

SUGAR INDUSTRY AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

General Outline

Short Title

The short title of the Bill is *Sugar Industry and Other Legislation Amendment Bill 2003*.

Objectives of the Legislation

To amend the *Sugar Industry Act 1999* (the Act) to:

- transfer the functions of the Bureau of Sugar Experiment Stations (BSES) to a private industry-owned company limited by guarantee;
- transfer assets and liabilities of BSES to the new entity;
- remove control of sugar variety issues from *Sugar Industry Act 1999* and control these under the *Plant Protection Act 1989*; and
- enable Cane Protection and Productivity Boards (CPPBs) to dissolve by 30 June 2004.

Reasons for the policy objectives of the Bill

Bureau of Sugar Experiment Stations (BSES)

BSES is a statutory body constituted under the Act. Its objective is to conduct research, development and extension activities for the sustainable production of commercial crops of cane and its products.

Since 2000 the Queensland Government has implemented major structural reform in the sugar industry with the transfer of ownership of bulk sugar terminals, the marketing of raw sugar, and CANEGROWERS organisation to industry ownership.

The BSES Board and all three major representative industry organisations agreed that the next step was the transfer of functions, assets and liabilities to an industry-owned entity, being a company limited by guarantee. In 2001, the Government established a joint industry/Government Steering Committee to investigate and develop recommendations to Government for the transfer of the BSES to the industry.

The Steering Committee investigated a broad range of options and consulted widely with industry to arrive at a majority position and recommendation for incorporation. That recommendation was to transfer the functions, assets and liabilities of BSES to an industry-owned entity, a company, to be registered under the *Corporations Act 2001 (Cth)*, and limited by guarantee.

With transfer to non-statutory body status, it will be inappropriate for BSES to maintain a number of its present regulatory functions. Consequently, a system for approval of sugarcane varieties for the purposes of pest and disease management only is to be maintained with a new provision for approved varieties to be included under the *Plant Protection Act 1989 (PPA)* to replace existing provisions under the *Sugar Industry Act 1999*. Authority for approval of varieties is to be transferred from BSES Chief Executive Officer to Director-General Department of Primary Industries.

Cane Protection and Productivity Boards (CPPBs)

CPPBs are statutory bodies established under the Act to enhance the productivity of the sugar industry at the local mill area by increasing the quantity and improving the quality of cane produced by crops grown in its area. CPPBs provide advice and help growers in the local mill area with supply of clean plant cane and cooperate in the prevention, control and eradication of pests and diseases.

Under the repealed *Sugar Industry Act 1991*, CPPBs were funded by a levy per tonne of cane produced in the mill area, paid fifty percent by growers and fifty percent by the mill. The new Act removed a major factor for CPPBs being under statute, namely the compulsory funding arrangements following doubts about their constitutional validity. It also prevented the subsidised commercial activities of some CPPBs, such as the sale of farm chemicals. Some CPPBs consequently recognised, at a forum in Townsville on 14 and 15 December 1999, that there would be advantages in non-statutory operation of their activities. A subsequent amendment to the

Act in 2000 allowed for the voluntary incorporation of the then twenty CPPBs to non-statutory entities that are not limited by shares.

Six CPPBs have taken that route and three others have amalgamated into the one statutory CPPB. Most of the 12 remaining statutory CPPBs until recently had no incentive to change structure but three advised last year that they wish to dissolve and not transfer into another body, to save the local industry money. Such dissolution without transfer requires a change in the Act.

The way in which the policy objectives are to be achieved by the Bill

Transfer of functions of the BSES.

The functions of the BSES are to be transferred to a private industry-owned company, limited by guarantee. The transfer company will be under the control of the Queensland sugar industry and will not in any way represent the State and will not be entitled to any of the privileges and immunities of the State.

The proposed date of transfer will be on or before 30 June 2003. On the transfer day, all of the Board's assets and liabilities will be transferred to, and become the assets and liabilities of the transfer company. On the transfer day BSES will be dissolved.

