

Queensland



**SUGAR INDUSTRY AND  
OTHER LEGISLATION  
AMENDMENT ACT 2003**

**Act No. 44 of 2003**



# Queensland



## SUGAR INDUSTRY AND OTHER LEGISLATION AMENDMENT ACT 2003

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**MINOR AND CONSEQUENTIAL AMENDMENTS OF SUGAR  
INDUSTRY ACT 1999**

Queensland



**Sugar Industry and Other Legislation  
Amendment Act 2003**

**Act No. 44 of 2003**

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An Act to amend the *Sugar Industry Act 1999*, and for other purposes

*[Assented to 27 August 2003]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Sugar Industry and Other Legislation Amendment Act 2003*.

### **2 Commencement**

(1) The following provisions of this Act commence on assent—

(a) sections 3, 7 to 15, 17, 19 to 21 and 26(3);

(b) the schedule, other than items 1 to 3, 13 and 14.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF SUGAR INDUSTRY ACT 1999**

### **3 Act amended in pt 2**

This part, and the schedule, amends the *Sugar Industry Act 1999*.

### **4 Omission of ch 2, pt 3 (Cane variety control)**

Chapter 2, part 3—

*omit.*



**5 Omission of ch 4, pt 5 (Bureau of Sugar Experiment Stations)**

Chapter 4, part 5—

*omit.*

**6 Omission of ch 4, pt 7 (Cane protection and productivity boards)**

Chapter 4, part 7—

*omit.*

**7 Amendment of ch 4, pt 8, hdg**

Chapter 4, part 8, heading, ‘**CORPORATIONS**’—

*omit, insert—*

**‘ENTITIES’.**

**8 Amendment of s 198 (Definitions for pt 5A)**

(1) Section 198, definitions “asset”, “board”, “eligible participant” and “liability”—

*omit.*

(2) Section 198—

*insert—*

“**assets**”, of a board, means all assets of the board immediately before the board’s transfer day.

“**authorised person**”, for a replacement entity, means an individual with its written authority.

“**board**” means a cane protection and productivity board established under section 177.<sup>1</sup>

“**liabilities**”, of a board, means all liabilities of the board immediately before the board’s transfer day.

“**proposed transfer day**” see section 201(a).

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<sup>1</sup> Section 177 (Establishment of productivity area and cane protection and productivity board)

**“replacement entity”** see section 201(b).’.

(3) Section 198, definition “transfer day”, ‘corporation’—

*omit, insert—*

‘entity’.

## **9 Replacement of s 200 (Decision to transfer to non-statutory corporation)**

Section 200—

*omit, insert—*

### **‘200 Decision to transfer to person**

‘A board may, before 30 June 2004, decide to dissolve itself and transfer its assets and liabilities to a person.<sup>2</sup>’.

## **10 Amendment of s 201 (Things that must be decided for the transfer)**

Section 201(b)—

*omit, insert—*

(b) the person to which it will transfer its assets and liabilities (the **“replacement entity”**).’.

## **11 Replacement of s 202 (Deciding the replacement corporation)**

Section 202—

*omit, insert—*

### **‘202 Deciding the replacement entity**

‘A board may decide a person will be its replacement entity only if—

- (a) the replacement entity has, by notice to the board signed by an authorised person for the entity, agreed to be the replacement entity; and

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<sup>2</sup> See the *Acts Interpretation Act 1954*, section 32D (References to persons generally).

- (b) the relevant mill owner and a majority of the growers who supply cane to the relevant mill agree with the proposed transfer.’.

## **12 Replacement of s 203 (Notice of decision about replacement corporation)**

Section 203—

*omit, insert—*

### **‘203 Notice of decision about replacement entity**

‘(1) The board must give the Minister notice of any decision under section 200.

