the holder of land to a mill owner or grower to take effect, a notice must be given to the commissioner.

(2) The notice must be—

- (a) in the approved form; and
- (b) signed by the mill owner or grower and the land-holder; and

(c) accompanied by the fee required under a regulation.

(3) On receiving the notice, the commissioner must record particulars of the access right in the access rights register.

(4) The access right mentioned in subsection (3) then takes effect and not beforehand.

(5) If the commissioner grants an access right, the commissioner must record particulars of the access right in the access rights register.

(6) The access right mentioned in subsection (5) then takes effect and not beforehand.

Compensation on grant of access right

67.(1) Subject to subsection (6), if the commissioner or a land-holder grants an access right, the land-holder whose land is affected and the mill owner or grower to whom the access right is granted may agree on the amount of any compensation payable to the land-holder.

(2) If the land-holder and the mill owner or grower can not agree on the amount—

- (a) the holder or the mill owner or grower may apply to the Land Court to decide the amount; or
- (b) they may jointly apply to the commissioner to appoint a valuer to decide the amount.

(3) On an application under subsection (2)(a), the Land Court may decide the amount.

(4) On an application under subsection (2)(b), the following provisions apply—

- (a) the commissioner may appoint a valuer;
- (b) the valuer may decide the amount;
- (c) the valuer's decision is final.

(5) The costs of a valuation under subsection (4) are to be paid by—

- (a) if the access right granted is a cane railway easement—the mill owner; or

(b) if the access right granted is a permit to pass—the holder of the permit to pass.

(6) The commissioner, in granting a permit to pass to a person, may order the person to pay to the land-holder whose land is affected by the permit 1 or both of the following—

- (a) an amount, or amounts from time to time, towards the cost to the land-holder of the use of the permit;
- (b) an amount as compensation for significant detriment to the land-holder's use of the land.

Access rights register

68.(1) The commissioner must keep a register called the access rights register.

(2) The commissioner must record in the register the following particulars of an access right—

- (a) type;
- (b) assigned number;
- (c) date of registration;
- (d) holder's name;
- (e) names and addresses of the holders of the lands affected by the grant of the right;
- (f) description of the lands affected;
- (g) other particulars decided by the commissioner.

(3) The commissioner must record each access right in the order of granting.

(4) The record of an access right in the register is taken to be adequate notice to all persons of the access right's existence.

(5) The *Land Title Act 1994* is subject to subsection (4).

(6) If an access right is relinquished by its holder, the holder must immediately give notice of the relinquishment to the commissioner and to the land-holders recorded in the register for the right.

Maximum penalty—40 penalty units.

(7) On receiving the notice, the commissioner must record the relinquishment in the register.

(8) The register must be available for inspection at the office of the commissioner during the ordinary working hours of the office.

(9) A person may inspect a particular record in the register on payment of the fee required under a regulation.

Certificates

69.(1) In a proceeding, a certificate purporting to be signed by a person authorised by the commissioner stating any information recorded in the access rights register is evidence of the information stated.

(2) The certificate may be issued at any time on payment of the fee required under a regulation.

Noting of access right on other registers

70.(1) This section applies to the registrar of titles or other person who under an Act keeps a register of title to land that is the subject of an access right (“**registrar**”).

(2) A person to whom an access right is granted must give notice of the grant to the registrar of titles within 28 days after the access right is granted.

Maximum penalty—40 penalty units.

(3) A person to whom an access right is granted may give notice of the grant to any registrar other than the registrar of titles.

(4) On being given a notice under subsection (2) or (3), the registrar must enter in the register a note warning of the existence of the access right recorded in the access rights register.

(5) The note is not taken to be registration of the access right on the register.

Variation and cancellation of access right, dispute resolution and enforcement

71.(1) The land-holder whose land is affected by an access right and the holder of the access right may, by agreement, vary or cancel the access right or a condition on which it is held.

(2) If the access right is recorded or noted in a register kept under this or another Act by any person, notice by the parties to the variation or cancellation, produced with the documents the person requires, is enough authority for the person to vary the particulars of, or remove particulars of, the access right or condition from the register.

(3) Despite subsection (1) but subject to subsection (7), the commissioner may in special circumstances vary or cancel an access right, or a condition on which it is held, on application by—

- (a) the land-holder whose land is affected by the access right; or
- (b) the holder of the access right.

(4) A change in the use of the land affected by the access right is not in itself special circumstances for subsection (3).

(5) The commissioner may direct the applicant to give a copy of the application to any other person the commissioner considers may have an interest in the application.

(6) A person given a copy of the application under subsection (5) is entitled to make written submissions to, and be heard by, the commissioner about the application.

(7) A cane railway easement may be cancelled under subsection (3) only on the basis that it has not been used for at least 2 years.

(8) The commissioner must give an information notice of a decision under subsection (3), by public notice or otherwise, to anyone the commissioner considers may have an interest in the decision.

(9) The commissioner may mediate in disputes about the exercise of an access right.

(10) An access right, and any condition on which it is held, may be enforced by application to the Land Court.

(11) If an access right, or condition of an access right, is recorded or

noted in a register kept under this or another Act by any person, written notification by the commissioner—

- (a) of a variation or cancellation of the right under subsection (3); and
- (b) that—
 - (i) no appeal has been properly lodged against the variation or cancellation; or
 - (ii) if an appeal has been lodged—the appeal has been dismissed;

produced with the documents the person requires, is enough authority for the person to vary the particulars of, or remove particulars of, the access right or condition from the register.

Compensation on cancellation or variation of access right

72.(1) If the commissioner cancels or varies an access right under section 71 on an application by a holder of the access right, section 67 applies in the same way it applies to the grant of an access right by the commissioner on the application of a mill owner or grower.

(2) If the commissioner cancels or varies an access right under section 71 on an application by the holder of the land affected by the right, the land-holder and the holder of the access right may agree on the amount of any compensation payable to the holder of the access right.

(3) If the land-holder and the holder of the access right can not agree on the amount—

- (a) the land-holder or the holder of the access right may apply to the Land Court to decide the amount; or
- (b) they may jointly apply to the commissioner to appoint a valuer to decide the amount.

(4) On an application under subsection (3)(a), the Land Court may decide the amount.

(5) On an application under subsection (3)(b), the following provisions apply—

- (a) the commissioner may appoint a valuer;

- (b) the valuer may decide the amount;
- (c) the valuer's decision is final.

(6) The cost of the valuation must be paid by the applicants subject to the following—

- (a) if the access right was held by the mill owner—the mill owner must pay the cost;
- (b) if the access right was held by a grower and the holder of the land affected is another grower—each grower must pay half the cost;
- (c) if the access right was held by a grower and the holder of the land affected by the right is neither a grower nor mill owner—the grower must pay the cost.

Rectification or reinstatement of land on cancellation or variation of access right

73.(1) This section applies if the commissioner cancels an access right affecting land or varies an access right in a way that excludes land affected by the right.

(2) The commissioner may give a written order to the person who is or was the holder of the right to carry out rectification or reinstatement of the land as directed by the commissioner.

(3) The commissioner must give a copy of the order to the holder of the land.

(4) The holder of the land may give a copy of the order to the registrar of the Supreme Court.

(5) The order may then be enforced as an order of the court.

Construction etc. of railways, obstruction of access right

74.(1) For supply of cane to a mill, a mill owner or a person authorised by the mill owner may—

- (a) construct, maintain, alter and use a railway or road, and carry out any other necessary works on—
 - (i) land of the mill owner or over which the mill owner holds

an access right; or

- (ii) subject to the *Local Government Act 1993*, section 919¹⁴, a road for which the mill owner holds a permit under that section; or
- (iii) subject to the *Transport Infrastructure Act 1994*, a State-controlled road for which the mill owner holds an approval under section 47¹⁵ of that Act; and

- (b) use on the railway or road vehicles or rolling stock and other machinery and equipment the mill owner may consider necessary.

(2) A person must not obstruct or attempt to obstruct the use of an access right or a right under subsection (1).

Maximum penalty—40 penalty units.

Example—

Removal or attempt to remove rail line used in connection with an access right.

(3) Without limiting subsection (2), a person may apply to a Magistrates Court for an order restraining anyone else from obstructing or attempting to obstruct the applicant's use of an access right or a right under subsection (1).

(4) The application must be made to the Magistrates Court sitting in the magistrates court district in which the obstruction or attempt is happening or anticipated.

(5) The court may make the order sought on the conditions it considers appropriate.

(6) A person who suffers loss or damage because another person obstructs or attempts to obstruct the person's use of the person's access right or right under subsection (1) may recover the amount of the loss or damage as a debt from the other person.

¹⁴ *Local Government Act 1993*, section 919 (Ancillary works and encroachments on roads)

¹⁵ *Transport Infrastructure Act 1994*, section 47 (Ancillary works and encroachments)

PART 5—MILLS

Division 1—What are mills

Meaning of “mill”

75. A “mill” is works that are—

- (a) equipped for the manufacture of sugar from cane; or
- (b) proposed to be constructed and equipped for the manufacture of sugar from cane and established as a new mill under division 2.

Division 2—Proposed mills

Object of div 2

76. The object of this division is to facilitate—

- (a) the establishment of a mill; and
- (b) arrangements made in anticipation of the establishment of a mill, including, for example, arrangements about supply agreements and the grant of cane production areas.

Establishment of relevant industry bodies

77.(1) This section applies if—

- (a) a person wants to establish a mill; and
- (b) the Minister is satisfied—
 - (i) the person has demonstrated the necessary commitment to establishing the mill; and
 - (ii) arrangements necessary for the operation of this Act (“arrangements”) will be in place for growers (“proposed growers”) to supply the mill with cane under 1 or more supply agreements.

(2) A cane production board may be established for the proposed mill

under chapter 4, part 4.¹⁶

(3) If a cane production board is established for the mill, chapter 4, part 6¹⁷ applies as if the mill had been established.

Cane production areas and supply agreements

78.(1) A cane production board established for a proposed mill may exercise powers under chapter 2, part 1¹⁸ about cane production areas necessary for this Act to operate in relation to the mill, including in a way that gives effect to arrangements under section 77.

(2) Other bodies established under this Act may, or must, exercise powers in relation to the establishment of the cane production areas as if the mill had been established.

(3) However, a power exercised under subsection (1) or (2) is of no effect to create, vary or cancel a cane production area until the mill is established.

(4) A collective agreement made by a negotiating team established for a proposed mill under section 77(2) is of no effect until the mill is established.

(5) For this part—

- (a) the Minister may, by gazette notice, declare the day the mill is established; and
- (b) the declared day is taken to be the day the mill is established.

Division 3—Mill closure

Closure

79.(1) For this division, a mill (the “**closed mill**”) is closed if it permanently stops carrying on the business of crushing cane.

¹⁶ Chapter 4 (Administration), part 4 (Cane production boards)

¹⁷ Chapter 4 (Administration), part 6 (Negotiating teams)

¹⁸ Chapter 2 (Production, supply and milling), part 1 (Cane production areas)

(2) The closed mill is taken to close at the last moment of the day on which it is closed.

(3) The owner of the mill must immediately give written notice to the Minister of the day of the closure.

Maximum penalty—20 penalty units.

(4) The Minister may declare the closure day by gazette notice.

(5) Other than for subsection (3) the day so declared is taken, for this division, to be the day the mill closed.

Meaning of “receiving mill” and “closed mill cane”

80.(1) A “receiving mill” for the closed mill is a mill that undertakes the crushing of closed mill cane.

(2) “Closed mill cane” means cane that would have been supplied to the closed mill under supply agreements if it had not closed.

Abolition of relevant industry bodies

81.(1) On the closure of the closed mill, the cane production board and negotiating team established for the closed mill cease to exist and their members cease to hold office.

(2) If the board or team is established for the closed mill and another mill, subsection (1) does not affect the board or team so far as it is established for the other mill.

Action may be taken to support transfer of access rights

82.(1) The object of this section is to authorise a regulation to support or complement arrangements made between the owner of a receiving mill and the owner, or other person managing the affairs, of the closed mill.

(2) A regulation may provide for the grant to the receiving mill’s owner of access rights for the harvesting or supply to the mill, and transport between the mill and another mill, of closed mill cane.

(3) The grant may be a transfer of access rights previously held by the closed mill’s owner, or an additional grant of access rights.

(4) A grower or land-holder is not entitled to compensation only because an access right relating to the grower's cane or the land-holder's land is transferred under a regulation from a closed mill owner to a receiving mill owner.

(5) To remove doubt, it is declared that subsection (4) does not prevent a compensation arrangement being negotiated between interested parties.

(6) The regulation must provide for a grant of additional access rights under subsection (2) to be subject to provisions about compensation and review that are equivalent to or the same as the provisions applying if a grant of access rights is made under section 64.¹⁹

(7) The regulation may provide for—

- (a) changes to registers held under any Act to give effect to changes in access rights; and
- (b) documents evidencing access rights transferred under subsection (2) to be interpreted in a way that gives effect to the transfer.

Division 4—Cane analysis programs

Requirement to have cane analysis program and purpose

83.(1) Each mill must have a cane analysis program.²⁰

(2) A cane analysis program is a program made for a mill to obtain information about cane received at the mill.

(3) The purpose of obtaining the information is to supervise the payment to growers of amounts owing to them under the scheme for the acquisition of sugar provided for by this Act.

Content of program

84. A cane analysis program may provide for any of the following—

¹⁹ Section 64 (Commissioner may grant an access right)

²⁰ See also section 257 (Continuation of program).

- (a) the weighing, examining or testing of cane received at the mill for its quantity, quality or another condition;
- (b) the appointment by the commissioner or another entity of a person to perform the duty of weighing, examining or testing cane or sugar, the qualifications of the person and the performance of duties by the person;
- (c) the observation and checking of performance of duties by persons appointed under paragraph (b) by other persons appointed under the program;
- (d) facilities to be provided by the mill owner;
- (e) directions that may be given by persons authorised under the program;
- (f) returns of information obtained under the program that must be given to the commissioner;
- (g) monitoring procedures calculated to provide reasonable and regular checking that the provisions of the program and directions given under the program are being complied with;
- (h) payment and recovery of costs associated with the program;
- (i) anything provided for under a regulation.

Costs of program

85.(1) The costs of the operation of a cane analysis program established at the request of a mill owner or mill suppliers' committee are to be paid by the owner of the mill and the mill suppliers' committee—

- (a) in the proportions agreed to by them; or
- (b) if there is no agreement—
 - (i) on the costs of the operation of a provision of the cane analysis program mentioned in section 84(c)—in equal amounts; or
 - (ii) on other costs—as decided by the dispute resolution process under section 88.

(2) A person incurring costs payable by the owner of a mill or a mill

suppliers' committee under section 84 may recover the costs as a debt from the owner or committee.

Approval process for program

86.(1) A negotiating team established for a mill may propose to the commissioner for approval a cane analysis program for the mill or a change to the mill's program.

(2) The commissioner may advise the team about an appropriate program before the team proposes the program to the commissioner.

(3) In deciding whether to approve the program, the commissioner may consider anything the commissioner considers relevant and must consider the following—

- (a) the program's likely effectiveness;
- (b) the extent to which the program is able to be audited;
- (c) whether the provisions of the program are reasonable.

(4) On approving the program or change, the commissioner must give the mill owner and the mill suppliers' committee notice of the program's provisions.

(5) A program or change becomes binding on the persons to whom it is stated to apply when the notice is given.

(6) In approving a program, the commissioner may cancel an existing program.

Enforcement of program

87. A person who suffers loss or damage because of a contravention by another person of a cane analysis program, or direction given under a program, binding on the other person, may recover the amount of the loss or damage as a debt from the other person.

Dispute resolution

88.(1) This section applies if a negotiating team can not agree on the making of a cane analysis program for a mill or a change to a mill's

program.

(2) The dispute must be resolved under the dispute resolution process established under section 188(3)(b).²¹

(3) If the dispute resolution process has not been established, the dispute resolution process established under a regulation must be followed.

Division 5—Cane quality programs

Requirement to have cane quality program

89.(1) The negotiating team established for a mill must make a cane quality program for the mill.

(2) The program is taken to be part of the collective agreement for the mill and of any supply agreement made with the mill owner.

(3) A negotiating team that makes a program must immediately give a copy of it to the corporation.

Purpose of program

90. The purpose of a cane quality program is to facilitate the management of sugar quality to meet customer requirements for quality decided by the corporation.

Content of program

91.(1) A cane quality program may provide for anything about achieving cane quality, including quality standards and tests.

(2) A program may also provide for a scheme of premiums and discounts for cane or sugar quality.

Costs of program

92. The costs of the operation of a cane quality program made for a mill

²¹ Section 188 (Functions and powers)

are to be paid by the owner of the mill and the mill's suppliers' committee—

- (a) in the proportions agreed to by them; or
- (b) if there is no agreement, in equal amounts.

