

Queensland



# **SUGAR INDUSTRY ACT 1999**

**Reprinted as in force on 31 October 2002  
(includes amendments up to Act No. 11 of 2002)**

**Reprint No. 3A**

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# Queensland



## SUGAR INDUSTRY ACT 1999

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# **SUGAR INDUSTRY ACT 1999**

[as amended by all amendments that commenced on or before 31 October 2002]

**An Act about the sugar industry in Queensland, and for other purposes**

## **CHAPTER 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Sugar Industry Act 1999*.

### **2 Commencement**

(1) Chapter 4, part 10 commences on 1 October 1999.

(2) The remaining provisions commence on 1 January 2000.

### **3 Principal object of Act**

The principal object of the Act is to facilitate an internationally competitive, export oriented sugar industry based on sustainable production that benefits those involved in the industry and the wider community.

### **4 Definitions**

The dictionary in the schedule defines particular words used in this Act.

### **5 Notes in text**

A note in the text of this Act is part of the Act.

## **6 State bound**

This Act binds all persons, including the State.

# **CHAPTER 2—PRODUCTION, SUPPLY AND MILLING**

## **PART 1—CANE PRODUCTION AREAS**

### *Division 1—Establishment of entitlement*

## **7 Cane production area**

(1) A person may hold an entitlement called a “**cane production area**”.

(2) A cane production area entitles the person (a “**grower**”) to enter a supply agreement with the owner of a particular mill for the supply to the mill of cane grown on a particular number of hectares situated within land of a particular description.

*Example—*

A cane production area owned by Smith, of 10 hectares, within land description lot 1234 on plan A123456, Curra, relating to the Curra Mill means that Smith is a grower and may supply to the Curra mill cane grown on 10 hectares and grown within land description lot 1234 on plan A123456, Curra under a supply agreement with the owner of the Curra Mill. The supply agreement may, as provided by this Act, be either an individual agreement or a collective agreement.

(3) A grower is the only person who may enter a supply agreement with a mill owner.

(4) Subsection (3) does not prevent a person entering a supply agreement with a mill owner on condition the person becomes the holder of the relevant cane production area.

(5) A cane production area is property and may, for example, be sold, leased, subleased, or otherwise transferred, subject to requirements under this part.

(6) Disposal of land included in a cane production area does not effect a disposal of the cane production area.

(7) Land included in a cane production area may be the same area as, or greater than, but not less than, the number of hectares included in the cane production area.

*Example—*

The land description of grower Smith's cane production area mentioned in the example to subsection (2) may in fact encompass 20 hectares, but Smith's entitlement only relates to any 10 of those hectares at any one time.

(8) Particular land may be included in more than 1 cane production area.

(9) However, the total of all the numbers of hectares included in cane production areas in which particular land is included may not be greater than the land's actual area.

*Example of subsection (8) and (9)—*

Grower Smith may have 2 cane production areas, each of 10 hectares, and each with the same land description, actually encompassing 20 hectares. How Smith disposes of cane grown on the 20 hectares to a mill or mills depends on the mill or mills to which the cane production area relates and the supply agreements Smith is permitted to enter under this Act.

(10) Part 2, division 4, provides for the supply to the mill by the mill owner of cane grown on land included in the owner's cane production area.

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

### ***Subdivision 1—General provisions***

## **8 Explanation of div 2**

(1) A cane production area may be granted, varied or cancelled by a cane production board on application to it under subdivision 2.

(2) Applications may affect each of the details of a cane production area, that is to say, they may ask a cane production board to do 1 or more of the following—

- (a) grant or cancel the cane production area;
- (b) vary the holder;
- (c) vary the description of land included in the cane production area;

(d) vary the number of hectares by cancelling or allocating a number of hectares;

(e) vary a cane production area's conditions.

(3) A single application may be all that is needed to achieve a desired change in cane production area entitlements.

*Example—*

A grower may sell the grower's cane production area to someone else in a simple transaction associated with the sale of a cane farm. In this case a single application would be made under section 13.

(4) A combination of applications may be needed to achieve a desired outcome and may, if convenient, be included in a single application form.

*Example—*

A grower may sell the grower's cane production area to someone else who proposes to farm in a completely different place. In this case, a combination of applications would be made under section 13 (to vary the holder) and section 14 (to vary the land description to the new farm). For some reason, the new grower may want a new cane production area, involving the cancellation of the old cane production area under section 16(1)(a) and the grant of a new cane production area under section 12 combined with the transfer of the number of hectares.

(5) An application or combination of applications may be for the purpose of changing a grower's cane production area entitlements relating to more than 1 mill by effectively achieving the following—

(a) cancellation of a cane production area relating to 1 mill, or of a number of hectares included in it;

(b) granting of a cane production area relating to another mill or an allocation of a number of unallocated hectares to an existing cane production area relating to the other mill.

(6) An application mentioned in subsection (5) must comply with division 3.

## **9 General provisions applying to applications**

(1) Subject to division 3, an application for the grant, variation or cancellation of a cane production area must be made to the cane production board established for the mill to which the cane production area will relate or relates.

(2) A grant or variation (other than a cancellation of a number of hectares included in a cane production area) of a cane production area, on

application to a cane production board, may be for a particular period or indefinite.

(3) An application must be made in the way decided by the board, subject to this Act.

(4) The board may decide the application in the way it considers appropriate, subject to this Act.

(5) Before deciding an application, the board may require the applicant to provide particular information to the board.

(6) In granting or varying a cane production area, the board may impose conditions on the cane production area.

*Examples of conditions—*

1. A condition requiring the grower to contribute financially to cane railways facilitating use of the land for growing cane.
2. A condition limiting the harvesting of cane to a particular period each year.
3. A condition requiring the grower to enter into an individual agreement with the mill for a particular period or stating conditions about the grower's participation in the collective agreement made for the mill for a particular period.
4. A condition requiring the grower to use practices relating to land use, land management and environmental protection.

(7) Applications involving the grant of a number of currently unallocated hectares can not be called for or accepted by a cane production board unless it has first advertised their availability in a newspaper circulated throughout the area where cane supplied to the mill or an adjacent mill is grown.

(8) A grant, variation or cancellation on any application under this division takes effect when it is recorded in the register kept by the board under section 176,<sup>1</sup> unless the contrary intention appears.

## **10 Information notice must be given for refusal of application**

If a cane production board refuses to grant an application under this part, or grants an application on a condition not sought by the applicant, the board must give the applicant an information notice within 28 days after making the decision.

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<sup>1</sup> Section 176 (Cane production board to keep cane production area register)

***Subdivision 2—Particular applications to cane production boards*****11 Grant of new or increased cane production area from out of unallocated hectares**

(1) A person may apply to be granted a cane production area, or an increase in the number of hectares included in a cane production area held by the person, by the allocation of a stated number of unallocated hectares.

(2) For a grant of a cane production area, the application must state the description of land the applicant wishes to have included in it.

(3) The cane production board may grant the application only if it is satisfied that any consultation, required for the purposes of the grant under guidelines under any of the following, has happened—

- (a) a regulation;
- (b) section 163(d);
- (c) section 163(e).<sup>2</sup>

(4) Also, the cane production board may grant the application only if it is satisfied that, if the application is granted—

- (a) the total number of hectares that will be included in cane production areas relating to the mill will not be more than the limit decided for the mill under section 37;<sup>3</sup> and
- (b) the land that will be included in the cane production area will be suitable cane land, having regard to the anticipated effect of conditions applying to the cane production area; and
- (c) for a grant of a cane production area, the grower will have, or be likely to obtain, an estate or interest in the land that will be included in it entitling the grower to use it to grow cane; and
- (d) for a grant of a cane production area, the land that will be included in the cane production area will not include land also included in a cane production area relating to another mill, or if it will, division 3 has been complied with if it applies.

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2 Section 163 (Functions and powers of a cane production board)

3 Section 37 (Negotiating team must decide expansion of cane production areas)



(5) Also, the cane production board may grant the application only after considering anything it is required to consider under a regulation.

(6) In this section—

**“unallocated hectares”** means hectares from out of the unallocated hectares relating to the mill to which the cane production area will relate or relates.

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

(1) An application may be made for the grant of, or for an increase in the number of hectares included in, a cane production area (the **“relevant cane production area”**) relating to a mill by the allocation of a number of hectares transferred from another cane production area relating to the mill.

(2) For the grant of the relevant cane production area, the application must state the description of land the applicant wishes to have included in it.

(3) The application must be made by the grower seeking to transfer the hectares, or if a disposition of a number of hectares from a grower to another person is involved, by the grower and the other person.

(4) The cane production board may grant the application only if it is satisfied that—

- (a) every third party consent required under section 17 has been obtained; and
- (b) any consultation, required for the purposes of the grant under guidelines under any of the following, has happened—
  - (i) a regulation;
  - (ii) section 163(d);
  - (iii) section 163(e).<sup>4</sup>

(5) Also, the cane production board may grant the application only if it is satisfied that, if the application is granted—

- (a) the land that will be included in the relevant cane production area will be suitable cane land, having regard to the anticipated effect of conditions applying to the cane production area; and

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<sup>4</sup> Section 163 (Functions and powers of a cane production board)

- (b) for the grant of a cane production area, the grower will have, or be likely to obtain, an estate or interest in the land that will be included in it entitling the grower to use it to grow cane; and
- (c) the land that will be included in the cane production area will not include land also included in a cane production area relating to another mill, or if it will, division 3 has been complied with if it applies.

(6) If the total number of hectares included in a cane production area are being transferred, the cane production area must be cancelled under section 16(1)(a).

(7) Also, section 18(3) to (7) applies.

### **13 Transfer of cane production area to another person**

(1) An application may be made to transfer the cane production area of a grower (the “**transferor**”) to another person (the “**transferee**”).

(2) The application must be made by the transferor and the transferee.

(3) The board may grant the application only if it is satisfied that every third party consent required under section 17 has been obtained.

(4) Also, the cane production board may grant the application only if it is satisfied that, if the application is granted, the transferee will have, or be likely to obtain, an estate or interest in the land that will be included in the cane production area entitling the transferee to use it to grow cane.

(5) Also, section 18(3) to (7) applies.

### **14 Variation of description of land included in cane production area**

(1) A grower may apply for a variation of the description of land included in the grower’s cane production area.

(2) The cane production board may grant the application only if it is satisfied that—

- (a) every third party consent required under section 17 has been obtained; and
- (b) any consultation, required for the purposes of the grant under guidelines under any of the following, has happened—
  - (i) a regulation;

- (ii) section 163(d);
- (iii) section 163(e).<sup>5</sup>

(3) Also, the cane production board may grant the application only if it is satisfied that, if the application is granted—

- (a) the land that will be included in the cane production area will be suitable cane land, having regard to the anticipated effect of conditions applying to the cane production area; and
- (b) the grower will have, or be likely to obtain, an estate or interest in the land that will be included in the cane production area entitling the grower to use it to grow cane.

## **15 Variation of conditions of cane production area**

(1) A grower may apply for a variation in the conditions on which the grower holds the grower's cane production area.

(2) The cane production board must grant the application if, by unanimous decision, it considers the variation appropriate.

## **16 Cancellation of cane production area or hectares on application**

(1) A grower may apply to have the grower's cane production area cancelled, or to vary the cane production area by cancelling a part of its number of hectares, for the purpose of—

- (a) the grant or variation of another cane production area relating to the same mill; or
- (b) permanently ceasing to grow cane in relation to the cancelled cane production area or to the extent relevant to the cancelled number of hectares, including on land previously used to grow the cane.

(2) The cane production board must grant the application if it is satisfied that—

- (a) the purpose of the cancellation or variation is as mentioned in subsection (1)(a) or (b); and

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5 Section 163 (Functions and powers of a cane production board)

(b) every third party consent required under section 17 has been obtained.

(3) For subsection (2)(a), the board must be satisfied that division 3 does not apply.

(4) On the grant of an application under subsection (1)(b), the number of hectares of the cancelled cane production area, or the number of hectares cancelled, become unallocated hectares for the mill to which the cane production area relates or related.

## **17 Third party consent required in particular circumstances**

(1) This section applies to an application for the following—

- (a) transfer of a number of hectares from a cane production area;
- (b) transfer of a cane production area from a grower to another person;
- (c) variation of the description of land included in a cane production area;
- (d) cancellation of a cane production area or of a part of the number of hectares included in a cane production area.

(2) The application must provide a statutory declaration stating the following about the relevant land—

- (a) whether or not a third party has an interest in the land;
- (b) if there is a third party, whether or not the declarant has obtained the third party's written consent to the transfer, variation or cancellation.

(3) The statutory declaration must be made by the transferor, if a disposition to another person is involved, or if not, by the applicant.

(4) If a third party has refused to give written consent, the following provisions apply—

- (a) the applicant may ask the cane production board deciding the application to dispense with the consent;
- (b) the third party must be given notice of the applicant's request and is entitled to be heard by the board on it;
- (c) the board may dispense with the consent if it considers it is being unreasonably withheld.

(5) The application can not be granted unless the consent of each third party mentioned in subsection (2) has been obtained or dispensed with under subsection (4).

(6) In this section—

“**relevant land**” means the land included in the cane production area mentioned in subsection (1)(a), (b) or (d) or the description of which is being varied as mentioned in subsection (1)(c).

## **18 Relationship between entitlement change and supply agreement obligations**

(1) An application under this division may be necessary to provide for a change to a supply agreement applying to a grower because a grower supplies cane to a mill under a supply agreement that depends on the grower’s entitlements under a cane production area.

(2) However, a cancellation or variation of a cane production area under this division, other than as expressly provided by this Act, has no effect on the obligations under the supply agreement of anyone bound by it.<sup>6</sup>

(3) Subsections (4) to (6) apply to an application for the following—

- (a) transfer of a cane production area from 1 person to another;
- (b) cancellation of a cane production area or of part of the number of hectares included in a cane production area.

(4) If a collective agreement applies or applied to the cane production area, the application must provide the transferor’s statutory declaration stating the following about the cane production area—

- (a) whether or not the transferor has an outstanding obligation under the agreement;
- (b) if there is an outstanding obligation, its nature.

(5) The purpose of subsection (4) is to ensure that—

- (a) any relevant obligations of a grower under a collective agreement are considered by the grower before making the application; and
- (b) division 3 is complied with, if it applies.

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<sup>6</sup> In relation to collective agreements, see section 44 (Collective agreement—effect).

(6) If—

- (a) the application is one mentioned in subsection (3)(a); or
- (b) the application is one mentioned in subsection (3)(b), and a disposition of a number of hectares from a grower to another person is involved;

the transferee is bound by an obligation required to be disclosed under subsection (4).

(7) In this section—

**“transferee”** means the person to whom another person’s cane production area is being transferred, or to whose cane production area a number of hectares is being transferred under a disposition.

**“transferor”** means the person who holds the cane production area being transferred to another person or a number of hectares which are being cancelled.

*Division 3—Applications affecting cane production areas relating to more than 1 mill effectively moving cane supply from 1 mill to another*

### *Subdivision 1—Preliminary*

## **19 Purpose and explanation of div 3**

(1) The purpose of this division is to establish a number of processes that enable growers to move the supply of cane grown on particular land from 1 mill to another mill if—

- (a) entities associated with both mills consent; or
- (b) the move is necessary to allow growers to increase the number of hectares from which they can supply cane; or
- (c) because of a significant sustainable lengthening of the current mill’s crushing season due to a significant sustainable increase in cane productivity, the move is necessary to allow growers to achieve more efficient crushing arrangements.

(2) A move by a grower under each process involves—

- (a) the grower obtaining a grant of unallocated hectares relating to a mill (the receiving mill mentioned in section 30(1)) other than

the mill to which the grower's cane production area currently relates (the **"current mill"**); and

- (b) cancellation of the grower's cane production area relating to the current mill, or of a number of hectares included in it, as may be necessary to take account of the move.

(3) Each process ensures the termination of the grower's obligations under any collective agreement made for the current mill that would otherwise apply to the relevant cane.

(4) If the move is necessary to allow the grower to increase the number of hectares from which the grower is supplying cane, the process ensures the cane supply to the current mill is not reduced because it requires the resulting increase in unallocated hectares relating to the mill to be granted under section 11.

(5) Subdivisions 2 to 4 provide various processes each of which establishes a basis for the grower to move to the receiving mill, and how this may affect other growers or potential growers.

(6) Subdivision 5 provides for the grower's application to the cane production board established for the receiving mill and the result of a grant.

## 20 Definitions for div 3

In this division—

**"cane productivity"**, in relation to a mill, means the total number of tonnes of cane crushed by the mill, calculated as the average tonnage for each hectare included in all the cane production areas that relate to the mill.

**"current cane production area"**, for a grower making an application under this division, means the grower's cane production area relating to the current mill.

**"current cane production board"**, for a grower making an application under this division, means the cane production board established for the current mill.

**"current mill"**, for a grower making an application under this division, means the current mill mentioned in section 19(2).

**"grant of unallocated hectares"** means a grant under section 11 of a cane production area, or an increase in the number of hectares included in a

cane production area, from out of unallocated hectares relating to a mill.

**“horizontal expansion”**, in relation to a mill, means expansion in cane production areas relating to the mill.

**“productivity increase”**, in relation to a mill, means a sustainable increase in cane productivity relating to the mill, disregarding the effect of any horizontal expansion.

**“receiving cane production board”**, for a grower making an application under this division, means the cane production board established for the receiving mill.

**“receiving mill”**, for a grower making an application under this division, means the receiving mill mentioned in section 30(1).

**“regulation process”** means a process provided for under a regulation.

### *Subdivision 2—Consent process*

#### **21 Consent process**

(1) A grower may obtain consents to the grower’s application under section 30 from the owners of the current mill and the receiving mill and the mill suppliers’ committees of those mills.

(2) All these consents are necessary if the grower is relying on compliance with section 30(1)(a) as the basis of the application.

### *Subdivision 3—Horizontal expansion process*

#### **22 Start of horizontal expansion process**

(1) All references in this subdivision to the mill owner, growers, cane production areas, unallocated hectares, the cane production board (the **“board”**), the negotiating team, the mill suppliers’ committee, crushing season and crushing capacity relate to the current mill, unless the contrary intention appears.

(2) To start the process under this subdivision, the mill owner or the mill suppliers’ committee may ask the board to call for applications from growers for the grant of unallocated hectares.



(3) The object of the request is to find out the level of demand for expansion of cane production areas over the currently available unallocated hectares.

(4) As provided for under a regulation, the board must call for applications from growers for the grant of unallocated hectares.

(5) In response to the call, a grower may apply to the board for a grant of unallocated hectares.

(6) As provided for under a regulation, the board must—

(a) assess the level of demand; and

(b) if there is a demand, refer the assessment to the negotiating team.

(7) For subsection (6)(b), for each application, the board must make the assessment it considers appropriate of the likelihood the grower's application would be granted if unallocated hectares were available.

(8) For subsection (7), each assessment must include consideration of whether the grower has enough suitable cane land for the grant.

(9) Each grower whose application the board considers it would grant is an “**eligible grower**”.

### **23 If the negotiating team agrees on horizontal expansion**

If the negotiating team agrees on expansion in cane production areas, the board must grant the increased number of unallocated hectares for the mill under section 11.

### **24 If the negotiating team does not agree on horizontal expansion**

(1) If the negotiating team does not agree on expansion in cane production areas, section 219 applies to the dispute and an arbitration process must be used.

(2) To resolve the dispute, the arbitrator must decide, after consulting with the negotiating team, everything about the expansion, including the crushing season length.

(3) Subject to subsection (4)—

(a) the arbitrator's decision has effect as a final decision of the negotiating team under section 219; and

- (b) if the arbitrator decides there is to be an expansion of cane production areas, for the purposes of section 23, the negotiating team is taken to have agreed to the expansion.

(4) If the mill owner rejects the arbitrator's decision because the owner refuses to invest the capital necessary to carry out the decision, the arbitrator's decision is of no effect as a final decision of the negotiating team under section 219.

(5) If subsection (4) applies and the arbitrator decides that the mill owner, in connection with the arbitration, has not offered to increase crushing capacity by an amount that in all the circumstances is measurable, the arbitrator must also make the following declaration to the board about the measurable increase—

- (a) the mill owner has failed to agree to it;
- (b) the amount, expressed as a number of hectares calculated under a regulation (the “**declared measurable increase**”).

(6) The board must then as soon as practicable give a notice to the eligible growers and the mill owner.

(7) The notice must state that the board will follow a regulation process stated in the notice, and used to prevent any significant decrease in the total number of hectares included in cane production areas relating to the mill—

- (a) to facilitate cancellations of eligible growers' cane production areas, or numbers of hectares included in them, in support of the growers applications under section 30; and
- (b) to grant unallocated hectares arising from the cancellations to other eligible growers in priority to other persons.

(8) The board must comply with the process.

(9) However, the process is subject to a resolution of the dispute within the negotiating team at any time.

## **25 Process for moving supply from current mill**

(1) The regulation process under section 24(7) must provide for at least the process stated in the following subsections.

(2) An eligible grower may apply to the board for the board to—

- (a) give the grower a notice that it will take the action mentioned in section 24(7)(a) in relation to a stated number of hectares

included in the grower's cane production area (a **“move consent notice”**); or

- (b) make a grant mentioned in section 24(7)(b) applied for by the grower under section 22(5).

(3) As eligible growers make applications mentioned in subsection (2), a reasonably fair way of selecting each eligible grower in priority to other eligible growers must be used to give move consent notices or make the grants mentioned in subsection (2)(b).

(4) The selection process mentioned in subsection (3) applied to a grower must depend on whether unallocated hectares arising out of the cancellation mentioned in section 24(7)(a) relating to the grower will be able to be granted to another eligible grower.

(5) Also, the process mentioned in subsection (3) must involve a grower's application under subsection (2) being refused, if—

- (a) the board considers that unallocated hectares arising out of the cancellation mentioned in section 24(7)(a) relating to the grower will not be able to be granted to another eligible grower; or
- (b) the process has ended.

(6) As the applications of eligible growers under subsection (2) are processed—

- (a) eligible growers are to be issued with move consent notices; and
- (b) other eligible growers are to be given notices that their applications under subsection (2)(b) will be granted as particular cancellations mentioned in section 24(7) are recorded by the board.

(7) An eligible grower given a notice mentioned in subsection (6)(b) may withdraw the grower's application under subsection (2)(b) at any time before the cancellation relating to the grant is made, but afterwards may only withdraw it as provided under a regulation.

(8) As cancellations under section 31 are made based on move consent notices under this subdivision, the board must exercise its powers under section 11 to grant unallocated hectares, arising out of the cancellations, to growers previously given notice of the grant as mentioned in subsection (6)(b).

(9) The process must end when the first of the following happens—

- (a) there are no more applications under subsection (2) to be processed;
- (b) the total of the numbers of unallocated hectares granted by the following boards equal the amount of the declared measurable increase—
  - (i) the current cane production board, in exercising its powers under section 11 to grant unallocated hectares arising from cancellations under section 31;
  - (ii) receiving cane production boards, in exercising their powers under section 30 based on move consent notices.

(10) An application under subsection (2) must be made by an eligible grower within 5 years after the arbitrator's declaration under section 24(5) or before the end of the process under subsection (9)(b), whichever happens first.

## **26 Other provisions that may be included in the process**

(1) A regulation under section 24(7) may provide for time limits, including—

- (a) a time limit in a move consent notice after which the notice ceases to have effect; or
- (b) a time limit within which a grower must make an application under section 30.

(2) For section 25(8), the regulation may permit the grants mentioned in the subsection to be made, and to be binding on the growers, unless the growers withdraw their applications as provided under the regulation.

(3) Subsection (1) and (2) and section 25 do not limit the matters that may be included in the process under a regulation under section 24(7).

### ***Subdivision 4—Productivity increase process***

## **27 Establishment of productivity increase process**

(1) All references in this subdivision to the mill owner, growers, cane production areas, unallocated hectares, the cane production board (the “**board**”), the negotiating team, the mill suppliers' committee,

crushing capacity and crushing season relate to the current mill, unless the contrary intention appears.

(2) To start the process under this subdivision, the circumstances mentioned in subsection (3) must exist arising from an arbitrated dispute within the negotiating team about the framing or variation of a collective agreement.

(3) The circumstances are as follows—

- (a) for a particular crushing season, the mill suppliers' committee asks the mill owner to increase the crushing capacity;
- (b) the basis is that the length of the crushing season has significantly increased because of a significant sustainable increase in cane productivity;
- (c) the arbitrator's final decision is that—
  - (i) the crushing season length has significantly increased because of a significant sustainable increase in cane productivity of a particular amount (the **“sustainable increase”**); and
  - (ii) the mill's crushing capacity should be increased by a stated amount;
- (d) the mill owner rejects the arbitrator's decision;
- (e) the arbitrator decides the mill owner, in connection with the arbitration, has not offered to increase crushing capacity by an amount that in all the circumstances is measurable.

(4) The arbitrator must make the following declaration to the board about the sustainable increase—

- (a) the mill owner has failed to agree to it;
- (b) the amount, expressed as a number of hectares calculated under a regulation (the **“declared sustainable increase”**).

(5) The board must then as soon as practicable give a notice to growers and to the mill owner.

(6) The notice must state that the board will follow a regulation process stated in the notice to facilitate cancellations of growers' cane production areas, or numbers of hectares included in them, in support of growers applications under section 30.

(7) The notice must state that the cancellations relate to a stated total number of hectares included in existing cane productions areas that is no more than the declared sustainable increase.

(8) The board must comply with the process.

(9) However, the process is subject to a resolution of the dispute within the negotiating team at any time.

(10) To give notice to growers under subsection (5), it is enough to advertise, in a newspaper circulating in the area where cane supplied to the mill is grown, information on how a copy of the notice may be obtained.

(11) In this section—

**“arbitrated dispute”** means a dispute that has been arbitrated under section 219.

## **28 Process of moving supply from current mill**

(1) The regulation process provided for under section 27(6) must provide for at least the process stated in the following subsections.

(2) A grower may apply to the board for the board to give the grower a notice that it will take the action mentioned in section 27(6) in relation to a stated number of hectares included in the grower’s cane production area (a **“move consent notice”**).

(3) As growers make applications mentioned in subsection (2), a reasonably fair way of selecting each grower in priority to other growers must be used to give move consent notices.

(4) Also, the process mentioned in subsection (3) must involve a grower’s application under subsection (2) being refused if the process has ended.

(5) The process must end when the first of the following happens—

- (a) there are no more applications under subsection (2) to be processed;
- (b) receiving cane production boards, in exercising their powers under section 30 based on move consent notices issued under the process, make grants of unallocated hectares equal to the amount of the declared sustainable increase.

(6) An application under subsection (2) must be made by a grower within 5 years after the arbitrator’s declaration under section 27(4) or

before the end of the process under subsection (5)(b), whichever happens first.

(7) Despite cancellations under section 31 based on move consent notices under this subdivision, the number of hectares that are cancelled do not become unallocated hectares available to be granted under section 11.

## **29 Other provisions that may be included in the process**

(1) A regulation under section 27(6) may provide for time limits, including—

- (a) a time limit in a move consent notice after which the notice ceases to have effect; or
- (b) a time limit within which a grower must make an application under section 30.

(2) Subsection (1) and section 28 do not limit the matters that may be included in the process provided for under a regulation under section 27(2).

### *Subdivision 5—Applications relating to receiving mill*

## **30 Application allowing supply to receiving mill**

(1) If a grower—

- (a) has obtained the consents mentioned in section 21; or
- (b) has received a move consent notice mentioned in section 25(2) or 28(2);

the grower may apply under section 11 to a cane production board established for a mill other than the current mill (the “**receiving mill**”) to be granted unallocated hectares relating to the receiving mill.

(2) In addition to the other requirements for the application under division 2, the application must provide the following—

- (a) the consents or move consent notice mentioned in subsection (1);
- (b) particulars of the land from which the grower intends to supply cane to the receiving mill, if the application is granted;
- (c) the number of hectares on which is grown the cane that the grower intends to cease supplying to the current mill and start supplying to the receiving mill, if the application is granted;

- (d) the particulars of the current cane production area and a request for its cancellation, or of a stated number of hectares included in it, as may be necessary to ensure—
- (i) consistency between cane production area entitlements; and
  - (ii) that the grower may comply with each collective agreement applying to the grower, if the application is granted.

(3) The information provided under subsection (2)(b) to (d) must be consistent with the corresponding information included in the consents or move consent notice provided under subsection (2)(a).

(4) The receiving cane production board can not act on a move consent notice unless it is in force when the board acts.

(5) The receiving cane production board may, under section 11, grant the application effective from the start of the crushing season for the next year.

### **31 Cancellation of supply to current mill**

(1) If the receiving cane production board grants the application, it must give notice to the current cane production board to cancel the current cane production area or the number of hectares mentioned in section 30(2)(d) included in it, effective from the start of the crushing season for the next year.

(2) When it receives the notice, the current cane production board must record the cancellation in its register effective from the start of the crushing season for the next year.

(3) The cancellation takes effect from the start of the crushing season for the next year.