‘(2) The notice must state the following—

- (a) the day the decision was made;
- (b) the proposed transfer day;
- (c) the replacement entity’s name;
- (d) whether the replacement entity’s functions will include the functions of the board under section 190(a) to (e);
- (e) that the replacement entity will deal with the assets of the board for the benefit of the relevant mill owner and the growers who supply cane to the relevant mill;
- (f) the way the replacement entity will—
  - (i) deal with the liabilities of the board; and
  - (ii) hold, dispose of and deal with the assets.

‘(3) The notice must be accompanied by—

- (a) a copy of the notice mentioned in section 202(a);<sup>3</sup> and
- (b) evidence that the relevant mill owner and a majority of the growers who supply cane to the relevant mill agree with the proposed transfer.’.

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3 Section 202 (Deciding the replacement entity)

### **13 Amendment of s 204 (Minister's decision)**

(1) Section 204—

*insert—*

‘(1A) The Minister must, before approving the transfer for the board, be satisfied the replacement entity will deal with the board’s assets for the benefit of the relevant mill owner and the growers who supply cane to the relevant mill.’.

(2) Section 204(1A) to (3)—

*renumber* as section 204(2) to (4).

### **14 Replacement of s 211 (Employees)**

Section 211—

*omit, insert—*

#### **‘211 Employees**

‘(1) If the notice mentioned in section 203<sup>4</sup> states that the replacement entity’s functions will include the functions of the board under section 190(a) to (e), a person employed by the board immediately before the transfer day for the board becomes, on the transfer day, an employee of the replacement entity.

‘(2) If the notice mentioned in section 203 states that the replacement entity’s functions will not include the functions of the board under section 190(a) to (e)—

- (a) a person’s employment by the board immediately before the transfer day is, on the transfer day, taken to be lawfully terminated under the Industrial Relations Act; and
- (b) the replacement entity and the employee may agree the employee is, on the transfer day, to be employed by the replacement entity; and
- (c) if an agreement is not made under paragraph (b)—

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4 Section 203 (Notice of decision about replacement entity)

- (i) the person has, under the Industrial Relations Act, the rights given to an employee whose employment has been lawfully terminated under that Act; and
- (ii) the rights given to the person may be exercised against the replacement entity as if the replacement entity had been the employer who terminated the person's employment.

'(3) If a person employed by the board immediately before the transfer day becomes, under subsection (1) or (2)(b), an employee of the replacement entity, subsections (4) to (7) apply.

'(4) Subsection (1) or (2)(b) does not—

- (a) constitute a redundancy or retrenchment of the person's employment by the board; or
- (b) entitle the person to a benefit or payment merely because the person is no longer employed by the board; or
- (c) interrupt the person's continuity of service.

'(5) For the Industrial Relations Act, the person's period of employment with the board is taken to be an equivalent period of employment with the replacement entity.

'(6) Subject to the Industrial Relations Act, the person has the same employment rights against the replacement entity that the person had against the board immediately before the transfer day.

'(7) If an industrial instrument under the Industrial Relations Act bound the person and the board immediately before the transfer day, it binds the person and the replacement entity.'

## **15 Insertion of ch 4, pt 8, div 5**

Chapter 4, part 8—

*insert—*

### ***'Division 5—Expiry and savings provisions***

#### **'213A Expiry of pt 8**

'This part expires on 1 July 2004.

### **‘213B Saving of operation of pt 8**

‘This part is declared to be a law to which the *Acts Interpretation Act 1954*, section 20A,<sup>5</sup> applies.’.

### **16 Amendment of s 223 (Functions of commissioner)**

Section 223—

*insert—*

- ‘(h) to receive any assets and liabilities transferred to the commissioner under chapter 10;<sup>6</sup>
- (i) to act for the benefit of the sugar industry.’.

### **17 Insertion of new s 223A**

After section 223—

*insert—*

### **‘223A Powers of commissioner**

‘The commissioner has power to do any of the following—

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

### **18 Amendment of s 228 (Commissioner’s budget)**

Section 228(6)—

*omit, insert—*

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5 *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional or validating effect etc.)

6 See section 364 (Continuity of proceedings and matters)

‘(6) If, under chapter 10,<sup>7</sup> assets or liabilities are transferred to the commissioner, the commissioner may ask the Minister to amend the budget.’.