All employees of BSES will transfer to the new entity, with all employee benefits and conditions to be maintained.

On the transfer day, the appointment of members of the board of directors of BSES will be terminated. No compensation is to be payable for the termination of the appointments.

After the transfer day the transfer company will not have any role under the Sugar Industry Act and sections of the Act relating to BSES are amended. However, for the purposes of continuity, the BSES member on the twelve CPPBs will remain a member until dissolution of the individual CPPBs.

Plant Health Management

Control of sugarcane varieties for the purposes of pest and disease management only, through the concept of restricting the planting of non-approved cane, is to be removed from the *Sugar Industry Act 1999* and

addressed through the Department of Primary Industries (DPI) under the *Plant Protection Act 1989*.

Authority for approval of varieties is to be transferred from BSES Chief Executive Officer to Director-General DPI, with a provision for declaration of approved varieties of plants (not just sugar cane) for planting and cultivating in pest quarantine areas, and varieties that may be grown as plant crops and those that may be ratooned in each pest quarantine area.

CPPBs

CPPBs are to be abolished. CPPBs will be given until 30 June 2004 to:

- transfer assets and liabilities to a nominated legal entity that will carry out similar functions. In this case all assets, liabilities and employees will transfer to the new entity; or
- dissolve. In this case employment of any staff is terminated unless a receiving entity agrees to employ them and assets and liabilities will be transferred to, and become the assets and liabilities of a nominated person or entity. On the transfer day the CPPB will be dissolved.

Selection of the entity or entities for transfer of assets/liabilities is to be determined by the CPPB and agreed on by the mill and a majority of growers in the mill area.

If, on 30 June 2004 any CPPBs have failed to carry out that transfer, then any employees and all assets and liabilities, except for uncommenced possible future legal actions, will be transferred to BSES or its replacement entity.

BSES will not be obliged to carry on the functions of any CPPBs that transfer assets and liabilities to BSES upon dissolution. Any uncommenced future legal actions will be transferred to the Sugar Industry Commissioner.

Alternatives to the Bill

BSES Incorporation.

There are three options with respect to BSES:

Option 1: maintain the “status quo” by retaining BSES as a statutory authority.

Option 2: transfer of the functions, assets and liabilities of BSES to an industry-owned entity - company limited by shares.

Option 3: transfer of the functions, assets and liabilities of BSES to an industry-owned entity - company limited by guarantee (preferred option).

Option 1 is not the preferred option because for so long as BSES remains as a statutory body, it is “owned” by and accountable to the Queensland Government and Government is potentially exposed to pressure from industry for a “rescue package” in the event of any financial problems with BSES.

The most significant factor in determining between Options 2 and 3 is the distinction between a company designed to provide a **service**, which in itself may generate a surplus, but which was not intended for subsequent distribution (which would lead to a company limited by guarantee) or a **profit**, which would ultimately be used to distribute profit to shareholders, (which could lead to a Company Limited by Shares). A profit driven company is less well suited to a service provider model preferred by industry.

Following industry consultation, **Option 3: company limited by guarantee**, which would be a taxable entity, emerged as the preferred structure for the new entity. The dominant view was that BSES’s replacement corporation should also be a service driven organisation. Additional factors in support of Option 3 over Option 2 were the higher cost of establishing a share-based entity and concerns with regard to potential problems associated with determining equity for distribution of shares.

The company limited by guarantee - taxable option offers the following benefits:

- Well suited to service provider model;
- Control by industry;
- Would not require issue of shares and maintenance of a share register which would provide easier management of the entity;
- Could access a larger range of funding and obtain R&D tax concessions;
- Any profit could be used to reduce industry contribution rate;

- If necessary, can be converted to a share holding company in future.

CPPB Dissolution.

(1) There are two options for CPPBs:

Option 1: maintain CPPBs as statutory authorities and add a voluntary provision for their dissolution.

Option 2: remove CPPBs from statute (preferred option).

