

# Primary Industries and Other Acts Amendment Bill 2008

## Explanatory Notes

### General Outline

#### Short title of the Bill

The short title of the Bill is the *Primary Industries and Other Acts Amendment Bill 2008* ('the Bill').

#### Policy objectives of the Bill

The Bill has two major policy objectives:

- to amend the *Rural and Regional Adjustment Act 1994*, principally to broaden the potential for QRAA's operations; and
- to amend the *Sugar Industry Act 1999*, the *Land Act 1994* and the *Land Title Act 1994* to dissolve the office of the Sugar Industry Commissioner ('the commissioner') and to provide an alternative approach for the future administration of sugar access rights.

The amendments to the *Rural and Regional Adjustment Act 1994* will:

- allow QRAA to administer approved assistance schemes for the benefit of businesses and not for profit agencies in Queensland, irrespective of their size and connection with the rural or regional sector, when such administration is required by the Queensland Government;
- allow QRAA to administer authorised interstate schemes for the benefit of the rural and regional sector, and primary producers and small businesses when they are experiencing temporary difficulty in and for the Commonwealth and other States;
- allow the chief executives of Queensland Treasury and the Department of Primary Industries and Fisheries (DPI&F) to each nominate a senior executive (as defined in the *Public Service Act*

1996) to attend meetings of the QRAA board of directors and to act in the role of director, and provide that the senior executive need not be from the chief executive's department; and

- clarify that a quorum of the board includes the government directors.

The amendments to the *Sugar Industry Act 1999*, the *Land Act 1994* and the *Land Title Act 1994* will:

- dissolve the commissioner;
- provide for the Land Court to assume jurisdiction for applications regarding non consent sugar access rights matters;
- preserve current sugar access rights and provide for future sugar access rights;
- provide that future sugar access rights are recorded on land titles and allow cane railway easements to be registered as easements on titles; and
- deal with spent and expiring transitional provisions and relevant consequential amendments that flow from the dissolution of the commissioner.

## **Reasons for the Bill**

### ***Reasons regarding QRAA***

QRAA is a statutory authority established under the *Rural and Regional Adjustment Act 1994* (RRA Act) to deliver financial and other assistance and incentives. Primarily, the object of the assistance and incentives is to foster the development of a more productive and sustainable rural and regional sector.

QRAA's activities are principally directed at providing assistance to rural and regional producers whose businesses show long-term viability, although QRAA will also help persons leave rural and regional production. QRAA may also assist small businesses (other than rural and regional producers), and other elements of Queensland's economy, in periods when they are experiencing temporary downturn.

As a result of a legislative review of the RRA Act in 2003, the QRAA charter was expanded to include the regional sector but the metropolitan area has until now remained outside the scope of QRAA's operations.

It is considered that the Government should have the flexibility to utilise QRAA's expertise and systems to deliver targeted assistance to businesses and not for profit organisations in Queensland, irrespective of their size and connection with the rural or regional sector. This requires the scope of the Act to expand beyond the rural and regional sector and those experiencing temporary difficulty and, accordingly, amendments are included in the Bill to enable this to occur for QRAA's operation within Queensland.

Further, the legislative review in 2003 also recommended that the RRA Act be amended to empower QRAA to administer Government assistance schemes for other jurisdictions within Australian borders.

In this regard, in July 2005, QRAA sought the support of the Minister for Primary Industries and Fisheries to undertake the administration of a Commonwealth Government assistance scheme in New South Wales. However, it was considered at that time that the objects of the RRA Act were not wide enough to enable QRAA to operate such an assistance scheme. A provision in the *Acts Interpretation Act 1954*—which provides that the jurisdiction of a Queensland legislative instrument is presumed to be restricted to Queensland, unless otherwise expressly stated—was considered applicable.

While there are not likely to be many future opportunities for QRAA to administer schemes for the benefit of the rural and regional sector in other jurisdictions, such opportunities do arise on occasions, and the Bill provides the certainty for QRAA to provide such a service, subject to Ministerial authorisation to enter into an arrangement to administer. Administration of assistance schemes for other jurisdictions would be on a full cost pricing basis and would strengthen QRAA's skills base and potentially reduce overheads.

Under the RRA Act, the chief executive of the department which administers the RRA Act (currently the DPI&F), and the chief executive of the department which administers the *Financial Administration and Audit Act 1977* (currently Queensland Treasury) are *ex officio* directors of QRAA. The amendments will clarify that each chief executive may delegate his/her role as a director to a senior executive (as defined in the *Public Service Act 1996*), who need not be from that chief executive's department. The delegate will be required to have suitable skills and experience.

