

SUGAR INDUSTRY REFORM BILL 2004

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Sugar Industry Reform Bill 2004*.

Objectives of the Legislation

The major policy objective of the Bill is to implement the commitment by the sugar industry and government to comprehensive reform.

Reasons for the policy objectives of the Bill

The Queensland sugar industry is export dependent (85% of production is exported to markets in Asia, North America and the Middle-East). The industry now faces a fundamentally changed market situation:

- The industry's historic advantage in efficiency has been eroded, with very low uptake of new technology and practices.
- Brazil has emerged as a major new competitor, with a more efficient and commercial export sector. Brazil will *increase* its cane production this year by the size of the total Australian industry.
- The long-term downward trend in all commodity prices has combined with oversupply on the world market to produce a world raw sugar price that is below the cost of production for many industry participants. The high value of the Australian dollar also reduces returns.
- The industry has remained focused almost entirely on raw sugar exports, and has done little to promote either alternatives products from cane or sugar, or to further value-add.

Because of these factors, and several poor seasons, industry returns have declined from approximately \$2 billion per year, to approximately \$1 billion.

The Queensland Government and the leaders of the Queensland sugar industry have committed to supporting and promoting comprehensive legislative reform to ensure the long-term future of the industry.

The *Sugar Industry Act 1999* ('the Act') is hindering the industry from making the changes it needs to remain competitive in today's global sugar market. The Queensland Government's position is that reform of the industry's regulatory structure is essential to create a business environment that will promote the productivity gains essential for a sustainable future.

Both the Australian Sugar Milling Council (ASMC) and the Queensland Cane Growers Organisation Limited (CANEGROWERS) formally recognised on 1 March 2004 that the future cannot simply be an extension of the past and that previous assumptions driving production and structural arrangements need to be changed. They also committed to the transformational change required to achieve sustainability.

The future of the sugar industry has been a focus of Government, following years of poor seasons, worsening world prices and repeated requests for government assistance. Four separate reports have been commissioned since early 2002 into the causes of, and remedies for, the industry's decline:

- The Hildebrand Report: *An Independent Assessment of the Sugar Industry*, June 2002 (commissioned by the Commonwealth Government);
- The Centre for International Economics (CIE) Report: *Cleaning up the Act*, December 2002 (Queensland Government);
- Boston Consulting Group: Report to Canegrowers, *Review of Constraints on Industry Competitiveness and Innovation*, January 2003 (CANEGROWERS); and
- The Updated CIE Report: *Cleaning up the Act. More Important than Ever*, February 2004 (Queensland Government).

The Hildebrand and CIE Reports offered a consistent and complementary message about the industry's future - a message that was confirmed to a great extent by Boston.

- Hildebrand observed a culture that he insisted had to change. This culture, with its hostility to change, inbuilt mutual antagonism between growers and millers and non-commercial nature, is characterised by the ‘adverse effects’ principle identified by CIE.
- CIE argues that the regulatory structure has created a set of formal and informal rules-called the principle of ‘adverse effects’-which have the effect of blocking productivity gains. Those adversely affected by change - generally the inefficient - are able to use the legislation to block that change. This principle helps to explain the aspects of the industry’s culture identified by Hildebrand. The culture is characterised by the principle of adverse effects and is able to continue because of the legislation. Indeed, ‘adverse effects’ considerations are often buried underneath ‘equity’ issues between growers or behind grower-miller antagonism.
- Hildebrand urged the industry to support “the best, most energetic and most able talent to lead for the good of each mill area or region”. CIE showed how the regulatory structure allowed the least productive and least energetic to protect their own interests and block those seeking positive change with negative consequences for the overall mill area and industry. Boston, by endorsing the ‘adverse effects’ principle, adopted this view.
- Hildebrand did not identify a mechanism for cultural change. CIE found this mechanism - removal of all the legislation that continues to allow for the ‘adverse effects’ principle to apply. Boston also supports removal of this principle.

The main explanation for the industry’s failure to take up productivity gains is the ‘adverse effects’ principle. This principle is embodied in both legislation and culture, but it is perpetuated by the legislative structure. The CIE has identified a risk in that if Government allow this system to continue, this lack of action may contribute to the industry’s inability to make essential productivity gains.

The productivity gains referred to by CIE, and endorsed by Boston, are conservative and based on existing, published research funded by industry. The gains are at all stages along the value-chain. Cane farming can be improved in a range of ways, for example by using less fertiliser and improving management techniques. Harvesting is a area where major improvements are possible by changing practices and reducing harvester

speeds. Better integration of harvest, transport and delivery can increase efficiency and reduce costs for growers, harvesters and millers. The reason many of these changes have not occurred is because the current system either allows those who would be adversely affected by the changes to block them, or does not provide incentives for participants to make the changes.

The Updated CIE Report found that if \$A200/tonne prices persist to 2006/07 and there is no reform then the industry would cease to exist in all regions and there would be strong regional multiplier effects. This highlighted the urgency of reform.

The Government consulted and negotiated with industry over CIE's recommended legislative reform in three areas and consequently agreed that the legislation would reflect the "Heads of Agreement" between the Boards of both CANEGROWERS and the ASMC, which was signed with the Premier on 1 March 2004.

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

This Bill will amend the *Sugar Industry Act 1999* to implement the commitment by the sugar industry and Government to comprehensive reform for the long-term future of the sugar industry. The main amendments being made by the Bill are:

- **Removal of Cane Production Area System**

The Bill will remove the Cane Production Areas (CPAs) from the Act from 1 January 2005. These are, in effect, a license allowing a grower to grow cane and supply a particular mill (to which the grower is "assigned"). The Bill will also remove restrictions on growers being able to transfer from one mill to another.

- **Removal of the Statutory Bargaining System**

The Bill will remove the statutory bargaining system from 1 January 2005. This system provides for a negotiating team to negotiate a collective cane supply and processing agreement with the mill, which is binding on all holders of CPA. While it is currently possible to have an individual agreement with the mill outside the statutory collective, the mill suppliers' committee is entitled to know all the terms of this agreement, save the price for cane, and may take court action where it perceives the individual

agreement to impose a significant adverse effect on growers supplying to the collective.

- **Creation of Supply Contracts**

The Bill supports normal commercial processes to drive positive outcomes and trends for the sugar industry. The Bill allows growers to freely engage in the market for the supply of their cane. Importantly the Bill also enables growers to participate in “opt in” collective arrangements with millers, as well as other interested third parties. There is an opportunity, not an obligation, to bargain collectively. Parties to supply contracts are provided with scope to participate in more than one such contract. Removal of the existing and onerous statutory bargaining system will result in industry participants benefiting from greater freedoms to direct and control their own interests.

- **A Phased Change from Compulsory Arbitration**

After an interim arbitration period in 2004-2005, the supply contract framework will then be supported by a dispute resolution process that is consistent with major regulatory reform.

From 1 July 2004 to 31 December 2004 the current system of mediation and arbitration will apply via a Regulation. However, unless agreed by the parties, final offer arbitration (where each party puts up a bid and the arbiter must choose one or the other), will be replaced by a normal commercial system where the arbiter will have the ability to broker an outcome.

