



Queensland

Sugar Industry Amendment Act 2005

Act No. 62 of 2005



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Sugar Industry Amendment Act 2005

Act No. 62 of 2005

An Act to amend the *Sugar Industry Act 1999*

[Assented to 28 November 2005]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Sugar Industry Amendment Act 2005*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act amended

This Act amends the *Sugar Industry Act 1999*.

4 Omission of ch 3 (Marketing)

Chapter 3—

omit.

5 Amendment of s 109 (Reports to Minister)

(1) Section 109(1) and (2)—

omit, insert—

‘(1) If the Minister asks, the commissioner must give the Minister a report about anything specified by the Minister about the discharge by the commissioner of the commissioner’s functions under this Act or the commissioner’s activities.’.

(2) Section 109(3)—

renumber as section 109(2).

6 Amendment of s 110 (Minister’s directions)

(1) Section 110(1) and (2)—

omit, insert—

- ‘(1) The Minister may give the commissioner written directions about the discharge of the commissioner’s functions.’.
- (2) Section 110(3), ‘entity’—
omit, insert—
‘commissioner’.
- (3) Section 110(4)(a), ‘entity of its functions’—
omit, insert—
‘commissioner of the commissioner’s functions’.
- (4) Section 110(4)(b), ‘entity in writing that a direction is under consideration and given it’—
omit, insert—
‘commissioner in writing that a direction is under consideration and given the commissioner’.
- (5) Section 110(3) to (6)—
renumber as section 110(2) to (5).

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

Section 111—

omit, insert—

‘111 Minister’s directions in commissioner’s annual report

‘The commissioner must include in each annual report prepared by the commissioner under the *Financial Administration and Audit Act 1977*, section 46J,¹ a report of any direction given to the commissioner by the Minister during the financial year for which the report is prepared.’.

8 Omission of s 112 (Review of sugar vesting scheme)

Section 112—

omit.

¹ *Financial Administration and Audit Act 1977*, section 46J (Annual report)

- 9 Omission of ch 4, pt 3 (Queensland Sugar Limited)**
Chapter 4, part 3—
omit.
- 10 Omission of ch 4, pt 4 (The Sugar Authority)**
Chapter 4, part 4—
omit.
- 11 Amendment of s 223 (Functions of commissioner)**
(1) Section 223(b) and (d)—
omit.
(2) Section 223(e), ‘chapter 10;’—
omit, insert—
‘chapter 8;².’
(3) Section 223(c), (e) and (f)—
renumber as section 223(b) to (d).
- 12 Amendment of s 223A (Powers of commissioner)**
Section 223A(b), ‘chapter 10;’—
omit, insert—
‘chapter 8;³.’
- 13 Amendment of s 227 (Commissioner’s independence)**
Section 227(2)—
omit.

2 See section 276 (Transfer and dissolution)

3 See section 276 (Transfer and dissolution)

14 Amendment of s 228 (Commissioner's budget)

Section 228(6), 'chapter 10,'—

omit, insert—

'chapter 8,⁴'.

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

(1) Section 230(1)—

omit, insert—

'(1) The commissioner may delegate the commissioner's powers to an appropriately qualified member of the commissioner's staff.'

(2) Section 230(3)—

renumber as section 230(2).

16 Omission of s 234A (Appeal to District Court—exemption application)

Section 234A—

omit.

17 Replacement of ss 243–246

Sections 243 to 246—

omit, insert—

'243 Pooled export contracts

'(1) This section applies to the negotiation, making or varying of, or giving effect to, a contract (a *pooled export contract*) between QSL and a mill owner—

(a) for sugar manufactured by the mill owner to be sold by QSL, as agent or on its own behalf, in export markets; and