The proposed amendments will also clarify that the government directors will be counted towards a quorum of the QRAA board, this will assist a

quorum to be reached and thus allow for more efficient conduct of board meetings.

### ***Reasons regarding sugar***

As a result of the sugar industry reforms in 2004, 2005 and 2007, the responsibilities of the office of the commissioner have been considerably reduced.

Over the course of the reforms, the future of the office has been subject to consultation between the DPI&F and the sugar industry. In 2007, being aware of the commissioner's reduced responsibilities following industry deregulation, the Queensland government indicated its intention to phase out the office.

Since the 2007 amendments to the commissioner's role under the *Primary Industries Acts Amendment and Repeal Act 2007*, the commissioner's remaining duties have been to:

- decide the granting, variation and cancellation of sugar access rights (namely permits to pass and cane railway easements);
- maintain the access rights register; and
- assist with the mediation and arbitration of disputes regarding the supply contract process for 3 further years, in circumstances where a cane supply contract had referred to the commissioner in this capacity and that supply contract was on foot. (Note: Such assistance has never been requested by the industry and, accordingly, has never been provided by the commissioner. Instead, parties to disputes have been using commercial dispute resolution processes).

The *Sugar Industry Act 1999* creates two types of statutory sugar access rights:

- Cane railway easements—These sugar access rights are granted to a mill owner to facilitate harvest and supply of cane. They are essentially a permanent encumbrance on the subject land while the mill operates and the railway line remains in place.
- Permits to pass—These sugar access rights confer a right to a cane grower or mill owner to pass over another person's land to facilitate harvest and supply of cane or to service a cane railway easement.

As at 30 June 2007, there were 4,795 cane railway easements and 198 permits recorded in the access rights register.

Sugar access rights may be granted by consent (that is, with the agreement of the landholder of the affected land).

Alternatively, in the absence of consent between the parties, sugar access rights may be granted by the commissioner. In such circumstances, the commissioner has the ability to order the immediate grant, or variation, of a non consent access right. The normal process rights afforded to an affected landholder—that is, notice, objections, appeals and compensation (payable by the applicant to the landholder)—are determined after the event.

As part of the proposed phasing out process, an Access Rights Working Group (‘Working Group’) was convened to investigate alternatives for the future administration of sugar cane access rights. The Working Group was chaired by the DPI&F and consisted of representatives from the Australian Sugar Milling Council (ASMC), CANEGROWERS, Queensland Transport, and the Departments of Natural Resources and Water and Justice and Attorney-General.

The Working Group found that the office of the commissioner was not sustainable and recommended that it be dissolved by 30 June 2008. The commissioner supports this proposal and, in recent years, has been working toward the dissolution of the office.

The major recommendations of the Working Group were that:

- the office of the Sugar Industry Commissioner be dissolved by 30 June 2008;
- there be ongoing legislation to preserve current sugar access rights and to provide for future sugar access rights;
- future sugar access rights are recorded on land titles and that legislation regarding land titles be amended to allow cane railway easements to be registered as easements on titles; and
- the Land Court assume jurisdiction for applications regarding non consent sugar access rights matters.

These recommendations are the basis of the policy to be implemented by legislative changes to amend the *Sugar Industry Act 1999*, the *Land Act 1994* and the *Land Title Act 1994*.

The Bill will continue to enable sugar access rights to be granted by consent between the parties and will transfer the commissioner's existing role regarding non consent sugar access rights to the Land Court.

Current access rights are at present being recorded on the relevant land title registers as notices, and future access rights will be recorded on the relevant land title registers when the Titles Office is notified of the interest and then recorded or registered when the Titles Office formalities are completed. Amendments to the *Land Act 1994* and the *Land Title Act 1994* will allow registration of future cane railway access rights as easements on affected titles by inserting a 'public utility provider' category for sugar mill owners to allow registration as an easement in gross. A time period will need to be specified for future permits to pass.

In preparation for the dissolution of the commissioner, each current cane railway easement and permit to pass is being recorded by the Titles Office as a notice on the affected land title. The recording of notices will ensure that all current access rights are recorded permanently and accurately as notices on Queensland's Automated Titles System and that searches can be conducted efficiently. Further, the notices will resolve a major difficulty with the accuracy of the current access rights register, by providing automatic updates for ownership and land description changes.