(4) On cancellation, the grower is not bound by a collective agreement made for the current mill, so far as it relates to the activities of the grower after the cancellation in growing, harvesting and supplying cane in the exercise of the entitlement granted by the application.

(5) The obligations of the grower under an individual agreement are not affected only because the application has been granted.

(6) This section does not limit the number of different applications that may be made under division 2 in support of the purpose mentioned in section 19.<sup>7</sup>

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<sup>7</sup> Section 19 (Purpose and explanation of div 3)



*Example—*

An application under section 14 to vary the description of land included in a relevant cane production area may be necessary or convenient.

(7) A number of hectares cancelled under subsection (3) on the grant of an application based on consents mentioned in section 21, or a move consent notice mentioned in section 25(2) become unallocated hectares for the current mill.

#### ***Division 4—Cancellation of cane production area without application***

### **32 Cane production board may cancel a cane production area for particular reasons**

(1) The cane production board established for a mill to which a cane production area relates may cancel the cane production area, or vary the cane production area by cancelling part of its number of hectares, if satisfied that—

- (a) land included in the cane production area has become permanently used for another purpose excluding cane growing; or
- (b) no cane has been supplied to the mill under a supply agreement for at least 2 years; or
- (c) the grower has not complied with a condition of the cane production area.

(2) For subsection (1)(b), a period must not be counted if an agreement under section 40 provided that no cane need be supplied to the mill for the period.

(3) Before the board cancels the cane production area or part of the cane production area's number of hectares, it must give notice to the grower calling on the grower to show cause why the cancellation should not happen.<sup>8</sup>

(4) If the grower does not show as required cause or enough cause why the cancellation should not happen, the board may proceed with the cancellation.

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<sup>8</sup> Section 248 contains general provisions about show cause proceedings.

(5) If the board is satisfied as mentioned in subsection (1)(a) to (c), it may, instead of immediately ordering the cancellation, allow the grower a period to dispose of the cane production area or the part of its number of hectares.

(6) The cancellation takes effect when it is recorded in the register kept by the board under section 176.<sup>9</sup>

(7) Within 21 days after the board makes a decision under subsection (1) or (5), it must give an information notice to the grower.

(8) The cancellation has no effect on any right the mill owner may have to take proceedings against the grower to recover an amount under, or for breach of, a supply agreement.

(9) The number of hectares of the cancelled cane production area, or the number of hectares cancelled, become unallocated hectares for the mill to which the cane production area relates or related.

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

## **33 Giving effect to cane production board's decisions**

(1) A cane production board must, as required under a regulation, record in its register kept under section 176 the effect of the decision of any cane production board granting an application or cancelling a cane production area or part of the number of hectares of a cane production area under this part.

(2) However, if the decision is made on an application made in anticipation of an agreement being made or other event happening in relation to a cane production area, on the applicant's request the cane production board may delay recording the effect of the decision until it receives a request from the applicant to record it.

*Example—*

An application may be made for a variation needed for an anticipated commercial transaction that afterwards may fail to proceed. The cane production board may delay recording the effect of the decision until it receives confirmation that the transaction has proceeded.

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9 Section 176 (Cane production board to keep cane production area register)

***Division 6—Cane production area plans*****34 Agreed cane production area plan is evidence**

A plan verified by a grower and the owner of the mill to which the grower's cane production area relates, showing for a date or period the boundaries of the description of land included in the cane production area or where cane is being, or proposed to be, grown on the land for supply to the mill, is evidence of those things.

**35 Submission of plan to cane production board**

(1) If a grower or mill owner is not satisfied of the accuracy of a plan mentioned in section 34 submitted by the one to the other for verification, the dissatisfied grower or owner may submit an alternative plan to the cane production board established for the mill.

(2) If satisfied the plan is accurate, the cane production board must certify to that effect.

(3) If dissatisfied, the cane production board may reject the plan or certify a plan amended by it.

(4) The chairperson must sign the cane production board's certificate.

(5) The certified plan may be filed by the grower or mill owner in the cane production board's office.

(6) The certified plan is evidence of the things in the plan.

**36 Cane production board may interpret disputed plans**

(1) If there is a dispute between a mill owner and a grower or between growers about the accuracy or interpretation of a plan verified under section 34 or certified under section 35, the owner or a grower may apply to the cane production board established for the mill to decide the issue.

(2) The board may decide the issue.

(3) The cane production board's decision is binding on the owner and grower and anyone else relying on a right or obligation of the owner or grower that is established by the plan.

***Division 7—Expansion generally*****37 Negotiating team must decide expansion of cane production areas**

(1) A negotiating team established for a mill must decide everything about the size of expansion of cane production areas relating to the mill and the length of a crushing season (“**expansion**”).

(2) In deciding anything about expansion, the negotiating team’s objective is to enhance the profit of the mill owner and the growers supplying cane, while taking full account of local circumstances.

**38 Disputes**

(1) This section applies if—

- (a) there is a dispute about expansion; and
- (b) a final decision under section 219<sup>10</sup> is made.

(2) The decision is binding on the mill owner and growers.

(3) However, if the decision requires capital investment by the mill owner, and the mill owner refuses to invest the capital, the decision is of no effect.

(4) Nothing in this division requires a grower to accept an allocation of hectares to the grower’s cane production area without making an application.

(5) This section does not apply if the processes under division 3, subdivision 3 or 4, are being used.

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10 Section 219 (Dispute resolution about functions)

## **PART 2—CANE SUPPLY AND PROCESSING AGREEMENTS**

### *Division 1—Cane supply is governed by supply agreements*

#### **39 Object of pt 2**

(1) The object of this part is to ensure that the supply by growers of cane to a mill, the cane's crushing and the payment to growers in return are governed by agreements (each a **“cane supply and processing agreement”** or **“supply agreement”**) between growers and mill owners.

(2) A supply agreement may be either an individual agreement or a collective agreement.

(3) A supply agreement may be for 1 or more crushing seasons.

#### **40 Individual agreement**

(1) An individual agreement is a supply agreement made directly between 1 or more growers and a mill owner.

(2) An individual agreement between a grower and a mill owner may provide that the grower need not supply cane to the owner's mill.

(3) An individual agreement may be for more than or for all or part of the period of the collective agreement otherwise applying to the grower and for all or part of the supply of cane grown by the grower.

#### **41 Collective agreement—nature**

(1) A collective agreement is a supply agreement made by a negotiating team.

(2) A negotiating team must make a collective agreement for the mill for which it is established.

(3) There may only be 1 collective agreement in force at any 1 time for a mill.

(4) A negotiating team established for more than 1 mill may make a collective agreement applying to more than 1 of the mills.

**42 Collective agreement—before the start of negotiations**

(1) No later than 28 days before starting negotiations for a collective agreement, the negotiating team must publish in a newspaper circulating in the area where the cane to which the agreement will apply is grown a notice, stating the following—

- (a) the intention to start negotiations;
- (b) the day negotiations will start;
- (c) the negotiating team's address for service;
- (d) the period or range of periods the collective agreement may possibly cover;
- (e) the day before which notices in relation to individual agreements are required to be given to the mill suppliers' committee for the purposes of section 48(2) and (3).

(2) The cost of publishing the notice must be paid in equal amounts by the mill suppliers' committee and the mill owner.

(3) If the notice is not published as required under subsection (1), the agreement can not be made.

(4) However, the negotiating team may, without giving public notice, have preliminary discussions to decide the matters mentioned in subsection (1)(d) and (e).

**43 Collective agreement—making**

(1) A collective agreement made for a mill must be signed by the members of the negotiating team or by the commissioner under subsection (3).

(2) Within 21 days after a collective agreement is made, the negotiating team must publish, in a newspaper circulating in the area from which cane will be supplied to the mill under the agreement, a notice of the signing of the agreement and how a copy can be obtained.

(3) If a member of a negotiating team does not sign a collective agreement, despite the fact that there are no disputes on its content or that any dispute has been decided under section 219, the commissioner may sign the agreement in the member's place, on the application of another member, the mill suppliers' committee or the mill owner.

**44 Collective agreement—effect**

(1) A collective agreement made for a mill is binding and enforceable in any court of competent jurisdiction as a contract on—

- (a) the mill owner; and
- (b) each grower who enters, or who is taken to have entered into, the agreement; and
- (c) each person having title to, or interest in, the mill or the land from which cane is to be supplied to the mill, or the cane.

(2) Under subsection (1)(b), unless excused under section 47 or a relevant supply agreement, any grower who grows cane on land included in the grower's cane production area has a contractual obligation to supply the cane to the mill to which the grower's cane production relates.

**45 Variation of collective agreement**

(1) This section applies to a collective agreement made for a mill and to the negotiating team established for the mill.

(2) The negotiating team may vary the agreement on application, made within 21 days after the agreement is published as required under section 43(2), by 20 or more growers bound by the agreement.

(3) Also, the negotiating team may vary the agreement on application made at any time by the mill owner or the mill suppliers' committee on the grounds of a change of circumstances.

(4) An agreement provision that has been made or confirmed by a final decision under section 219<sup>11</sup> can not be affected under subsection (2).

(5) Sections 42(1) to (4) and 43 apply to the variation in the same way as they apply to the agreement.

**46 Which agreement applies to particular grower**

(1) Each grower must have a supply agreement with a mill owner for each season.

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11 Section 219 (Dispute resolution about functions)

(2) A grower may enter an individual agreement with the owner of the mill, or a collective agreement made for the mill, to which the grower's cane production area relates.

(3) A grower who does not voluntarily enter a supply agreement is taken to have entered the collective agreement made for the mill to which the grower's cane production area relates.

(4) Subject to this Act, a grower may, under subsection (2), enter into an individual agreement with a mill owner at any time.

#### **47 Grower may give notice of change of entitlement**

(1) This section applies only to a collective agreement made for a mill for a period longer than 4 years.

(2) Before the collective agreement is made, a grower may give notice to the negotiating team of a proposed cancellation of the grower's cane production area, or of a number of hectares included in it, to take effect from a day after the end of the 4 year period.

(3) If the cancellation is granted, the grower is excused from any obligation under the agreement to grow cane or supply cane to the mill after the cancellation takes effect in relation to the cancelled cane production area or number of hectares.

(4) This section does not limit part 1, division 3.<sup>12</sup>

(5) In this section—

“**grower**” means a grower whose cane production area relates to the mill.

“**negotiating team**” means the negotiating team established for the mill.

#### *Division 2—Process for entering individual agreements*

#### **48 Individual agreement entered by grower with mill owner**

(1) Notice must be given under this section of an individual agreement between a grower and the mill owner.

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12 Part 1, division 3 (Applications affecting cane production areas relating to more than 1 mill effectively moving cane supply from 1 mill to another)



(2) A grower must give notice, as required under subsections (3) to (5), to the mill suppliers' committee before a collective agreement is made for the mill, if the grower—

- (a) has entered into an individual agreement with the mill owner for all or part of any period to which the collective agreement will apply; or
- (b) has entered into an agreement, arrangement or understanding, written or unwritten, with the mill owner to enter an individual agreement with the mill owner for all or part of any period to which the collective agreement will apply (a **“prearrangement”**).

(3) Notice must be given as follows—

- (a) for a prearrangement entered into before the committee started negotiating the collective agreement (the **“start”**) if the relevant individual agreement was not entered into before the start—within 14 days after the prearrangement was entered into;
- (b) for an individual agreement entered into before the start—within 14 days after the individual agreement was entered into;
- (c) for a prearrangement entered into after the start and before the collective agreement is made—the earlier of the following—
  - (i) the end of 5 days after the prearrangement was entered into;
  - (ii) the day mentioned in the notice published under section 42(1)(e) for the collective agreement (the **“published day”**);
- (d) for an individual agreement entered into after the start and before the collective agreement is made—the earlier of the following—
  - (i) the end of 5 days after the individual agreement was entered into;
  - (ii) the published day.

(4) Notice must be given in relation to an individual agreement as required under subsection (3)(b), (c) or (d) even if notice in relation to the agreement has already been given under any paragraph of the subsection.

(5) Notice given by a grower under subsection (2) must state the following—

- (a) the period the individual agreement relates to or it is intended it will relate to;

(b) the part of the grower's cane production area the individual agreement relates to or it is intended it will relate to.

(6) Within 7 days after a collective agreement is made, the mill owner must give to the mill suppliers' committee notice of every individual agreement the owner has entered with growers before the collective agreement was made for all or part of the period to which the collective agreement applies.

(7) If, during the period to which a collective agreement applies, the mill owner enters an individual agreement with a grower for all or part of the period to which the collective agreement applies, the owner must give notice of the agreement to the mill suppliers' committee within 7 days after the agreement is entered into.

(8) Notice given by a mill owner under subsection (6) or (7) of an individual agreement must give enough details of the agreement to allow the effect of the agreement on the collective agreement to be decided for the purposes of section 49.

(9) However, the details need not include details of the price payable to the grower for cane under the individual agreement.

(10) If notice of an individual agreement, including a prearrangement relating to it is not given as required under subsections (2) to (8), the application of the collective agreement to the grower and the mill owner is unaffected by the individual agreement and the collective agreement applies to them.

#### **49 Individual agreement—stopping or cancelling**

(1) Within 21 days after it receives notice of an individual agreement, the mill suppliers' committee may refer to mediation the issue of whether the agreement should not be made, or, if made, cancelled.

(2) To refer the issue to mediation, the mill suppliers' committee must give notice to the parties to the mediation.

(3) The parties to the mediation are the mill suppliers' committee and the parties to the individual agreement.

(4) The mediator must be—

(a) a person agreed to by the parties to the mediation; or

(b) if the parties can not agree—the commissioner or a person nominated by the commissioner.

(5) A person nominated by the commissioner under subsection (4)(b) must have appropriate qualifications or experience for the mediation.

(6) In the mediation, the only ground to be considered is whether the individual agreement's provisions will have a significant adverse effect on growers supplying cane to the mill under the collective agreement.

*Example—*

Provisions that may result in a cane grower who supplies cane to the mill under the collective agreement being excluded from harvesting during peak ccs levels.

(7) For subsection (6), the individual agreement is not taken to have the mentioned significant adverse effect only because it provides for a price payable to the grower for cane under the individual agreement other than as decided under the collective agreement.

(8) If the mediation ends with the parties in dispute, the mill suppliers' committee may apply within 21 days to a Magistrates Court sitting in the magistrates court district in which the mill is situated for an order stopping the making of, or cancelling, the agreement.

(9) The only ground of the application is the ground mentioned in subsection (6).

(10) The parties to the application are the mill suppliers' committee and the parties to the individual agreement.

(11) The court may decide the application and make or refuse to make the order sought and, to facilitate the proceeding before the court, make any other order the court considers appropriate.

(12) If the individual agreement is cancelled, the relevant grower is taken to have entered the collective agreement.

### *Division 3—Content of supply agreements*

#### **50 Content of agreement**

(1) A supply agreement must provide for the rights and obligations of any grower and mill owner, in relation to the following, about cane to be supplied to the mill by the grower under the agreement—

- (a) harvesting;
- (b) delivery to the mill;
- (c) transport and handling;

(d) acceptance and crushing by the mill;

(e) payment by the mill owner.

(2) A collective agreement must include payment arrangements linking the price of cane to the selling price of sugar, unless the negotiating team decides otherwise.

(3) For subsection (2), the selling price of sugar is the selling price declared by QSL.

(4) A collective agreement must provide that growers must grow cane on a stated minimum percentage of the number of hectares included in their cane production areas.

(5) A collective agreement may provide for different provisions for different growers.

(6) A supply agreement may provide for the following—

(a) a financial incentive scheme of premiums, discounts and allowances relating to cane and sugar quality or to anything that may affect cane and sugar quality, having regard to best practice;

(b) penalty payments in amounts, or referable to amounts, for a contravention of the agreement.

## **51 Cane required to be accepted by a mill**

(1) If a grower delivers cane grown by the grower to a mill in accordance with the relevant supply agreement, the mill owner is contractually obliged to accept the cane for crushing.

(2) However, every supply agreement is taken to include a provision that the mill owner is not required to accept the following for crushing—

(a) cane infested with a pest;

(b) cane having in or on it a chemical residue in an amount more than the maximum residue limit of the chemical prescribed for cane under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*;

(c) cane exposed to or having on or in it a chemical as prescribed under a regulation;

(d) cane containing less than 7 units of commercial cane sugar;

- (e) cane grown, harvested, transported, handled, delivered or supplied in contravention of this Act or an applicable supply agreement.

## **52 Delivery and acceptance of cane**

Every supply agreement is taken to include the following provisions—

- (a) cane is delivered to a mill if it is delivered or tendered for delivery in accordance with the agreement;
- (b) acceptance of cane by the mill owner comprises—
  - (i) the handling of cane from the point of delivery to the mill; and
  - (ii) its crushing; and
  - (iii) the acceptance of liability for its payment in accordance with the agreement;
- (c) no action taken about cane before the mill owner decides it is or is not acceptable, in accordance with the agreement provisions mentioned in section 51 or in the relevant supply agreement, is acceptance of the cane.

## **53 Emergency and natural disaster**

Every collective agreement is taken to include a provision excusing a party from an obligation under the agreement the party is unable to fulfil because of natural disaster or other emergency affecting cane growing, harvesting, delivering, transporting or crushing.

## **54 Dispute resolution**

- (1) A collective agreement must provide for a final decision if there is—
  - (a) a dispute within the negotiating team about a variation of the agreement; or
  - (b) a dispute within a future negotiating team during the negotiations for the next collective agreement made for the mill.

(2) The negotiating team mentioned in subsection (1)(b) is bound by the provision mentioned in subsection (1)(b).

(3) Also, if there is no provision for resolution of a dispute within a negotiation team as provided under subsection (1), then the dispute resolution process provided under a regulation must be followed.

## **55 General considerations**

(1) In negotiating a collective agreement for a mill, a negotiating team's objective is to enhance the profit of the mill owner and the growers supplying cane, while taking full account of local circumstances.

(2) Matters the negotiating team may consider include the following—

- (a) the amount of existing and proposed crushing capacity of the mill;
- (b) mill reliability;
- (c) likely loss of harvesting and crushing time because of weather conditions;
- (d) crushing season length and the risk of being unable to complete harvesting;
- (e) increases in the amount of cane to be crushed at the mill because of increases in productivity or the total number of hectares used to grow cane;
- (f) commercial cane sugar yield patterns, cane growing patterns and the effect of a harvesting date on future yields;
- (g) raw sugar marketing commitments and the likely selling price of sugar;
- (h) bulk raw sugar storage capacity limits;
- (i) cane payment arrangements;
- (j) cane and sugar quality;
- (k) crop size;
- (l) industrial dispute risk;
- (m) procedures requiring the mill owner to notify a grower that the grower's cane has not been accepted for crushing for a reason mentioned in section 51(2);
- (n) mill closure;

- (o) anything relevant to the harvesting, delivery, transport, handling and crushing of cane;
- (p) anything else relevant.

(3) The negotiating team must consider ways in which the growers and the mill owner may jointly improve profitability.

#### *Division 4—Mill owner’s cane*

### **56 Object of div 4**

The object of this division is to place the owner of a mill supplying cane to the mill in as similar a position, to any grower supplying cane to the mill, as can sensibly be achieved having regard to the provisions of this Act under which supply agreements govern the supply of cane to a mill.

### **57 Owner may hold cane production area and supply cane**

(1) Under section 7(1), the owner may hold a cane production area relating to the mill.

(2) Nothing in this Act prevents the owner from supplying to the mill cane grown on land included in the cane production area (the “owner’s cane”).

### **58 Owner may opt to supply as if under provisions of individual agreement**

(1) The owner may opt to be treated as if the owner’s cane is being supplied to the mill under an individual agreement, for more than or for all or part of the period of the collective agreement made for the mill.

(2) The owner may opt to be treated as mentioned in subsection (1) by giving notice under section 48(2) and (6) or 48(7) to the mill suppliers’ committee as the grower and mill owner mentioned in the subsections.

(3) The notice must state particulars of the following—

- (a) the number of hectares from which cane will be supplied;
- (b) the period when the cane will be supplied;
- (c) the cane to be supplied.

(4) Sections 48 and 49 apply as if the notice were notice of an individual agreement.

(5) However, for section 49, the provision for mediation does not apply and application may be made to a Magistrates Court under the section without proof of mediation ending with the parties in dispute.

(6) The application to the Magistrates Court must be made within 14 days after the notice mentioned in subsection (2) is given.

(7) Also, for section 49(6), the only significant adverse effect that may be relied on is one arising because the rate of cane supply to the mill under the collective agreement has changed due to the supply of the owner's cane.

## **59 Application of collective agreement and notice**

(1) To the extent the owner does not opt to be treated as mentioned in section 58(1), the provisions of the collective agreement made for the mill apply to the supply of the owner's cane to the mill.

(2) The provisions of the collective agreement apply to the extent they can sensibly be applied and on the basis that the owner is both the grower and the owner.

(3) The owner must, before the start of negotiations for the collective agreement, give to the mill suppliers' committee notice of the number of hectares from which, and when, the cane will be supplied.

Maximum penalty for subsection (3)—20 penalty units.

## **PART 3—CANE VARIETY CONTROL**

### **60 Approved cane**

(1) The BSES may, by gazette notice—

- (a) approve for growing in an area defined in the notice a variety of cane stated in the notice, or cancel the approval of the variety; and
- (b) impose conditions regulating when cane of a variety the subject of the notice starts, or stops, being approved for growing.



(2) In approving a variety of cane for growing in an area, the BSES must have regard to its—

- (a) agricultural qualities; and
- (b) mill processing characteristics; and
- (c) resistance to pests; and
- (d) effect on the environment.

### **61 Permit to grow cane of non-approved variety**

(1) A person may apply to the BSES for a permit authorising the person to grow cane at a place where, and during a period when, the variety of cane to which it belongs is not approved for growing under section 60.

(2) An application must be—

- (a) in a form, and give particulars, approved by the BSES; and
- (b) accompanied by the fee prescribed under a regulation.

(3) The BSES must consider the application and may—

- (a) grant a permit to the applicant, subject to any reasonable conditions; or
- (b) refuse the application, by notice given to the applicant stating reasons for the refusal.

### **62 Offences concerning non-approved cane**

(1) A person must not grow non-approved cane.

Maximum penalty—100 penalty units.

(2) A person must not—

- (a) dispose of, or attempt to dispose of, non-approved cane to another person; or
- (b) deliver, or attempt to deliver, non-approved cane to a mill; or
- (c) accept non-approved cane at a mill.

Maximum penalty—100 penalty units.

## PART 4—CANE ACCESS, HARVESTING AND MILL SUPPLY

### 63 Access right to harvest and supply cane

(1) This part provides for the grant by a land-holder or the commissioner of 2 types of right (each an “**access right**”)—

- (a) a permit to pass; and
- (b) a cane railway easement.

(2) A permit (a “**permit to pass**”) may be granted to—

- (a) a grower to facilitate harvest of cane and supply to a mill; or
- (b) a mill owner to facilitate harvest of cane and supply of cane to any mill or between any mills or to service a cane railway easement.

(3) A permit to pass authorises the person to whom it is granted and a person acting on the person’s behalf to use another person’s land under the permit’s conditions.

(4) An easement (a “**cane railway easement**”) may be granted to a mill owner to facilitate harvest of cane and supply of cane to any mill or between any mills.

(5) A cane railway easement may be granted whether or not it is annexed to or used and enjoyed together with any other land.

(6) The grant of an access right is subject to the powers under the *Transport Infrastructure Act 1994* of the chief executive or a railway manager within the meaning of that Act.

### 64 Land-holder may grant an access right

A land-holder may grant an access right affecting the holder’s land under an agreement with a mill owner or a grower.

### 65 Commissioner may grant an access right

(1) This section applies if—

- (a) a person seeking an access right affecting land does not reach agreement with the land-holder for the grant, after reasonable negotiation or attempts to negotiate; and
- (b) the commissioner considers the grant necessary for a purpose mentioned in section 63(2) or (4) in relation to the person; and
- (c) the grant, if made, would not affect native title, or if it would, there is an indigenous land use agreement consenting to the grant.

(2) A person may make an application to the commissioner to be granted the access right.

(3) The applicant must give a copy of the application to—

- (a) every person the applicant knows will be entitled to claim compensation if the right is granted; and
- (b) anyone the commissioner directs should be given a copy.

(4) A person given a copy of the application is entitled to make written submissions to, and be heard by, the commissioner about the application.

(5) The commissioner may grant the application and may impose reasonable conditions on the grant.

*Examples of conditions—*

A condition that the mill owner or grower construct and maintain at or near the boundaries of the land cattle grids or other structures.

(6) However, the commissioner must not grant the application unless the commissioner is satisfied on reasonable grounds that the grant, if made, would not affect native title, or, if it would, there is an indigenous land use agreement consenting to the grant.

(7) In this section—

**“indigenous land use agreement”** means an indigenous land use agreement under the *Native Title Act 1993* of the Commonwealth registered on the register of indigenous land use agreements.

## **66 Notice of decision**

The commissioner must, within 21 days after the decision, give the applicant an information notice of the decision under section 65 and, if the access right is granted, any person the commissioner considers may be entitled to claim compensation.

**67 Grant of access right takes effect on registration**

(1) For the grant of an access right by the holder of land to a mill owner or grower to take effect, a notice must be given to the commissioner.

(2) The notice must be—

- (a) in the approved form; and
- (b) signed by the mill owner or grower and the land-holder; and
- (c) accompanied by the fee required under a regulation.

(3) On receiving the notice, the commissioner must record particulars of the access right in the access rights register.

(4) The access right mentioned in subsection (3) then takes effect and not beforehand.

(5) If the commissioner grants an access right, the commissioner must record particulars of the access right in the access rights register.

(6) The access right mentioned in subsection (5) then takes effect and not beforehand.

**68 Compensation on grant of access right**

(1) Subject to subsection (6), if the commissioner or a land-holder grants an access right, the land-holder whose land is affected and the mill owner or grower to whom the access right is granted may agree on the amount of any compensation payable to the land-holder.

(2) If the land-holder and the mill owner or grower can not agree on the amount—

- (a) the holder or the mill owner or grower may apply to the Land Court to decide the amount; or
- (b) they may jointly apply to the commissioner to appoint a valuer to decide the amount.

(3) On an application under subsection (2)(a), the Land Court may decide the amount.

(4) On an application under subsection (2)(b), the following provisions apply—

- (a) the commissioner may appoint a valuer;

(b) the valuer may decide the amount;

(c) the valuer's decision is final.

(5) The costs of a valuation under subsection (4) are to be paid by—

(a) if the access right granted is a cane railway easement—the mill owner; or

(b) if the access right granted is a permit to pass—the holder of the permit to pass.

(6) The commissioner, in granting a permit to pass to a person, may order the person to pay to the land-holder whose land is affected by the permit 1 or both of the following—

(a) an amount, or amounts from time to time, towards the cost to the land-holder of the use of the permit;

(b) an amount as compensation for significant detriment to the land-holder's use of the land.

## **69 Access rights register**

(1) The commissioner must keep a register called the access rights register.

(2) The commissioner must record in the register the following particulars of an access right—

(a) type;

(b) assigned number;

(c) date of registration;

(d) holder's name;

(e) names and addresses of the holders of the lands affected by the grant of the right;

(f) description of the lands affected;

(g) other particulars decided by the commissioner.

(3) The commissioner must record each access right in the order of granting.

(4) The record of an access right in the register is taken to be adequate notice to all persons of the access right's existence.

(5) The *Land Title Act 1994* is subject to subsection (4).

(6) If an access right is relinquished by its holder, the holder must immediately give notice of the relinquishment to the commissioner and to the land-holders recorded in the register for the right.

Maximum penalty—40 penalty units.

(7) On receiving the notice, the commissioner must record the relinquishment in the register.

(8) The register must be available for inspection at the office of the commissioner during the ordinary working hours of the office.

(9) A person may inspect a particular record in the register on payment of the fee required under a regulation.

## 70 Certificates

(1) In a proceeding, a certificate purporting to be signed by a person authorised by the commissioner stating any information recorded in the access rights register is evidence of the information stated.

(2) The certificate may be issued at any time on payment of the fee required under a regulation.

## 71 Noting of access right on other registers

(1) This section applies to the registrar of titles or other person who under an Act keeps a register of title to land that is the subject of an access right (“**registrar**”).

(2) A person to whom an access right is granted must give notice of the grant to the registrar of titles within 28 days after the access right is granted.

Maximum penalty—40 penalty units.

(3) A person to whom an access right is granted may give notice of the grant to any registrar other than the registrar of titles.

(4) On being given a notice under subsection (2) or (3), the registrar must enter in the register a note warning of the existence of the access right recorded in the access rights register.

(5) The note is not taken to be registration of the access right on the register.

## **72 Variation and cancellation of access right, dispute resolution and enforcement**

(1) The land-holder whose land is affected by an access right and the holder of the access right may, by agreement, vary or cancel the access right or a condition on which it is held.

(2) If the access right is recorded or noted in a register kept under this or another Act by any person, notice by the parties to the variation or cancellation, produced with the documents the person requires, is enough authority for the person to vary the particulars of, or remove particulars of, the access right or condition from the register.

