

Sugar Industry Amendment Bill 2005

Explanatory Notes

General Outline

Short title

The short title of the Bill is the *Sugar Industry Amendment Bill 2005*.

Policy objectives

To amend the *Sugar Industry Act 1999* (Sugar Industry Act) to remove statutory vesting and to provide transitional arrangements to facilitate the orderly marketing of the Queensland sugar crop.

Reasons for the policy objectives

Since the beginning of 2002, both the State and Federal Governments have been closely examining the long term viability of the sugar industry in Queensland. This examination has been prompted, in particular, by the pressures placed on the industry by its competitive global environment.

In early 2004, the *Sugar Industry Reform Act 2004* amended the *Sugar Industry Act 1999* to lessen the regulatory environment on the Queensland sugar industry by removing the statutory cane production area system and the statutory bargaining system.

These amendments followed a review of the industry in 2002 which found that the regulatory structure of the industry (at that time) limited its ability to respond to the globally competitive forces it was facing.

The 2002 review also identified a further regulatory impediment facing the industry, namely the compulsory acquisition ('vesting') of raw sugar on the domestic market. This requires all raw sugar to go through a 'single desk' marketing body (Queensland Sugar Limited).

The *Sugar Industry Reform Act 2004* included some limited relaxation of domestic marketing arrangements.

In March 2004, the Queensland Government and the State's peak sugar industry representative bodies, the Australian Sugar Milling Council (ASMC) and the CANEGROWERS organisation committed to a Heads of

Agreement. Following the Heads of Agreement, the 2004 reforms were implemented.

A major element in the Heads of Agreement was the establishment of a working group to “develop voluntary marketing arrangements as soon as possible. The objective of this working group is to work towards a new system for marketing of raw sugar prior to the requirement for review in 2006.”

To discharge this commitment the report of the working group was delivered in July 2005 and proposed the introduction from the 2006 season of a ‘New Marketing System’ for Queensland sugar.

In October 2005, a Memorandum of Understanding (MOU) was executed between the State Government, ASMC and CANEGROWERS to progress these new arrangements. This requires amendments to be made to the *Sugar Industry Act 1999*.

The MOU recognises that while the Queensland Government intends to pursue its policy to remove regulatory encumbrances from the sugar industry, it is committed to support an orderly transition from legislative to contractually-based marketing arrangements for bulk export sales.

It is recognised that, in moving to a new marketing system, the key to success is for all parties to work towards delivering greater flexibility and enhanced outcomes whilst continuing the benefits and synergies of presenting a coordinated face to Queensland's bulk raw sugar customers. The peak industry bodies have committed to working with Queensland Sugar Limited to assist it to remain the preferred marketer.

Following the signing of the MOU in October 2005, the Queensland Government moved ahead to prepare the necessary legislative amendments that will enable the introduction of the new sugar arrangements commencing with the 2006 crop. This will be accomplished by way of commercially negotiated contractual arrangements between participating mill owners and Queensland Sugar Limited (QSL) for the export of bulk raw sugar for an initial period of three years.

The new contract-based arrangements will replace the current compulsory acquisition or ‘vesting’ of raw sugar under the *Sugar Industry Act 1999*, thereby allowing all the provisions of the Act dealing with vesting and statutory based marketing arrangements to be repealed.

The repeal of the vesting provisions will also mean that the domestic sugar market will be fully deregulated. It will confirm previous arrangements

which allowed individual mills to arrange their own ‘niche market’ exports of speciality sugar in bags and containers.

Apart from repealing the vesting arrangements, the Bill contains necessary transitional provisions identified by the Department of Primary Industries and Fisheries and the Office of the Queensland Parliamentary Counsel.

For example, the Bill contains what are called ‘authorisations’ to ensure that the new sugar marketing arrangements are protected from any difficulties that might otherwise arise under the *Trade Practices Act 1974* (TPA).

The requested authorisations are being provided in recognition of the need to have a smooth transition to the New Marketing System.