## **19 Amendment of s 253 (Improper use of information prohibited)**

Section 253—

*insert—*

‘(2) An offence against this section is a misdemeanour.’.

## **20 Insertion of new s 255A**

After section 255—

*insert—*

### **‘255A Allegations of false or misleading matters**

‘(1) This section applies to a proceeding for an offence against this Act described as involving—

- (a) false or misleading information; or
- (b) a false or misleading document or statement.

‘(2) It is enough for the complaint starting the proceeding to state the document, information or statement was ‘false or misleading’ to the defendant’s knowledge, without specifying which.

‘(3) In the proceeding, evidence that the document, information or statement was given or made recklessly is evidence that it was given or made so as to be false or misleading.’.

## **21 Omission of chs 8 and 9**

Chapters 8 and 9—

*omit.*

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<sup>7</sup> See section 364 (Continuity of proceedings and matters)

## **22 Insertion of new ch 10, pt 3**

Chapter 10, after part 2—

*insert—*

### **‘PART 3—TRANSITIONAL PROVISIONS FOR SUGAR INDUSTRY AND OTHER LEGISLATION AMENDMENT ACT 2003**

#### *‘Division 1—Preliminary*

##### **‘344 Definitions for pt 3**

‘In this part—

**“amending Act”** means the *Sugar Industry and Other Legislation Amendment Act 2003*.

**“unamended Act”** means this Act as in force immediately before the date of assent for the amending Act.

#### *‘Division 2—Dissolution of BSES*

##### *‘Subdivision 1—Preliminary*

##### **‘345 Definitions for div 2**

‘In this division—

**“assets”**, of BSES, means all assets of BSES immediately before the transfer day.

**“authorised person”**, for the replacement corporation, means its secretary or another individual with the written authority of its board of directors.

**“BSES”** means the Bureau of Sugar Experiment Stations established under the unamended Act, section 143.

**“cane protection and productivity board”** means a cane protection and productivity board established under the unamended Act,



section 177,<sup>8</sup> and in existence under this Act immediately before the commencement.

**“commencement”** means the day the amending Act, section 22, commences.

**“company limited by guarantee”** means a company limited by guarantee under the Corporations Act, section 9.<sup>9</sup>

**“constitution”**, of the replacement corporation, means its constitution, or proposed constitution, under the Corporations Act.

**“liabilities”**, of BSES, means all liabilities of BSES immediately before the transfer day.

**“proposed transfer day”** see section 348(a).

**“replacement corporation”** see section 348(b).

**“transfer day”** means the day approved by the Minister under section 351<sup>10</sup> as the transfer day for BSES.

**“under the control of the Queensland sugar industry”** see section 346.

### **‘346 Meaning of “under the control of the Queensland sugar industry”**

**(1)** The replacement corporation is taken to be **“under the control of the Queensland sugar industry”** if the corporation has the required number of grower representatives and mill owners with the required voting power in the corporation.

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8 Section 177 (Establishment of productivity area and cane protection and productivity board)

9 Corporations Act, section 9—

**“company limited by guarantee”** means a company formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute to the property of the company if it is wound up.

Corporations Act, section 124(1) (Legal capacity and powers of a company) provides that: ‘A company limited by guarantee does not have the power to issue shares.’

10 Section 351 (Minister’s decision)

‘(2) In this section—

“**required number**”, of grower representatives and mill owners, means a number of grower representatives and mill owners that is at least 75% of all the members of the replacement corporation.

“**required voting power**”, in the replacement corporation, means the ability to freely exercise at least 75% of the total voting power associated with the membership of the corporation.

### *‘Subdivision 2—Steps to transfer and dissolution*

#### **‘347 Decision to transfer to replacement corporation**

‘BSES must decide to dissolve itself and transfer its assets and liabilities to a corporation—

- (a) that is not a statutory body; and
- (b) that is under the control of the Queensland sugar industry.