(3) Despite subsection (1) but subject to subsection (7), the commissioner may in special circumstances vary or cancel an access right, or a condition on which it is held, on application by—

- (a) the land-holder whose land is affected by the access right; or
- (b) the holder of the access right.

(4) A change in the use of the land affected by the access right is not in itself special circumstances for subsection (3).

(5) The commissioner may direct the applicant to give a copy of the application to any other person the commissioner considers may have an interest in the application.

(6) A person given a copy of the application under subsection (5) is entitled to make written submissions to, and be heard by, the commissioner about the application.

(7) A cane railway easement may be cancelled under subsection (3) only on the basis that it has not been used for at least 2 years.

(8) The commissioner must give an information notice of a decision under subsection (3), by public notice or otherwise, to anyone the commissioner considers may have an interest in the decision.

(9) The commissioner may mediate in disputes about the exercise of an access right.

(10) An access right, and any condition on which it is held, may be enforced by application to the Land Court.

(11) If an access right, or condition of an access right, is recorded or noted in a register kept under this or another Act by any person, written notification by the commissioner—

- (a) of a variation or cancellation of the right under subsection (3); and
- (b) that—
  - (i) no appeal has been properly lodged against the variation or cancellation; or
  - (ii) if an appeal has been lodged—the appeal has been dismissed;

produced with the documents the person requires, is enough authority for the person to vary the particulars of, or remove particulars of, the access right or condition from the register.

### **73 Compensation on cancellation or variation of access right**

(1) If the commissioner cancels or varies an access right under section 72 on an application by a holder of the access right, section 68 applies in the same way it applies to the grant of an access right by the commissioner on the application of a mill owner or grower.

(2) If the commissioner cancels or varies an access right under section 72 on an application by the holder of the land affected by the right, the land-holder and the holder of the access right may agree on the amount of any compensation payable to the holder of the access right.

(3) If the land-holder and the holder of the access right can not agree on the amount—

- (a) the land-holder or the holder of the access right may apply to the Land Court to decide the amount; or
- (b) they may jointly apply to the commissioner to appoint a valuer to decide the amount.

(4) On an application under subsection (3)(a), the Land Court may decide the amount.

(5) On an application under subsection (3)(b), the following provisions apply—

- (a) the commissioner may appoint a valuer;
- (b) the valuer may decide the amount;
- (c) the valuer's decision is final.



(6) The cost of the valuation must be paid by the applicants subject to the following—

- (a) if the access right was held by the mill owner—the mill owner must pay the cost;
- (b) if the access right was held by a grower and the holder of the land affected is another grower—each grower must pay half the cost;
- (c) if the access right was held by a grower and the holder of the land affected by the right is neither a grower nor mill owner—the grower must pay the cost.

#### **74 Rectification or reinstatement of land on cancellation or variation of access right**

(1) This section applies if the commissioner cancels an access right affecting land or varies an access right in a way that excludes land affected by the right.

(2) The commissioner may give a written order to the person who is or was the holder of the right to carry out rectification or reinstatement of the land as directed by the commissioner.

(3) The commissioner must give a copy of the order to the holder of the land.

(4) The holder of the land may give a copy of the order to the registrar of the Supreme Court.

(5) The order may then be enforced as an order of the court.

#### **75 Construction etc. of railways, obstruction of access right**

(1) For supply of cane to a mill, a mill owner or a person authorised by the mill owner may—

- (a) construct, maintain, alter and use a railway or road, and carry out any other necessary works on—
  - (i) land of the mill owner or over which the mill owner holds an access right; or

- (ii) subject to the *Local Government Act 1993*, section 919<sup>13</sup>, a road for which the mill owner holds a permit under that section; or
  - (iii) subject to the *Transport Infrastructure Act 1994*, a State-controlled road for which the mill owner holds an approval under section 47<sup>14</sup> of that Act; and
- (b) use on the railway or road vehicles or rolling stock and other machinery and equipment the mill owner may consider necessary.

(2) A person must not obstruct or attempt to obstruct the use of an access right or a right under subsection (1).

Maximum penalty—40 penalty units.

*Example—*

Removal or attempt to remove rail line used in connection with an access right.

(3) Without limiting subsection (2), a person may apply to a Magistrates Court for an order restraining anyone else from obstructing or attempting to obstruct the applicant's use of an access right or a right under subsection (1).

(4) The application must be made to the Magistrates Court sitting in the magistrates court district in which the obstruction or attempt is happening or anticipated.

(5) The court may make the order sought on the conditions it considers appropriate.

(6) A person who suffers loss or damage because another person obstructs or attempts to obstruct the person's use of the person's access right or right under subsection (1) may recover the amount of the loss or damage as a debt from the other person.

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13 *Local Government Act 1993*, section 919 (Ancillary works and encroachments on roads)

14 *Transport Infrastructure Act 1994*, section 47 (Ancillary works and encroachments)

## **PART 5—MILLS**

### *Division 1—What are mills*

#### **76 Meaning of “mill”**

A “**mill**” is works that are—

- (a) equipped for the manufacture of sugar from cane; or
- (b) proposed to be constructed and equipped for the manufacture of sugar from cane and established as a new mill under division 3.

### *Division 2—Merging of mills*

#### **77 Declaration of day a merged mill is recognised**

(1) This section applies if works that are more than 1 existing mill become a single mill (the “**merged mill**”) under an arrangement between—

- (a) 1 or more owners of more than 1 existing mill (the “**existing mills**”); and
- (b) the mill suppliers’ committees established for the existing mills.

(2) The merged mill is established as a single mill for the purposes of this Act from the day the gazette notice mentioned in subsection (4) is published.

(3) For the purposes of the gazette notice, the parties to the arrangement mentioned in subsection (1) must give notice of the arrangement to the Minister.

(4) After receiving the notice, the Minister must publish a gazette notice declaring the merged mill to be a mill for the purposes of this Act.

#### **78 Effect of merger on cane production areas**

From the establishment of existing mills as a merged mill, cane production areas that immediately before the establishment related to the existing mills become related to the merged mill.

***Division 3—Proposed mills*****79 Object of div 2**

The object of this division is to facilitate—

- (a) the establishment of a mill; and
- (b) arrangements made in anticipation of the establishment of a mill, including, for example, arrangements about supply agreements and the grant of cane production areas.

**80 Establishment of relevant industry bodies**

(1) This section applies if—

- (a) a person wants to establish a mill; and
- (b) the Minister is satisfied—
  - (i) the person has demonstrated the necessary commitment to establishing the mill; and
  - (ii) arrangements necessary for the operation of this Act (“**arrangements**”) will be in place for growers (“**proposed growers**”) to supply the mill with cane under 1 or more supply agreements.

(2) A cane production board may be established for the proposed mill under chapter 4, part 6.<sup>15</sup>

(3) If a cane production board is established for the mill, chapter 4, part 9,<sup>16</sup> applies as if the mill had been established.

**81 Cane production areas and supply agreements**

(1) A cane production board established for a proposed mill may exercise powers under chapter 2, part 1,<sup>17</sup> about cane production areas necessary for this Act to operate in relation to the mill, including in a way that gives effect to arrangements under section 80.

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15 Chapter 4 (Administration), part 6 (Cane production boards)

16 Chapter 4 (Administration), part 9 (Negotiating teams)

17 Chapter 2 (Production, supply and milling), part 1 (Cane production areas)

(2) Other bodies established under this Act may, or must, exercise powers in relation to the establishment of the cane production areas as if the mill had been established.

(3) However, a power exercised under subsection (1) or (2) is of no effect to create, vary or cancel a cane production area until the mill is established.

(4) A collective agreement made by a negotiating team established for a proposed mill under section 80(2) is of no effect until the mill is established.

(5) For this part—

- (a) the Minister may, by gazette notice, declare the day the mill is established; and
- (b) the declared day is taken to be the day the mill is established.

#### *Division 4—Mill closure*

### **82 Closure**

(1) For this division, a mill (the “**closed mill**”) is closed if it permanently stops carrying on the business of crushing cane.

(2) The closed mill is taken to close at the last moment of the day on which it is closed.

(3) The owner of the mill must immediately give written notice to the Minister of the day of the closure.

Maximum penalty—20 penalty units.

(4) The Minister may declare the closure day by gazette notice.

(5) Other than for subsection (3) the day so declared is taken, for this division, to be the day the mill closed.

### **83 Meaning of “receiving mill” and “closed mill cane”**

(1) A “**receiving mill**” for the closed mill is a mill that undertakes the crushing of closed mill cane.

(2) “**Closed mill cane**” means cane that would have been supplied to the closed mill under supply agreements if it had not closed.

**84 Continuation of mill suppliers' committee for particular purpose**

(1) On the closure of the closed mill, the mill suppliers' committee continues to exist as provided for under subsections (2) to (4).

(2) Persons entitled to establish the committee from time to time are the persons (the "**previous growers**") who held cane production areas—

- (a) that related to the closed mill before it closed; and
- (b) that included land from which cane is currently not being supplied to another mill under a cane production area relating to the other mill.

(3) For subsection (2), it is sufficient if the committee is established from time to time in a way the committee considers practicable to meet the requirements of the subsection.

(4) The function of the committee is to help the previous growers in their negotiations to obtain the grant of cane production areas relating to another mill for all or part of the land that was included in their cane production areas relating to the closed mill.

(5) The function under subsection (4) includes helping the previous growers to negotiate arrangements for the transport of cane.

(6) In this section—

**"another mill"** means—

- (a) a mill other than the closed mill; or
- (b) the closed mill subsequently reopened under a new owner.

**85 Abolition of relevant industry bodies**

(1) On the closure of the closed mill, the cane production board and negotiating team established for the closed mill cease to exist and their members cease to hold office.

(2) If the board or team is established for the closed mill and another mill, subsection (1) does not affect the board or team so far as it is established for the other mill.

**86 Action may be taken to support transfer of access rights**

(1) The object of this section is to authorise a regulation to support or complement arrangements made between the owner of a receiving mill and the owner, or other person managing the affairs, of the closed mill.

(2) A regulation may provide for the grant to the receiving mill's owner of access rights for the harvesting or supply to the mill, and transport between the mill and another mill, of closed mill cane.

(3) The grant may be a transfer of access rights previously held by the closed mill's owner, or an additional grant of access rights.

(4) A grower or land-holder is not entitled to compensation only because an access right relating to the grower's cane or the land-holder's land is transferred under a regulation from a closed mill owner to a receiving mill owner.

(5) To remove doubt, it is declared that subsection (4) does not prevent a compensation arrangement being negotiated between interested parties.

(6) The regulation must provide for a grant of additional access rights under subsection (2) to be subject to provisions about compensation and review that are equivalent to or the same as the provisions applying if a grant of access rights is made under section 65.<sup>18</sup>

(7) The regulation may provide for—

- (a) changes to registers held under any Act to give effect to changes in access rights; and
- (b) documents evidencing access rights transferred under subsection (2) to be interpreted in a way that gives effect to the transfer.

***Division 5—Cane analysis programs*****87 Requirement to have cane analysis program and purpose**

(1) Each mill must have a cane analysis program.<sup>19</sup>

(2) A cane analysis program is a program made for a mill to obtain information about cane received at the mill.

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18 Section 65 (Commissioner may grant an access right)

19 See also section 334 (Continuation of programs).

(3) The purpose of obtaining the information is to supervise the payment to growers of amounts owing to them under the scheme for the acquisition of sugar provided for by this Act.

## **88 Content of program**

A cane analysis program may provide for any of the following—

- (a) the weighing, examining or testing of cane received at the mill for its quantity, quality or another condition;
- (b) the appointment by the commissioner or another entity of a person to perform the duty of weighing, examining or testing cane or sugar, the qualifications of the person and the performance of duties by the person;
- (c) the observation and checking of performance of duties by persons appointed under paragraph (b) by other persons appointed under the program;
- (d) facilities to be provided by the mill owner;
- (e) directions that may be given by persons authorised under the program;
- (f) returns of information obtained under the program that must be given to the commissioner;
- (g) monitoring procedures calculated to provide reasonable and regular checking that the provisions of the program and directions given under the program are being complied with;
- (h) payment and recovery of costs associated with the program;
- (i) anything provided for under a regulation.

## **89 Costs of program**

(1) The costs of the operation of a cane analysis program established at the request of a mill owner or mill suppliers' committee are to be paid by the owner of the mill and the mill suppliers' committee—

- (a) in the proportions agreed to by them; or
- (b) if there is no agreement—



- (i) on the costs of the operation of a provision of the cane analysis program mentioned in section 88(c)—in equal amounts; or
- (ii) on other costs—as decided by the dispute resolution process under section 92.

(2) A person incurring costs payable by the owner of a mill or a mill suppliers' committee under section 88 may recover the costs as a debt from the owner or committee.

## **90 Approval process for program**

(1) A negotiating team established for a mill may propose to the commissioner for approval a cane analysis program for the mill or a change to the mill's program.

(2) The commissioner may advise the team about an appropriate program before the team proposes the program to the commissioner.

(3) In deciding whether to approve the program, the commissioner may consider anything the commissioner considers relevant and must consider the following—

- (a) the program's likely effectiveness;
- (b) the extent to which the program is able to be audited;
- (c) whether the provisions of the program are reasonable.

(4) On approving the program or change, the commissioner must give the mill owner and the mill suppliers' committee notice of the program's provisions.

(5) A program or change becomes binding on the persons to whom it is stated to apply when the notice is given.

(6) In approving a program, the commissioner may cancel an existing program.

## **91 Enforcement of program**

A person who suffers loss or damage because of a contravention by another person of a cane analysis program, or direction given under a program, binding on the other person, may recover the amount of the loss or damage as a debt from the other person.

**92 Dispute resolution**

(1) This section applies if a negotiating team can not agree on the making of a cane analysis program for a mill or a change to a mill's program.

(2) The dispute must be resolved under the dispute resolution process established under section 218(3)(b).<sup>20</sup>

(3) If the dispute resolution process has not been established, the dispute resolution process established under a regulation must be followed.

***Division 6—Cane quality programs*****93 Requirement to have cane quality program**

(1) The negotiating team established for a mill must make a cane quality program for the mill.

(2) The program is taken to be part of the collective agreement for the mill and of any supply agreement made with the mill owner.

(3) A negotiating team that makes a program must immediately give a copy of it to QSL.

**94 Purpose of program**

The purpose of a cane quality program is to facilitate the management of sugar quality to meet customer requirements for quality decided by QSL.

**95 Content of program**

(1) A cane quality program may provide for anything about achieving cane quality, including quality standards and tests.

(2) A program may also provide for a scheme of premiums and discounts for cane or sugar quality.

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<sup>20</sup> Section 218 (Functions and powers)

## 96 Costs of program

The costs of the operation of a cane quality program made for a mill are to be paid by the owner of the mill and the mill's suppliers' committee—

- (a) in the proportions agreed to by them; or
- (b) if there is no agreement, in equal amounts.

## 97 Dispute resolution

(1) This section applies if a negotiating team can not agree on the making of a quality program for a mill or a change to a mill's program.

(2) The dispute must be resolved under the dispute resolution process established under section 218(3)(b).<sup>21</sup>

(3) If the dispute resolution process has not been established, the dispute resolution process established under a regulation must be followed.

### *Division 7—Commissioner's function for redirection of cane*

## 98 Redirection of cane

(1) This section applies if—

- (a) a mill (the “**first mill**”) can not crush cane because of a mishap; and
- (b) an adjacent mill (the “**second mill**”) is able to crush the cane that is the subject of a supply agreement with the first mill.

*Examples of mishaps—*

- breakdown of a boiler at the mill
- a natural disaster.

(2) The commissioner may require the relevant mill owners and the mill suppliers' committees to attend a compulsory conference as required by the commissioner.

(3) The purpose of the conference is to decide whether the parties can agree on the redirection of cane to the second mill.

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21 Section 218 (Functions and powers)

(4) The conference may be held using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the conference.

(5) The parties to the conference must bear their own costs for the conference.

(6) A person must not contravene a requirement under subsection (2).  
Maximum penalty for subsection (6)—40 penalty units.

### *Division 8—Payments to be made for growers*

#### **99 Mill owner must make payment for grower**

(1) This section applies if—

- (a) the cane production board established for a mill approves the making of any category of payment by the mill owner, for a grower, to a third person from out of the grower's payments; and
- (b) the grower has authorised the mill owner to make payments of the category to the third person.

(2) The mill owner must make each payment to the third person as authorised by the grower.

Maximum penalty—2 penalty units.

(3) In this section—

“**grower's payments**” means any amount due by the mill owner to the grower.

“**payment**” means the payment of an amount.

“**third person**” means an entity other than the mill owner or grower.

## **CHAPTER 3—MARKETING**

#### **100 Vesting of sugar in QSL**

(1) All sugar on manufacture becomes the absolute property of QSL free from all mortgages, charges, liens, pledges and trusts.

(2) Property divested from any person because of this section is changed to a right to receive payments under this Act.

(3) To the extent that a contract, agreement, security or other document, whether made before or after this Act, is contrary to this section, it is of no effect.

### **101 QSL to market and pay for vested sugar**

(1) QSL must market the sugar vested in it.

(2) When QSL considers enough information is available for the purpose, QSL must calculate—

- (a) the net value for each tonne of sugar included in each payment scheme; and
- (b) the payments due to each mill owner.

(3) The payments must be made as provided under the relevant payment scheme.

(4) If QSL does not make a payment to a mill owner, the mill owner may recover the amount as a debt from QSL.

(5) QSL may recover as a debt from a mill owner any excess payments made to the mill owner.

### **102 Schemes for payment**

(1) Payment to mill owners for sugar vested in QSL must be calculated and made—

- (a) under payment schemes; and
- (b) by reference to the raw sugar equivalent of sugar that each mill owner delivers to QSL that is the product of cane harvested in each crushing season and manufactured in the year of harvest and the next following year.

(2) QSL may establish as many payment schemes on as many bases as it considers appropriate, including, for example, schemes based on producer pricing or early season sugar production.

(3) Also, QSL may, as it considers appropriate, share out to each payment scheme—

- (a) revenue received by the corporation; and
- (b) the costs of QSL's operations.

(4) Without limiting the power under subsection (3), QSL may share out costs of QSL's operations over a particular period to a future period.

(5) QSL may amend a payment scheme.

(6) Before establishing or amending a payment scheme, QSL must consult with organisations representing mill owners and growers.

(7) QSL may consider anything relevant in establishing a payment scheme, including, for example, the following—

- (a) weight of sugar delivered by a mill owner to QSL;
- (b) quality of sugar delivered by a mill owner to QSL;
- (c) costs incurred by a mill owner in complying with directions under section 103;
- (d) anything else affecting the proceeds of sale by QSL of sugar delivered by a mill owner to QSL.

(8) For a payment scheme to take effect, QSL must give notice of it to relevant mill owners and relevant mill suppliers' committees.

(9) Even though any part of the process of crushing cane and manufacturing sugar happens at a mill other than the mill (the “**agreement mill**”) where the cane is to be crushed or sugar manufactured under the conditions of the supply agreement for the cane, for the purposes of payment to mill owners by QSL, the process is taken to have happened at the agreement mill.

(10) For penalty sugar—

- (a) subsection (1) does not apply; and
- (b) the payments owing to a mill owner for penalty sugar are decided under a regulation.

### **103 Production of brands of raw sugar**

(1) The object of this section is to facilitate the marketing of sugar vested in QSL.

(2) QSL may make arrangements with a mill owner under which the owner is to produce a particular brand of raw sugar in a particular period or amount.

(3) Despite subsection (2), QSL may give a direction to a mill owner requiring the owner to produce a particular brand of raw sugar in a particular period or amount.

(4) The following provisions apply to the direction—

- (a) the mill owner must comply with it;
- (b) QSL must pay to the mill owner the part of the amount of the owner's costs in complying with it that is more than the amount of the costs the owner would otherwise incur in producing the industry standard brand of raw sugar;
- (c) if a mill owner does not comply with it, the owner must pay to QSL the amount of any loss or damage suffered by QSL because of the failure.

(5) An amount payable under subsection (4)(b) or (c) may be recovered as a debt.

(6) The dispute resolution process provided under a regulation must be followed if a dispute arises in relation to costs incurred by a mill owner because of the direction.

(7) QSL must inform the mill suppliers' committee of an arrangement made under subsection (2) or a direction given under subsection (3) as soon as practicable after it is made or given.

(8) However, a failure to comply with subsection (7) has no effect on the arrangement or direction.

(9) In this section—

**“industry standard brand”** of raw sugar is the brand of raw sugar stated under a regulation.

#### **104 Directions about delivery etc.**

(1) All sugar vested in QSL under section 100(1) must be delivered to QSL as directed under subsection (2).

(2) QSL may give directions it considers appropriate to mill owners or growers about—

- (a) how sugar vested in it must be kept before it is supplied to QSL;  
or
- (b) how sugar vested in it must be supplied to QSL, including—

- (i) times, places and way of supply; or
- (ii) delivery to places or persons or other action that will be treated as supply to QSL; or
- (c) the payment by the manufacturer of sugar of costs associated with its supply to QSL; or
- (d) the conditions on which QSL will accept sugar vested in it; or
- (e) information that must be given to QSL by any person concerned in the supply to, and acceptance by, QSL of sugar, and the form and way in which the information must be given; or
- (f) anything else for which directions are necessary to facilitate the discharge by QSL of its functions for sugar vested in it.

(3) A person who does not comply with a direction is liable for the amount of any loss or damage suffered by QSL because of the failure.

(4) The amount may be recovered by QSL as a debt.

(5) Subsection (3) does not limit the proceedings that may be taken against anyone for a contravention of a direction.

### **105 Sugar quality standards**

(1) QSL may make a standard about how sugar quality is decided and affects amounts payable to a mill owner.

(2) The standard may—

- (a) apply generally to all persons and matters or be limited in its application to—
  - (i) particular persons or matters; or
  - (ii) particular classes of persons or matters; or
- (b) apply generally or be limited in its application by reference to stated exceptions or factors.

(3) The standard may include, for example—

- (a) specified quality criteria and tests for the criteria; and
- (b) a financial incentive scheme of premiums, discounts and allowances depending on sugar quality.

(4) For a standard to take effect, QSL must give notice of it to the mill owner and the relevant mill suppliers' committee.



(5) QSL may notify the standard in a way it considers appropriate, including, for example, in a way that preserves its commercial confidentiality.

### **106 QSL's operating costs**

(1) From the proceeds received by it from the sale of sugar vested in it under section 100, QSL must provide for—

- (a) all costs of the sale of the sugar; and
- (b) all costs of QSL in the discharge of its statutory functions, including the budgets of the authority, the BSES and the commissioner and other amounts stated as costs in QSL's budget; and
- (c) payments to accounts established under subsection (2).

(2) QSL may keep in its accounts the provisions QSL considers appropriate to fund its operation or to provide for its contingent or future liabilities.

(3) Without limiting subsection (2), QSL may keep provisions in its accounts for the sharing out of its costs for a particular period to a future period.

### **107 Exemption of sugar for local consumption**

(1) A mill owner need not deliver to QSL a quantity of sugar manufactured at the mill ("**exempt sugar**") but may instead retain exempt sugar for local consumption or sell exempt sugar to another mill owner to be retained for local consumption.

(2) Exempt sugar—

- (a) must not be more than .25% of the total quantity of the sugar vested in QSL under section 100; and
- (b) is divested from QSL.

(3) Despite subsection (1), a mill owner (the "**first owner**") may arrange with the owner of another mill to manufacture sugar at the other mill that is to be all or part of the first owner's exempt sugar.

(4) Sugar mentioned in subsection (3) is to be treated under subsection (1) as if it were manufactured at the first owner's mill.

(5) QSL, by notice given to the mill owner, may impose conditions on the retention or sale of exempt sugar, including, for example, the way the total quantity of sugar vested in QSL is to be calculated for subsection (1).

(6) A mill owner may only sell exempt sugar—

- (a) to growers and workers connected with the mill; and
- (b) in quantities not less than 15 kg at any one time; and
- (c) on any conditions that may be imposed under subsection (5).

(7) A mill owner must give written notice to QSL as required by QSL of an amount of exempt sugar sold by the owner.

Maximum penalty—40 penalty units.

(8) A mill owner who sells exempt sugar must keep at the mill, and allow to be inspected at any time, on reasonable request to the owner by a person authorised to do so by QSL, a record of each sale, including the quantity and the purchaser's name.

Maximum penalty for subsection (8)—40 penalty units.

## **CHAPTER 4—ADMINISTRATION**

### **PART 1—MINISTER'S POWERS**

#### **108 Minister may establish advisory bodies**

The Minister may establish an advisory committee or other body to help the Minister in the administration of this Act.

#### **109 Reports to Minister**

(1) This section applies to the following entities—

- (b) the authority;
- (c) the commissioner;
- (d) the BSES;
- (e) a cane production board;

(f) a cane protection and productivity board.

(2) If the Minister asks, the entity must give the Minister a report about anything specified by the Minister about the discharge by it of functions under this Act or to its activities.

(3) If the Minister specifies a period of time within which a report is to be given, the report must be given within the period.

(4) A regulation may provide for reports that a cane production board must give to the Minister.

### **110 Minister's directions**

(1) This section applies to the following entities—

- (b) the authority;
- (c) the commissioner;
- (d) the BSES;
- (e) a cane production board;
- (f) a cane protection and productivity board.

(2) The Minister may give written directions to the entity about the discharge of its functions.

(3) The entity must comply with the directions.

(4) The Minister may give a direction only if the Minister—

- (a) is satisfied the direction is necessary to ensure the discharge by the entity of its functions does not conflict with major government policies; and
- (b) has informed the entity in writing that a direction is under consideration and given it an adequate opportunity to discuss with the Minister the need for the direction.

(5) The Minister must cause a copy of the direction to be tabled in the Legislative Assembly within 14 sitting days after giving the direction.

(6) This section does not apply to directions the Minister is authorised to give about matters under another provision of this Act or any other Act.

### **111 Minister's directions in entities' annual report**

(1) This section applies to the following entities—

- (b) the authority;
- (c) the commissioner;
- (d) the BSES;
- (e) a cane protection and productivity board.

(2) The entity must include in each annual report prepared by it under the *Financial Administration and Audit Act 1977*, section 46J,<sup>22</sup> a report of any direction given to it by the Minister during the financial year for which the report is prepared.

### **112 Review of sugar vesting scheme**

(1) The Minister must appoint a person to review the effectiveness of, and the need for the continuation, alteration or abolition of, the sugar vesting scheme established under chapter 3.

(2) The review must be started—

- (a) not later than 1 December 2006; or
- (b) if QSL asks for the review to be started on an earlier date—on the earlier date.

(3) The review must be completed not later than 31 December 2007.

## **PART 3—QUEENSLAND SUGAR LIMITED**

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

(1) QSL does not represent the State.<sup>23</sup>

(2) QSL can not make the State liable for the debts and obligations of QSL or any other person.

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

(1) To remove doubt, it is declared that—

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<sup>22</sup> *Financial Administration and Audit Act 1977*, section 46J (Annual report)

<sup>23</sup> QSL is a company limited by guarantee, established under the Corporations Law.

- (a) QSL is not a statutory body for—
  - (i) the *Financial Administration and Audit Act 1977*; and
  - (ii) the *Statutory Bodies Financial Arrangements Act 1982*; and
- (b) QSL is not a unit of public administration under the *Crime and Misconduct Act 2001*.

(2) However—

- (a) in relation to the performance of its statutory functions or the exercise of its statutory powers, QSL is a public authority for—
  - (i) the *Ombudsman Act 2001*; and
  - (ii) the *Freedom of Information Act 1992*; and
- (b) in relation to a document mentioned in section 273(5),<sup>24</sup> QSL is a public authority for the Public Records Act if the document is a public record under the Act.

(3) In subsection (2)(b)—

**“Public Records Act”** means—

- (a) until the commencement of the *Public Records Act 2002*, section 14<sup>25</sup>—the *Libraries and Archives Act 1988*; or
- (b) from the commencement of the *Public Records Act 2002*, section 14—the *Public Records Act 2002*.

## 121 QSL’s constitution

(1) QSL’s constitution must be consistent with this Act.

(2) QSL must give the Minister and the authority notice of any proposed change to QSL’s constitution dealing with its purpose or function.

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24 Section 273 (Provisions facilitating transfer)

25 *Public Records Act 2002*, section 14 (Public authority must ensure particular records remain accessible)

*Note—*

For the effect of a failure to give notice, see section 141(1)(b).<sup>26</sup>

(3) QSL must give the notice before QSL’s board makes a decision on the proposed change.

(4) The Minister may approve the proposed change for the purpose of section 141.

## **122 QSL’s board**

(1) QSL’s constitution must provide that at least 3 of QSL’s directors, other than the managing director or the chief executive officer, must—

- (a) have expertise in commodity marketing, finance, vesting, law or business administration; and
- (b) be independent of sugar industry representative bodies.

(2) For 3 years starting on QSL day, the chairperson of QSL must be a director who—

- (a) has recognised expertise in corporate governance; and
- (b) is independent of sugar industry representative bodies.