The preferred option is not only to allow for the dissolution of CPPBs, but also to provide for the removal of CPPBs remaining under statute. It is no longer appropriate to retain any Cane Protection and Productivity Boards as statutory bodies. More contemporary structures are required to provide the productivity-related services.

This is particularly the case now that there is no longer a statutory CPPB in every mill area. Since mid 2000 eight of the 20 CPPBs have dissolved and three others are keen to dissolve without transferring their functions to another entity. Consequently the remaining Boards are not in a position to deliver functions across the whole of the Queensland industry.

If any CPPB does remain as at 30 June 2004, their assets, liabilities and employees are to be transferred to the replacement corporation for BSES. Consultation with BSES indicates agreement to this policy proposal, including taking on known CPPB liabilities. BSES already has some level of fiduciary responsibility with regard to CPPBs given that each statutory CPPB currently has a BSES officer as a Board member, which will continue up until 30 June 2004. Any contingent liabilities (legal proceedings by or against a CPPB) are to be transferred to the Sugar Industry Commissioner.

Estimated costs for government implementation

Following incorporation of the replacement corporation, BSES will transfer its assets and liabilities to that industry-owned entity. At the time of transfer of assets, the State's operating position and net worth would be reduced by the amount of the BSES's net assets.

Government has not contributed to CPPBs and they are not included on the State Asset Base. Transfer of CPPBs will have no impact on the State's operating position and net worth unless they are transferred to the BSES while it is still controlled by the State.

Arrangements for cane plant health management following transfer by BSES of its functions to the industry-owned replacement corporation have been negotiated with BSES and arrangements have been made which will be revenue neutral.

Transfer duty will be incurred on the transfer of assets and liabilities to the replacement entities of both BSES and the CPPBs. Other duty implications may arise depending on the circumstances of BSES and the CPPBs. While duty is payable an application can be lodged for an ex-gratia payment of any duty liability arising from the transactions proposed. Applications for ex-gratia relief are determined by the Under Treasurer pursuant to the *Financial Administration and Audit Act 1977* based on the particular circumstances and merits of each case. The CPPBs vary in size, staff employed (0 to 10 full-time), liabilities owed and assets held (from \$34,000 to \$1 million). The total net assets of the twelve CPPBs are about \$2.8m.

The payment of transfer duty and other duty is a major concern for CPPBs. DPI has formally requested ex gratia relief from transfer or other duties payable as a consequence of CPPBs either dissolving or incorporating under the amendments proposed.

Consistency with fundamental legislative principles

Clause 22, New section 358, Clause 23 – New section 366 and Clause 14 - New section 211 - termination of appointment without compensation

New sections 358 and 366 provide that no compensation is payable to Board members of BSES and CPPBs upon termination of their membership of the Boards. Compensation is not justifiable because the existing Chair of BSES is taking on a similar paid position within the new entity so will not be disadvantaged by the changes. The BSES has determined that existing BSES Board members will also be retained for continuity purposes. CPPB Board members are paid sitting fees that are designed to compensate for time spent away from their businesses. After dissolution there will no longer be a requirement on their time and accordingly compensation is not required.

New section 211 provides for the termination of employment of any employees of those CPPBs that choose to dissolve rather than transfer their functions to another entity. The new clauses provide that those employees will have the rights given to an employee whose employment has been lawfully terminated under the *Industrial Relations Act*.

Those CPPBs that are choosing to dissolve are CPPBs in areas that no longer have a requirement for services like those currently provided. Under these circumstances there is no replacement body to whom employees can be transferred. However, there is not expected to be any impact on employees of these CPPBs because in those areas discussions are being held with other prospective employers BSES and/or the mill about reemploying those employees. In all cases the prospects of immediate re-employment are good.

Clause 31 – Insertion of new section 11A – whether the clause has sufficient regard to the rights and liberties of individuals.