Amendments to Chapter 8 include a sunset clause to align the provision with a related end date of the transitional arrangements that were in place as part of the 2005 reforms to the single sugar desk. Further, the amendments deal with spent and expiring transitional provisions and relevant consequential amendments that flow from the dissolution of the commissioner.

The new Chapter 9 sets out a range of necessary transitional provisions including a provision to provide for the Land Court to assume responsibility for the continuation of any matters not yet completed at the date of dissolution, by the commissioner.

The existing transitional process regarding cane supply contract dispute resolution in Chapter 9 of the *Sugar Industry Act 1999*, which was to expire on 30 June 2010, is to be removed. This process has not been used by industry since it was inserted in 2004. Instead, parties to a dispute are able to use, and have been using, commercial processes for such disputes.

## **How the policy objectives will be achieved**

Passage of the Bill will achieve Queensland's policy objectives by amendment of the relevant legislative provisions.

The RRA Act requires that a review be conducted by October 2009 and that a report be tabled in the Legislative Assembly. The required review will provide an opportunity to fully consider QRAA's future direction and to evaluate the impact of the proposed amendments.

## **Alternative method of achieving the policy objectives**

There are no alternative methods of achieving the Government's policy objectives in relation to the RRA Act amendments. The impact of these amendments on the delivery of QRAA's core business is expected to be minimal. QRAA's primary focus will continue to be Queensland's rural and regional sector; however, QRAA will have the potential to deliver a wider range of Government assistance measures.

In relation to sugar, the Working Group examined a range of options including the removal of special purpose legislation and the adoption of normal commercial practice for the acquisition of lands required for the harvest and delivery of cane to a mill. Ongoing legislation was found to be warranted, based mainly on consideration of the cane railway system's contribution to Queensland's freight infrastructure, the need to maintain harvest efficiency and industry competitiveness, and the continuing ability to safeguard the property rights of individuals.

## **Estimated cost for Government implementation**

There will be no appreciable administrative costs in relation to this Bill.

Empowering QRAA to administer broader schemes will strengthen QRAA's capacity to maintain its existing core skills and infrastructure by providing continuity of work and opportunities for skills development for temporary staff. A pool of skilled staff will then be available to administer assistance for any new event affecting the rural and regional and business sectors in Queensland. In addition, authorised interstate schemes will be provided on a full cost pricing basis.

No significant financial impacts are anticipated from the sugar amendments. Currently, the commissioner's 2007-2008 budget is being provided by the DPI&F, with costs shared jointly by DPI&F, the ASMC and CANEGROWERS. Previously, industry had funded this office by

deductions from the now deregulated vesting of the Queensland sugar crop in Queensland Sugar Limited. Upon dissolution of the commissioner's office, the Land Court has indicated that it expects to be able to handle the anticipated volume of access rights applications within its existing resources and the Titles Office will register access rights on affected land titles, also within their existing resources.

The amendments aim to provide an alternative, more cost effective means of administering the existing access rights system in a way which better accords with Government land registration practices.

### **Consistency with the Fundamental Legislative Principles**

The Bill has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

### **Consultation**

With regard to the RRA amendments, AgForce and the Queensland Farmers Federation (QFF) were consulted. AgForce and QFF support these proposals.

Consultation on the amendments has been undertaken with Queensland Treasury and the Department of the Premier and Cabinet as well as QRAA.

In connection with the sugar amendments, consultation has been conducted with the major sugar milling and growing organisations, namely the ASMC and CANEGROWERS (both of which also participated in the Working Group). The Boards of both ASMC and CANEGROWERS have endorsed the proposal for the future administration of access rights.

Queensland Treasury, Queensland Transport, and the Departments of the Premier and Cabinet, Natural Resources and Water, Justice and Attorney-General, and Tourism, Regional Development and Industry have been consulted and support the sugar amendments.

The proposal essentially involves the continuation of the existing system for the administration of access rights by alternative means. Notification of the new arrangements will be publicly available on the commissioner's website and the commissioner will formally advise legal conveyancing practitioners of the new arrangements prior to the dissolution of the office.



With respect to the spent and expiring provisions to be amended or removed, the Sugar Industry Commissioner and Queensland Sugar Limited were consulted and agreed there were no issues with the proposed changes.

## Notes on Provisions

### Part 1 Preliminary

#### Clause 1 Short Title

Clause 1 states that the short title of the Act is the *Primary Industries and Other Acts Amendment Act 2008*.

