

SUGAR INDUSTRY BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The Act will be known as the *Sugar Industry Act 1999*.

Policy objectives of the Bill

The principle objective of the Bill is to facilitate an internationally competitive, export oriented sugar industry based on sustainable production that benefits both the persons involved in the sugar industry and the wider community.

Reasons for the policy objectives of the Bill

The sugar industry in Queensland has historically been regulated. Public benefit testing carried out during the 1995-96 review of the industry determined that it is in the interests of both those persons involved in the industry and the wider community for the industry to remain regulated, though at a reduced level than as exists under current sugar industry legislation.

The review of industry, carried out by the Sugar Industry Review Working Party ("SIRWP"), identified several areas within the industry for reform. The SIRWP's report, published in November 1996, reviewed major policy areas and contained 74 recommendations for reform. The report indicated that the Queensland Sugar Corporation ("the corporation") should be restructured to provide it with an increased focus on export and domestic marketing arrangements and reduced regulatory powers, with these powers being transferred to local industry bodies and to the sugar industry commissioner, whose office is created under the Bill.

The Bill's objectives were developed following extensive consideration of the SIRWP's report by implementation and legislation committees established by the Department of Primary Industries and consisting of industry and government representatives.

The extent of legislative change proposed by the committees was such that the drafting of a new Bill and repeal of existing sugar industry legislation was considered more reasonable than attempting to amend the existing legislation. This has been supported by all sectors of the sugar industry.

The way in which the policy objectives will be achieved by the Bill

The policy objectives will be achieved by the Bill through implementation of a number of key reforms to sugar industry practice and regulatory framework:

- The Bill retains the corporation's compulsory acquisition and single desk selling powers for the export and domestic markets. The corporation's regulatory functions have been confined to ultimate responsibility for raw sugar quality and brands. The office of sugar industry commissioner has been created to administer most of the remaining regulatory functions, and the sugar industry tribunal has been abolished with appeals to be heard in civil courts.
- An improved framework has been incorporated into the Bill to provide for increased responsibility of industry to manage its affairs at a local level. By way of example:
 - The negotiation process between mill owners and growers has been enhanced by allowing the negotiating team to develop a dispute resolution process. A dispute resolution process may be provided under a regulation in the event that the negotiating team does not agree on a process.
 - Provisions have been incorporated by which growers and mill owners negotiate regarding cane supply to determine income distribution, with a view to enhancing mill area net income. In negotiating a collective agreement, the negotiating team's objective is to enhance the profit of the mill owner and the growers supplying cane to the mill.

- Processes have been established through which growers are able to expand in their mill area or possibly move cane supply from one mill to another mill.
- Existing environmental and land use requirements in the process of approving new cane land have been changed, to help ensure the industry's long term sustainable development.
- A process has been established to address transport and local authority matters when new cane land is being considered.
- The research, development and extension roles of the Bureau of Sugar Experiment Stations ("BSES") and cane protection and productivity boards relative to each other have been changed.

Alternatives to the Bill

The two alternatives to the Bill are:

- To make the necessary legislative changes by way of amendment to the existing *Sugar Industry Act 1991* and *Sugar Milling Rationalisation Act 1991*; and
- To not make any legislative changes to the above Acts, leaving the sugar industry to continue its current operation under those Acts.

These alternatives are considered unacceptable for two reasons:

- The SIRWP's review and recommendations and the subsequent consideration and endorsement of those recommendations, have made it apparent that legislative change is necessary, to such an extent that a new Bill has been considered the most reasonable way to implement the recommendations.
- Unless a new Bill is introduced, the *Sugar Industry Act 1991* must be amended by 31 December 1999 to preserve for the 2000 season and beyond, current authorisations for the *Trade Practices Act 1974* which will expire on 30 June 2000.

Estimated administrative cost to government for implementation of the Bill

It is not anticipated that there will be any administrative cost to government for implementation of the Bill.

Consistency with fundamental legislative principles

The Bill complies in the main with the fundamental legislative principles contained in the *Legislative Standards Act 1992* with the exception of clause 85.

Each grower must have a supply agreement with a mill owner for each season. A grower may enter an individual agreement with the mill owner, or a collective agreement made for the mill by the negotiating team.

Clause 85 of the Bill requires that as part of a supply agreement, the negotiating team must make a cane quality program. The clause imposes contractual terms on growers that may adversely affect the rights and liberties of growers (individuals) and as such may contravene section 4(3)(a) of the *Legislative Standards Act 1992*. There is no provision for a regulation to detail the content of a cane quality program.

The provisions of clause 85 are considered necessary and reasonable for the following reasons:

- The entity (a negotiating team) responsible for making the cane quality program is equally representative of the mill owner and supplying growers. If there is any dispute within the negotiating team regarding the making of a cane quality program, there is provision for the negotiating team to undergo a dispute resolution process (under clause 184).
- Regulatory detail regarding a cane quality program may impede the process in that different conditions exist in different mill areas, and it may not be reasonable for all negotiating teams to comply with a 'standard' regulation.
- In the *Sugar Industry Act 1991*, quality issues may be determined by guidelines prepared by the corporation, by Ministerial standard and by local awards. Further, mill owners are not obliged to accept cane below the award standard. The Bill has decentralised these cane quality functions in negotiating teams, and further,

enshrines existing statutory obligations regarding quality into contractual terms.

Consultation in relation to the Bill

Government

The Departments of Premier and Cabinet, Natural Resources, State Development (Business Regulatory Reform Unit), Employment Training Industrial Relations (Employment Taskforce), Justice, Queensland Transport, Main Roads and Communication and Information, Local Government and Planning along with Environmental Protection Agency and Queensland Treasury have been consulted in relation to preparation of the Bill.

The Office of Queensland Parliamentary Counsel has prepared the Bill.

Industry

Extensive public consultation was undertaken during the SIRWP's review in 1995/96. This resulted in 446 written and 80 oral submissions. The SIRWP's report was made public.

There has been extensive consultation with representative sugar industry groups in relation to the Bill. In particular, the corporation, Australian Sugar Milling Council ("ASMC"), Australian Cane Farmers' Association ("ACFA") and CANEGROWERS have been consulted.

In November 1998, a consultation draft of the Bill was circulated on a confidential basis for comment, to the directors of ASMC, ACFA, BSES, CANEGROWERS, the corporation, a member of each cane protection and productivity board, and major sugar refiner representatives. This provided the opportunity to those persons who will actually use the legislation to review its requirements. The implementation committee together with the chairs of ACFA, ASMC and CANEGROWERS considered comments in December 1998.

Executive officers of industry organisations were consulted on the final draft Bill.

Results of consultation

There is general agreement among sugar industry bodies and government agencies regarding implementation of SIRWP recommendations in the Bill.

NOTES ON PROVISIONS

CHAPTER 1—PRELIMINARY

Short title

Clause 1 provides that the short title of the Act will be the *Sugar Industry Act 1999*.

Commencement

Clause 2 provides that the provisions relating to the office of sugar industry commissioner will commence on 1 October 1999. The remaining provisions commence on 1 January 2000. This staggered commencement allows for the establishment of the office of sugar industry commissioner prior to commencement of the Act.

Principal object of Act

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

Definitions

Clause 4 makes reference to definitions of particular words being in schedule 2.

State bound

Clause 5 provides that the Act binds the State.

CHAPTER 2—PRODUCTION, SUPPLY AND MILLING

PART 1—CANE PRODUCTION AREAS

Division 1—Establishment of entitlement

Cane production area

Clause 6 provides that a cane production area entitles a grower to enter into a supply agreement with a mill owner to supply the mill with cane grown on particular land. A cane production area is property distinct from the land on which cane is grown. Accordingly, a cane production area may, subject to this part, be sold, leased, subleased or otherwise transferred. A mill owner who holds a cane production area does not have to enter into a supply agreement in order to supply its cane to the mill.

The allocation of cane production areas establishes a framework for the orderly production, supply and milling of cane. This framework exists to facilitate efficient arrangements for the industry.

A cane production area describes:

- the holder, for example Grower A;
- the number of hectares on which sugar cane can be grown under the entitlement. For example, a cane production area may specify twenty hectares, which would entitle the grower to grow twenty hectares of sugar cane; and
- the particulars of the land on which the hectares must be located, for example, the twenty hectares must be located within land description Lot 1234 on Plan A123456, in the county of Curra.

The number of hectares described in the cane production area need not equate with the area of land owned by the grower, that is, the grower may own a thirty hectare farm, but apply to grow cane on only twenty hectares of that land. The cane may be grown on any twenty of the thirty hectares, subject to land use suitability.

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

Subdivision 1—General provisions

Explanation of div 2

Clause 7 explains the operation of division 2. A person may apply under subdivision 2 to a cane production board for a grant, variation or cancellation of a cane production area. Applications may request a cane production board to do certain things, listed in subclause (2), in relation to cane production areas.

In order to achieve a desired outcome in relation to a cane production area, a person may make one or more application to the cane production board. An example of applications is provided in subclause (4). For a transaction involving more than 1 mill, the applicant must comply with the provisions of division 3.

General provisions applying to applications

Clause 8 details the powers and obligations of a cane production board in relation to applications to grant or vary a cane production area. In respect of inter-mill applications, certain additional conditions under division 3 apply.

A cane production board may grant or vary a cane production area for a particular period or indefinitely. An application takes effect when it is entered on the register kept by the cane production board in accordance with clause 157, unless the contrary intention appears.

Information notice must be given for refusal of application

Clause 9 provides that if a cane production board refuses to grant an application or imposes conditions on the grant that the applicant did not seek, the board must give the applicant a notice giving reasons for its decision within 28 days of making the decision.

Subdivision 2 —Particular applications to cane production boards

Clauses 10 to 17 under this subdivision provide a summary list of authorised transactions regarding cane production areas, on which a cane production board may make decisions.