Dispute resolution

93.(1) This section applies if a negotiating team can not agree on the making of a quality program for a mill or a change to a mill's program.

(2) The dispute must be resolved under the dispute resolution process established under section 188(3)(b).²²

(3) If the dispute resolution process has not been established, the dispute resolution process established under a regulation must be followed.

Division 6—Commissioner's function for redirection of cane

Redirection of cane

94.(1) This section applies if—

- (a) a mill (the "**first mill**") can not crush cane because of a mishap; and
- (b) an adjacent mill (the "**second mill**") is able to crush the cane that is the subject of a supply agreement with the first mill.

Examples of mishaps—

- breakdown of a boiler at the mill
- a natural disaster.

(2) The commissioner may require the relevant mill owners and the mill suppliers' committees to attend a compulsory conference as required by the commissioner.

(3) The purpose of the conference is to decide whether the parties can agree on the redirection of cane to the second mill.

²² Section 188 (Functions and Powers)

(4) The conference may be held using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the conference.

(5) The parties to the conference must bear their own costs for the conference.

(6) A person must not contravene a requirement under subsection (2).

Maximum penalty for subsection (6)—40 penalty units.

Division 7—Payments to be made for growers

Mill owner must make payment for grower

95.(1) This section applies if—

- (a) the cane production board established for a mill approves the making of any category of payment by the mill owner, for a grower, to a third person from out of the grower's payments; and
- (b) the grower has authorised the mill owner to make payments of the category to the third person.

(2) The mill owner must make each payment to the third person as authorised by the grower.

Maximum penalty—2 penalty units.

(3) In this section—

“grower's payments” means any amount due by the mill owner to the grower.

“payment” means the payment of an amount.

“third person” means an entity other than the mill owner or grower.

CHAPTER 3—MARKETING

Vesting of sugar in corporation

96.(1) All sugar on manufacture becomes 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 under 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.

Corporation to market and pay for vested sugar

97.(1) The corporation must market the sugar vested in it.

(2) When the corporation considers enough information is available for the purpose, the corporation must calculate—

- (a)** the net value for each tonne of sugar included in each payment scheme; and
- (b)** the payments due to each mill owner.

(3) The payments must be made as provided under the relevant payment scheme.

(4) If the corporation does not make a payment to a mill owner, the mill owner may recover the amount as a debt from the corporation.

(5) The corporation may recover as a debt from a mill owner any excess payments made to the mill owner.

Schemes for payment

98.(1) Payment to mill owners for sugar vested in the corporation must be calculated and made—

- (a)** under payment schemes; and

(b) by reference to the raw sugar equivalent of sugar that each mill owner delivers to the corporation that is the product of cane harvested in each crushing season and manufactured in the year of harvest and the next following year.

(2) The corporation may establish as many payment schemes on as many bases as it considers appropriate, including, for example, schemes based on producer pricing or early season sugar production.

(3) Also, the corporation may, as it considers appropriate, share out to each payment scheme—

(a) revenue received by the corporation; and

(b) the costs of the corporation's operations.

(4) Without limiting the power under subsection (3), the corporation may share out costs of the corporation's operations over a particular period to a future period.

(5) The corporation may amend a payment scheme.

(6) Before establishing or amending a payment scheme, the corporation must consult with organisations representing mill owners and growers.

(7) The corporation may consider anything relevant in establishing a payment scheme, including, for example, the following—

(a) weight of sugar delivered by a mill owner to the corporation;

(b) quality of sugar delivered by a mill owner to the corporation;

(c) costs incurred by a mill owner in complying with directions under section 99;

(d) anything else affecting the proceeds of sale by the corporation of sugar delivered by a mill owner to the corporation.

(8) For a payment scheme to take effect, the corporation must give notice of it to relevant mill owners and relevant mill suppliers' committees.

(9) Even though any part of the process of crushing cane and manufacturing sugar happens at a mill other than the mill (the "**agreement mill**") where the cane is to be crushed or sugar manufactured under the conditions of the supply agreement for the cane, for the purposes of payment to mill owners by the corporation, the process is taken to have happened at the agreement mill.

(10) For penalty sugar—

- (a) subsection (1) does not apply; and
- (b) the payments owing to a mill owner for penalty sugar are decided under a regulation.

Production of brands of raw sugar

99.(1) The object of this section is to facilitate the marketing of sugar vested in the corporation.

(2) The corporation may make arrangements with a mill owner under which the owner is to produce a particular brand of raw sugar in a particular period or amount.

(3) Despite subsection (2), the corporation may give a direction to a mill owner requiring the owner to produce a particular brand of raw sugar in a particular period or amount.

(4) The following provisions apply to the direction—

- (a) the mill owner must comply with it;
- (b) the corporation must pay to the mill owner the part of the amount of the owner's costs in complying with it that is more than the amount of the costs the owner would otherwise incur in producing the industry standard brand of raw sugar;
- (c) if a mill owner does not comply with it, the owner must pay to the corporation the amount of any loss or damage suffered by the corporation because of the failure.

(5) An amount payable under subsection (4)(b) or (c) may be recovered as a debt.

(6) The dispute resolution process provided under a regulation must be followed if a dispute arises in relation to costs incurred by a mill owner because of the direction.

(7) The corporation must inform the mill suppliers' committee of an arrangement made under subsection (2) or a direction given under subsection (3) as soon as practicable after it is made or given.

(8) However, a failure to comply with subsection (7) has no effect on the arrangement or direction.

(9) In this section—

“industry standard brand” of raw sugar is the brand of raw sugar stated under a regulation.

Directions about delivery etc.

100.(1) All sugar vested in the corporation under section 96(1) must be delivered to the corporation as directed under subsection (2).

(2) The corporation may give directions it considers appropriate to mill owners or growers about—

- (a) how sugar vested in it must be kept before it is supplied to the corporation; or
- (b) how sugar vested in it must be supplied to the corporation, including—
 - (i) times, places and way of supply; or
 - (ii) delivery to places or persons or other action that will be treated as supply to the corporation; or
- (c) the payment by the manufacturer of sugar of costs associated with its supply to the corporation; or
- (d) the conditions on which the corporation will accept sugar vested in it; or
- (e) information that must be given to the corporation by any person concerned in the supply to, and acceptance by, the corporation of sugar, and the form and way in which the information must be given; or
- (f) anything else for which directions are necessary to facilitate the discharge by the corporation of its functions for sugar vested in it.

(3) A person who does not comply with a direction is liable for the amount of any loss or damage suffered by the corporation because of the failure.

(4) The amount may be recovered by the corporation as a debt.

(5) Subsection (3) does not limit the proceedings that may be taken against anyone for a contravention of a direction.

Sugar quality standards

101.(1) The corporation may make a standard about how sugar quality is decided and affects amounts payable to a mill owner.

(2) The standard may—

- (a) apply generally to all persons and matters or be limited in its application to—
 - (i) particular persons or matters; or
 - (ii) particular classes of persons or matters; or
- (b) apply generally or be limited in its application by reference to stated exceptions or factors.

(3) The standard may include, for example—

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

(4) For a standard to take effect, the corporation must give notice of it to the mill owner and the relevant mill suppliers' committee.

(5) The corporation may notify the standard in a way it considers appropriate, including, for example, in a way that preserves its commercial confidentiality.

Corporation's operating costs

102.(1) From the proceeds received by it from the sale of sugar vested in it under section 96, the corporation must provide for—

- (a) all costs of the sale of the sugar; and
- (b) all costs of the corporation in the discharge of its functions, including the commissioner's budget and other amounts stated as costs in the corporation's budget; and
- (c) payments to accounts established under subsection (2).

(2) The corporation may keep in its accounts the provisions the corporation considers appropriate to fund its operation or to provide for its contingent or future liabilities.

(3) Without limiting subsection (2), the corporation may keep provisions in its accounts for the sharing out of its costs for a particular period to a future period.

Exemption of sugar for local consumption

103.(1) A mill owner need not deliver to the corporation a quantity of sugar manufactured at the mill (“**exempt sugar**”) but may instead retain exempt sugar for local consumption or sell exempt sugar to another mill owner to be retained for local consumption.

(2) Exempt sugar—

- (a) must not be more than .25% of the total quantity of the sugar vested in the corporation under section 96; and
- (b) is divested from the corporation.

(3) Despite subsection (1), a mill owner (the “**first owner**”) may arrange with the owner of another mill to manufacture sugar at the other mill that is to be all or part of the first owner’s exempt sugar.

(4) Sugar mentioned in subsection (3) is to be treated under subsection (1) as if it were manufactured at the first owner’s mill.

(5) The corporation, by notice given to the mill owner, may impose conditions on the retention or sale of exempt sugar, including, for example, the way the total quantity of sugar vested in the corporation is to be calculated for subsection (1).

(6) A mill owner may only sell exempt sugar—

- (a) to growers and workers connected with the mill; and
- (b) in quantities not less than 15 kg at any one time; and
- (c) on any conditions that may be imposed under subsection (5).

(7) A mill owner must give written notice to the corporation as required by the corporation of an amount of exempt sugar sold by the owner.

Maximum penalty—40 penalty units.

(8) A mill owner who sells exempt sugar must keep at the mill, and allow to be inspected at any time, on reasonable request to the owner by a person authorised to do so by the corporation, a record of each sale,

including the quantity and the purchaser's name.

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

CHAPTER 4—ADMINISTRATION

PART 1—MINISTER'S POWERS

Minister may establish advisory bodies

104. The Minister may establish an advisory committee or other body to help the Minister in the administration of this Act.

Reports to Minister

105.(1) This section applies to the following entities—

- (a) the corporation;
- (b) the commissioner;
- (c) the BSES;
- (d) a cane production board;
- (e) a cane protection and productivity board.

(2) If the Minister asks, the entity must give the Minister a report about anything specified by the Minister about the discharge by it of functions under this Act or to its activities.

(3) If the Minister specifies a period of time within which a report is to be given, the report must be given within the period.

(4) A regulation may provide for reports that a cane production board must give to the Minister.

Minister's directions

106.(1) This section applies to the following entities—

- (a) the corporation;
- (b) the commissioner;
- (c) the BSES;
- (d) a cane production board;
- (e) a cane protection and productivity board.

(2) The Minister may give written directions to the entity about the discharge of its functions.

(3) The entity must comply with the directions.

(4) The Minister may give a direction only if the Minister—

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

(5) The Minister must cause a copy of the direction to be tabled in the Legislative Assembly within 14 sitting days after giving the direction.

(6) This section does not apply to directions the Minister is authorised to give about matters under another provision of this Act or any other Act.

Minister's directions in entities' annual report

107.(1) This section applies to the following entities—

- (a) the corporation;
- (b) the commissioner;
- (c) the BSES;
- (d) a cane protection and productivity board.

(2) The entity must include in each annual report prepared by it under the *Financial Administration and Audit Act 1977*, section 46J,²³ a report of any

²³ *Financial Administration and Audit Act 1977*, section 46J (Annual report)

direction given to it by the Minister during the financial year for which the report is prepared.

PART 2—QUEENSLAND SUGAR CORPORATION

Division 1—Constitution and membership

Establishment of corporation

108.(1) The Queensland Sugar Corporation is established.

(2) The corporation—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

Judicial notice of corporation's seal

109. All courts and persons acting judicially are to take judicial notice of the corporation's seal and are to presume the seal affixed to any document to have been duly affixed until the contrary is proved.

Corporation does not represent the State

110.(1) The corporation does not represent the State.

(2) The corporation can not make the State liable for the debts and obligations of the corporation or any other person other than when it is authorised to do so by the State under any Act.

Objectives of corporation

111. The principal objectives of the corporation are—

- (a) to act commercially in the marketing of raw sugar and in the

- discharge of its functions generally; and
- (b) to act competitively in the pricing of sugar or its raw sugar equivalent sold to Australian customers; and
 - (c) to enhance the efficiency, competitiveness and access to markets of the Queensland sugar industry; and
 - (d) to enhance the long term economy of the Queensland sugar industry and the benefits flowing from it to cane growers and mill owners; and
 - (e) to encourage initiative, innovation and value adding within the Queensland sugar industry and downstream processing of its sugar; and
 - (f) to take part in any form of trade and commerce anywhere in the world, about either the products of the Queensland sugar industry or of another sugar industry.

Board of directors

112.(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

113. Of the appointed directors of the corporation—

- (a) the director who is to be appointed chairperson must have extensive commercial experience relevant to the corporation's objectives; and
- (b) 3 directors must have experience in the production of cane; and

- (c) 3 directors must have experience in the milling of cane; and
- (d) 2 directors must have wide commercial experience.

Remuneration of directors

114. Appointed directors of the corporation are to be paid by the corporation the fees and allowances decided by the Governor in Council.

Division 2—General provisions about the corporation

Disqualifications for appointment

115. A person is not qualified to be or to continue as an appointed director if the person—

- (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 of an indictable offence, whether on indictment or summarily; or
- (c) becomes incapable of performing the duties of a director because of physical or mental incapacity; or
- (d) is not able to manage a corporation because of the Corporations Law, section 229;²⁴ or
- (e) is named in the register held by the Australian Securities and Investments Commission under the Corporations Law, section 243.²⁵

Vacation of office

116.(1) The office of an appointed director becomes vacant if the appointed director—

²⁴ Corporations Law, section 229 (Certain persons not to manage corporations)

²⁵ Corporations Law, section 243 (Register of disqualified company directors and other officers)

- (a) dies; or
- (b) resigns office by notice given to the Minister; or
- (c) is absent without the board's permission from 3 consecutive meetings of the board of which due notice has been given; or
- (d) is no longer qualified to be an appointed director; or
- (e) is removed from office under section 121.

(2) In this section—

“**meeting**” means the following—

- (a) if the director does not attend—a meeting with a quorum present;
- (b) if the director attends—a meeting with or without a quorum present.

Meetings of board of directors

117.(1) The board of directors must meet as often as the chairperson decides is necessary.

(2) The board may hold meetings, or allow directors to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous communication between directors taking part in the meeting.

(3) A director who takes part in a meeting under subsection (2) is taken to be present at the meeting.

(4) Despite subsection (2), the chairperson of the board or the chief executive officer of the corporation may, in writing, refer a question requiring consideration by the board to all the directors of the board.

(5) For subsection (4)—

- (a) a written decision of the directors is taken to be a decision of the board of directors at a duly constituted meeting of the board; and
- (b) a reference using any technology for transmission to directors is adequate reference in writing; and
- (c) a reply to a reference using any technology is an adequate written decision.

(6) The quorum at a meeting is half the number of appointed directors plus 1.

(7) The chairperson, or in the absence of the chairperson, a director elected by directors present at a meeting, must preside at a meeting of the board.

(8) All questions at a meeting must be decided by a majority of votes of the directors present.

(9) The director presiding at a meeting is to have a vote, and if there is an equality of votes, a second or casting vote.

(10) Subject to this Act, procedure at meetings of the board is to be decided by the board.

Director's interest in a matter to be considered by the board

118.(1) If a director has an interest in a matter being considered, or about to be considered, by the board of directors, the director must disclose the nature of the interest to a board meeting as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty—100 penalty units.

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

(3) If the interest is a material personal interest, the director must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a “**related resolution**”) under subsection (4)(a) in relation to the matter (whether in relation to the director or another director); or
- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in a decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(4) Subsection (3) does not apply to the matter if—

- (a) the board has at any time passed a resolution that states—

- (i) the director, interest and matter; and
 - (ii) that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter; or
- (b) the Minister has given a written direction to that effect for the matter when a quorum of the board can not be formed because of subsection (3).

(5) In this section—

“interest”, of a director relating to a matter for consideration at a meeting, does not include—

- (a) for a director mentioned in section 113(b)—an interest the director has in common with persons involved in the production of cane in general; and
- (b) for a director mentioned in section 113(c)—an interest the director has in common with persons involved in the milling of cane in general.

Voting etc. by directors on Australian marketing matter

119.(1) This section applies if—

- (a) a matter before the corporation is an Australian 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 118(4) does not apply to the matter.

(4) However, if, because of subsection (2), there are not enough directors to form the quorum required under section 117(6),²⁶ at least 2 appointed directors who do not have a material personal interest in the matter form a quorum for the meeting.

(5) In this section—

²⁶ Section 117 (Meetings of board of directors)

“Australian marketing matter” means anything about innovation in processing raw sugar or about the sale by the corporation of raw sugar for consumption or processing in the Australian market.

Prohibition on political activity

120. The board of directors must not—

- (a) use any of the corporation’s funds for any purpose in connection with the politics of any political party or any candidate for political office; or
- (b) 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 director

121.(1) This section applies if the Governor in Council is satisfied that the board has contravened section 120.

(2) The Governor in Council may remove a director of the board from office by notice given to the director.

