

# Queensland



## Subordinate Legislation 1999 No. 339

### *Sugar Industry Act 1999*

# SUGAR INDUSTRY REGULATION 1999

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**FEES**

**Short title**

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

**Commencement**

2. This regulation commences on 1 January 2000.

**Call for applications for grant of unallocated hectares—Act, s 21**

**3.(1)** For section 21(4) of the Act, a cane production board calls for applications from growers for the grant of unallocated hectares by publishing a notice—

- (a) in a newspaper likely to be read by the growers; or
- (b) in some other public medium the board considers sufficient to bring the notice to the growers' attention.

**(2)** The notice must—

- (a) be published in a way that is likely to ensure growers understand the purpose and content of the notice; and
- (b) state the date by which applications must be made; and
- (c) give the name of a representative of the board and information on how to contact the representative to enquire about making an application.

**(3)** For subsection (2)(b), the date must be at least 30 days after the notice is published.

**(4)** The notice may also state—

- (a) applications may not be granted as the purpose of the notice is merely to assess the level of demand for the grant of unallocated hectares; and
- (b) the board will assess the level of demand and, if there is a demand, refer the assessment to the negotiating team; and
- (c) in assessing the level of demand, the board will consider the likelihood of the grower's application being granted if unallocated hectares are available.

**Calculation of declared measurable increase—Act, s 23**

4. For section 23(5)(b)<sup>1</sup> of the Act, the declared measurable increase is calculated by the arbitrator based on the material presented at arbitration.

**Process for moving supply from current mill—horizontal expansion process**

5. Schedule 1 states the regulation process for section 23(7) of the Act.

**Calculation of declared sustainable increase—Act, s 26**

6. For section 26(4)(b) of the Act, the declared sustainable increase is calculated using the following formula—

$$dsa = \frac{a}{b} \times cpa$$

where—

“a” means the sustainable increase.

“b” means the average cane productivity for the crushing seasons decided by the arbitrator.

“cpa” means the total number of hectares included in all the cane production areas that relate to the mill.

“dsa” means the declared sustainable increase.

**Process of moving supply from current mill—productivity increase process**

7. Schedule 2 states the regulation process for section 26(6) of the Act.

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<sup>1</sup> Section 23 (If the negotiating team does not agree on horizontal expansion) of the Act

**Giving effect to cane production board's decisions—Act, s 32**

8. For section 32(1) of the Act, the cane production board must record the effect of the decision in its register within 14 days after the date of the decision.

**Schemes for payment—Act, s 98**

9. For section 98(10)(b) of the Act, payments to a mill owner for penalty sugar are calculated and made at the rate of \$1 for each tonne of raw sugar equivalent of sugar that the mill owner delivers to the corporation.

**Production of brands of raw sugar—Act, s 99**

10. For section 99(9) of the Act, definition “industry standard brand”, the industry standard brand of raw sugar is Brand 1.

**Dispute resolution process—Act, ss 23, 26, 37, 53, 88, 93 and 189**

11. Schedule 3 states the dispute resolution process for sections 23(1), 26(2), 37(1), 53(3), 88(3), 93(3), and 189(6) of the Act.

**Dispute resolution process—Act, s 99**

12. Schedule 4 states the dispute resolution process for section 99(6) of the Act.

**Fees**

13. The fees payable under the Act are in schedule 5.

## SCHEDULE 1

### REGULATION PROCESS (HORIZONTAL EXPANSION)

section 5

#### **Making an application**

1. An eligible grower may apply to the board for—
  - (a) a notice (a “**move consent notice**”) that the board will facilitate cancellation of the grower’s cane production area, or a stated number of hectares included in the area, in support of the grower’s application to be granted unallocated hectares relating to a receiving mill; or
  - (b) a grant of a stated number of unallocated hectares, arising from cancellations, and applied for by the grower under section 21(5)<sup>2</sup> of the Act.

#### **Dealing with applications**

**2.(1)** As far as practicable, the board must deal with applications made under section 1 in the order in which they are received.

**(2)** In assessing an application for a move consent notice, the board must consider whether unallocated hectares arising from the cancellation will be able to be granted to another eligible grower.