A cane production board may consider any combination of transactions under a single or combined application.

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

Clause 10 deals with the grant of new cane production area from hectares available for allocation as cane production area, but which have not yet been allocated to growers. Unallocated hectares represent the number of hectares determined by the negotiating team less the total number of the hectares described in all existing cane production areas relating to the mill area. The hectares may be unallocated either because:

- they have never been allocated and represent expansion of the number of hectares of cane supplied to the mill; or
- they are hectares that were previously contained in another cane production area but are now ‘spare’ because an existing cane production area has been cancelled.

Subclause (4) details the circumstances that must or will exist before the cane production board may grant a new cane production area from unallocated hectares. Subclause (5) requires the cane production board, prior to granting the application, to consider anything required under regulation.

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

Clause 11 describes the process to be followed when a new or increased cane production area is granted based on the transfer of a number of (allocated) hectares from the same mill. Hectares are allocated if they are currently included in a cane production area. In order to ensure that the hectares described in the new or increased cane production area are removed from the existing cane production area, a transfer under clause 12 will also

be required.

An example of a transaction under this clause would be if Mr Smith wanted to become a grower in a mill area where there are no unallocated hectares available for the mill to grant. For Mr Smith to obtain hectares for a cane production area, he would need an existing grower to transfer cane production area to him. Accordingly, if Grower Jones wished to transfer his cane production area because he had decided to leave cane farming, both Mr Smith and Grower Jones would apply under clause 11 (refer clause 11(3)).

As with a grant under clause 10, the cane production board may only grant an application for the grant of a new or increased cane production area if certain preconditions have been satisfied, which are detailed in subclauses (4) and (5).

When the grant of the new or increased cane production area is entered on the register, the corresponding amount of cane production area must be removed from the transferor's (in the above example, Grower Jones') recorded cane production area.

All transactions under this clause must comply with the requirements relating to a cane supply agreement under clause 17.

Transfer of cane production area to another person

Clause 12 allows the transfer of a cane production area to another person. This could occur, for example, when the grower's cane farm is sold to another person. In that example a transfer of cane production area under clause 12, plus a grant to the buyer of the transferred cane production area under clause 11 would be required. The descriptions contained in the cane production area, detailed in clause 7, are not altered other than for the description of the holder of cane production area.

A cane production board may grant an application only if the preconditions detailed in subclauses (3) and (4) have been complied with, and obligations under any collective agreement have been met. Once the total number of hectares included in a cane production area are transferred, the cane production area must be cancelled under clause 15.

Variation of description of land included in cane production area

Clause 13 enables a grower to apply for a variation of the land described in the grower's cane production area. This might occur where, for example, a grower acquires a new block of land and wishes to grow cane on that block rather than on the land described in the cane production area.

The cane production board may grant the application only if the preconditions detailed in subclauses (2) and (3) have been complied with.

Variation of conditions of cane production area

Clause 14 allows a grower to apply for a variation in the conditions on the grower's cane production area that were imposed by a cane production board under clause 8. The cane production board must grant the application if it unanimously considers the variation to be appropriate.

Cancellation of cane production area or hectares on application

Clause 15 enables a grower to apply to have the grower's cane production area cancelled or varied by cancelling a portion of the area's hectares. The cane production board must grant the application if it is satisfied that the growing of cane will be permanently discontinued on the relevant hectares or if the application is associated with another application relating to the same mill area.

The cancellation of cane production area cannot be used as a mechanism to 'transfer' cane land to another mill without the consent of the existing mill. Cancelled cane production area becomes unallocated hectares in the existing mill area.

Third party consent required in particular circumstances

Clause 16 ensures that the interests of third parties are acknowledged in respect of certain applications made to a cane production board.

The applicant must make a statutory declaration as to whether or not a third party has an interest in the land and if so, whether or not written consent has been obtained. However the cane production board may dispense with the consent requirement where it considers the consent is being unreasonably withheld.

Relationship between entitlement change and supply agreement obligations

Clause 17 details circumstances in which it may be necessary for a grower to apply to a cane production board to change a supply agreement, since the agreement depends on the grower's entitlements under a cane production area.

A cancellation of or variation to a cane production area does not, other than as expressly provided by the Act, alter the grower's responsibility to meet obligations under a supply agreement. A mill owner may take proceedings against a grower for breaching a supply agreement.

Where a collective agreement applies and applications are made to:

- transfer a cane production area from one person to another; or
- cancel all or part of a cane production area or hectares of a cane production area,

the transferring grower must provide a statutory declaration in respect of cane supply agreement obligations and ensure that the necessary consents are obtained.

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**

Clause 18 explains the three processes established under the division by which a grower supplying cane to a mill (the "current mill") may apply to be granted a new or increased cane production area relating to another mill (the "receiving mill"), in order to move the supply of cane from the current mill to the receiving mill. In all cases, a grower must be granted unallocated hectares in the receiving mill area, and the grower's cane production area, or a number of hectares included in it, in the current mill area must be cancelled.

Each process ensures the termination of the grower's obligations under a collective agreement made for the current mill that applies to the relevant cane supply.

Definitions for div 3

Clause 19 details definitions for the purposes of the division.

Subdivision 2 —Consent process

Consent process

Clause 20 provides that the grower may in support of the grower's application under clause 29, obtain consent to the application from:

- Owners of the current and receiving mills; and
- Mill suppliers' committees of the current and receiving mills.

If these consents are obtained, the grower will not be subject to the processes detailed in subdivisions 3 and 4.

Subdivision 3 —Horizontal expansion process

Start of horizontal expansion process

Clause 21 provides that the process commences upon the current mill owner or current mill suppliers' committee asking the current cane production board to ascertain the extent to which demand by growers for expansion in cane production areas exceeds currently available unallocated hectares. The board, in accordance with a regulation process, must call for applications for grant of unallocated hectares, assess the level of demand of those growers with suitable available cane land and refer assessment of any demand to the negotiating team. The applications must be genuine. Those growers to whom the board considers it would grant unallocated hectares, are called "eligible growers".

If the negotiating team agrees to horizontal expansion

Clause 22 provides that if the negotiating team agrees on expansion, the cane production board must grant, in accordance with the provisions detailed in clause 10, the increased number of unallocated hectares. If the negotiating team agrees on expansion, the processes detailed under clauses 23, 24 and 25 will not be relevant.

If the negotiating team does not agree on horizontal expansion

Clause 23 provides that if the negotiating team does not agree on expansion the matter will be subject to arbitration. The arbitrator must consult with the negotiating team and determine everything regarding the expansion, including the length of the crushing season.

If the arbitrator decides there will be expansion, the negotiating team for the purposes of clause 22, is taken to have agreed to the expansion.

However if the mill owner rejects the arbitrator's decision and will not invest the capital necessary to give effect to the arbitrator's decision, the decision is of no effect as a final decision of the negotiating team. Further, the arbitrator must notify the current cane production board if the arbitrator finds that the mill owner, in connection with the arbitration, has not offered to increase milling capacity by a measurable amount. The board in turn notifies the mill owner and eligible growers.

The notice from the board to the mill owner and eligible growers must detail that it will follow a cancellation / granting process (detailed in clauses 24 and 25 and by regulation) to ensure to the extent practicable that there will not be a significant reduction in the total number of hectares included in the current mill's cane production area. The process will facilitate cancellation of the eligible growers' current cane production area or relevant number of hectares, and ensure that the board will properly exercise its powers under clause 10. The process is subject to resolution at any time of the negotiating team's dispute.

Process for moving supply from current mill

Clause 24 details the minimum requirements for the regulation process referred to in clause 23. A time limit applies within which eligible growers may be considered under the process. The process ensures as far as possible, that an eligible grower will not be able to apply to a receiving mill

for a grant of unallocated hectares, unless the current cane production board is satisfied that there are sufficient applications for unallocated hectares in the current mill area to ‘replace’ the eligible grower’s area that will be cancelled following a grant in the receiving mill area. This in turn ensures, as far as possible, the economic viability of the current mill.

Other provisions that may be included in the process

Clause 25 provides further matters that may be included in the regulation process and that *clause 24* does not limit matters that may be detailed by regulation in respect of the horizontal expansion process.

Subdivision 4 —Productivity increase process

Establishment of productivity increase process

Clause 26 provides that the process commences when the circumstances detailed in subclause (3) exist, which arise from an arbitrated dispute within the negotiating team about the framing or variation of a collective agreement.

The arbitrator must determine that the season length has been significantly increased due to a significant sustainable increase in cane productivity of a particular amount (the “sustainable increase”), and that the mill’s crushing capacity should be increased by a stated amount in order to be able to deal with the sustainable increase.

Further, the mill owner must reject the arbitrator’s determination and the arbitrator must decide that the mill owner in connection with the arbitration, has not offered to increase crushing capacity by a measurable amount.

The arbitrator then declares the amount of the sustainable increase as a number of hectares, and the current cane production board notifies growers and the mill owner and indicates it will follow a regulation process to facilitate cancellations of cane production area or hectares to support growers’ applications to move supply to a receiving mill. A grower would make application to a receiving mill in order to achieve more efficient crushing arrangements.

The process is subject to resolution at any time of the negotiating team’s dispute.

Process of moving supply from current mill

Clause 27 sets out the minimum requirements for the regulation process referred to in clause 26. A time limit applies within which growers may be considered under the process.

Cane production area and hectares cancelled under this clause do not become unallocated hectares available to be granted under clause 10.

Other provisions that may be included in the process

Clause 28 provides further matters that may be included in the regulation process and that clause 27 does not limit matters that may be detailed by regulation in respect of the productivity increase process.

