

REFORM OF SUGAR CANE INDUSTRY BILL 2016
(BILL NO. 19 OF 2016)

CLAUSES

PART 1—PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Objectives

PART 2—SUGAR INDUSTRY TRIBUNAL

4. Establishment of the Tribunal
5. Functions of the Tribunal
6. Tribunal to keep itself informed of all matters pertaining to the Industry
7. Indemnity of the Tribunal
8. Remuneration and allowances
9. Transfer of employees
10. Existing agreements
11. Continuation of proceedings
12. No benefit in respect of abolition of office
13. Accountant of the Industry

PART 3—COUNCIL OF SUGAR CANE GROWERS

14. Establishment of the Council
15. Composition of the Council
16. Vacation of office of members of the Council
17. Functions of the Council
18. Council proceedings
19. Disclosure of interest
20. Chief executive officer, officers and servants of the Council
21. Remuneration and allowances
22. Seal of the Council
23. District and sector committees of the Council etc
24. Indemnity of members, officers and employees of the Council
25. Special levy
26. Collection of levies
27. Annual report and accounts
28. Inquiry into certain affairs of the Council

PART 4—MILL AREA COMMITTEES

29. Establishment of Mill Area Committees
30. Composition of Mill Area Committees
31. Tenure of office of representative members of Mill Area Committees
32. Functions of Mill Area Committees
33. Meetings of Mill Area Committees
34. Financial provisions of Mill Area Committees

PART 5—SUGAR INDUSTRY MASTER AWARD

35. Continuation of Master Award under the Sugar Industry Act (Cap. 206)
36. Minister to make Master Award
37. Consultations and publicity in connection with the revision of Master Award
38. Public inquiry to be held by the Ministry in respect of revised draft Master Award
39. Finalisation of revised Master Award
40. Publication of revised Master Award
41. Permissible deductions by the Corporation under Master Award

PART 6—REGISTRATION OF GROWERS

42. Register of Growers
43. Persons entitled to be registered as growers
44. Certificate of Registration
45. Endorsement of Certificate of Registration
46. Rectification of Register
47. Cancellation of registration
48. New registrations in respect of existing farms
49. Certain registered growers to nominate representatives
50. New registrations in respect of new farms
51. Cancellation of registrations in cases of fraud
52. Fees
53. Inspection of Register

PART 7—RESTRICTIONS ON INDUSTRIAL ACTION

54. Meaning of “industrial action” and “secondary industrial action”
55. Restrictions on industrial action
56. Sugar Industry Infringement Notice
57. Penalties for unlawful industrial action
58. Defences available in proceedings for offences under this Part

PART 8—DISPUTES PROCEDURE

59. Meaning of “dispute”
60. Functions of the permanent secretary
61. Particular powers of the Tribunal in respect of the hearing and determination of disputes and other proceedings
62. Assessors
63. Intervention of the Minister
64. Representation of parties
65. Procedure of the Tribunal
66. Powers of inspection
67. Orders for taking of evidence
68. Referral of disputes to Mill Area Committees

PART 9—AWARDS

- 69. Form of awards
- 70. Commencement of awards
- 71. Registration and publication of awards
- 72. Award not to conflict with any written law
- 73. Relief granted not limited to any relief claimed
- 74. Common rules
- 75. Interpretation of award
- 76. On whom award binding
- 77. Cancellation, variation and suspension of awards
- 78. Awards to be final, except in certain cases
- 79. Appeal to the High Court
- 80. Statement of case to the High Court pending hearing of dispute
- 81. Costs
- 82. Enforcement of awards
- 83. Contempt of the Tribunal

PART 10—TRANSFER AND CONVERSION OF SHARES, ASSETS AND LIABILITIES

- 84. Transfer of shares in the Corporation
- 85. Conversion of shares in the Corporation
- 86. Conversion of shares in South Pacific Fertiliser Limited
- 87. Transfer and acquisition of assets and liabilities to the Corporation
- 88. Transfer of employees
- 89. Existing agreements and contracts
- 90. Continuation of proceedings
- 91. No benefit in respect of abolition of office

PART 11—MISCELLANEOUS

- 92. Rules of the Tribunal
- 93. Restriction on disclosure of information
- 94. Regulations
- 95. Repeal and transitional

SCHEDULE 1—SUGAR INDUSTRY INFRINGEMENT NOTICE

SCHEDULE 2—FIXED PENALTIES

BILL NO. 19 OF 2016**A BILL****FOR AN ACT TO PROVIDE FOR THE REFORM, PROMOTION AND
REGULATION OF THE SUGAR CANE INDUSTRY**

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

- 1.**—(1) This Act may be cited as the Reform of Sugar Cane Industry Act 2016.
- (2) This Act comes into force on the date or dates appointed by the Minister by notice in the Gazette.