Division 3—Corporation and officers—general functions, powers and duties

Functions of corporation

122. The corporation has the following functions—

- (a) to participate in the development and implementation of policy relating to the marketing of raw sugar and related aspects of the Queensland sugar industry;
- (b) to manage the regulation of the quality of cane and raw sugar produced in Queensland;
- (c) to manage the acquisition of raw sugar produced in Queensland;
- (d) to market raw sugar and to distribute the net proceeds to mill owners;

- (e) to promote the development of the Queensland sugar industry and its products;
- (f) to perform other functions given to it under this or another Act.

General powers of corporation

123.(1) The corporation has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) appoint and act through agents and attorneys; and
- (d) do anything else necessary or convenient to be done for its functions.

(2) Without limiting subsection (1), the corporation has the powers given to it under this Act or another Act.

(3) The corporation may exercise its powers inside or outside Queensland.

(4) Without limiting subsection (1), the corporation may exercise its powers outside Australia.

(5) Also, without limiting subsection (1), the corporation may—

- (a) purchase, sell, and participate in any form of trade or commerce about, the products of the Queensland sugar industry or the sugar industry elsewhere; and
- (b) acquire, construct, fund, 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) 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
- (d) undertake or fund research into marketing of the products of the Queensland sugar industry; and
- (e) fund research, development and extension relating to the

Queensland sugar industry; and

- (f) mediate in a dispute about the operation of a cane quality program, if asked by the parties; and
- (g) perform the role of pricing administrator under payment schemes under section 98²⁷ based on producer pricing; and
- (h) appoint another entity to, or establish another entity with, the role of pricing administrator mentioned in paragraph (g); and
- (i) establish corporations in the performance of its functions.

(6) Subject to this Act, the corporation, in exercising its powers, must act in a commercial way.

Corporation to consult industry

124.(1) The corporation must give organisations representative of cane growers and mill owners an opportunity to meet separately or otherwise with representatives of the corporation to discuss matters affecting the Queensland sugar industry.

(2) The corporation must do so—

- (a) regularly; and
- (b) whenever the Minister directs it to do so.

(3) The Minister may decide the organisations that generally, or in relation to a particular meeting, must be regarded by the corporation as representative of cane growers or mill owners.

Chief executive officer and staff of corporation

125. The corporation—

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

²⁷ Section 98 (Schemes for payment)

Corporation's power to delegate

126. The corporation may, by board resolution, delegate its powers to—

- (a) the chairperson of the corporation's board; or
- (b) an appropriately qualified member of a corporation committee; or
- (c) an appropriately qualified corporation employee.

Duty and liability of certain officers of corporation

127.(1) A corporation officer must act honestly in the exercise of powers, and the performance 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 performance 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 has been, 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) A corporation officer 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 (6) does not limit the *Crimes (Confiscation) Act 1989*.

(8) For subsection (2), in deciding 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 subsection (2).

(10) In this section—

“corporation officer” 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.

Application of various public sector Acts

128.(1) The corporation is—

- (a) a statutory body under the *Statutory Bodies Financial*

Arrangements Act 1982 and the *Financial Administration and Audit Act 1977*; and

- (b) a unit of public administration under the *Criminal Justice Act 1989*.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B²⁸ states the way in which the corporation's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

PART 3—BUREAU OF SUGAR EXPERIMENT STATIONS

Division 1—Constitution and membership

Establishment of BSES

129.(1) The Bureau of Sugar Experiment Stations is established.

(2) The BSES—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

Judicial notice of BSES's seal

130. All courts and persons acting judicially are to take judicial notice of the BSES's seal and are to presume the seal affixed to any document to have been duly affixed until the contrary is proved.

²⁸ *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)

Objective of BSES

131. The objective of the BSES is to conduct research, development and extension activities directed at enhancing the sustainable production of commercial crops of cane and its products.

Board of directors

132.(1) The BSES is governed by a board of directors.

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

- (a) 1 is to be the chief executive officer of the BSES, 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 is to be appointed for a term of 3 years.

Qualifications for appointment to board of directors

133. Of the appointed directors of the BSES—

- (a) the director who is to be appointed chairperson must have extensive commercial experience relevant to the BSES's objectives; and
- (b) 2 directors must have experience in the production of cane; and
- (c) 2 directors must have experience in the milling of cane; and
- (d) 1 director must have wide research, development or extension experience; and
- (e) 1 director must have wide commercial experience.

Remuneration of directors

134. Appointed directors of the BSES are to be paid by the BSES the fees and allowances decided by the Governor in Council.

Division 2—General provisions about BSES**Disqualifications for appointment**

135. A person is not qualified to be or to continue as an appointed director if the person—

- (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 of an indictable offence, whether on indictment or summarily; or
- (c) becomes incapable of performing the duties of a director because of physical or mental incapacity; or
- (d) is not able to manage a corporation because of the Corporations Law, section 229;²⁹ or
- (e) is named in the register held by the Australian Securities and Investments Commission under the Corporations Law, section 243.³⁰

Vacation of office

136.(1) The office of an appointed director becomes vacant if the appointed director—

- (a) dies; or
- (b) resigns office by notice given to the Minister; or
- (c) is absent without the board's permission from 3 consecutive meetings of the board of which due notice has been given; or
- (d) is no longer qualified to be an appointed director; or
- (e) is removed from office under section 140.

(2) In this section—

²⁹ Corporations Law, section 229 (Certain persons not to manage corporations)

³⁰ Corporations Law, section 243 (Register of disqualified company directors and other officers)

“**meeting**” means the following—

- (a) if the director does not attend—a meeting with a quorum present;
- (b) if the director attends—a meeting with or without a quorum present.

Meetings of the board of directors

137.(1) The board of directors must meet as often as the chairperson decides is necessary.

(2) The board may hold meetings, or allow directors to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous communication between directors taking part in the meeting.

(3) A director who takes part in a meeting under subsection (2) is taken to be present at the meeting.

(4) Despite subsection (2), the chairperson of the board, or in the absence of the chairperson any deputy of the chairperson, may, in writing, refer a question requiring consideration by the board to all the directors of the board.

(5) For subsection (4)—

- (a) a written decision of the directors is taken to be a decision of the board of directors at a duly constituted meeting of the board; and
- (b) a reference using any technology for transmission to directors is adequate reference in writing; and
- (c) a reply to a reference using any technology is an adequate written decision.

(6) The quorum at a meeting is half the number of appointed directors plus 1.

(7) The chairperson, or in the absence of the chairperson and any deputy of the chairperson, a director elected by directors present at a meeting, must preside at a meeting of the board.

(8) All questions at a meeting must be decided by a majority of votes of the directors present.

(9) The director presiding at a meeting is to have a vote, and if there is an equality of votes, a second or casting vote.

(10) Subject to this Act, procedure at meetings of the board is to be decided by the board.

Director's interest in a matter to be considered by the board

138.(1) If a director has an interest in a matter being considered, or about to be considered, by the board of directors, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty—100 penalty units.

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

(3) If the interest is a material personal interest, the director must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a **“related resolution”**) under subsection (4)(a) in relation to the matter (whether in relation to the director or another director); or
- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(4) Subsection (3) does not apply to the matter if—

- (a) the board has at any time passed a resolution that states—
 - (i) the director, interest and matter; and
 - (ii) that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter; or
- (b) if a quorum of the board can not be formed because of subsection (3)—the Minister has given a written direction to that effect for the matter.

(5) In this section—

“**interest**”, of a director relating to a matter for consideration at a meeting, does not include—

- (a) if a director is a grower—an interest the director has in common with growers in general; and
- (b) if a director is a mill owner—an interest the director has in common with mill owners in general.

Prohibition on political activity

139. The BSES must not—

- (a) 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) 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 director

140.(1) This section applies if the Governor in Council is satisfied that the board has contravened section 139.

(2) The Governor in Council may remove a director of the board from office by notice given to the director.

Division 3—BSES and officers—general functions, powers and duties

Functions of BSES

141. The BSES has the following functions—

- (a) to participate in investigating and evaluating the requirements for research relating to the growing of cane in Queensland;
- (b) under the *Plant Protection Act 1989*, to prevent, control and eradicate pest infestation of cane;

- (c) to conduct, arrange for, or fund, research and extension about any matter related to the breeding, production, harvesting, transport or processing of cane and related activities;
- (d) to develop, or help to develop, methods of sustainable production of cane and related activities;
- (e) to develop cane analysis standards;
- (f) to help the commissioner in implementing cane analysis programs;
- (g) to monitor and improve the quality of cane and cane products;
- (h) to provide a service for the checking and certification of the accuracy of laboratory equipment used in deciding the relative quality of sugar for the purposes of payments made under this Act;
- (i) to provide advice on the ability of land to sustain cane crops;
- (j) to help in keeping to a minimum any damage to natural resources and the environment that may be caused by the activities of the Queensland sugar industry;
- (k) to commercially exploit the products of its research development and extension activities;
- (l) to collaborate with other research providers, cane protection and productivity boards and industry in the coordination of local research, development and extension;
- (m) to take all action within the powers conferred on it by this Act or another Act that may be necessary to achieve its objectives;
- (n) to perform other functions given to it under this or another Act.

General powers of BSES

142.(1) The BSES has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) appoint and act through agents and attorneys; and

(d) do anything else necessary or convenient to be done for its functions.

(2) Without limiting subsection (1), the BSES has the powers given to it under this Act or another Act.

(3) The BSES may exercise its powers inside or, if the interests of the Queensland sugar industry require it to do so, outside Queensland.

(4) Without limiting subsection (1), the BSES may exercise its powers outside Australia, if the interests of the Queensland sugar industry require it to do so.

BSES's power to delegate

143. The BSES may, by board resolution, delegate its powers to—

- (a) a director; or
- (b) an appropriately qualified member of the BSES's staff.

Application of various public sector Acts

144.(1) The BSES is—

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

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B³¹ states the way in which the BSES's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

³¹ Statutory Bodies Financial Arrangements Act 1982, part 2B (Powers under this Act and relationship with other Acts)

Division 4—Funding

Chief executive officer and staff of BSES

145. The BSES—

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

BSES budget

146.(1) Each year the BSES must propose its operating budget (“**budget**”) for the period from the start of the crushing season in the year until the start of the crushing season in the following year (the “**budget period**”).

(2) However, the budget is of no effect until it is approved by the Minister under subsection (6).

(3) The budget must state how much of the income of the BSES is to be charged to the corporation (the “**corporation portion**”) and when the corporation is to pay the BSES.

(4) Before proposing the budget, the BSES must consult with sugar industry representatives and, for the corporation portion, the corporation.

(5) The BSES must submit the budget to the Minister.

(6) After consulting with industry representatives, the corporation and the BSES, the Minister may approve the budget, with or without amendment.

(7) The budget approved by the Minister is the budget for the budget period.

(8) The corporation portion approved by the Minister is payable by the corporation to the BSES as stated in the budget.

(9) At any time during the budget period—

- (a) the BSES may ask the Minister to vary the budget; or
- (b) in relation to payment of the corporation portion—the corporation may ask the Minister to vary the budget.

(10) Before the BSES asks the Minister to vary the budget, other than in relation to the corporation portion, the BSES must consult with industry representatives.

(11) Before the BSES or the corporation asks the Minister to vary the budget to the extent the budget relates to the corporation portion, it must ensure consultation has taken place between the BSES and the corporation.

(12) In considering any request to vary the budget, the Minister must consult with sugar industry representatives, the corporation and the BSES.

(13) After complying with subsection (12), the Minister may vary the budget as requested, either with or without amendment.

PART 4—CANE PRODUCTION BOARDS

Division 1—Establishment and membership

Establishment of a cane production board

147.(1) The Minister must establish cane production boards for mills.

(2) A cane production board may be established for 1 mill or for more than 1 mill if a single negotiating team is established for the mills.

Objectives of a cane production board

148. The principal objectives of a cane production board established for a mill are—

- (a) to ensure the efficient participation by growers supplying cane to the mill and the mill owner in the scheme established under this Act; and
- (b) to enhance the benefits to the growers and mill owner from cane production and milling; and
- (c) to help the sustainable production of cane on land included in cane production areas relating to the mill.

Functions and powers of a cane production board

149.(1) A cane production board established for a mill has the following functions—

- (a) to administer the granting, transfer, cancellation or variation of cane production areas relating to the mill and other matters relating to the cane production areas;
- (b) to implement the decisions of the negotiating team established for the mill about expansion in cane production areas relating to the mill;
- (c) to administer the processes relating to moving cane supply between mills, including the consent process, horizontal expansion process and productivity increase process;
- (d) to make guidelines about land use, the environment and transport applying in relation to applications for grants of cane production areas or increases in the number of hectares included in cane production areas relating to the mill;
- (e) to make guidelines about anything relevant to cane growing on land included in cane production areas relating to the mill;
- (f) to perform other functions given to it under this or another Act.

(2) A cane production board may do anything necessary or convenient to be done for its functions.

Power to engage assistance

150. A cane production board may employ the persons, and engage the consultants and service providers it considers necessary.

Membership of a cane production board

151.(1) A cane production board is to consist of 5 members appointed by the Minister, of whom—

- (a) 1 is to be appointed chairperson; and
- (b) 2 are to be appointed on being nominated by the owner or owners of the mill or mills for which the cane production board is

established; and

- (c) 2 are to be appointed on being nominated by the mill suppliers' committee or committees established for the mill or mills mentioned in paragraph (b).

(2) The chairperson must be a person whom the Minister is satisfied will act independently in the discharge of the chairperson's functions.

(3) A member of a cane production board is to be appointed for a term not longer than 3 years.

Acting appointments

152. A person who is not a member of a cane production board may be appointed to act as a member for any meeting of the board by the entity that nominated the member for appointment.³²

Remuneration of members

153.(1) The chairperson of a cane production board is to be paid the fees and allowances decided by the Minister.

(2) Payment is to be made jointly by—

- (a) the owner or owners of the mill or mills for which the board is established; and
- (b) the mill suppliers' committee or committees established for the mills.

(3) A member of a cane production board appointed on the nomination of a mill owner is to be paid by the mill owner the fees and allowances that are decided by the mill owner.

(4) A member of a cane production board appointed on the nomination of a mill suppliers' committee is to be paid by the committee the fees and allowances that are decided by the committee.

(5) The State is not liable to pay to a member of a cane production board fees and allowances for service as a member.

³² The *Acts Interpretation Act 1954*, section 24B contains provisions about acting appointments.

*Division 2—General provisions about cane production boards***Disqualifications for appointment**

154. A person is not qualified to be or to continue as a member of a cane production board if the person—

- (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 of an indictable offence, whether on indictment or summarily; or
- (c) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (d) is not able to manage a corporation because of the Corporations Law, section 229;³³ or
- (e) is named in the register held by the Australian Securities and Investments Commission under the Corporations Law, section 243.³⁴

Vacation of office

155.(1) The office of a member of a cane production board becomes vacant if the member—

- (a) dies; or
- (b) resigns office by notice given to the Minister; or
- (c) is absent without the board's permission from 3 consecutive meetings of the board of which due notice has been given; or
- (d) is no longer qualified to be a member.

(2) In this section—

“meeting” means the following—

³³ Corporations Law, section 229 (Certain persons not to manage corporations)

³⁴ Corporations Law, section 243 (Register of disqualified company directors and other officers)

- (a) if the member does not attend—with a quorum present;
- (b) if the member attends—with or without a quorum present.

Meetings of a cane production board

156.(1) A cane production board must meet as often as its chairperson decides is necessary.

(2) A board may hold meetings, or allow members to take part in meetings, using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

(3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

(4) Despite subsection (2), the chairperson of a board may, in writing, refer a question requiring consideration by the board to all the board's members.

(5) For subsection (4)—

- (a) a written decision of the members is taken to be a decision of the members at a duly constituted meeting of the board; and
- (b) a reference using any technology for transmission to members is adequate reference in writing; and
- (c) a reply to a reference using any technology is an adequate written decision.

(6) The quorum at a meeting must include at least—

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

(7) The chairperson, or in the absence of the chairperson and any deputy of the chairperson, a member elected by members present at a meeting, must preside at a board meeting.

(8) All questions at a board meeting are to be decided by a majority of votes of the members present.

(9) Subject to this Act, procedure at board meetings is to be decided by the board.

Member's interest in a matter to be considered by a board

157.(1) If a member of a cane production board has an interest in a matter being considered, or about to be considered, by the board, the member must disclose the nature of the interest to a meeting of the board 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 board.

(3) If the interest is a material personal interest, the member must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a **“related resolution”**) under subsection (4)(a) about 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 board; or
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(4) Subsection (3) does not apply to the matter if—

- (a) the board has at any time passed a resolution that states—
 - (i) the member, interest and matter; and
 - (ii) 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 board can not be formed because of subsection (3)—the Minister has given a written direction to that effect for the matter.

(5) In this section—

“interest”, of a member relating to a matter for consideration at a meeting, does not include—

- (a) if a member is a grower—an interest the member has in common

with growers in general; and

- (b) if a member is a mill owner—an interest the member has in common with mill owners in general.