How the policy objectives will be achieved

The most important legislative changes to be progressed via the *Sugar Industry Amendment Bill 2005* will be the repeal of the vesting arrangements, effective from the date of proclamation of this Bill, with the aim being for that to occur if possible on 1 January 2006. However, raw sugar from the 2005 harvest that is vested prior to 31 December 2005 will continue to be the legal property of QSL. This is because once raw sugar from the 2005 harvest has been legally vested (ownership transferred) under the Act as it now stands, it will not subsequently ‘divest’.

With these changes, there is no need for the current Ministerial pricing direction to continue, and it will be revoked administratively with the amending legislation’s commencement.

Alternatives to the Bill

The alternatives are to either make no legislative changes (that is, maintain the ‘status quo’) or to repeal the vesting arrangements without any transitional provisions.

The first-mentioned option would mean that a full-scale review of the Act for the purposes of National Competition Policy (NCP) would then need to be conducted in 2006-2007 that would subject the statutory arrangements of the Act (notably vesting) to a Public Benefit Test.

In the interim, under the status quo option, the existing regulated marketing arrangements for sugar would continue, at least until the NCP review. As it would be very difficult to justify the continuation of the current regulated arrangements in an open and transparent NCP review, the most likely

outcome would be that the current arrangements would have to be dismantled following the review.

This option does not provide any long-term stability for the industry and is not supported by the Queensland Government.

In regard to the second-mentioned option, this would result in complete deregulation without any orderly transitional arrangements. This would potentially be disruptive to the industry, especially in regard to export arrangements.

This option does also not provide any long-term stability for the industry and is not supported by the Queensland Government.

Estimated administrative cost to government for implementation

There are no specific financial issues for the Queensland Government to address in regard to the passage of the necessary facilitating legislation.

Consistency with fundamental legislative principles

It is arguable that the following issues in the Bill breach fundamental legislative principles:

Loss of employment and members of authority going out of office

It is arguable that new sections 278 and 279, which are being inserted into the *Sugar Industry Act 1999* by clause 20 of the Bill, is a departure from fundamental legislative principles in that they purport to terminate the appointment of employees and members of the Sugar Authority without compensation. However, the Office of the Queensland Parliamentary Counsel has only included the provisions with an abundance of caution. In fact, the Authority does not currently employ any staff and has only one member, that being the Sugar Industry Commissioner. The Commissioner's remuneration will not be affected by the abolition of the Authority. Accordingly, no positions need to be terminated or compensation considered.

Retrospectivity

Two issues regarding retrospectivity arise. Firstly, proposed new sections 243 to 245 being inserted by clause 17 and new sections 282 and 283 being inserted by clause 20 provide TPA authorisations for pooled export contracts and domestic supply contracts made before 30 October 2004. The retrospective application is beneficial to orderly transition to the new marketing arrangements. The Australian Sugar Milling Council,

CANEGROWERS and Queensland Sugar Limited looked to the Government to provide such limited authorisation arrangements as may be considered necessary to assist the orderly transition to the new marketing system. The Public Benefit Test undertaken on the TPA authorisations demonstrates a significant net public benefit in enacting these provisions.

The second issue relates to new sections 268, 269 and 270 being inserted by clause 20 of the Bill. Those sections, in part, preserve the operation of sections 107Q, 107R(5) and 107S(4) of the Act for the period until all exemption from vesting issues for the 2005 season are finalised. Sections 107Q, 107R(5) and 107S(4) provide that an exemption from vesting is taken to have no effect if certain breaches occur, in which case the sugar retrospectively vests in QSL. These provisions are merely being continued by this Bill for a brief period. Breaches of vesting exemption provisions could potentially involve large shipments of sugar worth a very significant amount of money. Re-vesting in QSL is therefore seen as a necessary financial disincentive to breach of the provisions.

Exempt matter under Freedom of Information

New section 271, being inserted by clause 20 of the Bill, continues the operation of section 107T of the Act after commencement. Section 107T provides that a document held by the Authority in connection with an application for exemption or the granting of exemption, including periodic estimates and annual returns, is exempt matter under the *Freedom of Information Act 1992* (FOI). Section 107T was included in the Act because it was regarded as essential that the information is exempt matter because it will be of a highly commercially sensitive nature, and for industry to take up new and innovative uses of sugar on the domestic market, it will need to be confident in the integrity of the system. That will remain the case after commencement of this Bill.