#### **‘348 Things that must be decided for the transfer**

‘Under section 347, BSES must decide the following—

- (a) the day on which BSES proposes to transfer its assets and liabilities (the “**proposed transfer day**”);
- (b) the corporation to which it will transfer its assets and liabilities (the “**replacement corporation**”).

#### **‘349 Conditions for transfer**

‘BSES may decide a corporation will be its replacement corporation only if—

- (a) the corporation has, by notice to BSES signed by an authorised person for the corporation, agreed to be the replacement corporation; and
- (b) the corporation is under the control of the Queensland sugar industry; and
- (c) the corporation is a company limited by guarantee; and

- (d) BSES is satisfied that, on the transfer of the assets and liabilities, having regard to the requirements and purposes of the transfer, the following will be appropriate—
- (i) the corporation's constitution;
  - (ii) the obligations, restrictions and rights that will attach to members of the corporation;
  - (iii) the corporation's officers.

### **'350 Notice of decision about replacement corporation**

'(1) BSES must give the Minister notice of its decision under section 347.

'(2) The notice must state the following—

- (a) the day the decision was made;
- (b) the proposed transfer day;
- (c) the replacement corporation's name;
- (d) the replacement corporation is a company limited by guarantee;
- (e) the corporation is under the control of the Queensland sugar industry;
- (f) BSES is satisfied that, on the transfer of BSES's assets and liabilities to the replacement corporation, having regard to the requirements and purposes of the transfer, the following will be appropriate—
  - (i) the corporation's constitution;
  - (ii) the obligations, restrictions and rights that will attach to members of the corporation;
  - (iii) the corporation's officers.

'(3) The notice must be accompanied by a copy of the notice mentioned in section 349(a).<sup>11</sup>

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<sup>11</sup> Section 349 (Conditions for transfer)

### **‘351 Minister’s decision**

‘(1) The Minister must consider the notice and may require information from BSES.

‘(2) If the Minister does not consider that all requirements for this division have been complied with for the transfer, the Minister may give BSES written directions.

‘(3) BSES must comply with the directions.

‘(4) The Minister must, by notice given to BSES, approve the proposed transfer day, or another day after the proposed transfer, as the transfer day for BSES.

‘(5) The day approved by the Minister as the transfer day for BSES must be declared by gazette notice.

### **‘352 Transfer and dissolution**

‘On the transfer day—

- (a) BSES’s assets and liabilities are transferred to, and become the assets and liabilities of, the replacement corporation; and
- (b) BSES is dissolved.

### **‘353 Replacement corporation does not represent the State**

‘The replacement corporation—

- (a) does not represent the State; and
- (b) can not make the State liable for the debts and obligations of the corporation or any other person.

### ***‘Subdivision 3—Provisions facilitating transfer***

### **‘354 Registration of transferred assets**

‘(1) A certificate signed by an authorised person for the replacement corporation is evidence of an asset having become an asset of the corporation on the transfer day if the certificate—

- (a) identifies the asset; and

- (b) states the asset was, immediately before the transfer day, an asset of BSES; and
- (c) states that, under this division, the asset became an asset of the replacement corporation on the transfer day.

‘(2) If the certificate is given to an entity with registration functions under a law of the State for assets of that kind under a law of the State, the entity must do the following as if the certificate were an appropriate instrument of transfer of the asset—

- (a) register the matter in the same way as transactions for assets of that kind;
- (b) deal with, and give effect to, the certificate.

*Example of entity with registration functions—*

- the registrar of titles.

‘(3) A transfer of the asset to the replacement corporation may be registered or given effect to under the law of another State or the Commonwealth if—

- (a) the certificate is given to an entity with registration functions for assets of that kind under the other State’s or the Commonwealth’s law; and
- (b) the entity is permitted by law to do so.

### **‘355 References to BSES**

‘A reference to BSES in an Act or document existing before its dissolution has effect, from its dissolution, as if it were a reference to the replacement corporation, if the context permits.