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

Clause 29 provides that a grower may apply under clause 10 to the receiving cane production board for a new cane production area or an increase in hectares in the grower's receiving cane production area if the grower has either:

- Obtained the consents referred to in clause 20; or
- Received a move consent notice referred to in clause 24(2) or clause 27(2).

The clause details requirements of a grower's application, which are in addition to the application requirements in division 2. The receiving cane production board may under clause 10 grant the grower's application, which will be effective from the start of the crushing season for the next year.

Cancellation of supply to current mill

Clause 30 provides that if the receiving cane production board grants the grower's application, it will be effective from the start of the following year's crushing season. The board must notify the current cane production board to cancel the grower's current cane production area or the relevant number of hectares, effective from the start of the following year's crushing

season. The current cane production board must record the cancellation in its register.

The grower, on cancellation of the current cane production area or hectares, is not bound by a collective agreement made for the current mill in so far as the agreement relates to the grower's growing, harvesting and supplying the cane (note however that if the grower has had only some hectares cancelled, the grower is still bound by the collective agreement in respect of cane grown on the remaining hectares in the current cane production area). The grower's obligations under an individual agreement are not affected only due to the granting of an application under clause 29.

Hectares cancelled under this clause on grant of an application based on consents or on a move consent notice issued under the horizontal expansion process, 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

Clause 31 provides that a cane production board may cancel a cane production area in circumstances detailed in the clause, in order that the board can meet its objective of ensuring the efficient participation of growers supplying cane to the mill for which the board is established. However a board cannot cancel cane production area without first having issued a 'show cause' notice to a grower requesting reasons as to why the cancellation should not be made. It should be noted here that under clause 213, the notice to show cause must give the person to whom it is given at least 28 days in which to make submissions.

If a grower has hectares or cane production area cancelled under this clause, the grower's obligations under a supply agreement are not affected. Accordingly, a cane production board may cancel a cane production area to meet its own objectives without affecting other legal proceedings. The number of hectares cancelled under this clause become unallocated hectares for the relevant mill area.

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

Giving effect to cane production board's decisions

Clause 32 details that a cane production board must, once satisfied that the transaction for which an application is made will proceed, record on the cane production area register the effect of the board's decisions in granting applications or cancelling cane production area or hectares. The cane production board may delay recording the effect of a decision made by the board until it receives confirmation that the transaction has proceeded.

Division 6 —Cane production area plans

Agreed cane production area plan is evidence

Clause 33 provides that a cane production area plan verified by a grower and the owner of the mill to which the cane production area relates is evidence of the matters outlined in the plan. Accordingly the verified plan may be produced, if necessary, as evidence of the matters outlined in the plan.

Submission of plan to cane production board

Clause 34 provides that a grower or mill owner may submit an alternative cane production area plan to the cane production board if they are not satisfied that an original plan is accurate. As to a plan's accuracy, the cane production board may certify or reject the plan, or amend and certify an alternative plan.

Cane production board may interpret disputed plans

Clause 35 provides that a cane production board may decide disputed issues with regard to verified or certified cane production area plans, upon application from one or both of the parties.

Division 7—Expansion of cane production areas generally**Negotiating team must decide expansion of cane production areas**

Clause 36 provides that a negotiating team established for a mill must decide all matters regarding the size of expansion of cane production areas and length of crushing season for the mill.

Disputes

Clause 37 applies in the event of a dispute about expansion of cane production area that has been determined under the dispute resolution process detailed in clause 184. The decision is not binding on the mill owner and growers if it requires the mill to make a capital investment and the mill owner refuses. The clause does not apply if the horizontal expansion or productivity increase processes under division 3 are used.

A grower who has not made an application for expansion is not required to accept an allocation of hectares to the grower's cane production area.

PART 2—CANE SUPPLY AND PROCESSING AGREEMENTS***Division 1—Cane supply is governed by supply agreements*****Object of pt 2**

Clause 38 explains the intention of the part to ensure that individual or collective supply agreements between growers and mill owners incorporate cane supply, cane crushing, and payments to growers.

The ability for individual supply agreements to be negotiated is a change from the position under the *Sugar Industry Act 1991*, where there were various constraints on any “mill supply contracts” negotiated separately from the award. Notably, under this Act, the corporation does not have a role in approving supply agreements.

Individual agreement

Clause 39 provides that an individual agreement may be made directly between 1 or more growers and a mill owner. The content of an individual agreement is not constrained by a collective agreement in terms of the period of the agreement or by the quantity of cane supplied from the grower's available cane for supply. For example, a grower may have both a collective agreement for a portion of the grower's crop and an individual agreement for the remainder.

Collective agreement—nature

Clause 40 provides that a negotiating team is to make a collective agreement for the mill or mills for which it is established.

Collective agreement—before the start of negotiations

Clause 41 details the administrative arrangements and the obligations of the parties involved in negotiation of a collective agreement.

Collective agreement—making

Clause 42 details matters regarding signing and publishing a collective agreement.

Collective agreement—effect

Clause 43 confirms that a collective agreement is a legally binding contract.

Variation of collective agreement

Clause 44 provides for variation of a collective agreement on the application of 20 or more growers within 21 days of the agreement being published. However a provision of a collective agreement that has been determined by a dispute resolution process is not affected by an application by 20 or more growers. For example if a condition has been subject to a dispute resolution process, then one of the parties to the agreement must have been strongly opposed to the condition. Therefore, further strong

opposition by 20 or more growers cannot start a process to change what a dispute resolution process has already determined.

Which agreement applies to particular grower

Clause 45 provides that a grower must have a supply agreement for each season. That agreement may be either an individual agreement with the mill owner or a collective agreement. If a grower does not voluntarily enter a supply agreement then the grower is deemed to be part of the collective agreement with the mill to which the grower's cane production area relates.

Grower may give notice of change of entitlement

Clause 46 provides that a grower, prior to entering into a collective agreement which is to run for more than 4 years, may notify the negotiating team of the grower's intention to cease supply from all or a number of hectares at the end of 4 years. If the cancellation is granted, the grower is excluded from supply of cane to the mill in relation to the cancelled cane production area or number of hectares included in it.

The purpose of this provision is to enable growers to plan their exit from the industry, while at the same time providing some certainty and information to the mill owner.

Division 2 —Process for entering individual agreements

Individual agreement entered by grower with mill owner

Clause 47 sets out the obligations of a grower and mill owner entering into an individual agreement. Notably, various notice provisions must be complied with, and if they are not, the grower and mill owner are bound by the provisions of the collective agreement that has been negotiated.

Individual agreement—stopping or cancelling

Clause 48 provides that the relevant mill suppliers' committee may apply for a Magistrates Court order to stop or cancel an individual agreement only on the ground that the agreement's provisions will significantly adversely affect growers supplying cane to the mill under the relevant collective

agreement.

Division 3 – Content of supply agreements

Content of agreement

Clause 49 provides that a supply agreement must cover matters relating to growing, harvesting, transport, handling and delivery to the mill, acceptance and crushing by the mill and payment by the mill owner. It may address financial matters relating to sugar quality. A collective agreement does not have to set the same conditions and arrangements for all growers covered by the agreement.

Cane not required to be accepted by mill

Clause 50 provides that whether or not it is stated in a supply agreement, there are certain circumstances, stated in the clause, in which a mill is not required to accept cane supplied by a grower with whom a supply agreement exists.

Delivery and acceptance of cane

Clause 51 details the meaning of delivery and acceptance of cane under a supply agreement.

Emergency and natural disaster

Clause 52 provides that all parties to a collective agreement are excused from obligations that they are unable to meet due to natural disasters or emergency.

Dispute resolution

Clause 53 provides that a collective agreement must provide for a final decision if there is a dispute within the negotiating team or within a future negotiating team. A future negotiating team is bound by a previous decision of a negotiating team.

If the collective agreement does not provide for dispute resolution, the process set out in a regulation will be followed.

General considerations

Clause 54 provides that the objective of a collective agreement is to enhance the net income of the mill owner and the growers supplying cane, by taking account of local circumstances. The clause details matters that may be considered when negotiating a collective agreement.

PART 3—CANE VARIETY CONTROL

Approved cane

Clause 55 provides that the Bureau of Sugar Experiment Stations (“BSES”) may approve, or cancel approval of, a variety of cane for growing.

Permit to grow cane of non-approved variety

Clause 56 provides that the BSES may permit upon application, the growing of a non-approved variety of cane.

Offences concerning non-approved cane

Clause 57 creates an offence if non-approved cane is grown, and further offences if non-approved cane is disposed of or attempted to be disposed of to another person, or if it is delivered or attempted to be delivered to a mill, or if it is accepted at a mill.

PART 4—CANE ACCESS, HARVESTING AND MILL SUPPLY

The Act differs from the *Sugar Industry Act 1991* in that here, the term “access right” may be used to refer either to a cane railway easement or to a permit to pass, unless otherwise specified. The Queensland Sugar Corporation does not have a role in granting access rights under this Act.

Access right to harvest and supply cane

Clause 58 states that this part provides for the grant, by a land-holder or the commissioner, of two types of access right, permits to pass and cane railway easements. The access rights network provides the foundation to facilitate the harvest of cane and its supply to mills, and enables mill owners to service the cane railway system.

Permits to pass may be granted to both growers and mill owners. Permits authorise the grantee (and the grantee's agents) to use the grantor's land in accordance with permit conditions. Cane railway easements may only be granted to mill owners.

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

Clause 59 provides that a land-holder may grant an access right affecting the holder's land, by way of an agreement with a mill owner or grower.

Commissioner may grant an access right

Clause 60 provides, having regard to the importance of access rights to the industry, for a default mechanism for establishing access rights if agreement cannot be reached between the land-holder and person seeking the access right.

The grower or mill owner seeking the access right may apply to the commissioner for the grant of the access right. Affected parties may be heard in relation to the application.

