

# **SUGAR INDUSTRY AMENDMENT BILL 2000**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Short Title**

The short title of the Bill is the *Sugar Industry Amendment Act 2000*.

#### **Objectives of the legislation**

The Bill amends the following Acts administered by the Minister for Primary Industries:

- *Sugar Industry Act 1999*
- *Primary Industry Bodies Reform Act 1999*.

#### **Reasons for the Bill**

##### *Sugar Industry Act 1999*

The overriding objective of the Bill is to enhance the efficiency and international competitiveness of Queensland's export oriented sugar industry. The public benefit test 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 that existing 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. These amendments address two of these recommendations regarding the restructuring of the Queensland Sugar Corporation and the return of the Bulk Sugar Terminal assets to industry control.

These amendments 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 Bill contains amendments to provide for the incorporation of the Queensland Sugar Corporation as an industry owned marketing company and the establishment of an overseeing statutory authority, the transfer of the Bulk Sugar Terminals assets to industry, the option of incorporation for Cane Protection and Productivity Boards (CPPB's) and a number of other amendments.

### **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 the following reforms to the sugar industry regulatory framework:

- The Queensland Sugar Corporation is to be replaced by Queensland Sugar Limited (QSL), a company limited by guarantee that is established under the Corporations Law.
- QSL will not represent the State in any way, and is to replace the Corporation as the sole marketer of raw sugar produced in Queensland. As such, QSL will assume the powers and obligations of the Corporation relating to vesting, marketing, payment, production, delivery, standards etc.
- QSL is not a statutory body nor a unit of public administration for the purposes of the *Criminal Justice Act 1989*. However, since it is exercising statutory powers, it will be, in relation to those statutory functions, a public authority for the purposes of the *Parliamentary Commissioner Act 1974*, *Freedom of Information Act 1992* and *Libraries and Archives Act 1988*.
- QSL will also be required to consult with the Auditor-General about the appointment of a recognised company auditor and must annually provide copies of its audited financial statements to the Minister, the Auditor-General and the Sugar Authority.
- The Minister may give directions to QSL about the performance and exercise of its statutory functions and

powers, including a direction about the pricing of raw sugar for sale to domestic consumers.

- The Bill outlines requirements for the transfer of the Corporation's assets and liabilities to QSL.
- The Sugar Authority is to consist of the Sugar Commissioner as chairperson and, from time to time, up to three other appropriately qualified members. The Authority's functions are to monitor the performance of QSL in the exercise of its powers and the performance of its functions under this Act and assume the role of single desk selling if QSL moves out of control of the Queensland sugar industry. It is at this point that the other members of the Authority are likely to be appointed because a high level of expertise would be required to carry out that role. The Sugar Authority will report periodically to the Minister.
- Cane Protection and Productivity Boards are to be given the option to dissolve and transfer their operations to a corporation which is not a statutory body provided this corporation has an objective similar to the objective of the Board under the Act. The Bill sets out a number of requirements to ensure that any dissolution and transfer complies with this intent and the approval of the Minister is required.
- The assets and liabilities of the Bulk Sugar Terminals (BST) are to be transferred to industry control by a process requiring:
  - The transfer of BST assets and liabilities to the Queensland Sugar Corporation;
  - The transfer of these assets and liabilities to Sugar Terminals Limited (STL), a public company established under the Corporations Law in return for shares in STL to the value of the transferred assets and liabilities;
  - The distribution of these shares to eligible persons on the basis of sugar cane deliveries in previous years. The Bill makes provision for the means of distributing the shares and for appeals against determinations of share entitlements.
- To facilitate the smooth transition of QSC assets to QSL and STL, the legislation will provide for the appointment of the Sugar Industry Commissioner as administrator of the QSC. The

administrator's role is to identify and distribute the assets and liabilities of QSC to industry.

- Other amendments are made to:
  - Clarify that a cane grower is able to move from a collective to an individual cane production agreement if a grower desires such a change;
  - Clarify that a reference in this Act to a mill suppliers committee is a reference to such committee established under the *Primary Producers' Organisation and Marketing Act 1926* and in existence immediately before the *Primary Industry Bodies Reform Act 1999*;
  - Enable canegrowers to elect a corporation as their mill suppliers' committee; and
  - Provide power for CPPBs and Cane Production Boards to recover from growers the cost of providing their services.

*Primary Industry Bodies Reform Act 1999*

- A minor amendment is required to clarify a policy intention that the growers eligible under the locally funded assets held in trust by the Queensland Cane Growers Organisation Ltd that has been formed to take control of the assets and liabilities of the former statutory CANEGROWERS organisation are those growing cane in the district from time to time; and
- An amendment is required to rectify an anomaly in the Act. Under the Act assets of secondary bodies were required to be held in trust by their principal bodies but the employees of those secondary bodies were transferred to the principal bodies. This anomaly threatens the autonomy of local areas and would result in the payment of additional payroll tax. This anomaly is rectified by retrospectively transferring the employees to the trust that holds the assets to pay them.

### **Alternatives to the Bill**

The main alternative to the Bill is to not make any legislative changes to the above Acts, leaving the sugar industry to continue its current operation under those Acts.

This alternative is considered unacceptable because of the SIRWP review and recommendations and the subsequent consideration and endorsement of those recommendations, have made it apparent that legislative change is necessary.

### **Estimated costs for government implementation**

It is not anticipated that there will be any administrative cost to Government for the administration of this Bill.