Current convention is for exempt matters under the FOI Act to be included in that Act. However in this case, given that the original FOI provisions were in the Sugar Industry Act, the Office of the Queensland Parliamentary Counsel considered that the transitional provisions should also be in the Sugar Industry Act.

Injunctions

New sections 285 and 286, being inserted by clause 20 of the Bill, deem undecided injunction applications under section 247 of the Act to have been withdrawn and provide that injunctions granted under section 247 have no effect after commencement. Section 247 enables injunctions relating to contraventions of chapters 2 or 3 of the Act. The relevant part of

chapter 2 relates to supply arrangements until 31 December 2005 only. Chapter 3 relates to the marketing of sugar under the current vesting arrangements and is being omitted under this Bill. There would, after commencement of this Bill, no longer be any useful purpose to be served by proceeding with injunction provisions following the expiry and repeal of the provisions breach which could lead to an injunction.

Consultation

Community

CANEGROWERS, ASMC and QSL were consulted.

Government

The following Departments were consulted on the preparation of the Bill:

- Premier and Cabinet
- Treasury
- State Development, Trade & Innovation
- Communities
- Natural Resources and Mines
- Employment and Training
- Justice and Attorney General (Crown Law)

Results of Consultation

Community

CANEGROWERS, ASMC and QSL support the legislative changes needed to underpin the New Marketing System.

A significant number of growers from the Burdekin area and the smaller Australian Cane Farmers Association have expressed concern over this proposal.

Government

All Departments consulted supported the Bill.

Notes on Provisions

Short title

Clause 1 provides that the short title of the Act is the *Sugar Industry Amendment Act 2005*.

Commencement

Clause 2 provides that this Act commences on a day to be fixed by proclamation.

Act Amended

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

Omission of ch 3 (Marketing)

Clause 4 omits Chapter 3 of the Act which deals with the marketing of sugar. Currently within this Chapter Section 100 of the Act vests all raw sugar in Queensland Sugar Limited (QSL). Under section 101 QSL markets this product on both the domestic and the world market on behalf of the industry. QSL compulsorily acquires the sugar, but must return the proceeds of the sale to mills. This is commonly known as the “single desk”.

QSL is an industry owned corporation, the privatised successor to Queensland Sugar Corporation, a statutory authority. Under section 102 the proceeds of the sale of raw sugar are returned to mills, less the marketing costs of QSL, on the basis of payment schemes negotiated between QSL and the mills. Section 103 of the Act gives QSL the power to direct mills to produce certain brands of sugar, although in practice the kinds of sugar produced are the subject of commercial negotiation between the parties.

The Chapter is being deleted because a New Marketing System (NMS) for raw sugar, based on contractual agreement between mills and QSL is to be implemented, a key feature of which is the abolition of all vesting.

Amendment of s 109 (Reports to the Minister)

Clause 5 amends section 109 of the Act which provides for reports from the Sugar Authority (the Authority) and the Sugar Industry Commissioner.

The amendments remove reference to 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.

Because this Bill is removing vesting of sugar in QSL and the regulation of the marketing of sugar by QSL, the roles of the Sugar Authority have become redundant. Accordingly this Bill is abolishing the Authority. This clause is consequential on that abolition.

Amendment of s 110 (Minister's directions)

Clause 6 amends section 110 of the Act which provides for directions by the Minister to the Sugar Industry Authority and the Sugar Industry Commissioner. The clause removes references in section 110 to the Sugar Authority. As detailed above for clause 5, the Bill abolishes the Sugar Authority, making references to it in this section redundant.

Replacement of s 111 (Minister's directions in entities annual report)

Clause 7 omits section 111 of the Act which requires that direction made by the Minister to the Sugar Authority or Sugar Industry Commissioner must be published in the entities annual report. The clause inserts a new section 111 that removes references to the Sugar Authority. As outlined above for clauses 5 and 6 above, this Bill abolishes the Sugar Authority, thereby making such references redundant.

