Queensland

SUGAR INDUSTRY AMENDMENT BILL 2003

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TABLE OF PROVISIONS

2003

A BILL

FOR

An Act to amend the *Sugar Industry Act 1999*

The Parliament of Queensland enacts—

Clause 1 Short title

This Act may be cited as the *Sugar Industry Amendment Act 2003*.

Clause 2 Commencement

(1) Sections 1 to 5, 7(2) and 8 commence, or are taken to have commenced, on the earlier of the following days—

(a) the date of assent;

(b) 15 April 2003.

(2) The remaining provisions of this Act commence on the date of assent.

Clause 3 Act amended

This Act amends the *Sugar Industry Act 1999*.

Clause 4 Replacement of s 82 (Closure)

Section 82—

omit, insert—

‘82 Closure

‘**(1)** A mill owner may close a mill in any year—

(a) only after the crushing season for that year ends; and

(b) only if the owner has given notice to each grower whose cane production area relates to the mill (an **“affected grower”**) of the owner’s intention to close the mill after the crushing season ends.

‘**(2)** The notice must—

(a) state that the mill owner intends to close the mill after the crushing season ends; and

(b) can not be given after 1 May in any year.

‘**(3)** If the mill owner closes the mill in contravention of this section, the owner is liable to each affected grower for any loss suffered because of the contravention.

‘**(4)** However, the liability to an affected grower is subject to any agreement between the owner and the affected grower.’.

Clause 5 Amendment of s 84 (Continuation of mill suppliers’ committee for particular purpose)

Section 84(4)—

omit, insert—

‘**(4)** The committee’s function is to represent the previous growers’ interests.

Example—

If another mill is available for land included in the growers’ cane production areas relating to the closed mill, the function includes helping them negotiate cane production areas for the other mill.’.

Clause 6 Insertion of new ch 3, pt 1, hdg

Chapter 3, before section 100—

insert—

‘PART 1—VESTING OF SUGAR IN QSL AND MARKETING OF VESTED SUGAR’.

Clause 7 Amendment of s 100 (Vesting of sugar in QSL)

(1) Section 100—

insert—

‘**(1A)** However, the sugar does not become the property of QSL if a vesting exemption is in force for the sugar.[1]’.

1 See part 2 (Exemptions from vesting in QSL).

(2) Section 100—

insert—

‘**(4)** This section is subject to section 102A.’.

(3) Section 100(1A) to (4)—

renumber as section 100(2) to (5).

Clause 8 Insertion of new s 102A

After section 102—

insert—

‘102A Charge in favour of growers on amounts payable to mill owner

‘**(1)** This section applies if—

(a) under a payment scheme, an amount (the **“charged amount”**) is payable by QSL to a mill owner for sugar vested in QSL; and

(b) a grower is a party to a supply agreement with the mill owner.

‘**(2)** The grower has a charge on the charged amount.

‘**(3)** The charge—

(a) secures payment in accordance with the supply agreement of all amounts that are payable to the grower for cane supplied under the agreement; and

(b) has priority over any other charge or security over the charged amount.

‘**(4)** However, if more than 1 grower has a charge on the charged amount and the charged amount is insufficient to secure payment to all the growers, the amount secured under subsection (3)(a) for each of the growers is reduced ratably.

‘**(5)** This section is declared to be a Corporations legislation displacement provision for the Corporations Act, section 5G, in relation to chapters 2K and 5 of that Act.[2]’.

2 Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws) and chapters 2K (Charges) and 5 (External administration)

Clause 9 Insertion of new ch 3, pt 2

After section 107—

insert—

‘PART 2—EXEMPTIONS FROM VESTING IN QSL

‘Division 1—Obtaining vesting exemption

‘107A Power to exempt

‘**(1)** QSL may, under this part, exempt sugar manufactured by a mill from vesting, under section 100, in QSL (a **“vesting exemption”**).

‘**(2)** A vesting exemption may be granted for—

(a) the whole or a stated part of sugar manufactured by the mill; or

(b) a stated period or indefinitely.

‘107B Who may apply for vesting exemption

‘**(1)** The following may apply for a vesting exemption for a mill—

(a) the owner of the mill;

(b) a grower whose cane production area relates to the mill.

‘**(2)** However, the application can be made only if more than half of the growers who have entered into, or who are taken to have entered into, the collective agreement for the mill have agreed to the application.

‘**(3)** The agreement may be provided for in the collective agreement or given by other writing.

‘107C Requirements for application

‘**(1)** The application must state each of the following—

(a) the applicant’s name and address;

(b) the mill for which the exemption is sought;

(c) the period of the vesting exemption is sought;

(d) the sugar for which the vesting exemption is sought;

(e) the proposed use of the sugar to be exempted.

Example of a proposed use of exempted sugar—

Using it to produce ethanol.

‘**(2)** The application must be accompanied by the fee prescribed under a regulation.

‘107D QSL may seek further information or documents

‘**(1)** QSL may, after the application has been made, give the applicant a notice requiring the applicant—

(a) to give it a stated document or information that is relevant to the application; or

(b) to verify the correctness of the document or information by statutory declaration.

‘**(2)** However, the notice may be given only within 15 business days after QSL receives the application.

‘**(3)** The application is taken to be withdrawn if, within the stated time in the notice, the applicant does not comply with a requirement under subsection (1).

‘107E Deciding application

‘**(1)** QSL must consider and decide either to grant or refuse the application within 28 business days after the last of the following events to happen—

(a) the making of the application;

(b) if, under section 107F, QSL has required the applicant to give a document or information—the giving of the required document or information.

‘**(2)** QSL may refuse the application if it considers the granting of the application or the proposed use of the sugar would interfere with any of its existing sugar marketing arrangements.