New section 11A, which is being inserted into the *Plant Protection Act* 1989, provides power for an inspector to permit exemption from an approved plant declaration. The power of an inspector to exempt from compliance with an approved plant declaration is necessary to allow the planting and cultivation of non-approved cane varieties for research purposes, in accordance with the conditions of an inspector's approval. This power already exists in s 11(7) of the Act in a pest quarantine area. The application of approved varieties of cane also applies to pest quarantine areas, and it is consistent to provide the same process. The capacity for an inspector to give an inspector's approval that allows a person to plant and cultivate a non-approved variety of cane is subject to the inspector being satisfied that the planting and cultivation in accordance with the approval does not pose a risk of spreading a pest in the pest quarantine area.

New section 11A also imposes a high penalty of 1,000 penalty units. The penalties for non-compliance should be the same as those in s 11 (10) of the Act which is 1,000 penalty units. The consequences of planting and cultivating non-approved cane in a pest quarantine area, without an inspector's approval or contrary to an inspector's approval and failure to comply with the directions of an inspector in respect of non-approved cane poses the same risk of spreading a pest as non-compliance with s 11 (7) of the Act.

CONSULTATION

Community

BSES were consulted with regard to timing of the transfer of assets to industry. All other issues had been raised with industry stakeholders previously.

Representatives of all twelve CPPBs, the peak industry bodies and the Sugar Industry Commissioner have been consulted on the proposed amendments.

Government

Treasury, the Office of State Revenue (OSR) and Department of Industrial Relations were consulted with regard to timing of the transfer of assets to industry, transfer duty ex-gratia relief and industrial relations respectively.

Results of consultation

Community

With regard to timing of the transfer of assets to industry, BSES preferred that the new entity commence from 1 July 2003. After negotiation with BSES and Treasury, agreement was reached that transfer of assets occur by 30 June 2003.

All twelve CPPBs were consulted on the proposed CPPB amendments and all are in favour. Nine are expected to incorporate and three to dissolve by June 2004. No CPPB employees are expected to lose employment. CPPBs indicated that the sunset date should be no earlier than 30 June 2004 to ensure they had sufficient time to incorporate or dissolve. Some requested passage of the legislation if possible twelve months prior to that date for the same reason and some requested it so as to enable dissolution by 30 June 2003.

Some CPPBs noted that Government should not impose transaction costs on CPPBs, such as Transfer Duty, as they claimed it was a benefit to Government (and not to the CPPBs) for the CPPBs to become non-statutory. Also, they were aware that no transfer duty was paid when five previous CPPBs voluntarily incorporated in August 2002.

Several CPPBs particularly welcomed the proposals as they linked favourably with the need to change the way productivity advice should be delivered in the regions.

The Sugar Industry Commissioner and peak sugar industry organisations support the proposed amendments.

Government

All Government Departments support the proposals in this Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 provides that the short title of the Act is the *Sugar Industry and Other Legislation Amendment Act 2003*.

Commencement

Clause 2 provides that the following sections commence on assent:

- 3 (Act amended in pt 2);
- 7 to 15 (these sections amend the existing sections of the *Sugar Industry Act 1999* that enable Cane Protection and Productivity Boards to transfer to replacement entities);
- 19 to 21 (which are minor amendments and corrections to the Act and transitional provisions);
- 26(3) (amendment of dictionary); and
- Schedule other than items 1 to 3, 13 and 14.

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

PART 2—AMENDMENT OF SUGAR INDUSTRY ACT 1999

Act amended in pt 2

Clause 3 provides that this part amends the *Sugar Industry Act 1999* (the Act).

Omission of ch 2, pt 3 (Cane Variety Control)

Clause 4 omits chapter 2, part 3 of the Act (Cane Variety Control). This is being done because the concept of restricting the planting of non-approved cane, currently in this part of the Sugar Industry Act, will be transferred to the *Plant Protection Act 1989*. Since these provisions exist mainly to provide protection from plant disease (they also provide for mill processing characteristics/quality and effect on the environment), they most appropriately belong in the Plant Protection Act, which is specifically for that purpose.