From 1 January 2005 to 31 December 2005 a limited form of compulsory arbitration will be available, where the arbiter is able to determine a compromise position (as different from Final Offer Arbitration). The system will involve initial mediation and will be limited to major issues affecting the growers representing at least 75% of the 2004 cane supply in a mill area. Arbitration will not extend to the division of proceeds between growers and millers or to the ownership of sugar. Further, any contract that is arbitrated upon will exist for only one year.

Parties will have access to arbitration by agreement from 1 January 2006. The Bill will continue to provide for dispute resolution for disputes arising out of contracts.

- **Provision For Exemption From Vesting Of Sugar**

Queensland's single desk marketing arrangements for raw sugar, operated by Queensland Sugar Limited (QSL), is created by *compulsory acquisition* – the Act *vests* ownership of all sugar, upon manufacture, in QSL. The amendments will provide a scheme for exemptions, a transparent and accountable process involving an independent third party (the Sugar Industry Authority) with the power to grant exemptions from vesting.

The Bill will enable exemptions from 1 July 2004 from compulsory vesting of sugar used in the manufacture of an alternative product, such as ethanol and sugar exported in bags. However, as a result of the Heads of Agreement, the Bill will maintain the domestic single desk for raw sugar used in manufacturing (eg for refining) and it will retain the provision for the Ministerial Direction for Export Parity Pricing of domestic sales, in order to simulate domestic deregulation.

Alternatives to the Bill

There are two alternatives to the current Bill, those being:

- no change; or
- adopting the CIE's recommended reforms of December 2002.

The "no change" option is an unacceptable option because of the evidence from industry and the Updated CIE Report (of February 2004) that regulatory reform is essential for industry survival if the current sugar price scenario continues to 2006/07.

The CIE recommendations effectively meant no interim arbitration period and domestic market deregulation. However, the Queensland Government has agreed with the industry's desire for transitional approach in regard to arbitration and the domestic market.

The Heads of Agreement included an industry initiative to establish a working group to develop voluntary marketing arrangements as soon as possible. The objective of this working group is to work towards a new system for marketing of raw sugar prior to the National Competition Policy Review on sugar regulatory arrangements in 2006.

Therefore, while the opportunities for value adding have been expanded through this Bill, any further changes will await the results of that working group's deliberations and the Review findings.

Estimated costs for government implementation

It is not anticipated that there will be any administrative cost to government for implementation of the Bill.

Consistency with fundamental legislative principles

It is arguable that there are some departures in the Bill from fundamental legislative principles. Any such departure has occurred in the context of a tension between the fundamental legislative principles outlined in the *Legislative Standards Act 1992* and the need to urgently implement reforms to the sugar industry in order to ensure that it has an economically viable future.

Clause 25 – proposed new section 237 – *Collective contracts*

New section 237 authorises the making of collective supply contracts under the Act for the purposes of the *Trade Practices Act 1974 (Cth)* where they are made between a group of growers and a mill owner who are within the same region.

The definition of "region" in inserted new section 237 could be considered a "Henry VIII" provision. Allowing the word "region" to be prescribed under a regulation enables the Act to be amended by subordinate legislation. However the ability to prescribe a region in this way is considered necessary and justified. Flexibility in prescription enables Government to allow the authorisation to work according to circumstances required by industry. The "regional" relationships between groups of growers and mill owners are not necessarily fixed or ascertainable at any one point in time.

Clause 29 - proposed new sections 386, 387, 390, 391, Clause 32 proposed new sections 407 and 408 and Clause 33 – proposed new sections 413 and 414—*termination of appointment without compensation*

New sections 387, 391, 408 and 414 relate to the termination of appointment of members of cane production boards, mill suppliers' committees, and negotiating teams without the payment of compensation.

All these bodies are part-time bodies. In each case the amount of sitting fees paid to the members is low and designed merely to compensate the members for the time the member is absent from normal employment.

Since termination of this appointment means that the members will no longer need to be absent from normal employment, compensation for loss of the sitting fees is not justified.

New sections 386, 390, 407 and 413 relate to the termination of employment of any employees of cane production boards, mill suppliers' committees (with the exception of mill suppliers committees that are corporations where the employees remain employees of that corporation), and negotiating teams. The new clauses provide that those employees will be entitled to the same rights given to an employee whose employment has been lawfully terminated under the *Industrial Relations Act*.

Whilst the *Sugar Industry Act* enables cane production boards to have employees and arguably enable the other bodies to have employees, government enquiries have revealed that none of them has any employees. Clearly any of the bodies may elect to employ someone between now and the commencement of these provisions on 1 January 2004. If that occurs the termination provisions will apply. Under these circumstances compensation for affected employees is not considered appropriate because it will have been publicly known before commencement of their employment that the bodies will be terminated on 1 January 2004. Those employees would therefore have been on notice when they took the job that their employment would be terminated on 1 January 2004.

Clause 15 - New Sections 107U and 107V - *Rights and liberties of individuals (maximum penalties)*

Very high penalties have been included in the Bill for offences against the new provisions enabling exemptions from vesting for domestic use of sugar. These offences relate to commercial dealings, which could potentially involve large shipments of sugar worth a very significant amount of money. It is essential that these penalties are high in order to offset the potential profits that might be made illegally trading sugar on the export market.

Clauses 30 – New sections 393, 394 and 395 – (Abolition of existing cane production areas), Clause 34 – New section 398 – (Termination of existing supply agreements) and new section 399 – (Undecided applications taken to have lapsed) – *Deprivation of right to own property and fair compensation*

The removal of the cane production area system (CPA) by new section 393 will take away a statutory form of property – the individual

CPA. New subsection 393(3) specifically states that no compensation is payable to the holder of the CPA. New sections 394 and 395 provide that no compensation for undecided applications relating to CPA and terminating any process commenced relating to expansion of CPA. However, CPA were issued at no cost, their value is minimal and there is little current trade in CPA. It can also be anticipated that since mills will still require cane for crushing the CPA system is likely to be replaced by a similar contractual right of access to mill crushing capacity, as in New South Wales. The value of the land held by growers on which cane is grown is also likely to continue to reflect the value of CPA.

By virtue of new section 399 supply agreements will be terminated and applications to variation of existing applications to vary a collective agreement will be terminated without payment of compensation. Termination of the contracts is necessary because the reforms initiated by the Bill would remove the bodies who would have been empowered to take action under the agreement, such as mill supplier's committee and negotiating teams making the contracts meaningless and unenforceable. Whilst the contracts are terminated, no property rights have been deprived because growers still retain the right to negotiate for sale of their sugar crop and mill will retain the right to purchase the cane once a new contract is negotiated. It should also be noted that there will be very few, if any collective agreements affected by this clause as the majority are negotiated annually.

CONSULTATION

- **Community**

Extensive consultation has occurred with all sectors of the industry on the issue of industry change. Comprehensive details of that consultation can be found in the Government's Policy Paper "Sugar the way forward, A Statement of the Queensland Government's Position on Regulatory Reform of The Sugar Industry" which will be tabled in Parliament at the same time as these Explanatory Notes.

- **Government**

There has been extensive consultation between the Departments of Primary Industries and Fisheries, State Development and Innovation, Premier and Cabinet and Queensland Treasury in the development of the Bill.