The commissioner may grant the access right and may impose reasonable conditions to minimise inconvenience and interference to the land-holder in the use of the land. There is however a limitation on the commissioner's power to grant an access right in that the commissioner cannot grant an access right if it would affect native title, unless there is an indigenous land use agreement in place consenting to the grant.

Notice of decision

Clause 61 obliges the commissioner, within 21 days of a decision being made under clause 60, to give an information notice of the decision to the applicant, and if the access right is granted, to any person the commissioner considers may be entitled to claim compensation.

Grant of access right takes effect on registration

Clause 62 provides for registration of access rights in the register maintained by the commissioner. Access rights do not take effect until recorded in the register.

Compensation on grant of access right

Clause 63 provides for compensation rights to land-holders affected by access rights. Negotiation between parties is encouraged, but if agreement cannot be reached, the clause provides for determination of compensation by either a valuer or the Land Court.

Access rights register

Clause 64 obliges the commissioner to establish and maintain an access rights register, and details the information to be recorded in the register. Access rights are recorded in the order in which they are granted, and registration in the register is deemed adequate notice to all persons of the existence of the right. In this sense the Act contains an exception to the principles of indefeasibility laid down in the *Land Title Act 1994*.

Mill owners and growers must notify the commissioner and land-holder of the relinquishment of access rights. Details are recorded in the register. Registers may be inspected during the ordinary working hours of the commissioner's office upon payment of the prescribed fee.

Certificates

Clause 65 provides that in relation to a proceeding, certificates containing information recorded in the register may be given by the commissioner and are taken to be evidence of such information.

Noting of access right on other registers

Clause 66 requires a person to whom an access right is granted, to notify the registrar of titles within 28 days of the grant. Registrars of other registers of title to land may also be notified. The *Sugar Industry Act 1991* did not specify a time frame within which this notification was to be made. The registrars must register a note warning of the existence of the access right. This note is not tantamount to registration of the access right under the register(s).

Variation and cancellation of access right, dispute resolution and enforcement

Clause 67 provides for the variation or cancellation of access rights or of a condition on which an access right is held. This may be done by agreement between the parties or on application to the commissioner. The clause details requirements to notify register holders on variation or cancellation of an access right. The clause also empowers the commissioner to mediate in disputes about the exercise of access rights. Access rights are enforced through the Land Court.

Compensation on cancellation or variation of access right

Clause 68 provides for compensation following the commissioner's cancellation or variation of an access right under clause 67. If the application to cancel or vary was made by the holder of the access right, clause 63 applies to the determination of compensation in the same way as it applies (in clause 63) to the grant of an access right by the commissioner on the application of a mill owner or grower. If the application was made by the land-holder, compensation is determined in accordance with clause 68.

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

Clause 69 empowers the commissioner to require rectification and reinstatement works to be carried out on land following cancellation or variation of access rights by the commissioner. Where land is no longer subject to or affected by access rights, work may be necessary before the land-holder can make use of such land. Such work may involve removal of structures and repairs to the surface of the land.

Construction etc. of railways, obstruction of access right

Clause 70 makes provision to ensure as far as possible, the supply of cane to a mill by creating various powers regarding construction, maintenance, alteration and use of a railway or road and associated vehicles, rolling stock, machinery and equipment. These powers are where relevant, subject to provisions of the *Local Government Act 1993* and the *Transport Infrastructure Act 1994*.

Penalties apply if persons obstruct or attempt to obstruct the use of an access right or the rights conferred by the clause. Further, persons may apply for a Magistrates Court order restraining anyone from obstructing or attempting to obstruct the applicant's use of an access right or right to construct, maintain, alter or use the railway or road. This avenue did not exist under the *Sugar Industry Act 1991*.

PART 5—MILLS***Division 1—What are mills*****Meaning of “mill”**

Clause 71 provides a definition of “mill”.

Division 2—Proposed mills**Object of div 2**

Clause 72 provides that division 2 is intended to facilitate the establishment of a mill and the arrangements necessary to support and enable the operation of the new mill such as cane supply agreements and grant of cane production areas.

Establishment of relevant industry bodies

Clause 73 permits the formation of the industry bodies necessary for a new mill to function under the statutory scheme. Many of the bodies and structures are required to be in place before the mill is formally established.

A cane production board may be established under chapter 4 part 4 for the proposed mill once the Minister is satisfied:

- the person wishing to establish the new mill has demonstrated the necessary commitment to establishing the mill; and
- arrangements have been made with growers for cane supply.

To facilitate cane supply arrangements negotiating teams are formed as if the mill has been established. Similarly, in forming a mill suppliers' committee under the *Primary Producers' Organisation and Marketing Act 1926*, the proposed growers are considered under that Act to be growers supplying cane to the mill.

Cane production areas and supply agreements

Clause 74 authorises the cane production board for a proposed mill to establish cane production areas using the powers conferred by chapter 2 part 1. Other bodies established under the Act are to exercise their powers relating to cane production areas as if the proposed mill had been established, except that cane production areas cannot be created, varied or cancelled until the mill is established.

Collective agreements are of no effect until the mill is established. The Minister may by gazette notice, declare the day on which the mill is established.

Division 3 — Mill Closure

Division 3 outlines the procedure for closing an existing mill. The division also provides a mechanism for enabling the transfer of access rights to another mill on the closure of an existing mill. The mill owner does not require the corporation's consent to close a mill as was the case under the *Sugar Milling Rationalisation Act 1991*.

Closure

Clause 75 provides that for division 3, a mill is closed if it permanently ceases crushing cane. The mill closes at the last moment of the day of closure. A mill owner must immediately notify the Minister of the day of closure or suffer imposition of a penalty. The Minister may declare the closure day by gazette notice.

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

Clause 76 defines “receiving mill” for the closed mill to be the mill that undertakes to crush closed mill cane. “Closed mill cane” is cane that would have been supplied to the closed mill under supply agreements had it not closed.

Abolition of relevant industry bodies

Clause 77 provides for the removal of the supporting bodies and structures made redundant by the mill closure. The cane production board and negotiating team cease to exist on the mill closure. Where the board and negotiating team were established for the closed mill and another mill, both bodies continue to operate in so far as the other mill is concerned.

Action may be taken to support transfer of access rights

Clause 78 authorises regulations to be made to support or complement arrangements between the receiving mill and the owner or manager of the closed mill for the purposes of:

- granting access rights for cane supply and transport of the closed mill's cane to the receiving mill. Grants may be either by way of transfer of access rights formerly held by the closed mill or the grant of additional rights. Any additional rights are subject to the same provisions about compensation and review as if the grant were made under clause 60.
- recording the changes in access rights in the registers held under any Act.
- providing for interpretation of documents evidencing access rights so as to give effect to the transfer.

Where an access right is transferred, a party is not entitled to compensation only because the transfer has occurred as a result of mill closure. Notwithstanding, a negotiated compensation arrangement can be agreed to between the parties.

Division 4 —Cane analysis programs

Division 4 obliges a negotiating team to develop a cane analysis program for the mill for which it is established and stipulates the content of such a program. This differs from the position under the *Sugar Industry Act 1991* where similar programs (sugarcane and sugarcane products examination and testing programs) were not mandatory but instituted at the corporation's option.

Requirement to have cane analysis program and purpose

Clause 79 obliges each mill to have a cane analysis program. The program enables a mill owner to obtain information regarding cane received at the mill for the purpose of supervising payments due to the grower under the Act's sugar acquisition scheme.

Content of program

Clause 80 details matters about which a program may provide.

Costs of program

Clause 81 provides that costs associated with operation of the program are to be paid in the proportions agreed by the mill owner and mill suppliers' committee, or failing agreement, in equal amounts.

Approval process for program

Clause 82 outlines a process by which the negotiating team can seek approval for a cane analysis program or variations to a program from the commissioner. The commissioner may also offer advice to the negotiating team developing the program. In deciding whether to approve a program the commissioner must consider the matters detailed in subclause (3).

The commissioner must give the mill owner and mill suppliers' committee notice of the provisions of a program after approval or variation, following which the program or variation is binding on the persons to whom it applies. The commissioner in approving a program may cancel an existing program.

Enforcement of program

Clause 83 provides that if a person suffers loss or damage due to another person's contravention of the cane analysis program or a direction under the program binding on the defaulting party, the first person may recover the loss or damage as a debt.

Dispute resolution

Clause 84 provides that if a negotiating team cannot agree on the cane analysis program or a change to the program, the dispute must be resolved by dispute resolution process.

Division 5 —Cane quality programs

Division 5 obliges a negotiating team to develop a cane quality program, which forms part of supply agreements, and stipulates the content of such a program.

Requirement to have cane quality program

Clause 85 provides that a negotiating team must make a cane quality program for the mill for which it is established. A copy of the program must immediately be provided to the corporation and the program is taken to be part of the collective agreement for the mill and of any supply agreement made with the mill owner.

Purpose of program

Clause 86 provides that the cane quality program facilitates the management of sugar quality to meet the customer quality requirements determined by the corporation.

Content of program

Clause 87 states that quality programs may provide for anything about achieving cane quality including standards and tests and may also include a premium and discount scheme for sugar quality.

Costs of program

Clause 88 provides that the costs of operating a cane quality program are to be met by the mill owner and the mill suppliers' committee in agreed proportions or failing agreement equally.

Dispute resolution

Clause 89 provides that if a negotiating team cannot agree on the quality program or a change to the program, the dispute must be resolved by dispute resolution process.

Division 6 —Commissioner's function for redirection of cane**Redirection of cane**

Clause 90 introduces a mechanism to deal with accidents or mishaps preventing a mill from crushing cane. If a mill cannot crush cane and a nearby mill is able to crush the disabled mill's cane, the commissioner may

convene a compulsory conference between both mills and their respective mill suppliers' committees to determine if the parties can agree on redirection of the cane. Failure to attend the conference is subject to a penalty. Each party bears its costs for the conference.