**(3)** An application must be refused if the regulation process has ended.

**(4)** If the board receives an application for a move consent notice relating to a stated number of hectares and the board has not received applications for grant of at least an equivalent number of unallocated hectares, the board—

- (a) must not grant the application in relation to the stated number of

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<sup>2</sup> Section 21 (Start of horizontal expansion process) of the Act



## SCHEDULE 1 (continued)

hectares; and

- (b) must ask the applicant if the applicant wishes—
  - (i) to have the application granted in relation to the number of hectares for which the board has received applications for grant; or
  - (ii) to withdraw the application.
- (5) As the board deals with applications, the board must—
  - (a) issue a move consent notice to each successful applicant; and
  - (b) give each applicant for a grant of unallocated hectares notice that the application will be granted as unallocated hectares become available from cancellations.

**Move consent notices**

**3.(1)** The move consent notice must state that, if a receiving cane production board grants unallocated hectares to the applicant, the current cane production board will cancel the applicant's current cane production area or the number of hectares included in the area and mentioned in the applicant's application for the move consent notice.

**(2)** A move consent notice ceases to have effect 1 year after the date of the notice.

**Withdrawing an application**

**4.(1)** An applicant given a notice under section 2(5)(b) may, by notice to the board, withdraw the application at any time before the cancellation, from which the unallocated hectares will arise, is made.

**(2)** After the cancellation is made, the grant of unallocated hectares is binding on the applicant.

**(3)** The board must not consider, for any further grant of unallocated hectares under the current regulation process, an applicant who has withdrawn an application.

## SCHEDULE 1 (continued)

**Granting unallocated hectares**

5. As cancellations based on move consent notices are made, the board must grant unallocated hectares, arising out of the cancellations, to applicants previously given notice under section 2(5)(b) who have not withdrawn their applications.

**End of regulation process**

6. The regulation process ends when the first of the following happens—
- (a) there are no more applications under section 1 to be processed;
  - (b) the total number of unallocated hectares granted by the following boards equals the amount of the declared measurable increase—
    - (i) the current cane production board in granting unallocated hectares arising from cancellations;
    - (ii) receiving cane production boards in granting unallocated hectares based on move consent notices.

**Time for making an application**

7. An application under section 1 must be made within 5 years after the arbitrator's declaration to the board, under section 23(5) of the Act, about the measurable increase or before the end of the process under section 6(b), whichever happens first.

## SCHEDULE 2

### REGULATION PROCESS (PRODUCTIVITY INCREASE)

section 7

#### **Making an application**

1. A grower may apply to the board for a notice (a “**move consent notice**”) that the board will facilitate cancellation of the grower’s cane production area, or a stated number of hectares included in the area, in support of the grower’s application to be granted unallocated hectares relating to a receiving mill.

#### **Dealing with applications**

2.(1) As far as practicable, the board must deal with applications made under section 1 in the order in which they are received.

(2) An application must be refused if the regulation process has ended.

#### **Move consent notices**

3.(1) The move consent notice must state that, if a receiving cane production board grants unallocated hectares to the applicant, the current cane production board will cancel the applicant’s current cane production area or the number of hectares included in the area and mentioned in the applicant’s application for the move consent notice.

(2) A move consent notice ceases to have effect 1 year after the date of the notice.

#### **End of regulation process**

4.(1) The regulation process ends when the first of the following happens—

## SCHEDULE 2 (continued)

- (a) there are no more applications under section 1 to be processed;
- (b) receiving cane production boards, in granting unallocated hectares based on move consent notices issued under the process, make grants of unallocated hectares equal to the amount of the declared sustainable increase.

(2) Despite cancellations based on move consent notices, the number of hectares that are cancelled do not become unallocated hectares available to be granted.

**Time for making an application**

5. An application under section 1 must be made within 5 years after the arbitrator's declaration to the board, under section 26(4) of the Act, about the sustainable increase or before the end of the process under section 4(1)(b), whichever happens first.