### **Consistency with fundamental legislative principles**

Arguably there are several breaches of fundamental legislative principles:

- The commencement date of Schedule 3 of the Bill, amendment of the PIBR Act, is retrospective. These amendments are, however, by way of clarification only:
  - To safeguard local grower interests in locally funded assets at mill and district level, the PIBR Act provides that the new company must hold these assets in trust for "eligible growers" as the beneficiaries at mill and district level. The definition of "eligible growers" in the PIBR Act is to growers at the time the transfer of assets to the trust. As existing growers leave cane growing this could require the trust monies to continue to be used for the benefit of those ex-growers. This would have the unintentional effect of having trust monies used for purposes other than to the benefit of cane growing in the area. The amendment will clarify that "eligible growers" are growers from time to time in the area, thus ensuring that the trust monies are applied, as intended, for the benefit of the local grower interest;
  - To rectify an anomaly in the Act. Under the Act assets of secondary bodies were required to be held in trust by their principal bodies but the employees of those secondary bodies were transferred to the principal bodies. This anomaly threatens the autonomy of local areas and would result in the payment of additional payroll tax. The clauses rectify the problem by retrospectively transferring the employees to the trust which holds the assets to pay them.

- the criteria for determining eligibility by growers for shares in STL are not prescribed in the Bill but are determined by STL. This could be viewed as insufficiently setting out growers' rights in the Act. However, it was agreed with industry at the outset that the Government would not impose criteria on it for the distribution. It was agreed that it was for industry to reach agreement on the distribution of shares to growers. Extensive industry consultation was carried out before the criteria were finalised;
- the Bill terminates the appointment of members of the board of the Queensland Sugar Corporation without compensation. This will not result in significant loss to those members because the term of the current Board would expire on 4 August this year;
- the Bill will also terminate members of boards of Cane Protection and Productivity Boards (CPPBs) without compensation in the event that the CPPB elects to transfer to a non statutory corporation. This is not likely to cause loss to members of those boards because it is the boards themselves that can elect to transfer and it is extremely likely that the board members will also be members of the board of the replacement corporation.

The other retrospective provisions in the Bill are corrections of minor technical errors in the *Sugar Industry Act 1999* that do not act to the disadvantage of any person.

## **Consultation**

### *Government*

The Department of the Premier and Cabinet, Queensland Treasury, the Department of State Development, the Department of Employment, Training, and Industrial Relations, the Department of Justice, the Office of Fair Trading and the Office of Rural Communities were consulted in the preparation of this Bill.

The Office of Queensland Parliamentary Counsel prepared the Bill.

### *Industry*

There has been consultation with the sugar industry organisations, namely CANEGROWERS, the Australian Sugar Milling Council, the

Australian Cane Farmers Association, the Bulk Sugar Terminals Management Group (which is representative of all three sugar industry organisations), and the CPPBs (individual CPPBs and collectively via a forum in Townsville in December 1999).

### **Results of Consultation**

There is agreement between government agencies and industry bodies regarding the proposals in the Bill.

## **NOTES ON PROVISIONS**

### **Short title**

*Clause 1* provides that the short title of the Act will be the *Sugar Industry Amendment Act 2000*.

### **Commencement**

*Clause 2* provides that:

- the amendments to the *Primary Industry Bodies Reform Act 1999* (the Reform Act) contained in Schedule 3 are taken to have commenced on 21 December 1999. 21 December 1999 was the date of commencement of the Reform Act;
- the amendments in Schedule 1, items 31, 32 and 35 are taken to have commenced immediately before 1 January 2000. Those amendments rectify an incorrect reference to a provision in the *Transport Operations (Road Use Management) Act 1995* and incorrect references to mill supply contracts under the *Sugar Industry Act 1991*;
- Sections 4 and 16 and Schedule 1, items 1, 3 to 5, 17 to 26, 29, 33 and 34 commence on assent;
- Schedule 2 commences on the dissolution day for chapter 7B, part 4 (Dissolution of the Queensland Sugar Corporation);

- the remaining provisions of this Act commence on a day to be fixed by proclamation.

### **Acts amended**

*Clause 3* provides that this Act, other than schedule 3, amends the *Sugar Industry Act 1999*. Schedule 3 amends the Reform Act.

### **Amendment of s 47 (Individual agreement entered by grower with mill owner)**

*Clause 4* amends section 47 of the *Sugar Industry Act 1999* (the Sugar Act) to clarify the meaning of the clause. Section 45(4) of the Sugar Act provides that a grower may enter into an individual agreement with a mill owner at any time. It is arguable that section 47 could be interpreted as being contrary to that intention by only allowing individual agreements that are entered into at the time the collective agreement is entered into.

The amendment will clarify:

- that a grower need only advise the mill suppliers' committee of his intention to enter into an individual agreement before a collective is entered into if the grower has that intention at that time. A grower may still enter into an individual agreement during the period of the collective agreement without giving this notice if he formed the intention to do so after the collective agreement is entered into;
- clarify what should be in the notice provided by the grower of his intention to enter an individual agreement; and
- clarify that it is the mill that is required to provide the notices referred to in clauses 47(3) and (4).

### **Insertion of new s 107A**

*Clause 5* inserts a new section 107A that requires the Minister to appoint a person to review the effectiveness of and need for the continuation, alteration or abolition of the vesting scheme. The review must be started by no later than 1 December 2006 or such earlier date as is requested by QSL and completed by 31 December 2007.