#### Clause 2 Commencement

Clause 2 provides that Parts 3, 4 and 5, which relate to amendment of the *Sugar Industry Act 1999*, *Land Act 1994* and the *Land Title Act 1994* commence on 1 July 2008 or the date of assent, whichever is the later.

### Part 2 Amendment of Rural and Regional Adjustment Act 1994

#### Act amended in pt 2

Clause 3 provides that Part 2 amends the *Rural and Regional Adjustment Act 1994* (RRA Act).

#### Replacement of s 3 (Object of Act)

Clause 4 removes the current section 3 regarding the objects of the RRA Act, and inserts a new section which sets out objects that better fit the RRA Act following the proposed changes to QRAA's activities by this Bill. The new section 3 states that the primary ongoing object of the RRA Act is for

QRAA to administer assistance schemes that foster the development of a more productive and sustainable rural and regional sector in Queensland. The new section 3 states that QRAA may also administer schemes that give assistance to primary producers, small businesses or other elements of Queensland's economy, in periods where they are experiencing temporary difficulty or to otherwise benefit Queensland's economy. Further, QRAA may also administer schemes for the Commonwealth and other States in rural and regional sectors outside Queensland.

### **Amendment of s 4 (Definitions)**

Clause 5 inserts new definitions into section 4 of the RRA Act. It inserts a definition of 'authorised interstate scheme' and provides that an 'approved scheme' is an authorised interstate scheme or an approved assistance scheme. Further, it amends the definition of 'authority's assistance funds' so that the definition encompasses authorised interstate schemes as well as approved assistance schemes.

### **Amendment of s 8 (Authority's functions)**

Clause 6 inserts a new function of QRAA, to provide that such functions include providing for administering authorised interstate schemes.

### **Amendment of s 9 (Authority's powers)**

Clause 7 inserts a new power of QRAA, to expressly provide that QRAA may exercise its powers both inside and outside of Queensland, within the ambit of the amended object (section 3).

### **Insertion of new s 10**

Clause 8 inserts a new section 10 which provides that QRAA may only give financial assistance under an approved scheme.

### **Amendment of s 11 (Approved assistance schemes)**

Clause 9 removes subsection 11(6), as this subsection is redundant. The intent of subsection 11(6) is achieved with regard to approved schemes by the abovementioned insertion of a new section 10.

### **Insertion of new s 11A**

Clause 10 inserts a new section 11A regarding authorised interstate schemes, describing the criteria that the Minister will have regard to, in considering the relevant authorisation. Unless the Minister has authorised QRAA to enter into arrangements to administer such a scheme, QRAA must not tender in relation to it, or agree to administer it. The Minister may give authorisation of such administration only if satisfied that the scheme's main purpose is to foster the development of the other State's rural or regional sector, or to give assistance to primary producers or small businesses in the other State that are experiencing temporary difficulty. The authorisation may be subject to conditions, which may relate to ensuring that QRAA's performance of its functions in Queensland is not affected. Schemes that are authorised by the Minister are an 'authorised interstate scheme'. QRAA must comply with the Minister's requests to provide the Minister with information relating to a tender or arrangements that have been made (or are proposed to be made) in relation to the administration of an authorised interstate scheme. However, subsection (5) is limited by subsection (6) to the extent that such a request may not contravene a confidentiality agreement to which the authority may be a party, in order to ensure commercial confidence can be maintained in QRAA's dealings with other jurisdictions.

### **Amendment of s 12 (Administering approved assistance schemes)**

Clause 11 amends section 12 so that it encompasses authorised interstate schemes as well as approved assistance schemes.

### **Amendment of s 13 (Funding of approved assistance schemes)**

Clause 12 amends section 13 so that it relates to authorised interstate schemes as well as approved assistance schemes.

### **Amendment of s 13A (Who may apply for internal review)**

Clause 13 amends section 13A so that it incorporates authorised interstate schemes as well as approved assistance schemes.

### **Insertion of new s 16D**

Clause 14 inserts a new section, empowering a director of QRAA's board mentioned in paragraphs 16(1)(a) or (b) to be able to delegate the director's functions under the RRA Act (including powers) to an appropriately qualified senior executive in the public service. A definition of 'appropriately qualified' is provided to aid the provision's clarity.