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

Clause 5 omits chapter 4, part 5 of the Act (Bureau of Sugar Experiment Stations). This omission reflects the fact that this Bill will abolish the Bureau of Sugar Experiment Stations and transfer its assets, liabilities and employees to a company limited by guarantee.

Omission of ch 4, pt 7 (Cane Protection and Productivity Boards)

Clause 6 omits chapter 4, part 7 of the Act (Cane Protection and Productivity Boards). This omission reflects the fact that this Bill will abolish Cane Protection and Productivity Boards.

Amendment of ch 4, pt 8, hdg

Clause 7 omits the heading of chapter 4 part 8 of the Act. The heading will change from “Replacement corporations for Cane Protection and Productivity Boards” to “Replacement entities for Cane Protection and Productivity Boards” to reflect the fact that CPPB’s will no longer be restricted to transferring to a corporation but can also transfer to a person.

Amendment of s 198 (Definitions for pt 5A)

Clause 8 amends the definitions for part 5A in section 198 of the Act.

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

Clause 9 omits section 200 of the Act relating to decisions to transfer the assets and liabilities of CPPBs to non-statutory corporations to reflect the fact that CPPB's will no longer be restricted to transferring to a corporation but can also transfer to a person. The amendment also removes restrictions on the content of the constitution of the receiving entity.

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

Clause 10 amends section 201 of the Act to reflect the fact that the CPPB's will no longer be restricted to transferring to a corporation but can also transfer to a person.

Replacement of s 202 (Deciding the replacement corporation)

Clause 11 will replace the existing section 202 of the Act which sets out the conditions under which a CPPB Board can decide on a replacement corporation. The amendment will remove a number of restrictions in the existing section 202. A CPPB will no longer be restricted to transferring to a corporation but can also transfer to a person. In addition, the receiving entity will no longer be restricted in relation to the contents of its constitution. However, the Board will now only be able to decide on a replacement entity where a majority of growers and the mill owner consent to the transfer.

Amendment of s 203 (Notice of decision about replacement corporation)

Clause 12 amends section 203 of the Act which required a CPPB that has decided to transfer to a replacement corporation to give a notice of that decision to the Minister. The amendments reflect the fact that:

- a CPPB will no longer be restricted to transferring to a corporation but can also transfer to a person;

- the receiving entity will no longer be restricted in relation to the contents of its constitution;
- the replacement entity may or may not be continuing the functions of the Board.

Amendment of s 204 (Minister's decision)

Clause 13 amends section 204 of the Act which relates to the Minister's decision about whether to agree to transfer to dissolve a Cane Protection and Productivity Board and transfer its assets and liabilities to a replacement entity. The amendment requires the Minister before approving the transfer to be satisfied that the replacement entity will deal with the assets for the benefit of the relevant mill owner and the growers who supply cane to a mill.

Replacement of s 211 (Employees)

Clause 14 replaces the current section 211 of the Act which deals with the status of employees of Cane Protection and Productivity Boards on transfer of the Board to a receiving entity. The new section reflects the fact that a board may now either transfer its functions to another entity or merely dissolve. If the functions are being transferred, then the employees will transfer to the receiving entity. If the Board is dissolving then on the transfer day any employees of a board will have their employment terminated unless the receiving entity agree to continue that employment. An employee whose employment is terminated has the rights given to an employee under the Industrial Relations Act.

Insertion of ch 4, pt 8, div 5

Clause 15 inserts a new chapter 4, part 5, division 5. The new part deals with expiry and savings provisions once all CPPB's have been dissolved.

Amendment of s 223 (Functions of commissioner)

Clause 16 amends section 223 of the Act by giving the Sugar Industry Commissioner the additional function of receiving any liabilities transferred to the Commissioner under new section 364 upon the automatic dissolution of any CPPBs. Automatic dissolution occurs if any CPPB has not transferred to a receiving entity or dissolved by 30 June

2004. The liabilities referred to are legal proceedings. All other assets and liabilities would transfer to the BSES replacement entity.