Interpretation

- 2.** In this Act, unless the context otherwise requires—

“Accountant” means the person appointed as the Accountant of the Industry under section 13;

“award” means an award, order, decision or other determination of the Minister or his or her representative, or the Tribunal;

“cane” means sugar cane;

- “Certificate of Registration” means a Certificate of Registration issued under section 44;
- “Corporation” means the Fiji Sugar Corporation Limited incorporated under the Companies Act 2015;
- “Council” means the Council of Sugar Cane Growers established under section 14;
- “dispute” has the meaning assigned to it under section 59;
- “district” means a district of a mill area;
- “farm” means the subdivision of land used or intended to be used by any person for the cultivation of cane;
- “gang” means a group of cane cutters led by a foreman;
- “Government” means the Government of the Republic of Fiji;
- “grower” means a person who cultivates cane for sale;
- “industrial action” has the meaning assigned to it under section 54;
- “Industry” means the Sugar Cane Industry;
- “institutions of the Industry” means the Ministry, the Tribunal, the Council, the Corporation and the Mill Area Committees;
- “lock-out” has the meaning assigned to it under section 54;
- “Master Award” means the Sugar Cane Industry Master Award;
- “mill” means the mill used by the Corporation for the manufacture of raw sugar from cane produced in a mill area;
- “mill area” means a mill area as determined by the permanent secretary and approved by the Minister by notice in the Gazette;
- “Mill Area Committee” means a Mill Area Committee established under section 29;
- “Minister” means the Minister responsible for sugar industry;
- “Ministry” means the Ministry of Sugar Industry;
- “molasses” means a solution of sugar and other carbohydrates and mineral salts in water, and in the context of the Industry means the final product of the sugar manufacturing process from which no more sugar may be economically crystallised by conventional methods;
- “officer”, in respect of the Corporation, includes a director, manager or secretary;
- “person” includes a company, association or body of persons, corporate or unincorporate;

- “Register” means the Register of Growers required to be kept by the Corporation under section 42;
- “registered”, except in respect of an award, means registered in the Register;
- “registered grower” means a grower who has been issued with a Certificate of Registration under section 44;
- “representative member” means, in respect of a Mill Area Committee, a member referred to under section 30(b) or (c);
- “secondary industrial action” has the meaning assigned to it under section 54;
- “sector” means a sector of a district;
- “sugar” means raw sugar in any of its recognised commercial forms, except the product sold as final molasses;
- “Sugar Research Institute” means the Sugar Research Institute of Fiji established under the Sugar Research Institute of Fiji Act 2005;
- “Tribunal” means the Sugar Industry Tribunal established under section 4; and
- “year” means any period of 12 consecutive months.

Objectives

3. The objectives of this Act are to—

- (a) establish the Tribunal, the Council and the Mill Area Committees;
- (b) promote the efficiency and development of the Industry by streamlining the Industry’s operational processes;
- (c) coordinate the activities of all sections of the Industry and promote goodwill and harmony between such sections;
- (d) prescribe standard provisions governing the mutual rights and obligations of the Corporation and the registered growers;
- (e) provide for the keeping of an official Register of Growers;
- (f) encourage and provide the means for conciliation with the view of preventing and settling all disputes within the Industry by amicable agreement;
- (g) provide the means for preventing and settling disputes within the Industry; and
- (h) convert all current Government loans to the Corporation and the related accrued interests into equity and for the Government to acquire all remaining shares of the Corporation, upon or as soon as practicable after the commencement of this Act.

PART 2—SUGAR INDUSTRY TRIBUNAL

Establishment of the Tribunal

4.—(1) This section establishes the Sugar Industry Tribunal.

(2) The Tribunal shall consist of one person who shall be appointed by the Chief Justice, and who is qualified to be appointed as a Judge of the High Court or has extensive experience in Economics or Industrial Relations.

(3) The person appointed as the Tribunal under subsection (2) shall hold office for a term of up to 3 years and may be eligible for reappointment.

(4) If the person appointed under subsection (2) is unable, whether arising from infirmity of body or mind, or for misbehaviour or any other cause, to perform the functions of the Tribunal, the Chief Justice shall revoke the appointment of the Tribunal and appoint a person, qualified to be appointed, as the new Tribunal.

Functions of the Tribunal

5. The Tribunal must—

- (a) hear and determine any dispute which has been certified by the permanent secretary or his or her representative to be an unresolved dispute under this Act;
- (b) hear and determine any question as to the interpretation of this Act and of any award; and
- (c) perform such other functions as prescribed under this Act or any other written law.