Omission of s 112 (Review of sugar vesting scheme)

Clause 8 omits section 112 of the Act. Section 112 provides that the vesting arrangements are subject to a review that must commence before December 2006.

The reforms implemented by this Bill require the removal of compulsory vesting and accordingly result in substantive changes to the Act and will replace the intended 2006-2007 NCP review, currently required by section 112.

Omission of ch 4, pt 3 (Queensland Sugar Limited)

Clause 9 omits chapter 4, part 3 of the Act which relates to Queensland Sugar Limited. This chapter relates to the establishment of Queensland Sugar Limited (QSL). QSL is a company under Corporations Law limited

by guarantee. QSL, which is controlled by the Queensland sugar industry, took over the statutory single desk marketing of sugar from the Queensland Sugar Corporation (QSC), and exercises the vesting powers previously exercised by the QSC.

This part currently contains sections providing:

- that QSL does not represent the State (s. 119)
- for the Application and non-application of certain Acts to QSL (s.120)
- for certain matters to be contained in QSL's constitution (s. 121)
- conditions on the composition of the QSL board (s. 122)
- for an audit of QSL (s.123)
- power for the Minister to give a sugar price direction to QSL (s.124). A sugar price direction is currently in force, setting the price for domestic sugar at import parity price.

Since the vesting of raw sugar is to be abolished by this Bill, the Act no longer need contain any regulatory controls over Queensland Sugar Limited (QSL).

Omission of ch 4, pt 4 (The Sugar Authority)

Clause 10 omits chapter 4, part 4 of the Act which relates to 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.

None of these functions will be relevant once this Bill is enacted. It should be noted that the Authority does not currently employ any staff and has only one member, that being the Sugar Industry Commissioner. The Commissioner's remuneration will not be affected by the abolition of the Authority.

Amendment of s 223 (Functions of the commissioner)

Clause 11 amends section 223 which provides for the functions of the Sugar Industry Commissioner. Currently those functions are to:

- Grant access rights and to keep the access rights register

- Accept each intention to contract lodged with the commissioner under section 20(5)
- To mediate negotiations within the sugar industry in Queensland, other than in matters in which the commissioner is the decision maker, if asked by all parties to the mediation
- To be a member of the Sugar Industry Authority
- To receive any assets and liabilities transferred to the commissioner under chapter 10 and
- To act for the benefit of the sugar industry

A number of the amendments being made by this Bill affect the functions of the Commissioner set out in this section and accordingly the following functions are being omitted:

- Acceptance of intention to contract under section 20(5) – this is a requirement to lodge an intention to contract with the commissioner. This provision was only relevant for the 2005 crushing season;
- Be a member of the Sugar Authority – the Authority is being abolished by this Bill;

Amendment of s 223A (Powers of commissioner)

Clause 12 amends section 223A of the Act which sets out the powers of the commissioner. The amendment reflects a changed chapter number that is consequential to other amendments made by this Bill.

Amendment of s 227 (Commissioner's independence)

Clause 13 omits section 227(2) of the Act. That section provided that the commissioner's independence did not prevent QSL providing staff and other resources to the commissioner to carry out his or her functions. This section is no longer appropriate now that QSL have no functions under the Act and the commissioner no longer has a role in vesting or marketing of sugar.

Amendment of s 228 (Commissioner's budget)

Clause 14 amends section 228(6) which provides for the Commissioner's budget by reflecting a changed chapter number that is consequential to other amendments made by this Bill.

Amendment of s 230 (Commissioner's power to delegate)

Clause 15 amends section 230(1) of the Act which provides the Sugar Industry Commissioner's power to delegate. Currently the Commissioner can delegate to:

- an appropriately qualified member of the commissioner's staff
- an entity established under this Act or
- an appropriately qualified member or officer of an entity established under this Act

Following the amendments made by this Bill, there are no longer any entities established under the Act to which powers could be delegated. Accordingly reference to entities established by the Act or staff of such entities is being omitted.

Omission of s 234A (Appeal to the District Court – exemption application)

Clause 16 omits section 234A of the Act which provides for appeals to the District Court against a decision on an application for an exemption from vesting under section 107G of the Act. With the abolition of vesting, exemption applications under section 107G will no longer be required.