## SCHEDULE 3

### DISPUTE RESOLUTION PROCESS FOR SECTIONS 23, 26, 37, 53, 88, 93 AND 189 OF THE ACT

section 11

#### PART 1—PRELIMINARY

##### Definitions

1. In this schedule—

**“arbitrator”** means an arbitrator appointed by a negotiating team.

**“final offer”** see section 14.

**“mediator”** means a mediator appointed by a negotiating team.

**“mill owner member”**, for a negotiating team, means a member of the negotiating team appointed by a mill owner or jointly by mill owners.

**“mill suppliers’ committee member”**, for a negotiating team, means a member of the negotiating team appointed by a mill suppliers’ committee or jointly by mill suppliers’ committees.

**“party”**, to a negotiation, mediation or arbitration, means either the mill owner members or the mill suppliers’ committee members.

**“timetable”**, for a negotiating team, means the timetable applying, under section 32, to a negotiating team.

## SCHEDULE 3 (continued)

**PART 2—NEGOTIATION****Application of pt 2**

2. This part does not apply to a dispute mentioned in section 23(1) or 26(2)<sup>3</sup> of the Act.

**Negotiation**

3.(1) A negotiating team must start negotiations in each year before the date stated in the timetable.

(2) The negotiating team must negotiate in good faith.

(3) Negotiations must take place at the time and place and in the way agreed by the negotiating team.

**Negotiated agreement**

4.(1) The negotiating team must try to reach a negotiated agreement without the involvement of a third party.

(2) However, the parties may nominate representatives to negotiate a specific issue.

**Mediation and arbitration**

5.(1) If 1 of the parties considers unanimous agreement is unlikely before the date stated in the timetable for negotiation to end, the party may ask to proceed to mediation.

(2) Negotiations may continue throughout mediation or arbitration.

(3) The parties may bypass mediation and proceed directly to arbitration only if both parties agree.

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<sup>3</sup> Section 23 (If the negotiating team does not agree on horizontal expansion) or 26 (Establishment of productivity increase process) of the Act

## SCHEDULE 3 (continued)

**PART 3—MEDIATION***Division 1—Application of part***Application of pt 3**

6. This part does not apply to a dispute mentioned in section 23(1) or 26(2)<sup>4</sup> of the Act.

*Division 2—Conducting mediation***When to proceed to mediation**

7. A negotiating team must proceed to mediation if—

- (a) the team has not unanimously agreed on all issues to be resolved before the date stated in the timetable for negotiation to end; or
- (b) under section 5(1), 1 of the parties has asked to proceed.

**Appointment of mediator**

8.(1) A negotiating team must appoint a person as mediator and decide whether the person is also to be the arbitrator.

(2) Before accepting an appointment as mediator, the person must tell the negotiating team whether the person also agrees to be arbitrator if there are unresolved issues at the end of the mediation.

**List of issues to be resolved**

9.(1) Each party must give to the mediator and each other a written list of the issues the party believes need to be resolved.

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<sup>4</sup> Section 23 (If the negotiating team does not agree on horizontal expansion) or 26 (Establishment of productivity increase process) of the Act

## SCHEDULE 3 (continued)

(2) The mediator must meet with the parties, together or separately—

- (a) to discuss issues to be resolved; and
- (b) to prepare a final list of issues; and
- (c) to fix a schedule for steps in the mediation.

(3) The steps must include preparing a summary of the parties' submissions.

(4) Any issue raised by either party may be included in the list of issues.

(5) The list must not include an issue about which the parties have already agreed.

(6) The final list may be amended only if the negotiating team unanimously agrees.

**Mediation—when, where and how**

**10.(1)** The negotiating team and the mediator must decide a time and place for the mediation to be held.

(2) If a time and place is not decided, the mediator must fix the time and place.

(3) A mediation must be held in the way decided by the mediator after consulting with the negotiating team.

**When mediation ends**

**11.** Mediation ends on the earlier of the following—

- (a) if the negotiating team has not reached agreement on all issues that need to be resolved—the date stated in the timetable;
- (b) if the negotiating team reaches a negotiated agreement about all the issues—the date of the agreement.

**List of unresolved issues**

**12.(1)** If mediation about a dispute mentioned in section 88(2) or 93(2)



## SCHEDULE 3 (continued)

of the Act ends, each party must give the mediator and the other party a list of the party's unresolved issues.

(2) The issues on the list are the issues to be resolved at arbitration.