Administrative costs

158. The administrative costs of a cane production board are to be paid by the mill owners and the mill suppliers' committees—

- (a) in the proportions agreed to by them; or
- (b) if there is no agreement, in equal amounts.

Legal and professional costs

159. A cane production board may only incur legal or other professional costs if the majority of its members mentioned in section 151(1)(b) and (c) agree.

Division 3—Amalgamation of cane production boards

Amalgamation

160.(1) The Minister may amalgamate cane production boards established for more than 1 mill if a single negotiating team is established for the mills.

(2) From the day on which the Minister first appoints all of the members of the new cane production board after the amalgamation—

- (a) each of the existing cane production boards are abolished (an **“abolished board”**) and the members go out of office; and
- (b) a single cane production board is established for the mills for which the abolished boards were established (the **“new board”**).

(3) For any term of office of all of the members of the new board, the Minister may decide that the number of its members to be appointed on the nomination of the mill owner or mill owners concerned and the mill suppliers' committee or committees concerned is to be greater than 4.

(4) A decision under subsection (3) is to provide for an equal number of members to be appointed on the nomination of the mill owner or mill owners concerned and on the nomination of the mill suppliers' committee or committees concerned.

(5) Other than the extent necessary to take into account the increase in membership, the provisions of division 1 about the appointment of members apply.

Other effects of amalgamation

161.(1) This section applies from the establishment of the new board.

(2) All assets and rights of an abolished board immediately before the establishment of the new board become the assets and rights of the new board.

(3) All liabilities and obligations of an abolished board immediately before the establishment of the new board become the liabilities and obligations of the new board.

(4) A proceeding that, if an abolished board were not abolished, might have been continued or taken by or against the abolished board, may be continued or taken by or against the new board.

(5) All matters started by an abolished board before the date on which the new board is established may be completed by the new board.

(6) A reference to an abolished board in an Act or document existing before the establishment of the new board has effect as if it were a reference to the new board, if the context permits.

(7) Persons employed or engaged by an abolished board are taken to be employed or engaged by the new board on the same terms and conditions as before.

(8) The new board must take all necessary action to replace the registers kept under section 162 by the abolished boards with a single register recording each cane production area relating to each mill for which the new board is established.

(9) The negotiating team mentioned in section 160(1) must take all necessary action—

- (a) under section 86,³⁵ to replace the cane analysis programs applying to the mills for which the abolished boards were established with a single cane analysis program for the mills; and
- (b) under section 89,³⁶ to replace the cane quality programs made for the mills for which the abolished boards were established with a single cane quality program for the mills.

Division 4—Cane production board register

Cane production board to keep cane production area register

162.(1) A cane production board must keep a register recording each cane production area that relates to the mill for which it is established.

(2) The register must record the following information about the cane production area—

- (a) the name of the holder and an address for service;
- (b) the description of the land included in it;
- (c) the number of hectares included in it;
- (d) any conditions to which it is subject;
- (e) grants, variations and cancellations of cane production areas;
- (f) any other information required under a regulation.

(3) The cane production board may also record in the register the existence of the interests of mortgagees, lessors or sublessors of land included in cane production areas.

(4) The register must be kept in a form and way so that the information required to be registered may be inspected at the principal office of the board during the ordinary working hours of the office.

(5) A person may inspect an entry in the register on payment to the board of a reasonable fee decided by the board.

³⁵ Section 86 (Approval process for program)

³⁶ Section 89 (Requirement to have can quality program)

(6) A regulation may provide for information that must be notified to a cane production board for registration, for the procedure for notification and for registration of notified information.

(7) An entry of information in the register is adequate notice of the information to all persons who subsequently have dealings in relation to the entitlement or land to which the information relates.

(8) This section is subject to section 249.³⁷

PART 5—CANE PROTECTION AND PRODUCTIVITY BOARDS

Division 1—Constitution and membership

Establishment of productivity area and cane protection and productivity board

163. A regulation may establish a productivity area and a cane protection and productivity board for a productivity area.

Cane protection and productivity board

164. A cane protection and productivity board—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

Judicial notice of a cane protection and productivity board's seal

165. All courts and persons acting judicially are to take judicial notice of the common seal of a cane protection and productivity board and are to

³⁷ Section 249 (Sugar Cane Assignment Register becomes the commissioner's register)

presume the common seal affixed to any document to have been duly affixed until the contrary is proved.

Objective of a cane protection and productivity board

166. The objective of a cane protection and productivity board is to enhance the productivity of the sugar industry by increasing the quantity and improving the quality of cane produced by crops grown in its area.

Membership of a cane protection and productivity board

167.(1) A cane protection and productivity board is to consist of 6 members, of whom—

- (a) 3 are to be representatives of growers elected by the growers of the productivity area in a poll conducted under the BSES's directions; and
- (b) 2 are to be representatives of mill owners nominated under the BSES's directions by the owners of the mills in the productivity area; and
- (c) 1 is to be an officer of the BSES nominated by the BSES.

(2) However, if the Minister is satisfied on petition by growers and owners of mills in the area that at least a majority of them wish to—

- (a) vary the number of their representatives; or
- (b) vary the representation of organisations on the cane protection and productivity board so as to include representatives of an organisation nominated in the petition;

the Minister is to vary in writing the membership as requested.

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

(4) An appointed member is to be appointed for a period not longer than 3 years.

(5) If a growers' representative is not able to be elected under subsection (1)(a) because insufficient nominations are received for the poll, the Minister may appoint anyone to be the growers' representative.

(6) If mill owners fail to nominate any representative for subsection (1)(b), the Minister may appoint anyone to be the representative of the mill owners on the cane protection and productivity board.

(7) The members of a cane protection and productivity board may elect a member as chairperson at any time.

(8) In this section—

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

“productivity area” means the productivity area for which a cane protection and productivity board is established.

Acting appointments

168. A person who is not a member of a cane protection and productivity board may be appointed under the BSES’s directions to act as a member for any meeting of the board by—

- (a) if the member was elected under section 167(1)(a)—the mill suppliers’ committees for the mills in the area for which the board is established; or
- (b) if the member was nominated under section 167(1)(b) or (c)—the entity that nominated the member for appointment.³⁸

Remuneration of members

169. A member of a cane protection and productivity board is to be paid by the board the fees and allowances decided by the Minister.

³⁸ The *Acts Interpretation Act 1954*, section 24B contains provisions about acting appointments.

Division 2—General provisions about cane protection and productivity boards

Disqualifications for appointment

170. A person is not qualified to be or to continue as a member of a cane protection and productivity board if the person—

- (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 of an indictable offence, whether on indictment or summarily; or
- (c) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (d) is not able to manage a corporation because of the Corporations Law, section 229;³⁹ or
- (e) is named in the register held by the Australian Securities and Investments Commission under the Corporations Law, section 243.⁴⁰

Vacation of office

171.(1) The office of a member of a cane protection and productivity board becomes vacant if the appointed member—

- (a) dies; or
- (b) resigns office by notice given to the Minister; or
- (c) is absent without the board's permission from 3 consecutive board meetings of which due notice has been given; or
- (d) is no longer qualified to be a member; or
- (e) is removed from office under section 175.

³⁹ Corporations Law, section 229 (Certain persons not to manage corporations)

⁴⁰ Corporations Law, section 243 (Register of disqualified company directors and other officers)

(2) In this section—

“**meeting**” means the following—

- (a) if the member does not attend—a meeting with a quorum present;
- (b) if the member attends—a meeting with or without a quorum present.

Meetings of a cane protection and productivity board

172.(1) A cane protection and productivity board must meet as often as its chairperson decides is necessary.

(2) A board may hold meetings, or allow members to take part in meetings, using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

(3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

(4) Despite subsection (2), the chairperson of a board may, in writing, refer a question requiring consideration by the board to all the members of the board.

(5) For subsection (4)—

- (a) a written decision of the members is taken to be a decision of the members at a duly constituted meeting of the board; and
- (b) a reference using any technology for transmission to members is adequate reference in writing; and
- (c) a reply to a reference using any technology is an adequate written decision.

(6) The quorum at a meeting is half the number of members of the board plus 1.

(7) The chairperson, or in the absence of the chairperson, a member elected by members present at a meeting, must preside at a board meeting.

(8) All questions at a meeting must be decided by a majority of votes of the members present.

(9) The member presiding at a meeting is to have a vote, and if there is an equality of votes, a second or casting vote.

(10) Subject to this Act, procedure at meetings of a cane protection and productivity board is to be decided by the board.

Member's interest in a matter to be considered by the board

173.(1) If a member of a cane protection and productivity board has an interest in a matter being considered, or about to be considered, by the board, the member must disclose the nature of the interest to a meeting of the board 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 board.

(3) If the interest is a material personal interest, the member must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a “**related resolution**”) under subsection (4)(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 board; or
- (d) otherwise take part in a decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(4) Subsection (3) does not apply to the matter if—

- (a) the board has at any time passed a resolution that states—
 - (i) the member, interest and matter; and
 - (ii) 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 board can not be formed because of subsection (3)—the Minister has given a written direction to that effect for the matter.

(5) In this section—

“**interest**”, of a member relating to a matter for consideration at a meeting, does not include—

- (a) if a member is a grower—an interest the member has in common with growers in general; and
- (b) if a member is a mill owner—an interest the member has in common with mill owners in general.

Prohibition on political activity

174. A cane protection and productivity board must not—

- (a) 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) 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

175.(1) This section applies if the Minister is satisfied that a cane protection and productivity board has contravened section 174.

(2) The Minister may remove a member of the board from office by notice given to the member.

Division 3—Cane protection and productivity board’s functions, powers and duties

Functions of a cane protection and productivity board

176. A cane protection and productivity board has the following functions—

- (a) to provide suitable advice and help to cane growers within its area about—
 - (i) the prevention, control and eradication of pest infestation of cane or any other matter or thing that adversely affects the

- quantity or quality of crops of cane; or
- (ii) the production and harvesting of cane;
 - (b) to help, and cooperate with, entities involved in preventing, controlling and eradicating pests in cane;
 - (c) to help, and cooperate with, entities involved in researching the production, harvesting, transport and processing of cane, including the BSES;
 - (d) to provide advice and information about the preservation and enhancement of the capacity of land to sustain crops of cane;
 - (e) to help minimise any damage to the environment that may be caused by activities of the sugar industry within its area;
 - (f) to take all action within the powers conferred on it by this or another Act that may be necessary to achieve its objectives.

General powers of a cane protection and productivity board

177.(1) A cane production and productivity board has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) appoint and act through agents and attorneys; and
- (d) do anything else necessary or convenient to be done for its functions.

(2) Without limiting subsection (1), the board has the powers given to it under this Act or another Act.

Power to engage assistance

178. A cane protection and productivity board may employ the persons, and engage the consultants and service providers, that it considers necessary.

Application of various public sector Acts

179.(1) A cane protection and productivity board is—

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

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B⁴¹ states the way in which a cane protection and productivity board's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

Regulation may levy a charge payable to a board

180.(1) A regulation may levy a charge payable to a cane production and productivity board on cane growers and mill owners in relation to cane growing, harvesting, supply and processing.

(2) A regulation may also prescribe—

- (a) the basis on which the charge will be made; and
- (b) the time and way of payment of the charge; and
- (c) any other matters necessary to enforce the charge, including by requiring a mill owner to collect the charge from, or pay the charge on behalf of, a grower.

(3) The amount of a charge must be no greater than is necessary to fund services to the Queensland sugar industry provided by the board, including by making provision for the costs associated with its continued provision of those services.

(4) If an amount of a charge is not paid by a grower or mill owner, the board may recover the amount as a debt from the grower or mill owner.

(5) If a mill owner pays to the board an amount of a charge levied on a grower, the mill owner may recover the amount as a debt from the grower.

⁴¹ *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)

(6) For subsection (5), the owner may deduct the amount from an amount due by the owner to the grower and may recover an unpaid portion of the amount by action against the grower.

Division 4—Dissolution of cane protection and productivity boards

Dissolution

181. A regulation may dissolve a cane protection and productivity board on a stated date.

Another cane protection and productivity board to take place of dissolved cane protection and productivity board

182.(1) A regulation may provide that, on the date when a cane protection and productivity board (the “**old board**”) is dissolved—

- (a) all assets and rights of the old board immediately before that date become the assets and rights of another stated cane protection and productivity board (the “**new board**”); and
- (b) all liabilities and obligations of the old board immediately before that date become the liabilities and obligations of the new board.

(2) A proceeding that, if the old board were not dissolved, might have been continued or taken by or against the old board on and from the date it is dissolved, may be continued or taken by or against the new board.

(3) All matters started by an old board before the date on which it is dissolved may be completed by the new board after that date.

(4) A reference to an old board in an Act or document existing before the date on which it is dissolved, on and from that date has effect as if it were a reference to the new board, if the context permits.

Change to registers

183. The registrar of titles and all other persons charged with keeping any register for dealings with property must make in the register all endorsements necessary to record the vesting of property in a cane

protection and productivity board under a regulation made under this division.

PART 6—NEGOTIATING TEAMS

Division 1—Establishment of negotiating team

Establishment

184.(1) A negotiating team is established for each mill.

(2) Adjacent mills may have a single negotiating team established for them by the joint appointment of members under section 185(2) by the mill owners and mill suppliers' committees.

Membership

185.(1) The negotiating team for a mill, or 2 or more adjacent mills, consists of 4 members.

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

(3) Additional members may be appointed under an agreement between the mill owner or owners and the mill suppliers' committee or committees.

(4) Before 1 January in each year and as necessary throughout the year, the owner of the mill or mills and mill suppliers' committee or committees must tell each other the names of their members on the negotiating team for the year.

Acting appointments

186. 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.⁴²

Objective of a negotiating team

187. The objective of a negotiating team is to help growers and the owner of the mill for which it is established to jointly improve profitability.

Division 2—Functions and powers

Functions and powers

188.(1) A negotiating team established for a mill or mills has the following functions—

- (a) to make a collective agreement for the mill or mills;
- (b) to decide all matters about expansion of the total number of hectares included in cane production areas relating to the mill or mills;
- (c) to develop and propose to the commissioner for approval a cane analysis program, or a change to the cane analysis program, for the mill or mills;
- (d) to make a cane quality program for the mill or mills;
- (e) to perform other functions given to it under this or another Act.

(2) A negotiating team may do anything necessary or convenient to be done for its functions.

(3) A negotiating team must agree on a dispute resolution process—

- (a) for agreements as mentioned in section 53;⁴³ and

⁴² The *Acts Interpretation Act 1954*, section 24B contains provisions about acting appointments.

⁴³ Section 53 (Dispute resolution)

(b) for its other functions.

(4) A negotiating team must appoint a secretary with an address for service of the negotiating team.

Dispute resolution about functions

189.(1) This section applies if a dispute arises within a negotiating team about a matter mentioned in section 188(1).

(2) If a dispute resolution process agreed by the negotiating team applies to the dispute, the process must be followed.

(3) A decision arising out of the dispute resolution process is taken to be the final decision of the negotiating team.

(4) The *Commercial Arbitration Act 1990* does not apply if the final decision is reached by arbitration.

(5) To remove doubt, for the *Judicial Review Act 1991*, sections 4 and 20(1),⁴⁴ the decision mentioned in subsection (3) is “**a decision to which this Act applies**”.

(6) If there is no dispute resolution process agreed by the negotiating team that applies, the dispute resolution process provided for under a regulation must be followed.

Power to engage assistance

190. A negotiating team may employ the persons, and engage the consultants and service providers, it considers necessary.

Division 3—General provisions about negotiating teams

Meetings and decisions of a negotiating team

191.(1) A negotiating team must meet as often as it decides is necessary.

(2) A negotiating team may hold meetings, or allow members to take

⁴⁴ *Judicial Review Act 1991*, sections 4 (Meaning of “decision to which this Act applies”) and 20 (Application for review of decision)

part in meetings, using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

(3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

(4) Despite subsection (2), a negotiating team may, in writing, refer a question requiring consideration by the team to all the members of the team.

(5) For subsection (4)—

- (a) a written decision of the members of the negotiating team is taken to be a decision of the members at a duly constituted meeting of the board; and
- (b) a reference to members using any technology is adequate reference in writing; and
- (c) a reply to a reference using any technology is an adequate written decision.

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

(7) A decision of a negotiating team must be unanimous or as decided under a dispute resolution process under section 189.

PART 7—SUGAR INDUSTRY COMMISSIONER

Division 1—Commissioner

Appointment of commissioner

192.(1) There is to be a Sugar Industry Commissioner.

(2) The commissioner is to be appointed by the Governor in Council.

(3) The commissioner holds office for the term, not longer than 5 years, and on the conditions stated in the instrument of appointment.