CHAPTER 3—MARKETING

Vesting of sugar in corporation

Clause 91 provides that all sugar upon manufacture becomes the absolute property of the corporation, free from all mortgages, charges, liens, pledges and trusts. A person divested of that property has a right to receive payment under the Act.

Corporation to market and pay for vested sugar

Clause 92 states that the corporation must market the vested sugar and calculate the net value of sugar marketed and the payments due to each mill owner. Payments must be made under the relevant payment scheme established under clause 93.

Schemes for payment

Clause 93 provides that the corporation may, on consultation with mill owner and grower organisations, establish and amend as many payment schemes as it considers appropriate. The costs of the corporation's operations may be shared out to each payment scheme.

The establishment of various payment schemes allows for the setting up of payment schemes based on, for example, producer pricing and early season sugar production.

Production of brands of raw sugar

Clause 94 facilitates the marketing of sugar vested in the corporation. The effect of this clause is that the sugar marketed by the corporation is managed in order to maximise the pooled proceeds.

The corporation may make arrangements with a mill owner as to production of a particular brand of sugar in a particular period or amount. If agreement cannot be reached, the corporation may make directions to the mill owner. The corporation will pay the mill owner the costs associated with manufacture of this sugar that are greater than the cost incurred for producing the industry standard brand of sugar. Any dispute over a mill owner's costs must be resolved by the dispute resolution process provided by regulation.

The industry standard brand is determined by regulation and in general is the sugar that is commonly manufactured by sugar mills. The purpose of determining the industry standard brand by regulation is to ensure that all parties are aware of the base requirement on industry in respect of the production of brands.

Directions about delivery etc.

Clause 95 gives the corporation absolute power in respect of the delivery of vested sugar. This power enables the corporation to make directions to mill owners or growers in relation to storage, delivery instructions, conditions of delivery, payment of costs associated with supply and supply of information to the corporation in relation to supply of sugar.

A person who does not comply with a direction is financially liable for loss or damage suffered by the corporation because of the non-compliance.

Sugar quality standards

Clause 96 provides that the corporation may make a standard as to how sugar quality is decided and how it affects amounts payable to a mill owner. The corporation must notify the mill owner and the relevant mill suppliers' committee in order for the standard to be effective.

Corporation's operating costs

Clause 97 provides that from the proceeds received by the corporation from the sale of vested sugar, the corporation must provide for:

- costs of the sale of sugar; and

- costs to discharge its functions, its budgeted costs including the commissioner’s budget, and its operating costs.

Exemption of sugar for local consumption

Clause 98 provides that a mill owner may retain a quantity, specified in the clause, of sugar manufactured at the mill for local consumption (“exempt sugar”), or sell exempt sugar to another mill owner to be retained for local consumption. Exempt sugar may only be sold to growers and workers connected with the mill. Other conditions relevant to exempt sugar are detailed in the clause. A mill owner is required to keep records of sugar sold for local consumption, and it is an offence not to do so.

CHAPTER 4—ADMINISTRATION

PART 1—MINISTER’S POWERS

The Minister’s powers as detailed in clauses 100 to 102 inclusive apply in the main to the corporation, the commissioner, BSES, cane production boards and cane protection and productivity boards.

Minister may establish advisory bodies

Clause 99 provides that the Minister may establish an advisory committee or other body to help administer the Act.

Reports to Minister

Clause 100 provides that entities referred to in the clause must provide, when requested by the Minister, a report about any specified matter relating to the entity’s activities or functions under the Act. A regulation may detail reports to be made by a cane production board. All reports must be provided within any specified time frame.

Minister's directions

Clause 101 provides that the Minister may give written directions to the entities referred to in the clause relating to the discharge of their functions if the Minister:

- is satisfied the direction is necessary to ensure that the discharge of the entity's functions does not conflict with major government policies; and
- has advised the entity that a direction is being considered and has given the entity an adequate opportunity to discuss the matter with the Minister.

The Minister must table a copy of the direction in the Legislative Assembly within 14 days of giving the direction. The clause does not apply to Ministerial directions about matters authorised under another provision of this or any other Act.

Minister's directions in entities' annual reports

Clause 102 provides that the entities referred to in the clause must include details of any direction given by the Minister during the relevant financial year, in their respective annual report.

PART 2—QUEENSLAND SUGAR CORPORATION***Division 1—Constitution and membership***

In line with the intended commercial focus of the corporation as the marketing arm of the industry, the corporation is established as a body corporate. The aim, so far as possible, is to structure and operate the corporation as if it were a company brought into existence under the Corporations Law.

Establishment of corporation

Clause 103 provides that subject to the Act, the corporation is established as a body corporate capable of suing and being sued, acquiring, holding and dealing with property and undertaking any acts that a body corporate may undertake according to law.

Judicial notice of corporation's seal

Clause 104 provides that the corporation's seal is to be judicially noticed and due affixation presumed unless the contrary is proved.

Corporation does not represent the State

Clause 105 provides that the corporation does not represent the State and, unless so authorised by the State under any Act, cannot make the State liable for the debts of the corporation or of any other person.

Objectives of corporation

Clause 106 outlines the principal objectives of the corporation. These objectives reflect the underlying commercial nature of the corporation's activities.

Board of directors

Clause 107 provides that the corporation's board of directors consists of 10 directors. This includes the chief executive officer who is a director without further appointment. The remaining 9 directors are appointed by the Governor in Council, including one appointed as chairperson. Appointed directors hold office for up to 3 years.

Qualifications for appointment to board of directors

Clause 108 details qualification requirements for directors appointed by the Governor in Council.

Remuneration of directors

Clause 109 provides that the corporation pays appointed directors the fees and allowances decided by the Governor in Council.

Division 2 —General provisions about the corporation**Disqualifications for appointment**

Clause 110 details the circumstances and events disqualifying persons for appointment to the board or continuing as an appointed director.

Vacation of office

Clause 111 describes the circumstances in which an appointed director's office will become vacant.

Meetings of board of directors

Clause 112 outlines the requirements of and procedures for, meetings of the board.

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

Clause 113 obliges a director to disclose any interest in any matter that is to be considered by the board, and details matters relevant to a director's "material personal interest" (this term is defined in the dictionary in schedule 2). If a director has a material personal interest, s/he may be present during discussion of and vote on the matter only in the circumstances detailed in subclause (4).

Voting etc. by directors on Australian marketing matter

Clause 114 deals with voting on an "Australian marketing matter" (which is defined in subclause (5)). Any director who is an "industry participant" (defined in schedule 2) is deemed to have a material personal interest in the matter and is disqualified from being present at the meeting while the matter is considered and from voting on the matter. If the remaining directors are insufficient to form the usual quorum, at least 2

appointed directors without such interests constitute a quorum for the purposes of the meeting.

Prohibition on political activity

Clause 115 provides that the board is prohibited from using its funds for political purposes and from becoming affiliated with any entity with political objectives.

Removal of director

Clause 116 enables the Governor in Council, if satisfied that the board has contravened clause 115, to remove a director.

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

Functions of corporation

Clause 117 outlines the functions of the corporation. Its primary role as the marketing arm of the industry is apparent.

General powers of corporation

Clause 118 grants wide powers to the corporation to facilitate the carrying out of its functions. The corporation is obliged to act commercially in the exercise of such powers, reflecting the commercial nature of its role.

Corporation to consult industry

Clause 119 provides a framework for the corporation to consult with industry representatives on matters affecting the Queensland sugar industry, on a regular basis and when directed by the Minister to do so.

Chief executive officer and staff of corporation

Clause 120 provides that the corporation must employ a chief executive officer. The corporation may employ persons and engage consultants and service providers that it considers necessary.

Corporation's power to delegate

Clause 121 provides for delegation of powers to the chairperson of the corporation or to an appropriately qualified employee or member of a committee of the corporation.

Duty and liability of certain officers of corporation

Clause 122 imposes the following obligations on the directors, chief executive officer and other persons involved in the management of the corporation:

- to act honestly in the exercise of powers and functions;
- to exercise reasonable care and diligence in the exercise of powers and functions;
- not to directly or indirectly make improper use of the officer's position; and
- not to directly or indirectly make improper use of information acquired because of the person's position as a corporation officer.

Breach of these obligations renders the officer liable to a penalty. The corporation may recover any profits received by an officer and any loss or damage suffered by the corporation as a result of any breach, regardless of whether the officer has been convicted of an offence.

Application of various public sector Acts

Clause 123 settles the extent to which certain public sector Acts apply to the corporation. The corporation is subject to the provisions of the Acts mentioned in the clause.

PART 3—BUREAU OF SUGAR EXPERIMENT STATIONS

Division 1—Constitution and membership

Establishment of BSES

Clause 124 provides for the establishment of the BSES subject to the Act, as a body corporate capable of suing and being sued, acquiring, holding and dealing with property and undertaking any acts that a body corporate may undertake according to law.

Judicial notice of BSES's seal

Clause 125 provides that the BSES's seal is to be judicially noticed and due affixation presumed unless the contrary is proved.

Objective of BSES

Clause 126 identifies the BSES's role as a major research, development and extension body for the industry.

Board of directors

Clause 127 details the composition of the BSES's board of directors and provides that appointed directors hold office for 3 years.

Qualifications for appointment to board of directors

Clause 128 details qualification requirements for the BSES's appointed directors.

Remuneration of directors

Clause 129 provides that the Governor in Council decides the fees and allowances paid by the BSES to appointed directors.

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

Clause 130 details the circumstances and events disqualifying persons for appointment to the board or continuing as an appointed director.

Vacation of office

Clause 131 describes the circumstances in which the office of an appointed director will become vacant.