### **Amendment of s 20 (Conduct of proceedings)**

Clause 15 omits the word 'appointed' from paragraph 20(3)(a) to remove the ambiguity previously caused regarding government directors who were technically not appointed. This amendment allows for government directors to be counted for the purposes of achieving a quorum.

### **Amendment of s 44 (Regulations)**

Clause 16 amends the heading of section 44 to bring the section heading into line with current drafting practice.

## **Part 3                      Amendment of Sugar Industry Act 1999**

### **Act amended in pt 3**

Clause 17 provides that Part 3 amends the *Sugar Industry Act 1999* (Sugar Industry Act).

### **Amendment of s 63 (Access right to harvest and supply cane)**

Clause 18 replaces the commissioner with the Land Court in subsection 63(1), so as to provide that access rights are granted by the Land Court, not the commissioner, when the consent of the land-holder is not obtained.

A new subsection 63(4) provides that it is mandatory that a time frame be specified for a permit to pass, so as to give the other parties more certainty as to the validity of the permit when it is noted on a title. To accommodate the new subsection 63(4), the existing subsections 63(4) to 63(6) are renumbered as subsections 63(5) to (7).

### **Amendment of s 64 (Land-holder may grant an access right)**

Clause 19 inserts a note at the foot of section 64 regarding grants of access rights when the consent of the land-holder is obtained, to refer the reader to sections 70 and 71 regarding the requirements to notify the person who is the registrar under the *Land Act 1994* or the *Land Title Act 1994* of the access right.

### **Replacement of s 65 (Commissioner may grant an access right)**

Clause 20 inserts a new section 65, which sets out when the Land Court may grant an access right on an application. Further, it specifies the requirements regarding the applicant's service of copies of the application.

The new section 65 provides that the Land Court may grant an application for an access right and impose reasonable conditions on the grant. Subsection (5) provides that in order to make such a grant the Land Court must be satisfied: that the applicant has failed, after reasonable attempts, to negotiate an agreement with the land-holder for the access right; that the access right is necessary for a purpose mentioned in subsections 63(2) or (5) regarding the applicant; and that the access right will not affect native title or, if it will, there is an indigenous land use agreement that consents to the access right. A note at the foot of subsection 65(5) refers the reader to sections 70 and 71 regarding the requirements to notify the person who is the registrar under the *Land Act 1994* or the *Land Title Act 1994* of the access right.

### **Omission of s 66 (Notice of decision)**

Clause 21 removes section 66, which required the commissioner to provide an information notice to the applicant and any person who may be entitled to claim compensation. Instead, under the new amendments the Land Court's judicial processes will apply, rendering the previous section 66 redundant.

### **Omission of s 67 (Grant of access right takes effect on registration)**

Clause 22 removes section 67, which provided that a grant of access rights took effect when the commissioner was notified of the right and recorded it in the sugar access register. This provision is redundant under the new amendments. Access rights are created by agreement or Land Court order.

New sections 70 and 71 set out the requirements for notice, recording and registration of details of a new access right under the *Land Act 1994* and the *Land Title Act 1994*.

### **Amendment of s 68 (Compensation on grant of access right)**

Clause 23 replaces the commissioner with the Land Court in subsections 68(1) and (6), so as to provide that when the grantee and land-holder cannot reach an agreement regarding the amount of the compensation payable to the land-holder regarding the grant of an access right, the Land Court decides the amount.

Clause 23 simplifies subsection 68(1) by introducing a new term ‘grantee’ to describe the ‘mill owner or grower to whom the access right is granted’. This definition is inserted into the Dictionary in clause 38.

The new subsections 68(2) to (5) provide that when the grantee and land-holder cannot reach an agreement regarding the amount of the compensation payable to the land-holder, either the grantee or land-holder can apply to the Land Court for an order for payment. Subsections 68(4) and 68(5) detail matters that the Land Court must have regard to when deciding the amount of compensation.

### **Replacement of ss 69-71**

Clause 24 removes the previous sections 69 to 71, which set out matters relating to the commissioner’s access rights register, and inserts new sections 70 and 71.

The new section 70 relates to a ‘permit event’—namely, when a permit to pass is granted or relinquished, and when a permit to pass or a condition on which the permit is held is varied or cancelled under section 72. The grantee must, within 28 days, give notice of the permit event to the registrar under the *Land Act 1994* or the *Land Title Act 1994* in the form required and provide a copy of the relevant document. A penalty applies for failure to give such notice. The registrar must ensure that a notice regarding the permit event appears in the register kept under the *Land Act 1994* or the *Land Title Act 1994* in such a way that a search will show that permit event.