### **‘356 Continuity of proceedings and matters**

‘(1) A proceeding that, if BSES were not dissolved, might have been started or continued by or against BSES may, from its dissolution, be started or continued by or against the replacement corporation.

‘(2) All matters started by BSES before its dissolution may be completed by the replacement corporation after BSES’s dissolution.

### **‘357 Employees**

‘(1) A person employed by BSES immediately before the transfer day becomes, on the transfer day, an employee of the replacement corporation.

‘(2) Subsection (1) does not—

- (a) constitute a redundancy or retrenchment of the person’s employment by BSES; or
- (b) entitle the person to a benefit or payment merely because the person is no longer employed by BSES; or
- (c) interrupt the person’s continuity of service.

‘(3) For the Industrial Relations Act, the person’s period of employment with BSES is taken to be an equivalent period of employment with the replacement corporation.

‘(4) Subject to the Industrial Relations Act, the person has the same employment rights against the replacement corporation that the person had against BSES immediately before the transfer day.

‘(5) If an industrial instrument under the Industrial Relations Act bound the person and BSES immediately before the transfer day, it binds the person and the replacement corporation.

### **‘358 Directors cease holding office**

‘(1) Each person who, immediately before the transfer day, was a director of BSES goes out of office on the transfer day.

‘(2) No compensation is payable to a person because of subsection (1).

### **‘359 Officer to remain member of cane protection and productivity board**

‘(1) This section applies to a member of a cane protection and productivity board who—

- (a) is nominated by BSES to be a member of the board; and
- (b) immediately before the transfer day, is an officer of BSES.

‘(2) The member continues, from the transfer day, to be a member of the board for the balance of the member’s term.’

## 23 Insertion of new ch 10, pt 3, div 3

Chapter 10, part 3—

*insert—*

***‘Division 3—Automatic dissolution of cane protection and productivity boards if no replacement entity***

### **‘360 Definitions for div 3**

‘In this division—

“**assets**”, of a board, means all assets of the board immediately before the board’s transfer day.

“**authorised person**”, for the replacement corporation, means its secretary or someone else with the written authority of its board of directors.

“**board**” means a cane protection and productivity board established under the unamended Act, section 177,<sup>12</sup> and in existence under this Act immediately before the commencement.

“**BSES**” means the Bureau of Sugar Experiment Stations established under the unamended Act, section 143.

“**commencement**” means the day the amending Act, section 23, commences.

“**liabilities**”, of a board, means all liabilities of the board immediately before the board’s transfer day.

“**replacement corporation**” means the replacement corporation to which BSES’s assets and liabilities were transferred.<sup>13</sup>

“**replacement entity**”, for a cane protection and productivity board established under the unamended Act but not in existence immediately before the commencement, means its replacement entity under section 201(b).<sup>14</sup>

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12 Section 177 (Establishment of productivity area and cane protection and productivity board)

13 See section 352 (Transfer and dissolution)

14 Section 201 (Things that must be decided for the transfer)

**“transfer day”**, for a board, means—

- (a) 30 June 2004 if—
  - (i) the board does not, before 30 June 2004, give the Minister a notice under section 203;<sup>15</sup> or
  - (iii) the Minister has, before 30 June 2004, refused to approve each proposed transfer for the board; or
- (b) if the Minister refuses, on or after 30 June 2004, to approve the transfer for the board—the day the Minister refuses to approve the transfer.

### **‘361 Automatic dissolution**

**‘(1)** This section applies if—

- (a) a board does not, before 30 June 2004, give the Minister a notice under section 203;<sup>16</sup> or
- (b) the Minister refuses, under section 204(3),<sup>17</sup> to approve each proposed transfer for the board made before 30 June 2004.

**‘(2)** On the transfer day for the board—

- (a) subject to subsection (3), the board’s assets and liabilities are transferred to the replacement corporation; and
- (b) the board is dissolved; and
- (c) the board’s productivity area is abolished.