**Replacement of ss 111-122**

*Clause 6* omits sections 111 to 122 of the Sugar Act. Those sections relate to the objectives and functions of the Queensland Sugar Corporation (QSC) and matters relating to its board of directors. The deletion of these sections reflects the transfer of the marketing of sugar from the QSC to Queensland Sugar Limited and the subsequent appointment of an administrator of the QSC and its eventual dissolution.

The clause also inserts a new section 111 that provides that the main objective of the QSC, once the administrator is appointed, is to distribute the corporation's assets to STL and QSL as expeditiously as possible.

**Amendment of s 123 (General powers of corporation)**

*Clause 7* omits those powers of the Queensland Sugar Corporation that will not be required when the Corporation is being run by an administrator after the marketing of sugar has been given to QSC.

**Omission of ss 124-127**

*Clause 8* omits sections 124 to 127 of the Sugar Act. Those provisions relate to the obligation of the QSC to consult industry and to provisions relating to staff of the QSC. Those provisions will not be required when the Corporation is being run by an administrator after the marketing of sugar has been given to QSC.

**Insertion of new ch 4 pts 2A and 2B**

*Clause 9* inserts a new chapter 4 parts 2A and 2B into the Sugar Act relating to Queensland Sugar Limited and the Sugar Authority respectively.

**NEW PART 2A—QUEENSLAND SUGAR LIMITED**

This part relates to the establishment of Queensland Sugar Limited (QSL). QSL will be a company under Corporations Law limited by guarantee. QSL, which will be controlled by the Queensland sugar industry, will take over the statutory single desk marketing of sugar from the Queensland Sugar Corporation (QSC).

### **QSL does not represent the State**

**New section 128A** provides that QSL does not represent the State and cannot make the State liable for the debts and obligations of QSL or any other person.

### **Application and non-application of certain Acts**

**New section 128B** confirms that, because QSL is a company under Corporations Law rather than a statutory body, it is subject to controls under Corporations Law rather than controls under Acts relating to statutory bodies, namely:

- *Financial Administration and Audit Act 1997*;
- *Statutory Bodies Financial Arrangements Act 1982*; and
- *Criminal Justice Act 1989*.

However, QSL will be exercising sugar statutory marketing functions under the *Sugar Industry Act 1999* for which it should be accountable to government. Accordingly, the *Parliamentary Commissioner Act 1974* and *Freedom of Information Act 1992* apply to QSL in relation to the performance of its statutory functions or the exercise of its statutory powers.

### **QSL's constitution**

**New clause 128C** provides that QSL's constitution must be consistent with the Act. The Act sets out certain requirements for QSL that are aimed at overseeing the performance of the statutory powers vested in QSL and ensuring that those powers are exercised by a company under the control of the Queensland sugar industry. If QSL breach this section then, under section 128W, QSL will be deemed to have moved out of the control of the Queensland sugar industry. If this occurs the Minister may direct the Sugar Authority to take over QSL's function in accordance with section 128X.

### **QSL's board**

**New section 128D** sets out certain requirements of the composition of QSL's board and chairperson. These requirements are designed to ensure that the single desk marketing function is transferred to a company with adequate expertise to competently carry it out.

**Audit of QSL**

**New section 128E** requires QSL to consult with the Auditor-General about the appointment of a registered company auditor to audit QSL. Annually QSL must supply copies of its audited financial statements and the auditor's full report on the financial statements, to the Minister, the Auditor-General and the Authority. Those statements must be kept confidential by the Minister, the Auditor-General and the Authority but may be given to staff or consultants under their control.

**Minister's directions to QSL**

**New section 128F** enables the Minister to give written directions to QSL about the performance of its statutory functions and the exercise of its statutory powers. For all directions the Minister must give QSL a reasonable opportunity to discuss the proposed direction. For directions other than directions about the price of domestic sugar, the Minister must be satisfied that exceptional circumstances exist justifying the Minister's intervention in the public interest. Any direction given must be gazetted and tabled in the Legislative Assembly.

**Minister may require information from QSL**

**New section 128G** empowers the Minister, by written notice, to require QSL to give the Minister or Sugar Authority information about the performance of its statutory functions. The information would be used to assist the Sugar Authority in the performance of its oversight role over QSL's statutory powers. The information provided would also help to determine, under section 128W, whether QSL is no longer under the control of the Queensland sugar industry.

## **PART 2B—THE SUGAR AUTHORITY**

### *Division 1—Constitution and membership*

#### **Establishment of authority**

New section 128H establishes the Sugar Authority. The Authority 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**

**New section 128I** provides that judicial notice will be taken of the Authority's seal.

#### **Membership**

**New section 128J** details the membership of the Sugar Authority. The Authority will consist of the Sugar Industry Commissioner as chairperson and, from time to time, up to three members. Whilst the Authority is carrying out the role of overseeing QSL, it is envisaged that only the Chairperson will be appointed. However, if, under clause 128X, the statutory single desk marketing function ever reverts to the Authority, members would be appointed with the necessary expertise to carry out that function.

#### **Remuneration**

**New section 128K** provides that appointed members will be paid the fees and allowances decided by the Governor in Council.

***Division 2—General provisions about the authority*****Application of div 2**

New section 128L provides that this division only applies if the authority has appointed members.

**Disqualifications for appointment**

New section 128M details the circumstances and events disqualifying persons for appointment to the Authority or continuing as an appointed director.

**Vacation of Office**

New section 128N describes the circumstances in which a member's office will become vacant.

**Meetings of authority**

New section 128O outlines the requirements of and procedures for meetings of the Authority.