RESULTS OF CONSULTATION

- **Industry**

General

The results of consultation with each sector of the industry are summarised in the Government's Policy Paper "Sugar the way forward, A Statement of the Queensland Government's Position on Regulatory Reform of The Sugar Industry" which will be tabled in Parliament at the same time as these Explanatory Notes. In general it is apparent that the majority of economic weight (in terms of both earnings and investment) in the industry support legislative change. However, larger numbers of small players are opposed to change.

In summary:

The Milling Sector: the Australian Sugar Milling Council (ASMC), which covers the ten milling companies in Queensland, has called for comprehensive legislative change, and rejected "selective tinkering" with the Act.

The major grower representation body Queensland Canegrowers Organisation advocate a "targeted" approach to reform.

Harvesters: the Queensland Mechanical Harvesting Association supports regulatory change. Their members have been locked out of the statutory bargaining system, allowing both growers and millers to exercise market power against them.

Individual grower submissions: over 350 submissions were received from individual growers. The majority of individual growers reflected the Australian Cane Farmers Association views denying there was a need for change, arguing instead that all the industry required was good weather, a better price and immediate government financial assistance to survive. However, a minority of individual grower submissions came to very different conclusions. For this group, change in the industry was absolutely essential. They argued that the legislative arrangements gave third parties too much power over how they themselves conducted their businesses.

External Investors: while no formal consultation took place with external investors, in the course of seeking new investment in Queensland, the Department of State Development and Innovation found at least one significant overseas corporation who expressed views on legislative change. This Corporation felt that without such changes, the present

restrictive environment jeopardised both their planning and their investment confidence.

- **Government**

All Government Departments support the proposals in this Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 provides that this Act may be cited as the *Sugar Industry Reform Bill 2004*.

Commencement

Clause 2 provides that:

- sections 3, 27 to 29 and 36(1) and (5) will commence on assent;
- sections 9 to 18, 24 and 36(3), (6), and (9) commence on 1 July 2004. The provisions will enable applicants to apply for exemptions from the vesting of sugar where it is to be used for the manufacture of an alternative product or is to be exported in bags to be used for human consumption;
- The remaining provisions of the Act, other than sections 7 and 36(4) and (8) commence on 1 January 2005; and
- sections 7 and 36(4) and (7) will commence on 1 July 2006.

The remainder of this Act commences on 1 January 2004.

PART 2—AMENDMENT OF *SUGAR INDUSTRY ACT* 1999

Act amended in pt 2 and Schedule

Clause 3 provides that this part, and the schedule, amends the *Sugar Industry Act 1999*.

Replacement of ch 2, hdg

Clause 4 changes the heading of Chapter 2 of the Act from “Production, supply and milling” to “Supply Contracts and Cane Access Rights”. The change is consequential to the amendments made to Chapter 2 by the Bill. Those amendments delete a substantial amount of the chapter thereby reducing the scope of its coverage.

Replacement of ch 2, pt 1 (Cane production areas)

Clause 5 replaces Chapter 2, part 1 of the Act. Part 1 related to cane production areas (CPAs). Formerly known as Assignment, CPAs are, in effect, a licence allowing a grower to grow cane and supply a particular mill (to which the grower is “assigned”). Part 1 dealt with:

- the establishment of entitlements, applications for grant;
- variation or cancellation of cane production areas;
- moving cane supply from one mill to another – this will remove restrictions on growers being able to transfer from one mill to another. To remove the restrictions created by CPA without removing this restriction of these would be to unbalance the system and prejudice one side of the industry;
- registration requirements for the grant variation or cancellation of CPA;
- cane production area plans; and
- expansion.

Chapter 2, part 1 of the Act is replaced with a new part 1 that provides for cane supply and supply contracts.

**NEW PART 1—ARRANGMENTS FOR SUPPLY
CONTRACTS FROM 1 JANUARY 2005 TO
31 DECEMBER 2005**

New Division 1—Cane supply is governed by supply contracts

In accordance with the Heads of Agreement between industry and the government, a revised form of compulsory arbitration in disputes relating to entering into a supply contract will apply during 2005. The purpose of the revised arbitration provisions is to assist in promoting sound economic outcomes for the sugar industry and encourage changes necessary to make the industry viable in the long term. Details of the arbitration system to apply during this period are:

- Any contract entered into under arbitration under this part may only last for one year, that is the contract must provide or will be deemed to provide that it expires on 31 December 2005;
- Growers may only apply for arbitration with a mill where the dispute with the mill involves a group of growers who in total represent a minimum of 75% of production that has been previously supplied in 2004 to the mill (an eligible collective) involved in the arbitration;
- Growers who supplied cane to a different mill in 2004 may only join this collective and therefore be parties to the arbitration with the consent of the mill that is the other party to the dispute;
- In order to provide some certainty as to who the parties to a dispute are, all members of the eligible collective must sign an intention to contract (a different document to a bargaining authority) with a mill and lodge that document with the Sugar Industry Commissioner by a prescribed date. Once lodged, the parties to the document are bound to enter into a contract with the mill named (all parties will still be required to sign that contract) in the intent for that portion of each growers cane identified in the intent;
- Growers may sign intents with more than one mill provided that in total the amount of cane identified in those intents does not exceed 100% of the cane produced by that grower.

New section 7 – Purpose of pt 1

New section 7 provides that the purpose of part 1 is to provide an interim system for cane supply and supply contracts in the crushing season for 2005 that will promote sound economic outcomes for the sugar industry and encourage changes necessary to make the industry viable in the long term.

New Section 8 – Definitions for pt 1

New section 8 provides for definitions for Chapter 2, part 1.

New Section 9 – Supply contract

New section 9 provides that each grower may only supply cane to a mill for a crushing season if the grower has a supply contract with the mill owner for the season. Growers may enter into supply contracts individually or through a collective but at any rate they must enter an agreement before the grower supplies cane to the mill. The new section also provides that if compulsory arbitration is used during the 2005 crushing season, the resulting supply contract is taken to have ended on or before 31 December 2005. The later provision reflects the heads of agreement with industry which provided for interim compulsory arbitration in 2005.

New section 9 also enables interested third parties to participate in a supply contract between a mill owner and a grower. Growers and millers can actively engage parties such as harvesting contractors or other potential industry participants to become directly involved in commercial arrangements.

New Section 10 – Individual contract

New section 10 provides that a grower may enter into a supply contract as an individual for all or part of their supply of cane.

New Section 11 – Collective contract

New section 11 enables two or more growers to enter into a supply agreement with a mill owner known as a collective contract. Each grower actively participates in establishing the agreement, as each grower is required to sign the collective contract. A group of growers may appoint a

bargaining representative to perform negotiations on behalf of the group with a mill owner.

For the purposes of the *Trade Practices Act 1974 (Cth)*, new section 237 authorises such collective contracts where they are made between a group of growers and a mill owner who are within the same region.

New section 12 – Variation of supply contract

New section 12 provides that the parties to a supply contract may vary the contract with the written consent of each contracting party.