(3) In subsection (2)—

“**QSL day**” has the meaning given by section 287.<sup>27</sup>

## **123 Audit of QSL**

(1) QSL must consult with the auditor-general about the appointment of a registered company auditor to audit QSL.

(2) Each year, QSL must give a copy of its audited financial statements, and the auditor’s full report on the financial statements, to the Minister, the auditor-general and the authority.

(3) The Minister, the auditor-general or the authority must not disclose the financial statements or the report on the statements, or anything in the statements or the report, to any other entity.

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26 Section 141 (Meaning of “moved out of the control of the Queensland sugar industry”)

27 Section 287 (Definitions for ch 9)

(4) Subsection (3) does not prevent the Minister, the auditor-general or the authority giving the report, for the purpose of this Act, to staff or consultants under their control.

(5) In this section—

**“registered company auditor”** means a registered company auditor under the Corporations Act, section 9.

### **124 Minister’s directions to QSL**

(1) The Minister may give written directions to QSL about the performance of its statutory functions and the exercise of its statutory powers.

(2) QSL must comply with the direction.

(3) The Minister may give a sugar price direction only if—

- (a) the Minister has given QSL notice of the Minister’s intention to give the direction; and
- (b) QSL has been given a reasonable opportunity to discuss the proposed direction with the Minister.

(4) The Minister may give any other type of direction only if—

- (a) the Minister is satisfied that exceptional circumstances exist justifying the Minister’s intervention in the public interest; and
- (b) the Minister has given QSL notice of the Minister’s intention to give the direction; and
- (c) QSL has been given a reasonable opportunity to discuss the proposed direction with the Minister.

(5) A direction—

- (a) must state the date from when it is to take effect; and
- (b) must be published in the gazette as soon as practicable after it is given; and
- (c) must be tabled in the Legislative Assembly within 14 sitting days after it is given.

(6) QSL may include in its next annual report—

- (a) the text of a direction given by the Minister; and

- (b) a statement of any effect that the direction has had, or is expected to have, on QSL's operations.

(7) The Minister is not taken to be a director of QSL because of the existence, or the exercise, of the Minister's power of direction.

(8) If QSL does not comply with the direction, the Minister must draw the matter to the attention of the Legislative Assembly.

(9) QSL is not entitled to compensation for any actual or prospective loss because of the Minister's direction.

(10) In subsection (3)—

**“sugar price direction”** means a direction about the pricing of raw sugar for sale to domestic customers.

## **125 Minister may require information from QSL**

(1) The Minister may, by notice given to QSL, require QSL to give to the Minister or the authority information about the performance of its statutory functions or the exercise of its statutory powers.

(2) The notice must state the time within which the information is required to be given.

(3) QSL must comply with the notice.

# **PART 4—THE SUGAR AUTHORITY**

## *Division 1—Constitution and membership*

### **126 Establishment of authority**

(1) The Sugar Authority is established.

(2) The authority—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.



**127 Judicial notice of corporation's seal**

All courts and persons acting judicially are to take judicial notice of the corporation's seal and are to presume the seal affixed to any document to have been duly affixed until the contrary is proved.

**128 Membership**

(1) The authority consists of—

- (a) the commissioner, as chairperson; and
- (b) if the Governor in Council makes an appointment under subsection (2), the appointed members of the authority.

(2) The Governor in Council may from time to time appoint up to 3 other persons with expertise in commodity marketing, finance, vesting, law or business administration to be members of the authority.

(3) Each appointed member of the authority is appointed for the term decided by the Governor in Council.

**129 Remuneration**

Appointed members of the authority are to be paid the fees and allowances decided by the Governor in Council.

*Division 2—General provisions about the authority***130 Application of div 2**

This division applies only if the authority has appointed members.

**131 Disqualifications for appointment**

A person is not qualified to be, or continue as, an appointed member of the authority if the person—

- (a) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (b) is convicted of an indictable offence, whether on indictment or summarily; or

- (c) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (d) holds an elected or appointed position in QSL or in a sugar industry representative body.

### **132 Vacation of office**

(1) The office of an appointed member of the authority becomes vacant if the member—

- (a) dies; or
- (b) resigns office by notice given to the Minister; or
- (c) is absent without the authority’s permission from 3 consecutive meetings of the authority of which due notice has been given; or
- (d) is no longer qualified to be a member.

(2) In this section—

“**meeting**” means the following—

- (a) if the member does not attend—a meeting with a quorum present;
- (b) if the member attends—a meeting with or without a quorum present.

### **133 Meetings of authority**

(1) The authority must meet as often as its chairperson decides is necessary.

(2) The authority may hold meetings, or allow members to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

(3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

(4) Despite subsection (2), the chairperson of the authority may, in writing, refer a question requiring consideration by the authority to all the authority’s members.

(5) For subsection (4)—

- (a) a written decision of the members is taken to be a decision of the members at a duly constituted meeting of the authority; and
- (b) a reference using any technology for transmission to members is adequate reference in writing; and
- (c) a reply to a reference using any technology is an adequate written decision.

(6) The quorum at a meeting of the authority is a majority of the members present and voting.

(7) The chairperson, or in the absence of the chairperson, a member present at a meeting, must preside at a meeting of the authority.

(8) All questions at a meeting must be decided by a majority of votes of the members present.

(9) The member presiding at a meeting is to have a vote, and if there is an equality of votes, a second or casting vote.

(10) Subject to this Act, procedure at meetings of the authority is to be decided by the authority.

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

(1) If a member of the authority has an interest in a matter being considered, or about to be considered, by the authority, the member must disclose the nature of the interest to a meeting of the authority as soon as practicable after the relevant facts come to the member's knowledge.

Maximum penalty—100 penalty units.

(2) The disclosure must be recorded in the minutes of the meeting of the authority.

(3) If the interest is a material personal interest, the member must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a **“related resolution”**) under subsection (4)(a) about the matter (whether in relation to the member or another member); or
- (c) be present while the matter, or a related resolution, is being considered by the authority; or

- (d) otherwise take part in any decision of the authority in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(4) Subsection (3) does not apply to the matter if—

- (a) the authority has at any time passed a resolution that states—
  - (i) the member, interest and matter; and
  - (ii) that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter; or
- (b) if a quorum of the authority can not be formed because of subsection (3)—the Minister has given a written direction to that effect for the matter.

### *Division 3—Authority's functions, powers and duties*

#### **135 Functions of authority**

(1) 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 this Act.

(2) The authority also has the function provided for in division 4.

#### **136 General powers of authority**

The authority has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) appoint and act through agents and attorneys; and
- (d) do anything else necessary or convenient to be done for its functions.

#### **137 Authority's staff**

The authority may employ the persons, and engage the consultants and service providers, that it considers necessary.

**138 Authority's budget**

(1) The commissioner must prepare and give to the Minister a draft budget for the authority for each financial year in the form and when the Minister directs.

(2) The Minister must decide the authority's budget for the financial year.

(3) Before the Minister decides the authority's budget, the Minister must consult with QSL and sugar industry representative bodies.

(4) The authority's budget is payable by QSL.

(5) The authority must authorise spending only under the budget decided by the Minister, unless the Minister otherwise directs.

**139 Application of various public sector Acts**

(1) The authority is—

- (a) a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Administration and Audit Act 1977*; and
- (b) a unit of public administration under the *Crime and Misconduct Act 2001*.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B<sup>28</sup> states the way in which the authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

***Division 4—When authority can take over QSL's functions and powers*****140 Application of div 4**

This division applies only if the Minister is satisfied that QSL has moved out of the control of the Queensland sugar industry.

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28 *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)

### **141 Meaning of “moved out of the control of the Queensland sugar industry”**

(1) QSL is taken to have “**moved out of the control of the Queensland sugar industry**” if any of the following happen—

- (a) QSL’s constitution is no longer consistent with this Act;
- (b) QSL changes a provision of its constitution dealing with its purpose or function without the Minister’s approval;
- (c) QSL becomes an externally-administered body corporate;
- (d) QSL no longer has the required number of grower representatives and mill owners with the required voting power in QSL;
- (e) if QSL converts to a company limited by shares—
  - (i) QSL is listed on the Australian Stock Exchange; and
  - (ii) QSL no longer has the required number of grower representatives and mill owners with the required voting power.

(2) In this section—

“**externally-administered body corporate**” has the meaning given by the Corporations Act, section 9.<sup>29</sup>

“**required number**”, of grower representatives and mill owners, means a number of grower representatives and mill owners that is at least 75% of all the members, or shareholders, of QSL.

“**required voting power**”, in QSL, means the ability to freely exercise at least 75% of the total voting power associated with the membership, or shareholding, of QSL.

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<sup>29</sup> Corporations Act, section 9 (Dictionary) provides—

“**externally-administered body corporate**” means a body corporate:

- (a) that is being wound up;
- (b) in respect of property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting;
- (c) that is under administration;
- (ca) that has executed a deed of company arrangement that has not yet terminated; or
- (d) that has entered into a compromise or arrangement with another person the administration of which has not been concluded.

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

(1) After consulting with sugar industry representative bodies, the Minister may give written directions to the authority to take over QSL's functions and powers under this Act.

(2) If the direction is given, a reference to QSL in chapters, 2, 3 4, 6 and 7 is taken to be a reference to the authority.

(3) The direction—

- (a) must state the date from when it is to take effect; and
- (b) be published in the gazette as soon as practicable after it is given; and
- (c) be tabled in the Legislative Assembly within 14 sitting days after it is given.

**PART 5—BUREAU OF SUGAR EXPERIMENT STATIONS***Division 1—Constitution and membership***143 Establishment of BSES**

(1) The Bureau of Sugar Experiment Stations is established.

(2) The BSES—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

**144 Judicial notice of BSES's seal**

All courts and persons acting judicially are to take judicial notice of the BSES's seal and are to presume the seal affixed to any document to have been duly affixed until the contrary is proved.

**145 Objective of BSES**

The objective of the BSES is to conduct research, development and extension activities directed at enhancing the sustainable production of commercial crops of cane and its products.

**146 Board of directors**

- (1) The BSES is governed by a board of directors.
- (2) The board consists of 8 directors of whom—
  - (a) 1 is to be the chief executive officer of the BSES, who is a director without further appointment; and
  - (b) 7 are to be persons appointed by the Governor in Council, 1 of whom is to be appointed as chairperson.
- (3) Each appointed director is to be appointed for a term of 3 years.

**147 Qualifications for appointment to board of directors**

Of the appointed directors of the BSES—

- (a) the director who is to be appointed chairperson must have extensive commercial experience relevant to the BSES's objectives; and
- (b) 2 directors must have experience in the production of cane; and
- (c) 2 directors must have experience in the milling of cane; and
- (d) 1 director must have wide research, development or extension experience; and
- (e) 1 director must have wide commercial experience.

**148 Remuneration of directors**

Appointed directors of the BSES are to be paid by the BSES the fees and allowances decided by the Governor in Council.



***Division 2—General provisions about BSES*****149 Disqualifications for appointment**

A person is not qualified to be or to continue as an appointed director if the person—

- (a) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (b) is convicted of an indictable offence, whether on indictment or summarily; or
- (c) becomes incapable of performing the duties of a director because of physical or mental incapacity; or
- (d) is not able to manage a corporation because of the Corporations Act, part 2D.6; or
- (e) is named in the register held by the Australian Securities and Investments Commission under the Corporations Act, section 1274AA.<sup>30</sup>

**150 Vacation of office**

(1) The office of an appointed director becomes vacant if the appointed director—

- (a) dies; or
- (b) resigns office by notice given to the Minister; or
- (c) is absent without the board's permission from 3 consecutive meetings of the board of which due notice has been given; or
- (d) is no longer qualified to be an appointed director; or
- (e) is removed from office under section 134.

(2) In this section—

“**meeting**” means the following—

- (a) if the director does not attend—a meeting with a quorum present;

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<sup>30</sup> Corporations Act, part 2D.6 (Disqualification from managing corporations) and section 1274AA (Register of disqualified company directors and other officers)

- (b) if the director attends—a meeting with or without a quorum present.

### **151 Meetings of the board of directors**

(1) The board of directors must meet as often as the chairperson decides is necessary.

(2) The board may hold meetings, or allow directors to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous communication between directors taking part in the meeting.

(3) A director who takes part in a meeting under subsection (2) is taken to be present at the meeting.

(4) Despite subsection (2), the chairperson of the board, or in the absence of the chairperson any deputy of the chairperson, may, in writing, refer a question requiring consideration by the board to all the directors of the board.

(5) For subsection (4)—

- (a) a written decision of the directors is taken to be a decision of the board of directors at a duly constituted meeting of the board; and
- (b) a reference using any technology for transmission to directors is adequate reference in writing; and
- (c) a reply to a reference using any technology is an adequate written decision.

(6) The quorum at a meeting is half the number of appointed directors plus 1.

(7) The chairperson, or in the absence of the chairperson and any deputy of the chairperson, a director elected by directors present at a meeting, must preside at a meeting of the board.

(8) All questions at a meeting must be decided by a majority of votes of the directors present.

(9) The director presiding at a meeting is to have a vote, and if there is an equality of votes, a second or casting vote.

(10) Subject to this Act, procedure at meetings of the board is to be decided by the board.

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

(1) If a director has an interest in a matter being considered, or about to be considered, by the board of directors, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty—100 penalty units.

(2) The disclosure must be recorded in the minutes of the board meeting.

(3) If the interest is a material personal interest, the director must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a **“related resolution”**) under subsection (4)(a) in relation to the matter (whether in relation to the director or another director); or
- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(4) Subsection (3) does not apply to the matter if—

- (a) the board has at any time passed a resolution that states—
  - (i) the director, interest and matter; and
  - (ii) that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter; or
- (b) if a quorum of the board can not be formed because of subsection (3)—the Minister has given a written direction to that effect for the matter.

(5) In this section—

**“interest”**, of a director relating to a matter for consideration at a meeting, does not include—

- (a) if a director is a grower—an interest the director has in common with growers in general; and
- (b) if a director is a mill owner—an interest the director has in common with mill owners in general.

**153 Prohibition on political activity**

The BSES must not—

- (a) use any of its funds for any purpose in connection with the politics of any political party or any candidate for political office; or
- (b) become affiliated in any way with any body, association or organisation that has as its object or any of its objects the support of the politics, program or aims of any political party.

**154 Removal of director**

(1) This section applies if the Governor in Council is satisfied that the board has contravened section 153.

(2) The Governor in Council may remove a director of the board from office by notice given to the director.

***Division 3—BSES and officers—general functions, powers and duties*****155 Functions of BSES**

The BSES has the following functions—

- (a) to participate in investigating and evaluating the requirements for research relating to the growing of cane in Queensland;
- (b) under the *Plant Protection Act 1989*, to prevent, control and eradicate pest infestation of cane;
- (c) to conduct, arrange for, or fund, research and extension about any matter related to the breeding, production, harvesting, transport or processing of cane and related activities;
- (d) to develop, or help to develop, methods of sustainable production of cane and related activities;
- (e) to develop cane analysis standards;
- (f) to help the commissioner in implementing cane analysis programs;
- (g) to monitor and improve the quality of cane and cane products;

- (h) to provide a service for the checking and certification of the accuracy of laboratory equipment used in deciding the relative quality of sugar for the purposes of payments made under this Act;
- (i) to provide advice on the ability of land to sustain cane crops;
- (j) to help in keeping to a minimum any damage to natural resources and the environment that may be caused by the activities of the Queensland sugar industry;
- (k) to commercially exploit the products of its research development and extension activities;
- (l) to collaborate with other research providers, cane protection and productivity boards and industry in the coordination of local research, development and extension;
- (m) to take all action within the powers conferred on it by this Act or another Act that may be necessary to achieve its objectives;
- (n) to perform other functions given to it under this or another Act.

### **156 General powers of BSES**

(1) The BSES has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) appoint and act through agents and attorneys; and
- (d) do anything else necessary or convenient to be done for its functions.

(2) Without limiting subsection (1), the BSES has the powers given to it under this Act or another Act.

(3) The BSES may exercise its powers inside or, if the interests of the Queensland sugar industry require it to do so, outside Queensland.

(4) Without limiting subsection (1), the BSES may exercise its powers outside Australia, if the interests of the Queensland sugar industry require it to do so.

**157 BSES's power to delegate**

The BSES may, by board resolution, delegate its powers to—

- (a) a director; or
- (b) an appropriately qualified member of the BSES's staff.

**158 Application of various public sector Acts**

(1) The BSES is—

- (a) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Administration and Audit Act 1977*; and
- (b) a unit of public administration under the *Crime and Misconduct Act 2001*.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B<sup>31</sup> states the way in which the BSES's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

***Division 4—Funding*****159 Chief executive officer and staff of BSES**

The BSES—

- (a) must employ a chief executive officer; and
- (b) may employ the persons, and engage the consultants, service providers and inspectors, that it considers necessary.

**160 BSES budget**

(1) Each year the BSES must propose its operating budget (“**budget**”) for the period from the start of the crushing season in the year until the start of the crushing season in the following year (the “**budget period**”).

(2) However, the budget is of no effect until it is approved by the Minister under subsection (6).

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31 *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)

(3) The budget must state how much of the income of the BSES is to be charged to QSL (“**QSL’s portion**”) and when QSL is to pay the BSES.

(4) Before proposing the budget, the BSES must consult with sugar industry representatives and, for QSL’s portion, QSL.

(5) The BSES must submit the budget to the Minister.

(6) After consulting with industry representatives, QSL and the BSES, the Minister may approve the budget, with or without amendment.

(7) The budget approved by the Minister is the budget for the budget period.

(8) QSL’s portion approved by the Minister is payable by QSL to the BSES as stated in the budget.

(9) At any time during the budget period—

(a) the BSES may ask the Minister to vary the budget; or

(b) in relation to payment of QSL’s portion—QSL may ask the Minister to vary the budget.

(10) Before the BSES asks the Minister to vary the budget, other than in relation to QSL’s portion, the BSES must consult with industry representatives.

(11) Before the BSES or QSL asks the Minister to vary the budget to the extent the budget relates to QSL’s portion, it must ensure consultation has taken place between the BSES and QSL.

(12) In considering any request to vary the budget, the Minister must consult with sugar industry representatives, QSL and the BSES.

(13) After complying with subsection (12), the Minister may vary the budget as requested, either with or without amendment.

## **PART 6—CANE PRODUCTION BOARDS**

### *Division 1—Establishment and membership*

#### **161 Establishment of a cane production board**

(1) The Minister must establish cane production boards for mills.

(2) A cane production board may be established for 1 mill or for more than 1 mill if a single negotiating team is established for the mills.

### **162 Objectives of a cane production board**

The principal objectives of a cane production board established for a mill are—

- (a) to ensure the efficient participation by growers supplying cane to the mill and the mill owner in the scheme established under this Act; and
- (b) to enhance the benefits to the growers and mill owner from cane production and milling; and
- (c) to help the sustainable production of cane on land included in cane production areas relating to the mill.

### **163 Functions and powers of a cane production board**

(1) A cane production board established for a mill has the following functions—

- (a) to administer the granting, transfer, cancellation or variation of cane production areas relating to the mill and other matters relating to the cane production areas;
- (b) to implement the decisions of the negotiating team established for the mill about expansion in cane production areas relating to the mill;
- (c) to administer the processes relating to moving cane supply between mills, including the consent process, horizontal expansion process and productivity increase process;
- (d) to make guidelines about land use, the environment and transport applying in relation to applications for grants of cane production areas or increases in the number of hectares included in cane production areas relating to the mill;
- (e) to make guidelines about anything relevant to cane growing on land included in cane production areas relating to the mill;
- (f) to make charges for services and facilities it provides;
- (g) to perform other functions given to it under this or another Act.



(2) A cane production board may do anything necessary or convenient to be done for its functions.

### **164 Power to engage assistance**

A cane production board may employ the persons, and engage the consultants and service providers it considers necessary.

### **165 Membership of a cane production board**

(1) A cane production board is to consist of 5 members appointed by the Minister, of whom—

- (a) 1 is to be appointed chairperson; and
- (b) 2 are to be appointed on being nominated by the owner or owners of the mill or mills for which the cane production board is established; and
- (c) 2 are to be appointed on being nominated by the mill suppliers' committee or committees established for the mill or mills mentioned in paragraph (b).

(2) The chairperson must be a person whom the Minister is satisfied will act independently in the discharge of the chairperson's functions.

(3) A member of a cane production board is to be appointed for a term not longer than 3 years.

### **166 Acting appointments**

A person who is not a member of a cane production board may be appointed to act as a member for any meeting of the board by the entity that nominated the member for appointment.<sup>32</sup>

### **167 Remuneration of members**

(1) The chairperson of a cane production board is to be paid the fees and allowances decided by the Minister.

(2) Payment is to be made jointly by—

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<sup>32</sup> The *Acts Interpretation Act 1954*, section 24B contains provisions about acting appointments.

- (a) the owner or owners of the mill or mills for which the board is established; and
- (b) the mill suppliers' committee or committees established for the mills.

(3) A member of a cane production board appointed on the nomination of a mill owner is to be paid by the mill owner the fees and allowances that are decided by the mill owner.

(4) A member of a cane production board appointed on the nomination of a mill suppliers' committee is to be paid by the committee the fees and allowances that are decided by the committee.

(5) The State is not liable to pay to a member of a cane production board fees and allowances for service as a member.

### *Division 2—General provisions about cane production boards*

#### **168 Disqualifications for appointment**

A person is not qualified to be or to continue as a member of a cane production board if the person—

- (a) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (b) is convicted of an indictable offence, whether on indictment or summarily; or
- (c) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (d) is not able to manage a corporation because of the Corporations Act, part 2D.6; or
- (e) is named in the register held by the Australian Securities and Investments Commission under the Corporations Act, section 1274AA.<sup>33</sup>

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<sup>33</sup> Corporations Act, part 2D.6 (Disqualification from managing corporations) and section 1274AA (Register of disqualified company directors and other officers)

**169 Vacation of office**

(1) The office of a member of a cane production board becomes vacant if the member—

- (a) dies; or
- (b) resigns office by notice given to the Minister; or
- (c) is absent without the board's permission from 3 consecutive meetings of the board of which due notice has been given; or
- (d) is no longer qualified to be a member.

(2) In this section—

“meeting” means the following—

- (a) if the member does not attend—with a quorum present;
- (b) if the member attends—with or without a quorum present.

**170 Meetings of a cane production board**

(1) A cane production board must meet as often as its chairperson decides is necessary.

(2) A board may hold meetings, or allow members to take part in meetings, using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

(3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

(4) Despite subsection (2), the chairperson of a board may, in writing, refer a question requiring consideration by the board to all the board's members.

(5) For subsection (4)—

- (a) a written decision of the members is taken to be a decision of the members at a duly constituted meeting of the board; and
- (b) a reference using any technology for transmission to members is adequate reference in writing; and
- (c) a reply to a reference using any technology is an adequate written decision.

(6) The quorum at a meeting must include at least—

- (a) 1 member nominated by mill owners; and
- (b) 1 member nominated by mill suppliers' committees.

(7) The chairperson, or in the absence of the chairperson and any deputy of the chairperson, a member elected by members present at a meeting, must preside at a board meeting.

(8) All questions at a board meeting are to be decided by a majority of votes of the members present.

(9) Subject to this Act, procedure at board meetings is to be decided by the board.

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

(1) If a member of a cane production board has an interest in a matter being considered, or about to be considered, by the board, the member must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the member's knowledge.

Maximum penalty—100 penalty units.

(2) The disclosure must be recorded in the minutes of the meeting of the board.

- (3) If the interest is a material personal interest, the member must not—
- (a) vote on the matter; or
  - (b) vote on a proposed resolution (a “**related resolution**”) under subsection (4)(a) about the matter (whether in relation to the member or another member); or
  - (c) be present while the matter, or a related resolution, is being considered by the board; or
  - (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

- (4) Subsection (3) does not apply to the matter if—
- (a) the board has at any time passed a resolution that states—
    - (i) the member, interest and matter; and

- (ii) that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter; or
- (b) if a quorum of the board can not be formed because of subsection (3)—the Minister has given a written direction to that effect for the matter.

(5) In this section—

“**interest**”, of a member relating to a matter for consideration at a meeting, does not include—

- (a) if a member is a grower—an interest the member has in common with growers in general; and
- (b) if a member is a mill owner—an interest the member has in common with mill owners in general.

### **172 Administrative costs**

The administrative costs of a cane production board are to be paid by the mill owners and the mill suppliers’ committees—

- (a) in the proportions agreed to by them; or
- (b) if there is no agreement, in equal amounts.

### **173 Legal and professional costs**

A cane production board may only incur legal or other professional costs if the majority of its members mentioned in section 165(1)(b) and (c) agree.

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

### **174 Amalgamation**

(1) The Minister may amalgamate cane production boards established for more than 1 mill if—

- (a) a single negotiating team is established for the mills; or
- (b) the mills merge into a single mill (the “**merged mill**”).

(2) From the day on which the Minister first appoints all of the members of the new cane production board after the amalgamation—

- (a) each of the existing cane production boards are abolished (an “**abolished board**”) and the members go out of office; and
- (b) a single cane production board is established for the mills for which the abolished boards were established, or the merged mill (the “**new board**”).

(3) For any term of office of all of the members of the new board, the Minister may decide that the number of its members to be appointed on the nomination of the mill owner or mill owners concerned and the mill suppliers’ committee or committees concerned is to be greater than 4.

(4) A decision under subsection (3) is to provide for an equal number of members to be appointed on the nomination of the mill owner or mill owners concerned and on the nomination of the mill suppliers’ committee or committees concerned.

(5) Other than the extent necessary to take into account the increase in membership, the provisions of division 1 about the appointment of members apply.

### **175 Other effects of amalgamation**

(1) This section applies from the establishment of the new board.

(2) All assets of an abolished board immediately before the establishment of the new board become the assets of the new board.

(3) All liabilities of an abolished board immediately before the establishment of the new board become the liabilities of the new board.

(4) A proceeding that, if an abolished board were not abolished, might have been continued or taken by or against the abolished board, may be continued or taken by or against the new board.

(5) All matters started by an abolished board before the date on which the new board is established may be completed by the new board.

(6) A reference to an abolished board in an Act or document existing before the establishment of the new board has effect as if it were a reference to the new board, if the context permits.

(7) Persons employed or engaged by an abolished board are taken to be employed or engaged by the new board on the same terms and conditions as before.

(8) The new board must take all necessary action to replace the registers kept under section 170 by the abolished boards with a single register

recording each cane production area relating to each mill for which the new board is established or the merged mill.

(9) The negotiating team established for the mill or mills for which the new board is established must take all necessary action—

- (a) under section 90,<sup>34</sup> to replace the cane analysis programs applying to the mills for which the abolished boards were established with a single cane analysis program for the mills or for the merged mill; and
- (b) under section 93,<sup>35</sup> to replace the cane quality programs made for the mills or for the merged mill for which the abolished boards were established with a single cane quality program for the mills or for the merged mill.

#### *Division 4—Cane production board register*

### **176 Cane production board to keep cane production area register**

(1) A cane production board must keep a register recording each cane production area that relates to the mill for which it is established.

(2) The register must record the following information about the cane production area—

- (a) the name of the holder and an address for service;
- (b) the description of the land included in it;
- (c) the number of hectares included in it;
- (d) any conditions to which it is subject;
- (e) grants, variations and cancellations of cane production areas;
- (f) any other information required under a regulation.

(3) The cane production board may also record in the register the existence of the interests of mortgagees, lessors or sublessors of land included in cane production areas.

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34 Section 90 (Approval process for program)

35 Section 93 (Requirement to have cane quality program)

(4) The register must be kept in a form and way so that the information required to be registered may be inspected at the principal office of the board during the ordinary working hours of the office.

(5) A person may inspect an entry in the register on payment to the board of a reasonable fee decided by the board.

(6) A regulation may provide for information that must be notified to a cane production board for registration, for the procedure for notification and for registration of notified information.

(7) An entry of information in the register is adequate notice of the information to all persons who subsequently have dealings in relation to the entitlement or land to which the information relates.

(8) This section is subject to section 325.<sup>36</sup>

## **PART 7—CANE PROTECTION AND PRODUCTIVITY BOARDS**

### *Division 1—Constitution and membership*

#### **177 Establishment of productivity area and cane protection and productivity board**

A regulation may establish a productivity area and a cane protection and productivity board for a productivity area.

#### **178 Cane protection and productivity board**

A cane protection and productivity board—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

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<sup>36</sup> Section 325 (Sugar Cane Assignment Register becomes the commissioner's register)



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

All courts and persons acting judicially are to take judicial notice of the common seal of a cane protection and productivity board and are to presume the common seal affixed to any document to have been duly affixed until the contrary is proved.

**180 Objective of a cane protection and productivity board**

The objective of a cane protection and productivity board is to enhance the productivity of the sugar industry by increasing the quantity and improving the quality of cane produced by crops grown in its area.

**181 Membership of a cane protection and productivity board**

(1) A cane protection and productivity board is to consist of 6 members, of whom—

- (a) 3 are to be representatives of growers elected by the growers of the productivity area in a poll conducted under the BSES's directions; and
- (b) 2 are to be representatives of mill owners nominated under the BSES's directions by the owners of the mills in the productivity area; and
- (c) 1 is to be an officer of the BSES nominated by the BSES.