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

New section 128P obliges a member to disclose any interest in any matter that is to be considered by the Authority and details matters relevant to a director's "material personal interest" (this term is defined in the dictionary in schedule 2 of the *Sugar Industry Act 1999*). 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 sub section (4).

***Division 3—Authority's functions, powers and duties*****Functions of authority**

New section 128Q details the functions of the Sugar Authority. The

Authority's main function is to monitor the performance of QSL in the exercise of its powers and the performance of its functions under the Act. It may also have the function of the single desk marketer of Queensland grown sugar in the event that QSL falls out of the control of the Queensland sugar industry as described in section 128W.

### **General powers of authority**

**New section 128R** provides the Sugar Authority with the necessary powers it requires to carry out its functions. They are the standard powers given to statutory authorities.

### **Authority's staff**

**New section 128S** empowers the Sugar Authority to employ staff and engage consultants and service providers.

### **Authority's budget**

**New section 128T** requires the Sugar Industry Commissioner to provide the Minister with a draft budget for each financial year in the form the Minister directs. The Minister, after consultation with QSL and industry representative bodies, will decide the budget of the Authority. The Authority's budget is payable by QSL.

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

**New section 128U** settles the extent to which certain public sector Acts apply to the Authority. The Authority is subject to the provisions of the Acts mentioned in the section.

### ***Division 4—When authority can take over QSL's functions and powers***

#### **Application of div 4**

**New section 128V** provides that this division will only apply if the Minister is satisfied that QSL has moved out of the control of the

Queensland sugar industry, or has changed a provision of its constitution relating to its ownership, the composition of its board of directors, its purpose or function, contrary to the requirements of the *Sugar Industry Act 1999*.

### **Meaning of "moved out of the control of the Queensland sugar industry"**

**New section 128W** details the circumstances under which QSL will be taken to have moved out of the control of the Queensland sugar industry. Under clause 128X, the Minister may direct the Authority to take over QSL's function. QSL will fall out of the control of the Queensland sugar industry when that industry no longer has at least 75% control of it, its constitution is no longer in accordance with the Act or it becomes an externally-administered body corporate.

### **Minister's directions to authority to take over QSL's functions and powers**

**New section 128X** empowers the Minister, after consulting with industry representative bodies, to give written directions to the Sugar Authority to take over QSL's statutory marketing functions. The direction must state the date it is to take effect, be gazetted and tabled in the Legislative Assembly.

### **Amendment of s 149 (Functions and powers of a cane production board)**

*Clause 10* provides cane production boards (CPBs) with the power to make charges for services and facilities they provide. This amendment will provide more flexibility in the ways in which CPBs can fund their activities.

### **Amendment of s 177 (General powers of a cane protection and productivity board)**

*Clause 11* provides cane protection and productivity boards (CPPBs) with the power to make charges for services and facilities they provide. This amendment will provide more flexibility in the ways in which CPPBs can fund their activities.

**Insertion of new ch 4, pt 5A**

*Clause 12* inserts a new chapter 4, part 5A into the *Sugar Industry Act 1999*.

**PART 5A—REPLACEMENT CORPORATIONS FOR  
CANE PROTECTION AND PRODUCTIVITY BOARDS***Division 1—Interpretation and application***Definitions for pt 5A**

**New section 183A** sets out definitions used in Part 5A.

**Application to transfers from more than 1 board**

**New section 183B** enables the provisions of part 5A to apply to the transfer of assets and liabilities of multiple Cane Protection and Productivity Boards (CPPBs) to a single replacement corporation.

*Division 2—Steps to transfer and dissolution***Decision to transfer to non-statutory corporation**

**New section 183C** enables a CPPB to decide to dissolve and transfer its assets and liabilities to a corporation that is not a statutory body and includes an objective similar to the objective of CPPBs.

**Things that must be decided for the transfer**

**New section 183D** requires the board of a CPPB to decide certain matters about the proposed transfer to a corporation. Those matters are the day of the proposed transfer and the corporation it will transfer to.



**Deciding the replacement corporation**

**New section 183E** sets out the conditions that must be met for a replacement corporation before the Board of a CPPB can decide to transfer to it.

**Notice of decision about replacement corporation**

**New section 183F** requires the board of a CPPB to give the Minister notice of its choice of a replacement corporation.

**Minister's decision**

**New section 183G** requires the Minister to consider the notice of decision provided by a CPPB board under new section 183F. If the Minister considers that all requirements of this Act have been met, the Minister must approve a proposed transfer day for the board. If the Minister does not consider that all the requirements of the Act have been complied with, the Minister must refuse to approve a transfer day and state the reasons for the refusal.

**Transfer**

**New section 183H** provides that on the transfer day, all of the boards assets and liabilities are transferred to, and become the assets and liabilities of, the replacement corporation.

**Dissolution**

**New section 183I** provides that on the transfer day the board of the CPPB is dissolved and its productivity area is abolished.

*Division 3—Provisions facilitating transfer***Exemption for cooperatives**

**New section 183J** excludes the operation of section 268 of the *Cooperatives Act 1997* to the transfer of assets from a board to the

replacement corporation if the replacement body is a cooperative. This amendment will allow the smooth transfer of a CPPB to a cooperative by waiving the usual rules for acquisition and disposal of assets by cooperative.

### **Registration of transferred assets**

**New section 183K** sets out evidentiary provisions relating to the transfer of assets from a board to the replacement corporation.

### **References to board**

New section 183L provides that references to the board in an Act or document existing before dissolution will, from its dissolution, take effect as references to the replacement corporation.