The new section 71 relates to an ‘easement event’—namely, when a cane railway easement is granted or relinquished, and when a cane railway easement or a condition on which the easement is held is varied or cancelled under section 72. The grantee must, within 28 days, give notice

of the easement event to the registrar under the *Land Act 1994* or the *Land Title Act 1994*. It is considered sufficient for the grantee to provide to the registrar the documents required to register the easement event. A penalty applies for failure to give such notice. The registrar must ensure that a notice regarding the easement event appears in the register kept under the *Land Act 1994* or the *Land Title Act 1994* in such a way that a search will show that easement event. The registrar may register the easement event under the *Land Act 1994* or the *Land Title Act 1994* in accordance with the requirements of those Acts.

### **Amendment of s 72 (Variation and cancellation of access right, dispute resolution and enforcement)**

Clause 25 replaces the words ‘the holder’ in subsection 72(1) with ‘the grantee’ to achieve consistent terminology. Further, clause 25 removes the previous subsections 72(2) to (10), which relate to applications to the commissioner to vary or cancel access rights, and inserts new subsections 72(2) to (6).

The new subsection 72(2) provides that a party to an access right may apply to the Land Court to vary or cancel an access right or a condition on which the access right is held. A ‘party’ is defined in clause 38 to be ‘a land-holder or a grantee’.

The new subsection 72(3) specifies requirements regarding the applicant’s service of copies of the application.

The new subsections 72(4) and (5) provide that the Land Court may grant a party’s application to vary or cancel a cane railway easement if satisfied that it has not been used for at least 2 years, and may otherwise grant an application to vary or cancel an access right if satisfied that there are special circumstances. Subsection 72(5) provides that a change in use of the land affected by the access right is not considered to be special circumstances under subsection 72(4)(b).

A new subsection 72(6) provides that a cane railway easement may be varied only in compliance with the provisions regarding amendment of easements in the *Land Act 1994* or the *Land Title Act 1994*.

### **Replacement of ss 73 and 74**

Clause 26 removes the previous sections 73 and 74, and inserts new sections 73, 74 and 74A.

The new section 73 provides that when the parties to an access right have by agreement, varied or cancelled an access right or a condition on which it is held but can not reach an agreement regarding the amount of the compensation payable, either party may apply to the Land Court for an order for the payment of compensation. The Land Court may make an order regarding the amount of compensation payable on application of the party under this section. Additionally, the Land Court may make an order regarding the amount of compensation payable in circumstances where the Land Court has made an order under section 72. Matters that the Land Court must have regard to when deciding the amount of compensation are set out under subsections 73(4) & (5).

The new section 74 provides that when the Land Court cancels an access right, or varies an access right in a way that excludes land affected by the right, the Land Court may order the grantee or former grantee to carry out rectification or reinstatement of the land as directed.

The new section 74A provides that if the Land Court makes an order under Part 4 of Chapter 3, the registrar of the Land Court must give a copy of the order to the registrar of the Supreme Court, who must then file it. The order is then enforceable as if it were an order of the Supreme Court.

### **Amendment of s 75 (Construction etc. of railways, obstruction of access right)**

Clause 27 replaces the previous subsection 75(1)(a) with a more concise provision and specifies, in a new subsection 75(2), constraints imposed by the *Local Government Act 1993* and the *Transport Infrastructure Act 1994* that apply to paragraph 75(1)(a).

The previous subsection 75(2), which provides that it is an offence to obstruct the use of an access right or a right under subsection 75(1), has not been replaced, as it is not necessary for such obstruction to be an offence in order for the Land Court to effectively deal with the obstruction (by making orders that restrain the obstruction).

So that the Land Court, rather than the Magistrates Court, is the court that considers applications regarding the obstruction of an access right or a right under subsection 75(1), subsection 75(3) is amended and subsection 75(4) is deleted. Subsections 75(5) and 75(6) are renumbered subsections 75(4) and (5) to accommodate the deletion of subsection 75(4).



### **Renumbering and relocation of s 108 (Minister may establish advisory bodies)**

Clause 28 renumbers and relocates section 108 in Chapter 4 as section 246 in Chapter 7.

### **Omission of chs 4 and 5**

Clause 29 removes Chapters 4 and 5 except for relocation of the previous section 108, which is renumbered as section 246 (see clause 28). Chapter 4 sets out the Minister's powers with regard to the commissioner and general provisions regarding the commissioner, while Chapter 5 sets out the appeals process regarding decisions made by the commissioner. The removal of Chapters 4 and 5 are to achieve the dissolution of the office of the sugar industry commissioner.