New Division 2—Dispute Resolution

Subdivision 1—Negotiating collective contracts

New Section 13 – Application of sdiv 1

New section 13 outlines that subdivision 1 applies where a dispute arises during negotiations for a collective and a mill owner who are the proposed parties to the collective contract and the eligible collective or mill owner wishes to refer the dispute to mediation.

New Section 14 – Meaning of “eligible collective”

New section 14 defines an “eligible collective” for a mill as a group consisting of growers who sign an intention to contract to supply the mill in the crushing season 2005 at least 75% of the average production of cane that was supplied to the mill in the crushing seasons for 2000 to 2004. It is only the eligible collective that is eligible for compulsory arbitration in 2005. This provision ensures that the majority of growers have the right to arbitration in 2005 whilst ensuring that the mill can be ensured that they are only forced to arbitrate with a collective supplying a significant amount of sugar in 2005.

New Section 15 – Scope of dispute resolution process

New Section 15 provides that the proposed parties cannot use compulsory arbitration in 2005 to resolve disputes about:

- the cane price formula;
- exemptions from vesting;
- whether a person is a supplier.

New Section 16 – Dispute resolution process

New Section 16 provides that the dispute resolution process for proposed parties in 2005 is a two stage process involving mediation and, if the commissioner is satisfied that the dispute has not been resolved by mediation, arbitration.

New Section 17 – When other grower may join the dispute process

New section 17 provides that a grower who did not supply cane to the mill in the crushing season for 2004 may, for the dispute resolution process under this subdivision in 2005, act as a member of the eligible collective only if the mill owner agrees.

New Section 18 – No final offer arbitration

New section 18 prohibits the use of final offer arbitration to resolve disputes arising during negotiation of a supply contract in the 2005 season.

New Section 19 - Before dispute resolution process

New section 19 requires that before an eligible collective or a mill owner can ask the Commissioner to refer a dispute about a proposed collective contract to compulsory arbitration, the eligible collective and the mill owner must enter into an intention to contract.

This section is required because, unlike the existing system, once CPA is abolished, growers are no longer tied to a particular mill and the mill is no longer obliged to accept a particular growers cane. Since growers in some areas will have a choice of which mills to sell their cane to, the intention to contract is necessary in order to provide certainty as to who is in the collective.

New Section 20 – Intention to contract

New section 20 sets out what must be included in the intention to contract referred to in new section 19 above. The intention to contract must be signed by each member of the eligible collective and the mill owner and lodged with the sugar industry commissioner by a date prescribed in regulation.

New section 20 also provides that a grower may be a party to more than one intention to contract provided that the amount of cane committed under intentions to contract does not exceed 100% of cane grown by the grower.

New Section 21 – Effect of dispute resolution process

New section 21 provides that if the Commissioner is satisfied the dispute has been resolved by mediation, the eligible collective and the mill owner must, as soon as practicable after mediation ends, enter into a collective contract. If the dispute had been arbitrated the parties to the intention to contract are bound by the collective contract made under arbitration. The purpose of this provision is to provide certainty to the parties. In the absence of this provision, the mill or collective, or a portion of growers in a collective could arbitrarily decide to withdraw from its obligation at a time in the growing season when it could cause financial loss to the other party that had been relying on the intention in good faith. The concept of being locked into a collective is not new to growers and will provide them with the best security and certainty during 2005, being a transitional year towards freer market arrangements.

New Section 22 – Mediation

New section 22 provides for mediation processes where parties to a supply agreement are in dispute. If the parties refer a dispute to mediation and the parties cannot agree on a mediator, the Sugar Industry Commissioner or a person appointed by the Sugar Industry Commissioner will act as a mediator. New Section 22 outlines matters about costs of mediation and that unpaid costs are recoverable as a debt to the mediator.

New section 22 will not affect any rights or remedies to which a party to the dispute may be entitled.

New Section 23 – Arbitration

New section 23 enables the Sugar Industry Commissioner to refer the dispute to arbitration where the Sugar Industry Commissioner is satisfied that the dispute has not been resolved by mediation under new section 22. Referral to arbitration must proceed only with the agreement of the parties. The *Commercial Arbitration Act 1990* (CA Act) applies to any arbitration that occurs in accordance with new section 23. The CA Act provides a framework for arbitration of commercial disputes, as opposed to resolution by the court system.

New subdivision 2—Existing supply contracts**New Section 24 – Application of sdiv2**

New section 24 provides that this subdivision applies if a dispute arises between any or all of the parties to a supply contract about its terms.

New section 25 – Parties must use dispute resolution process stated in supply contract

New section 25 provides that a supply contract must state a process for dispute resolution. That process cannot, by virtue of new section 26 involve final offer arbitration but may involve:

- mediation as outlined in new section 22; or
- arbitration as outlined in new section 23.

New Section 26 – No final offer arbitration

New section 26 makes it clear that the parties cannot use final offer arbitration as a means to resolve disputes under any circumstances. New section 18 outlines what constitutes final offer arbitration. The removal of final offer arbitration:

- discourages parties from submitting preferred and unrealistic bargaining positions; and
- ensures that an arbitrator may, as is the case in commercial arbitrations, exercise a discretion to make an award that is reasonable between the parties.

Division 3—Expiry and saving provisions**New Section 27 – Expiry of pt 1**

New section 27 provides that this part expires in 31 December 2005.

New Section 28 – Saving of operation of pt 1

New section 28 provides that this part is declared to be a law to which section 20A of the *Acts Interpretation Act 1954* applies. Section 20A provides that repeal does not end saving, transitional or validating effect of provisions.

Omission of ch 2, pt 2 (Cane supply and processing agreements)

Clause 6 omits Chapter 2, part 2 of the Act relating to Cane Supply and Processing Agreements. The statutory bargaining system provides that a mill suppliers' committee (MSC), elected on a one grower-one vote system, negotiates a collective cane supply and processing contract with the mill. This contract is binding on all holders of CPA. It is possible to have an individual agreement with the mill outside the statutory collective, but the MSC is entitled to know all the terms of this agreement, save the price for cane, and may take court action where it perceives the individual agreement to impose a significant adverse effect on growers supplying to the collective. This process has been identified by CIE as the key restriction in the Act on productivity gains.

Insertion of new ch 2, pt 2

Clause 7 inserts a new chapter 2, part 2 dealing with arrangements for supply contracts from 1 January 2006.

NEW PART 2—ARRANGEMENTS FOR SUPPLY CONTRACTS FROM 1 JANUARY 2006

New Division 1—Cane supply is governed by supply contracts

New Section 29 – Purpose of pt 2

New section 29 provides that the purpose of this part is to ensure the supply by growers of cane to a mill and the payment to growers in return are governed by written contracts between growers and mill owners.

New Section 30 – Definitions for pt2

New section 30 provides for definitions for Chapter 2, part 2.

New Section 31 – Supply contract

New section 31 provides that a grower may supply cane to a mill for crushing only if the grower has a supply contract with the mill owner for the season. Growers may enter into supply contracts individually or through a collective but at any rate they must enter an agreement before the grower supplies cane to the mill.

New section 31 also enables interested third parties to participate in a supply contract between a mill owner and a grower. Growers and millers can actively engage parties such as harvesting contractors or other potential industry participants to become directly involved in commercial arrangements.

New Section 32 – Individual contract

New section 32 provides that a grower may enter into a supply contract as an individual for all or part of their supply of cane.