(2) However, if the Minister is satisfied on petition by growers and owners of mills in the area that at least a majority of them wish to—

- (a) vary the number of their representatives; or
- (b) vary the representation of organisations on the cane protection and productivity board so as to include representatives of an organisation nominated in the petition;

the Minister is to vary in writing the membership as requested.

(3) Appointed members of a cane protection and productivity board are to be appointed by the Minister in writing.

(4) An appointed member is to be appointed for a period not longer than 3 years.

(5) If a growers' representative is not able to be elected under subsection (1)(a) because insufficient nominations are received for the poll, the Minister may appoint anyone to be the growers' representative.

(6) If mill owners fail to nominate any representative for subsection (1)(b), the Minister may appoint anyone to be the representative of the mill owners on the cane protection and productivity board.

(7) The members of a cane protection and productivity board may elect a member as chairperson at any time.

(8) In this section—

**“appointed member”** means a member of the board other than the member mentioned in subsection (1)(c).

**“productivity area”** means the productivity area for which a cane protection and productivity board is established.

## **182 Acting appointments**

A person who is not a member of a cane protection and productivity board may be appointed under the BSES's directions to act as a member for any meeting of the board by—

- (a) if the member was elected under section 181(1)(a)—the mill suppliers' committees for the mills in the area for which the board is established; or
- (b) if the member was nominated under section 181(1)(b) or (c)—the entity that nominated the member for appointment.<sup>37</sup>

## **183 Remuneration of members**

A member of a cane protection and productivity board is to be paid by the board the fees and allowances decided by the Minister.

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<sup>37</sup> The *Acts Interpretation Act 1954*, section 24B contains provisions about acting appointments.

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

**184 Disqualifications for appointment**

A person is not qualified to be or to continue as a member of a cane protection and productivity board if the person—

- (a) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (b) is convicted of an indictable offence, whether on indictment or summarily; or
- (c) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (d) is not able to manage a corporation because of the Corporations Act, part 2D.6; or
- (e) is named in the register held by the Australian Securities and Investments Commission under the Corporations Act, section 1274AA.<sup>38</sup>

**185 Vacation of office**

(1) The office of a member of a cane protection and productivity board becomes vacant if the appointed member—

- (a) dies; or
- (b) resigns office by notice given to the Minister; or
- (c) is absent without the board's permission from 3 consecutive board meetings of which due notice has been given; or
- (d) is no longer qualified to be a member; or
- (e) is removed from office under section 189.

(2) In this section—

“**meeting**” means the following—

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<sup>38</sup> Corporations Act, part 2D.6 (Disqualification from managing corporations) and section 1274AA (Register of disqualified company directors and other officers)

- (a) if the member does not attend—a meeting with a quorum present;
- (b) if the member attends—a meeting with or without a quorum present.

### **186 Meetings of a cane protection and productivity board**

(1) A cane protection and productivity board must meet as often as its chairperson decides is necessary.

(2) A board may hold meetings, or allow members to take part in meetings, using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

(3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

(4) Despite subsection (2), the chairperson of a board may, in writing, refer a question requiring consideration by the board to all the members of the board.

(5) For subsection (4)—

- (a) a written decision of the members is taken to be a decision of the members at a duly constituted meeting of the board; and
- (b) a reference using any technology for transmission to members is adequate reference in writing; and
- (c) a reply to a reference using any technology is an adequate written decision.

(6) The quorum at a meeting is half the number of members of the board plus 1.

(7) The chairperson, or in the absence of the chairperson, a member elected by members present at a meeting, must preside at a board meeting.

(8) All questions at a meeting must be decided by a majority of votes of the members present.

(9) The member presiding at a meeting is to have a vote, and if there is an equality of votes, a second or casting vote.

(10) Subject to this Act, procedure at meetings of a cane protection and productivity board is to be decided by the board.

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

(1) If a member of a cane protection and productivity board has an interest in a matter being considered, or about to be considered, by the board, the member must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the member's knowledge.

Maximum penalty—100 penalty units.

(2) The disclosure must be recorded in the minutes of the meeting of the board.

(3) If the interest is a material personal interest, the member must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a **“related resolution”**) under subsection (4)(a) in relation to the matter (whether in relation to the member or another member); or
- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in a decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(4) Subsection (3) does not apply to the matter if—

- (a) the board has at any time passed a resolution that states—
  - (i) the member, interest and matter; and
  - (ii) that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter; or
- (b) if a quorum of the board can not be formed because of subsection (3)—the Minister has given a written direction to that effect for the matter.

(5) In this section—

**“interest”**, of a member relating to a matter for consideration at a meeting, does not include—

- (a) if a member is a grower—an interest the member has in common with growers in general; and

- (b) if a member is a mill owner—an interest the member has in common with mill owners in general.

### **188 Prohibition on political activity**

A cane protection and productivity board must not—

- (a) use any of its funds for any purpose in connection with the politics of any political party or any candidate for political office; or
- (b) become affiliated in any way with any body, association or organisation that has as its object or any of its objects the support of the politics, program or aims of any political party.

### **189 Removal of member**

(1) This section applies if the Minister is satisfied that a cane protection and productivity board has contravened section 188.

(2) The Minister may remove a member of the board from office by notice given to the member.

### ***Division 3—Cane protection and productivity board's functions, powers and duties***

### **190 Functions of a cane protection and productivity board**

A cane protection and productivity board has the following functions—

- (a) to provide suitable advice and help to cane growers within its area about—
  - (i) the prevention, control and eradication of pest infestation of cane or any other matter or thing that adversely affects the quantity or quality of crops of cane; or
  - (ii) the production and harvesting of cane;
- (b) to help, and cooperate with, entities involved in preventing, controlling and eradicating pests in cane;
- (c) to help, and cooperate with, entities involved in researching the production, harvesting, transport and processing of cane, including the BSES;

- (d) to provide advice and information about the preservation and enhancement of the capacity of land to sustain crops of cane;
- (e) to help minimise any damage to the environment that may be caused by activities of the sugar industry within its area;
- (f) to take all action within the powers conferred on it by this or another Act that may be necessary to achieve its objectives.

### **191 General powers of a cane protection and productivity board**

(1) A cane protection and productivity board has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with, property; and
- (c) appoint and act through agents and attorneys; and
- (d) make charges for services and facilities it provides; and
- (e) do anything else necessary or convenient to be done for its functions.

(2) Without limiting subsection (1), the board has the powers given to it under this Act or another Act.

(3) Subsection (1)(d) does not limit, and is not limited by, section 194.<sup>39</sup>

### **192 Power to engage assistance**

A cane protection and productivity board may employ the persons, and engage the consultants and service providers, that it considers necessary.

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

(1) A cane protection and productivity board is—

- (a) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Administration and Audit Act 1977*; and
- (b) a unit of public administration under the *Crime and Misconduct Act 2001*.

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<sup>39</sup> Section 194 (Regulation may levy a charge payable to a board)

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B<sup>40</sup> states the way in which a cane protection and productivity board's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### **194 Regulation may levy a charge payable to a board**

(1) A regulation may levy a charge payable to a cane protection and productivity board on cane growers and mill owners in relation to cane growing, harvesting, supply and processing.

(2) A regulation may also prescribe—

- (a) the basis on which the charge will be made; and
- (b) the time and way of payment of the charge; and
- (c) any other matters necessary to enforce the charge, including by requiring a mill owner to collect the charge from, or pay the charge on behalf of, a grower.

(3) The amount of a charge must be no greater than is necessary to fund services to the Queensland sugar industry provided by the board, including by making provision for the costs associated with its continued provision of those services.

(4) If an amount of a charge is not paid by a grower or mill owner, the board may recover the amount as a debt from the grower or mill owner.

(5) If a mill owner pays to the board an amount of a charge levied on a grower, the mill owner may recover the amount as a debt from the grower.

(6) For subsection (5), the owner may deduct the amount from an amount due by the owner to the grower and may recover an unpaid portion of the amount by action against the grower.

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

### **195 Dissolution**

A regulation may dissolve a cane protection and productivity board on a stated date.

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40 *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)



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

(1) A regulation may provide that when a cane protection and productivity board (the “**old board**”) is dissolved—

- (a) all assets of the old board immediately before that date become the assets of another stated cane protection and productivity board (the “**new board**”); and
- (b) all liabilities of the old board immediately before that date become the liabilities of the new board.

(2) A proceeding that, if the old board were not dissolved, might have been continued or taken by or against the old board from its dissolution may be continued or taken by or against the new board.

(3) All matters started by an old board before the date on which it is dissolved may be completed by the new board after that date.

(4) A reference to an old board in an Act or document existing before its dissolution from its dissolution has effect as if it were a reference to the new board, if the context permits.

(5) Persons employed or engaged by the old board immediately before it is dissolved are taken, from its dissolution, to be employed or engaged by the new board on the same terms and conditions as before.

**197 Change to registers**

The registrar of titles and all other persons charged with keeping any register for dealings with property must make in the register all endorsements necessary to record the vesting of property in a cane protection and productivity board under a regulation made under this division.

## **PART 8—REPLACEMENT CORPORATIONS FOR CANE PROTECTION AND PRODUCTIVITY BOARDS**

### *Division 1—Interpretation and application*

#### **198 Definitions for pt 5A**

In this part—

**“asset”** of a board, means all assets of the board immediately before the board’s transfer day.

**“board”** means a cane protection and productivity board.

**“eligible participant”**, for a board, means—

- (a) each grower whose cane production area relates to a mill in the productivity area for which the board was established; and
- (b) each owner of a mill situated in the productivity area.

**“liability”** of a board, means all liabilities of the board immediately before the board’s transfer day.

**“transfer day”**, for a board, means the day approved by the Minister under section 203 for the transfer of the board’s assets and liabilities to a replacement corporation.

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

(1) This division applies in relation to the following in the same way it applies to a transfer from a single board to a replacement corporation—

- (a) a transfer of assets and liabilities from more than 1 board to a single replacement corporation on the same transfer day;
- (b) a transfer of assets and liabilities from a board to a replacement corporation that, on the transfer day, already has received the assets and liabilities of another board under this part.

(2) For subsection (1), each provision of divisions 2 and 3 is applied separately to each board.

*Division 2—Steps to transfer and dissolution***200 Decision to transfer to non-statutory corporation**

A cane protection and productivity board established under section 177 (the “**board**”) may decide to dissolve and transfer its assets and liabilities to a corporation—

- (a) that is not a statutory body; and
- (b) that will have an objective to enhance the productivity of the sugar industry by increasing the quantity and improving the quality of cane produced by crops grown in an area the board considers appropriate.

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

Under section 200, the board must decide the following—

- (a) the day on which the board proposes to transfer its assets and liabilities (the “**proposed transfer day**”);
- (b) the corporation to which it will transfer its assets and liabilities (the “**replacement corporation**”).

**202 Deciding the replacement corporation**

A board may decide a corporation will be its replacement corporation only if—

- (a) the corporation has, by notice to the board signed by an authorised person for the corporation, agreed to be the replacement corporation; and
- (b) the corporation is not—
  - (i) an industrial association; or
  - (ii) a public company that has a share capital; or
  - (iii) a cooperative that has a share capital; and
- (c) the corporation is a company limited by guarantee, a cooperative, an incorporated association or a public company; and
- (d) the board is satisfied that, on the transfer of the assets and liabilities—

- (i) an objective of the corporation will be to enhance the productivity of the sugar industry by increasing the quantity and improving the quality of cane produced by crops grown in an area the board considers appropriate; and
- (ii) having regard to the requirements and purposes of the transfer, the following will be appropriate—
  - (A) the corporation's constitution;
  - (B) the conditions under which each eligible participant may become a member of the corporation;
  - (C) the obligations, restrictions and rights that will attach to members of the corporation;
  - (D) the corporation's officers.

### **203 Notice of decision about replacement corporation**

(1) The board must give the Minister notice of its decision under section 200.

(2) The notice must state the following—

- (a) the day the decision was made;
- (b) the proposed transfer day;
- (c) the replacement corporation's name;
- (d) the replacement corporation is not—
  - (i) an industrial association; or
  - (ii) a public company that has a share capital; or
  - (iii) a cooperative that has a share capital;
- (e) whether the replacement corporation is a company limited by guarantee, a cooperative, an incorporated association or a public company;
- (f) the board is satisfied that, on the transfer of the board's assets and liabilities to the replacement corporation—
  - (i) an objective of the corporation will be to enhance the productivity of the sugar industry by increasing the quantity and improving the quality of cane produced by crops grown in an area the board considers appropriate; and

- (ii) having regard to the requirements and purposes of the transfer, the following will be appropriate—
  - (A) the corporation's constitution;
  - (B) the conditions under which each eligible participant may become a member of the corporation;
  - (C) the obligations, restrictions and rights that will attach to members of the corporation;
  - (D) the corporation's officers.

(3) The notice must be accompanied by a copy of the notice mentioned in section 202(a).<sup>41</sup>

### **204 Minister's decision**

(1) The Minister must consider the notice and may require information from the board.

(2) If the Minister considers that all requirements of this Act have been complied with for the transfer, the Minister must, by notice given to the board, approve the proposed transfer day, or another day after the proposed transfer, as the transfer day for the board.

(3) If the Minister does not consider that all the requirements for the transfer have been complied with, the Minister must, by notice given to the board, refuse to approve a transfer day and state the reasons for the refusal.

### **205 Transfer**

On the transfer day, all of the board's assets and liabilities are transferred to, and become the assets and liabilities of, the replacement corporation.

### **206 Dissolution**

On the transfer day, the board is dissolved and its productivity area is abolished.

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41 Section 202 (Deciding the replacement corporation)

***Division 3—Provisions facilitating transfer*****207 Exemption for cooperatives**

If the replacement corporation is a cooperative, the *Cooperatives Act 1997*, section 268<sup>42</sup> does not apply to the transfer of the board's assets and liabilities to the replacement corporation.

**208 Registration of transferred assets**

(1) A certificate signed by an authorised person for the replacement corporation is evidence of an asset having become an asset of the corporation on the transfer day if the certificate—

- (a) identifies the asset; and
- (b) states the asset was, immediately before the transfer day, an asset of the board; and
- (c) that, under this division, the asset became an asset of the replacement corporation on the transfer day.

(2) If the certificate is given to an entity with registration functions under a law of the State for assets of that kind under a law of the State, the entity must do the following as if the certificate were an appropriate instrument of transfer of the asset—

- (a) register the matter in the same way as transactions for assets of that kind;
- (b) deal with, and give effect to, the certificate.

*Example of an 'entity with registration functions'—*

- the registrar of titles.

(3) A transfer of the asset to the replacement corporation may be registered or given effect to under the law of another State if—

- (a) the certificate is given to an entity with registration functions for assets of that kind under the other State's law; and
- (b) the entity is permitted by law to do so.

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42 *Cooperatives Act 1997*, section 268 (Acquisition and disposal of assets)

**209 References to board**

A reference to the board in an Act or document existing before its dissolution, from its dissolution has effect as if it were a reference to the replacement corporation, if the context permits.

**210 Continuity of proceedings and matters**

(1) A proceeding that, if the board were not dissolved, might have been started or continued by or against the board, from the dissolution may be started or continued by or against the replacement corporation.

(2) All matters started by the board before its dissolution may be completed by the replacement corporation after the board's dissolution.

**211 Employees**

A person employed by the board immediately before the transfer day on the transfer day is taken to be employed by the replacement corporation on the same terms and conditions as before.

**212 Officers cease holding office**

(1) Each person who, immediately before the transfer day, was an officer of the board goes out of office on the transfer day.

(2) No compensation is payable to a person because of subsection (1).

***Division 4—Status of replacement corporation*****213 Replacement corporation**

A replacement corporation is not a cane protection and productivity board for any purpose.

## **PART 9—NEGOTIATING TEAMS**

### ***Division 1—Establishment of negotiating team***

#### **214 Establishment**

(1) A negotiating team is established for each mill.

(2) Adjacent mills may have a single negotiating team established for them by the joint appointment of members under section 215(2) by the mill owners and mill suppliers' committees.

#### **215 Membership**

(1) The negotiating team for a mill, or 2 or more adjacent mills, consists of 4 members.

(2) Two of the members are to be appointed by the mill owner, or jointly by the mill owners, and 2 are to be appointed by the mill suppliers' committee, or jointly by the mill suppliers' committees.

(3) Additional members may be appointed under an agreement between the mill owner or owners and the mill suppliers' committee or committees.

(4) Before 1 January in each year and as necessary throughout the year, the owner of the mill or mills and mill suppliers' committee or committees must tell each other the names of their members on the negotiating team for the year.

#### **216 Acting appointments**

A person who is not a member of a negotiating team may be appointed to act as a member for any meeting of the team by the entity, or jointly by the entities, that nominated the member for appointment.<sup>43</sup>

#### **217 Objective of a negotiating team**

The objective of a negotiating team is to help growers and the owner of the mill for which it is established to jointly improve profitability.

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<sup>43</sup> The *Acts Interpretation Act 1954*, section 24B contains provisions about acting appointments.



***Division 2—Functions and powers*****218 Functions and powers**

(1) A negotiating team established for a mill or mills has the following functions—

- (a) to make a collective agreement for the mill or mills;
- (b) to decide all matters about expansion of the total number of hectares included in cane production areas relating to the mill or mills;
- (c) to develop and propose to the commissioner for approval a cane analysis program, or a change to the cane analysis program, for the mill or mills;
- (d) to make a cane quality program for the mill or mills;
- (e) to perform other functions given to it under this or another Act.

(2) A negotiating team may do anything necessary or convenient to be done for its functions.

(3) A negotiating team must agree on a dispute resolution process—

- (a) for agreements as mentioned in section 54;<sup>44</sup> and
- (b) for its other functions.

(4) A negotiating team must appoint a secretary with an address for service of the negotiating team.

**219 Dispute resolution about functions**

(1) This section applies if a dispute arises within a negotiating team about a matter mentioned in section 218(1).

(2) If a dispute resolution process agreed by the negotiating team applies to the dispute, the process must be followed.

(3) A decision arising out of the dispute resolution process is taken to be the final decision of the negotiating team.

(4) The *Commercial Arbitration Act 1990* does not apply if the final decision is reached by arbitration.

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44 Section 54 (Dispute resolution)

(5) To remove doubt, for the *Judicial Review Act 1991*, sections 4 and 20(1),<sup>45</sup> the decision mentioned in subsection (3) is “**a decision to which this Act applies**”.

(6) If there is no dispute resolution process agreed by the negotiating team that applies, the dispute resolution process provided for under a regulation must be followed.

## **220 Power to engage assistance**

A negotiating team may employ the persons, and engage the consultants and service providers, it considers necessary.

### *Division 3—General provisions about negotiating teams*

## **221 Meetings and decisions of a negotiating team**

(1) A negotiating team must meet as often as it decides is necessary.

(2) A negotiating team may hold meetings, or allow members to take part in meetings, using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

(3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

(4) Despite subsection (2), a negotiating team may, in writing, refer a question requiring consideration by the team to all the members of the team.

(5) For subsection (4)—

- (a) a written decision of the members of the negotiating team is taken to be a decision of the members at a duly constituted meeting of the board; and
- (b) a reference to members using any technology is adequate reference in writing; and
- (c) a reply to a reference using any technology is an adequate written decision.

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<sup>45</sup> *Judicial Review Act 1991*, sections 4 (Meaning of “decision to which this Act applies”) and 20 (Application for review of decision)

(6) The quorum at a meeting is all the members of the negotiating team.

(7) A decision of a negotiating team must be unanimous or as decided under a dispute resolution process under section 219.

## **PART 10—SUGAR INDUSTRY COMMISSIONER**

### *Division 1—Commissioner*

#### **222 Appointment of commissioner**

(1) There is to be a Sugar Industry Commissioner.

(2) The commissioner is to be appointed by the Governor in Council.

(3) The commissioner holds office for the term, not longer than 5 years, and on the conditions stated in the instrument of appointment.

#### **223 Functions of commissioner**

The commissioner has the following functions—

- (a) to grant access rights and to keep the access rights register;
- (b) to keep a central register of cane production areas;
- (c) if asked by a cane production board, to help the board in the administration of its objectives;
- (d) to facilitate the existence of an effective cane analysis system;
- (e) to approve cane analysis programs;
- (f) to mediate in 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;
- (g) to be a member of the authority.

#### **224 Remuneration**

The commissioner is to be paid the remuneration, including allowances, decided by the Governor in Council.

**225 Disqualifications for appointment**

A person is not qualified to be or to continue as commissioner if the person—

- (a) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (b) is convicted of an indictable offence, whether on indictment or summarily; or
- (c) becomes incapable of performing the duties of commissioner because of physical or mental incapacity; or
- (d) is not able to manage a corporation because of the Corporations Act, part 2D.6; or
- (e) is named in the register held by the Australian Securities Investment Commission under the Corporations Act, section 1274AA.<sup>46</sup>

**226 Vacation of office**

The office of commissioner becomes vacant if the commissioner—

- (a) dies; or
- (b) resigns office by notice given to the Governor in Council; or
- (c) is absent, without the Minister's permission and without reasonable excuse, for 14 consecutive days or 28 days in any year; or
- (d) is no longer qualified to continue as commissioner; or
- (e) is removed from office under section 232.

**227 Commissioner's independence**

(1) In performing functions of office mentioned in section 223,<sup>47</sup> the commissioner must act independently and impartially.

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46 Corporations Act, part 2D.6 (Disqualification from managing corporations) and section 1274AA (Register of disqualified company directors and other officers)

47 Section 223 (Functions of commissioner)

(2) However, subsection (1) does not prevent QSL providing staff and other resources to the commissioner to carry out his or her functions effectively and efficiently.

### **228 Commissioner's budget**

(1) The commissioner must prepare and give to the Minister a draft budget for each financial year in the form and when the Minister directs.

(2) The Minister must decide the commissioner's budget for the financial year.

(3) Before the Minister decides the commissioner's budget, the Minister must consult with QSL and industry representative bodies.

(4) The commissioner's budget is payable by QSL.

(5) The commissioner must authorise spending only under the budget decided by the Minister, unless the Minister otherwise directs.

(6) If the commissioner is appointed to act as the administrator of the corporation, the commissioner may ask the Minister to vary the budget.

(7) The Minister may vary the budget as requested, either with or without amendment.

### **229 Commissioner's staff**

The commissioner may employ the persons the commissioner considers necessary.

### **230 Commissioner's power to delegate**

(1) The commissioner may delegate the commissioner's powers to—

- (a) an appropriately qualified member of the commissioner's staff;  
or
- (b) an entity established under this Act; or
- (c) an appropriately qualified member or officer of an entity established under this Act.

(2) Without limiting subsection (1), the commissioner may delegate a power under chapter 2, part 5, division 5<sup>48</sup> to an individual mentioned in subsection (1) or to another appropriately qualified person.

(3) The commissioner may delegate the commissioner's power to mediate in disputes about the exercise of an access right under section 72(9)<sup>49</sup> to—

- (a) the chairperson of the cane production board established for a mill that is or is proposed to be supplied with cane through the use of the access right; or
- (b) an appropriately qualified mediator.

### **231 Prohibition on political activity**

The commissioner must not use any of the funds made available to the commissioner under this Act for any purpose in connection with the politics of any political party or any candidate for political office.

### **232 Removal of commissioner**

(1) This section applies if the Governor in Council is satisfied that the commissioner has contravened section 231.

(2) The Governor in Council may remove the commissioner from office by notice given to the commissioner.

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

### **233 Commissioner and registers**

(1) The commissioner must keep a register of the total number of hectares included in cane production areas.

(2) If the commissioner requires a cane production board to give information to the commissioner for entry on the register, the board must give the information within the reasonable period the commissioner may require.

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48 Chapter 2, part 5, division 5 (Cane analysis programs)

49 Section 72 (Variation and cancellation of access right, dispute resolution and enforcement)

(3) If asked by a cane production board, the commissioner may help the board in any way the commissioner considers appropriate to properly keep the board's register about cane production areas.

(4) With the agreement of a mill owner and the mill suppliers' committee established for the mill, the commissioner may make arrangements, including financial arrangements, with the cane production board established for the mill under which the commissioner is to keep the board's register of information about cane production areas.

## CHAPTER 5—APPEALS

### 234 Appeal to Magistrates Court

(1) The following persons may appeal to a Magistrates Court (“**the court**”) against the decisions mentioned in relation to the person—

- (a) a person whose application to register any matter on a register kept by the commissioner or a cane production board has been refused by the commissioner or the board;
- (b) a person who makes an application under chapter 2, part 1, division 2, and is dissatisfied with a decision made by a cane production board about the application that adversely affects the person's interests;
- (c) a grower who is dissatisfied with a decision made by a cane production board under chapter 2, part 1, division 3 that adversely affects the interests of the grower;
- (d) a person whose cane production area has been cancelled by a cane production board under chapter 2, part 1, division 4;
- (e) a grower or mill owner mentioned in section 36 who is dissatisfied with a decision of a cane production board under the section;
- (f) a person whose application under section 61 has been refused by the BSES or granted on a condition with which the person is dissatisfied;

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- (g) a holder of an access right or a land-holder mentioned in section 74 who is dissatisfied with a decision of the commissioner under section 74(2).

(2) The appeal is started by—

- (a) giving a notice of appeal stating the grounds to the clerk of the court; and
- (b) giving a copy of the notice to the respondent.

(3) An appeal must be started within 28 days after the appellant—

- (a) for an appeal under subsection (1)(c)—is given notice of the relevant decision or becomes aware of the relevant decision, whichever happens later; or
- (b) otherwise—is given notice of the relevant decision.

(4) In deciding the appeal, the court—

- (a) is unaffected by the appealed decision; and
- (b) is not bound by the rules of evidence; and
- (c) must observe natural justice.

(5) In deciding the appeal, the court may confirm the appealed decision or set the appealed decision aside and make another decision.

(6) If the court makes another decision, the decision is taken to be the decision of the respondent.

(7) However, a decision mentioned in subsection (6) can not be appealed against under this section.

(8) A party dissatisfied by the decision of the Magistrates Court may appeal to the District Court, but only on a question of law.

(9) In this section—

**“decision”** includes—

- (a) an order; and
- (b) for a cane production board’s decision—failure to make the decision.



**235 Appeal to Land Court**

(1) This section applies to a decision by the commissioner under section 65 or 72(3).<sup>50</sup>

(2) A person aggrieved by the commissioner's decision may appeal to the Land Court within 28 days after the notice of the decision is given by the commissioner under section 66 or 72(8).

(3) The appeal is started by—

- (a) giving a notice of appeal stating the grounds to the registrar of the Land Court; and
- (b) giving a copy of the notice to the following—
  - (i) the commissioner;
  - (ii) any land-holder whose land is or would be affected by the relevant access right;
  - (iii) the holder of any relevant access right;
  - (iv) any grower affected by the relevant variation or cancellation, if the decision appealed against is under section 72(3).

(4) For subsection (3)(b)(ii) and (iv), it is enough if notice of the appeal is published in a newspaper circulating in the area where the access right is situated.

(5) The commissioner is not a party to the appeal merely because the commissioner is given a copy of the notice of appeal.

(6) In deciding the appeal, the court is unaffected by the appealed decision.<sup>51</sup>

(7) In deciding the appeal, the court may confirm the appealed decision or set the appealed decision aside and make another decision.

(8) If the court makes another decision, the decision is taken to be the decision of the commissioner.

(9) However, a decision mentioned in subsection (8) can not be appealed against under this section.

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50 Section 72 (Variation and cancellation of access right, dispute resolution and enforcement)

51 For relevant general powers of the Land Court, see *Land Court Act 2000*, section 7 (Land Court to be guided by equity and good conscience).

## CHAPTER 6—AUTHORISATIONS FOR COMPETITION LEGISLATION

### 236 Definitions for ch 6

In this chapter—

**“Competition Code”** means the Competition Code under the *Competition Policy Reform (Queensland) Act 1996*.

**“competition legislation”** means the *Trade Practices Act 1974* (Cwlth), section 51(1)(b)<sup>52</sup> or the Competition Code of this jurisdiction, section 51.<sup>53</sup>

**“harvesting equity committee”** means a committee that—

- (a) consists of representatives of a mill owner and growers; and
- (b) is established under a collective agreement to review matters about the harvesting of cane to try to ensure the harvesting is carried out in a fair, effective and efficient way.

**“settlement”** means a contract, arrangement or understanding made or arrived at between any or all of the following—

- (a) a grower;
- (b) a harvesting equity committee;
- (c) a cane production board;
- (d) a mill owner;
- (e) a mill suppliers’ committee;

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52 *Trade Practices Act 1974* (Cwlth), section 51 (Exceptions)

53 The Competition Code, section 51 states that in deciding whether a person has contravened the Code, Part IV, certain things must be disregarded. Section 51(1) of the Code provides that the following must be disregarded—

- (a) ...
- (b) anything done in a State, if the thing is specified in, and specifically authorised by:
  - (i) an Act passed by the Parliament of that State; or
  - (ii) regulations made under such an Act.