*Division 3—Final offers***Application of div 3**

**13.** This division applies only to a dispute mentioned in section 37(1) or 53(3) of the Act.

**Final offers at end of mediation**

**14.(1)** If mediation in relation to a dispute mentioned in section 37(1) or 53(3) of the Act ends, each party must give a written offer (a “**final offer**”) for resolving all issues to—

- (a) the mediator; and
- (b) the other party.

(2) The final offer must state the basis on which the party is prepared to settle all issues that have not been agreed.

(3) The mediator may require a party to give a statement explaining the basis of the party's final offer.

**Considering final offers before meeting**

**15.** If the mediator does not decide to allow a shorter time, the parties must be given at least 2 days to consider the final offers.

**Meeting about final offers**

**16.(1)** After the time allowed to consider final offers has ended, the parties and the mediator must meet—

- (a) to identify issues in the list of issues to be resolved that have not

## SCHEDULE 3 (continued)

been agreed, for discussion between the parties and the arbitrator;  
and

- (b) to identify issues to be resolved; and
- (c) to clarify—
  - (i) the provisions of the final offers; and
  - (ii) that the final offers cover all issues to be resolved; and
- (d) to oversee amendments to the offers to show the parties' intentions.

(2) A party may, if the mediator agrees, amend the party's final offer at the meeting.

(3) After the meeting, a final offer may be amended only—

- (a) with the negotiating team's unanimous agreement; or
- (b) at a preliminary meeting under section 21.

**Accepting final offers**

**17.(1)** An acceptance of a final offer must be—

- (a) in writing; and
- (b) made by each person to whom the offer was made; and
- (c) given to the offeror.

(2) An acceptance may be given at any time before the arbitrator's decision is given.

## SCHEDULE 3 (continued)

**PART 4—ARBITRATION***Division 1—Conducting arbitration***When to proceed to arbitration**

**18.** For a dispute mentioned in section 37(1), 53(3), 88(2) or 93(2) of the Act, the parties must proceed to arbitration if they have not agreed on all issues that need to be resolved.

**Appointment of arbitrator**

**19.** The parties must appoint a person as arbitrator if the mediator has not also been appointed as arbitrator.

**When arbitration starts**

**20.(1)** For a dispute mentioned in section 23(1) or 26(2) of the Act, arbitration starts when the dispute arises.

**(2)** For a dispute mentioned in section 37(1) or 53(3) of the Act, arbitration starts when—

- (a) mediation has ended; and
- (b) the parties have been allowed time to consider the final offers under section 15; and
- (c) a meeting with the mediator has been held under section 16; and
- (d) a final offer that includes all the issues identified for arbitration at a meeting under section 16(1) has not been accepted.

**(3)** For a dispute mentioned in section 88(2) or 93(2) of the Act, arbitration starts when—

- (a) mediation has ended; and
- (b) the arbitrator has received the list of issues for arbitration from the mediator.

## SCHEDULE 3 (continued)

**Preliminary meeting**

**21.(1)** The arbitrator must hold a preliminary meeting with the negotiating team before arbitration starts.

**(2)** The purpose of the meeting is—

- (a) for a dispute mentioned in section 37(1), 53(3), 88(2) or 93(2) of the Act—
  - (i) if the parties' final offers or lists of issues for arbitration have not been given to the arbitrator—for the arbitrator to receive the offers or lists; and
  - (ii) to clarify the final offers or the issues on the list; and
  - (iii) if amendments to the offers or lists are needed to show the parties' intentions—to oversee the amendments; and
- (b) for the arbitrator to fix a timetable for procedural issues in the arbitration, including delivering submissions and replies to the arbitrator and the other party.

**Conducting arbitration**

**22.(1)** Arbitration must be as informal as is consistent with an appropriate hearing of the issues.

**(2)** The arbitrator—

- (a) may exclude observers from the arbitration; and
- (b) may call for sworn oral or documentary evidence.

**(3)** For subsection (2)(b), the arbitrator may administer an oath.

**(4)** The arbitrator is not bound by the rules of evidence and may be informed in any way the arbitrator considers appropriate.