New Section 33 – Collective contract

New section 33 enables two or more growers to enter into a supply agreement with a mill owner known as a collective contract. Each grower actively participates in establishing the agreement, as each grower is required to sign the collective contract. A group of growers may appoint a

bargaining representative to perform negotiations on behalf of the group with a mill owner.

For the purposes of the *Trade Practices Act 1974 (Cth)*, new section 237 authorises such collective contracts where they are made between a group of growers and a mill owner who are within the same region.

New Section 34 – Parties must use dispute resolution process stated in supply contract

New section 34 provides that a supply contract must state a process for dispute resolution. That process cannot, by virtue of new section 37, involve final offer arbitration but may involve:

- mediation as outlined in new section 38; or
- arbitration as outlined in new section 39.

New Section 35 – Variation of supply contract

New section 35 provides that the parties to a supply contract may vary the contract with the written consent of each contracting party.

New Division 2—Dispute resolution

New Section 36 – Application of div 2

New section 36 outlines that Division 2 applies where a dispute arises between any or all of the parties to the supply contract about its terms.

New Section 37 – No final offer arbitration

New section 37 makes it clear that the parties cannot use final offer arbitration as a means to resolve disputes under any circumstances. New section 37 outlines what constitutes final offer arbitration. The removal of final offer arbitration:

- discourages parties from submitting preferred and unrealistic bargaining positions; and
- ensures that an arbitrator may, as is the case in commercial arbitrations, exercise a discretion to make an award that is reasonable between the parties.

New Section 38 – Mediation

New section 38 provides for mediation processes where parties to a supply agreement are in dispute. If a party asks the Commissioner to refer a dispute to mediation, the Sugar Industry Commissioner or a person appointed by the Sugar Industry Commissioner will act as a mediator. New Section 38 outlines matters about costs of mediation and that unpaid costs are recoverable as a debt to the mediator.

New section 38 will not affect any rights or remedies to which a party to the dispute may be entitled.

New Section 39 – Arbitration

New section 39 enables the Sugar Industry Commissioner to refer the dispute to arbitration where the Sugar Industry Commissioner certifies that the dispute has not been resolved by mediation under new section 38. Referral to arbitration must proceed only with the agreement of the parties. The *Commercial Arbitration Act 1990* (CA Act) applies to any arbitration that occurs in accordance with new section 39. The CA Act provides a framework for arbitration of commercial disputes, as opposed to resolution by the court system.

The arbitrator cannot be ordered to pay costs or part costs of the arbitration. New Section 39 also outlines matters about costs of arbitration and that unpaid costs are recoverable as a debt to the arbitrator.

Omission of ch 2, pt 5 (Mills)

Clause 8 omits Chapter 2, part 5 of the Act relating to mills. This part essentially dealt with how cane production areas were to be affected by the closure of a mill and how it would affect relevant mill suppliers' committees, cane production boards and negotiating teams. Since CPA is being abolished by this Bill, as well as mill suppliers' committees, cane production boards and negotiating teams, these provisions are now redundant.

Insertion of new ch 3 pt 1, hdg

Clause 9 inserts a new heading for Chapter 3, part 1. The new heading is "Marketing of sugar vested in QSL".

Amendment of s 100 (Vesting of sugar in QSL)

Clause 10 amends section 100 of the Act to provide an exemption from sugar vesting in QSL where the Sugar Industry Authority grants an exemption for the sugar under part 2 of Chapter 3 of the Act.

Amendment of s 102 (Schemes for payment)

Clause 11 amends section 102 of the Act to after the notification requirements for a payment scheme to take effect. Previously QSL had to notify the mill suppliers committee because mill suppliers committees are being abolished and more than one collective may exist, the obligation has been shifted to the mill owner to inform relevant growers.

Amendment of s 103 – (Production of brands of raw sugar)

Clause 12 amends section 103 of the Act that empowers QSL to give a direction to a mill owner requiring the owner to produce a particular brand of raw sugar in a particular period. The obligation on QSL to inform the mill suppliers committee has been changed to an obligation on the mill owner to inform relevant growers.

Amendment of s 105 (Sugar quality standards)

Clause 13 amends section 105 which empowers QSL to make standards about how sugar quality is decided and affects amounts payable to a mill owner. The obligation QSL to give notice to relevant growers about the meeting of a sugar quality standard has been changed to an obligation on the mill owner to inform relevant growers. The reasons for this are the same as those set out above for the amendment to section 102.

Amendment of s 107 (Exemption of sugar for local consumption)

Clause 14 amends section 107 of the Act. Section 107 provides mills with the power to sell 0.25% of their production for local consumption. This is called “exempt sugar”.

This right will remain, however this sugar will be referred to as “local consumption exempt sugar” to avoid confusion with the scheme exemptions from vesting in clause 18 of the Bill.

Insertion of new ch 3, pt 2

Clause 15 inserts a new Chapter 3, part 2 into the Act providing for exemptions from vesting in QSL. The new chapter provides for the retention of vesting, but with a scheme for exemptions. New Chapter 3 provides a transparent and accountable process involving an independent third party (the Sugar Industry Authority) with the power to grant exemptions from vesting. The criteria for granting an exemption are framed so that, providing an applicant can demonstrate the applicant has a domestic use, the applicant will receive an exemption. The Authority is not given a wide discretion. This is important to provide confidence for mills and others investigating alternative uses that their applications will be “as of right” provided they can demonstrate a domestic use. The system would be deliberately separated from QSL, because it is a competitor in the domestic market.

It is the person who owns the sugar immediately prior to vesting that can apply for the exemption. This is a departure from the existing operation of the Act under which only mills could deal with sugar.

In general, the current provisions of section 100 of the Act still apply, that is, all sugar vests on manufacture. The new model will, however provide for an exception to that general rule for “exempt sugar”.

NEW PART 2—EXEMPTIONS FROM VESTING IN QSL*New Division 1—Preliminary***New section 107A – Definitions for pt 2**

New section 107A provides definitions for Chapter 3, part 2.

New section 107B – Meaning of “exempt use”

New section 107B details the types of use of sugar that are eligible for exemption from vesting in QSL. Those uses (“exempted uses”) are:

1. sugar to be used for the manufacture in Australia of alternative products (eg ethanol).

2. sugar to be exported in bags (but not in bulk).
3. for any other similar use to the abovementioned uses.

New Division 2— Periodic estimates

New section 107C – Information given to authority

New section 107C will require suppliers to provide the Sugar Authority with estimates of the total production for the season and the anticipated amount of that production for which an exemption will be sought on 31 March, 31 May, and 31 July in each crushing season (periodic estimates). This will enable the Sugar Authority to provide details to QSL of how much sugar QSL is likely to have vested in it. QSL has advised that this information will adequately protect the export single desk by keeping it informed of what sugar is likely to vest in it during that crushing season

New section 107D – Information authority gives QSL

New section 107D requires the authority to give QSL—

- (a) the name of the person;
- (b) an estimate of the amount of the person’s sugar that will, under section 100, become the property of QSL.

within 7 days after each periodic estimate day.

The authority is prohibited from giving QSL any periodic estimate in order to ensure commercially sensitive information is not given to QSL, a competitor on the domestic market.