### **Continuity of proceedings and matters**

New section 183M provides that proceedings that had commenced or that could have been taken if a board continued to exist, may be taken against the relevant replacement corporation.

### **Employees**

New section 183N provides that, on the transfer date, employees of a board become employees of the relevant replacement corporation. An employee's entitlements, such as superannuation and leave, are carried over to the replacement corporation with no interruption to the employee's continuity of service.

### **Officers cease holding office**

**New section 183O** provides that each person who was an officer of the board goes out of office on the transfer day. No compensation is payable for the persons losing office on the transfer day.

***Division 4—Status of replacement corporation*****Replacement corporation**

**New section 183P** provides that a replacement corporation is not a Cane Protection and Productivity Board for any purpose.

**Amendment of s 193 (Functions of commissioner)**

*Clause 13* amends the functions of the sugar industry commissioner to take account of the new roles given to the commissioner under this Bill. Those new roles are as chairperson of the Sugar Authority and as the administrator of the Queensland Sugar Corporation.

**Amendment of s 198 (Commissioner's budget)**

*Clause 14* empowers the Minister to vary the budget of the Sugar Industry Commissioner if the Commissioner is appointed as administrator of the Queensland Sugar Corporation.

**Insertion of new s 227A and chs 7A and 7B**

*Clause 15* inserts a new section 227A and chapters 7A and 7B into the *Sugar Industry Act 1999*.

**Numbering and renumbering of Act**

**New section 227A** requires the provisions of the Act to be numbered and renumbered at the time of the next reprint under the *Reprints Act 1992*.

## **CHAPTER 7A—DEALINGS WITH BULK SUGAR TERMINAL ASSETS AND LIABILITIES**

### **PART 1—PRELIMINARY**

#### **Objects of ch 7A**

**New section 228** sets out the main objects of this chapter. Those objects reflect the decision of government to transfer bulk sugar terminal assets and liabilities to Sugar Terminals Limited (STL) in exchange for shares in STL. Those shares will be distributed by the Queensland Sugar Corporation to eligible growers. STL is a Queensland sugar industry controlled company set up for the purpose of owning the bulk sugar terminals.

#### **Definitions for ch 7A**

**New section 228A** sets out definitions used in this chapter.

### **PART 2—TRANSFER OF ASSETS AND LIABILITIES TO CORPORATION**

#### **Definitions for pt 2**

**New section 228B** sets out definitions for pt 2.

#### **Classification of BST assets and liabilities**

**New section 228C** enables the Minister and the Minister responsible for the administration of the *Transport Infrastructure Act 1994* jointly to identify the State and Port Authority bulk sugar terminal assets, other than land, to be transferred to the Queensland Sugar Corporation. The identification of assets and liabilities is done by Gazette notice.

**Vesting preserved**

**New section 228D** confirms that bulk sugar terminal assets and liabilities held by the Queensland Sugar Corporation before the transfer under new section 227D to it of State and Port Authority bulk sugar terminal assets, continue to be held by the corporation.

**BST day**

**New section 228E** required the Minister, by gazette notice, to fix a day to be BST day. BST day must be within one year after the commencement day. The commencement day is the day, to be fixed by proclamation, on which dealings with bulk sugar terminal assets under this Act commence.

**Transfer of transferable BST assets and liabilities**

**New section 228F** effects a transfer of bulk sugar terminal assets and liabilities of the State and of Port Authorities to the Queensland Sugar Corporation on and from BST day. The transfer dissolves the State and Port Authorities of any liability relating to the transferred assets and liabilities.

**Consideration for transfer of BST assets**

**New section 228G** provides that the consideration for the transfer of bulk sugar terminal assets to the Queensland Sugar Corporation is the receipt by the Corporation of bulk sugar terminal liabilities. To the extent that the value of the bulk sugar terminal assets exceeds the value of the bulk sugar terminal liabilities, the transfer is by way of gratuitous transfer.

**Provisions facilitating transfer**

**New section 228H** sets out suitable transitional arrangements relating to the transfer of the bulk sugar terminal assets from the State and Port Authorities to the Queensland Sugar Corporation. Those transitional arrangements deem references to the vestors in documents relating to bulk sugar terminal assets to be references to the Corporation and allow for the transfer of documents relating to the assets.

**Legal proceedings**

**New section 228I** enables legal proceedings that had commenced or could have commenced before the transfer to proceed against the Queensland Sugar Corporation.

**PART 3—TRANSFER OF ASSETS AND LIABILITIES  
TO STL****Definitions for pt 3**

**New section 228J** sets out definitions used for part 3.

**Transfer day**

**New section 228K** requires the Minister, by gazette notice, to fix a day to be the transfer day. The transfer day must be on or after BST day (the day bulk sugar terminal assets and liabilities of the State and of Port Authorities are transferred to the Queensland Sugar Corporation under new section 228F) but within one year after commencement day.

**Transfer of BST assets and liabilities**

**New clause 228L** provides that, on the transfer day, the bulk sugar terminal assets and liabilities held by the Queensland Sugar Corporation will be transferred to STL. At that point the Queensland Sugar Corporation bulk sugar terminal assets will include those transferred to it by the State and Port Authorities under new section 228F. The transfer of a liability under this section discharges the corporation from liability.

**Consideration for transfer of BST assets**

**New section 228M** provides that the consideration for the transfer of bulk sugar terminal assets to STL is the receipt by the Corporation of bulk sugar terminal liabilities. To the extent that the value of the bulk sugar terminal assets exceeds the value of the bulk sugar terminal liabilities, the transfer is the issue of shares in itself to the corporation.