‘**(3)** In making the decision, QSL must consider any criteria prescribed under a regulation.

‘**(4)** If QSL decides to grant the application, it may decide to impose conditions on the vesting exemption it considers necessary or desirable to ensure the sugar exempted is used only for the purpose for which the exemption is granted.

‘**(5)** A condition imposed under subsection (4) is called an **“exemption condition”**.

‘107F Notice of decision

‘**(1)** If QSL decides to grant the application, QSL must give the applicant notice of the decision as soon as practicable after making the decision.

‘**(2)** The notice must state each of the following—

(a) that the vesting exemption has been granted;

(b) the sugar and any period to which the exemption applies;

(c) the purpose for which the exempted sugar may be used;

(d) any exemption condition.

‘**(3)** If QSL makes a decision as follows, it must, as soon as practicable after making the decision, give the applicant an information notice about the decision—

(a) a decision to refuse the application;

(b) a decision about any of the following, unless the applicant has agreed to or requested the decision—

(i) the sugar or any period to which the vesting exemption applies;

(ii) the purpose for which exempted sugar may be used;

(iii) an exemption condition.

‘Division 2—Amending vesting exemption

‘107G Application to amend vesting exemption

‘**(1)** If a vesting exemption is in force, a person who, under section 107B, may apply for the exemption may at any time apply to QSL to amend the exemption.

‘**(2)** Sections 107C to 107F apply, with necessary changes, to the application as if it were an application for a vesting exemption.

‘Division 3—Cancellation or suspension of vesting exemption

‘107H Power to cancel or suspend

‘QSL may cancel or suspend a vesting exemption only—

(a) on the ground that a person has used sugar the subject of the exemption for a purpose other than a purpose for which the exemption was granted; and

(b) if the procedure under sections 107I to 107L is followed.

‘107I Show cause notice

‘**(1)** If QSL proposes to cancel or suspend the vesting exemption, it must give the person who applied for the exemption a notice stating each of the following—

(a) the action (the **“proposed action”**) QSL proposes to take under section 107H;

(b) that QSL believes a person has used sugar the subject of the exemption for a purpose other than a purpose for which the exemption was granted;

(c) the facts and circumstances that are the basis for the belief;

(d) if the proposed action is to amend—the proposed amendment;

(e) if the proposed action is to suspend—the proposed suspension period;

(f) that the person who applied for the exemption may make, within a stated period, written submissions to show why the proposed action should not be taken.

‘**(2)** The stated period must end at least 28 business days after the notice is given.

‘107J Considering submissions

‘**(1)** QSL must consider any written submission made under section 107I(1)(f) by the person who applied for the exemption within the period stated in the notice.

‘**(2)** If QSL at any time decides not to take the proposed action, it must, as soon as practicable, give the person notice of the decision.

'107K Decision on proposed action

'If, after complying with section 107J, QSL still believes a person has used sugar the subject of the vesting exemption for a purpose other than a purpose for which the exemption was granted, it may decide to—

(a) if the proposed action was to suspend for a stated period—suspend for no longer than the proposed suspension period; or

(b) if the proposed action was to cancel—

(i) cancel the vesting exemption; or

(ii) suspend it for a stated period.

'107L Notice and taking of effect of proposed action decision

'**(1)** QSL must, as soon as practicable after making a decision under section 107K, give the person who applied for the exemption an information notice about the decision.

'**(2)** The decision takes effect on the later of the following—

(a) the day the information notice is given;

(b) a later day of effect stated in the notice.'.

Clause 10 Amendment of s 124 (Minister's directions to QSL)

(1) Section 124(1), after 'powers'—

insert—

'other than in relation to the pricing of raw sugar for sale to domestic customers'.

(2) Section 124(3)—

omit.

(3) Section 124(4), 'any other type of direction'—

omit, insert—

'a direction'.

(4) Section 124(10)—

omit.

(5) Section 124(4) to (9)—

renumber as section 124(3) to (8).

Clause 11 Amendment of s 234 (Appeal to Magistrates Court)

Section 234(1)—

insert—

‘(h) a person who has applied for a vesting exemption who is dissatisfied with a decision by QSL to refuse the application or a decision by QSL about any of the following—

(i) the sugar or any period to which the vesting exemption applies;

(ii) the purpose for which exempted sugar may be used;

(iii) an exemption condition.

(i) a person who is dissatisfied with a decision by QSL to cancel or suspend a vesting exemption.’.

Clause 12 Omission of s 246 (Sugar price directions)

Section 246—

omit.

Clause 13 Omission of s 342 (Minister’s directions to Queensland Sugar Corporation)

Section 342—

omit.

Clause 14 Insertion of new ch 10, pt 3

After section 343—

insert—

‘PART 3—TRANSITIONAL PROVISION FOR SUGAR INDUSTRY AMENDMENT ACT 2003

‘344 Cessation of existing domestic sugar prices directions

‘**(1)** This section applies to a direction given under section 124 or a direction under the repealed Act continued in effect under section 322.[3]

‘**(2)** From the date of assent for the *Sugar Industry Amendment Act 2003*, the direction ceases to have effect to the extent it relates to the pricing of raw sugar for sale to domestic customers.’.

Clause 15 Amendment of schedule (Dictionary)

Schedule, definition “closed mill”—

omit, *insert*—

‘ **“closed mill”**, for chapter 2, part 5, division 4, means a mill closed under section 82.

“exemption condition” see section 107E(5).

“proposed action” see section 107I(1)(a).

“vesting exemption” see section 107A(1).’.

3 Sections 124 (Minister’s directions to QSL) and 322 (Minister’s directions to corporation)