Replacement of ss 243-246

Clause 17 omits sections 243 to 246 of the Act which provide trade practices authorisations for payment schemes, brand sugar and directions about delivery of sugar to QSL. These sections all relate to matters concerned with the vesting of sugar in QSL and the consequent marketing of sugar by QSL.

The clause also inserts new sections 243 and 244 that provide trade practices authorisations for pooled export contracts, domestic supply contracts made before 30 October 2004.

New section 243 – Pooled export contracts

For the future export of raw sugar once vesting ends, QSL will need to negotiate commercial export contractual arrangements with the milling companies and co-operatives. To the extent that these arrangements will involve an agreement between the mills and QSL for collective selling and uniform (pool) pricing, there could be a potential breach of the Commonwealth's *Trade Practices Act 1974* (TPA).

In order to avoid any potentially adverse TPA exposure, new clause 243 will provide that authorisation for those activities. Section 51 of the TPA allows a State to legislate to specifically ‘authorise and approve’ of activities that would otherwise be in breach of the TPA (the *Sugar Industry Act 1999* already contains a number of specifically worded TPA ‘section 51’ exemptions).

The Government considers that it is appropriate to ensure that QSL’s export arrangements under the NMS are covered to the maximum possible extent from any TPA exposure. The authorisation will apply until 30 September 2009, or such later gazetted date as dealings under contracts for the 2008/2009 financial year have been completed. As it is not possible to precisely identify the completion date for transactions requiring authorisation for the sale of the 2008 crop, a later date may need to be prescribed to allow for completion of the three year authorisation. After that time QSL will need to consult with the Australian Competition and Consumer Commission (ACCC) about any further authorisations under the TPA.

New section 244 – Pooled domestic contracts to satisfy refiner supply contract made before 30 October 2004

New section 244 addresses the need for a TPA authorisation to cover activities associated with certain ‘pre-existing’ domestic contracts (that is, between QSL and two of the domestic sugar refiners, that run past 31 December 2005 to expiry on 30 June 2007). The authorisation is not for the actual contracts, but rather for activities associated with the supply of sugar from mills to QSL to enable it to meet these contracts, and for the pricing arrangements for that sugar (including the negotiation of premiums and other supply incentives). The authorisation will continue until 30 September 2007 to ensure all dealings relating to the 2006/07 crushing season have been completed.

New section 245 – Pooled Export and domestic contract

New section 245 clarifies that a single contract between QSL and a customer can be authorised under the TPA Act by virtue of both new sections 243 and 244 above, that is both export and domestic content in the same contract is authorised. The new section will apply until 30 September 2009, or such later prescribed date as export dealings under contracts for the 2008/2009 financial year have been completed. As it is not possible to precisely identify the completion date for transactions requiring authorisation for the sale of the 2008 crop, a later date may need to be gazetted to allow for completion of the three year authorisation. After that time QSL will need to consult with the Australian Competition and

Consumer Commission (ACCC) about any further authorisations under the TPA.

Amendment of s 247 (Injunctions)

Clause 18 amends section 247 which provides for the granting of injunctions by omitting reference to chapter 3 of the Act (Marketing). This Bill is omitting that part.

Omission of s 254 (Indemnity)

Clause 19 omits section 254 of the Act which provides for indemnities by QSL or by bodies under the Act. Following the enactment of this Bill QSL will no longer be governed by the Act and the other bodies referred to in the section no longer exist.

Replacement of ch 10 (Transitional provisions)

Clause 20 replaces chapter 10 of the Act which provides for transitional provisions. The amendment includes new transitional provisions for the *Sugar Industry Amendment Act 2005* and remove previous, now redundant transitional provisions.

New Chapter 8 – Transitional provisions for Sugar Industry Amendment Act 2005

Part 1 – Preliminary

New section 258 – Definitions for ch 8

New section 258 provides definitions for the chapter 8.

New section 259 – References to authority

New section 259 provides that for this chapter, references in a provision of the unamended Act, chapter 3, to the authority is taken to be a reference to the commissioner. This amendment is being made because this Bill abolishes the Authority.