(b) under which payments by QSL to the mill owner—

4 See section 275 (Transfer and dissolution).

- (i) are made by reference to 1 or more pools of 2 or more mill owners that aggregates prices payable for sugar supplied or delivered by the mill owners to QSL; and
 - (ii) may be calculated and made under a financial incentive scheme of premiums, discounts and allowances relating to the quality of sugar supplied or delivered.
- ‘(2) Subsection (1)(b)(i) applies whether or not there is an arrangement or understanding between the mill owners about the entering into of the contract.
- ‘(3) The following things, whether done before or after the commencement of this section, are specifically authorised for the competition legislation—
 - (a) the negotiation of, and the entering into, arrangements or understandings about the terms of the contract—
 - (i) between QSL and the mill owners; or
 - (ii) between or among the mill owners;
 - (b) the making of the contract;
 - (c) the variation of the contract;
 - (d) the supply or delivery of sugar by the mill owner to QSL, and the acquisition or receipt of the sugar by QSL, under the contract;
 - (e) the payment of a price for sugar by QSL to the mill owner under the contract;
 - (f) the receipt of a price for sugar by the mill owner from QSL under the contract;
 - (g) the calculation of the prices to be paid by QSL to each mill owner by applying a formula apportioning some or all of the sale proceeds and costs from the sugar sold in export markets between some or all of the mill owners who have entered into a pooled export contract;
 - (h) a financial incentive scheme of premiums, discounts and allowances relating to the quality of sugar supplied or delivered by the mill owner to QSL under the contract;

- (i) the export by QSL of sugar acquired or received under the contract.
- ‘(4) This section expires on the later of the following days—
- (a) 30 September 2009;
 - (b) if a regulation made under this section before 30 June 2009 prescribes a later day of expiry—the later day.

‘244 Pooled domestic contract to satisfy refiner supply contract made before 30 October 2004

- ‘(1) This section applies to the negotiation, making or varying of, or giving effect to, a contract (a *pooled domestic contract*) between QSL and a mill owner—
- (a) for sugar manufactured by the mill owner to be sold by QSL, as agent or on its own behalf, to a domestic refiner to fulfil QSL’s obligations under a contract made before 30 October 2004 to supply sugar to the refiner; and
 - (b) under which payments by QSL to the mill owner—
 - (i) are made by reference to 1 or more pools of 2 or more mill owners that aggregates prices payable for sugar supplied or delivered by the mill owners to QSL; and
 - (ii) may be calculated and made under a financial incentive scheme of premiums, discounts and allowances relating to the quality of sugar supplied or delivered.
- ‘(2) Subsection (1)(b)(i) applies whether or not there is an arrangement or understanding between the mill owners about the entering into of the contract.
- ‘(3) The following things, whether done before or after the commencement of this section, are specifically authorised for the competition legislation—
- (a) the negotiation of, and the entering into, arrangements or understandings about the terms of the contract—
 - (i) between QSL and the mill owners; or
 - (ii) between or among the mill owners;

- (b) the making of the contract;
- (c) the variation of the contract;
- (d) the supply or delivery of sugar by the mill owner to QSL, and the acquisition or receipt of the sugar by QSL, under the contract;
- (e) the payment of a price for sugar by QSL to the mill owner under the contract;
- (f) the receipt of a price for sugar by the mill owner from QSL under the contract;
- (g) the calculation of the prices to be paid by QSL to each mill owner by applying a formula apportioning some or all of the sale proceeds and costs from the sugar sold in domestic markets between some or all of the mill owners who have entered into a pooled domestic contract;
- (h) a financial incentive scheme of premiums, discounts and allowances relating to the quality of sugar supplied or delivered by the mill owner to QSL under the contract;
- (i) the supply or delivery to the domestic refiner of sugar acquired or received under the contract.

‘(4) This section expires on 30 September 2007.

‘245 Pooled export and domestic contract

- ‘(1) This section applies to a contract between QSL and a mill owner for the supply or delivery of sugar manufactured by the mill owner to be sold by QSL, as agent or on its own behalf, both in export markets and domestic markets.
- ‘(2) Section 243(3) applies to the export market component of the contract as if it were a pooled export contract.
- ‘(3) Section 244(3) applies to the domestic market component of the contract as if it were a pooled domestic contract.
- ‘(4) This section expires on the later of the following days—
 - (a) 30 September 2009;
 - (b) if a regulation made under this section before 30 June 2009 prescribes a later day of expiry—the later day.’.

18 Amendment of s 247 (Injunctions)

Section 247(1) and (3), ‘chapter 2 or 3’—

omit, insert—

‘chapter 2’.

19 Omission of s 254 (Indemnity)

Section 254—

omit.

20 Replacement of ch 10 (Transitional provisions)

Chapter 10—

omit, insert—

‘Chapter 8 Transitional provisions for Sugar Industry Amendment Act 2005

‘Part 1 Preliminary

‘258 Definitions for ch 8

‘In this chapter—

authority means the Sugar Authority established under the unamended Act, section 126.

commencement means the day this section commences.

unamended Act means this Act as in force immediately before the commencement.