Functions of commissioner

193. The commissioner has the following functions—

- (a) to grant access rights and to keep the access rights register;
- (b) to keep a central register of cane production areas;
- (c) if asked by a cane production board, to help the board in the administration of its objectives;
- (d) to facilitate the existence of an effective cane analysis system;
- (e) to approve cane analysis programs;
- (f) to mediate in negotiations within the sugar industry in Queensland, other than in matters in which the commissioner is the decision maker, if asked by all parties to the mediation.

Remuneration

194. The commissioner is to be paid the remuneration, including allowances, decided by the Governor in Council.

Disqualifications for appointment

195. A person is not qualified to be or to continue as commissioner if the person—

- (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 of an indictable offence, whether on indictment or summarily; or
- (c) becomes incapable of performing the duties of commissioner because of physical or mental incapacity; or
- (d) is not able to manage a corporation because of the Corporations Law, section 229;⁴⁵ or
- (e) is named in the register held by the Australian Securities

⁴⁵ Corporations Law, section 229 (Certain persons not to manage corporations)

Investment Commission under the Corporations Law, section 243.⁴⁶

Vacation of office

196. The office of commissioner becomes vacant if the commissioner—

- (a) dies; or
- (b) resigns office by notice given to the Governor in Council; or
- (c) is absent, without the Minister's permission and without reasonable excuse, for 14 consecutive days or 28 days in any year; or
- (d) is no longer qualified to continue as commissioner; or
- (e) is removed from office under section 202.

Commissioner's independence

197.(1) In performing functions of office mentioned in section 193,⁴⁷ the commissioner must act independently and impartially.

(2) However, subsection (1) does not prevent the corporation providing staff and other resources to the commissioner to carry out his or her functions effectively and efficiently.

Commissioner's budget

198.(1) The commissioner must prepare and give to the Minister a draft budget for each financial year in the form and when the Minister directs.

(2) The Minister must decide the commissioner's budget for the financial year.

(3) Before the Minister decides the commissioner's budget, the Minister must consult with the corporation and industry representative bodies.

⁴⁶ Corporations Law, section 243 (Register of disqualified company directors and other officers)

⁴⁷ Section 193 (Functions of commissioner)

(4) The commissioner's budget is payable by the corporation.

(5) The commissioner must authorise spending only under the budget decided by the Minister, unless the Minister otherwise directs.

Commissioner's staff

199. The commissioner may employ the persons the commissioner considers necessary.

Commissioner's power to delegate

200.(1) The commissioner may delegate the commissioner's powers to—

- (a) an appropriately qualified member of the commissioner's staff; or
- (b) an entity established under this Act; or
- (c) an appropriately qualified member or officer of an entity established under this Act.

(2) Without limiting subsection (1), the commissioner may delegate a power under chapter 2, part 5, division 4⁴⁸ to an individual mentioned in subsection (1) or to another appropriately qualified person.

(3) The commissioner may delegate the commissioner's power to mediate in disputes about the exercise of an access right under section 71(9)⁴⁹ to—

- (a) the chairperson of the cane production board established for a mill that is or is proposed to be supplied with cane through the use of the access right; or
- (b) an appropriately qualified mediator.

⁴⁸ Chapter 2, part 5, division 4 (Cane analysis programs)

⁴⁹ Section 71 (Variation and cancellation of access right, dispute resolution and enforcement)

Prohibition on political activity

201. The commissioner must not use any of the funds made available to the commissioner under this Act for any purpose in connection with the politics of any political party or any candidate for political office.

Removal of commissioner

202.(1) This section applies if the Governor in Council is satisfied that the commissioner has contravened section 201.

(2) The Governor in Council may remove the commissioner from office by notice given to the commissioner.

Division 2—Commissioner’s function for registers**Commissioner and registers**

203.(1) The commissioner must keep a register of the total number of hectares included in cane production areas.

(2) If the commissioner requires a cane production board to give information to the commissioner for entry on the register, the board must give the information within the reasonable period the commissioner may require.

(3) If asked by a cane production board, the commissioner may help the board in any way the commissioner considers appropriate to properly keep the board’s register about cane production areas.

(4) With the agreement of a mill owner and the mill suppliers’ committee established for the mill, the commissioner may make arrangements, including financial arrangements, with the cane production board established for the mill under which the commissioner is to keep the board’s register of information about cane production areas.

CHAPTER 5—APPEALS

Appeal to Magistrates Court

204.(1) The following persons may appeal to a Magistrates Court (“**the court**”) against the decisions mentioned in relation to the person—

- (a) a person whose application to register any matter on a register kept by the commissioner or a cane production board has been refused by the commissioner or the board;
- (b) a person whose application under chapter 2, part 1, division 2 has been refused by a cane production board, or granted on a condition with which the person is dissatisfied;
- (c) a grower who is dissatisfied with a decision made by a cane production board under chapter 2, part 1, division 3 that adversely affects the interests of the grower;
- (d) a person whose cane production area has been cancelled by a cane production board under chapter 2, part 1, division 4;
- (e) a grower or mill owner mentioned in section 35 who is dissatisfied by a decision of a cane production board under the section;
- (f) a person whose application under section 60 has been refused by the BSES or granted on a condition with which the person is dissatisfied;
- (g) a holder of an access right or a land-holder mentioned in section 73 who is dissatisfied with a decision of the commissioner under section 73(2).

(2) The appeal is started by—

- (a) giving a notice of appeal stating the grounds to the clerk of the court; and
- (b) giving a copy of the notice to the respondent.

(3) An appeal must be started within 28 days after the appellant—

- (a) for an appeal under subsection (1)(c)—is given notice of the relevant decision or becomes aware of the relevant decision,

whichever happens later; or

(b) otherwise—is given notice of the relevant decision.

(4) In deciding the appeal, the court—

(a) is unaffected by the appealed decision; and

(b) is not bound by the rules of evidence; and

(c) must observe natural justice.

(5) In deciding the appeal, the court may confirm the appealed decision or set the appealed decision aside and make another decision.

(6) If the court makes another decision, the decision is taken to be the decision of the respondent.

(7) However, a decision mentioned in subsection (6) can not be appealed against under this section.

(8) A party dissatisfied by the decision of the Magistrates Court may appeal to the District Court, but only on a question of law.

(9) In this section—

“**decision**” includes order.

Appeal to Land Court

205.(1) This section applies to a decision by the commissioner under section 64 or 71(3).⁵⁰

(2) A person aggrieved by the commissioner’s decision may appeal to the Land Court within 28 days after the notice of the decision is given by the commissioner under section 65 or 71(8).

(3) The appeal is started by—

(a) giving a notice of appeal stating the grounds to the registrar of the Land Court; and

(b) giving a copy of the notice to the following—

(i) the commissioner;

⁵⁰ Section 71 (Variation and cancellation of access right, dispute resolution and enforcement)

- (ii) any land-holder whose land is or would be affected by the relevant access right;
- (iii) the holder of any relevant access right;
- (iv) any grower affected by the relevant variation or cancellation, if the decision appealed against is under section 71(3).

(4) For subsection (3)(b)(ii) and (iv), it is enough if notice of the appeal is published in a newspaper circulating in the area where the access right is situated.

(5) The commissioner is not a party to the appeal merely because the commissioner is given a copy of the notice of appeal.

(6) In deciding the appeal, the court is unaffected by the appealed decision.⁵¹

(7) In deciding the appeal, the court may confirm the appealed decision or set the appealed decision aside and make another decision.

(8) If the court makes another decision, the decision is taken to be the decision of the commissioner.

(9) However, a decision mentioned in subsection (8) can not be appealed against under this section.

CHAPTER 6—AUTHORISATIONS FOR COMPETITION LEGISLATION

Definitions for ch 6

206. In this chapter—

“**Competition Code**” means the Competition Code under the *Competition Policy Reform (Queensland) Act 1996*.

“**competition legislation**” means the *Trade Practices Act 1974* (Cwlth),

⁵¹ For relevant general powers of the Land Court, see *Land Court Act 1999*, section 7 (Land Court to be guided by equity and good conscience).

section 51(1)(b)⁵² or the Competition Code of this jurisdiction, section 51.⁵³

“harvesting equity committee” means a committee that—

- (a) consists of representatives of a mill owner and growers; and
- (b) is established under a collective agreement to review matters about the harvesting of cane to try to ensure the harvesting is carried out in a fair, effective and efficient way.

“settlement” means a contract, arrangement or understanding made or arrived at between any or all of the following—

- (a) a grower;
- (b) a harvesting equity committee;
- (c) a cane production board;
- (d) a mill owner;
- (e) a mill suppliers’ committee;
- (f) for a settlement about using a particular person for an activity mentioned in section 209(2)(a) or (b) or 210(2)(a) or (b),⁵⁴ the person.

Cane production areas

207.(1) The following things are specifically authorised for the competition legislation—

- (a) the granting of, or the refusal to grant, a cane production area, or

⁵² *Trade Practices Act 1974* (Cwlth), section 51 (Exceptions)

⁵³ The Competition Code, section 51 states that in deciding whether a person has contravened the Code, Part IV, certain things must be disregarded. Section 51(1) of the Code provides that the following must be disregarded—

- (a) ...
- (b) anything done in a State, if the thing is specified in, and specifically authorised by:
 - (i) an Act passed by the Parliament of that State; or
 - (ii) regulations made under such an Act.

⁵⁴ Section 209 (Supply agreements—individual agreements) or 210 (Supply agreements—collective agreements)

an increase in the number of hectares included in a cane production area, by a cane production board;

- (b) the variation of, or the refusal to vary, the description of land included in a grower's cane production area by a cane production board;
- (c) the variation in, or the refusal to vary, the conditions on which a grower holds a cane production area by a cane production board;
- (d) the cancellation of, or the refusal to cancel, a grower's cane production area, or part of the number of hectares included in a cane production area, by a cane production board.

(2) Subsection (1) applies to the granting, variation or cancellation only to the extent it is made for giving effect to a settlement.

(3) The things mentioned in subsection (1) are authorised even if they have the purpose, effect or likely effect of substantially lessening competition or one of the proscribed purposes stated in the *Trade Practices Act 1974* (Cwlth), section 46(1)⁵⁵ or the Competition Code of this jurisdiction, section 46(1).⁵⁶

(4) The following conditions imposed on the granting or variation of a cane production area are specifically authorised for the competition legislation—

- (a) a condition imposed on the growing of cane;
- (b) a condition imposed on the harvesting of cane;
- (c) a condition imposed on the delivery of cane;
- (d) a requirement about the use of a particular person for—
 - (i) the delivery of cane to a mill by a grower; or
 - (ii) the transport of cane by a mill owner;
- (e) a requirement that a grower must exercise the entitlement conferred by a cane production area within a certain time from the day the cane production area is granted;

⁵⁵ *Trades Practices Act 1974* (Cwlth), section 46 (Misuse of market power)

⁵⁶ Competition Code, section 46 (Misuse of market power)

- (f) a prohibition or limitation on the transfer of a cane production area within a certain time from the day the cane production area is granted.

Example of paragraph (a)—

A condition that a grower use practices allowing cane to be grown without undue damage to the environment.

Example of paragraph (b)—

A condition that cane is harvested in a particular period.

Example of paragraph (c)—

A condition that a grower pays an amount as a financial contribution to a cane railway to facilitate the use of the land for growing cane.

Expansions

208.(1) The following things are specifically authorised for the competition legislation—

- (a) the refusal of a mill owner or a mill suppliers' committee to give a consent under section 20⁵⁷ to a grower's application under section 29;⁵⁸
- (b) the rejection of a mill owner of the arbitrator's decision mentioned in section 23(4) or 26(3)(d);⁵⁹
- (c) the giving of, or the refusal to give, a move consent notice mentioned in section 24(2) or 27(2)⁶⁰ by a cane production board;
- (d) the making of a decision by a negotiating team about expansion under section 36.⁶¹

(2) Subsection (1)(c) or (d) applies to the giving of, or the refusal to give,

⁵⁷ Section 20 (Consent process)

⁵⁸ Section 29 (Application allowing supply to receiving mill)

⁵⁹ Section 23 (If the negotiating team does not agree to horizontal expansion) or 26 (Establishment of productivity increase process)

⁶⁰ Section 24 (Process for moving supply from current mill) or 27 (Process of moving supply from current mill)

⁶¹ Section 36 (Negotiating team must decide expansion of cane production areas)

a notice or the making of a decision only to the extent the notice or refusal is given, or the decision is made, for giving effect to a settlement.

(3) The things mentioned in subsection (1) are authorised even if they have the purpose, effect or likely effect of substantially lessening competition.

Supply agreements—individual agreements

209.(1) The following things are specifically authorised for the competition legislation—

- (a) the making of an individual agreement by 1 or more growers and a mill owner under section 39;⁶²
- (b) the variation of an individual agreement by the parties.

(2) Subsection (1) applies to the making or variation of an individual agreement only to the extent the agreement makes provision about—

- (a) the harvesting of cane by a grower, including the use of a particular person for the harvesting; or
- (b) the use of a particular person for—
 - (i) the delivery of cane to a mill by a grower; or
 - (ii) the transport of cane by a mill owner; or
- (c) the acceptance and crushing of cane by a mill at a time fixed under the agreement.

(3) The following things are specifically authorised for the competition legislation—

- (a) the harvesting of cane by a grower under an individual agreement, including the use of a particular person for the harvesting;
- (b) the use of a particular person for—
 - (i) the delivery of cane to a mill by a grower under an individual agreement; or
 - (ii) the transport of cane by a mill owner under an individual

⁶² Section 39 (Individual agreement)

agreement;

- (c) the acceptance and crushing of cane by a mill at a time fixed under an individual agreement.

(4) The things mentioned in subsections (1) and (3) are authorised even if they have the purpose, effect or likely effect of substantially lessening competition.

Supply agreements—collective agreements

210.(1) The following things are specifically authorised for the competition legislation—

- (a) the making of a collective agreement by a negotiating team under section 42;⁶³
- (b) the variation of a collective agreement by a negotiating team under section 44.⁶⁴

(2) Subsection (1) applies to the making or variation of a collective agreement only to the extent the agreement is made or varied for giving effect to a settlement about—

- (a) the harvesting of cane by a grower, including the use of a particular person for the harvesting; or
- (b) the use of a particular person for—
 - (i) the delivery of cane to a mill by a grower; or
 - (ii) the transport of cane by a mill owner; or
- (c) the acceptance and crushing of cane by a mill at a time fixed under the agreement.

(3) The following things are specifically authorised for the competition legislation—

- (a) the harvesting of cane by a grower under a collective agreement, including the use of a particular person for the harvesting;
- (b) the use of a particular person for—

⁶³ Section 42 (Collective agreement—making)

⁶⁴ Section 44 (Variation of collective agreement)

- (i) the delivery of cane to a mill by a grower under a collective agreement; or
- (ii) the transport of cane by a mill owner under a collective agreement;
- (c) the acceptance and crushing of cane by a mill at a time fixed under a collective agreement.

(4) Subsection (3)(a) applies only to the extent the collective agreement gives effect to a settlement about the harvesting.

(5) Subsection (3)(b) applies only to the extent the collective agreement gives effect to a settlement about the use of the particular person for doing the thing mentioned in subsection (3)(b)(i) or (ii).

(6) The things mentioned in subsections (1) and (3) are authorised even if they have the purpose, effect or likely effect of substantially lessening competition.

Supply agreements—payments

211.(1) The entry into a supply agreement is specifically authorised for the competition legislation.

(2) Subsection (1) applies to the entry only to the extent the agreement provides for the terms on which payments are to be made by a mill owner for cane to be supplied to a mill by a grower under the supply agreement.

(3) The following things are specifically authorised for the competition legislation—

- (a) the payment of a price for cane by a mill owner to a grower under a supply agreement mentioned in this section;
- (b) the receipt of a price for cane by a grower from a mill owner under a supply agreement mentioned in this section;
- (c) a financial incentive scheme of premiums, discounts and allowances relating to cane and sugar quality or to anything that may affect cane and sugar quality having regard to best practice under a supply agreement mentioned in this section.

Cane quality programs

212.(1) The making of a cane quality program by a negotiating team for a mill under section 89⁶⁵ is specifically authorised for the competition legislation.

(2) Subsection (1) applies to the making of a cane quality program only to the extent the program provides for a scheme of premiums and discounts for cane quality and gives effect to a settlement.

Payment schemes

213. The establishment by the corporation of payment schemes under section 98,⁶⁶ and anything done under or because of a payment scheme, is specifically authorised for the competition legislation.

Brand sugar

214.(1) The entry into of, and the giving of effect to, an arrangement between the corporation and a mill owner under section 99⁶⁷ under which the owner is to produce a particular brand of raw sugar in a particular period or amount is specifically authorised for the competition legislation.

(2) The following things are specifically authorised for the competition legislation—

- (a) the giving of a direction by the corporation to a mill owner of a mill under section 99(3) about sugar produced at the mill requiring the owner to produce a particular brand of raw sugar;
- (b) the production by the mill owner of a particular brand of raw sugar because of a direction given to the owner by the corporation under section 99(3).