Meetings of the board of directors

Clause 132 outlines the requirements of, and procedures for, meetings of the board.

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

Clause 133 obliges a director to disclose any interest in any matter that is to be considered by the board, and details matters relevant to a director's "material personal interest" (this term is defined in the dictionary in schedule 2). If a director has a material personal interest, s/he may be present during discussion of and vote on the matter only in the circumstances detailed in subclause (4).

Prohibition on political activity

Clause 134 prohibits the BSES from using its funds for political purposes or becoming affiliated with any entity with political objectives.

Removal of director

Clause 135 enables the Governor in Council, if satisfied that the board has contravened clause 134, to remove a director.

Division 3 —BSES and officers —general functions, powers and duties**Functions of BSES**

Clause 136 outlines the functions of the BSES and reflects its primary role as a major research, development and advisory body for the industry. Notably, the BSES under this Act is able to commercially exploit the products of its research, development and extension activities. Also, under this Act, the BSES is no longer to assist cane protection and productivity boards in the discharge of their functions as was the case under the *Sugar Industry Act 1991*. The BSES may however collaborate with cane protection and productivity boards in the coordination of local research, development and extension.

General powers of BSES

Clause 137 grants powers to the BSES to facilitate the discharge of its functions.

BSES's power to delegate

Clause 138 provides for delegation of powers to a director or to an appropriately qualified staff member. The BSES may no longer, as was the case under the *Sugar Industry Act 1991*, delegate to a cane protection and productivity board.

Application of various public sector Acts

Clause 139 takes account of the statutory nature of the BSES and makes the BSES subject to the provisions of the Acts mentioned in the clause.

Division 4 —Funding**Chief executive officer and staff of BSES**

Clause 140 provides that the BSES must employ a chief executive officer. The BSES may employ persons and engage consultants, service providers and inspectors it considers necessary.

Regulation may levy a charge payable to BSES

Clause 141 makes provision for a regulation to levy a charge payable to BSES on growers and mill owners in relation to cane growing, harvesting, supply and processing. The charge is to be used to fund BSES's services to the Queensland sugar industry. If the charge is not paid, it can be recovered by the BSES as a debt due from the grower or mill owner. If a mill owner pays a grower's charge, the mill owner can recover the amount from the grower. The regulation may prescribe the operational aspects of the charge such as the basis on which it will be made and how it will be paid.

PART 4—CANE PRODUCTION BOARDS***Division 1—Establishment and membership*****Establishment of a cane production board**

Clause 142 provides that the Minister may establish a cane production board for 1 mill or for more than 1 mill if a single negotiating team has been established for those mills.

Objectives of a cane production board

Clause 143 identifies the role of the cane production board in facilitating participation by growers and mill owners in the industry at a local level. Cane production boards have an additional objective to those of local boards under the *Sugar Industry Act 1991*, to assist in the sustainable production of cane.

Functions and powers of a cane production board

Clause 144 details the functions of a cane production board and reflects its administrative role in the industry at a local level, and the necessity for the boards to be aware of environmental and other matters affecting the local industry. Cane production boards have wider administrative functions than those of local boards under the *Sugar Industry Act 1991*, and an additional

function in making guidelines about matters specified in the clause. Cane production boards have the power to do anything necessary or convenient to be done for their functions.

Power to engage assistance

Clause 145 enables a cane production board to employ and engage persons it considers necessary to assist in the carrying out of its functions. Local boards did not have this ability under the *Sugar Industry Act 1991*.

Membership of a cane production board

Clause 146 details membership requirements of a cane production board and provides that members are appointed by the Minister for up to 3 years. Chairpersons must be persons whom the Minister is satisfied will act independently in discharging their functions.

Acting appointments

Clause 147 provides for the appointment of acting board members by the entity that nominated the member for appointment.

Remuneration of members

Clause 148 provides for the remuneration of cane production board members. The fees payable to the chairperson are set by the Minister and are paid jointly by the mill owner(s) and mill suppliers' committee(s). The fees payable to members are set and paid for by the mill owner(s) and mill suppliers' committee(s).

Division 2—General provisions about cane production boards

Disqualifications for appointment

Clause 149 details the circumstances and events disqualifying persons for appointment to the board or continuing as an appointed member.

Vacation of office

Clause 150 describes the circumstances in which a cane production board member's office will become vacant.

Meetings of a cane production board

Clause 151 outlines the requirements of and procedures for, meetings of a cane production board.

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

Clause 152 obliges a cane production board member to disclose any interest in any matter to be considered by the board, and details matters relevant to a member's "material personal interest" (this term is defined in the dictionary in schedule 2). If a member has a material personal interest, s/he may be present during discussion of and vote on the matter only in the circumstances detailed in subclause (4).

Administrative costs

Clause 153 provides that the mill owner(s) and mill suppliers' committee(s) as agreed between them pay a cane production board's administrative costs. Failing agreement, the administrative costs will be shared equally.

Legal and professional costs

Clause 154 provides that cane production boards cannot incur legal or other professional costs unless the majority of members agree.

Division 3 —Amalgamation of cane production boards**Amalgamation**

Clause 155 provides for the Minister to amalgamate cane production boards established for more than 1 mill if a single negotiating team has been established for those mills. The clause contains provisions relating to abolition of the old board and commencement of the new board. The

amalgamation process differs from the process under the *Sugar Industry Act 1991*, which enabled the Minister to amalgamate local boards following a poll for amalgamation.

Other effects of amalgamation

Clause 156 provides transitional arrangements for the transfer of the abolished board's affairs to the new board. For instance, existing proceedings or proceedings that might have been commenced by or against the abolished board may be continued or commenced by or against the new board. The abolished board's assets, rights, liabilities and obligations become those of the new board. References to abolished boards are taken to be references to the new board.

The new board must act to replace the abolished board's cane production area register with a single register detailing each cane production area relating to each mill for which the new board is established. Further, the negotiating team established for both mills must act to establish a single cane analysis program and cane quality program for the mills.

Division 4—Cane production board register

Cane production board to keep cane production area register

Clause 157 obliges a cane production board to keep a register for each cane production area supplying cane to the mill for which it is established, and stipulates the information to be recorded in the register. The clause also contains provisions relating to form and inspection of registers and states that regulations may stipulate the information to be notified to the board for registration and notification procedures. The obligation to keep a register is a newly created obligation for cane production boards, as under the *Sugar Industry Act 1991* the corporation kept the equivalent Sugar Cane Assignment Register.

PART 5—CANE PROTECTION AND PRODUCTIVITY BOARDS

Division 1—Constitution and membership

Establishment of productivity area and cane protection and productivity board

Clause 158 provides for the establishment by regulation of a productivity area and a cane protection and productivity board for a productivity area.

Cane protection and productivity board

Clause 159 establishes a cane protection and productivity board as a body corporate having a seal and capable of suing and being sued in its corporate name.

Judicial notice of a cane protection and productivity board's seal

Clause 160 provides that a cane protection and productivity board's seal is to be judicially noticed and due affixation presumed unless the contrary is proved.

Objective of a cane protection and productivity board

Clause 161 details the objective of a cane protection and productivity board as being the enhancement of the industry through increase in the quantity and improvement in the quality of cane crops in the productivity area.

Membership of a cane protection and productivity board

Clause 162 provides that members of a cane protection and productivity board are appointed by the Minister. Once appointed, members may choose one of their number to act as chairperson.

Acting appointments

Clause 163 facilitates the appointment of a person, under the direction of the BSES, to act as a member for any meeting of the board. The clause details the entities that are able to appoint acting members.

Remuneration of members

Clause 164 provides that board members are paid by the board the fees and allowances set by the Minister.

Division 2—General provisions about cane protection and productivity boards**Disqualifications for appointment**

Clause 165 details the circumstances and events disqualifying persons for appointment to the board or continuing as an appointed member.

Vacation of office

Clause 166 describes the circumstances in which a cane protection and productivity board member's office will become vacant.

Meetings of a cane protection and productivity board

Clause 167 outlines the requirements of and procedures for, meetings of cane protection and productivity boards.

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

Clause 168 obliges a cane protection and productivity board member to disclose any interest in any matter that is to be considered by the board, and details matters relevant to a member's "material personal interest". If a member has a material personal interest in a matter, s/he may be present during discussion of and vote on the matter only in the circumstances detailed in subclause (4).

Prohibition on political activity

Clause 169 provides that a cane protection and productivity board must not use its funds for political purposes or become affiliated with any entity with political objectives.

Removal of member

Clause 170 enables the Minister, if satisfied the cane protection and productivity board has contravened clause 169, to remove a member.

Division 3—Cane protection and productivity board’s functions, powers and duties**Functions of a cane protection and productivity board**

Clause 171 outlines the functions of a cane protection and productivity board and reflects its role as a local advisory body on productivity issues particularly in relation to crop quality and land use sustainability. The board also has a role in minimising the environmental impact of the local industry.

General powers of a cane protection and productivity board

Clause 172 grants powers to a cane protection and productivity board to facilitate the discharge of its functions.

Power to engage assistance

Clause 173 empowers a cane protection and productivity board to employ or engage any persons considered necessary.

Application of various public sector Acts

Clause 174 takes account of the statutory body status of a cane protection and productivity board and makes the board subject to the provisions of the Acts mentioned in the clause.

Regulation may levy a charge payable to a board

Clause 175 makes provision for a regulation to levy a charge payable to a cane protection and productivity board on growers and mill owners in relation to cane growing, harvesting, supply and processing. The charge is to be used to fund the board's services to the Queensland sugar industry. If the charge is not paid, it can be recovered by the board as a debt due from the grower or mill owner. If a mill owner pays a grower's charge, the mill owner can recover the amount from the grower. The regulation may prescribe the operational aspects of the charge such as the basis on which it will be made and how it will be paid.