Tribunal to keep itself informed of all matters pertaining to the Industry

6. The Tribunal must keep itself informed of all matters pertaining to the Industry and may require the Ministry or the Council or the Corporation to furnish such information, or to carry out and to report on such investigations to the Tribunal as shall be necessary.

Indemnity of the Tribunal

7. Any person appointed under section 4 may not be personally liable to any action, suit, proceeding, or challenge in any court, Tribunal or other adjudicating body for any act or omission done in the exercise of the powers conferred by or duties prescribed under this Act or any other written law, unless he or she acted in a negligent manner.

Remuneration and allowances

8. The remuneration and allowances payable to—

- (a) the person appointed under section 4(2) or 4(4) to constitute the Tribunal;
- (b) the Accountant; and
- (c) any person appointed under section 62 to act as an assessor at the hearing of any proceeding before the Tribunal,

may be determined from time to time by the Minister following consultation with the Minister responsible for public enterprises.

Transfer of employees

9.—(1) Subject to subsection (4), as from the commencement of this Act, all persons employed immediately before the commencement of this Act in the Tribunal established under the Sugar Industry Act (Cap. 206) shall be transferred to the Ministry.

(2) Until such time as terms and conditions, including rules as to the conduct and discipline of its employees are drawn up by the Minister, the terms and conditions applicable to the employees immediately before the commencement of this Act may continue to apply to every employee transferred under subsection (1).

(3) For the purposes of every enactment, law, award, determination, contract and agreement relating to the employment of a transferred employee, the contract of employment of that employee is deemed to have been unbroken and the period of employment is for all purposes deemed to have been a period with the Ministry.

(4) As from the commencement of this Act, the positions of Registrar of Tribunal and Industrial Commissioner established under the Sugar Industry Act (Cap. 206) shall be disestablished.

Existing agreements

10. All deeds, bonds, agreements, instruments and arrangements to which the Tribunal established under the Sugar Industry Act (Cap. 206) is a party and subsisting immediately before the commencement of this Act shall continue to be in force with effect from the commencement of this Act and shall be enforceable by or against the Ministry as if the Ministry had been named therein or had been a party thereto.

Continuation of proceedings

11.—(1) Any proceeding, claim, challenge or dispute of any nature that had been instituted in the Tribunal established under the Sugar Industry Act (Cap. 206) immediately before the date of commencement of this Act but had not been determined at that date or is pending shall be deemed to have been instituted under this Act and shall be determined by the Tribunal established under this Act.

(2) All suits, prosecutions, appeals or other legal proceedings which have been instituted in any court or tribunal by or against the Tribunal established under the Sugar Industry Act (Cap. 206) and pending before such court or tribunal on the commencement of the Act, shall with effect from the commencement of the Act be deemed to have been instituted by or against the Ministry and may be continued accordingly.

No benefit in respect of abolition of office

12. A person who is transferred to the Ministry is not entitled to claim any benefit on the ground that he or she has been retired from the Tribunal on account of the abolition of office in consequence of the repeal of the Sugar Industry Act (Cap. 206).

Accountant of the Industry

13.—(1) There must be an Accountant of the Industry who must be appointed by the Minister.

(2) The Accountant must be a chartered accountant practising in Fiji, whether alone or in partnership, with a certificate of public practice under the Fiji Institute of Accountants Act (Cap. 259).

(3) The Accountant shall hold office for a term of up to 5 years and not less than 3 years, as the Minister may decide.

(4) The Accountant shall have such functions as are assigned to him or her—

- (a) by the Minister; and
- (b) under this Act.

(5) The Accountant must have access to such books, records and information at the institutions of the Industry as he or she considers necessary for the proper discharge of his or her functions under this Act.

PART 3—COUNCIL OF SUGAR CANE GROWERS

Establishment of the Council

14.—(1) This section establishes the Council of Sugar Cane Growers.

(2) The Council must be a corporate body with—

- (a) perpetual succession and an official seal;
- (b) the capacity to enter into contracts and to sue and be sued in its corporate name; and
- (c) the power to acquire, hold and dispose of real and personal property and generally to do all such acts and things as are necessary for or incidental to the performance of its functions under this Act or any other written law.

Composition of the Council

15.—(1) The Council must consist of the following persons who shall be appointed by the Minister—

- (a) Two elected representatives from each of the following cane producers' associations—
 - (i) Rarawai and Penang Cane Producers' Association;
 - (ii) Labasa Cane Producers' Association; and
 - (iii) Lautoka Cane Producers' Association;
- (b) the Commissioner for the Western Division;
- (c) the Commissioner for the Northern Division; and
- (d) a representative of the Ministry.

(2) The Minister must appoint any person referred to in subsection (1) as the chairperson of the Council.