**Issues of shares in STL**

**New section 228N** provides that a regulation may set out requirements for the share transfer to the corporation referred to in new section 227L in exchange for bulk sugar terminal assets.

**Provisions facilitating transfer**

**New section 228O** sets out suitable transitional arrangements relating to the transfer of the bulk sugar terminal assets from the Queensland Sugar Corporation to STL. Those transitional arrangements deem references to the Corporation in documents related to bulk sugar terminal assets to be references to STL and allow for the transfer of documents relating to the assets.

**Legal proceedings**

**New section 228P** enables legal proceedings that had commenced or could have commenced before the transfer to proceed against STL.

**PART 4—STL SHARE TRANSFERS BY CORPORATION***Division 1—Interpretation***Definitions for pt 4**

**New section 228Q** details definitions used in this part.

*Division 2 —Transfer of STL shares***Corporation's obligation to transfer STL shares to eligible persons**

**New section 228R** requires the corporation to transfer the STL shares it has received from STL in return for the bulk sugar terminal assets to eligible

persons as defined in an eligibility document prepared by STL.

### **Entitlement to STL shares**

**New clause 228S** requires STL to work out an eligible person's entitlement to STL shares and set the criteria out in an eligibility document. That document will be available from STL on request.

### **Notice of STL's decision on entitlement**

**New clause 228T** requires STL to inform the Queensland Sugar Corporation of its decision on the eligible person's entitlement on the share transfer day. Within 28 days of the share transfer day STL must also inform all eligible persons, in writing, of their share entitlement and publish a newspaper advertisement information of its decision. Both the letter and advertisement must provide detail of appeal rights against STL's decision.

### **Transfer of STL shares**

**New section 228U** imposes an obligation on the Queensland Sugar Corporation to transfer to eligible persons the number of STL shares to which the person is entitled under the eligibility criteria devised by STL. Those shares will be transferred by way of gratuitous transfer.

## *Division 3—Appeals*

### **Appeal**

**New section 228V** details the appeal procedure for persons who are dissatisfied with a decision made by STL regarding the number of shares the person is issued by STL. Appeal will be to the Magistrates Court.

### **Transfer of STL shares as a result of appeal**

**New section 228W** requires STL to issued shares, by way of gratuitous transfer, to any eligible person awarded shares by the court under an appeal.



## **PART 5—GENERAL**

### **Chapter has effect despite agreements etc.**

**New section 228X** provides that this chapter has effect despite anything in any agreement, instrument or undertaking.

### **Chapter does not affect existing legal relationships**

**New section 228Y** provides that nothing done under this chapter by the State, a port entity, the corporation, or STL will render them liable for breach of contract or law.

### **Other conditions for transactions under chapter to be met**

**New section 228Z** provides that any transaction that would normally be required to effect transfer of the bulk sugar terminal assets is taken to have been done.

### **Minister's directions**

New section 228ZA empowers the Minister to give directions to the corporation, a port entity or STL regarding the transfer of bulk sugar terminal assets and liabilities. The direction must be gazetted and tabled in the Legislative Assembly.

## **CHAPTER 7B—DEALINGS WITH CORPORATION ASSETS AND LIABILITIES**

### **PART 1—PRELIMINARY**

#### **Objects of ch 7B**

**New section 229** sets out the objectives of ch 7B. Those objectives are to transfer corporation assets and liabilities to QSL, to appoint the

commissioner as administrator of the Queensland Sugar Corporation, to complete the distribution of STL shares received by the corporation and dissolve the corporation. These objects reflect the Government decision to transfer the sugar single desk marketing function to Queensland Sugar Limited (STL). STL is a corporation under Corporations Law that is under the control of the Queensland sugar industry.

### **Definitions for ch 7B**

**New section 229A** details the definitions used in ch 7B.

## **PART 2—TRANSFER OF ASSETS AND LIABILITIES FROM CORPORATION TO QSL**

### **Classification of corporation marketing assets and liabilities**

**New section 229B** empowers the Minister, by Gazette notice, to determine which Queensland Sugar Corporation assets are marketing assets and liabilities. The marketing assets and liabilities will be transferred to QSL. The Minister will make the decision after consulting with the Sugar Industry Commissioner, acting as administrator of the corporation.

### **QSL day**

**New section 229C** empowers the Minister to fix a day, by notice in the Gazette, as the day the marketing assets and liabilities of the Queensland Sugar Corporation transfer to QSL. That day is to be known as “QSL day”.

### **Transfer of marketing assets and liabilities**

**New clause 229D** provides that on QSL day, the marketing assets and liabilities of the Queensland Sugar Corporation transfer to QSL.

**Consideration for transfer of marketing assets**

**New section 229E** provides that the consideration for the transfer of the marketing assets to QSL is the receipt by QSL of marketing liabilities. To the extent that the value of the marketing assets exceeds the value of the marketing liabilities, the transfer is by way of gratuitous transfer.

**Provisions facilitating transfer**

**New section 229F** sets out suitable transitional arrangements relating to the transfer of the marketing assets from the Queensland Sugar Corporation to QSL. Those transitional arrangements deem references to the Corporation in documents related to marketing assets to be references to the QSL and allow for the transfer of documents relating to the assets.

**Legal proceedings**

**New section 229G** enables legal proceedings that had commenced or could have commenced before the transfer to proceed against QSL.