Insertion of new s 223A

Clause 17 inserts a new section 223 of the Act that sets out the powers of the Sugar Industry Commissioner. The new section will give the Commissioner the power to deal with any liabilities transferred to the Commissioner from Cane Protection and Productivity Boards that are automatically dissolved under new section 364.

Amendment of section 228 (Commissioner's budget)

Clause 18 amends section 228 of the Act relating to the Sugar Industry Commissioner's budget to enable the commissioner to ask the Minister to vary the budget where the commissioner accepts any liabilities of a Cane Protection and Productivity Board under new section 364.

Amendment of s 253 (Improper use of information prohibited)

Clause 19 amends section 253 to include a new subsection (2) that provides that the offence of improperly using information provided is a misdemeanour. This amendment is consistent with current policy of clarifying whether offences are crimes or misdemeanours.

Insertion of new s 255A

Clause 20 inserts a new section 255A that sets out evidentiary provisions relating to a proceeding against this Act involving false or misleading information or a false or misleading document or statement.

Omission of chs 8 and 9

Clause 21 omits:

- chapter 8 – dealings with bulk sugar terminal assets and liabilities. This part is no longer required because the transfer of all bulk sugar terminal assets and liabilities to Sugar Terminals Limited has now been completed;

- chapter 9 – dealings with corporation assets and liabilities. This part is no longer required because the transfer of assets and liabilities of the Queensland Sugar Corporation (QSC) to Queensland Sugar Limited has now been completed and QSC has been dissolved.

Insertion of new ch 10, pt 3

Clause 22 inserts a new chapter 10 part 3 in the Act dealing with transitional matters arising from the passage of this Bill.

NEW PART 3—TRANSITIONAL PROVISIONS FOR SUGAR INDUSTRY AND OTHER LEGISLATION AMENDMENT ACT 2003

New Division 1—Preliminary

New section 344 – Definitions for pt 3

New section 344 provides definitions for the new part 1 of chapter 8 of the Act.

New Division 2—Dissolution of BSES

New Subdivision 1—Preliminary

New section 345 – Definitions for div 2

New section 345 provides definitions for the new division 2 of chapter 8 of the Act.

New section 346 “Meaning of under the control of the Queensland sugar industry”

New section 346 defines what is meant in this chapter by “under the control of the Queensland sugar industry”. BSES can only transfer to a

corporation that is under the control of the Queensland sugar industry which means that at least 75% of the members and 75% of the voting right rest with mill owners and growers.

New Subdivision 2—Steps to transfer and dissolution

New section 347 – Decision to transfer to replacement corporation

New section 347 requires the Bureau of Sugar Experiment Stations (BSES) to make a decision to dissolve and transfer its assets and liabilities to a company limited by guarantee that is under the control of the Queensland sugar industry.

New section 348 – Things that must be decided for the transfer

New section 348 requires that BSES decide the following matters for the transfer to a company limited by guarantee:

- the day of the proposed transfer;
- the corporation to which it will make the transfer.

New section 349 – Conditions for transfer

New section 349 provides that BSES can decide to transfer to a corporation only if:

- the corporation gives written consent to the transfer;
- the corporation is under the control of the Queensland sugar industry. The corporation is under the control of the Queensland sugar industry if the industry has at least 75% control of it;
- the corporation is a company limited by guarantee; and
- BSES is satisfied that on transfer, the constitution, officers and any obligations on members of the corporation will be appropriate.

New section 350 – Notice of decision about replacement corporation

New section 350 requires BSES to give the Minister notice of its decision to transfer to a replacement corporation.

New section 351 – Minister’s decision

New section 351 requires the Minister to consider the notice given by BSES about its decision to transfer to a replacement corporation under new section 350. If the Minister is satisfied that the requirements of the Act have been complied with the Minister must, by notice to BSES, approve the transfer day or set another transfer day provided it is on or before 30 June 2003. If the Minister is not satisfied, the Minister may give a direction to BSES. BSES must comply with a direction.