### **Amendment of s 245 (Pooled export and domestic contract)**

Clause 30 removes subsection 245(3), which relates to a spent provision under subsection 244(3) which expired on 30 September 2007.

### **Amendment of s 249 (Statutory declaration)**

Clause 31 amends section 249 so that it does not apply to the commissioner, as applications and submissions will no longer be made to the commissioner. Section 249 will continue to apply to 'an entity established under this Act'. Currently, there are no entities established under the Sugar Industry Act to which applications or submissions may be made. However, the new section 246 (previously section 108 - see clause 28) provides that the Minister may establish an advisory committee or other body to help the Minister in the administration of the Sugar Industry Act. Should the Minister establish any such entity in the future, section 249 will enable that entity to require verification of particular information by statutory declaration.

### **Amendment of s 253 (Improper use of information prohibited)**

Clause 32 amends subsection 253(1) to recognise that the commissioner goes out of office on the day that the transitional provisions in the new Chapter 9 commence. Section 253 provides that persons who have been the commissioner or members, directors, officers or employees of an entity established under the Sugar Industry Act must not make improper use of

information. Further, section 253 will continue to provide that persons who are members, directors, officers or employees of an entity which may be established under the new section 246 (previously section 108 - see clause 28) of the Sugar Industry Act must not make improper use of information.

### **Omission of ch 8, pts 1-6**

Clause 33 removes Parts 1 to 6 of Chapter 8, which set out transitional provisions that were inserted into the Sugar Industry Act at the time of the 2005 sugar industry reforms by the *Sugar Industry Amendment Act 2005*.

### **Amendment of s 281 (Definition for pt 7)**

Clause 34 inserts the definition of the commencement date previously contained in repealed section 258, into Part 7 of Chapter 8.

### **Insertion of new s 283A**

Clause 35 inserts a new section 283A into Part 7 of Chapter 8, which provides that Part 7 expires on either the day that section 243 expires or the day that section 245 expires, whichever is the later.

### **Omission of ch 8, pt 8**

Clause 36 removes Part 8 of Chapter 8, which sets out transitional provisions that were inserted into the Sugar Industry Act at the time of the 2005 sugar industry reforms by the *Sugar Industry Amendment Act 2005*.

### **Replacement of ch 9**

Clause 37 removes Chapter 9, which set out transitional provisions that were inserted at the time of the 2007 sugar industry reforms by the *Primary Industries Acts Amendment and Repeal Act 2007*. Further, clause 37 inserts a new Chapter 9, consisting of the new sections 284 to 297, which sets out transitional provisions for the purposes of these amendments of the Sugar Industry Act.

The new section 284 is a transitional provision that sets out definitions of 'access rights register', 'commencement day' and 'commissioner' for the purposes of Chapter 9.

The new section 285 is a transitional provision that provides that a permit to pass in force immediately before the commencement day will remain in

force, regardless of the requirement in the new section 63(4) that a permit to pass must specify a timeframe. This requirement does not apply to current permits to pass and they are taken to have effect until cancelled or otherwise ceasing under the Sugar Industry Act.

The new section 286 is a transitional provision that provides that an access right in force immediately before the commencement day remains in force according to its terms as if it had been granted by the Land Court.

The new section 287 is a transitional provision that provides that an application to the commissioner under the previous sections 65 or 72, or an application to a Magistrates Court under the previous section 75, that has not been decided or finally dealt with immediately before the commencement day, is taken to be an application to the Land Court. The president of the Land Court may direct that the application and associated material held by the commissioner or the Magistrates Court are part of proceedings before the Land Court, and give any necessary directions as to how such proceedings are to be dealt with. The chief executive and registrar of the Magistrates Court must take all reasonable steps to make applications and material associated with them available to the Land Court.

The new section 288 is a transitional provision that provides that where a valuer was appointed under either the previous section 68 or the previous section 73 and the valuer has not decided an amount immediately before the commencement day, those sections continue to apply.

The new section 289 is a transitional provision that provides that on the commencement day, the commissioner's access rights register becomes the property of the registrar under the *Land Act 1994* or the *Land Title Act 1994*. The registrar must ensure that, for each current access right recorded in the access rights register immediately before the commencement day, a notice appears in the relevant register kept under the *Land Act 1994* or the *Land Title Act 1994*, so that a search of the register will show the existence of the right.