Division 4 —Dissolution of cane protection and productivity boards**Dissolution**

Clause 176 provides that a cane protection and productivity board may be dissolved by regulation.

Another cane protection and productivity board to take place of dissolved cane protection and productivity board

Clause 177 provides that assets, rights, liabilities, obligations and causes of action by or against a dissolved board may be transferred by regulation to the new board, and that references to a dissolved board are taken to be references to the new board. This differs from the position under the *Sugar Industry Act 1991* whereby the BSES took the place of a dissolved cane protection and productivity board.

Change to registers

Clause 178 facilitates the recording of transfers of property from dissolved boards to new boards in the relevant registers of title and property.

PART 6—NEGOTIATING TEAMS

Division 1—Establishment of negotiating team

Establishment

Clause 179 establishes a negotiating team for each mill.

Membership

Clause 180 provides that a mill owner and mill suppliers' committee are to be equally represented on negotiating teams. Additional members may be appointed by agreement between the mill owner and mill suppliers' committee. The mill suppliers' committee and mill owner are to advise each other of the names of the members appointed for the coming year by 1 January each year, and if membership changes during the year. The appointment of members differs from the position under the *Sugar Industry Act 1991* where the Governor in Council was responsible for appointing members to negotiating teams.

Acting appointments

Clause 181 provides that a mill owner and the mill suppliers' committee may appoint a person to act as a negotiating team member for any meeting.

Objective of a negotiating team

Clause 182 provides that the objective of a negotiating team is to assist growers and mill owners to jointly improve profitability.

Division 2—Functions and powers

Functions and powers

Clause 183 outlines the functions of a negotiating team and reflects its role as the body responsible for the development of grower and mill owner agreements. Further, negotiating teams decide matters about expansion and

develop cane analysis and cane quality programs. These functions have been expanded upon from negotiating teams' more limited function under the *Sugar Industry Act 1991* to make awards for the mill(s) for which the team was established. A negotiating team has the power to do anything necessary or convenient to be done for its functions.

Dispute resolution about functions

Clause 184 provides a mechanism for resolving disputes within a negotiating team relating to the team's functions. If a dispute resolution process agreed by the negotiating team applies to a dispute that process must be followed. If a process has not been agreed upon, the process provided for under a regulation must be followed. Decisions made by a negotiating team to resolve disputes are considered final decisions and are not subject to the *Commercial Arbitration Act 1990*. Under the *Sugar Industry Act 1991*, negotiating teams were not responsible for developing a dispute resolution process.

Power to engage assistance

Clause 185 enables a negotiating team to employ and engage persons considered necessary. Negotiating teams were not, under the *Sugar Industry Act 1991*, able to engage assistance.

Division 3 — General provisions about negotiating teams

Meetings and decisions of a negotiating team

Clause 186 outlines the requirements of and procedures for, meetings of a negotiating team. The clause provides that a decision of a negotiating team must be unanimous or as decided under a dispute resolution process under clause 184.

PART 7—SUGAR INDUSTRY COMMISSIONER

The sugar industry commissioner is a position newly created under this Act. The position of commissioner was created in order to separate regulatory functions from marketing and commercial functions, all of which had been undertaken by the corporation under the *Sugar Industry Act 1991*. The commissioner will carry out the majority of regulatory functions that were previously carried out by the corporation.

Division 1 —Commissioner

Appointment of commissioner

Clause 187 provides for the appointment by the Governor in Council of a sugar industry commissioner for a term of up to 5 years on conditions specified in the instrument of appointment.

Functions of commissioner

Clause 188 outlines the functions of the commissioner.

Remuneration

Clause 189 provides for the commissioner to be paid the remuneration, including allowances, decided by the Governor in Council.

Disqualifications for appointment

Clause 190 details the circumstances and events disqualifying persons for appointment or continuing to act as commissioner.

Vacation of office

Clause 191 describes the circumstances in which the office of commissioner will become vacant.

Commissioner's independence

Clause 192 obliges a commissioner to act independently and impartially in the discharge of the office. The corporation may provide the commissioner with access to administrative support services to facilitate the effective and efficient discharge of the commissioner's functions.

Commissioner's budget

Clause 193 provides for the commissioner to annually prepare and submit a draft budget to the Minister. The Minister decides the budget after consultation with the corporation and industry bodies. The corporation is responsible for paying the budget, which includes the commissioner's remuneration decided under clause 189. The commissioner may only authorise expenditure in accordance with the budget approved by the Minister, unless otherwise directed by the Minister.

Commissioner's staff

Clause 194 provides that the commissioner may employ staff considered to be necessary.

Commissioner's power to delegate

Clause 195 provides for the commissioner to delegate the commissioner's powers to an appropriately qualified staff member, an entity established under the Act, or an appropriately qualified member or officer of an entity. Additionally, powers relating to cane analysis programs may be delegated to appropriately qualified persons other than those specifically mentioned above.

The commissioner's mediation powers in relation to disputes about the exercise of an access right may be delegated to an appropriately qualified mediator or to the chairperson of the cane production board established for the mill that is or is proposed to be supplied with cane through use of the access right.

Prohibition on political activity

Clause 196 provides that the commissioner is prohibited from using funds provided under the Act for political purposes.

Removal of commissioner

Clause 197 enables the Governor in Council, if satisfied that the commissioner has contravened clause 196, to remove the commissioner from office.

Division 2 — Commissioner's function for registers**Commissioner and registers**

Clause 198 obliges the commissioner to keep the central register of cane production areas. For this purpose the commissioner may require cane production boards to forward information for entry in the register. The clause also permits a cane production board to, with the agreement of the mill and mill suppliers' committee, effectively delegate its responsibility for keeping the local cane production area register to the commissioner.

CHAPTER 5—APPEALS**Appeal to Magistrates Court**

Clause 199 provides for rights of appeal to the Magistrates Court, and the appeal process, with respect to the decisions detailed in subclause (1).

The court may confirm the decision or set it aside and make another decision, which is taken to be the decision of the commissioner or relevant cane production board. A decision of the Magistrates Court may be taken on appeal to the District Court on a question of law.

Appeal to Land Court

Clause 200 provides a right of appeal in respect of the commissioner's decision under clauses 60 or 67, respectively in relation to grant of an access right, or variation and cancellation of an access right.

The court may confirm the appealed decision or set it aside and make another decision, which is taken to be the decision of the commissioner and from which there is no right of appeal.

CHAPTER 6—AUTHORISATIONS FOR COMPETITION LEGISLATION

The effect of the chapter is to specifically authorise for the competition legislation, certain matters under the Act. Where relevant, these matters are authorised even if they have the purpose, effect or likely effect of substantially lessening competition. The authorisations are necessary for those actions that may be considered to be anti-competitive.

Definitions for ch 6

Clause 201 provides definitions for terms referred to in the chapter. "Competition legislation" is defined to mean section 51(1)(b) of the *Trade Practices Act 1974* (Cwlth) or section 51 of the Competition Code.

Cane production areas

Clause 202 specifically authorises for the competition legislation, certain matters relevant to the granting, variation or cancellation of a cane production area (including conditions attached to the cane production area).

Expansions

Clause 203 provides that the following decisions are specifically authorised for the competition legislation:

- refusal by a mill owner or mill suppliers' committee to give consent under clause 20 to a grower's application under clause 29.
- rejection by a mill owner of the arbitrator's decision mentioned in clause 23(4) or 26(3)(d).
- a current cane production board's giving of or refusal to give, a move consent notice under clauses 24(2) or 27(2).
- a negotiating team's decision about expansion under clause 36.

The latter two decisions above apply to the giving of or refusal to give a notice, or the making of a decision, only to the extent the notice or refusal is given, or the decision is made, in order to give effect to a settlement.

The above decisions are authorised even if they have the purpose, effect or likely effect of substantially lessening competition.

Supply agreements—individual agreements

Clause 204 provides that subject to the clause, the making or variation of individual agreements by 1 or more growers and mill owner are specifically authorised for the competition legislation.

Supply agreements—collective agreements

Clause 205 provides that subject to the clause, the making or variation of collective agreements by a negotiating team are specifically authorised for the competition legislation.

Supply agreements—payments

Clause 206 provides that entry into a supply agreement is specifically authorised for the competition legislation, to the extent that the agreement provides for the terms on which payments are to be made by a mill owner to a grower for cane supplied under the agreement.

Cane quality programs

Clause 207 provides that a negotiating team's making of a cane quality program for a mill under clause 85 is specifically authorised for the competition legislation, to the extent that the program provides for a scheme of premiums and discounts for cane quality and gives effect to a settlement.

Payment schemes

Clause 208 provides that the corporation's establishment of payment schemes under clause 93 and anything done under or because of a payment scheme are specifically authorised for the competition legislation.

Brand sugar

Clause 209 specifically authorises for the competition legislation, the entry into of and the giving of effect to, an arrangement between the corporation and a mill owner under clause 94 under which the owner is to produce a particular brand of raw sugar in a particular period or amount.

Directions about delivery

Clause 210 specifically authorises for the competition legislation, the corporation's directions on matters regarding the storage of vested sugar before its supply to the corporation, and delivery of vested sugar to the corporation. The clause also specifically authorises anything done under or because of a direction by the corporation or a person to whom the direction is given.

Sugar price directions

Clause 211 confirms that entry by the corporation into a contract for the sale of sugar for a price stated in a sugar price direction (given by the Minister under clause 101(1)), is specifically authorised for the competition legislation.

CHAPTER 7—MISCELLANEOUS

Injunctions

Clause 212 authorises the Supreme Court to grant injunctions restraining a person from engaging in conduct detailed in subclause (1), and if considered desirable, requiring the person to do anything.