- (f) for a settlement about using a particular person for an activity mentioned in section 239(2)(a) or (b) or 240(2)(a) or (b),<sup>54</sup> the person.

### **237 Cane production areas**

(1) The following things are specifically authorised for the competition legislation—

- (a) the granting of, or the refusal to grant, a cane production area, or an increase in the number of hectares included in a cane production area, by a cane production board;
- (b) the variation of, or the refusal to vary, the description of land included in a grower's cane production area by a cane production board;
- (c) the variation in, or the refusal to vary, the conditions on which a grower holds a cane production area by a cane production board;
- (d) the cancellation of, or the refusal to cancel, a grower's cane production area, or part of the number of hectares included in a cane production area, by a cane production board.

(2) Subsection (1) applies to the granting, variation or cancellation only to the extent it is made for giving effect to a settlement.

(3) The things mentioned in subsection (1) are authorised even if they have the purpose, effect or likely effect of substantially lessening competition or one of the proscribed purposes stated in the *Trade Practices Act 1974* (Cwlth), section 46(1)<sup>55</sup> or the Competition Code of this jurisdiction, section 46(1).<sup>56</sup>

(4) The following conditions imposed on the granting or variation of a cane production area are specifically authorised for the competition legislation—

- (a) a condition imposed on the growing of cane;
- (b) a condition imposed on the harvesting of cane;
- (c) a condition imposed on the delivery of cane;

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54 Section 239 (Supply agreements—individual agreements) or 240 (Supply agreements—collective agreements)

55 *Trades Practices Act 1974* (Cwlth), section 46 (Misuse of market power)

56 Competition Code, section 46 (Misuse of market power)

- (d) a requirement about the use of a particular person for—
  - (i) the delivery of cane to a mill by a grower; or
  - (ii) the transport of cane by a mill owner;
- (e) a requirement that a grower must exercise the entitlement conferred by a cane production area within a certain time from the day the cane production area is granted;
- (f) a prohibition or limitation on the transfer of a cane production area within a certain time from the day the cane production area is granted.

*Example of paragraph (a)—*

A condition that a grower use practices allowing cane to be grown without undue damage to the environment.

*Example of paragraph (b)—*

A condition that cane is harvested in a particular period.

*Example of paragraph (c)—*

A condition that a grower pays an amount as a financial contribution to a cane railway to facilitate the use of the land for growing cane.

## **238 Expansions**

(1) The following things are specifically authorised for the competition legislation—

- (a) the refusal of a mill owner or a mill suppliers' committee to give a consent under section 21<sup>57</sup> to a grower's application under section 30;<sup>58</sup>
- (b) the rejection of a mill owner of the arbitrator's decision mentioned in section 24(4) or 27(3)(d);<sup>59</sup>
- (c) the giving of, or the refusal to give, a move consent notice mentioned in section 25(2) or 28(2)<sup>60</sup> by a cane production board;

<sup>57</sup> Section 21 (Consent process)

<sup>58</sup> Section 30 (Application allowing supply to receiving mill)

<sup>59</sup> Section 24 (If the negotiating team does not agree to horizontal expansion) or 27 (Establishment of productivity increase process)

<sup>60</sup> Section 25 (Process for moving supply from current mill) or 28 (Process of moving supply from current mill)

- (d) the making of a decision by a negotiating team about expansion under section 37.<sup>61</sup>

(2) Subsection (1)(c) or (d) applies to the giving of, or the refusal to give, a notice or the making of a decision only to the extent the notice or refusal is given, or the decision is made, for giving effect to a settlement.

(3) The things mentioned in subsection (1) are authorised even if they have the purpose, effect or likely effect of substantially lessening competition.

### **239 Supply agreements—individual agreements**

(1) The following things are specifically authorised for the competition legislation—

- (a) the making of an individual agreement by 1 or more growers and a mill owner under section 40;<sup>62</sup>
- (b) the variation of an individual agreement by the parties.

(2) Subsection (1) applies to the making or variation of an individual agreement only to the extent the agreement makes provision about—

- (a) the harvesting of cane by a grower, including the use of a particular person for the harvesting; or
- (b) the use of a particular person for—
- (i) the delivery of cane to a mill by a grower; or
- (ii) the transport of cane by a mill owner; or
- (c) the acceptance and crushing of cane by a mill at a time fixed under the agreement.

(3) The following things are specifically authorised for the competition legislation—

- (a) the harvesting of cane by a grower under an individual agreement, including the use of a particular person for the harvesting;
- (b) the use of a particular person for—

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61 Section 37 (Negotiating team must decide expansion of cane production areas)

62 Section 40 (Individual agreement)

- (i) the delivery of cane to a mill by a grower under an individual agreement; or
- (ii) the transport of cane by a mill owner under an individual agreement;
- (c) the acceptance and crushing of cane by a mill at a time fixed under an individual agreement.

(4) The things mentioned in subsections (1) and (3) are authorised even if they have the purpose, effect or likely effect of substantially lessening competition.

### **240 Supply agreements—collective agreements**

(1) The following things are specifically authorised for the competition legislation—

- (a) the making of a collective agreement by a negotiating team under section 43;<sup>63</sup>
- (b) the variation of a collective agreement by a negotiating team under section 45.<sup>64</sup>

(2) Subsection (1) applies to the making or variation of a collective agreement only to the extent the agreement is made or varied for giving effect to a settlement about—

- (a) the harvesting of cane by a grower, including the use of a particular person for the harvesting; or
- (b) the use of a particular person for—
  - (i) the delivery of cane to a mill by a grower; or
  - (ii) the transport of cane by a mill owner; or
- (c) the acceptance and crushing of cane by a mill at a time fixed under the agreement.

(3) The following things are specifically authorised for the competition legislation—

- (a) the harvesting of cane by a grower under a collective agreement, including the use of a particular person for the harvesting;

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63 Section 43 (Collective agreement—making)

64 Section 45 (Variation of collective agreement)

- (b) the use of a particular person for—
  - (i) the delivery of cane to a mill by a grower under a collective agreement; or
  - (ii) the transport of cane by a mill owner under a collective agreement;
- (c) the acceptance and crushing of cane by a mill at a time fixed under a collective agreement.

(4) Subsection (3)(a) applies only to the extent the collective agreement gives effect to a settlement about the harvesting.

(5) Subsection (3)(b) applies only to the extent the collective agreement gives effect to a settlement about the use of the particular person for doing the thing mentioned in subsection (3)(b)(i) or (ii).

(6) The things mentioned in subsections (1) and (3) are authorised even if they have the purpose, effect or likely effect of substantially lessening competition.

## **241 Supply agreements—payments**

(1) The entry into a supply agreement is specifically authorised for the competition legislation.

(2) Subsection (1) applies to the entry only to the extent the agreement provides for the terms on which payments are to be made by a mill owner for cane to be supplied to a mill by a grower under the supply agreement.

(3) The following things are specifically authorised for the competition legislation—

- (a) the payment of a price for cane by a mill owner to a grower under a supply agreement mentioned in this section;
- (b) the receipt of a price for cane by a grower from a mill owner under a supply agreement mentioned in this section;
- (c) a financial incentive scheme of premiums, discounts and allowances relating to cane and sugar quality or to anything that may affect cane and sugar quality having regard to best practice under a supply agreement mentioned in this section.

## **242 Cane quality programs**

(1) The making of a cane quality program by a negotiating team for a mill under section 93<sup>65</sup> is specifically authorised for the competition legislation.

(2) Subsection (1) applies to the making of a cane quality program only to the extent the program provides for a scheme of premiums and discounts for cane quality and gives effect to a settlement.

## **243 Payment schemes**

The establishment by QSL of payment schemes under section 102,<sup>66</sup> and anything done under or because of a payment scheme, is specifically authorised for the competition legislation.

## **244 Brand sugar**

(1) The entry into of, and the giving of effect to, an arrangement between QSL and a mill owner under section 103<sup>67</sup> under which the owner is to produce a particular brand of raw sugar in a particular period or amount is specifically authorised for the competition legislation.

(2) The following things are specifically authorised for the competition legislation—

- (a) the giving of a direction by QSL to a mill owner of a mill under section 103(3) about sugar produced at the mill requiring the owner to produce a particular brand of raw sugar;
- (b) the production by the mill owner of a particular brand of raw sugar because of a direction given to the owner by QSL under section 103(3).

## **245 Directions about delivery**

(1) This section applies to a direction given by QSL under section 104(2).<sup>68</sup>

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65 Section 93 (Requirement to have cane quality program)

66 Section 102 (Schemes for payment)

67 Section 103 (Production of brands of raw sugar)

68 Section 104 (Directions about delivery etc.)



(2) The following things are specifically authorised for the competition legislation—

- (a) the giving of a direction about—
  - (i) how sugar vested in QSL must be kept before it is supplied to QSL; or
  - (ii) how sugar vested in QSL must be supplied to QSL, including—
    - (A) when, where and how the sugar is to be supplied; and
    - (B) delivery of the sugar to places or persons or other action that will be treated as supply to QSL; or
  - (iii) the payment by the manufacturer of sugar of costs associated with its supply to QSL; or
  - (iv) the conditions on which QSL will accept sugar vested in it; or
  - (v) information that must be given to QSL by any person concerned in the supply to, and acceptance by, QSL of sugar, and the form and way in which the information must be given;
- (b) anything done under, or because of, a direction mentioned in paragraph (a) by—
  - (i) QSL; or
  - (ii) a person to whom the direction is given.

### **246 Sugar price directions**

(1) The entry by QSL into a contract for the sale of sugar for a price stated in a sugar price direction is specifically authorised for the competition legislation.

(2) In this section—

“**sugar price direction**” means a direction given by the Minister to QSL under section 124(1)<sup>69</sup> about the pricing of raw sugar for sale to domestic customers.

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69 Section 124 (Minister’s directions to QSL)

## CHAPTER 7—MISCELLANEOUS

### 247 Injunctions

(1) Subsection (2) applies if a person has engaged, is engaging or is proposing to engage in conduct that is, was, or would be, any of the following—

- (a) a contravention of chapter 2 or 3;
- (b) attempting to contravene chapter 2 or 3;
- (c) aiding, abetting, counselling or procuring a person to contravene chapter 2 or 3;
- (d) inducing or attempting to induce (whether by threats, promises or otherwise) a person to contravene chapter 2 or 3;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of chapter 2 or 3;
- (f) conspiring with others to contravene chapter 2 or 3.

(2) On the application of an interested entity, the court may grant an injunction restraining the person from engaging in the conduct and, if the court considers it is desirable to do so, requiring the person to do anything.

(3) If a person has failed, is failing, or is proposing to fail, to do anything that the person is required to do under chapter 2 or 3, the court may, on the application of an interested entity, grant an injunction requiring the person to do the thing.

(4) However, the court may grant the injunction under subsection (2) or (3) only if it is satisfied that there is no other adequate remedy.

(5) On an application under subsection (2) or (3), the court may grant the injunction sought with the consent of all the parties to the proceeding, whether or not the court is satisfied that the subsection applies.

(6) The court may grant an interim injunction pending a decision on an application under subsection (2).

(7) The court may discharge or vary an injunction, and may grant an injunction on conditions.

(8) The court's power to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in the conduct; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to another person if the person engages, or continues to engage, in the conduct.

(9) The court's power to grant an injunction requiring a person to do a thing may be exercised—

- (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the thing; and
- (b) whether or not the person has previously failed to do a thing of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to another person if the person fails, or continues to fail, to do the thing.

(10) The court may, in addition to, or instead of, ordering an injunction against a person, order the person to pay damages to someone.

(11) The court's powers under this section are in addition to its other powers.

(12) In this section—

**“court”** means the Supreme Court.

**“interested entity”** means an entity established under this Act or another person, whose interests have been, are or would be affected by the relevant conduct.

## **248 General provisions about show cause proceedings**

(1) This section applies to any show cause proceeding under this Act.

(2) The notice to show cause must give the person to whom it is given at least 28 days in which to make submissions.

(3) The entity giving the notice—

- (a) may extend the period for making submissions at any time; and
- (b) must consider any submissions made by the person; and

- (c) must give the person a reasonable opportunity to be heard about the matter.

### **249 Statutory declaration**

(1) This section applies to an application or submission to the commissioner or an entity established under this Act.

(2) The commissioner or entity may require particular information to be verified by statutory declaration as a condition of its consideration or further consideration of the application or submission.

### **250 Records to be kept**

An entity established under this Act—

- (a) must keep the records that may be necessary for the proper discharge of its functions; and
- (b) is a public authority under the *Public Records Act 2002*.

### **251 Superannuation schemes**

(1) An entity established under this Act may—

- (a) establish or amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

(2) The auditor-general may audit the schemes.

(3) Subsection (2) is subject to the *Financial Administration and Audit Act 1977*, part 6.<sup>70</sup>

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<sup>70</sup> *Financial Administration and Audit Act 1977*, part 6 (Audit of consolidated fund and public sector entities)

**252 Offence to make false statement in application or submission**

A person must not, in an application or submission made to an entity under this Act, make any false or misleading statement without reasonable excuse.

Maximum penalty—40 penalty units.

**253 Improper use of information prohibited**

A person who is, or has been, the commissioner, or a member, director, officer or employee of an entity established under this Act, must not make improper use of information acquired because of the person's position, or an opportunity provided by the position, to gain directly or indirectly an advantage for any person or to cause detriment to the entity or any person.

Maximum penalty—500 penalty units or 5 years imprisonment.

**254 Indemnity**

(1) The persons mentioned in subsections (2) to (4) are to be indemnified as mentioned in the subsections against all actions, proceedings and claims in relation to acts done or omitted to be done by any of them in good faith and without negligence under this Act.

(2) The commissioner and the chairperson of QSL are to be indemnified by QSL.

(3) The chairperson of a cane production board is to be indemnified by the commissioner.

(4) Subject to subsections (2) and (3), a person who is a chairperson, director or member of a body corporate established under this Act, or of a board of the body corporate, or who is an employee or agent of the body corporate, is to be indemnified by the body corporate.

(5) The following are declared to be excluded matters for the Corporations Act, section 5F, in relation to the Corporations Act, part 2D.2, division 1<sup>71</sup>—

- (a) a person who is, or is to be, indemnified under this section;

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71 Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter) and part 2D.2, division 1 (Indemnities and insurance for officers and auditors)

- (b) QSL;
- (c) a cane production board;
- (d) another body corporate established under this Act.

### **255 Proceedings for an offence**

(1) Subject to subsection (2), a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following—

- (a) 1 year after the offence is committed;
- (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

(2) A proceeding for an indictable offence may, at the election of the prosecution, be taken—

- (a) by way of summary proceedings under subsection (1); or
- (b) on indictment.

(3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of the person; or
- (b) for an examination of witnesses in relation to the charge.

(4) If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(5) If—

- (a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment; or
- (b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment;

the magistrate—

- (c) must not decide the charge as a summary offence; and
- (d) must proceed by way of a committal proceeding.

(6) If a magistrate acts under subsection (5)—

- (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
- (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (5) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).<sup>72</sup>

(7) The maximum penalty that may be imposed on a summary conviction of an indictable offence is 100 penalty units or 1 year's imprisonment.

(8) In this section—

**“indictable offence”** means an offence against section 253.<sup>73</sup>

## 256 Evidence

(1) A document purporting to be a copy of a collective agreement and purporting to be certified as a copy by or on behalf of a party to the agreement is evidence of the agreement.

(2) A statement in a complaint for an offence against this Act of when the commission of the offence came to the knowledge of the complainant is evidence of that fact.

(3) A certificate purporting to be signed by a person authorised to do so by an entity established under this Act stating that a particular document is a document lodged with or held by the entity, or a copy of the document, is evidence of anything stated in the certificate.

(4) A certificate purporting to be signed by the chief executive officer of the BSES, or a person authorised by the chief executive officer, stating for a particular date or period and particular place that cane of a particular variety was non-approved cane is evidence of anything stated in the certificate.

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72 *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

73 Section 253 (Improper use of information prohibited)

**257 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

## **CHAPTER 8—DEALINGS WITH BULK SUGAR TERMINAL ASSETS AND LIABILITIES**

### **PART 1—PRELIMINARY**

**258 Objects of ch 8**

The main objects of this chapter are—

- (a) to transfer assets and liabilities relating to bulk sugar terminals to the corporation; and
- (b) to transfer the assets and liabilities from the corporation to STL; and
- (c) to provide for shares in STL to be transferred to persons, including persons who, under the repealed Act, were particular assignment holders or lessees of assignments, and particular mill owners.

**259 Definitions for ch 8**

In this chapter—

**“BST day”** means the day fixed by the Minister under section 263.

**“commencement day”** means the day on which the provision in which the term is used commences.

**“corporation”** means Queensland Sugar Corporation.

**“port entity”** means one of the following entities—

- (a) Bundaberg Port Authority established under the *Government Owned Corporations (Ports) Regulation 1995*;



- (b) Cairns Port Authority established under the *Government Owned Corporations (Ports) Regulation 1995*;
- (c) Mackay Port Authority established under the *Government Owned Corporations (Ports) Regulation 1995*;
- (d) Port of Brisbane Corporation established under the *Government Owned Corporations (Ports) Regulation 1994*;
- (e) Ports Corporation of Queensland established under the *Government Owned Corporations (Ports) Regulation 1994*;
- (f) Townsville Port Authority established under the *Government Owned Corporations (Ports) Regulation 1995*.

### **259A Excluded matters for Corporations legislation**

All matters provided for under this chapter are declared to be excluded matters for the Corporations Act, section 5F, in relation to the Corporations legislation to the extent the Corporations legislation is inconsistent with this chapter.

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

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

In this part—

“**BST asset**” means an asset classified as a BST asset under section 261.

“**BST liability**” means a liability classified as a BST liability under section 261.

“**joint gazette notice**” means a gazette notice made jointly by the Minister and the Minister responsible for the administration of the *Transport Infrastructure Act 1994*.

“**transferable BST asset**” means a BST asset that is an asset of the State or a port entity.

“**transferable BST liability**” means a BST liability that is a liability of the State or a port entity.

**“transferor”**, of a transferred asset, means the entity whose asset the transferred asset was immediately before it was transferred to the corporation under this part.

**“transferor”**, of a transferred liability, means the entity whose liability the transferred liability was immediately before it was transferred to the corporation under this part.

**“transferred asset”** means a transferable BST asset transferred to the corporation under this part.

**“transferred liability”** means a transferable BST liability transferred to the corporation under this part.

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

(1) The Minister, by 1 or more joint gazette notices, may classify—

- (a) assets (other than land, as opposed to improvements on land), whether of the State, a port entity or the corporation, as BST assets; and
- (b) liabilities, whether of the State, a port entity or the corporation, as BST liabilities.

(2) The first notice must be published before BST day.

(3) Any subsequent notice must be published within 1 year after BST day.

(4) To remove doubt, it is declared that subsection (1) does not—

- (a) authorise strategic port land of a port entity to be classified under a joint gazette notice, as opposed to improvements on the land, including, for example, a bulk sugar terminal, which may be classified under a joint gazette notice; or
- (b) affect the control the port entity has over the strategic port land.

(5) In this section—

**“strategic port land”**, of a port entity, means land that is its strategic port land under the *Transport Infrastructure Act 1994*, section 171.<sup>74</sup>

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74 *Transport Infrastructure Act 1994*, section 171 (Approval of land use plans)

**262 Vesting preserved**

(1) A BST asset that is an asset of the corporation immediately before the commencement day continues to be the asset of the corporation on and after the commencement day.

(2) A BST liability that is a liability of the corporation immediately before the commencement day continues to be a liability of the corporation on and after the commencement day.

**263 BST day**

(1) The Minister must, by gazette notice, fix a day to be BST day for this chapter.

(2) BST day must be within 1 year after the commencement day.

**264 Transfer of transferable BST assets and liabilities**

(1) On and after BST day, the transferable BST assets and transferable BST liabilities are transferred to, and become the assets and liabilities of, the corporation, as provided for in subsections (2) and (3).

(2) If the transferable BST assets and transferable BST liabilities are classified under section 261 on or before BST day, they are transferred to, and become the assets and liabilities of, the corporation on BST day.

(3) If the transferable BST assets and transferable BST liabilities are classified under section 261 after BST day, they are transferred to, and become the assets and liabilities of, the corporation on the day of the gazette notice.

(4) The transfer of the assets and liabilities under this section has effect despite the provisions of any other law.

(5) The transfer of a liability of the State under this section discharges the State from the liability.

(6) The transfer of a liability of a port entity under this section discharges the port entity from the liability.

**265 Consideration for transfer of BST assets**

(1) The assumption by the corporation of the transferable BST liabilities is part of the consideration for the transfer of the transferable BST assets.

(2) To the extent that the total market value of the transferable BST assets is more than the total value of the transferable BST liabilities, the transferable BST assets are transferred to the corporation by way of gratuitous transfer.

### **266 Provisions facilitating transfer**

(1) The following apply for the purpose of the transferred assets or transferred liabilities (the “**relevant purpose**”)—

- (a) a reference in an instrument or an oral agreement, understanding or undertaking, so far as it applies to a transferred asset or transferred liability, to the transferor of the asset or liability is taken to be a reference to the corporation;
- (b) the relationship existing between the transferor and a person in relation to a transferred asset or transferred liability immediately before the transfer took effect continues between the corporation and the person after the transfer takes effect and gives rise to the same rights and liabilities as would have arisen if there had been no transfer;
- (c) a notice given by or to the transferor before the transfer took effect is, so far as it is referable to a transferred asset or transferred liability, taken to have been given to the corporation at the time it was given to or by the transferor;
- (d) the corporation is entitled to possession of all documents to which the transferor was entitled immediately before the transfer took effect that are referable, wholly or partly, to a transferred asset or transferred liability;
- (e) the corporation may execute an instrument transferring or otherwise dealing with a transferred asset or transferred liability in its own name;
- (f) the corporation is otherwise the successor in law of the transferor for the relevant purpose.

(2) Subsection (1) does not limit the other provisions of this part.

**267 Legal proceedings**

(1) This section applies if a legal proceeding might have been continued or started by or against the transferor of a transferred asset or transferred liability in relation to the asset or liability if there had been no transfer.

(2) The proceeding may be continued or started by or against the corporation.

(3) The corporation has the same rights and privileges as the transferor would have had if there had been no transfer.

(4) A document that could have been given in evidence by or against the transferor if there had been no transfer may be given in evidence by or against the corporation.

**PART 3—TRANSFER OF ASSETS AND LIABILITIES  
TO STL****268 Definitions for pt 3**

In this part—

“**BST asset**” means—

- (a) an asset that was transferred to the corporation under part 2; or
- (b) an asset that continued to be an asset of the corporation under section 262.

“**BST liability**” means—

- (a) a liability that was transferred to the corporation under part 2; or
- (b) a liability that continued to be a liability of the corporation under section 262.

“**transfer day**” means the day fixed by the Minister under section 269.

“**transferred asset**” means a BST asset transferred to STL under this part.

“**transferred liability**” means a BST liability transferred to STL under this part.

**269 Transfer day**

(1) The Minister must, by gazette notice, fix a day to be the transfer day for this part.

(2) The transfer day must be within 1 year after BST day.

**270 Transfer of BST assets and liabilities**

(1) On the transfer day, the BST assets and BST liabilities are transferred to, and become the assets and liabilities of, STL.

(2) The transfer of the assets and liabilities under this section has effect despite the provisions of any other law.

(3) The transfer of a liability under this section discharges the corporation from the liability.

**271 Consideration for transfer of BST assets**

(1) The assumption by STL of the BST liabilities is part of the consideration for the transfer of the BST assets.

(2) The remainder of the consideration is the issue by STL of shares in itself to the corporation.

**272 Issue of shares in STL**

(1) A regulation may provide for—

- (a) the number, and class, of shares to be issued for section 271(2); and
- (b) the day on which STL must issue the shares.

(2) STL must issue the shares to the corporation as required under the regulation.

(3) This section has effect despite the Corporations Act.

**273 Provisions facilitating transfer**

(1) The following apply for the purpose of the transferred assets or transferred liabilities (the “**relevant purpose**”)—

- (a) a reference in an instrument or an oral agreement, understanding or undertaking, so far as it applies to a transferred asset or transferred liability, to the corporation is taken to be a reference to STL;
  - (b) the relationship existing between the corporation and a person in relation to a transferred asset or transferred liability immediately before the transfer took effect continues between STL and the person after the transfer takes effect and gives rise to the same rights and liabilities as would have arisen if there had been no transfer;
  - (c) a notice given by or to the corporation before the transfer took effect is, so far as it is referable to a transferred asset or transferred liability, taken to have been given by or to STL at the time it was given by or to the corporation;
  - (d) STL is entitled to possession of all documents to which the corporation was entitled immediately before the transfer took effect that are referable, wholly or partly, to a transferred asset or transferred liability;
  - (e) STL may execute an instrument transferring or otherwise dealing with a transferred asset or transferred liability in its own name;
  - (f) STL is otherwise the successor in law of the corporation for the relevant purpose.
- (2) Subsection (1) does not limit the other provisions of this part.

### **274 Legal proceedings**

(1) This section applies if a legal proceeding might have been continued or started by or against the corporation in relation to a transferred asset or transferred liability if there had been no transfer.

(2) The proceeding may be continued or started by or against STL.

(3) STL has the same rights and privileges as the transferor would have had if there had been no transfer.

(4) A document that could have been given in evidence by or against the corporation if there had been no transfer may be given in evidence by or against STL.

## **PART 4—STL SHARE TRANSFERS BY CORPORATION**

### *Division 1—Interpretation*

#### **275 Definitions for pt 4**

In this part—

“**eligible person**” means a person who is an eligible person under the STL eligibility document.

“**share transfer day**” means the day appointed under a regulation under section 272.<sup>75</sup>

“**STL eligibility document**” means a document prepared by STL, whether before or after the commencement of this section, that provides for—

- (a) the way an eligible person’s entitlement to STL shares is worked out; and
- (b) the way the corporation must give effect to the transfer of the shares to an eligible person.

“**STL shares**” means the shares in STL issued to the corporation under section 272.

### *Division 2—Transfer of STL shares*

#### **276 Corporation’s obligation to transfer STL shares to eligible persons**

(1) The corporation must transfer STL shares only to persons who, immediately before the share transfer day, are eligible persons.

(2) A person is eligible to have STL shares transferred to them only if the person is, immediately before the share transfer day, an eligible person.

#### **277 Entitlement to STL shares**

(1) STL must work out an eligible person’s entitlement to STL shares (“**share entitlement**”) under the STL eligibility document.

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<sup>75</sup> Section 272 (Issues of shares in STL)



(2) A person may obtain a copy of the STL eligibility document from STL on payment of a fee.

(3) The fee must not be more than the reasonable cost of providing the document to the person.

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

(1) On the share transfer day, STL must tell the corporation of its decision on an eligible person's share entitlement.

(2) Within 28 days after the share transfer day, STL must—

- (a) give notice to all eligible persons who gave STL information on their possible share entitlement—
  - (i) of STL's decision on their share entitlement; and
  - (ii) stating how and when an eligible person may appeal against the decision to a Magistrates Court; and
- (b) publish in a newspaper circulating in the area, where cane was grown that was relevant to entitlements of eligible persons, a notice—
  - (i) stating that STL has made a decision on the share entitlements of eligible persons; and
  - (ii) inviting eligible persons to contact STL about their share entitlements if they have not received notice from STL within the period stated in the newspaper notice; and
  - (iii) stating that an eligible person may appeal against the decision to a Magistrates Court.

## **279 Transfer of STL shares**

(1) On, or as soon as practicable after, the share transfer day, the corporation must transfer to each eligible person the number of STL shares that STL has told the corporation under section 278(1) the person is entitled to.

(2) The corporation must transfer the shares by gratuitous transfer.

*Note—*

The administrator of the corporation completes the distribution of the shares under chapter 9, part 4.

(3) The transfer of STL shares under this section has effect despite the other provisions of this Act or the provisions of any other law.

### *Division 3—Appeals*

#### **280 Appeal**

(1) A person who is dissatisfied with a decision made by STL regarding the person's share entitlement may appeal to a Magistrates Court (“**the court**”) against the decision.

(2) A person—

(a) can not appeal against the provision made in the STL eligibility document—

(i) for deciding whether the person is an eligible person; or

(ii) for the way in which the eligible person's share entitlement is worked out; but

(b) may appeal on the grounds that, having regard to the provisions of the STL eligibility document—

(i) STL has incorrectly decided that the person is not an eligible person; or

(ii) the number of shares allocated to the person was incorrect.

(3) Also, an eligible person can not appeal against the decision if—

(a) STL, after the commencement of this section, asked the person in writing to give information about their share entitlement within a stated time; and

(b) the person did not give STL the information within the stated time.

(4) The appeal is started by—

(a) giving a notice of appeal stating the grounds to the clerk of the court; and

(b) giving a copy of the notice to STL.

(5) An appeal must be started within 28 days after the latest of the following days—

(a) the day the person is given notice of STL's decision;

- (b) the day the person becomes aware of STL's decision;
- (c) the date of assent.

(6) A person is taken to have become aware of STL's decision when STL publishes notice of the decision in a newspaper under section 278(2)(b).