**(5)** The arbitrator must act consistently with natural justice.

**Submissions**

**23.(1)** The arbitrator may, at any stage of an arbitration, require the

## SCHEDULE 3 (continued)

parties to give written or oral submissions on an issue.

- (2) A party may reply to a submission made by the other party.

**Arbitrator may call for documents, material or information**

**24.(1)** If the arbitrator considers it necessary to help the arbitrator make a decision, the arbitrator may require the giving of a document, material or information in the custody, possession or power of—

- (a) a negotiating team member; or
- (b) a mill owner concerned in the arbitration; or
- (c) a grower who supplies cane to the mill for which the mill suppliers' committee concerned in the arbitration is established.

(2) If a person fails to give the document, material or information at the request of the arbitrator, the arbitrator may take the failure into consideration when making the decision.

**Commercial confidentiality**

**25.(1)** This section applies if a document, material or information is given to the arbitrator.

(2) The person who gave the document, material or information may make a claim to the arbitrator that it is commercially confidential (a “**confidentiality claim**”).

- (3) A confidentiality claim—

- (a) may be written or oral; and
- (b) may be made when, or at any time after, the document, material or information is given to the arbitrator.

(4) If a confidentiality claim is made, the arbitrator may give the document, material or information to another person only if—

- (a) the claimant consents; or
- (b) the other person undertakes in writing to the arbitrator and to the claimant—

## SCHEDULE 3 (continued)

- (i) not to disclose the document, material or information to another person; and
- (ii) not to copy the document, material or information; and
- (iii) to return the document, material or information to the arbitrator at the end of the arbitration or at an earlier time required by the claimant.

**Arbitrator may seek independent advice**

**26.(1)** The arbitrator may seek advice from an independent expert if the negotiating team agrees.

**(2)** If the advice involves extra cost or time for the arbitration, the arbitrator must first obtain the negotiating team's agreement to the cost or time.

**(3)** Before calling for the advice, the arbitrator must notify the negotiating team of—

- (a) the identity and qualifications of the proposed expert; and
- (b) the questions the arbitrator intends to put to the expert.

**(4)** The arbitrator must—

- (a) if the advice is written—give the negotiating team a copy of the advice; or
- (b) if the advice is oral—disclose the substance of the advice to the negotiating team.

**(5)** In this section—

**“advice”** includes information.

**No separate meetings without agreement**

**27.** The arbitrator may separately meet with a negotiating team member involved in the arbitration before the arbitration ends only if the negotiating team agrees.

## SCHEDULE 3 (continued)

**When arbitration ends****28.** Arbitration ends—

- (a) when the arbitrator makes a decision; or
- (b) if, before the arbitrator makes a decision—
  - (i) a party accepts an offer made by the other party; or
  - (ii) the parties reach a negotiated agreement about all of the issues to be resolved.

*Division 2—Arbitrator's decision***Decisions about disputes mentioned in the Act, ss 23, 26, 88 and 93**

**29.** For a dispute mentioned in section 23(1), 26(2), 88(2) or 93(2) of the Act, the arbitrator must within 14 days after submissions close—

- (a) make a decision based on the submissions received; and
- (b) give written reasons for the decision to the parties.

**Decisions about disputes mentioned in the Act, ss 37 and 53**

**30.(1)** If, for a dispute mentioned in section 37(1) or 53(3) of the Act, each party has made a final offer, the arbitrator must within 14 days after submissions close—

- (a) make a decision by choosing 1 of the offers; and
- (b) give written reasons for the decision to the parties.

**(2)** If only 1 final offer has been made, the arbitrator may accept the offer as the arbitrator's decision.

**Decision binding**

**31.** The arbitrator's decision or an agreement made by the negotiating team in an arbitration binds—

## SCHEDULE 3 (continued)

- (a) the members of the negotiating team; and
- (b) a mill owner concerned in the arbitration; and
- (c) a mill suppliers' committee concerned in the arbitration; and
- (d) a grower who supplies cane to the mill for which the mill suppliers' committee concerned in the arbitration is established.