New section 260 – References to unamended Act

New section 260 provides that if this chapter states that a provision of the unamended Act continues to apply, the provision applies as if the amending Act has not been enacted.

Part 2 – Sugar vested in QSL**New section 261 – Payments by QSL to mill owners**

New section 261 ensures that, if QSL has not, before the commencement of this Bill, made any payments to mill owners for sugar that has vested in QSL, the obligation on QSL to make the payment continues.

New section 262 – Payment schemes

New section 262 removes any doubt that the repeal of section 105 (Sugar Quality Standards) of the Act by this Bill does not, after the commencement of this Bill, prevent QSL giving effect to a sugar quality standard.

New section 263 – Obligations of mill owners

New section 263 will ensure that the operation of section 107 of the Act is preserved after the commencement of this Bill. Section 107 currently enables a mill to retain local consumption exempt sugar for local consumption. The obligations in section 107 that a mill owner must give written notice to QSL of the amount of local consumption sugar sold and maintain records of the sales is preserved by this new section.

Part 3 - Exemptions**New section 264 – Definitions for pt 3**

New section 264 provides definitions for the new part 3.

New section 265 – Late exemption applications

New section 265 will ensure that any late applications for exemption from vesting during the 2005 crushing season continue to be dealt with following the repeal of those exemption provisions by this Bill. Currently

section 107E of the Act requires that an application for exemption from vesting must be made to the Sugar Authority by 16 September in the crushing season to which the application relates. An application for a “late exemption” can be made after that date.

New section 266 – Decision made after commencement on late exemption application

New section 266 will ensure that a decision is made on any late applications for exemption from vesting during the 2005 crushing season following the repeal of those exemption provisions by this Bill. The new section preserves the application of sections 107H to 107L and 107O of the Act as if the amending Act had not been enacted and a reference to the Authority was a reference to the Commissioner.

Details of the preserved sections are:

Section 107H currently requires the Sugar Authority to make a decision on an exemption application within 7 days of receipt or, if further information is sought, within 7 days of receiving that information.

Section 107I currently requires the Sugar Authority to grant an exemption application if satisfied—

- the applicant is the owner of the relevant sugar source; and
- the proposed use of the sugar to be exempted under the application is an exempt use.

Section 107J currently enables the Authority, in granting a late exemption application, to impose conditions on the exemption the authority considers necessary or desirable to ensure the exempt sugar under the application is used only for an exempt use. The power to impose conditions only applies to late exemption because the Authority will have sufficient details with those applications (including a copy of a contract, agreement or understanding) to devise meaningful conditions. Insufficient details will be required with an exemption application other than for a late exemption to allow meaningful conditions to be imposed.

Section 107O currently requires the Authority to provide an applicant with a notice of refusal of exemption application as soon as practicable after it makes a decision to refuse the application.

New section 267 – Application for amendment of exemption

New section 267 enables a supplier to apply, after the commencement of this Bill, to the Sugar Industry Commissioner for an amendment to the supplier’s exemption from vesting for the 2005 season. The new section

preserves the operation of section 107P the Act as if the amending Act had not been enacted and a reference to the Authority was a reference to the Commissioner. Section 107P currently enables a person to apply for a variation of that person's exemption. If an Applicant is granted an Exemption, and for some reason they can no longer use the sugar for the Exempted Use or, in the case of a late exemption the On-User has changed, the Applicant must apply to the Sugar Authority for a variation of the Exemption. The Authority may grant a variation to the Exempted Use on sighting appropriate evidence of the new proposed use. The Authority may recover its costs of considering a variation.

New section 268 – Improper use of exempt sugar after commencement

New section 268 continues the offence of improper use of sugar from the 2005 season that applies where sugar has been used other than in accordance with the exemption from vesting granted.

The current section 107Q sets out the ways in which exempt sugar can be used. The holder of an Exemption or the On-User may only use the sugar referred to in that exemption in the following ways:

1. for the Exempt Use specified in the Exemption Certificate;
2. for a Variation on the Exempt Use approved by the Authority; or
3. in a contract with Queensland Sugar Limited.