(7) In deciding the appeal, the court—

- (a) is unaffected by the appealed decision; and
- (b) is not bound by the rules of evidence; and
- (c) must observe natural justice.

(8) In deciding the appeal, the court may confirm the appealed decision or set the appealed decision aside and make another decision.

(9) If the court makes another decision—

- (a) the decision can only order STL to issue shares or further shares to the person; and
- (b) the court can not award damages against STL; and
- (c) the decision is taken to be the decision of STL.

(10) However, a decision mentioned in subsection (9) can not be appealed against under this section.

(11) A party dissatisfied by the decision of the court may appeal to the District Court, but only on a question of law.

(12) In this section—

**“decision”** includes order.

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

(1) This section applies if, as a result of an appeal, the court orders STL to issue shares or further shares to an eligible person.

(2) STL must transfer the shares to the person by gratuitous transfer as soon as practicable or in accordance with the appeal decision.

(3) The transfer of STL shares under this section has effect despite the other provisions of this Act or the provisions of any other law.

## **PART 5—GENERAL**

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

This chapter has effect despite anything in any agreement, instrument or undertaking.

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

Nothing done under this chapter in relation to the State, a port entity, the corporation or STL (the “**entity**”)—

- (a) makes the entity liable for a breach of a contract, trust or confidence or otherwise makes the entity guilty of a civil wrong; or
- (b) places the entity in breach of a law of the State or an instrument prohibiting, regulating or restricting the assignment or transfer of an asset or liability or the disclosure of information; or
- (c) is taken to fulfil a condition—
  - (i) allowing a person to terminate an instrument or be released, wholly or partly, from an obligation or change the operation or effect of an instrument or obligation; or
  - (ii) requiring money to be paid, or anything else to be done, before its stated maturity; or
- (d) releases a surety or other obligee, wholly or partly, from an obligation.

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

(1) This section applies if—

- (a) apart from this section, obtaining the advice or consent of, or giving notice to, a person would be necessary to give effect to a transfer or other transaction contemplated by this chapter; and
- (b) the advice, consent or notice is not required under this chapter.

(2) The advice is taken to have been obtained.

(3) The consent or notice is taken to have been given.

**285 Minister's directions**

(1) The Minister may give the corporation, a port entity or STL a written direction to give effect to—

- (a) the transfer of assets and liabilities to the corporation under part 2; or
- (b) the transfer of assets and liabilities to STL, and the issue by STL of shares in itself to the corporation, under part 3; or
- (c) the transfer of shares in STL by the corporation under part 4.

(2) The entity to whom the direction is given must comply with it.

(3) The direction must—

- (a) be published in the gazette as soon as practicable after it is given; and
- (b) be tabled in the Legislative Assembly within 14 sitting days after it is given.

(4) This section has effect despite the other provisions of this Act or the provisions of any other law.

## **CHAPTER 9—DEALINGS WITH CORPORATION ASSETS AND LIABILITIES**

### **PART 1—PRELIMINARY**

**286 Objects of ch 9**

The main objects of this chapter are—

- (a) to transfer corporation assets and liabilities to QSL; and
- (b) to appoint the commissioner to act as administrator of the corporation and to provide for its administration; and
- (c) to complete the distribution of STL shares received by the corporation; and
- (d) to dissolve the corporation.

**287 Definitions for ch 9**

In this chapter—

“**corporation**” means Queensland Sugar Corporation.

“**marketing asset**”, of the corporation, means an asset classified as a corporation marketing asset by a gazette notice under section 288.

“**marketing liability**”, of the corporation, means a liability classified as a corporation marketing liability by a gazette notice under section 288.

“**QSL day**” means the day fixed by the Minister under section 289.

“**STL shares**” has the meaning given by section 275.

“**transferred asset**” means a marketing asset transferred to QSL under this chapter.

“**transferred liability**” means a marketing liability transferred to QSL under this chapter.

**287A Excluded matters for Corporations legislation**

All matters provided for under this chapter are declared to be excluded matters for the Corporations Act, section 5F, in relation to the Corporations legislation to the extent the Corporations legislation is inconsistent with this chapter.

**PART 2—TRANSFER OF ASSETS AND LIABILITIES  
FROM CORPORATION TO QSL****288 Classification of corporation marketing assets and liabilities**

(1) After consulting with the commissioner as administrator of the corporation, the Minister, by 1 or more gazette notices, may classify—

- (a) corporation assets as corporation marketing assets; and
- (b) corporation liabilities as corporation marketing liabilities.

(2) The first gazette notice must be published before QSL day.

(3) Any subsequent notice must be published within 1 year after the first notice.

**289 QSL day**

(1) The Minister must, by gazette notice, fix a day to be QSL day for this chapter.

(2) QSL day must be within 6 months after the date of assent of the *Sugar Industry Amendment Act 2000*.

**290 Transfer of marketing assets and liabilities**

(1) On and after QSL day, the corporation's marketing assets and marketing liabilities are transferred to, and become the assets and liabilities of, QSL as provided for in subsections (2) and (3).

(2) If corporation marketing assets or liabilities are classified under section 288 on or before QSL day, they are transferred to, and become the assets and liabilities of, QSL on QSL day.

(3) If corporation marketing assets or liabilities are classified under section 288 after QSL day, they are transferred to, and become the assets and liabilities of, QSL on the day of the gazette notice.

(4) The transfer of the assets and liabilities under this section has effect despite the provisions of any other law.

(5) The transfer of a liability under this section discharges the corporation from the liability.

**291 Consideration for transfer of marketing assets**

(1) The assumption by QSL of the corporation's marketing liabilities is part of the consideration for the transfer of the marketing assets.

(2) To the extent that the total market value of the corporation's marketing assets is more than the total value of the marketing liabilities, the marketing assets are transferred to QSL by way of gratuitous transfer.

**292 Provisions facilitating transfer**

(1) The following apply for the purpose of the transferred assets or transferred liabilities (the "**relevant purpose**")—

- (a) a reference in an instrument or an oral agreement, understanding or undertaking, so far as it applies to a transferred asset or

transferred liability, to the corporation is taken to be a reference to QSL;

- (b) the relationship existing between the corporation and a person in relation to a transferred asset or transferred liability immediately before the transfer took effect continues between QSL and the person after the transfer takes effect and gives rise to the same rights and liabilities as would have arisen if there had been no transfer;
- (c) a notice given by or to the corporation before the transfer took effect is, so far as it is referable to a transferred asset or transferred liability, taken to have been given by or to QSL at the time it was given by or to the corporation;
- (d) QSL is entitled to possession of all documents to which the corporation was entitled immediately before the transfer took effect that are referable, wholly or partly, to a transferred asset or transferred liability;
- (e) QSL may execute an instrument transferring or otherwise dealing with a transferred asset or transferred liability in its own name;
- (f) QSL is otherwise the successor in law of the corporation for the relevant purpose.

(2) Subsection (1) does not limit the other provisions of this part.

### **293 Legal proceedings**

(1) This section applies if a legal proceeding might have been continued or started by or against the corporation in relation to a transferred asset or transferred liability if there had been no transfer.

(2) The proceeding may be continued or started by or against QSL.

(3) QSL has the same rights and privileges as the corporation would have had if there had been no transfer.

(4) A document that could have been given in evidence by or against the corporation if there had been no transfer may be given in evidence by or against QSL.



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

(1) A direction given by the corporation in force immediately before QSL day is taken on and after QSL day to be a direction given by QSL.

(2) A payment scheme established by the corporation in force immediately before QSL day is taken on and after QSL day to be established by QSL.

(3) A standard about sugar quality made by the corporation in force immediately before QSL day is taken on and after QSL day to be made by QSL.

**PART 3—ADMINISTRATION***Division 1—General***295 Officers cease holding office**

(1) Each person who, immediately before the commencement of this section, was a member of the board of directors of the corporation goes out of office on the commencement.

(2) No compensation is payable to a person because of subsection (1).

**296 Employees**

(1) A person employed by the corporation immediately before the commencement of this section becomes an employee of QSL on the commencement.

(2) Subsection (1) does not—

- (a) constitute a redundancy or retrenchment of the person's employment by the corporation; or
- (b) entitle the person to a benefit or payment merely because the person is no longer employed by the corporation; or
- (c) interrupt the person's continuity of service.

(3) For the Industrial Relations Act, the person's period of employment with the corporation is taken to be an equivalent period of employment with QSL.

(4) Subject to the Industrial Relations Act, the person has the same employment rights against QSL that the person had against the corporation immediately before the commencement of this section.

(5) If an industrial instrument under the Industrial Relations Act bound the person and the corporation immediately before the commencement of this section, it binds the person and QSL.

(6) In this section—

“**employment rights**” includes existing and accruing rights to—

- (a) remuneration; and
- (b) recreation, long service, sick or other leave; and
- (c) superannuation or other benefits and entitlements.

“**Industrial Relations Act**” means the *Industrial Relations Act 1999*.

### *Division 2—Administrator*

#### **297 Appointment**

(1) The commissioner is appointed to act as the administrator of the corporation.

(2) The administrator holds office until—

- (a) the dissolution day; or
- (b) the office of commissioner becomes vacant under section 226.<sup>76</sup>

#### **298 Administrator is corporation**

For all purposes of this Act, the administrator is the corporation.

#### **299 Additional functions of administrator**

(1) The administrator has the following additional functions—

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<sup>76</sup> Section 226 (Vacation of office)

- (a) to identify the marketing assets and liabilities of the corporation and to transfer them to QSL;
- (b) to transfer BST assets and BST liabilities to STL;
- (c) to receive STL shares to the value of the BST assets transferred in consideration of the transfer of the assets to STL;
- (d) to complete the distribution of STL shares received under chapter 8, part 4, division 2;
- (e) to enter into arrangements with STL and QSL about the use of the corporation's assets.

(2) In subsection (1)(b)—

“**BST asset**” has the meaning given by section 268.

“**BST liability**” has the meaning given by section 268.

### **300 Minister's directions to administrator**

(1) The Minister may give the administrator a written direction to ensure the distribution of STL shares is carried out.

(2) The administrator must comply with the direction.

(3) The direction must—

- (a) be published in the gazette as soon as practicable after it is given; and
- (b) be tabled in the Legislative Assembly within 14 sitting days after it is given.

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

### **301 Distribution**

(1) The administrator must distribute the STL shares under section 279<sup>77</sup> by way of gratuitous transfer.

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77 Section 279 (Transfer of STL shares)

(2) As soon as practicable after the shares have been distributed, the administrator must give the Minister notice (“**completion notice**”) that the distribution has been completed.

### **302 Dissolution day**

(1) If the Minister receives a completion notice, the Minister must, by gazette notice, fix a day (the “**dissolution day**”) for the dissolution of the corporation.

(2) The corporation—

- (a) continues in existence under this Act until the dissolution day; and
- (b) is dissolved on the dissolution day.

## **PART 5—GENERAL**

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

This chapter has effect despite anything in any agreement, instrument or undertaking.

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

Nothing done under this chapter in relation to the corporation or QSL (the “**entity**”)—

- (a) makes the entity liable for a breach of a contract, trust or confidence or otherwise makes the entity guilty of a civil wrong; or
- (b) places the entity in breach of a law of the State or an instrument prohibiting, regulating or restricting the assignment or transfer of an asset or liability or the disclosure of information; or
- (c) is taken to fulfil a condition—
  - (i) allowing a person to terminate an instrument or be released, wholly or partly, from an obligation or change the operation or effect of an instrument or obligation; or

- (ii) requiring money to be paid, or anything else to be done, before its stated maturity; or
- (d) releases a surety or other obligee, wholly or partly, from an obligation.

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

(1) This section applies if—

- (a) apart from this section, obtaining the advice or consent of, or giving notice to, a person would be necessary to give effect to a transfer or other transaction contemplated by this chapter; and
- (b) the advice, consent or notice is not required under this chapter.

(2) The advice is taken to have been obtained.

(3) The consent or notice is taken to have been given.

## **CHAPTER 10—TRANSITIONAL PROVISIONS**

### **PART 1—TRANSITIONAL PROVISIONS FOR ACT No. 51 OF 1999**

#### *Division 1—Interpretation*

### **306 Definitions for pt 1**

In this part—

**“register of easements”** means the register of easements maintained under section 201<sup>78</sup> of the repealed Act.

**“Sugar Cane Assignment Register”** means the register maintained under section 32 of the repealed Act.

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78 *Sugar Industry Act 1991*, section 201 (Register of Easements)

**“Sugar Industry Tribunal”** means the Sugar Industry Tribunal established under section 209<sup>79</sup> of the repealed Act.

**“transitional assignment”** see section 307(1).

**“transitional easement”** see section 313(1).

**“transitional permit”** see section 314(1).

### *Division 2—Assignments*

#### **307 Assignment becomes a cane production area**

(1) This section applies to a person who held an assignment under the repealed Act immediately before the repeal of section 136(1)<sup>80</sup> of the repealed Act (**“transitional assignment”**).

(2) From the repeal of the section, the person is taken to hold instead a cane production area and to be a grower.

(3) The land included in the cane production area is the transitional assignment’s land and the description of the land included in the cane production area is the transitional assignment’s presently assigned description.

(4) The mill to which the cane production area relates is the mill to which the land included in the transitional assignment was assigned.

(5) The number of hectares included in the cane production area is the number of hectares in the transitional assignment’s area.

(6) A condition imposed on the grant or variation of the transitional assignment under section 139(3) or 142(4)<sup>81</sup> of the repealed Act is taken to be a condition imposed on the grant of the cane production area.

(7) To the extent that any type of right under the repealed Act mentioned in this section may be affected by a decision on a review by the Sugar Industry Tribunal on an application started before the commencement of this section, this section applies as if the decision had been given effect immediately before the commencement of this section.

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79 *Sugar Industry Act 1991*, section 209 (Sugar Industry Tribunal)

80 *Sugar Industry Act 1991*, section 136 (The assignment entitlement)

81 *Sugar Industry Act 1991*, section 139 (Guidelines for grant of assignment) or 142 (Orders by local board)

**308 Plan of transitional assignment becomes plan of a cane production area**

(1) This section applies to a plan to which section 160<sup>82</sup> of the repealed Act applied immediately before the repeal of the section.

(2) From the repeal of the section, subject to section 307, the plan is a plan under section 34.<sup>83</sup>

**309 Particular Queensland Sugar Corporation guideline to continue in effect**

(1) This section applies to a guideline in force under section 139(1)<sup>84</sup> of the repealed Act immediately before the repeal of the section.

(2) From the repeal of the section, the guideline is a guideline of each cane production board and is binding on the cane production board and on anyone making to the cane production board an application to which the guideline relates.

(3) For subsection (2) the guideline is to be read as follows—

- (a) a reference to an assignment is taken to be a reference to a cane production area;
- (b) a reference to a local board is taken to be a reference to a cane production board;
- (c) a reference to an assignment holder is taken to be a reference to a grower.

(4) The guideline stops having effect—

- (a) for a cane production board that makes a guideline, instrument or decision before 30 March 2000 about the same matter—the day the board makes the guideline, instrument or decision; or
- (b) otherwise—30 March 2000.

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82 *Sugar Industry Act 1991*, section 160 (Agreed assignment plan is evidence)

83 Section 34 (Agreed cane production area plan is evidence)

84 *Sugar Industry Act 1991*, section 139 (Guidelines for grant of assignment)

***Division 3—Awards and mill supply contracts*****310 Awards**

Each award made under section 118<sup>85</sup> of the repealed Act from the repeal of the section is to continue to have effect as if this Act had not been passed until it expires in accordance with its own terms.

**311 Mill supply contracts**

A mill supply contract mentioned in section 130(2)<sup>86</sup> of the repealed Act, and in force immediately before the repeal of the section, from the repeal continues in force as a supply agreement under this Act.

**312 Existing mill starts as mill**

(1) This section applies to each mill that is in existence immediately before the repeal of section 3C<sup>87</sup> of the repealed Act.

(2) From the repeal of the section, the mill is taken to be a mill under section 76.<sup>88</sup>

***Division 4—Transitional easements and permits to pass*****313 Transitional easement becomes a cane railway easement**

(1) This section applies to an easement granted under section 196<sup>89</sup> of the repealed Act and in force immediately before the repeal of the section (a “**transitional easement**”).

(2) From the repeal of the section, the easement is a cane railway easement and is subject to the same conditions as the transitional easement (and is an access right).

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85 *Sugar Industry Act 1991*, section 118 (Making of awards)

86 *Sugar Industry Act 1991*, section 130 (Mill supply contracts)

87 *Sugar Industry Act 1991*, section 3C (Meaning of “sugar mill” or “mill”)

88 Section 76 (Meaning of “mill”)

89 *Sugar Industry Act 1991*, section 196 (Grant of easement)



(3) However, the easement granted to the mill owner is taken to be granted to the owner to facilitate harvest of cane and supply of cane to any mill and between any mills.

### **314 Transitional permit becomes permit to pass**

(1) This section applies to a permit granted under section 207<sup>90</sup> of the repealed Act and in force immediately before the repeal of the section (a “**transitional permit**”).

(2) From the repeal of the section, the permit is a permit to pass and is subject to the same conditions as the transitional permit (and is an access right).

(3) However, if the transitional permit was granted to a mill owner, it is taken to be granted to the owner to facilitate harvest of cane and supply of cane to any mill and between any mills.

### **315 Register of easements becomes the access rights register**

(1) From the repeal of section 201<sup>91</sup> of the repealed Act, the register of easements becomes the access rights register.

(2) The commissioner, as soon as possible after the repeal of the section, must record in the access rights register the particulars mentioned in section 69(2)<sup>92</sup> of every transitional permit.

(3) For subsection (2), the Queensland Sugar Corporation must, immediately on the repeal of the section, give the commissioner the copies of the transitional permits kept by the Queensland Sugar Corporation.

### **316 References to the register of easements**

(1) In any register mentioned in section 204<sup>93</sup> of the repealed Act, a note warning of the existence of a transitional easement on the register of easements, is taken, from the commencement of this section, to be a note warning of the existence of the relevant cane railway easement on the access rights register.

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90 *Sugar Industry Act 1991*, section 207 (Permits to pass over land)

91 *Sugar Industry Act 1991*, section 201 (Register of Easements)

92 Section 69 (Access rights register)

93 *Sugar Industry Act 1991*, section 204 (Notation of easement on other registers)

(2) In any Act or document, if the context permits, a reference to a transitional easement or transitional permit is taken to be a reference to the relevant access right.

### **317 Transitional applications**

(1) This section applies to an application made to the Queensland Sugar Corporation for the grant of an easement under section 196(1)(b) of the repealed Act, or permit under section 207(1)<sup>94</sup> of the repealed Act, made before the repeal of the section that had not been decided immediately before the repeal of the section.

(2) From the repeal of the section, the application is to continue as an application to the commissioner for the relevant access right under section 65.<sup>95</sup>

(3) For subsection (2), section 65(1)(a) does not apply.

## *Division 5—Marketing*

### **318 Vesting preserved**

Anything vested in the Queensland Sugar Corporation under section 111<sup>96</sup> of the repealed Act before its repeal, from the repeal of the section continues to be vested in the Queensland Sugar Corporation under section 100.<sup>97</sup>

### **319 Pool for payment**

From the repeal of section 113<sup>98</sup> of the repealed Act, a sugar pool under the section in existence immediately before the repeal of the section, considered in conjunction with the provisions of the repealed Act and any

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94 *Sugar Industry Act 1991*, section 196 (Grant of easement), section 207 (Permits to pass over land)

95 Section 65 (Commissioner may grant an access right)

96 *Sugar Industry Act 1991*, section 107 (Vesting of sugar in Corporation)

97 Section 100 (Vesting of sugar in QSL)

98 *Sugar Industry Act 1991*, section 113 (Calculation of price payable to owners of sugar mills)

arrangements of the Queensland Sugar Corporation relating to the pool, is taken to be a payment scheme under section 102.<sup>99</sup>

### **320 Directions about delivery to and acceptance by corporation**

(1) This section applies to a direction given under section 108<sup>100</sup> of the repealed Act before the repeal of the section.

(2) To the extent the direction must be complied with after the repeal of that section to have effect according to its terms, the direction continues from the repeal of the section as a direction of the Queensland Sugar Corporation under section 104.<sup>101</sup>

### **321 Sugar quality standards**

(1) This section applies to a standard made under section 114<sup>102</sup> of the repealed Act that was in effect immediately before the repeal of the section.

(2) From the repeal of that section, the standard is a standard under section 105.<sup>103</sup>

## *Division 6—Minister's powers*

### **322 Minister's directions to corporation**

(1) This section applies to a direction given to the Queensland Sugar Corporation under section 25<sup>104</sup> of the repealed Act before the repeal of the section.

(2) To the extent the direction must be complied with after the repeal of that section to have effect according to its terms, the direction continues after the repeal of the section as a direction under section 110.<sup>105</sup>

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99 Section 102 (Schemes for payment)

100 *Sugar Industry Act 1991*, section 108 (Delivery to and acceptance by Corporation of sugar)

101 Section 104 (Directions about delivery etc.)

102 *Sugar Industry Act 1991*, section 114 (Minister's standards)

103 Section 105 (Sugar quality standards)

104 *Sugar Industry Act 1991*, section 25 (Minister's directions to Corporation)

105 Section 110 (Minister's directions)

***Division 7—Queensland Sugar Corporation*****323 Continuation of corporation**

(1) The Queensland Sugar Corporation mentioned as being established under section 113 is a continuation of the Queensland Sugar Corporation constituted under section 9<sup>106</sup> of the repealed Act.

(2) Each appointed director holding office under section 13<sup>107</sup> of the repealed Act immediately before the repeal of the section, from the repeal of the section, continues in office for the balance of the director's term as a director appointed under section 112.<sup>108</sup>

(3) The chief executive and other persons employed under section 23<sup>109</sup> of the repealed Act immediately before the repeal of the section, from the repeal of the section, continue in employment under section 125,<sup>110</sup> on the same terms and conditions.

(4) Subsections (2) and (3) do not limit subsection (1).

**324 Delegation continues**

A delegation of the Queensland Sugar Corporation under section 27<sup>111</sup> of the repealed Act and in force immediately before the repeal of the section, from the repeal of the section, continues as a delegation under section 126.<sup>112</sup>

**325 Sugar Cane Assignment Register becomes the commissioner's register**

(1) This section applies to the Sugar Cane Assignment Register.

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106 *Sugar Industry Act 1991*, section 9 (Constitution)

107 *Sugar Industry Act 1991*, section 13 (Board of directors)

108 Previous section 112 (Board of directors) was omitted by Act No. 25 of 2000.

109 *Sugar Industry Act 1991*, section 23 (Chief executive officer and staff of Corporation)

110 Previous section 125 (Chief executive officer and staff of corporation) was omitted by Act No. 25 of 2000.

111 *Sugar Industry Act 1991*, section 27 (Corporation's power to delegate)

112 Previous section 126 (Corporation's power to delegate) was omitted by Act No. 25 of 2000.

(2) On the repeal of section 32<sup>113</sup> of the repealed Act, the register becomes the register kept by the commissioner under section 233.<sup>114</sup>

(3) An entry of any particular in the register as it existed immediately before the repeal of section 32 of the repealed Act, continues to be adequate notice of the particular to all persons who subsequently have dealings in relation to the entitlement or land to which the particular relates.

(4) Each cane production board must before 30 March 2000, notify the commissioner when it is ready to receive the part of the register that relates to matters required to be recorded by it in its register under section 176.<sup>115</sup>

(5) On receiving the notification under subsection (4), or if no notification is received before 30 March 2000, as soon as possible after 30 March 2000, the commissioner must give to each cane production board the part of the register that relates to matters required to be recorded by the board in its register under section 176.

(6) The part of the register given to a cane production board must include the records made under section 33<sup>116</sup> of the repealed Act about land included in cane production areas that relate to the mill for which the board is established.

(7) Until the commissioner gives a cane production board, as required under subsection (5), a part of the register mentioned in the subsection—

- (a) section 176(1), (4) and (5) does not apply in relation to the board; and
- (b) anything that under this Act may, or must, be recorded in the register kept under section 176, for the purposes of registration must be given by the board to the commissioner and recorded in the part by the commissioner; and
- (c) the part of the register, with any further record made in it under paragraph (b), is taken to be the register under section 176.

(8) A person may inspect a record in the part of the register on payment to the commissioner of a reasonable fee decided by the commissioner.

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113 *Sugar Industry Act 1991*, section 32 (Sugar Cane Assignment Register)

114 Section 233 (Commissioner and register)

115 Section 176 (Cane production board to keep cane production area register)

116 *Sugar Industry Act 1991*, section 33 (Notice of mortgage and other interests)

(9) The part of the register given by the commissioner to the board under subsection (5) must include the records made under subsection (7)(b).

### *Division 8—Bureau of Sugar Experiment Stations*

#### **326 Continuation of bureau**

(1) The Bureau of Sugar Experiment Stations mentioned as being established under section 143<sup>117</sup> is a continuation of the Bureau of Sugar Experiment Stations constituted under section 53<sup>118</sup> of the repealed Act.

(2) Each appointed director holding office under section 56<sup>119</sup> of the repealed Act immediately before the repeal of the section, from the repeal of the section continues in office for the balance of the director's term as a director appointed under section 146.<sup>120</sup>

(3) The Director of Sugar Experiment Stations and other persons employed under section 70<sup>121</sup> of the repealed Act immediately before the repeal of the section, from the repeal of the section continue in employment under section 159<sup>122</sup> on the same terms and conditions.

(4) The Director of Sugar Experiment Stations mentioned in subsection (3) becomes the chief executive officer of the BSES.

(5) Subsections (2) to (4) do not limit subsection (1).

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117 Section 143 (Establishment of BSES)

118 *Sugar Industry Act 1991*, section 53 (Establishment of Bureau)

119 *Sugar Industry Act 1991*, section 56 (Board of directors)

120 Section 146 (Board of directors)

121 *Sugar Industry Act 1991*, section 70 (Director and staff)

122 Section 159 (Chief executive officer and staff of BSES)

**327 Approved cane and permits for non-approved cane**

(1) An approval under section 73<sup>123</sup> of the repealed Act and in force immediately before the repeal of the section, from the repeal of the section is an approval under section 60.<sup>124</sup>

(2) A permit under section 74<sup>125</sup> of the repealed Act and in force immediately before the repeal of the section, from the repeal of the section is a permit under section 61.<sup>126</sup>

***Division 9—Cane production boards*****328 Local board becomes a cane production board**

(1) This section applies to a local board established under section 38<sup>127</sup> of the repealed Act and in existence immediately before the repeal of the section.

(2) From the repeal of the section, the local board continues as a cane production board taken to be established under section 161.<sup>128</sup>

(3) Each member of the local board holding office under section 40<sup>129</sup> of the repealed Act immediately before the repeal of the section, from the repeal of the section continues in office for the balance of the member's term as a member appointed under section 165.<sup>130</sup>

(4) Subsection (3) does not limit subsection (2).

**329 References to certain boards etc.**

In an Act or document, a reference to a local board may, if the context permits, be taken to be a reference to a cane production board.

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123 *Sugar Industry Act 1991*, section 73 (Approved sugarcane)

124 Section 60 (Approved cane)

125 *Sugar Industry Act 1991*, section 74 (Permit to grow sugarcane of non-approved variety)

126 Section 61 (Permit to grow cane of non-approved variety)

127 *Sugar Industry Act 1991*, section 38 (Establishment of local boards)

128 Section 161 (Establishment of cane production board)

129 *Sugar Industry Act 1991*, section 40 (Membership of local board)

130 Section 165 (Membership of cane production board)

***Division 10—Cane protection and productivity boards*****330 Continuation of productivity areas**

Each sugarcane productivity area declared under the section 77<sup>131</sup> of the repealed Act and in force immediately before the repeal of the section, from the repeal continues as a productivity area taken to be established under section 177.<sup>132</sup>

**331 Continuation of cane protection and productivity boards**

(1) This section applies to a cane protection and productivity board established under section 78<sup>133</sup> of the repealed Act and in existence immediately before the repeal of the section.

(2) From the repeal of the section, the cane protection and productivity board continues as a cane protection and productivity board taken to be established under section 177.<sup>134</sup>

(3) Each member of the cane protection and productivity board holding office under section 81 of the repealed Act immediately before the repeal of the section, from the repeal of the section continues in office for the balance of the member's term as a member appointed under section 181.<sup>135</sup>

(4) The persons employed under section 87<sup>136</sup> of the repealed Act immediately before the repeal of the section, from the repeal of the section continue in employment under section 192<sup>137</sup> on the same terms and conditions.

(5) Subsections (3) and (4) do not limit subsection (2).