Division 3—Obtaining exemption certificate

Subdivision 1—Exemption applications

New section 107E – Applying for exemption

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

New section 107F - Requirements for application

New section 107F reduces the amount of detail an applicant for an exemption is required to provide to the Sugar Authority from that required under the Bill. An application for an exemption will only need to provide details of:

- The supplier seeking the exemption;
- The amount of sugar for which an exemption is being sought;
- The exempt purpose for which the sugar is proposed to be used.

QSL has advised that that is the only information it requires. This reduces to a minimum the amount of information supplied to QSL, a potential rival on the domestic market.

New section 107G – Authority may seek further documents or information

New section 107G requires the Authority's decisions in relation to the applications for late exemptions to be made within 28 days of the application being lodged. If the Authority needs to request extra information in order to make a decision on an application, the time between the request being made for the extra information and its supply by the applicant will be added to the 28 day time limit. If the Authority has not decided the application within the 28 day period, the application will be deemed to have been granted.

The new section only applies to late exemptions and not applications for exemption because an application for an exemption other than a late exemption can be made prior to a contract, agreement or understanding being entered into. Rather than documents or supporting evidence being required up front, such information can be supplied later in an annual return.

Subdivision 2—Deciding exemption application**New section 107H – Decision on exemption application**

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

New section 107I – Criteria for decision

New section 107I requires the Sugar Authority to grant an exemption application if satisfied—

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

New section 107J – Exemption conditions

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

New section 107K – Period of exemption

New section 107K provides that an exemption may be granted for a season or seasons.

Subdivision 3—Action after decision on exemption application**New section 107L – Grant of exemption application**

New section 107L requires the Authority to issue to the applicant an exemption certificate containing certain information as soon as practicable.

New section 107M – Exempt use on copy of exemption certificate

New section 107M requires the Authority to keep a copy of the exemption certificate.

New section 107N – Information authority gives QSL

New section 107N requires the Sugar Authority to provide QSL with details of exemptions granted, other than late exemptions, by no later than 30 September in the crushing season to which the application relates. The information required is the name of the person and the amount of the person's sugar that will become the property of QSL.

New section 107O – Notice of refusal of exemption application

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

*Division 4—Procedure for amendment of exemption***New section 107P – Application for amendment of exemption**

New section 107P enables a person to apply for a variation of that person's exemption. If an Applicant is granted an Exemption, and for some reason they can no longer use the sugar for the Exempted Use or, in the case of a late exemption the On-User has changed, the Applicant must apply to the Sugar Authority for a variation of the Exemption. The Authority may grant a variation to the Exempted Use on sighting appropriate evidence of the new proposed use. The Authority may recover its costs of considering a variation.

*Division 5—Consequences of improper use of exempt sugar by exemption holder or on-user***New section 107Q – Consequences**

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

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

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

Division—6 Annual Returns

New section 107R – Annual return

New section 107R requires a person who has been granted an exemption, other than a late exemption, to lodge an annual return by no later than 31 January in the year following its grant. The annual return will require the applicant to account for how the sugar the subject of the exemption was used. This requirement is a consequence of not requiring applicants to provide details of on-users at the time the exemption is granted. Significant penalties have been provided for failure to provide a return by the set date.

New section 107S – Authority may seek further documents or information

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

New Division 7—Application of Freedom of Information Act 1992

New section 107T – Exempt matter

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

New Division 8—Prohibited conduct**New section 107U – False or misleading application**

New section 107U makes it an offence to include false or misleading information in an exempt sugar application or an application to vary an exemption. The penalty for the offence is 3000 penalty units. The penalty has been set very high to offset the potentially significant profits that could be made by illegally selling sugar on the international market. Such illegal trade would prejudice the single desk marketing of sugar on the international market.

New section 107V – Improper use of exempt sugar

New section 107V makes it an offence to use exempt sugar improperly. Again the penalty is 3000 penalty units. The reason for the high penalty is the same as for new section 107U above.

New section 107W – False or misleading periodic estimate and annual return

New section 107W makes it an offence to give the authority a periodic estimate or annual return containing information the person knows is false or misleading in a material particular. Again the penalty is 3000 penalty units. The reason for the high penalty is the same as for new section 107U above.

New section 107X Executive officers must ensure corporation complies with div 8

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

Amendment of s 128 (Membership)

Clause 16 adds to the qualifications of members of the Sugar Industry Authority may have to include experience in the application of competition principles. This skill is applicable to the new role given to the Authority under clause 21 of the Bill of granting certificates allowing use of exempt sugar.

Amendment of s 135 (Functions of authority)

Clause 17 adds to the functions of the Sugar Industry Authority the function of granting exemptions from the vesting of sugar and the giving of exemption certificates.

Amendment of s 138 (Authority's budget)

Clause 18 amends section 138 about the budget of the Sugar Industry Authority. Currently QSL pays the Authority's budget. The amendment will mean the QSL will pay the Authority's budget other than the fees and charges the Authority gets from matters associated with the granting of exemptions from the vesting of sugar.

Omission of ch 4, pt 6 (Cane production boards)

Clause 19 omits Chapter 4, part 6 of the Act which deals with Cane Production Boards. Cane Production Boards are small, part-time bodies of grower and miller representatives with an independent chair that handled the administration of cane production areas. Cane Production Boards are no longer required following the removal by the Bill of the cane production area System and the statutory bargaining system.

Omission of ch 4, pt 9 (Negotiating teams)

Clause 20 omits Chapter 4, part 9 of the Act which deals with negotiating teams. Negotiating teams are no longer required following the removal by the Bill of the statutory bargaining system.

Amendment of s 233 (Functions of commissioner)

Clause 21 gives the Sugar Industry Commissioner the additional power of accepting each intention to contract lodged with the commissioner under section 20(5). New section 19 requires that before an eligible collective or a mill owner can refer a dispute about a proposed collective contract to compulsory arbitration during 2005, the eligible collective and the mill owner must enter into an intention to contract.

Amendment of s 223A (Powers of commissioner)

Clause 22 amends section 223A of the Act that sets out the powers of the Sugar Industry Commissioner. The amendment will give the Commissioner the power to acquire, hold, dispose of, and deal with property including assets transferred to the Commissioner from Cane Production Boards and Negotiating teams under new sections 388 and 410.

Amendment of s 234 (Appeal to Magistrates Court)

Clause 23 amends section 234 of the Act which enables appeals to the Magistrates Court against decisions made under the Act. The amendment will delete appeals against a decision by a cane production board to refuse an application by a person to register any matter on a register it keeps. The provision is no longer required because cane production boards will be abolished by this Bill.

Insertion of new s 234A

Clause 24 inserts a new section 234A which enables appeals to the District Court from decisions of the Sugar Industry Authority regarding matters associated with the granting of exemptions from the vesting of sugar.

Replacement of ss 237–242

Clause 25 omits the following sections which authorised certain activities under the *Trade Practices Act 1974* which would otherwise have been in breach of that Act for being anti-competitive:

- Section 237 – cane production areas;
- Section 238 – expansions;
- Section 239 – supply agreements – individual agreements;
- Section 240 – supply agreements – collective agreements;
- Section 241 – supply agreements – payments;
- Section 242 – cane quality programs.