⁶⁵ Section 89 (Requirement to have cane quality program)

⁶⁶ Section 98 (Schemes for payment)

⁶⁷ Section 99 (Production of brands of raw sugar)

Directions about delivery

215.(1) This section applies to a direction given by the corporation under section 100(2).⁶⁸

(2) The following things are specifically authorised for the competition legislation—

- (a) the giving of a direction about—
 - (i) how sugar vested in the corporation must be kept before it is supplied to the corporation; or
 - (ii) how sugar vested in the corporation must be supplied to the corporation, including—
 - (A) when, where and how the sugar is to be supplied; and
 - (B) delivery of the sugar to places or persons or other action that will be treated as supply to the corporation; or
 - (iii) the payment by the manufacturer of sugar of costs associated with its supply to the corporation; or
 - (iv) the conditions on which the corporation will accept sugar vested in it; or
 - (v) information that must be given to the corporation by any person concerned in the supply to, and acceptance by, the corporation of sugar, and the form and way in which the information must be given;
- (b) anything done under, or because of, a direction mentioned in paragraph (a) by—
 - (i) the corporation; or
 - (ii) a person to whom the direction is given.

Sugar price directions

216.(1) The entry by the corporation into a contract for the sale of sugar for a price stated in a sugar price direction is specifically authorised for the

⁶⁸ Section 100 (Directions about delivery etc.)

competition legislation.

(2) In this section—

“**sugar price direction**” means a direction given by the Minister to the corporation under section 106(1)⁶⁹ about the pricing of raw sugar for sale to domestic customers.

CHAPTER 7—MISCELLANEOUS

Injunctions

217.(1) Subsection (2) applies if a person has engaged, is engaging or is proposing to engage in conduct that is, was, or would be, any of the following—

- (a) a contravention of chapter 2 or 3;
- (b) attempting to contravene chapter 2 or 3;
- (c) aiding, abetting, counselling or procuring a person to contravene chapter 2 or 3;
- (d) inducing or attempting to induce (whether by threats, promises or otherwise) a person to contravene chapter 2 or 3;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of chapter 2 or 3;
- (f) conspiring with others to contravene chapter 2 or 3.

(2) On the application of an interested entity, the court may grant an injunction restraining the person from engaging in the conduct and, if the court considers it is desirable to do so, requiring the person to do anything.

(3) If a person has failed, is failing, or is proposing to fail, to do anything that the person is required to do under chapter 2 or 3, the court may, on the application of an interested entity, grant an injunction requiring the person to do the thing.

⁶⁹ Section 106 (Minister’s directions)

(4) However, the court may grant the injunction under subsection (2) or (3) only if it is satisfied that there is no other adequate remedy.

(5) On an application under subsection (2) or (3), the court may grant the injunction sought with the consent of all the parties to the proceeding, whether or not the court is satisfied that the subsection applies.

(6) The court may grant an interim injunction pending a decision on an application under subsection (2).

(7) The court may discharge or vary an injunction, and may grant an injunction on conditions.

(8) The court's power to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in the conduct; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to another person if the person engages, or continues to engage, in the conduct.

(9) The court's power to grant an injunction requiring a person to do a thing may be exercised—

- (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the thing; and
- (b) whether or not the person has previously failed to do a thing of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to another person if the person fails, or continues to fail, to do the thing.

(10) The court may, in addition to, or instead of, ordering an injunction against a person, order the person to pay damages to someone.

(11) The court's powers under this section are in addition to its other powers.

(12) In this section—

“**court**” means the Supreme Court.

“**interested entity**” means an entity established under this Act or another person, whose interests have been, are or would be affected by the relevant conduct.

General provisions about show cause proceedings

218.(1) This section applies to any show cause proceeding under this Act.

(2) The notice to show cause must give the person to whom it is given at least 28 days in which to make submissions.

(3) The entity giving the notice—

- (a) may extend the period for making submissions at any time; and
- (b) must consider any submissions made by the person; and
- (c) must give the person a reasonable opportunity to be heard about the matter.

Statutory declaration

219.(1) This section applies to an application or submission to the commissioner or an entity established under this Act.

(2) The commissioner or entity may require particular information to be verified by statutory declaration as a condition of its consideration or further consideration of the application or submission.

Records to be kept

220. An entity established under this Act—

- (a) must keep the records that may be necessary for the proper discharge of its functions; and
- (b) is a public authority under the *Libraries and Archives Act 1988*.

Superannuation schemes

221.(1) An entity established 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 6.⁷⁰

Offence to make false statement in application or submission

222. A person must not, in an application or submission made to an entity under this Act, make any false or misleading statement without reasonable excuse.

Maximum penalty—40 penalty units.

Improper use of information prohibited

223. A person who is, or has been, the commissioner, or a member, director, officer or employee of an entity established under this Act, must not make improper use of information acquired because of the person's position, or an opportunity provided by the position, to gain directly or indirectly an advantage for any person or to cause detriment to the entity or any person.

Maximum penalty—500 penalty units or 5 years imprisonment.

Indemnity

224.(1) The persons mentioned in subsections (2) to (4) are to be indemnified as mentioned in the subsections against all actions, proceedings and claims in relation to acts done or omitted to be done by any of them in good faith and without negligence under this Act.

⁷⁰ *Financial Administration and Audit Act 1977*, part 6 (Audit of consolidated fund and public sector entities)

(2) The commissioner and the chairperson of the corporation are to be indemnified by the corporation.

(3) The chairperson of a cane production board is to be indemnified by the commissioner.

(4) Subject to subsections (2) and (3), a person who is a chairperson, director or member of a body corporate established under this Act, or of a board of the body corporate, or who is an employee or agent of the body corporate, is to be indemnified by the body corporate.

Proceedings for an offence

225.(1) Subject to subsection (2), a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following—

- (a) 1 year after the offence is committed;
- (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

(2) A proceeding for an indictable offence may, at the election of the prosecution, be taken—

- (a) by way of summary proceedings under subsection (1); or
- (b) on indictment.

(3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of the person; or
- (b) for an examination of witnesses in relation to the charge.

(4) If a proceeding for an indictable 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*.

(5) If—

- (a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted

on indictment; or

- (b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment;

the magistrate—

- (c) must not decide the charge as a summary offence; and
 (d) must proceed by way of a committal proceeding.

(6) If a magistrate acts under subsection (5)—

- (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 (5) is taken to be evidence in the proceeding for 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).⁷¹

(7) The maximum penalty that may be imposed on a summary conviction of an indictable offence is 100 penalty units or 1 year's imprisonment.

(8) In this section—

“**indictable offence**” means an offence against section 127 or 223.⁷²

Evidence

226.(1) A document purporting to be a copy of a collective agreement and purporting to be certified as a copy by or on behalf of a party to the agreement is evidence of the agreement.

(2) A statement in a complaint for an offence against this Act of when

⁷¹ *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

⁷² Section 127 (Duty and liability of certain officers of corporation) or 223 (Improper use of information prohibited)

the commission of the offence came to the knowledge of the complainant is evidence of that fact.

(3) A certificate purporting to be signed by a person authorised to do so by an entity established under this Act stating that a particular document is a document lodged with or held by the entity, or a copy of the document, is evidence of anything stated in the certificate.

(4) A certificate purporting to be signed by the chief executive officer of the BSES, or a person authorised by the chief executive officer, stating for a particular date or period and particular place that cane of a particular variety was non-approved cane is evidence of anything stated in the certificate.

Regulation-making power

227.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

CHAPTER 8—AMENDMENTS, REPEALS AND TRANSITIONAL PROVISIONS

PART 1—AMENDMENTS AND REPEALS

Amendments

228. Schedule 1 amends the Acts and regulations mentioned in it.

Repeals

229. The following Acts are repealed—

- *Sugar Industry Act 1991*
- *Sugar Milling Rationalisation Act 1991.*

PART 2—TRANSITIONAL PROVISIONS

Division 1—Interpretation

Definitions for pt 2

230. In this part—

“**register of easements**” means the register of easements maintained under section 201⁷³ of the repealed Act.

“**repealed Act**” means the *Sugar Industry Act 1991*.

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

“**Sugar Industry Tribunal**” means the Sugar Industry Tribunal established under section 209⁷⁴ of the repealed Act.

“**transitional assignment**” see section 231(1).

“**transitional easement**” see section 237(1).

“**transitional permit**” see section 238(1).

Division 2—Assignments

Assignment becomes a cane production area

231.(1) This section applies to a person who held an assignment under the repealed Act immediately before the repeal of section 136(1)⁷⁵ of the repealed Act (“**transitional assignment**”).

(2) From the repeal of the section, the person is taken to hold instead a cane production area and to be a grower.

(3) The land included in the cane production area is the transitional

⁷³ *Sugar Industry Act 1991*, section 201 (Register of Easements)

⁷⁴ *Sugar Industry Act 1991*, section 209 (Sugar Industry Tribunal)

⁷⁵ *Sugar Industry Act 1991*, section 136 (The assignment entitlement)

assignment's land and the description of the land included in the cane production area is the transitional assignment's presently assigned description.

(4) The mill to which the cane production area relates is the mill to which the land included in the transitional assignment was assigned.

(5) The number of hectares included in the cane production area is the number of hectares in the transitional assignment's area.

(6) A condition imposed on the grant or variation of the transitional assignment under section 139(3) or 142(4)⁷⁶ of the repealed Act is taken to be a condition imposed on the grant of the cane production area.

(7) To the extent that any type of right under the repealed Act mentioned in this section may be affected by a decision on a review by the Sugar Industry Tribunal on an application started before the commencement of this section, this section applies as if the decision had been given effect immediately before the commencement of this section.

Plan of transitional assignment becomes plan of a cane production area

232.(1) This section applies to a plan to which section 160⁷⁷ of the repealed Act applied immediately before the repeal of the section.

(2) From the repeal of the section, subject to section 231, the plan is a plan under section 33.⁷⁸

Particular corporation guideline to continue in effect

233.(1) This section applies to a guideline in force under section 139(1)⁷⁹ of the repealed Act immediately before the repeal of the section.

(2) From the repeal of the section, the guideline is a guideline of each

⁷⁶ *Sugar Industry Act 1991*, section 139 (Guidelines for grant of assignment) or 142 (Orders by local board)

⁷⁷ *Sugar Industry Act 1991*, section 160 (Agreed assignment plan is evidence)

⁷⁸ Section 33 (Agreed cane production area plan is evidence)

⁷⁹ *Sugar Industry Act 1991*, section 139 (Guidelines for grant of assignment)

cane production board and is binding on the cane production board and on anyone making to the cane production board an application to which the guideline relates.

(3) For subsection (2) the guideline is to be read as follows—

- (a) a reference to an assignment is taken to be a reference to a cane production area;
- (b) a reference to a local board is taken to be a reference to a cane production board;
- (c) a reference to an assignment holder is taken to be a reference to a grower.

(4) The guideline stops having effect—

- (a) for a cane production board that makes a guideline, instrument or decision before 30 March 2000 about the same matter—the day the board makes the guideline, instrument or decision; or
- (b) otherwise—30 March 2000.

Division 3—Awards and mill supply contracts

Awards

234. Each award made under section 118⁸⁰ of the repealed Act from the repeal of the section is to continue to have effect as if this Act had not been passed until it expires in accordance with its own terms.

Mill supply agreements

235. A mill supply agreement mentioned in section 130⁸¹ of the repealed Act, and in force immediately before the repeal of the section, from the repeal continues in force as a supply agreement under this Act.

⁸⁰ *Sugar Industry Act 1991*, section 118 (Making of awards)

⁸¹ *Sugar Industry Act 1991*, section 130 (Mill supply contracts)

Existing mill starts as mill

236.(1) This section applies to each mill that is in existence immediately before the repeal of section 3C⁸² of the repealed Act.

(2) From the repeal of the section, the mill is taken to be a mill under section 75.⁸³

Division 4—Transitional easements and permits to pass**Transitional easement becomes a cane railway easement**

237.(1) This section applies to an easement granted under section 196⁸⁴ of the repealed Act and in force immediately before the repeal of the section (a “**transitional easement**”).

(2) From the repeal of the section, the easement is a cane railway easement and is subject to the same conditions as the transitional easement (and is an access right).

(3) However, the easement granted to the mill owner is taken to be granted to the owner to facilitate harvest of cane and supply of cane to any mill and between any mills.

Transitional permit becomes permit to pass

238.(1) This section applies to a permit granted under section 207⁸⁵ of the repealed Act and in force immediately before the repeal of the section (a “**transitional permit**”).

(2) From the repeal of the section, the permit is a permit to pass and is subject to the same conditions as the transitional permit (and is an access right).

(3) However, if the transitional permit was granted to a mill owner, it is

⁸² *Sugar Industry Act 1991*, section 3C (Meaning of “sugar mill” or “mill”)

⁸³ Section 75 (Meaning of “mill”)

⁸⁴ *Sugar Industry Act 1991*, section 196 (Grant of easement)

⁸⁵ *Sugar Industry Act 1991*, section 207 (Permits to pass over land)

taken to be granted to the owner to facilitate harvest of cane and supply of cane to any mill and between any mills.

Register of easements becomes the access rights register

239.(1) From the repeal of section 201⁸⁶ of the repealed Act, the register of easements becomes the access rights register.

(2) The commissioner, as soon as possible after the repeal of the section, must record in the access rights register the particulars mentioned in section 68(2)⁸⁷ of every transitional permit.

(3) For subsection (2), the corporation must, immediately on the repeal of the section, give the commissioner the copies of the transitional permits kept by the corporation.

References to the register of easements

240.(1) In any register mentioned in section 204⁸⁸ of the repealed Act, a note warning of the existence of a transitional easement on the register of easements, is taken, from the commencement of this section, to be a note warning of the existence of the relevant cane railway easement on the access rights register.

(2) In any Act or document, if the context permits, a reference to a transitional easement or transitional permit is taken to be a reference to the relevant access right.

Transitional applications

241.(1) This section applies to an application made to the corporation for the grant of an easement under section 196(1)(b) of the repealed Act, or permit under section 207(1)⁸⁹ of the repealed Act, made before the repeal of

⁸⁶ *Sugar Industry Act 1991*, section 201 (Register of Easements)

⁸⁷ Section 68 (Access rights register)

⁸⁸ *Sugar Industry Act 1991*, section 204 (Notation of easement on other registers)

⁸⁹ *Sugar Industry Act 1991*, section 196 (Grant of easement), section 207 (Permits to pass over land)

the section that had not been decided immediately before the repeal of the section.

(2) From the repeal of the section, the application is to continue as an application to the commissioner for the relevant access right under section 64.⁹⁰

(3) For subsection (2), section 64(1)(a) does not apply.

Division 5—Marketing

Vesting preserved

242. Anything vested in the corporation under section 107⁹¹ of the repealed Act before its repeal, from the repeal of the section continues to be vested in the corporation under section 96.⁹²

Pool for payment

243. From the repeal of section 113⁹³ of the repealed Act, a sugar pool under the section in existence immediately before the repeal of the section, considered in conjunction with the provisions of the repealed Act and any arrangements of the corporation relating to the pool, is taken to be a payment scheme under section 98.⁹⁴

Directions about delivery to and acceptance by corporation

244.(1) This section applies to a direction given under section 108⁹⁵ of the repealed Act before the repeal of the section.

⁹⁰ Section 64 (Commissioner may grant an access right)

⁹¹ *Sugar Industry Act 1991*, section 107 (Vesting of sugar in Corporation)

⁹² Section 96 (Vesting of sugar in corporation)

⁹³ *Sugar Industry Act 1991*, section 113 (Calculation of price payable to owners of sugar mills)

⁹⁴ Section 98 (Schemes for payment)

⁹⁵ *Sugar Industry Act 1991*, section 108 (Delivery to and acceptance by Corporation of sugar)

(2) To the extent the direction must be complied with after the repeal of that section to have effect according to its terms, the direction continues from the repeal of the section as a direction of the corporation under section 100.⁹⁶

Sugar quality standards

245.(1) This section applies to a standard made under section 114⁹⁷ of the repealed Act that was in effect immediately before the repeal of the section.

(2) From the repeal of that section, the standard is a standard under section 101.⁹⁸

Division 6—Minister’s powers

Minister’s directions to corporation

246.(1) This section applies to a direction given to the corporation under section 25⁹⁹ of the repealed Act to the corporation before the repeal of the section.

(2) To the extent the direction must be complied with after the repeal of that section to have effect according to its terms, the direction continues after the repeal of the section as a direction under section 106.¹⁰⁰

Division 7—Queensland Sugar Corporation

Continuation of corporation

247.(1) The Queensland Sugar Corporation mentioned as being

⁹⁶ Section 100 (Directions about delivery etc.)