**‘(3)** The liabilities mentioned in subsection (2)(a) do not include a liability that may lead to a proceeding that, if the board were not dissolved, might be started or continued by or against the board.<sup>18</sup>

### **‘362 Registration of transferred assets**

**‘(1)** A certificate signed by an authorised person for the replacement corporation is evidence of an asset of a board having become an asset of

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15 Section 203 (Notice of decision about replacement entity)

16 Section 203 (Notice of decision about replacement entity)

17 Section 204 (Minister’s decision)

18 See section 364 (Continuity of proceedings and matters).



the replacement corporation on the transfer day for the board if the certificate—

- (a) identifies the asset; and
- (b) states the asset was, immediately before the transfer day, an asset of the board; and
- (c) states that, under this division, the asset became an asset of the replacement corporation on the transfer day.

‘(2) If the certificate is given to an entity with registration functions under a law of the State for assets of that kind under a law of the State, the entity must do the following as if the certificate were an appropriate instrument of transfer of the asset—

- (a) register the matter in the same way as transactions for assets of that kind;
- (b) deal with, and give effect to, the certificate.

*Example of an entity with registration functions—*

- the registrar of titles.

‘(3) A transfer of the asset to the replacement corporation may be registered or given effect to under the law of another State or the Commonwealth if—

- (a) the certificate is given to an entity with registration functions for assets of that kind under the other State’s or the Commonwealth’s law; and
- (b) the entity is permitted by law to do so.

### ‘363 References to board

‘A reference to a board in an Act or document existing before its dissolution has effect, from its dissolution, as if it were a reference to the replacement corporation, if the context permits.

### ‘364 Continuity of proceedings and matters

‘(1) A proceeding that, if a board were not dissolved, might have been started or continued by or against the board may, from its dissolution, be started or continued by or against the commissioner.

‘(2) All matters started by the board before its dissolution may be completed by the commissioner after the board’s dissolution.

### **‘365 Employees**

‘(1) A person employed by a board immediately before the transfer day becomes, on the transfer day, an employee of the replacement corporation.

‘(2) Subsection (1) does not—

- (a) constitute a redundancy or retrenchment of the person’s employment by the board; or
- (b) entitle the person to a benefit or payment merely because the person is no longer employed by the board; or
- (c) interrupt the person’s continuity of service.

‘(3) For the Industrial Relations Act, the person’s period of employment with the board is taken to be an equivalent period of employment with the replacement corporation.

‘(4) Subject to the Industrial Relations Act, the person has the same employment rights against the replacement corporation that the person had against the board immediately before the transfer day.

‘(5) If an industrial instrument under the Industrial Relations Act bound the person and the board immediately before the transfer day, it binds the person and the replacement corporation.

### **‘366 Members cease holding office**

‘(1) Each person who, immediately before the transfer day for a board, was a member of the board goes out of office on the transfer day.

‘(2) No compensation is payable to a person because of subsection (1).’.

## **24 Insertion of new ch 10, pt 3, div 4**

Chapter 10, part 3—

*insert—*

### ***‘Division 4—Appeals***

#### **‘367 Definitions for div 4**

‘In this division—

“**BSES**” means the Bureau of Sugar Experiment Stations established under the unamended Act, section 143.

“**commencement**” means the day the amending Act, section 24, commences.

#### **‘368 Appeal to Magistrates Court against BSES’s decision**

‘(1) This section applies to a person mentioned in the unamended Act, section 234(1)(f),<sup>19</sup> who may appeal to a Magistrates Court against the decision, mentioned in relation to the person, of BSES.

‘(2) If—

- (a) the person has appealed to a Magistrates Court under the unamended Act, section 234, against the decision; and
- (b) the appeal has not been decided before the commencement;

the appeal lapses.

‘(3) No order for costs may be made for the appeal.

‘(4) If—

- (a) the person could have appealed to a Magistrates Court under the unamended Act, section 234, against the decision; and
- (b) the person has not appealed before the commencement;

the unamended Act, section 234, does not apply to the decision.