All these sections have become redundant following the reforms being implemented by this Bill. Clause 28 inserts new section 237 which

provides an authorisation for collective contracts under the Act for the purposes of the *Trade Practices Act 1974 (Cth)*.

New Section 237 – Collective Contracts

New section 237 authorises the making of collective supply contracts under the Act for the purposes of the *Trade Practices Act 1974 (Cth)* where they are made between a group of growers and a mill owner who are within the same region.

New section 237 specifies the extent to which the authorisation applies in relation to collective contracts. Specifically authorised activities under new section 237 are:

- the acceptance and crushing of cane by a mill at a time fixed under a collective agreement;
- the payment of a price for cane by a mill owner to a grower under a supply agreement mentioned in this section;
- the receipt of a price for cane by a grower from a mill owner under a supply agreement mentioned in this section; and
- 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.

Omission of s 248 (General provisions about show cause proceedings)

Clause 26 omits section 248 of the Act which sets out general provisions about show cause provisions. The section is no longer required because the only such requirement is in section 32 of the Act about cane production boards cancelling cane production area. Section 32 is being omitted from the Act by this Bill.

Omission of ch 10, pts 1 and 2

Clause 27 omits parts 1 and 2 of Chapter 10 of the Act. Chapter 10 dealt with transitional provisions related to the transition from the *Sugar Industry Act 1991* to the *Sugar Industry Act 1999*. These provisions have served their purpose and are no longer required.

Replacement of ch 10, pt 3, hdg

Clause 28 omits the heading to part 3 of Chapter 10 and provides for a new heading for Chapter 10, part 1 entitled “Transitional provisions for *Sugar Industry and Other Legislation Amendment Act 2003*”.

Insertion of new ch 10, pt 2

Clause 29 inserts a new part 2 of Chapter 10 of the Act that provides for “transitional provisions for the *Sugar Industry and Other Legislation Amendment Act (No 2) 2003*.”

**NEW PART 2—TRANSITIONAL PROVISIONS FOR
SUGAR INDUSTRY REFORM ACT 2004*****New Division 1—Preliminary*****New section 373 - Definitions for pt 2**

New section 373 includes definitions for part 2 of the new Chapter 10.

New Division 2—Dissolution of cane production boards***New Subdivision 1—Preliminary***

Cane Production Boards (CPBs) are to be abolished under this Bill. To facilitate the dissolution of CPBs the provisions of this Division will enable the CPBs to transfer their assets and liabilities to a receiving entity provided that that transfer occurs 1 January 2004. If no receiving entity is found by that date, the assets and liabilities of the CPB transfer instead to the Sugar Industry Commissioner.

New section 374 - Definitions for div 2

New section 374 inserts definitions for Division 2 of the new Chapter 10. The new Division relates to the dissolution of cane production boards.

*New Subdivision 2—Voluntary dissolution***New section 375 - Application to transfers from more than 1 board**

New section 375 enables the provisions of Division 2 to apply to the transfer of assets and liabilities of multiple Cane Production Boards (CPBs) to a single receiving entity.

New section 376 - Decision to transfer to person

New section 376 enables a CPB to decide to dissolve and transfer its assets and liabilities to a person before 1 January 2004.

New section 377 - Things that must be decided for the transfer

New section 377 requires the board of a CPB to decide the person (the “receiving entity”) it will transfer its assets and liabilities to.

New section 378 - Deciding the receiving entity

New section 378 sets out the conditions that a CPB board must meet before deciding on a receiving entity. Those conditions are that the board has received written notice from the receiving entity that it consents to the transfer and that the board is satisfied that the relevant mill owner and a majority of growers who supply cane to the mill consent to the transfer.

New section 379 - Notice of decision about receiving entity

New section 379 requires the board of a CPB to give the Minister notice of its choice of a receiving entity.

New section 380 - Minister’s decision

New section 380 requires the Minister to consider the notice of decision provided by a CPB board under new section 379. If the Minister considers

that all requirements of this Act have been met, the Minister must approve the transfer. If the Minister does not consider that all the requirements of the Act have been complied with, the Minister must refuse to approve the transfer and state the reasons for the refusal.

New section 381 - Transfer and dissolution

New section 381 provides that on the transfer day, all of the boards assets and liabilities are transferred to and become the assets and liabilities of the receiving entity. On the transfer day the board of the CPB is dissolved.

New section 382 - Exemption for cooperatives

New section 382 excludes the operation of section 268 of the *Cooperatives Act 1997* to the transfer of assets from a board to the receiving entity if the receiving entity is a cooperative. This amendment will allow the smooth transfer of a CPB to a cooperative by waiving the usual rules for acquisition and disposal of assets by cooperative.

New section 383 - Registration of transferred assets

New section 383 sets out evidentiary provisions relating to the transfer of assets from a board to the receiving entity.

New section 384 - References to board

New section 384 provides that references to the board in an Act or document existing before dissolution will, from its dissolution, take effect as references to the receiving entity.

New section 385 - Continuity of proceedings and matters

New section 385 provides that proceedings that had commenced or that could have been taken if a board continued to exist, may be continued or commenced against the relevant receiving entity.

New section 386 - Employees

New section 386 provides that on the transfer day any employees of a board will have their employment terminated unless the receiving entity agree to continue that employment. An employee whose employment is terminated has the rights given to an employee under the Industrial Relations Act.

New section 387 - Members cease holding office

New section 387 provides that each person who was an officer of the board goes out of office on the transfer day. No compensation is payable for the persons losing office on the transfer day.

New Subdivision 3—Involuntary dissolution

This subdivision deals with the situation where a cane production board has failed to nominate a replacement entity by 1 January 2004 or the Minister has refused to approve the transfer to the nominated replacement entity. In these circumstances transfer will be made to the Sugar Industry Commissioner.

New section 388 – Automatic dissolution

New section 388 provides that if a board has not given the Minister a notice under new section 379 or the Minister has refused to approve a notice, the boards and assets will transfer to the Sugar Industry Commissioner on the transfer day (1 January 2004).

New section 389 - Continuity of proceedings and matters

New section 389 provides that proceedings that had commenced or that could have been taken if a board continued to exist, may be taken against the Commissioner.

New section 390 - Employees

New section 390 provides that on the transfer day any employees of a board will have their employment terminated. An employee whose

employment is terminated has the rights given to an employee under the Industrial Relations Act.

New section 391 - Members cease holding office

New section 391 provides that each person who was an officer of the board goes out of office on the transfer day. No compensation is payable for the persons losing office on the transfer day.

Insertion of new ch 10, pt 2, div 3

Clause 33 inserts a new Division 3 into Chapter 10, part 2 dealing with the abolition of cane production areas.

New Division 3—Abolition of cane production areas**New section 392 - Definition for div 3**

New section 392 inserts definitions for Division 3.

New section 393 - Abolition of existing cane production areas

New section 393 provides that cane production areas are abolished and that no compensation is payable in respect of that abolition.

New section 394 - Undecided applications taken to have lapsed

New section 394 provides that any applications for the grant, variation or cancellation of cane production area are taken to have lapsed. No compensation will be payable for the lapse.