Application to the Supreme Court is made by either an entity established under the Act or by any other party whose interests are or would be affected by the conduct. Injunctions restraining conduct may only be given if there is no other adequate remedy. Alternatively, injunctions may be granted where the parties consent. The court may grant interim injunctions.

The court may also vary or discharge injunctions and grant damages in addition to or in substitution for the grant of an injunction. The court's power to grant an injunction may be exercised regardless of the circumstances detailed in subclauses (8) and (9).

General provisions about show cause proceedings

Clause 213 provides for a 'show cause' notice to give the recipient at least 28 days within which to make submissions. The entity giving the notice may extend this time and must give the recipient reasonable opportunity to be heard.

Statutory declaration

Clause 214 permits the commissioner or another entity established under the Act to require that information given in support of an application or submission is verified by statutory declaration.

Records to be kept

Clause 215 obliges each entity established under the Act to keep records necessary for the discharge of its functions.

Superannuation schemes

Clause 216 permits entities established under the Act to make arrangements for superannuation.

Offence to make false statement in application or submission

Clause 217 makes it an offence to make, without reasonable excuse, false or misleading statements in applications or submissions made to an entity under the Act.

Improper use of information prohibited

Clause 218 prohibits a past or present commissioner, officer, director, member or employee of the entities established under the Act from improperly using information or opportunities arising from their position, to benefit any person or cause harm to the entity.

Indemnity

Clause 219 provides an indemnity from legal action in relation to acts and omissions done or not done in good faith and without negligence, for the persons detailed in the clause.

Proceedings for an offence

Clause 220 details requirements and matters relevant to proceedings to be taken in respect of any offence committed under the Act.

Evidence

Clause 221 contains evidentiary provisions relating to commission of offences against the Act.

Regulation-making power

Clause 222 empowers the Governor in Council to make regulations under the Act, and to impose a maximum penalty of not more than 20 penalty units for any contravention of a regulation.

CHAPTER 8—AMENDMENTS, REPEALS AND TRANSITIONAL PROVISIONS

PART 1—AMENDMENTS AND REPEALS

Amendments

Clause 223 provides that schedule 1 amends the Acts and regulations referred to in the schedule.

Repeals

Clause 224 provides that the *Sugar Industry Act 1991* and the *Sugar Milling Rationalisation Act 1991* are repealed.

Subsequent references in the explanatory notes to the *Sugar Industry Act 1991* will be to the “repealed Act”.

PART 2—TRANSITIONAL PROVISIONS

Division 1—Interpretation

Definitions for pt 2

Clause 225 details definitions for the purposes of part 2.

Division 2 —Assignments

Assignment becomes a cane production area

Clause 226 provides for a person who held an assignment under the repealed Act to become a grower holding a cane production area under this Act. The land described in the assignment and cane production area is the same.

The rights and obligations attached to an assignment under the repealed Act are not carried forward to this Act. However, a new set of rights and obligations that apply to cane production areas are established under this Act.

Plan of transitional assignment becomes plan of a cane production area

Clause 227 provides for a plan of assignment under the repealed Act to be a plan of cane production area under this Act.

Particular corporation guideline to continue in effect

Clause 228 provides for a guideline made by the corporation in relation to a grant of assignment, to continue as a guideline of each cane production board.

The corporation guideline remains in effect until the cane production board makes a guideline about a similar matter or otherwise until 30 March 2000.

Division 3 —Awards and mill supply contracts

Awards

Clause 229 provides for existing awards to remain in effect until they expire.

Mill supply agreements

Clause 230 provides for existing mill supply agreements to continue in force as a supply agreement under this Act.

Existing mill starts as mill

Clause 231 deems a mill that existed under the repealed Act, to be a mill under clause 71 of this Act.

Division 4—Transitional easements and permits to pass**Transitional easement becomes a cane railway easement**

Clause 232 deems easements granted under the repealed Act to be access rights, with the same conditions, under this Act.

Transitional permit becomes permit to pass

Clause 233 deems permits to pass granted under the repealed Act to be access rights, with the same conditions, under this Act.

Register of easements becomes the access rights register

Clause 234 provides for the register of easements under the repealed Act to become the access rights register under this Act, for which the commissioner is responsible.

References to the register of easements

Clause 235 deems a reference to an easement or a permit to pass in a register maintained by the registrar of titles or another person responsible for maintaining a register of title in land, to be a reference to the relevant access right.

Transitional applications

Clause 236 continues as an application for the relevant access right to the commissioner under this Act, an undecided application under the repealed Act by either a mill owner for a grant of easement or by a mill owner or grower for a permit to pass.

Division 5—Marketing**Vesting preserved**

Clause 237 continues the vesting in the corporation under this Act, anything vested in the corporation under the repealed Act.

Pool for payment

Clause 238 makes provision for a sugar pool and any related arrangements under the repealed Act to be a payment scheme under this Act.

Directions about delivery to and acceptance by corporation

Clause 239 continues until they expire, the corporation's delivery instructions and arrangements regarding vested sugar.

Sugar quality standards

Clause 240 continues under this Act, an existing Ministerial standard about sugar quality.

Division 6 —Minister's powers**Minister's directions to corporation**

Clause 241 continues under this Act, an existing Ministerial direction regarding the discharge of the corporation's functions.

Division 7 —Queensland Sugar Corporation**Continuation of corporation**

Clause 242 continues the corporation under this Act. Appointed directors continue to hold their positions until their terms expire and the chief executive and all staff continue in employment on the same terms and conditions.

Delegation continues

Clause 243 continues any delegation by the corporation of its powers.

Sugar Cane Assignment Register becomes the commissioner's register

Clause 244 provides that the Sugar Cane Assignment Register established and maintained under the repealed Act becomes the register kept by the commissioner under this Act.

Before 30 March 2000, each cane production board must have requested the commissioner to provide the parts of the commissioner's register that are relevant to the cane production board's area and activities.

Although no process is described in the Act, the commissioner will most likely need to set up an administrative process for the transfer of recorded information between each cane production board and the commissioner.

Division 8 —Bureau of Sugar Experiment Stations**Continuation of bureau**

Clause 245 provides for the continuation of the BSES under this Act. Appointed directors continue to hold their positions until their terms expire and the director of BSES and all staff continue in employment on the same terms and conditions.

Approved cane and permits for non-approved cane

Clause 246 provides that existing approvals and permits issued by the BSES in relation to the growing of cane, remain valid under this Act subject to the conditions on which the approvals and permits were granted.

Division 9 —Cane production boards**Local board becomes a cane production board**

Clause 247 provides that a local board established under the repealed Act becomes a cane production board under this Act. A member of a local board becomes a member of the relevant cane production board, until their term expires.

The powers and functions of cane production boards are quite different from those that were exercised by local boards under the repealed Act. No powers or functions of local boards have been handed on to cane production boards, other than those stated in this Act.

References to certain boards etc.

Clause 248 provides that a reference to a local board may be taken to be a reference to a cane production board, if the context permits.

Division 10 — Cane protection and productivity boards

Continuation of productivity areas

Clause 249 provides that a declared sugarcane productivity area under the repealed Act continues as a productivity area under this Act.

Continuation of cane protection and productivity boards

Clause 250 provides that a cane protection and productivity board under the repealed Act continues as a cane protection and productivity board under this Act. Appointed members continue to hold their positions until their terms expire, and any staff continue in employment on the same terms and conditions.

Division 11—Negotiating teams

Continuation of negotiating teams

Clause 251 provides that a negotiating team established under the repealed Act continues as a negotiating team under this Act. Appointed members continue to hold their positions until their terms expire.

Division 12 —Sugarcane and sugarcane products examination and testing programs**Continuation of programs**

Clause 252 provides that a sugarcane and sugarcane products examination and testing program instituted for a mill under the repealed Act continues under this Act as a cane analysis program. Obligations on persons created by the repealed Act program remain unchanged.

Division 13—Sugar Industry Tribunal**Continuation of pt 12 of repealed Act**

Clause 253 provides for the continuation of the Sugar Industry Tribunal for the purposes of this section. The tribunal will continue to hear applications brought before it before the *Sugar Industry Act 1991* was repealed until all applications have been finalised.

The tribunal, in addition to its powers under part 12 of the repealed Act, may make orders necessary to account for changes to the law under this Act, and give effect to its decision under this Act.

Division 14 —Sugar Industry Commissioner**Particular functions postponed**

Clause 254 provides for the postponement of commencement of the commissioner's functions regarding cane analysis programs until 1 January 2000.

Division 15 —Competition policy legislation**Definitions for div 15**

Clause 255 defines terms used in the division.

Guidelines

Clause 256 specifically authorises the corporation's making an assignment grant guideline (in force under section 139(1) of the repealed Act and referred to in clause 228 of this Act), to the extent that the guideline provides (under 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.

Awards

Clause 257 specifically authorises for the competition legislation, the making of an award by a negotiating team under section 118 of the repealed Act and continued in force under clause 229 of this Act, to the extent that the award is made for giving effect to a settlement about matters detailed in subclause (2).

Mill supply agreements

Clause 258 in relation to existing mill supply contracts, specifically authorises for the competition legislation the activities under a contract that are detailed in subclause (2).

Directions about delivery to and acceptance by corporation

Clause 259 specifically authorises for the competition legislation, in relation to a direction regarding delivery of vested sugar given under section 108 of the repealed Act and continued in force under clause 239 of this Act, the things detailed in subclause (2).

Minister's directions to corporation

Clause 260 specifically authorises for the competition legislation, the entry by the corporation into a contract for the sale of sugar for a price stated in a written direction from the Minister under section 25(1) of the repealed Act and continued in force under clause 241 of this Act.

Expiry

Clause 261 provides that division 15 expires on 30 June 2000.

SCHEDULE 1

Schedule 1 contains amendments to other Acts and regulations.

SCHEDULE 2

Schedule 2 contains the dictionary.