#### **‘369 Appeal to District Court against Magistrates Court’s decision**

‘(1) This section applies to a person mentioned in the unamended Act, section 234(1)(f), who—

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<sup>19</sup> Section 234 (Appeal to Magistrates Court)

- (a) has appealed to a Magistrates Court against the decision, mentioned in relation to the person, of BSES; and
- (b) is dissatisfied with the decision of the Magistrates Court (the “**court decision**”).

‘(2) If—

- (a) the person has appealed to the District Court under the unamended Act, section 234(8), against the court decision; and
- (b) the appeal has not been decided before the commencement;

the appeal lapses.

‘(3) No order for costs may be made for the appeal.

‘(4) If—

- (a) the person could have appealed to the District Court under the unamended Act, section 234(8), against the court decision; and
- (b) the person has not appealed before the commencement;

the unamended Act, section 234(8), does not apply to the court decision.’.

## 25 Insertion of new ch 10, pt 3, div 5

Chapter 10, part 3—

*insert—*

### *‘Division 5—Injunctions*

#### ‘370 Definitions for div 5

‘In this division—

“**commencement**” means the day the amending Act, section 25, commences.

“**court**” means the Supreme Court.

“**injunction**” includes an interim injunction.

“**repealed provision**” means a provision of the unamended Act, chapter 2, part 3.<sup>20</sup>

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20 Chapter 2 (Production, supply and milling), part 3 (Cane variety control)

**“undesirable conduct”**, for a person, means the 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 a repealed provision;
- (b) attempting to contravene a repealed provision;
- (c) aiding, abetting, counselling or procuring a person to contravene a repealed provision;
- (d) inducing or attempting to induce (whether by threats, promises or otherwise) a person to contravene a repealed provision;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a repealed provision;
- (f) conspiring with others to contravene a repealed provision.

### **‘371 Undecided applications taken to have lapsed**

‘(1) This section applies if an interested entity applied before the commencement under the unamended Act, section 247,<sup>21</sup> to the court for an injunction—

- (a) either—
  - (i) restraining a person from engaging in undesirable conduct; or
  - (ii) requiring a person to do anything the person is required to do under a repealed provision; and
- (b) on the commencement, the application had not been decided.

‘(2) The application is taken to have lapsed.

‘(3) No order for costs may be made for the application.

### **‘372 Injunctions of no effect after commencement**

‘(1) This section applies if the court has, on the application of an interested entity, granted an injunction, under the unamended Act, section 247—

- (a) restraining a person from engaging in undesirable conduct and, if the court considered it desirable to do so, requiring the person to do anything; or
- (b) requiring a person to do anything the person is required to do under a repealed provision.

‘(2) The injunction is of no effect after the commencement.’.

## **26 Amendment of schedule (Dictionary)**

(1) Schedule, definitions “appointed director”, “BSES” and “non-approved cane”—

*omit.*

(2) Schedule, definition “cane protection and productivity board”—

*omit.*

(3) Schedule—

*insert—*

“**assets**”, for chapter 4, part 8, see section 198.

“**board**”, for chapter 4, part 8, see section 198.

“**employment rights**” includes existing and accruing rights to—

- (a) remuneration; and
- (b) recreation, long service, sick or other leave; and
- (c) superannuation or other benefits and entitlements.

“**Industrial Relations Act**” means the *Industrial Relations Act 1999*.

“**liabilities**”, for chapter 4, part 8, see section 198.

“**proposed transfer day**”, for chapter 4, part 8, see section 201(a).

“**replacement entity**”, for chapter 4, part 8, see section 201(b).

“**transfer day**”, for chapter 4, part 8, see section 198.’.

### **PART 3—AMENDMENT OF LIENS ON CROPS OF SUGAR CANE ACT 1931**

#### **27 Act amended in pt 3**

This part amends the *Liens on Crops of Sugar Cane Act 1931*.

#### **28 Omission of s 16 (Application of proceeds of crop to costs of sugarcane protection etc.)**

Section 16—

*omit.*

### **PART 4—AMENDMENT OF PLANT PROTECTION ACT 1989**

#### **29 Act amended in pt 4**

This part amends the *Plant Protection Act 1989*.