New section 395 - End of processes relating to cane production areas

New section 395 provides that any process that had commenced seeking expansion of the CPA area of a mill is ended with no compensation payable.

New section 396 - Existing instrument, agreement, understanding and undertaking

New section 396 will preserve the legal affect of any contract which identified a grower by reference to the grower's cane production area.

Insertion of new ch 10, pt 2, div 4

inserts a new Division 4 of Chapter 10, part 2 dealing with the termination of supply agreements.

*New Division 4—Supply agreements***New section 397 – Definition for div 4**

New section 397 provides definitions for the new Division 4.

New section 398 - Termination of existing supply agreements

New section 398 provides that any existing supply agreements are terminated with no compensation payable.

New section 399 - Undecided applications taken to have lapsed

New section 399 provides that any applications that have been made for a variation to a collective agreement are deemed to have lapsed with no compensation payable.

Insertion of new ch 10, pt 2, div 5

inserts a new Division 5 of Chapter 10, part 1 dealing with the termination of mill suppliers' committees.

New Division 5—Mill suppliers’ committees***New Subdivision 1—Preliminary*****New section 400 - Definition for div 5**

New section 400 provides definitions for the new Division 5.

New Subdivision 2—Incorporated mill suppliers’ committees**New section 401 - No effect on corporate status**

New section 401 provides that if a mill suppliers’ committee has corporate status, this new division has no affect on that corporate status. This provision will have application to the Kalamia mill suppliers committee, which is incorporated. Whilst that committee will cease to have functions under this Act, the company will continue to exist.

New Subdivision 3—Transfer of assets and liabilities of unincorporated mill suppliers’ committees to replacement corporation**New section 402 - Application of sdiv 3**

New section 402 provides that this Division applies to a mill suppliers’ committee that is not a corporation.

New section 403 - Definitions for sdiv 3

New section 403 provides definitions for the new subdivision 3 of Division 5.

New section 404 - Transfer of mill suppliers’ committee’s assets and liabilities

New section 404 provides that a mill suppliers’ committee’s assets and liabilities are transferred to the “replacement corporation”. The background to this amendment is that over 75 years of compulsory levies under the now repealed *Primary Producers’ Organisation and Marketing*

Act 1926 (PPO&M Act), the Canegrowers organisation and its subsidiary bodies at mill and district level accumulated significant assets. Because the subsidiary bodies were not incorporated under the PPO&M Act, the central organisation in Brisbane held these bodies' assets in trust. While the PPO&M Act only required land to be held in trust (section 30B), industry practice was that, the Canegrowers organisation, as the only incorporated body, also held effective control over other, non-real assets.

As part of removing the unconstitutional compulsory levies under the *Primary Industries Bodies Reform Act 2000* (PIBR Act), the Canegrowers organisation was transformed from a statutory body (Queensland Cane Growers' Organisation) to a private company (Queensland Cane Growers' Organisation Limited referred to in this subdivision as the replacement corporation). The assets that were held in trust for the subsidiary bodies were continued to be held in that capacity, this time by the new private company.

The PIBR Act also enables growers in an area to either change the trustee or transfer the trust assets to another corporation. If that has occurred the trusts being transferred under this Bill will go to that new trustee or corporation.

Assets from these trusts are to be used for local purposes and have been used to fund the activities of mill suppliers' committees under the Sugar Industry Act. Accordingly it is considered appropriate to transfer the assets and liabilities of mill suppliers' committees to these trusts.

New section 405 - Purpose trust for eligible growers

New section 405 provides that the assets and liabilities transferred to the replacement corporation are to be held against the trusts referred to above.

New section 406 - Exemption for cooperatives

New section 406 provides that if the replacement corporation is a cooperative, section 268 of the *Cooperatives Act 1997* (Acquisition and disposal of assets) does not apply to the transfer of the mill suppliers' committee's assets and liabilities to the replacement corporation.

New section 407 - Employees

New section 407 provides that on 1 January 2004 any employees of a mill suppliers' committee will have their employment terminated. An

employee whose employment is terminated has the rights given to an employee under the *Industrial Relations Act*.

New section 408 - Members cease holding office

New section 408 provides that each person who was a member of a mill suppliers' committee goes out of office on 1 January 2004. No compensation is payable for the persons losing office on the transfer day.

Insertion of new ch 10, pt 2, div 6

Clause 36 inserts a new Division 6 of Chapter 10, part 2 dealing with the abolition of negotiating teams.

New Division 6—Abolition of negotiating teams

New section 409 - Definitions for div 6

New section 409 provides definitions for the new Division 6

New section 410 - Transfer to commissioner

New section 410 provides that on 1 January 2004 the assets and liabilities of negotiating teams transfer to the Sugar Industry Commissioner.

New section 411 - Abolition

New section 411 provides that on 1 January 2004 each negotiating team is abolished.

New section 412 - Continuity of proceedings and matters

New section 412 provides that proceedings that had commenced or that could have been taken if a negotiating team continued to exist, may be taken against the Commissioner and all matters started by a negotiating team may be completed by the Commissioner.

New section 413 - Employees

New section 413 provides that on 1 January 2004 any employees of a negotiating team will have their employment terminated. An employee whose employment is terminated has the rights given to an employee under the Industrial Relations Act and may enforce those rights against the Commissioner.

New section 414 - Members cease holding office

New section 414 provides that each person who was a member of a negotiating team goes out of office on 1 January 2004. No compensation is payable for the persons losing office on the transfer day.

Insertion of new ch 10, pt 2, div 7

Clause 37 inserts a new Division 7 of Chapter 10, part 2 dealing with appeals.

*New Division 7—Appeals***New section 415 - Definitions for div 7**

New section 415 provides definitions for the new Division 7.

New section 416 - Appeal to Magistrates Court against board's decision

New section 416 provides that any appeals to the Magistrates Court against a decision of a cane production board that have been commenced or which could have been made lapse on 1 January 2004. Any such appeal will become irrelevant

New section 417 - Appeal to District Court against Magistrates Court's decision

New section 417 provides that any appeal from a Magistrates Court to the District Court relating to a decision of a cane production board lapses.

Insertion of new ch 10, pt 2, div 8

Clause 38 inserts a new Chapter 10, part 2, Division 8 relating to injunctions.

New Division 8—Injunctions**New section 418 - Definitions for div 8**

New section 418 provides definitions for the new Division 8.

New section 419 - Undecided applications taken to have lapsed

New section 419 provides that applications for injunctions relating to repealed provision lapse on 1 January 2004.

New section 420 - Injunctions of no effect after commencement

New section 420 provides that injunctions granted that relates to a repealed provision have no effect after 1 January 2004.

Amendment of schedule (Dictionary)

Clause 39 amends the dictionary to delete definitions that are no longer relevant following passage of this Bill.

**PART 3—MINOR AND CONSEQUENTIAL
AMENDMENTS OF ACTS****Acts amended—schedule**

Clause 40 makes a number of minor consequential amendments to the Sugar Industry Act, the Duties Act 2001, Liens on Crops of Sugar Cane Act 1931, Plant Protection Act 1989, Transport Infrastructure Act 1994 and Transport Operations (Road Use Management) Act 1995