**PART 5—MISCELLANEOUS****Timetable**

**32.(1)** The following timetable states the dates in each year by which the stages in the dispute resolution process must be reached—

- (a) 15 February—negotiation stage starts;
- (b) 31 March—mediation stage starts immediately after the end of the negotiation stage;
- (c) 30 April—mediation stage ends, final offers or lists of issues to be resolved given by each party to the other party and the mediator;
- (d) 1 May—arbitration stage starts;
- (e) 28 May—arbitration stage ends, arbitrator's decision, and reasons for the decision, given.

**(2)** The timetable applies to a negotiating team unless the team unanimously agrees to amend it.

**Amalgamating issues**

**33.** A mediator or arbitrator may, if the negotiating team agrees, amalgamate similar issues that have arisen in more than 1 mill area into 1 mediation or arbitration.



## SCHEDULE 3 (continued)

**Mediators and arbitrators not liable to parties**

**34.(1)** A mediator or arbitrator is not liable to the parties to the mediation or arbitration on any ground, other than fraud or dishonesty.

**(2)** A mediator or arbitrator must—

- (a) act fairly, in good faith and without bias; and
- (b) treat issues raised in the mediation or arbitration in confidence.

**Costs**

**35.(1)** The parties concerned in a mediation or arbitration must each pay half of—

- (a) the mediator's or arbitrator's fees and expenses; and
- (b) other costs jointly associated with the mediation or arbitration.

**(2)** A mill owner member of the negotiating team must be indemnified by the mill owners concerned in the negotiation, mediation or arbitration for costs the member incurs under the dispute resolution process.

**(3)** A mill suppliers' committee member of the negotiating team must be indemnified by the mill suppliers' committee concerned in the negotiation, mediation or arbitration for costs the member incurs under the dispute resolution process.

**Confidentiality**

**36.(1)** Discussions between a party and the mediator in negotiations or mediations are without prejudice.

**(2)** Evidence of anything done or said, or an admission made, at a mediation or arbitration is inadmissible in a civil proceeding.

**(3)** However, subsections (1) and (2) do not apply if all parties to the negotiation, mediation or arbitration agree.

## SCHEDULE 3 (continued)

**Consultation with members of negotiating team**

37. Proceedings must be conducted by mediators and arbitrators in consultation with the members of the negotiating team.

**Help to members of negotiating team**

38.(1) A member of the negotiating team may be helped in the negotiation, mediation and arbitration process by an adviser or spokesperson.

(2) However, a member may be represented by a lawyer<sup>5</sup> only if the other members agree.

(3) In this section—

“**adviser**” includes a person who holds a law degree.

“**spokesperson**” includes a person who holds a law degree.’.

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<sup>5</sup> Under the *Acts Interpretation Act 1954*, section 36—

‘ “**lawyer**” means a barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State.’.

## SCHEDULE 4

### DISPUTE RESOLUTION PROCESS FOR SECTION 99 OF THE ACT

section 12

#### PART 1—PRELIMINARY

##### Definitions

1. In this schedule—

“**arbitrator**” means an arbitrator appointed by the corporation and the mill owner.

“**final offer**” see section 12.

“**mediator**” means a mediator appointed by the corporation and the mill owner.

“**party**”, for a negotiation, mediation or arbitration, means either the corporation or the mill owner.

#### PART 2—NEGOTIATION

##### Negotiation

2.(1) The parties must negotiate in good faith.

(2) Negotiations must take place at the time and place and in the way agreed by the parties.

**SCHEDULE 4 (continued)****Negotiated agreement**

**3.(1)** The parties must discuss the costs incurred by the mill owner in complying with the corporation's direction to the mill owner to produce a particular brand of raw sugar in a particular period or amount.

**(2)** The parties must try to reach a negotiated agreement without the involvement of a third party.

**(3)** However, the parties may nominate representatives to negotiate a specific issue in the dispute.

**Mediation and arbitration**

**4.(1)** If 1 of the parties considers unanimous agreement is unlikely, the party may ask to proceed to mediation.

**(2)** Negotiations may continue throughout mediation or arbitration.

**(3)** The parties may bypass mediation and proceed directly to arbitration only if both parties agree.

**PART 3—MEDIATION****When to proceed to mediation**

**5.** The parties must proceed to mediation if—

(a) the parties have not agreed on all issues that need to be resolved;  
or

(b) under section 4(1), 1 of the parties has asked to proceed.