(3) A member of the Council may hold office for a term of 3 years from the date of appointment.

(4) Any appointment to the Council made under the Sugar Industry Act (Cap. 206) shall be deemed to have been revoked on the commencement of this Act.

Vacation of office of members of the Council

16. Any member of the Council may resign from office by providing written notice to the Minister, and he or she shall be deemed to have vacated his or her office on such date the notice is received by the Minister.

Functions of the Council

17. The Council shall take all reasonable and necessary steps to protect and develop the Industry and the interests of the registered growers, and in particular—

- (a) encourage and promote cooperation among registered growers, and between registered growers and others engaged in the Industry;
- (b) remove or provide redress of all legitimate grievances of a registered grower in any particular sector, district or mill area;
- (c) provide registered growers with goods and services relating to the business of cane-growing;
- (d) establish, hold and administer funds for the benefit of registered growers;
- (e) encourage and promote research and education with a view to improving the efficiency and productivity of registered growers and to collect, record and distribute information of value to registered growers; and
- (f) perform such other functions as may be assigned to the Council by this Act or any other written law.

Council proceedings

18.—(1) Except as otherwise provided by this Act, the procedure at a meeting of the Council must be regulated by the Council.

(2) The Council must convene at least 6 meetings in a year, and may meet at such time and place as may be determined by the chairperson of the Council.

(3) At any meeting of the Council, 5 members shall constitute a quorum.

(4) The chairperson of the Council must preside at all the meetings of the Council and in his or her absence the members present must, for that particular meeting, appoint a member to function as the chairperson for that meeting.

(5) Any issue raised at any meeting of the Council must be decided by a majority of the votes of the members present, and if there is an equality of votes, the chairperson of that meeting shall have a casting vote.

(6) The validity of any proceeding of the Council shall not be affected by any vacancy in the membership of the Council or by any defect in the appointment of any member.

(7) The minutes of every meeting of the Council must be kept in a proper form and must be confirmed as soon as practicable by the person presiding at a subsequent meeting of the Council.

Disclosure of interest

19. If any member of the Council is present at a meeting of the Council, and has a direct or indirect personal, pecuniary or other interest in a matter being discussed or considered, he or she must immediately disclose that interest and, unless the Council otherwise determines, take no further part in the discussion or consideration of that matter.

Chief executive officer, officers and employees of the Council

20.—(1) The Council must appoint a chief executive officer of the Council, who shall perform such functions as may be assigned to him or her by the Council under this Act.

(2) The chief executive officer of the Council may, following the approval of the Council, appoint and employ such officers and employees for the proper and efficient carrying out of the functions of the Council under this Act.

Remuneration and allowances

21.—(1) The remuneration and allowances payable to the chairperson of the Council and members of the Council must be determined by the Minister following consultation with the Minister responsible for public enterprises.

(2) The remuneration and allowances payable to the chief executive officer and other officers and employees of the Council shall be determined by the Council.

Seal of the Council

22.—(1) The seal of the Council must only be affixed to a document pursuant to a resolution of the Council in the presence of the chairperson or the chief executive officer of the Council, or in such manner as may be authorised by the Council.

(2) If a document appears to bear the common seal of the Council, it shall be presumed, in the absence of proof to the contrary, that the common seal of the Council was duly affixed to such document.

District and sector committees of the Council etc

23. The chief executive officer of the Council may establish district or sector committees to advise him or her on the exercise of any of the functions of the Council.

Indemnity of members, officers and employees of the Council

24. Subject to section 29, any member of the Council, including the chief executive officer, any officer or employee and any member of a committee of the Council appointed under section 23, may not be personally liable to any action, suit, proceeding or challenge in any Court, Tribunal or other adjudicating body for or in respect of any act or omission done in the exercise of the powers conferred by or duties prescribed under this Act or any other written law, unless he or she acted in a negligent manner.

Special levy

25. The Council may, following the approval of the Minister, impose, upon each registered grower, a special levy from time to time to meet the cost of any capital project or for any other special purpose.

Collection of levies

26.—(1) Any special levy imposed under section 25 must be deducted according to a registered grower's share of the proceeds of the sale of sugar, molasses and other by-products of cane and must be collected by the Council from the Corporation upon the production of a certificate of authorisation for such deduction by the Accountant.

(2) Subject to subsection (3), the Accountant must not issue a certificate under subsection (1) unless he or she is satisfied that the levy has been approved by the Council following consultation with the Minister.

(3) Where the Accountant, without reasonable cause, fails or refuses to issue a certificate under subsection (2), the Council may make a written application to the Minister who may direct the Accountant to issue such certificate.