⁹⁷ *Sugar Industry Act 1991*, section 114 (Minister’s standards)

⁹⁸ Section 101 (Sugar quality standards)

⁹⁹ *Sugar Industry Act 1991*, section 25 (Minister’s directions to Corporation)

¹⁰⁰ Section 106 (Minister’s directions)

established under section 108¹⁰¹ is a continuation of the Queensland Sugar Corporation constituted under section 9¹⁰² of the repealed Act.

(2) Each appointed director holding office under section 13¹⁰³ of the repealed Act immediately before the repeal of the section, from the repeal of the section, continues in office for the balance of the director's term as a director appointed under section 112.¹⁰⁴

(3) The chief executive and other persons employed under section 23¹⁰⁵ of the repealed Act immediately before the repeal of the section, from the repeal of the section, continue in employment under section 125,¹⁰⁶ on the same terms and conditions.

(4) Subsections (2) and (3) do not limit subsection (1).

Delegation continues

248. A delegation of the corporation under section 27¹⁰⁷ of the repealed Act and in force immediately before the repeal of the section, from the repeal of the section, continues as a delegation under section 126.¹⁰⁸

Sugar Cane Assignment Register becomes the commissioner's register

249.(1) This section applies to the Sugar Cane Assignment Register.

(2) On the repeal of section 32¹⁰⁹ of the repealed Act, the register becomes the register kept by the commissioner under section 203.¹¹⁰

¹⁰¹ Section 108 (Establishment of corporation)

¹⁰² *Sugar Industry Act 1991*, section 9 (Constitution)

¹⁰³ *Sugar Industry Act 1991*, section 13 (Board of directors)

¹⁰⁴ Section 112 (Board of directors)

¹⁰⁵ *Sugar Industry Act 1991*, section 23 (Chief executive officer and staff of Corporation)

¹⁰⁶ Section 125 (Chief executive officer and staff of corporation)

¹⁰⁷ *Sugar Industry Act 1991*, section 27 (Corporation's power to delegate)

¹⁰⁸ Section 126 (Corporation's power to delegate)

¹⁰⁹ *Sugar Industry Act 1991*, section 32 (Sugar Cane Assignment Register)

¹¹⁰ Section 203 (Commissioner and register)

(3) An entry of any particular in the register as it existed immediately before the repeal of section 32 of the repealed Act, continues to be adequate notice of the particular to all persons who subsequently have dealings in relation to the entitlement or land to which the particular relates.

(4) Each cane production board must before 30 March 2000, notify the commissioner when it is ready to receive the part of the register that relates to matters required to be recorded by it in its register under section 162.¹¹¹

(5) On receiving the notification under subsection (4), or if no notification is received before 30 March 2000, as soon as possible after 30 March 2000, the commissioner must give to each cane production board the part of the register that relates to matters required to be recorded by the board in its register under section 162.

(6) The part of the register given to a cane production board must include the records made under section 33¹¹² of the repealed Act about land included in cane production areas that relate to the mill for which the board is established.

(7) Until the commissioner gives a cane production board, as required under subsection (5), a part of the register mentioned in the subsection—

- (a) section 162(1), (4) and (5) does not apply in relation to the board; and
- (b) anything that under this Act may, or must, be recorded in the register kept under section 162, for the purposes of registration must be given by the board to the commissioner and recorded in the part by the commissioner; and
- (c) the part of the register, with any further record made in it under paragraph (b), is taken to be the register under section 162.

(8) A person may inspect a record in the part of the register on payment to the commissioner of a reasonable fee decided by the commissioner.

¹¹¹ Section 162 (Cane production board to keep cane production area register)

¹¹² *Sugar Industry Act 1991*, section 33 (Notice of mortgage and other interests)

(9) The part of the register given by the commissioner to the board under subsection (5) must include the records made under subsection (7)(b).

Division 8—Bureau of Sugar Experiment Stations

Continuation of bureau

250.(1) The Bureau of Sugar Experiment Stations mentioned as being established under section 129¹¹³ is a continuation of the Bureau of Sugar Experiment Stations constituted under section 53¹¹⁴ of the repealed Act.

(2) Each appointed director holding office under section 56¹¹⁵ of the repealed Act immediately before the repeal of the section, from the repeal of the section continues in office for the balance of the director's term as a director appointed under section 132.¹¹⁶

(3) The Director of Sugar Experiment Stations and other persons employed under section 70¹¹⁷ of the repealed Act immediately before the repeal of the section, from the repeal of the section continue in employment under section 145¹¹⁸ on the same terms and conditions.

(4) The Director of Sugar Experiment Stations mentioned in subsection (3) becomes the chief executive officer of the BSES.

(5) Subsections (2) to (4) do not limit subsection (1).

Approved cane and permits for non-approved cane

251.(1) An approval under section 73¹¹⁹ of the repealed Act and in force immediately before the repeal of the section, from the repeal of the section

¹¹³ Section 129 (Establishment of BSES)

¹¹⁴ *Sugar Industry Act 1991*, section 53 (Establishment of Bureau)

¹¹⁵ *Sugar Industry Act 1991*, section 56 (Board of directors)

¹¹⁶ Section 132 (Board of directors)

¹¹⁷ *Sugar Industry Act 1991*, section 70 (Director and staff)

¹¹⁸ Section 145 (Chief executive officer and staff of BSES)

¹¹⁹ *Sugar Industry Act 1991*, section 73 (Approved sugarcane)

is an approval under section 59.¹²⁰

(2) A permit under section 74¹²¹ of the repealed Act and in force immediately before the repeal of the section, from the repeal of the section is a permit under section 60.¹²²

Division 9—Cane production boards

Local board becomes a cane production board

252.(1) This section applies to a local board established under section 38¹²³ of the repealed Act and in existence immediately before the repeal of the section.

(2) From the repeal of the section, the local board continues as a cane production board taken to be established under section 147.¹²⁴

(3) Each member of the local board holding office under section 40¹²⁵ of the repealed Act immediately before the repeal of the section, from the repeal of the section continues in office for the balance of the member's term as a member appointed under section 151.¹²⁶

(4) Subsection (3) does not limit subsection (2).

References to certain boards etc.

253. In an Act or document, a reference to a local board may, if the context permits, be taken to be a reference to a cane production board.

¹²⁰ Section 59 (Approved cane)

¹²¹ *Sugar Industry Act 1991*, section 74 (Permit to grow sugarcane of non-approved variety)

¹²² Section 60 (Permit to grow cane of non-approved variety)

¹²³ *Sugar Industry Act 1991*, section 38 (Establishment of local boards)

¹²⁴ Section 147 (Establishment of cane production board)

¹²⁵ *Sugar Industry Act 1991*, section 40 (Membership of local board)

¹²⁶ Section 151 (Membership of cane production board)

Division 10—Cane protection and productivity boards**Continuation of productivity areas**

254. Each sugarcane productivity area declared under the section 77¹²⁷ of the repealed Act and in force immediately before the repeal of the section, from the repeal continues as a productivity area taken to be established under section 163.¹²⁸

Continuation of cane protection and productivity boards

255.(1) This section applies to a cane protection and productivity board established under section 78¹²⁹ of the repealed Act and in existence immediately before the repeal of the section.

(2) From the repeal of the section, the cane protection and productivity board continues as a cane protection and productivity board taken to be established under section 163.¹³⁰

(3) Each member of the cane protection and productivity board holding office under section 81 of the repealed Act immediately before the repeal of the section, from the repeal of the section continues in office for the balance of the member's term as a member appointed under section 167.¹³¹

(4) The persons employed under section 87¹³² of the repealed Act immediately before the repeal of the section, from the repeal of the section continue in employment under section 178¹³³ on the same terms and

¹²⁷ *Sugar Industry Act 1991*, section 77 (Productivity areas)

¹²⁸ Section 163 (Establishment of productivity area and cane protection and productivity board)

¹²⁹ *Sugar Industry Act 1991*, section 78 (Constitution of productivity boards)

¹³⁰ Section 163 (Establishment of productivity area and cane protection and productivity board)

¹³¹ Section 167 (Membership of a cane protection and productivity board)

¹³² *Sugar Industry Act 1991*, section 87 (Power to engage assistance)

¹³³ Section 178 (Power to engage assistance)

conditions.

(5) Subsections (3) and (4) do not limit subsection (2).

Division 11—Negotiating teams

Continuation of negotiating teams

256.(1) Each negotiating team established under section 52A¹³⁴ of the repealed Act and in existence immediately before the repeal of the section, from the repeal continues as a negotiating team established under section 184.¹³⁵

(2) Each member of the negotiating team holding office under section 52A of the repealed Act immediately before the repeal of the section, from the repeal of the section continues in office as a member under section 185.¹³⁶

Division 12—Sugarcane and sugarcane products examination and testing programs

Continuation of programs

257. A program instituted for a mill under section 30¹³⁷ of the repealed Act and in force immediately before the repeal of the section, from the repeal continues as the cane analysis program under section 83¹³⁸ for the mill and is binding on the persons to whom it applies according to its terms.

¹³⁴ *Sugar Industry Act 1991*, section 52A (Establishment)

¹³⁵ Section 184 (Establishment)

¹³⁶ Section 185 (Membership)

¹³⁷ *Sugar Industry Act 1991*, section 30 (Programs to obtain information)

¹³⁸ Section 83 (Requirement to have cane analysis program and purpose)

Division 13—Sugar Industry Tribunal**Continuation of pt 12 of repealed Act**

258.(1) Despite the repeal of the repealed Act, part 12¹³⁹ of that Act is taken to continue in effect for this section.

(2) Each application made to the tribunal before the repeal of the repealed Act and not brought to an end before the repeal may continue to be dealt with by the tribunal until all applications are disposed of.

(3) The tribunal, in addition to any other power it has under part 12, also has the power to make any order necessary to take account of the changes to the law under this Act and give effect to its decision under this Act.

Division 14—Sugar Industry Commissioner**Particular functions postponed**

259. Despite the commencement of section 193,¹⁴⁰ the commissioner's functions under section 193(d) and (e) do not commence until 1 January 2000.

Division 15—Competition policy legislation**Definitions for div 15**

260. In this division—

“**Competition Code**” means the Competition Code under the *Competition Policy Reform (Queensland) Act 1996*.

¹³⁹ *Sugar Industry Act 1991*, part 12 (Sugar Industry Tribunal)

¹⁴⁰ Section 193 (Functions of commissioner)

“**competition legislation**” means the *Trade Practices Act 1974* (Cwlth), section 51(1)(b)¹⁴¹ or the Competition Code of this jurisdiction, section 51.¹⁴²

Guidelines

261.(1) The making of a guideline by the corporation that is in force under section 139(1)¹⁴³ of the repealed Act and mentioned in section 233¹⁴⁴ of this Act is specifically authorised for the competition legislation.

(2) Subsection (1) applies to the making of a guideline only to the extent the guideline provides, under section 139(2) of the repealed Act, with respect to the aggregate of all assignments’ areas available to be granted in a calendar year, that a prescribed proportion is to be offered in the first instance to holders of existing assignments.

(3) The making of a guideline is authorised even if it has the purpose, effect or likely effect of substantially lessening competition or one of the proscribed purposes stated in the *Trade Practices Act 1974* (Cwlth), section 46(1)¹⁴⁵ or the Competition Code of this jurisdiction, section 46(1).¹⁴⁶

Awards

262.(1) The making of an award by a negotiating team under

¹⁴¹ *Trade Practices Act 1974* (Cwlth), section 51 (Exceptions)

¹⁴² The Competition Code, section 51 states that in deciding whether a person has contravened the Code, Part IV, certain things must be disregarded. Section 51(1) of the Code provides that the following must be disregarded—

(a) ...

(b) anything done in a State, if the thing is specified in, and specifically authorised by:

(i) an Act passed by the Parliament of that State; or

(ii) regulations made under such an Act.

¹⁴³ *Sugar Industry Act 1991*, section 139 (Guidelines for grant of assignment)

¹⁴⁴ Section 233 (Particular corporation guideline to continue in effect)

¹⁴⁵ *Trades Practices Act 1974* (Cwlth), section 46 (Misuse of market power)

¹⁴⁶ Competition Code, section 46 (Misuse of market power)

section 118¹⁴⁷ of the repealed Act and continued in force under section 234¹⁴⁸ of this Act is specifically authorised for the competition legislation.

(2) Subsection (1) applies to the making of an award only to the extent the award is made for giving effect to a settlement about—

- (a) the harvesting of cane by an assignment holder under the award, including the use of a particular person for the harvesting; or
- (b) the use of a particular person for—
 - (i) the delivery of cane to a mill by an assignment holder under the award; or
 - (ii) the transport of cane by a mill owner under the award; or
- (c) the base prices to be paid for cane.

(3) The making of an award is authorised even if it has the purpose, effect or likely effect of substantially lessening competition.

Mill supply agreements

263.(1) This section applies to an existing mill supply contract.

(2) The following things are specifically authorised for the competition legislation—

- (a) the harvesting of cane by an assignment holder under a contract, including the use of a particular person for the harvesting;
- (b) the use of a particular person for—
 - (i) the delivery of cane to a mill by an assignment holder under a contract; or
 - (ii) the transport of cane by a mill owner under a contract;
- (c) the taking, delivery and crushing of cane by a mill owner at a time fixed under a contract;
- (d) the payment of a price for cane by a mill owner to an assignment

¹⁴⁷ *Sugar Industry Act 1991*, section 118 (Making of awards)

¹⁴⁸ Section 234 (Awards)

holder under a contract;

- (e) the receipt of a price for cane by an assignment holder from a mill owner under a contract.

(3) The things mentioned in subsection (2) are authorised even if they have the purpose, effect or likely effect of substantially lessening competition.

(4) This section applies to a contract whether or not the contract is an exempt contract.

(5) In this section—

“exempt contract” means a mill supply contract exempted from section 131 or 134¹⁴⁹ of the repealed Act under a regulation under section 134A¹⁵⁰ of the repealed Act.

“existing mill supply contract” means the following mill supply contracts continued in force under section 235¹⁵¹ of this Act—

- a mill supply contract to which the owner of the mill known as the ‘Plane Creek Mill’ is a party
- a mill supply contract to which the owner of the mills known as the ‘Macknade Mill’ and the ‘Victoria Mill’ is a party
- a mill supply contract to which the owner of the mill known as the ‘Mossman Mill’ is a party
- a mill supply contract to which the owner of the mill known as the ‘Tableland Mill’ is a party.

“mill supply contract” means a contract or agreement within the meaning of section 130¹⁵² of the repealed Act.

¹⁴⁹ *Sugar Industry Act 1991*, section 131 (Procedure for making effective mill supply contract) or 134 (Contracts limited to 3 years)

¹⁵⁰ *Sugar Industry Act 1991*, section 134A (Exemption from controls over agreements)

¹⁵¹ Section 235 (Mill supply agreement)

¹⁵² *Sugar Industry Act 1991*, section 130 (Mill supply contracts)

Directions about delivery to and acceptance by corporation

264.(1) This section applies to a direction given under section 108¹⁵³ of the repealed Act and continued in force under section 244¹⁵⁴ of this Act.

(2) The following things are specifically authorised for the competition legislation—

- (a) the making of determinations by the corporation, and the authorising of its employees, agents and other bodies and persons to give directions, as the corporation thinks fit about—
 - (i) how sugar vested in the corporation must be kept before it is delivered to the corporation; or
 - (ii) how sugar vested in the corporation must be delivered to the corporation, including—
 - (A) when, where and how the sugar is to be delivered; and
 - (B) delivery of the sugar to places or persons or other action that will be treated as delivery to the corporation; or
 - (iii) the payment by the manufacturer of sugar of costs associated with its delivery to the corporation; or
 - (iv) the conditions on which the corporation will accept sugar vested in it under part 7¹⁵⁵ of the repealed Act; or
 - (v) information that must be given to the corporation by any person concerned in the delivery to, and acceptance by, the corporation of sugar, and the form and way in which the information must be given;
- (b) anything done under, or because of, the direction by—
 - (i) the corporation; or
 - (ii) the person giving the direction; or

¹⁵³ *Sugar Industry Act 1991*, section 108 (Delivery to and acceptance by Corporation of sugar)

¹⁵⁴ Section 244 (Directions about delivery to and acceptance by corporation)

¹⁵⁵ *Sugar Industry Act 1991*, part 7 (Acquisition of sugar)

(iii) the mill owner to whom the direction is given.

(3) Subsection (2) applies to the direction only if it is given to a mill owner.

(4) Also, subsection (2) applies to the direction only to the extent it relates to the delivery of raw sugar to a place or person for giving effect to a contract, arrangement or understanding made or arrived at between the corporation and another person.

Minister's directions to corporation

265.(1) This section applies to a sugar price direction under section 25(1)¹⁵⁶ of the repealed Act and continued in force under section 246¹⁵⁷ of this Act.