The new section 290 is a transitional provision that provides that an order made by the commissioner under section 74 that was in force immediately before the commencement day continues in force as if it had been made by the Land Court.

The new section 291 is a transitional provision that provides that the commissioner goes out of office on the commencement day, and no compensation is payable to the commissioner.

The new section 292 is a transitional provision that provides that the State replaces the commissioner in agreements or arrangements between the commissioner and other entities in force immediately before the commencement day. Further, the State replaces the commissioner in proceedings that could have been started or continued by or against the commissioner before the commencement day.

The new section 293 is a transitional provision that provides that the State assumes the assets or liabilities of the commissioner, in the commissioner's capacity as the commissioner, immediately before the commencement day.

The new section 294 is a transitional provision that provides that the employment of a person employed by the commissioner immediately before the commencement day is taken to be lawfully terminated under the *Industrial Relations Act 1999*. The person may exercise the rights of an employee whose employment has been lawfully terminated against the State, as if the State was the employer who lawfully terminated the person's employment.

The new section 295 is a transitional provision that provides that a document to which the previous section 271 applied immediately before the commencement day continues to be exempt matter under the *Freedom of Information Act 1992*.

The new section 296 is a transitional provision that provides that, where a person has a right of appeal under the previous section 234 regarding a decision of the commissioner, the appeal may be started or continued, on or after the commencement day, and for this purpose the chief executive is the respondent, and the prior section 234 continues to apply. Relevantly for the operation of the new section 296, the previous subsection 234(3) provides that an appeal must be commenced within 28 days after the appellant is given notice of the decision.

The new section 297 is a transitional provision that provides that, where a person has a right of appeal under the previous section 235 regarding a decision of the commissioner, the appeal may be started or continued, on or after the commencement day, and for this purpose the chief executive is the respondent, and the previous section 235 continues to apply. Relevantly for the operation of the new section 297, the previous subsection 235(2) provides that an appeal must be commenced within 28 days after the appellant is given notice of the decision.

### **Amendment of schedule (Dictionary)**

Clause 38 removes definitions that are no longer necessary as a result of the amendments to the Sugar Industry Act. Further, clause 38 inserts the definitions of ‘grantee’, ‘party’ and ‘registrar’. Accordingly, the definition of ‘cane railway easement’ is amended to refer to the appropriately renumbered section 63(5).

## **Part 4                      Amendment of Land Act 1994**

### **Act amended in pt 4**

Clause 39 provides that Part 4 amends the *Land Act 1994*.

### **Amendment of s 369 (Public utility easements)**

Clause 40 inserts an additional paragraph in subsection 369(2) of the *Land Act 1994*, which provides that public utility easements may be registered by the registrar of titles for various types of infrastructure and purposes. The additional paragraph provides that the registrar of titles may register a cane railway easement in favour of a mill owner for a purpose for which a cane railway easement may be granted under the Sugar Industry Act.

### **Amendment of sch 6 (Dictionary)**

Clause 41 inserts and adds to definitions in the Dictionary in Schedule 6 of the *Land Act 1994*. The definitions of ‘cane railway easement’ and ‘mill owner’ are inserted, and require the reader to refer to the Sugar Industry Act. Further, the definition of ‘public utility provider’ is expanded, to provide that a mill owner is a ‘public utility provider’, but only for the registration of a cane railway easement.

## **Part 5                      Amendment of Land Title Act 1994**

### **Act amended in pt 5**

Clause 42 provides that Part 5 amends the *Land Title Act 1994*.

### **Amendment of s 81A (Definitions for div 4)**

Clause 43 inserts and adds to definitions in section 81A of the *Land Title Act 1994*. The definitions of ‘cane railway easement’ and ‘mill owner’ are inserted, and require the reader to refer to the Sugar Industry Act. Further, the definition of ‘public utility provider’ is expanded, to provide that a mill owner is a ‘public utility provider’, but only for the registration of a cane railway easement.

### **Amendment of s 89 (Easements for public utility providers)**

Clause 44 inserts an additional subparagraph in section 89(2)(a) of the *Land Title Act 1994*, which provides that public utility easements may be registered by the registrar of titles for various types of infrastructure and purposes. The additional subparagraph provides that the registrar of titles may register a cane railway easement in favour of a mill owner for a purpose for which a cane railway easement may be granted under the Sugar Industry Act.