**Appointment of mediator**

**6.(1)** The parties must appoint a person as mediator and decide whether the person is also to be the arbitrator.

**(2)** Before accepting an appointment as mediator, the person must tell the

**SCHEDULE 4 (continued)**

parties whether the person also agrees to be arbitrator if there are unresolved issues at the end of the mediation.

(3) The mediator is appointed under a written agreement between the parties and the mediator.

**List of issues to be resolved**

7.(1) The parties must give to the mediator and each other a list of the issues they believe need to be resolved.

(2) The mediator must meet with the parties, together or separately—

- (a) to discuss the issues to be resolved; and
- (b) to prepare a final list of issues.

(3) The list must not include an issue about which the parties have already agreed.

(4) The final list may be amended only if the parties agree.

(5) The issues on the list are the issues to be resolved at arbitration.

**When mediation ends**

8. Mediation ends on the earlier of the following—

- (a) if the parties have not reached agreement on all issues that need to be resolved—5 business days after the start of mediation;
- (b) if the parties reach a negotiated agreement about all the issues—the date of the agreement.

## SCHEDULE 4 (continued)

**PART 4—ARBITRATION****When to proceed to arbitration**

9. The parties must proceed to arbitration if they have not agreed on all issues that need to be resolved.

**Appointment of arbitrator**

10.(1) The parties must appoint a person as arbitrator if the mediator has not also been appointed as arbitrator.

(2) The arbitrator is appointed under a written agreement between the parties and the arbitrator.

**When arbitration starts**

11. Arbitration starts when—

- (a) mediation has ended; and
- (b) the arbitrator has received the list of issues for arbitration from the mediator.

**Final offers at start of arbitration**

12.(1) At the start of arbitration, each party must give a written offer (a “**final offer**”) for resolving all issues to—

- (a) the arbitrator; and
- (b) the other party.

(2) The final offer must state the basis on which the party is prepared to settle all issues that have not been agreed.

(3) The arbitrator may require a party to give a statement explaining the basis of the party’s final offer.

## SCHEDULE 4 (continued)

**Conducting arbitration**

**13.(1)** Arbitration must be as informal as is consistent with an appropriate hearing of the issues.

**(2)** An arbitrator—

- (a) may exclude observers from the arbitration; and
- (b) may call for sworn oral or documentary evidence.

**(3)** For subsection (2)(b), the arbitrator may administer an oath.

**(4)** The arbitrator is not bound by the rules of evidence and may be informed in any way the arbitrator considers appropriate.

**(5)** The arbitrator must act consistently with natural justice.

**When arbitration ends**

**14.** Arbitration ends—

- (a) when the arbitrator makes a decision; or
- (b) if, before the arbitrator makes a decision—
  - (i) a party accepts an offer made by the other party; or
  - (ii) the parties reach a negotiated agreement about all of the issues to be resolved.

**Arbitrator's decision**

**15.(1)** The arbitrator must—

- (a) give the parties a written decision within 5 business days after the end of arbitration; and
- (b) give the parties written reasons for the decision within 10 business days after the end of arbitration.

**(2)** However, the parties may agree to allow the arbitrator a longer period of time than a period stated in subsection (1).

**(3)** The arbitrator's decision is binding on the parties.

## SCHEDULE 4 (continued)

**PART 5—MISCELLANEOUS****Fees and expenses of mediation and arbitration**

**16.** The parties must each pay—

- (a) half of the mediator's and the arbitrator's fees and expenses; and
- (b) their own costs of the mediation and arbitration.



**SCHEDULE 5**

**FEES**

section 13

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- 1. Inspection of access rights register and certificate of information recorded in register (if certificate issued at same time as inspection)—Act, s 68(9) . . . . . 10.00
- 2. Certificate of information recorded in access rights register (if certificate issued other than at same time as inspection of register)—Act, s 69(2) . . . . . 10.00

**ENDNOTES**

- 1. Made by the Governor in Council on 16 December 1999.
- 2. Notified in the gazette on 17 December 1999.
- 3. Laid before the Legislative Assembly on . . .
- 4. The administering agency is the Department of Primary Industries.