‘259 References to authority

‘For this chapter, a reference in the unamended Act, chapter 3, to the authority is taken to be a reference to the commissioner.

‘260 References to unamended Act

- ‘(1) If this chapter states that a provision of the unamended Act continues to apply—
- (a) the provision applies as if the amending Act had not been enacted; and
 - (b) any other provision referred to in the provision continues to apply.
- ‘(2) In this section—
- amending Act* means the *Sugar Industry Amendment Act 2005*.

‘Part 2 Sugar vested in QSL**‘261 Payments by QSL to mill owners**

- ‘(1) This section applies if QSL has not, before the commencement, made a payment due to a mill owner for sugar manufactured by the mill owner that, under the unamended act, vested in QSL.
- ‘(2) The unamended Act, sections 101 and 102, continue to apply to the payment.

‘262 Payment schemes

- ‘(1) To remove any doubt, it is declared that the repeal of the unamended Act, section 105, does not, after the commencement, prevent QSL giving effect to a sugar quality standard made under the section.
- ‘(2) In this section—
- sugar quality standard* means a standard made by QSL under the unamended Act, section 105(1), about how sugar quality is decided and affects amounts payable to a mill owner.

‘263 Obligations of mill owners

- ‘(1) This section applies to a mill owner who sells, after the commencement, local consumption exempt sugar if the sugar

is manufactured from cane supplied to the mill in the crushing season for 2005.

‘(2) The unamended Act, section 107(7) and (8), continues to apply to the mill owner.

‘(3) In this section—

local consumption exempt sugar means local consumption exempt sugar under the unamended Act, section 107(1).

‘Part 3 Exemptions

‘264 Definitions for pt 3

‘In this part—

amendment, of an exemption, means an amendment of an exemption under the unamended Act, section 107A.

annual return means an annual return given under the unamended Act, section 107R.

exemption means an exemption under the unamended Act, section 107A.

exempt sugar, for an exemption, means exempt sugar for an exemption under the unamended Act, section 107A.

exempt use means an exempt use under the unamended Act, section 107B.

late exemption application means a late exemption application under the unamended Act, section 107E(4).

‘265 Late exemption applications

‘(1) This section applies if—

(a) a supplier makes a late exemption application before the commencement; and

(b) after the commencement but within 15 days after the authority receives the application, the commissioner gives the supplier a notice requiring the supplier, within a stated reasonable period—

- (i) to give the commissioner a stated document or information relevant to the application; or
 - (ii) to verify the correctness of the document or information by statutory declaration.
- ‘(2) The application is taken to have been withdrawn if the supplier does not comply with the requirement.

‘266 Decision made after commencement on late exemption application

- ‘(1) This section applies if—
 - (a) a supplier makes a late exemption application before the commencement; and
 - (b) immediately before the commencement, the authority has not made a decision about the application.
- ‘(2) The unamended Act, sections 107H to 107L and 107O, continue to apply to the application.

‘267 Application for amendment of exemption

- ‘(1) A supplier may at any time after the commencement apply to the commissioner for an amendment of the supplier’s exemption.
- ‘(2) The unamended Act, section 107P, continues to apply to the making and deciding of the application.

‘268 Improper use of exempt sugar after commencement

- ‘(1) This section applies to a person who, after the commencement, uses exempt sugar under an exemption for a use other than—
 - (a) the exempt use stated for the sugar in the exemption; or
 - (b) if the person has a contract with QSL for the use of the exempt sugar under the exemption—the use decided by QSL.
- ‘(2) The unamended Act, section 107Q(2) and (3), continues to apply to the sugar.

- ‘(3) The unamended Act, section 107V, continues to apply to the person.

‘269 Annual returns given after commencement

- ‘(1) This section applies to a supplier if, immediately before the commencement, the supplier—
- (a) is the holder of an exemption that is in force, other than an exemption granted for a late exemption application; and
 - (b) has not, as required under the unamended Act, section 107R, given the authority an annual return.
- ‘(2) The unamended Act, sections 107R(2), 107S and 107W, continue to apply to the supplier.
- ‘(3) The unamended Act, section 107R(5), continues to apply.

‘270 Further documents or information for annual return

- ‘(1) This section applies if—
- (a) before the commencement, a supplier receives a notice under the unamended Act, section 107S, and the supplier has not complied with the notice; or
 - (b) after the commencement but before the end of 15 business days after 31 January 2006, a supplier receives a notice under the unamended Act, section 107S.
- ‘(2) The unamended Act, section 107S(3), continues to apply to the supplier.
- ‘(3) The unamended Act, section 107S(4), continues to apply.