New section 352 – Transfer and dissolution

New section 352 provides that on the transfer day all assets and liabilities are transferred to the replacement corporation and BSES is dissolved.

New section 353 – Replacement corporation does not represent the State

New section 353 provides that the replacement corporation does not represent the State and cannot make the State liable for the debts and obligations of the corporation or any other person.

New subdivision 3—Provisions facilitating transfer

New section 354 – Registration of transferred assets

New section 354 sets out evidentiary provisions relating to the transfer of assets from a board to the replacement corporation.

New section 355 – References to BSES

New section 355 provides that references to the BSES in an Act or document existing before dissolution will, from its dissolution, take effect as references to the replacement corporation.

New section 356 – Continuity of proceedings and matters

New section 356 provides that proceedings that could have been taken if BSES continued to exist, may be taken against the replacement corporation.

New section 357 – Employees

New section 357 provides that, on the transfer date, employees of BSES become employees of the replacement corporation. An employee's entitlements, such as leave, are carried over to the replacement corporation with no interruption to the employee's continuity of service.

New section 358 – Directors cease holding office

New section 358 provides that each person who was a director of BSES goes out of office on the transfer day. No compensation is payable for the persons losing office on the transfer day.

New section 359 - Officer to remain member of cane protection and productivity board

New section 359 provides that officers of BSES who are directors of CPPB Boards remain members of those Boards after the dissolution of BSES. Section 181 of the Act sets out the membership of CPPB Boards. Section 181 provides that one of the members of the Board will be an officer of the BSES nominated by BSES. In order to ensure continuity of the Boards after the dissolution of BSES, this amendment will ensure that the former BSES nominee remains a member of the Board.

Insertion of new ch 10, pt 3, div 3

Clause 23 Inserts a new chapter 10, part 3, division 3 into the Act dealing with the automatic dissolution of Cane Protection and Productivity Boards

if no replacement entities are nominated or the Boards dissolved by 30 June 2004.

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

New section 360 Definitions for div 3

New section 360 provides definitions for the new division 3.

New section 361 Automatic dissolution

New section 361 provides for the automatic dissolution of CPPBs. Automatic dissolution will occur where a board has not transferred to a receiving entity or dissolved before 30 June 2004. Upon automatic dissolution of a CPPB, its assets and liabilities are transferred to the replacement corporation of BSES at which time the Board of the CPPB is dissolved and the Board's productivity area is abolished.

New section 362 Registration of transferred assets

New section 362 sets out evidentiary provisions relating to the transfer of assets from a board to the replacement corporation of BSES.

New section 363 References to board

New section 363 provides that references to the CPPB Board in an Act or document existing before dissolution will, from its dissolution, take effect as references to the replacement corporation of BSES.

New section 364 Continuity of proceedings and matters

New section 364 provides that existing proceedings, or proceedings which could have been started by or against the former CPPB may be continued or started by or against the Sugar Industry Commissioner.

New section 365 Employees

New section 365 provides that on the transfer date, employees of CPPBs become employees of the replacement corporation for BSES. An employee's entitlements, such as leave, are carried over to the replacement corporation with no interruption to the employee's continuity of service.

New section 366 Members cease holding office

New section 366 provides that each person who was a member of the Board of a CPPB goes out of office on the transfer day. No compensation is payable for the persons losing office on the transfer day.

Insertion of new ch 10, pt 3, div 4

Clause 24 inserts a new chapter 10, part 3 division 4 dealing with appeals that had commenced against the BSES prior to dissolution.

New Division 4—Appeals

New section 367 Definitions for div 4

New section 367 provides definitions for the new division 4.

New section 368 Appeal to Magistrates Court against BSES's decision

New section 368 provides that any appeals to the Magistrates Court against decisions of the BSES prior to its dissolution lapse on its dissolution. This is appropriate because the decisions that would have been open to appeal relate to the planting of cane varieties. This Bill will move those issues to the *Plant Protection Act 1989* with decisions being made by the Director-General. Given this, it would be more appropriate for a new decision to be made by the Director-General under the new provisions than to continue with an appeal.