Annual report and accounts

27.—(1) The chief executive officer of the Council shall, as soon as practicable after the end of each year, furnish the Accountant with a detailed financial report of the audited accounts for that year.

(2) The Council must submit to the Minister, as soon as practicable after the end of each year, an annual report of the activities of the Council during that year and the audited financial report.

(3) The Minister must submit copies of the annual report and the financial report to Cabinet before it is laid before Parliament.

Inquiry into certain affairs of the Council

28.—(1) Subject to subsection (2), the Minister may, upon the written request of not less than 100 registered growers, make such inquiry as he or she deems necessary to ascertain whether or not the special levy imposed under section 25 is being properly used for the specified purpose under this Act.

(2) The Minister must not carry out an inquiry under subsection (1) unless he or she is satisfied that the reason for the request for the inquiry, is an allegation that the Council is expending money collected under the special levy for any purpose other than the specified purpose.

(3) The Minister must publish the findings of an inquiry made under subsection (1) in such manner as he or she deems appropriate.

PART 4—MILL AREA COMMITTEES

Establishment of Mill Area Committees

29. This section establishes the following Mill Area Committees—

- (a) the committee for the Labasa Mill area as the Labasa Mill Area Committee;
- (b) the committee for the Lautoka Mill area as the Lautoka Mill Area Committee;
- (c) the committee for the Penang Mill area as the Penang Mill Area Committee; and
- (d) the committee for the Rarawai Mill area as the Rarawai Mill Area Committee.

Composition of Mill Area Committees

30. A Mill Area Committee must consist of—

- (a) the Director for Sugar who must be the chairperson;
- (b) 3 members appointed by the Council to represent the Council; and
- (c) 3 members appointed by the chief executive officer of the Corporation to represent the Corporation.

Tenure of office of representative members of Mill Area Committees

31.—(1) Representative members of a Mill Area Committee shall hold office for a term of up to 3 years and may be eligible for reappointment.

(2) Any representative member of a Mill Area Committee may resign from office by providing written notice to the chairperson of the Mill Area Committee, and he or she shall be deemed to have vacated his or her office at such time the notice is received by the chairperson of the Mill Area Committee.

(3) If a representative member of a Mill Area Committee vacates his or her office as a result of death, resignation or transfer, other than effluxion of time, the vacancy may be filled in the same manner as that in which the appointment to that office is required to be made under this section, for the unexpired term of office of that member.

Functions of Mill Area Committees

32. The functions of a Mill Area Committee shall be to encourage and promote good relations between persons engaged within the mill area of the Committee in the cultivation and harvesting of cane, the transportation of cane to the mill in that area, the crushing of cane, the making of sugar at that mill and the transportation and storage of sugar made at that mill, and in particular to—

- (a) assist in removing and providing redress for all legitimate grievances within that area relating to any of the matters referred to in the foregoing provisions of this Part;

- (b) secure the maximum production of cane and sugar in that area within the limits of the mill quota of cane and sugar for that mill;
- (c) advise the Minister, of all matters referred to it by the Corporation or the Council as the case may be;
- (d) assist within that area in the collection, recording and distribution of information in respect of the Industry; and
- (e) perform such other functions as may be assigned to it under this Act.

Meetings of Mill Area Committees

33.—(1) Except as otherwise provided by this Act, the procedure at a meeting of a Mill Area Committee must be regulated by that Mill Area Committee.

(2) A Mill Area Committee must meet at such time and place as shall be determined by the chairperson of that Mill Area Committee.

(3) At any meeting of a Mill Area Committee, 4 members shall constitute a quorum.

(4) The chairperson of a Mill Area Committee must preside at all the meetings of the Mill Area Committee, and in his or her absence the members present may, for that particular meeting, appoint a member to function as the chairperson.

(5) Any issue raised at any meeting of a Mill Area Committee must be decided by a majority of the votes of the members of the Mill Area Committee present, and if there is an equality of votes, the chairperson of the Mill Area Committee shall have a casting vote.

(6) The validity of any proceeding of a Mill Area Committee shall not be affected by any vacancy in the membership of the Mill Area Committee or by any defect in the appointment of any member.

(7) The minutes of every meeting of a Mill Area Committee must be kept in a proper form and must be confirmed as soon as practicable by the person presiding at a subsequent meeting of the Mill Area Committee.

Financial provisions of Mill Area Committees

34. The administrative expenses of a Mill Area Committee must be borne by each of the parties represented in the Mill Area Committee.

PART 5—SUGAR INDUSTRY MASTER AWARD

Continuation of Master Award under the Sugar Industry Act (Cap. 206)

35. The Sugar Industry Master Award made under the Sugar Industry Act (Cap. 206) shall continue in force until such time it is revoked by the Minister.