**Continuation of corporation directions, payment schemes and quality standards**

**New section 229H** provides that directions payments schemes and quality standards made by the corporation in force on QSL day are to have been made by QSL.

**PART 3—ADMINISTRATION***Division 1—General***Officers cease holding office**

**New section 229I** provides that each person who immediately before QSL day, was a member of the board of directors of the Queensland Sugar

Corporation goes out of office. No compensation is payable to those board members.

### **Employees**

**New section 229J** transfers all employees of the Queensland Sugar Corporation to QSL on QSL day. All the rights and benefits accrued by those employees are preserved.

## ***Division 2—Administrator***

### **Appointment**

**New section 229K** provides that the administrator is appointed to act as the administrator of the Queensland Sugar corporation. The appointment of an administrator is required because it is likely that the bulk sugar terminal assets will not have been transferred to STL before QSL day. This means that an administrator will need to remain until the share transfer to growers resulting from the bulk sugar terminal asset transfer is completed.

### **Administrator is corporation**

**New section 229L** provides that for all purposes of this Act the administrator is the corporation.

### **Additional functions of administrator**

**New section 229M** details the functions that the administrator has that are additional to those held by the Queensland Sugar Corporation. Those functions relate to identifying the marketing and bulk sugar terminal assets and transferring them to QSL and STL respectively and receiving and distributing shares. Because not all assets will have been transferred when the administrator is appointed, the administrator is also given the power to enter into arrangements with STL and QSL about the use of the corporation's assets.

**Minister's directions to administrator**

**New section 229N** empowers the Minister to give the administrator written directions to ensure that the share issue and the distribution of shares in STL are carried out. Any direction must be gazetted and tabled in the Legislative Assembly.

**PART 4—DISTRIBUTION OF STL SHARES AND  
DISSOLUTION OF CORPORATION****Distribution**

**New section 229O** requires the administrator to distribute the shares in STL to eligible growers by way of gratuitous transfer. As soon as practicable after the shares are issued the administrator must give the Minister notice that distribution has been completed.

**Dissolution day**

**New section 229P** provides that if the Minister receives a notice from the administrator under new section 229O that the share distribution has been completed, the Minister must, by gazette notice, fix a day for the dissolution of the Queensland Sugar Corporation.

**PART 5—GENERAL****Chapter has effect despite agreements etc**

**New section 229Q** provides that this chapter has effect despite anything in any agreement, instrument or undertaking.

**Chapter does not affect existing legal relationships**

**New section 229R** provides that nothing done under this chapter in relation to the corporation, or QSL will render them liable for breach of contract or law.

**Other conditions for transactions under chapter to be met**

**New section 229S** provides that any transaction that would normally be required to effect transfer of assets under this chapter is taken to have been done.

**Amendment of ch 8 (Amendments, repeals and transitional provisions)**

*Clause 16* amends chapter 8 of the *Sugar Industry Act 1999*.

**PART 1—TRANSITIONAL PROVISIONS FOR  
ACT No. 51 of 1999*****Division 11A—Mill suppliers' committees*****References to a mill suppliers' committee**

**New section 256A** rectifies the absence of a transitional provision relating to the definition of “mill suppliers’ committee” in the *Sugar Industry Act 1999*. The definition in the Act refers to a committee elected by a majority of growers whose cane production areas relate to a mill. That definition differed from that in the *Sugar Industry Act 1991* which referred to mills suppliers’ committees established under the *Primary Producers’ Organisation and Marketing Act 1926* (PPOM Act). There was not time, between the commencement of the 1999 Act and the commencement of negotiations for the next crushing season for a new election for mill suppliers’ committees to take place. Accordingly, the mill suppliers’ committees previously elected under the PPOM Act have continued to operate.

**New section 256A** provides that mill suppliers’ committees established under the PPOM Act and in existence immediately before the repeal of that Act by the *Primary Industry Bodies Reform Act 1999* are mill suppliers’ committees under the 1999 Act. The term of office of those committees is until the expiry of their term or an earlier election by growers.

## **PART 2—TRANSITIONAL PROVISIONS FOR *SUGAR INDUSTRY AMENDMENT ACT 2000***

### **Compliance with notice requirements**

**New clause 267** provides that a grower or miller will have sufficiently complied with section 47 of the Act if the grower or miller has complied with the section after amendment. The explanation for this provision is set in the explanation for clause 4 above.

### **Amendment of sch 2 (Dictionary)**

*Clause 17* amends Schedule 2 (Dictionary) of the *Sugar Industry Act 1999*. The amendments are consequential to the dissolution of the Queensland Sugar Corporation, the issue of shares in STL to eligible growers and the creation of the Sugar Authority. The clause also amends the definition of “mill suppliers’ committee” in the Act. The amended definition will ensure that a majority of growers for a mill can, if they so chose, elect a corporation to be the mill suppliers’ committee for the mill. That corporation can be a corporation to which the assets of a now dissolved mill suppliers’ committee established under the repealed *Primary Producers’ Organisation and Marketing Act 1926* have been transferred in accordance with the *Primary Industry Bodies Reform Act 1999*.

## **SCHEDULE 1**

### **CONSEQUENTIAL AND MINOR AMENDMENTS**

*Clause 1* inserts a note into the principal Act to the effect that a note in the text of this Act is part of the Act.

*Clause 2* amends various section in the Act consequential on the transfer of the statutory marketing of sugar from the Queensland Sugar Corporation to STL.

*Clause 3* amends section 57(2) of the Act. Section 52 referred to the wrong sub sections of section 47. The amendment corrects that incorrect reference.