‘271 Exempt matter after commencement

- ‘(1) After the commencement, a document held by the authority before the commencement under the unamended Act, section 107T—
- (a) continues to be exempt matter under the *Freedom of Information Act 1992*; and
 - (b) is taken to be held by the commissioner.

- ‘(2) A document given to the commissioner after the commencement in connection with the following is exempt matter under the *Freedom of Information Act 1992*—
- (a) the making or granting of an application for an exemption;
 - (b) the giving of an annual return.

‘272 False or misleading application for amendment of exemption made after commencement

- ‘(1) This section applies to a person who makes an application for amendment of an exemption after the commencement.
- ‘(2) The unamended Act, section 107U, continues to apply to the person.

‘273 Executive officers of corporation

- ‘(1) This section applies if, after the commencement, a corporation commits an offence against a provision of the unamended Act, chapter 3, part 2, division 8.

Note—

The unamended Act, sections 107U(1), 107V and 107W(1), have continued application under sections 272(2), 268(3) and 269(2) respectively.

- ‘(2) The unamended Act, section 107X, continues to apply to the executive officers of the corporation.

‘Part 4 Queensland Sugar Limited

‘274 QSL’s audited financial statements for 2005/2006 financial year

- ‘(1) This section applies for the financial year starting on 1 July 2005 if, immediately before the commencement, QSL has not, as required under the unamended Act, section 123(2), given the Minister, the auditor-general and the authority QSL’s audited financial statements for the financial year.

- ‘(2) The unamended Act, section 123, continues to apply for the financial year.

‘Part 5 **Dissolution of Sugar Authority**

‘275 **Definitions for pt 5**

‘In this part—

assets, of the authority, means all assets of the authority immediately before the commencement.

liabilities, of the authority, means all liabilities of the authority immediately before the commencement.

‘276 **Transfer and dissolution**

‘On the commencement—

- (a) the authority’s assets and liabilities are transferred to, and become the assets and liabilities of, the commissioner; and
- (b) the authority is dissolved.

‘277 **Continuity of proceedings and matters**

- ‘(1) A proceeding that, before the commencement, might have been started or continued by or against the authority may, after the commencement, be started or continued by or against the commissioner.
- ‘(2) All matters started by the authority before the commencement may be completed by the commissioner after the commencement.

‘278 **Employees**

- ‘(1) A person’s employment by the authority immediately before the commencement is, on the commencement, taken to be lawfully terminated under the Industrial Relations Act.

- ‘(2) The person has the rights given to an employee whose employment has been lawfully terminated under that Act.
- ‘(3) The rights given to the person may be exercised against the commissioner as if the commissioner had been the employer who terminated the person’s employment.

‘279 Members cease holding office

- ‘(1) Each person who, immediately before the commencement, was a member of the authority goes out of office on the commencement.
- ‘(2) No compensation is payable to a person because of subsection (1).

‘Part 6 Appeals

‘280 Appeal to District Court against authority’s decision

- ‘(1) This section applies to an applicant mentioned in the unamended Act, section 107H, who may appeal to the District Court against a decision of the authority.
- ‘(2) If—
 - (a) the person has appealed to the District Court under the unamended Act, section 234A, against the decision; and
 - (b) the appeal has not been decided before the commencement;the unamended Act, section 234A, continues to apply to the appeal after the commencement.
- ‘(3) If—
 - (a) the person could have appealed to the District Court under the unamended Act, section 234A, against the decision; and
 - (b) the applicant has not appealed before the commencement;the unamended Act, section 234A, continues to apply after the commencement.

'Part 7 Competition policy legislation

'281 Definitions for pt 7

'In this part—

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),⁵ or the Competition Code of this jurisdiction, section 51.⁶

'282 Pooled export contracts made before commencement

- '(1) This section applies to a pooled export contract made before the commencement.
- '(2) The following things, whether done before or after the commencement, are specifically authorised for the competition legislation—
- (a) the negotiation of, and the entering into, arrangements or understandings about the terms of the contract—
 - (i) between QSL and the mill owners; or
 - (ii) between or among the mill owners;
 - (b) the variation of the contract;
 - (c) the supply or delivery of sugar by the mill owner to QSL, and the acquisition or receipt of the sugar by QSL, under the contract;

5 *Trade Practices Act 1974* (Cwlth), section 51 (Exceptions)

6 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.