Minister to make Master Award

36.—(1) The Minister shall have the power to make the Master Award following consultation with the Council and the Corporation.

(2) The Master Award may contain provisions which—

- (a) regulate the planting, cultivation and harvesting of cane by registered growers;
- (b) regulate the sale and delivery, by registered growers, of cane harvested by the registered growers to the Corporation;
- (c) regulate the acceptance and purchase, by the Corporation, of cane delivered to the Corporation by registered growers;
- (d) regulate the manufacture, storage, marketing, delivery and sale of sugar, molasses and other by-products made from cane delivered by registered growers to the Corporation;
- (e) regulate the procedures to be followed when settling disputes arising under the Master Award; and
- (f) prescribe such other matters or things as shall be necessary or convenient to give effect to the matters referred to in paragraphs (a) to (e) including—
 - (i) the establishment and incorporation of cane harvesting gangs;
 - (ii) access by the Corporation, registered growers and cane harvesting gangs to the land of registered growers;
 - (iii) the establishment and management of an organisation, whether or not incorporated, to do all or any of the following—
 - (A) to purchase, store, market, deliver, sell or otherwise deal in sugar molasses and other by-products made from cane delivered by registered growers to the Corporation;
 - (B) any other matters incidental thereto; and
 - (C) the inspection of cane and the destruction of diseased cane.

Consultations and publicity in connection with the revision of Master Award

37.—(1) When revising the Master Award, the Minister must consult the Council and the Corporation in respect of all the provisions which the Ministry proposes to review in the Master Award.

(2) The Minister must, after considering the views which may have been expressed in writing by the Council or the Corporation in the course of consultations held under subsection (1)—

- (a) prepare a draft of the revised Master Award;
- (b) prepare a report on the consultations and the consideration of the views given by the Ministry;

- (c) cause copies of the draft of the revised Master Award under paragraph (a) to be made available for supply, free or with a charge, to any registered grower and for purchase by any other person at such price as the Ministry may consider reasonable; and
- (d) cause a notice to be published in the Gazette and in a newspaper circulating in Fiji—
 - (i) stating that copies of the draft of the revised Master Award under paragraph (a) are also available at the Ministry and at such other places as may be specified in the notice; and
 - (ii) inviting submissions to be made in writing to the Minister by any person in respect of the draft of the revised Master Award within such period as may be specified in the notice, being a period of not less than 2 months from the last date on which the notice was published under this paragraph.

(3) Subject to subsection (4), the Minister, after considering the submissions made in writing by any person in respect of the draft of the revised Master Award under subsection (2)(a), after consulting the Council and the Corporation in respect of the submissions, and after considering the views which may have been expressed in writing by the Council or the Corporation on the submissions, may, if it considers it necessary to do so—

- (a) prepare a new draft of the revised Master Award, incorporating such modifications to the draft of the revised Master Award under subsection (2)(a) as the Minister may deem appropriate to make having regard to the submissions and views;
- (b) prepare a report on the submissions made, the consultations held under this subsection and the consideration of the views given by the Ministry;
- (c) cause copies of the draft of the revised Master Award, as modified, and of that report to be made available for supply, free of charge, to any registered grower and for purchase by any person at such price as the Minister may deem appropriate; and
- (d) cause a notice to be published in the Gazette and in a newspaper circulating in Fiji—
 - (i) stating that copies of the draft of the revised Master Award, as modified, are so available at the Ministry and at such other places as may be specified in the notice; and
 - (ii) inviting submissions to be made in writing to the Ministry by any person in respect of the draft of the revised Master Award, as modified, within such period as shall be specified in the notice, being a period of not less than 28 days from the last date on which the notice was published under this paragraph.

(4) The Minister shall, as soon as practicable following receipt of any submissions made under subsections (2)(d)(ii) and (3)(d)(ii), furnish copies of the submissions to the Council and the Corporation.

(5) The Minister must not include in any draft of the revised Master Award under this section any provision which has not been agreed to by the Council and the Corporation.

Public inquiry to be held by the Ministry in respect of revised draft Master Award

38.—(1) The Minister, after considering the submissions made in writing by any person in respect of the draft of the revised Master Award under section 37(3)(a), after consulting the Council and the Corporation in respect of the submissions, and after considering the views which may have been expressed in writing by the Council or the Corporation on the submissions, may, if it considers it necessary to do so—

- (a) prepare a new draft of the revised Master Award, incorporating such modifications to the draft of the revised Master Award under section 37(3)(d)(ii) as the Ministry may deem appropriate to make having regard to the submissions and views;
- (b) prepare a report on the submissions made, the consultations held under section 37 and under this section, and the consideration of the views given by the Ministry;
- (c) cause copies of the draft of the revised Master Award, as modified, and of that report to be made available for supply, free of charge, to any registered grower and for purchase by any person at such price as the Ministry may deem appropriate; and
- (d) hold a public inquiry under subsection (3) for the purpose of considering any objection to the new draft of the revised Master Award prepared under paragraph (a).