If sugar is used in any other way apart from above, for example it sells the sugar to someone other than QSL without an exemption certificate, the exemption certificate is void and the sugar should be taken to have vested in QSL on manufacture.

Current section 107V makes it an offence to use exempt sugar improperly. The penalty is 3000 penalty units.

The amendment preserves the operation of sections 107Q and 107V as if this amending Act had not been enacted.

New section 269 – Annual returns given after the commencement

New section 269 continues the obligation on suppliers granted an exemption from vesting for the 2005 season to lodge an annual return detailing the use made by the supplier of the sugar the subject of the exemption.

Current section 107R requires a person who has been granted an exemption, other than a late exemption, to lodge an annual return by no later than 31 January in the year following its grant. The annual return will require the applicant to account for how the sugar the subject of the

exemption was used. This requirement is a consequence of not requiring applicants to provide details of on-users at the time the exemption is granted. Significant penalties have been provided for failure to provide a return by the set date.

Current section 107S enables the Authority to seek further information or documents to clarify the annual return. The Authority may also require an applicant to verify the correctness of a document by requiring a statutory declaration. The notice seeking further information can only be issued within 15 sitting days of the 31 January deadline for the lodging of annual returns.

Current section 107W makes it an offence to give the authority a periodic estimate or annual return containing information the person knows is false or misleading in a material particular. The penalty is 3000 penalty units.

The amendment preserves the operation of sections 107R, 107S and 107W as if this amending Act had not been enacted and references to the Authority were to the Commissioner.

New section 270 – Further documents or information for annual return

New section 270 preserves the right to seek further information regarding annual returns lodged by a supplier for the 2005 season detailing the use made by the supplier of the sugar the subject of the exemption. This power formerly resided in the Sugar Authority but because this Bill is abolishing the Authority, the power is being transferred to the Sugar Industry Commissioner.

Current section 107S enables the Authority to seek further information or documents to clarify the annual return. The Authority may also require an applicant to verify the correctness of a document by requiring a statutory declaration. The notice seeking further information can only be issued within 15 sitting days of the 31 January deadline for the lodging of annual returns.

The amendment preserves the operation of section 107S as if this amending Act had not been enacted and references to the Authority were to the Commissioner.

New section 271 – Exempt matter after commencement

New section 271 will continue the exemption from the application of the *Freedom of Information Act 1992* of documents relating to use of sugar the subject of exemptions from vesting during the 2005 season.

Current section 107T provides that a document held by the Authority in connection with an application for exemption or the granting of exemption, including periodic estimates and annual returns, is exempt matter under the *Freedom of Information Act 1992*. It is essential that the information is exempt matter because it will be of a highly commercially sensitive nature and for industry to take up new and innovative uses of sugar on the domestic market it will need to be confident in the integrity of the system.

The amendment preserves the operation of section 107T as if this amending Act had not been enacted and references to the Authority were to the Commissioner.

New section 272 – False or misleading application for amendment of exemption made after commencement

New section 272 preserves the offence for a person making an application for an exemption for vesting or an amendment to an application for vesting during the 2005 season after the commencement of this Bill.

Current section 107U makes it an offence to include false or misleading information in an exempt sugar application or an application to vary an exemption. The penalty for the offence is 3000 penalty units.

The amendment preserves the operation of section 107U as if this amending Act had not been enacted.

New section 273 – Executive officers of corporation

New section 273 preserves the offence of executive officers failing to ensure that a corporation complies with the requirements for exemption for vesting during the 2005 season.

Current section 107X provides for personal liability of executive officers of corporations that fail to comply with the exempt sugar provisions.

The amendment preserves the operation of section 107X as if this amending Act had not been enacted.

New Part 4 – Queensland Sugar Limited

New section 274 – QSL's audited financial statements for 2005/2006 financial year

New section 274 requires the Authority to provide the Minister with a final audited financial statement regarding vesting for the 2005/2006 financial year.

New Part 5 – Dissolution of Sugar Authority**New section 275 – Definitions for pt 5**

New section 275 inserts definitions for the new part 5 of chapter 10 of the Act. The new part 5 provides transitional provisions relating to the dissolution of the Sugar Authority.