*Clause 4* clarifies section 57(7). Section 57(7) currently makes reference to section 48. The amendment makes it clear which part of section 48 is relevant.

*Clause 5* clarifies section 57(7). Section 57 provides that a significant adverse effect of a mill crushing its own cane will be an alteration in the rate of cane supply to the mill. In fact, if a mill is crushing mill's own cane instead of the cane of growers, there is no overall reduction in the rate of cane being supplied to the mill. The section is intending to cover a reduction of supply of cane under a collective agreement to the mill. Section 4 clarifies that point.

*Clauses 8, 9 and 10* make amendments to the Act consequential to the transfer of statutory single desk marketing of sugar from the Queensland Sugar Corporation to QSL.

*Clause 11* amends the section providing for things to be paid for by QSL to include the budget of the new Sugar Authority.

*Clause 12* amends the provisions on administration in the Act to include the Sugar Authority. These provisions deal with directions by the Minister, reports to the Minister and annual reports.

*Clauses 13, 14, 15 and 16* make amendments Act consequential to the transfer of statutory single desk marketing of sugar from the Queensland Sugar Corporation to QSL.

*Clauses 17 and 18* amend section 161(2) and 161(3) by removing superfluous words from the sections.

*Clause 19* corrects an incorrect reference to cane protection and productivity boards.

*Clause 20* removes redundant words from section 182(1).

*Clauses 21, 22, 23 and 24* simplify the wording of section 182.

*Clause 25* inserts to new sub clause into section 182 of the Act which clarifies what happens to staff of a Cane Protection and Productivity Board (CPPB) where that CPPB is dissolved and another takes its place. The Act is currently silent on that matter. In those circumstances, the staff of the



dissolved CPPB become employed by the new CPPB on the same terms and conditions as before.

*Clause 26* rectifies a grammatical error in section 204 of the Act.

*Clause 27* amends section 216(2) of the Act consequent on the transfer of the statutory marketing function from the Queensland Sugar Corporation to QSL.

*Clause 28* amends section 225(8) consequent on the transfer of the statutory marketing role from the Queensland Sugar Corporation to QSL.

*Clause 29* amends the heading of section 230 (Transitional Provisions) consequent on the transitional provisions inserted in the Act by this Bill.

*Clause 30* removes a definition of “repealed Act” that more appropriately belongs in schedule 2 of the Act (dictionary). The definition is placed in Schedule 2 by section 36 of the Schedule.

*Clauses 31 and 32* amend incorrect references to mill supply contracts under the *Sugar Industry Act 1991*.

*Clause 33* simplifies the language of section 246 of the Act.

*Clause 34* omits section 266 of the Act. That section would have expired Division 15 of Part 2 of Chapter 8 of the Act. That Division contains transitional provisions relating to competition policy legislation. The repeal was to be made on the assumption that the transitional provisions would have completed the necessary changes and become redundant. However there are still several mill supply contracts still in force. The transitional provisions are still required to authorise activities being carried out under those agreements.

*Clause 35* amends a reference to a provision of the *Transport Operations (Road Use Management) Act 1995*. Schedule 1 of the *Sugar Industry Act 1999* which commenced on 1 January 2000 provided for the amendment of the definition “**railway**” in the *Transport Operations (Road Use Management) Act 1995*, Schedule 3. However, under the *Road Transport Reform Act 1999*, schedule 3 was, on 1 December 1999, renumbered as schedule 4. This amendment corrects the reference and ensures that the amendment in the *Sugar Industry Act 1999*, schedule 1 is and always has been effective in the way intended.

*Clause 36* amends schedule 2 of the Act (Dictionary) consequent on the transfer of the statutory marketing of sugar function from the Queensland

Sugar Corporation to QSL. It also includes a definition of “repealed act” in schedule 2 that was previously in section 230. The reference was removed from section 230 by section 26 of this Schedule.

## **SCHEDULE 2**

### **AMENDMENTS ON DISSOLUTION DAY**

*Clauses 1, 2, 3, 4, 5, 6, 7 and 8* make amendments consequential on the dissolution of the Queensland Sugar Corporation.

## **SCHEDULE 3**

### **AMENDMENT OF *PRIMARY INDUSTRY BODIES REFORM ACT 1999***

*Clause 1* effects a minor amendment to section 12(1)(d) of the *Primary Industry Bodies Reform Act 1999* (the PIBR Act) by removing an unnecessary “and” from the end of the paragraph.

*Clause 2* amends section 43 of the PIBR Act to clarify the intention the section. To safeguard local grower interests in locally funded assets at mill and district level, section 43 of the PIBR Act provides that the new company must hold these assets in trust for “eligible growers” as the beneficiaries at mill and district level. The definition of “eligible growers” in the PIBR Act is to growers at the time the transfer of assets to the trust. As existing growers leave cane growing this could require the trust monies to continue to be used for the benefit of those ex-growers. This would have the unintentional effect of having trust monies used for purposes other than to benefit of cane growing in the area. The amendment will clarify that “eligible growers” are growers from time to time in the area, thus ensuring

that the trust monies are applied, as intended, for the benefit of the local grower interest.

*Clauses 3 and 4* rectify an anomaly in the Act. Under the Act assets of secondary bodies were required to be held in trust by their principal bodies but the employees of those secondary bodies were transferred to the principal bodies. This anomaly threatens the autonomy of local areas and would result in the payment of additional payroll tax. The clauses rectify the problem by retrospectively transferring the employees to the trust which holds the assets to pay them.