New section 369 Appeal to District Court against Magistrates Court's decision

New section 369 provides that any appeal to the District Court from a decision of the Magistrate's Court on a decision by BSES prior to its dissolution will lapse on its dissolution. As with the preceding clause this is appropriate because the decisions that would have been open to appeal relate to the planting of cane varieties. This Bill will move those issues to the *Plant Protection Act 1989* with decisions being made by the Director-General. Given this, it would be more appropriate for a new decision to be made by the Director-General under the new provisions than to continue with an appeal.

Insertion of new ch 10, pt 3, div 5

Clause 25 inserts a new chapter 10, part 3, division 5 relating to applications for injunctions made by, or the grant of injunctions to, BSES or CPPBs prior to their dissolution.

New Division 5—Injunctions

New section 370 Definitions for div 5

New section 370 provides definitions for the new division 5.

New section 371 Undecided applications taken to have lapsed

New section 371 provides that any undecided applications for injunctions made by BSES or a CPPB prior to its dissolution lapses.

New section 372 Injunctions of no effect after commencement

New section 372 provides that any injunction taken out by BSES or a CPPB prior to its dissolution lapses.

Amendment of schedule (Dictionary)

Clause 26 amends the schedule to the Act, which contains the dictionary, to omit terms that will become redundant on the commencement of this amending Act and insert relevant new definitions.

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

Act amended in pt 3

Clause 27 provides that this part amends the *Liens on Crops of Sugar Cane Act 1931*.

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

Clause 28 omits section 16 of the Act. Section 16 provides that proceeds of any sugarcane shall be applied in satisfaction of any sum lawfully payable and not duly paid to a Cane Protection and Productivity Board established under the *Sugar Industry Act 1999* for the supplying of any fumigant, insecticide, fungicide, poison, or other material, or more than 1 of those materials, for the purpose of the control with respect to that sugarcane of any pest within the meaning of that Act and for any services rendered in connection with the use of that material for that purpose, in priority to all other sums, secured or unsecured, payable from such proceeds including any sum due and owing to any lienee and secured by a lien duly registered under this Act and in force over that sugarcane. With the dissolution of Cane Protection and Productivity Boards this provision will become redundant.

PART 4—AMENDMENT OF PLANT PROTECTION ACT 1989

Act amended in pt 4

Clause 29 provides that this part amends the *Plant Protection Act 1989*.

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

Clause 30 omits section 6AA of the Act. This section currently provides that:

- a reference to the chief executive is taken to be a reference to the chief executive officer of the Bureau of Sugar Experiment Stations established under the *Sugar Industry Act 1999*; and
- if under section 16, an inspector takes measures on behalf of a body established under the *Sugar Industry Act 1999*, the provisions of sections 17 and 18 apply as if a reference to the Crown were a reference to the body; and
- if a matter or thing is seized by an inspector acting on behalf of a body established under the *Sugar Industry Act 1999*, sections 25 and 26 apply as if a reference to the Crown were a reference to the body; and
- a reference in section 28 to the Crown includes a reference to a body established under the *Sugar Industry Act 1999*.

The section is being omitted consequential of the dissolution of the BSES which carried on functions under the Plant Protection Act by virtue of section 6AA.

Insertion of new s 11A

Clause 31 inserts new section 11A into the Act. The concept of restricting the planting of non-approved cane, currently in sections 60 to 62 of the *Sugar Industry Act 1999*, is transferred by this amendment to the Plant Protection Act. This is done by providing the Director-General with a head of power to, by notice, declare approved varieties of plants (not just sugar cane) for planting and cultivating in pest quarantine areas. The notice will be subordinate legislation to ensure adequate drafting and scrutiny by Parliament.

SCHEDULE

MINOR CONSEQUENTIAL AMENDMENTS OF SUGAR INDUSTRY ACT 1999

The schedule makes a number of minor amendments consequential on the amendments being made by this Bill.