New section 276 – Transfer and dissolution

New section 276 provides that on commencement the assets and liabilities of the Sugar Authority transfer to and become the assets and liabilities of the Sugar Industry Commissioner.

New section 277 – Continuity of proceedings and matters

New section 277 enables proceedings against the Sugar Authority commenced before the commencement of this Bill to be continued against the Sugar Industry Commissioner. The new section also provides that all matters started by the Authority before the commencement may be completed by the Sugar Industry Commissioner.

New section 278 - Employees

New section 278 terminates the employment of employees of the Authority. The rights of the persons may be exercised against the Sugar Industry Commissioner. This provision has been included for abundant caution but in fact there are no employees of the Authority.

New section 279 – Members cease holding office

New section 279 terminates the appointment of members of the Authority without compensation. This provision has been included for abundant caution but in fact the only member of the Authority is the Sugar Industry Commissioner. The Commissioner's remuneration will not be affected by the abolition of the Authority.

New Part 6 - Appeals**New section 280 – Appeal to District Court against authority's decision.**

New section 280 preserves the right of an applicant mentioned in the current section 107H to appeal to the District Court or to continue an action commenced against the decision of the authority.

The current section 107H requires the Sugar Authority to make a decision on an exemption application within 7 days of receipt or, if further information is sought, within 7 days of receiving that information.

Current section 234A enables appeals to the District Court from decisions of the Sugar Industry Authority regarding matters associated with the granting of exemptions from the vesting of sugar.

New Part 7 – Competition policy legislation

New section 281 – Definitions for pt 7

New section 281 provides definitions for division 6 of the new chapter 8, part 7 of the Act. The new part 7 provides transitional provisions relating to competition policy legislation.

New section 282 - Pooled export contracts made before commencement

New section 282 authorises contracts for the pooled export of sugar made under the Act before the commencement of these amendments for the purposes of the *Trade Practices Act 1974 (Cth)* (TPA). This section is necessary because transactions that are, before the commencement of these amendments, part of the sugar single desk such as:

- the creation of pools for sugar
- the setting of a common price for export sugar and
- incentives schemes of premiums and discounts and allowances may, after the commencement of these amendments be in breach of the TPA

New section 283 - Export contracts made before commencement

New section 283 authorises contracts made for the export of sugar made under the Act before the commencement of these amendments for the purposes of the TPA. This section is necessary because transactions that are, before the commencement of these amendments, part of the sugar single desk such as:

- supply of sugar by mill owners to QSL
- payment of a price for sugar by QSL to the mill owners under the contract
- the receipt of a price for sugar by the mill owners from QSL under the contract
- the calculation of the prices to be paid by QSL to each mill owner by applying a formula apportioning some or all of the sale proceeds and costs from the sugar sold in export markets between some or all of the mill owners who have entered into the contract

- a financial incentive scheme of premiums, discounts and allowances relating to the quality of sugar supplies by the mill owners and
- the export by QSL of sugar acquired under the contract may, after the commencement of these amendments be in breach of the TPA.

New Part 8 – Injunctions

New section 284 – Definitions for pt 8

New section 284 provides definitions for Part 8 of the new chapter 8 of the Act. The new Part 8 provides transitional provisions relating to injunctions.

New section 285 – Undecided applications taken to have been withdrawn

New section 285 provides that if an interested entity applied, before the commencement of these amendments, under section 247 of the Act, to the Supreme Court for an injunction to restrain conduct under provisions being repealed by these amendments, those proceedings are taken to have lapsed.

New section 286 – Injunctions of no effect after commencement

New section 286 provides that if the Supreme Court has, on the application of an interested entity, granted an injunction under section 247 of the unamended Act, the injunction is of no effect after the commencement.

New section 287 – Non-application of ss 285 and 286 in relation to improper use of exempt sugar

New section 287 provides that new sections 285 and 286 above do not apply if the interested entity is the commissioner and the repealed provision is the unamended Act section 107V. 107V makes it an offence to use exempt sugar improperly. The penalty is 3000 penalty units.

Amendment of schedule (Dictionary)

Clause 21 amends the dictionary to delete definitions that are no longer relevant following passage of this Bill and include appropriate new definitions.