#### **30 Omission of s 6AA (Act applies to sugar cane)**

Section 6AA—

*omit.*

#### **31 Insertion of new s 11A**

After section 11—

*insert—*

#### **‘11A Approved plant variety**

‘(1) The chief executive may declare—

- (a) a variety of a plant (the “**approved plant variety**”) for planting or cultivating in the pest quarantine area; and
- (b) the way, and the conditions under which, the approved plant variety may be planted or cultivated in the pest quarantine area.

‘(2) A declaration mentioned in subsection (1) is an “**approved plant declaration**”.

‘(3) The chief executive may decide to make an approved plant declaration only if the chief executive is satisfied the planting or cultivating of the approved plant variety will not spread the pest to a crop plant within the pest quarantine area.

‘(4) The chief executive must, when making a decision under subsection (3), consider the following things—

- (a) the resistance or susceptibility of the approved plant variety to the pest;
- (b) whether the approved plant variety is a host of the pest;
- (c) all other relevant circumstances, including, for example—
  - (i) whether, and to what extent, the pest would be visible on the approved plant variety; and
  - (ii) whether the approved plant variety shows any symptoms of pest infestation; and

*Example—*

A particular variety of bananas shows dark green marks on the underside of the leaf and at the bottom of the flower bell on the plant if it is infested with *banana bunchy top virus*.

- (iii) the way the pest is spread; and
- (iv) the likelihood of its spread.

‘(5) An approved plant declaration is subordinate legislation.

‘(6) An inspector may give directions and take action as may be necessary or convenient to ensure compliance with, or permit exemption from, an approved plant declaration.

‘(7) Subsection (6) does not limit another provision of this Act.

‘(8) If—

- (a) the Minister has, by notice under section 11(2), declared the pest quarantine area; and



- (b) a regulation in relation to the same matter has not, under section 11(1), commenced within 3 months after the Minister makes the notice;

the approved plant declaration remains in force until the notice lapses.

‘(9) A person must not—

- (a) contravene an approved plant declaration; or
- (b) contravene a direction given by an inspector under subsection (6); or
- (c) obstruct an inspector in the exercise of powers under subsection (6).

Maximum penalty for subsection (9)—1 000 penalty units.’

## SCHEDULE

### MINOR AND CONSEQUENTIAL AMENDMENTS OF SUGAR INDUSTRY ACT 1999

section 3

**1 Sections 106(1)(b), ‘, the BSES’—**

*omit.*

**2 Sections 109(1)(d), 110(1)(d), 111(1)(d) and 234(1)(f)—**

*omit.*

**3 Sections 109(1)(f), 110(1)(f) and 111(1)(e)—**

*omit.*

**4 Section 120(2) and (3)—**

*omit, insert—*

‘(2) However, in relation to the performance of its statutory functions or the exercise of its statutory powers, QSL is a public authority for—

- (a) the *Ombudsman Act 2001*; and
- (b) the *Freedom of Information Act 1992*.’.

**5 Section 122(2), ‘QSL day’—**

*omit, insert—*

‘1 August 2000’.

**6 Section 122(3)—**

*omit.*

## SCHEDULE (continued)

- 7 Sections 199, 205, 207 to 210 and 213, ‘corporation’—**  
*omit, insert—*  
‘entity’.
- 8 Section 208(1)(c), before ‘that’—**  
*insert—*  
‘states’.
- 9 Section 208(3), after ‘another State’—**  
*insert—*  
‘or the Commonwealth’.
- 10 Section 208(3)(a), after ‘State’s’—**  
*insert—*  
‘or the Commonwealth’s’.
- 11 Ch 4, pt 8, div 4, heading, ‘corporation’—**  
*omit, insert—*  
‘entity’.
- 12 Section 213, heading, ‘corporation’—**  
*omit, insert—*  
‘entity’.
- 13 Chapter 10, part 1, division 8—**  
*omit.*

SCHEDULE (continued)

**14 Chapter 10, part 1, division 10—**  
*omit.*