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131 *Sugar Industry Act 1991*, section 77 (Productivity areas)

132 Section 177 (Establishment of productivity area and cane protection and productivity board)

133 *Sugar Industry Act 1991*, section 78 (Constitution of productivity boards)

134 Section 177 (Establishment of productivity area and cane protection and productivity board)

135 Section 181 (Membership of a cane protection and productivity board)

136 *Sugar Industry Act 1991*, section 87 (Power to engage assistance)

137 Section 192 (Power to engage assistance)



***Division 11—Negotiating teams*****332 Continuation of negotiating teams**

(1) Each negotiating team established under section 52A<sup>138</sup> of the repealed Act and in existence immediately before the repeal of the section, from the repeal continues as a negotiating team established under section 214.<sup>139</sup>

(2) Each member of the negotiating team holding office under section 52A of the repealed Act immediately before the repeal of the section, from the repeal of the section continues in office as a member under section 215.<sup>140</sup>

***Division 12—Mill suppliers' committees*****333 References to a mill suppliers' committee**

(1) This section applies in relation to a mill suppliers' committee from the commencement of section 4.

(2) A reference in this Act to a mill suppliers' committee for a mill is taken to include, and to always have included, a reference to the persons who continued to meet as the mill suppliers' committee in a continuation of the membership of the mill suppliers' committee—

- (a) established for the mill under the *Primary Producers' Organisation and Marketing Act 1926*; and
- (b) in existence immediately before the commencement of the *Primary Industry Bodies Reform Act 1999*, section 55.<sup>141</sup>

(3) Subsection (2) applies to the mill suppliers' committee until the first of the following happens—

- (a) its term of office as stated for the appointment of its members expires;
- (b) growers elect a replacement committee.

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138 *Sugar Industry Act 1991*, section 52A (Establishment)

139 Section 214 (Establishment)

140 Section 215 (Membership)

141 *Primary Industry Bodies Reform Act 1999*, section 55 (Dissolution on transfer day)

(4) Subsections (2) and (3) apply despite the *Primary Industry Bodies Reform Act 1999*, section 55.

***Division 13—Sugarcane and sugarcane products examination and testing programs***

**334 Continuation of programs**

A program instituted for a mill under section 30<sup>142</sup> of the repealed Act and in force immediately before the repeal of the section, from the repeal continues as the cane analysis program under section 87<sup>143</sup> for the mill and is binding on the persons to whom it applies according to its terms.

***Division 14—Sugar Industry Tribunal***

**335 Continuation of pt 12 of repealed Act**

(1) Despite the repeal of the repealed Act, part 12<sup>144</sup> of that Act is taken to continue in effect for this section.

(2) Each application made to the tribunal before the repeal of the repealed Act and not brought to an end before the repeal may continue to be dealt with by the tribunal until all applications are disposed of.

(3) The tribunal, in addition to any other power it has under part 12, also has the power to make any order necessary to take account of the changes to the law under this Act and give effect to its decision under this Act.

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142 *Sugar Industry Act 1991*, section 30 (Programs to obtain information)

143 Section 87 (Requirement to have cane analysis program and purpose)

144 *Sugar Industry Act 1991*, part 12 (Sugar Industry Tribunal)

***Division 15—Sugar Industry Commissioner*****336 Particular functions postponed**

Despite the commencement of section 223,<sup>145</sup> the commissioner's functions under section 223(d) and (e) do not commence until 1 January 2000.

***Division 16—Competition policy legislation*****337 Definitions for div 16**

In this division—

**“Competition Code”** means the Competition Code under the *Competition Policy Reform (Queensland) Act 1996*.

**“competition legislation”** means the *Trade Practices Act 1974* (Cwlth), section 51(1)(b)<sup>146</sup> or the Competition Code of this jurisdiction, section 51.<sup>147</sup>

**338 Guidelines**

(1) The making of a guideline by the Queensland Sugar Corporation that is in force under section 139(1)<sup>148</sup> of the repealed Act and mentioned in section 309<sup>149</sup> of this Act is specifically authorised for the competition legislation.

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145 Section 223 (Functions of commissioner)

146 *Trade Practices Act 1974* (Cwlth), section 51 (Exceptions)

147 The Competition Code, section 51 states that in deciding whether a person has contravened the Code, Part IV, certain things must be disregarded. Section 51(1) of the Code provides that the following must be disregarded—

(a) ...

(b) anything done in a State, if the thing is specified in, and specifically authorised by:

(i) an Act passed by the Parliament of that State; or

(ii) regulations made under such an Act.

148 *Sugar Industry Act 1991*, section 139 (Guidelines for grant of assignment)

149 Section 309 (Particular corporation guideline to continue in effect)

(2) Subsection (1) applies to the making of a guideline only to the extent the guideline provides, under section 139(2) of the repealed Act, with respect to the aggregate of all assignments' areas available to be granted in a calendar year, that a prescribed proportion is to be offered in the first instance to holders of existing assignments.

(3) The making of a guideline is authorised even if it has the purpose, effect or likely effect of substantially lessening competition or one of the proscribed purposes stated in the *Trade Practices Act 1974* (Cwlth), section 46(1)<sup>150</sup> or the Competition Code of this jurisdiction, section 46(1).<sup>151</sup>

### **339 Awards**

(1) The making of an award by a negotiating team under section 118<sup>152</sup> of the repealed Act and continued in force under section 310<sup>153</sup> of this Act is specifically authorised for the competition legislation.

(2) Subsection (1) applies to the making of an award only to the extent the award is made for giving effect to a settlement about—

- (a) the harvesting of cane by an assignment holder under the award, including the use of a particular person for the harvesting; or
- (b) the use of a particular person for—
  - (i) the delivery of cane to a mill by an assignment holder under the award; or
  - (ii) the transport of cane by a mill owner under the award; or
- (c) the base prices to be paid for cane.

(3) The making of an award is authorised even if it has the purpose, effect or likely effect of substantially lessening competition.

### **340 Mill supply agreements**

(1) This section applies to an existing mill supply contract.

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150 *Trades Practices Act 1974* (Cwlth), section 46 (Misuse of market power)

151 Competition Code, section 46 (Misuse of market power)

152 *Sugar Industry Act 1991*, section 118 (Making of awards)

153 Section 310 (Awards)

(2) The following things are specifically authorised for the competition legislation—

- (a) the harvesting of cane by an assignment holder under a contract, including the use of a particular person for the harvesting;
- (b) the use of a particular person for—
  - (i) the delivery of cane to a mill by an assignment holder under a contract; or
  - (ii) the transport of cane by a mill owner under a contract;
- (c) the taking, delivery and crushing of cane by a mill owner at a time fixed under a contract;
- (d) the payment of a price for cane by a mill owner to an assignment holder under a contract;
- (e) the receipt of a price for cane by an assignment holder from a mill owner under a contract.

(3) The things mentioned in subsection (2) are authorised even if they have the purpose, effect or likely effect of substantially lessening competition.

(4) This section applies to a contract whether or not the contract is an exempt contract.

(5) In this section—

**“exempt contract”** means a mill supply contract exempted from section 131 or 134<sup>154</sup> of the repealed Act under a regulation under section 134A<sup>155</sup> of the repealed Act.

**“existing mill supply contract”** means the following mill supply contracts continued in force under section 311<sup>156</sup> of this Act—

- a mill supply contract to which the owner of the mill known as the ‘Plane Creek Mill’ is a party
- a mill supply contract to which the owner of the mills known as the ‘Macknade Mill’ and the ‘Victoria Mill’ is a party

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154 *Sugar Industry Act 1991*, section 131 (Procedure for making effective mill supply contract) or 134 (Contracts limited to 3 years)

155 *Sugar Industry Act 1991*, section 134A (Exemption from controls over agreements)

156 Section 311 (Mill supply contracts)

- a mill supply contract to which the owner of the mill known as the ‘Mossman Mill’ is a party
- a mill supply contract to which the owner of the mill known as the ‘Tableland Mill’ is a party.

“**mill supply contract**” means a contract or agreement within the meaning of section 130<sup>157</sup> of the repealed Act.

### **341 Directions about delivery to and acceptance by Queensland Sugar Corporation**

(1) This section applies to a direction given under section 108<sup>158</sup> of the repealed Act and continued in force under section 320<sup>159</sup> of this Act.

(2) The following things are specifically authorised for the competition legislation—

- (a) the making of determinations by the Queensland Sugar Corporation (the “**corporation**”), and the authorising of its employees, agents and other bodies and persons to give directions, as the corporation thinks fit about—
  - (i) how sugar vested in the corporation must be kept before it is delivered to the corporation; or
  - (ii) how sugar vested in the corporation must be delivered to the corporation, including—
    - (A) when, where and how the sugar is to be delivered; and
    - (B) delivery of the sugar to places or persons or other action that will be treated as delivery to the corporation; or
  - (iii) the payment by the manufacturer of sugar of costs associated with its delivery to the corporation; or
  - (iv) the conditions on which the corporation will accept sugar vested in it under part 7<sup>160</sup> of the repealed Act; or

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157 *Sugar Industry Act 1991*, section 130 (Mill supply contracts)

158 *Sugar Industry Act 1991*, section 108 (Delivery to and acceptance by Corporation of sugar)

159 Section 320 (Directions about delivery to and acceptance by corporation)

160 *Sugar Industry Act 1991*, part 7 (Acquisition of sugar)

- (v) information that must be given to the corporation by any person concerned in the delivery to, and acceptance by, the corporation of sugar, and the form and way in which the information must be given;
- (b) anything done under, or because of, the direction by—
  - (i) the corporation; or
  - (ii) the person giving the direction; or
  - (iii) the mill owner to whom the direction is given.

(3) Subsection (2) applies to the direction only if it is given to a mill owner.

(4) Also, subsection (2) applies to the direction only to the extent it relates to the delivery of raw sugar to a place or person for giving effect to a contract, arrangement or understanding made or arrived at between the corporation and another person.

### **342 Minister's directions to Queensland Sugar Corporation**

(1) This section applies to a sugar price direction under section 25(1)<sup>161</sup> of the repealed Act and continued in force under section 322<sup>162</sup> of this Act.

(2) The entry by the Queensland Sugar Corporation into a contract for the sale of sugar for a price stated in the direction is specifically authorised for the competition legislation.

(3) In this section—

**“sugar price direction”** means a direction given by the Minister to the Queensland Sugar Corporation under section 25(1) of the repealed Act about the pricing of raw sugar for sale to domestic customers.

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161 *Sugar Industry Act 1991*, section 25 (Minister's directions to Corporation)

162 Section 322 (Minister's directions to corporation)

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

### **343 Compliance with notice requirements**

(1) Subsection (2) applies if before the relevant commencement—

- (a) a grower has given a notice mentioned in the previous section 48(2) to a mill suppliers' committee about an individual agreement the grower intended to enter with a mill owner before a collective agreement was made by the mill suppliers' committee; and
- (b) the notice would have complied with the requirements of section 48(3)<sup>163</sup> if the relevant commencement had happened before the notice was given.

(2) The notice is taken to be, and to always have been, sufficient compliance with previous sections 48(2) and (8).

(3) Subsection (4) applies if before the relevant commencement a grower has failed to give a notice as required under the previous sections 48(2) and (8) to a mill suppliers' committee about an individual agreement the grower intended to enter with a mill owner before a collective agreement was made by the mill suppliers' committee.

(4) Despite the previous section 48(10), the previous section 48(10) is taken to be, and to always have been, of no effect in relation to the failure.

(5) Subsections (3) and (4) do not limit subsections (1) and (2).

(6) Subsection (7) applies if before the relevant commencement, a grower failed to give to a mill suppliers' committee, before a collective agreement was made by the committee, notice as required under the previous section 48 of an individual agreement the grower intended to enter with a mill owner after the collective agreement was made.

(7) Despite the previous section 48, the failure to give notice is taken to be, and to always have been, of no effect for any purpose of this Act.

(8) A reference in previous section 48(3) to individual agreements a mill owner has entered with growers is taken to have always been a reference to individual agreements entered with growers before the collective agreement mentioned in the subsection was made.

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<sup>163</sup> Section 48 (Individual agreement entered by grower with mill owner)



(9) A reference in this section to the previous section 48, or a provision of that section, is a reference to the section or provision as it existed before the relevant commencement.

(10) In this section—

**“relevant commencement”** means the commencement of the *Sugar Industry Amendment Act 2000*, section 4.

## SCHEDULE

### DICTIONARY

section 4

**“access right”** see section 63(1).

**“access rights register”** see section 69.

**“acquire”** includes purchase, take on lease, licence or under another interest.

**“adjacent”** includes nearby.

**“appointed director”**, for the BSES, means each director of the BSES other than the BSES’s executive officer.

**“appointed member”**, for the authority, means each member of the authority other than the commissioner.

**“appropriately qualified”**, in relation to the exercise of a power, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

The level at which a person is employed by an entity.

**“authority”** means the Sugar Authority established under section 126.

**“BSES”** means the Bureau of Sugar Experiment Stations established under section 143.

**“business manager”**, of an industry participant, means—

- (a) a director, employee or officer of the industry participant; or
- (b) a manager or trustee of, or a partner in, an entity that is an industry participant.

**“cane”** means sugar cane.

**“cane analysis program”** means a cane analysis program under section 87.

**“cane quality program”** means a cane quality program under section 93.

**“cane production area”** see section 7.

## SCHEDULE (continued)

**“cane production board”** means a cane production board established under section 161.

**“cane productivity”** for chapter 2, part 1, division 3, see section 20.

**“cane protection and productivity board”** means a cane protection and productivity board established under section 177.

**“cane railway easement”** see section 63(4).

**“cane supply and processing agreement”** see section 39.

**“closed mill”** for chapter 2, part 5, division 4, see section 82.

**“closed mill cane”** for chapter 2, part 5, division 4, see section 83(2).

**“collective agreement”** means a collective agreement under section 41.

**“commercial cane sugar”** means the estimated yield of cane sugar from cane, decided as provided under the cane analysis program applying to the cane.

**“commissioner”** means the Sugar Industry Commissioner appointed under section 222.

**“Competition Code”** for—

(a) chapter 6, see section 236; or

(b) chapter 10, part 1, division 16, see section 337.

**“competition legislation”** for—

(a) chapter 6, see section 236; or

(b) chapter 10, part 1, division 16, see section 337.

**“consent process”** means the process under chapter 2, part 1, division 3, subdivision 2.

**“crushing capacity”** means the estimated maximum rate of crushing at which a mill can operate continuously while keeping a proper level of efficiency.

**“crushing season”** means, for any calendar year, the season for the harvesting and crushing of cane starting in the year.

**“current cane production area”** for chapter 2, part 1, division 3, see section 20.

## SCHEDULE (continued)

“**current cane production board**” for chapter 2, part 1, division 3, see section 20.

“**current mill**” for chapter 2, part 1, division 3, see section 20.

“**decision**” includes an order and a direction.

“**eligible person**”, for chapter 8, part 4, see section 275.

“**expansion**”, in cane production areas, mean an increase in the total number of hectares included in all cane production areas relating to a mill, whether by an increase in the number of cane production areas or in the numbers of hectares included in existing cane production areas.

“**grant of unallocated hectares**” for chapter 2, part 1, division 3, see section 20.

“**grower**” see section 7(2).

“**guidelines**” means written guidelines.

“**harvesting equity committee**” for chapter 6, see section 236.

“**horizontal expansion**” for chapter 2, part 1, division 3, see section 20.

“**horizontal expansion process**” means the process under chapter 2, part 1, division 3, subdivision 3.

“**industrial association**” means an industrial association as defined in the *Industrial Relations Act 1999*, section 102.

“**industry participant**” means—

- (a) a person who—
  - (i) grows cane; or
  - (ii) mills cane; or
  - (iii) produces, refines or manufactures sugar; or
  - (iv) other than QSL, sells sugar solely by wholesale or retail; or
- (b) an entity representing the interests of persons carrying on any of the things mentioned in paragraph (a); or
- (c) a business manager of a person or entity mentioned in paragraph (a) or (b).

“**information notice**” for a decision, means a written notice stating the following—

## SCHEDULE (continued)

- (a) the reasons for the decision;
- (b) the right of appeal or review provided under this Act to the person given the notice;
- (c) the period within which the appeal must be started or review applied for;
- (d) how to appeal or apply for the review.

**“interest”** of a director or member of an entity established under this Act about a matter for consideration at a meeting, means a direct or indirect interest.

**“land included in a cane production area”** means land within the boundaries of the description of land to which the cane production area relates.

**“material personal interest”** of a director or member of an entity established under this Act about a matter for consideration at a meeting—

- (a) means an interest relating to the personal affairs of the director or member that may have, or be seen to have, a significant influence on the conduct of the director or member at the meeting; and
- (b) for section 119,<sup>164</sup> includes an interest in the matter that arises because the director or member is a business manager of another person who has a material personal interest in the matter.

**“mill”** see section 76.

**“mill owner”** or **“owner of a mill”** means an entity owning or having the control of a mill including the manager, the managing director or other person controlling the business of a mill.

**“mill suppliers’ committee”** means—

- (a) generally—
  - (i) a mill suppliers’ committee established for a mill by the majority of growers whose cane production areas relate to the mill; or

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<sup>164</sup> Previous section 119 was omitted by Act No. 25 of 2000.

## SCHEDULE (continued)

- (ii) a corporation, including a replacement corporation mentioned in the *Primary Industry Bodies Reform Act 1999*, section 42(1)(c), that the majority of growers whose cane production areas relate to a mill decide is the mill suppliers' committee established for the mill; or
- (b) if—
  - (i) more than 1 mill has merged into a single mill; and
  - (ii) after the merger, the mill suppliers' committees established for the merging mills before the merger (the **“previous committees”**) continue to operate;
 

the committee consisting of the previous committees acting jointly; or
- (c) in relation to a mill, or an entity established under this Act for a mill or a supply agreement made for a mill or with a mill owner—the mill suppliers' committee mentioned in paragraph (a) or (b) established for, or relating to, the mill.

**“negotiating team”** means a negotiating team established under chapter 4, part 9.

**“non-approved cane”** means cane that—

- (a) is grown at a place where, and at a time when, cane of the variety to which it belongs is not approved for growing under section 60; and
- (b) is not grown under a permit issued under section 61; and
- (c) is not grown by, for or at the request of, the chief executive officer of the BSES.

**“notice”** means written notice.

**“number of hectares included in a cane production area”** means the number of the hectares to which the cane production area relates as opposed to the land included in the cane production area.

**“obstructs”** includes assaults, threatens, abuses, insults, intimidates, hinders and attempts to obstruct.

**“payment scheme”**, for payment to mill owner for sugar vested in QSL, means a payment scheme under section 102(2).

## SCHEDULE (continued)

“**penalty sugar**” means sugar manufactured from cane grown on land other than land included in the description or number of hectares included in a relevant cane production area.

“**permit to pass**” see section 63(2).

“**pest**” see the *Plant Protection Act 1989*, section 3.<sup>165</sup>

“**pest infestation**” see the *Plant Protection Act 1989*, section 3.<sup>166</sup>

“**productivity increase**” for chapter 2, part 1, division 3, see section 20.

“**productivity increase process**” means the process under chapter 2, part 1, division 3, subdivision 4.

“**products**” includes by-products.

“**QSL**” means Queensland Sugar Limited ACN 090 152 211.

“**Queensland Sugar Corporation**” means the Queensland Sugar Corporation mentioned as being established under section 108 as originally enacted.

“**raw sugar equivalent**” means the amount of raw sugar that is the equivalent of any sugar vested in QSL under the relevant payment scheme under section 102.<sup>167</sup>

“**receiving cane production board**” for chapter 2, part 1, division 3, see section 20.

“**receiving mill**” for—

- (a) chapter 2, part 1, division 3, see section 20; or
- (b) chapter 2, part 5, division 4, see section 83.

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165 *Plant Protection Act 1989*, section 3—

“**pest**” means any organism of the plant or animal kingdom (excluding vertebrates) or any virus or viroid or disorder or condition or cause of specified symptoms that is declared to be a pest under section 4.

166 *Plant Protection Act 1989*, section 3—

“**pest infestation**” means a condition whereby the land, plant, soil, appliance or other matter or thing in respect of which the term is used supports a pest physically, nutritionally or in any other way or a condition whereby the presence of the pest in or on the land, plant, soil, appliance or other matter or thing in question exposes any plant either directly or indirectly to pest infestation.

167 Section 102 (Schemes for payment)

## SCHEDULE (continued)

“**register of easements**” for chapter 10, part 1, see section 306.

“**regulation process**” for chapter 2, part 1, division 3, see section 20.

“**repealed Act**” means the *Sugar Industry Act 1991*.

“**research**” includes investigation or consideration.

“**settlement**” for chapter 6, see section 236.

“**STL**” means Sugar Terminals Limited ACN 084 059 601.

“**sugar**” means all raw sugar, crystal sugar, sugar syrups, inverted syrups, liquid sugar and any other form of manufactured sugar other than the following—

- (a) final molasses;
- (b) a form of sugar manufactured from another form of sugar previously disposed of by QSL;
- (c) sugar the source of which was grown outside Queensland.

“**sugar cane**” means any plant or part of a plant of the genus *Saccharum* or any hybrid of sugarcane.

“**Sugar Cane Assignment Register**”, for chapter 10, part 1, see section 306.

“**Sugar Industry Tribunal**”, for chapter 10, part 1, see section 306.

“**suitable cane land**”, in relation to a cane production area, means land that, in all the circumstances, including the number of hectares included in the cane production area, is—

- (a) capable of producing commercial cane crops with the use of appropriate agricultural practices; and
- (b) situated where cane may be transported economically to a mill under a supply agreement applying to the cane; and
- (c) suitable for growing cane indefinitely using practices to protect the environment that are reasonable and practicable, having regard to any guideline under a regulation or that may be made by a relevant cane production board under section 163(d) or (e).<sup>168</sup>

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<sup>168</sup> Section 163 (Functions and powers of a cane production board).



## SCHEDULE (continued)

**“supply agreement”** see section 39.

**“sustainable production”** means farming practices and systems that maintain or enhance—

- (a) economic viability of production; and
- (b) the natural resource base, that is, soil, land and water; and
- (c) other ecosystems that are influenced by agricultural activities.

**“third party”**, for an application for a cancellation or variation of a cane production area under chapter 2, part 1, division 2, means a mortgagee, lessor or sublessor of the land affected by the variation.

**“transfer”** of a number of hectares from one cane production area to another, means—

- (a) varying the first cane production area by cancelling the number of hectares; and
- (b) varying the second cane production area by allocating the same number of hectares to it.

**“transitional assignment”**, for chapter 10, part 1, see section 306.

**“transitional easement”**, for chapter 10, part 1, see section 306.

**“transitional permit”**, for chapter 10, part 1, see section 306.

**“unallocated”** hectares relating to a mill, means the number of hectares decided under section 37<sup>169</sup> as the total number of hectares that may be included in cane production areas relating to the mill less the total number of hectares already included in them.

**“variation”**, of a cane production area, means—

- (a) variation of the description of land included in it; or
- (b) cancellation of a, or increase in the, number of hectares included in it; or
- (c) variation in the conditions to which it is subject; or
- (d) variation of the holder.

**“verified”** means verified in writing.

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169 Section 37 (Negotiating team must decide expansion of cane production areas)

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 31 October 2002. Future amendments of the Sugar Industry Act 1999 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of earlier reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of earlier reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	1 January 2000	27 January 2000
1A	to Act No. 25 of 2000	28 July 2000	6 October 2000
2	to Act No. 25 of 2000	28 July 2000	3 November 2000
2A	to Act No. 45 of 2001	15 July 2001	1 August 2001
2B	to Act No. 63 of 2001	25 October 2001	8 November 2001
2C	to Act No. 73 of 2001	3 December 2001	14 December 2001
2D	to Act No. 73 of 2001	1 January 2002	15 January 2002
2E	to Act No. 11 of 2002	1 July 2002	
3	to Act No. 25 of 2000	1 July 2002	

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

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## 6 List of legislation

### **Sugar Industry Act 1999 No. 51**

date of assent 18 November 1999

ss 1–2 commenced on date of assent

ch 4 pt 7 commenced 1 October 1999 (see s 2(1))

remaining provisions commenced 1 January 2000 (see s 2(2))

**Note—** The Minister must by a gazette notice, fix a day (“dissolution day”) for dissolution of the corporation (see 1999 No. 51 s 229P as ins 2000 No. 25 s 15 and Queensland Government Gazette No. 43, 25 October 2002 p 689)

amending legislation—

### **Sugar Industry Amendment Act 2000 No. 25 ss 1, 2(2)–2(5), 3(1), 4–17 schs 1–2**

date of assent 27 June 2000

ss 1–2 commenced on date of assent

ss 4, 16, sch 1 items 1, 3–5, 17–26, 29, 33–34 commenced 27 June 2000 (see s 2(3))

sch 1 items 31–32, commenced immediately before 1 January 2000 (see s 2(2))

sch 2 commenced 31 October 2002 (see s 2(4), 1999 No. 51 s 229P and Queensland Government Gazette No. 43, 25 October 2002 p 689)

remaining provisions commenced 28 July 2000 (2000 SL No. 199)

### **Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

### **Primary Industries Legislation Amendment Act 2001 No. 63 s 1, pt 7, s 58 sch**

date of assent 25 October 2001

commenced on date of assent

### **Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1**

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

**Ombudsman Act 2001 No. 73 ss 1–2, 96 sch 1**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2001 (2001 SL No. 224)

**Public Records Act 2002 No. 11 ss 1, 2(2), 62 sch 1**

date of assent 24 April 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2002 (2002 SL No. 115)

## **7 List of annotations**

**This reprint has been renumbered—see table of renumbered provisions in endnote 8.**

**CHAPTER 1—PRELIMINARY****Definitions****s 4** amd 2001 No. 63 s 58 sch**Notes in text****s 5** ins 2000 No. 25 s 3(1) sch 1**CHAPTER 2—PRODUCTION, SUPPLY AND MILLING****Cancellation of cane production area or hectares on application****s 16** amd 2001 No. 63 s 58 sch**Collective agreement—before the start of negotiations****s 42** amd 2000 No. 25 s 3A**Individual agreement entered by grower with mill owner****s 48** amd 2000 No. 25 s 4**Content of agreement****s 50** amd 2000 No. 25 s 3(1) sch 1**Owner may opt to supply as if under provisions of individual agreement****s 58** amd 2000 No. 25 s 3(1) sch 1**PART 5—MILLS****Division 2—Merging of mills****div hdg** ins 2000 No. 25 s 4A**Declaration of day a merged mill is recognised****s 77** ins 2000 No. 25 s 4A**Effect of merger on cane production areas****s 78** ins 2000 No. 25 s 4A**Continuation of mill suppliers' committee for particular purpose****s 84** ins 2000 No. 25 s 4B**Requirement to have cane quality program****s 93** amd 2000 No. 25 s 3(1) sch 1**Purpose of program****s 94** amd 2000 No. 25 s 3(1) sch 1

**CHAPTER 3—CANE VARIETY CONTROL****Vesting of sugar in QSL****prov hdg** amd 2000 No. 25 s 3(1) sch 1**s 100** amd 2000 No. 25 s 3(1) sch 1**QSL to market and pay for vested sugar****prov hdg** amd 2000 No. 25 s 3(1) sch 1**s 101** amd 2000 No. 25 s 3(1) sch 1**Schemes for payment****s 102** amd 2000 No. 25 s 3(1) sch 1**Production of brands of raw sugar****s 103** amd 2000 No. 25 s 3(1) sch 1**Directions about delivery etc****s 104** amd 2000 No. 25 s 3(1) sch 1**Sugar quality standards****s 105** amd 2000 No. 25 s 3(1) sch 1**QSL's operating costs****prov hdg** amd 2000 No. 25 s 3(1) sch 1**s 106** amd 2000 No. 25 s 3(1) sch 1**Exemption of sugar for local consumption****s 107** amd 2000 No. 25 s 3(1) sch 1**CHAPTER 4—ADMINISTRATION****PART 1—MINISTER'S POWERS****Reports to Minister****s 109** amd 2000 No. 25 s 3(1) sch 1; 2000 No. 25 s 3(1) sch 2**Minister's directions****s 110** amd 2000 No. 25 s 3(1) sch 1; 2000 No. 25 s 3(1) sch 2**Minister's directions in entities' annual report****s 111** amd 2000 No. 25 s 3(1) sch 1; 2000 No. 25 s 3(1) sch 2**Review of sugar vesting scheme****s 112** prev s 112 om 2000 No. 25 s 6

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**Division 2—Steps to transfer and dissolution****div 2** (ss 200–206) ins 2000 No. 25 s 12**Division 3—Provisions facilitating transfer****div hdg** ins 2000 No. 25 s 12**Exemption for cooperatives****s 207** ins 2000 No. 25 s 12**Registration of transferred assets****s 208** ins 2000 No. 25 s 12  
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s 261      ins 2000 No. 25 s 15

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s 265      ins 2000 No. 25 s 15

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s 266 prev s 266 om 2000 No. 25 s 3(1) sch  
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s 283 ins 2000 No. 25 s 15

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**CHAPTER 9—DEALINGS WITH CORPORATION ASSETS AND LIABILITIES**

ch hdg ins 2000 No. 25 s 15

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pt hdg ins 2000 No. 25 s 15

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**s 320** amd 2000 No. 25 s 3(1) sch 2

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**s 333** ins 2000 No. 25 s 16(4)

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om R1 (see RA s 40)

amd 2000 No. 25 s 3(1) sch 1 (amendment could not be given effect)

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