(2) The Minister must not include in the new draft of the revised Master Award under subsection (1)(a) any provision which has not been agreed to by the Council and the Corporation.

(3) The Ministry must, at least 6 weeks before the date which shall be fixed for the holding of the public inquiry, cause a notice to be published on not less than 2 occasions in the Gazette and in a newspaper circulating in Fiji—

- (a) specifying the date, time and place for the holding of the public inquiry;
- (b) stating that copies of the new draft of the revised Master Award under subsection (1)(a) and of the report under subsection (1)(b) are available at the Ministry and at such other places as may be specified in the notice; and
- (c) inviting objections to be made by any person, at the public inquiry, to the Ministry in respect of the new draft of the revised Master Award under subsection (1)(a), and requiring any person intending to make any such objection to furnish the Ministry, not later than 21 days before the date

specified under paragraph (a) for the holding of the public inquiry with a statement of the matters to which the objection relates and the grounds on which he or she intends to make that objection, and the Ministry may as soon as practicable following the receipt of any such statements furnish copies of the statements to the Council and the Corporation.

(4) Except as otherwise provided in the following provisions of this section, the public inquiry must be held in public and the procedure at the public inquiry may be determined by the Ministry.

(5) Subject to subsection (6), every person who has furnished the Minister with a statement as required by the notice published under subsection (3), may be entitled to present arguments and evidence at the public inquiry in support of his or her objection.

(6) The Minister may be represented at the public inquiry by the Attorney-General or by any public officer appointed by the Minister or the Attorney-General, and may be entitled to be heard on any matter which appears to the Minister to be of public importance or affecting public interest, or both.

(7) The Council and the Corporation must be entitled to be represented at the public inquiry by any of their respective directors, officers or servants duly authorised by the Council and the Corporation, and shall be entitled to be heard on any matter on which arguments or evidence are presented to the Ministry at the public inquiry.

(8) Any organisation of employers or employees may be represented at the public inquiry by a member, officer or servant of the organisation, and shall be entitled to be heard on any matter on which arguments or evidence are presented to the Ministry at the public inquiry.

(9) The Minister, if it appears that 2 or more objections are similar in substance that it is unnecessary to consider them separately, may elect any one of the persons making the objections to represent the case at the public inquiry.

(10) The Minister may adjourn the public inquiry from time to time and may hold adjourned sittings at such times and places as it deems appropriate, having regard, in particular, to the convenience of the persons appearing at the public inquiry.

(11) The Minister may exclude any person from any sitting at the public inquiry if the Minister deems it necessary to do so in order to preserve order.

(12) Notwithstanding subsections (8) and (9), any person presenting arguments and evidence at the public inquiry may be represented by a barrister and solicitor.

Finalisation of revised Master Award

39.—(1) Before finally determining the provisions to be included in the revised Master Award, the Minister, following the close of the public inquiry and after taking into consideration the arguments and evidence presented to the Minister at the public inquiry, shall consult the Council and the Corporation as to the need for, or desirability of, amending the new draft of the revised Master Award prepared under section 38(1)(a), having regard to the arguments and evidence presented to the Ministry at the public inquiry.

(2) The Minister may, after considering the views which may have been expressed in writing by the Council or the Corporation in the course of consultations held under subsection (1)—

- (a) finalise the revised Master Award, and must not include any provision in the revised Master Award which has not been agreed to by the Council and the Corporation, unless the Minister is satisfied that no useful purpose shall be served in endeavouring to obtain such agreement; and
- (b) prepare a report—
 - (i) containing a summary of the arguments and evidence presented to it at the public inquiry and the consideration of the arguments and evidence; and
 - (ii) on the consultations held under subsection (1) and the consideration of the views given by the Ministry.

Publication of revised Master Award

40. The Minister must cause—

- (a) a copy of the revised Master Award to be published in the Gazette;
- (b) copies of the revised Master Award and of the report under section 39(2)(b) to be made available for supply, free of charge, to any registered grower, and for purchase by any other person at such price as the Ministry deems appropriate; and
- (c) a notice to be published in the Gazette and in a newspaper circulating in Fiji stating that such copies are available at the Ministry and at such other places as may be specified by the Ministry.

Permissible deductions by the Corporation under Master Award

41. Notwithstanding any other written law or any agreement between a registered grower and any other person, the Corporation may deduct from the amount payable to a registered grower under the Master Award any sum which the Corporation is required or authorised under the Master Award to deduct from that amount.