- (d) the payment of a price for sugar by QSL to the mill owner under the contract;
- (e) the receipt of a price for sugar by the mill owner from QSL under the contract;
- (f) the calculation of the prices to be paid by QSL to the mill owner by applying a formula apportioning some or all of the sale proceeds and costs from the sugar sold in export markets between some or all of the mill owners who have entered into a pooled export contract;
- (g) a financial incentive scheme of premiums, discounts and allowances relating to the quality of sugar supplied or delivered by the mill owner to QSL under the contract;
- (h) the export by QSL of sugar acquired or received under the contract.

‘283 Export contracts made before commencement

- ‘(1) This section applies to a contract (an *export contract*) made before the commencement between QSL and a mill owner for sugar manufactured by the mill owner to be sold by QSL, as agent or on its own behalf, in export markets.
- ‘(2) The following things, whether done before or after the commencement, are specifically authorised for the competition legislation—
 - (a) the negotiation of, and the entering into, arrangements or understandings about the terms of the contract between QSL and the mill owner;
 - (b) the making of the contract;
 - (c) the variation of the contract;
 - (d) the supply or delivery of sugar by the mill owner to QSL, and the acquisition or receipt of the sugar by QSL, under the contract;
 - (e) the payment of a price for sugar by QSL to the mill owner under the contract;
 - (f) the receipt of a price for sugar by the mill owner from QSL under the contract;

- (g) the calculation of the prices to be paid by QSL to the mill owner by applying a formula apportioning some or all of the sale proceeds and costs from the sugar sold in export markets between some or all of the mill owners who have entered into an export contract;
- (h) a financial incentive scheme of premiums, discounts and allowances relating to the quality of sugar supplied or delivered by the mill owner to QSL under the contract;
- (i) the export by QSL of sugar acquired or received under the contract.

‘Part 8 Injunctions

‘284 Definitions for pt 8

‘In this part—

injunction includes an interim injunction.

repealed provision means a provision of the unamended Act, chapter 3.

undesirable conduct, for a person, means the 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 a repealed provision;
- (b) attempting to contravene a repealed provision;
- (c) aiding, abetting, counselling or procuring a person to contravene a repealed provision;
- (d) inducing or attempting to induce (whether by threats, promises or otherwise) a person to contravene a repealed provision;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a repealed provision;
- (f) conspiring with others to contravene a repealed provision.

‘285 Undecided applications taken to have been withdrawn

- ‘(1) This section applies if an interested entity applied before the commencement under the unamended Act, section 247, to the Supreme Court for an injunction—
- (a) either—
 - (i) restraining a person from engaging in undesirable conduct; or
 - (ii) requiring a person to do anything the person is required to do under a repealed provision; and
 - (b) on the commencement, the application had not been decided.
- ‘(2) Subject to section 287—
- (a) on the commencement, the application is taken to have been withdrawn; and
 - (b) no order for costs may be made for the application.

‘286 Injunctions of no effect after commencement

- ‘(1) This section applies if the Supreme Court has, on the application of an interested entity, granted an injunction, under the unamended Act, section 247—
- (a) restraining a person from engaging in undesirable conduct and, if the court considered it desirable to do so, requiring the person to do anything; or
 - (b) requiring a person to do anything the person is required to do under a repealed provision.
- ‘(2) Subject to section 287, the injunction is of no effect after the commencement.

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

‘Sections 285 and 286 do not apply if—

- (a) the interested entity is the commissioner; and

- (b) the repealed provision is the unamended Act, section 107V.⁷.

21 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *amendment, annual return, applicant, appointed member, authority, business manager, Competition Code, competition legislation, exemption, exemption application, exemption certificate, exemption certificate details, exemption conditions, exempt sugar, exempt use, industrial association, industry participant, interest, late exemption application, material personal interest, on-user, payment scheme, periodic estimate, periodic estimate day, raw sugar equivalent, research, use and verified* —
omit.
- (2) Schedule—
insert—
‘Competition Code—
(a) for chapter 6, see section 236; or
(b) for chapter 8, part 7, see section 281.
competition legislation—
(a) for chapter 6, see section 236; or
(b) for chapter 8, part 7, see section 281.
pooled domestic contract see section 244(1).
pooled export contract see section 243(1).’

7 Section 107V (Improper use of exempt sugar)