(2) The entry by the corporation into a contract for the sale of sugar for a price stated in the direction is specifically authorised for the competition legislation.

(3) In this section—

“sugar price direction” means a direction given by the Minister to the corporation under section 25(1) of the repealed Act about the pricing of raw sugar for sale to domestic customers.

Expiry

266. This division expires on 30 June 2000.

¹⁵⁶ *Sugar Industry Act 1991*, section 25 (Minister's directions to Corporation)

¹⁵⁷ Section 246 (Minister's directions to corporation)

SCHEDULE 1

AMENDMENT OF OTHER ACTS AND REGULATIONS

section 228

HEALTH (DRUGS AND POISONS) REGULATION 1996

1. Section 247—

omit, insert—

‘Cane protection and productivity board

‘247. A cane protection and productivity board under the *Sugar Industry Act 1999* is authorised to sell an S7 poison for—

- (a) the control of plant diseases in sugar cane; or
- (b) the destruction of insect pests, vermin or weeds.’.

2. Section 290(3)(c)—

omit, insert—

‘(c) for a cane protection and productivity board—under the *Sugar Industry Act 1999*.’.

SCHEDULE 1 (continued)

LIENS ON CROPS OF SUGAR CANE ACT 1931**1. Section 8(1), from ‘provisions’ to ‘thereunder’—**

omit, insert—

‘*Sugar Industry Act 1999* and any collective agreement mentioned in section 40¹⁵⁸ of that Act’.

2. Section 8(1), from ‘the lands’ to ‘Acts’—

omit, insert—

‘relates any cane production area in which is included the lands described in the lien’.

3. Section 8—

insert—

‘(4) In this section—

“**cane production area**” has the meaning given by the *Sugar Industry Act 1999*, section 6.¹⁵⁹’.

4. Section 9(1)(a), ‘the *Sugar Industry Act 1991*, section 129’—

omit, insert—

‘a cane supply and processing agreement entered into under the *Sugar Industry Act 1999*’.

¹⁵⁸ *Sugar Industry Act 1999*, section 40 (Collective agreement—nature)

¹⁵⁹ *Sugar Industry Act 1999*, section 6 (Cane production area)

SCHEDULE 1 (continued)

5. Section 16(2), from ‘any Cane’ to ‘1991’—*omit, insert—*

‘a cane protection and productivity board established under the *Sugar Industry Act 1999*’.

6. Section 16(4)(a), ‘1991’—*omit, insert—*

‘1999’.

PLANT PROTECTION ACT 1989

1. Section 3, definition “plant”, ‘or, unless another Act provides, sugar cane’—*omit.***2. Part 1, after section 6—***insert—***‘Act applies to sugar cane**

‘6AA.(1) This Act applies to sugar cane as a plant.

‘(2) To apply this Act to sugar cane—

- (a) a reference to the Minister is taken to be a reference to the Minister within the meaning of the *Sugar Industry Act 1999*; and
- (b) a reference to the chief executive is taken to be a reference to the chief executive officer of the Bureau of Sugar Experiment Stations established under the *Sugar Industry Act 1999*; and
- (c) if, under section 16, an inspector takes measures on behalf of a body established under the *Sugar Industry Act 1999*, the provisions of sections 17 and 18 apply as if a reference to the Crown were a reference to the body; and

SCHEDULE 1 (continued)

- (d) if a matter or thing is seized by an inspector acting on behalf of a body established under the *Sugar Industry Act 1999*, sections 38 and 39 apply as if a reference to the Crown were a reference to the body; and
- (e) a reference in section 28 to the Crown includes a reference to a body established under the *Sugar Industry Act 1999*; and
- (f) non-approved cane is taken to be a pest.

‘(3) In this section—

“**non-approved cane**” has the meaning given by the *Sugar Industry Act 1999*, schedule 2.¹⁶⁰

“**sugar cane**” means any plant or part of the plant of the genus *Saccharum* or any hybrid of sugar cane.’.

PRIMARY PRODUCERS’ ORGANISATION AND MARKETING ACT 1926

1. Section 30A, definition “grower”, from ‘means’ to ‘1991’—

omit, insert—

‘means a person who holds a cane production area under the *Sugar Industry Act 1999*’.

¹⁶⁰ *Sugar Industry Act 1999*, schedule 2 provides—

“**non-approved cane**” means cane that—

- (a) is grown at a place where, and at a time when, cane of the variety to which it belongs is not approved for growing under section 59; and
- (b) is not grown under a permit issued under section 60; and
- (c) is not grown by, for or at the request of, the chief executive officer of the BSES.

SCHEDULE 1 (continued)

2. Section 30A, definition “mill”—

omit, insert—

‘**“mill”** see the *Sugar Industry Act 1999*, section 75.¹⁶¹’.

**STATUTORY BODIES FINANCIAL
ARRANGEMENTS REGULATION 1997****1. Schedule 1A, ‘*Sugar Industry Act 1991*’ (1st and 3rd mention)—**

omit, insert—

‘*Sugar Industry Act 1999*’.

2. Schedule 1A, ‘*Sugar Industry Act 1991* (see section 78)’—

omit, insert—

‘*Sugar Industry Act 1999* (see section 163)’.

3. Schedule 1A, ‘productivity boards’—

omit, insert—

‘cane protection and productivity boards’.

4. Schedule 2, ‘*Sugar Industry Act 1991* (1st mention)’—

omit, insert—

‘*Sugar Industry Act 1999*’.

¹⁶¹ *Sugar Industry Act 1999*, section 75 (Meaning of “mill”)

SCHEDULE 1 (continued)

5. Schedule 2, ‘*Sugar Industry Act 1991*’ (see section 78)—

omit, insert—

‘*Sugar Industry Act 1999* (see section 163)’.

6. Schedule 2, ‘productivity boards’—

omit, insert—

‘cane protection and productivity boards’.

7. Schedule 4, ‘*Sugar Industry Act 1991*’—

omit, insert—

‘*Sugar Industry Act 1999*’.

8. Schedule 5, ‘*Sugar Industry Act 1991*’—

omit, insert—

‘*Sugar Industry Act 1999*’.

TRANSPORT INFRASTRUCTURE ACT 1994**1. Schedule 3, definition “sugar tramway”, paragraph (a)—**

omit, insert—

‘(a) operated, entirely or partly, on an access right under the *Sugar Industry Act 1999*, chapter 2, part 4;¹⁶² and’.

¹⁶² *Sugar Industry Act 1999*, chapter 2 (Production, supply and milling), part 4 (Cane access, harvesting and mill supply)

SCHEDULE 1 (continued)

**TRANSPORT OPERATIONS (ROAD USE
MANAGEMENT) ACT 1995**

1. Schedule 3, definition “railway”, paragraph (b)—*omit, insert—*

‘(b) a railway on a cane railway easement under the *Sugar Industry Act 1999*, chapter 2, part 4.¹⁶³’.

WATER RESOURCES ACT 1989

1. Section 117(1), from ‘within the meaning of the *Sugar Industry Act 1991*’ to ‘with that Act’—*omit, insert—*

‘to which relate under the *Sugar Industry Act 1999* cane production areas that include’.

**WATER RESOURCES (RATES AND CHARGES)
REGULATION 1992**

1. Section 25(1), ‘*Sugar Industry Act 1991*’—*omit, insert—*

‘*Sugar Industry Act 1999*’.

2. Section 25(1), definitions “assigned” and “sugar mill”—*omit.*

¹⁶³ *Sugar Industry Act 1999*, chapter 2 (Production, supply and milling), part 4 (Cane access, harvesting and mill supply)

SCHEDULE 1 (continued)

3. Section 25(3), ‘is assigned to a sugar mill (the “assigned land”)’—

omit, insert—

‘is included in a cane production area relating to a sugar mill as provided under the *Sugar Industry Act 1999*’.

4. Section 25(3)(b), ‘assigned’—

omit.

SCHEDULE 2**DICTIONARY**

section 4

“access right” see section 62(1).

“access rights register” see section 68.

“acquire” includes purchase, take on lease, licence or under another interest.

“adjacent” includes nearby.

“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 BSES—each director of the BSES other than the BSES’s chief executive officer.

“appropriately qualified”, in relation to the exercise of a power, includes having the qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

The level at which a person is employed by an entity.

“BSES” means the Bureau of Sugar Experiment Stations established under section 129.

“business manager”, of an industry participant, means—

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

“cane” means sugar cane.

“cane analysis program” means a cane analysis program under section 83.

SCHEDULE 2 (continued)

- “cane quality program”** means a cane quality program under section 89.
- “cane production area”** see section 6.
- “cane production board”** means a cane production board established under section 147.
- “cane productivity”** for chapter 2, part 1, division 3, see section 19.
- “cane protection and productivity board”** means a cane protection and productivity board established under section 163.
- “cane railway easement”** see section 62(4).
- “cane supply and processing agreement”** see section 38.
- “closed mill”** for chapter 2, part 5, division 3, see section 79.
- “closed mill cane”** for chapter 2, part 5, division 3, see section 80(2).
- “collective agreement”** means a collective agreement under section 40.
- “commercial cane sugar”** means the estimated yield of cane sugar from cane, decided as provided under the cane analysis program applying to the cane.
- “commissioner”** means the Sugar Industry Commissioner appointed under section 192.
- “Competition Code”** for—
- (a) chapter 6, see section 206; or
 - (b) chapter 8, part 2, division 15, see section 260.
- “competition legislation”** for—
- (a) chapter 6, see section 206; or
 - (b) chapter 8, part 2, division 15, see section 260.
- “consent process”** means the process under chapter 2, part 1, division 3, subdivision 2.
- “corporation”** means the Queensland Sugar Corporation established under section 108.

SCHEDULE 2 (continued)

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

“crushing season” means, for any calendar year, the season for the harvesting and crushing of cane starting in the year.

“current cane production area” for chapter 2, part 1, division 3, see section 19.

“current cane production board” for chapter 2, part 1, division 3, see section 19.

“current mill” for chapter 2, part 1, division 3, see section 19.

“decision” includes an order and a direction.

“expansion”, in cane production areas, mean an increase in the total number of hectares included in all cane production areas relating to a mill, whether by an increase in the number of cane production areas or in the numbers of hectares included in existing cane production areas.

“grant of unallocated hectares” for chapter 2, part 1, division 3, see section 19.

“grower” see section 6(2).

“guidelines” means written guidelines.

“harvesting equity committee” for chapter 6, see section 206.

“horizontal expansion” for chapter 2, part 1, division 3, see section 19.

“horizontal expansion process” means the process under chapter 2, part 1, division 3, subdivision 3.

“industry participant” means—

- (a) a person who—
 - (i) grows cane; or
 - (ii) mills cane; or
 - (iii) produces, refines or manufactures sugar; or

SCHEDULE 2 (continued)

- (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).

“information notice” for a decision, means a written notice stating the following—

- (a) the reasons for the decision;
- (b) the right of appeal or review provided under this Act to the person given the notice;
- (c) the period within which the appeal must be started or review applied for;
- (d) how to appeal or apply for the review.

“interest” of a director or member of an entity established under this Act about a matter for consideration at a meeting, means a direct or indirect interest.

“land included in a cane production area” means land within the boundaries of the description of land to which the cane production area relates.

“material personal interest” of a director or member of an entity established under this Act about a matter for consideration at a meeting—

- (a) means an interest relating to the personal affairs of the director or member that may have, or be seen to have, a significant influence on the conduct of the director or member at the meeting; and
- (b) for section 119, includes an interest in the matter that arises because the director or member is a business manager of another person who has a material personal interest in the matter.

“mill” see section 75.

SCHEDULE 2 (continued)

“mill owner” or **“owner of a mill”** means an entity owning or having the control of a mill including the manager, the managing director or other person controlling the business of a mill.

“mill suppliers’ committee” means—

- (a) generally—a mill suppliers’ committee established for a mill by the majority of growers whose cane production areas relate to the mill; or
- (b) in relation to a mill, or an entity established under this Act for a mill or a supply agreement made for a mill or with a mill owner—the mill suppliers’ committee established for the mill by the majority of growers whose cane production areas relate to the mill.

“negotiating team” means a negotiating team established under chapter 4, part 6.

“non-approved cane” means cane that—

- (a) is grown at a place where, and at a time when, cane of the variety to which it belongs is not approved for growing under section 59; and
- (b) is not grown under a permit issued under section 60; and
- (c) is not grown by, for or at the request of, the chief executive officer of the BSES.

“notice” means written notice.

“number of hectares included in a cane production area” means the number of the hectares to which the cane production area relates as opposed to the land included in the cane production area.

“obstructs” includes assaults, threatens, abuses, insults, intimidates, hinders and attempts to obstruct.

“payment scheme”, for payment to mill owner for sugar vested in the corporation, means a payment scheme under section 98(2).

“penalty sugar” means sugar manufactured from cane grown on land other than land included in the description or number of hectares included in a relevant cane production area.

 SCHEDULE 2 (continued)

“**permit to pass**” see section 62(2).

“**pest**” see the *Plant Protection Act 1989*, section 3.¹⁶⁴

“**pest infestation**” see the *Plant Protection Act 1989*, section 3.¹⁶⁵

“**productivity increase**” for chapter 2, part 1, division 3, see section 19.

“**productivity increase process**” means the process under chapter 2, part 1, division 3, subdivision 4.

“**products**” includes by-products.

“**raw sugar equivalent**” means the amount of raw sugar that is the equivalent of any sugar vested in the corporation under the relevant payment scheme under section 98.¹⁶⁶

“**receiving cane production board**” for chapter 2, part 1, division 3, see section 19.

“**receiving mill**” for—

- (a) chapter 2, part 1, division 3, see section 19; or
- (b) chapter 2, part 5, division 3, see section 80.

“**register of easements**” for chapter 8, part 2, see section 230.

“**regulation process**” for chapter 2, part 1, division 3, see section 19.

“**repealed Act**” for chapter 8, part 2, see section 230.

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

“**settlement**” for chapter 6, see section 206.

¹⁶⁴ *Plant Protection Act 1989*, section 3—

‘ “**pest**” means any organism of the plant or animal kingdom (excluding vertebrates) or any virus or viroid or disorder or condition or cause of specified symptoms that is declared to be a pest under section 4.’

¹⁶⁵ *Plant Protection Act 1989*, section 3—

‘ “**pest infestation**” means a condition whereby the land, plant, soil, appliance or other matter or thing in respect of which the term is used supports a pest physically, nutritionally or in any other way or a condition whereby the presence of the pest in or on the land, plant, soil, appliance or other matter or thing in question exposes any plant either directly or indirectly to pest infestation.’

¹⁶⁶ Section 98 (Schemes for payment)

SCHEDULE 2 (continued)

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

- (a) final molasses;
- (b) a form of sugar manufactured from another form of sugar previously disposed of by the corporation;
- (c) sugar the source of which was grown outside Queensland.

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

“Sugar Cane Assignment Register”, for chapter 8, part 2, see section 230.

“Sugar Industry Tribunal”, for chapter 8, part 2, see section 230.

“suitable cane land”, in relation to a cane production area, means land that, in all the circumstances, including the number of hectares included in the cane production area, is—

- (a) capable of producing commercial cane crops with the use of appropriate agricultural practices; and
- (b) situated where cane may be transported economically to a mill under a supply agreement applying to the cane; and
- (c) suitable for growing cane indefinitely using practices to protect the environment that are reasonable and practicable, having regard to any guideline under a regulation or that may be made by a relevant cane production board under section 149(d) or (e).¹⁶⁷

“supply agreement” see section 38.

“sustainable production” means farming practices and systems that maintain or enhance—

- (a) economic viability of production; and
- (b) the natural resource base, that is, soil, land and water; and

¹⁶⁷ Section 149 (Functions and powers of a cane production board).

SCHEDULE 2 (continued)

(c) other ecosystems that are influenced by agricultural activities.

“third party”, for an application for a cancellation or variation of a cane production area under chapter 2, part 1, division 2, means a mortgagee, lessor or sublessor of the land affected by the variation.

“transfer” of a number of hectares from one cane production area to another, means—

- (a) varying the first cane production area by cancelling the number of hectares; and
- (b) varying the second cane production area by allocating the same number of hectares to it.

“transitional assignment”, for chapter 8, part 2, see section 230.

“transitional easement”, for chapter 8, part 2, see section 230.

“transitional permit”, for chapter 8, part 2, see section 230.

“unallocated” hectares relating to a mill, means the number of hectares decided under section 36¹⁶⁸ as the total number of hectares that may be included in cane production areas relating to the mill less the total number of hectares already included in them.

“variation”, of a cane production area, means—

- (a) variation of the description of land included in it; or
- (b) cancellation of a, or increase in the, number of hectares included in it; or
- (c) variation in the conditions to which it is subject; or
- (d) variation of the holder.

“verified” means verified in writing.

¹⁶⁸ Section 36 (Negotiating team must decide expansion of cane production areas)