PART 6—REGISTRATION OF GROWERS

Register of Growers

42.—(1) The Corporation must keep the Register of Growers in a form approved by the Minister, and must enter the following particulars in the Register—

- (a) the name of every person entitled to be registered as a grower under section 43;
- (b) the date on which the entry in the Register is made;
- (c) the registration number assigned to that person under subsection (3);

- (d) the location and area of the farm belonging to that person;
- (e) particulars of a certificate of title, lease, sublease, agreement for a lease or sublease, or other instrument of title relating to the estate or interest of that person in the farm;
- (f) the registered area;
- (g) the sector, district and mill area in which the farm is situated;
- (h) any farm basic allotment fixed by the Corporation in respect of that farm;
- (i) the method of delivery of cane to the Corporation applying to that farm; and
- (j) such other particulars as the permanent secretary may direct in any particular case.

(2) In this Part, “registered area” means the area of the proportion of the farm that may be used to grow cane as determined from time to time by the Corporation.

(3) Upon registering a person as a grower, the Corporation must assign to such person the registration number.

(4) Where a person is entitled to be registered as a grower under section 43 in respect of more than one farm, separate entries must be made in the Register in accordance with subsection (1) in respect of each farm.

(5) Any person who wilfully defaces or alters the Register held by the Corporation commits an offence and must be liable on conviction to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 6 months, or both.

(6) Any person registered as a grower in the Register of Growers under the Sugar Industry Act (Cap. 206) shall be deemed to be registered as such under this Act.

Persons entitled to be registered as growers

43. A person must be entitled to be registered as a grower in respect of any farm upon meeting the criteria set out by the Corporation and approved by the permanent secretary.

Certificate of Registration

44.—(1) The Corporation must issue to a registered grower a Certificate of Registration.

(2) A Certificate of Registration shall be authenticated under the seal of the Corporation and shall be accepted in all courts as evidence of the particulars contained in, or endorsed on, the Certificate of Registration in accordance with this Part and of such particulars being entered in the Register.

(3) A Certificate of Registration shall, unless the contrary is proved by the production of the Register, be conclusive evidence that the person named on the Certificate of Registration is the person registered in respect of the farm to which the Certificate of Registration relates.

(4) A registered grower, his or her personal representatives or any other person in possession of a Certificate of Registration in respect of any farm shall, if required to do so, produce the Certificate of Registration held by him or her for—

- (a) endorsement; or
- (b) cancellation, where the entry in the Register relating to the registration of that grower in respect of that farm has been cancelled in pursuance of an order of the permanent secretary under section 47.

(5) A person who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding \$200.

(6) Where the Corporation is satisfied that a Certificate of Registration has been lost or destroyed, or has been defaced or illegible, it may issue another Certificate of Registration containing all the entries and endorsements which were made or appeared on the original Certificate of Registration, so far as may be ascertained from the corresponding entry in the Register, and stating that it is a substitute certificate.

(7) Any person who wilfully defaces, alters or destroys a Certificate of Registration commits an offence and is liable on conviction to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 6 months, or both.

Endorsement of Certificate of Registration

45. Any alteration made to an entry in the Register relating to any farm must be endorsed by the Corporation on the Certificate of Registration relating to that farm in pursuance of any order made by the Minister under this Part.

Rectification of Register

46.—(1) Any person may make a written application to the permanent secretary to rectify any entry in the Register that is incorrect.

(2) The permanent secretary may, if he or she is satisfied with the written application of such person in subsection (1) that an entry in the Register is incorrect, by order, direct the Corporation to make an alteration to rectify that entry.

Cancellation of registration

47.—(1) Subject to subsections (2) and (5), if a registered grower ceases for any reason to be in possession of any farm or any part of a farm, the Minister may, by order, direct the Corporation to cancel the entry in the Register relating to the registration of that grower in respect of that farm.

(2) Subsection (1) does not apply if a registered grower has ceased to be in possession of a part of his or her farm and the Minister, on the application of the registered grower, is satisfied that cancellation of the entry in the Register in respect of the grower is not warranted, in which case, the Minister may, by order, direct the Corporation to amend the Register to such extent as the permanent secretary deems appropriate.

(3) If a registered grower requests the Corporation to cancel the entry in the Register in respect of that registered grower, the Corporation may do so provided that it is not prejudicial to the Corporation.

(4) If the Corporation determines that the entry in the Register relating to a grower must be cancelled or amended, the Corporation may cancel or amend that entry accordingly.

(5) If a registered grower dies, the Corporation must enter the name or names of the personal representatives of the registered grower in the Register.

New registrations in respect of existing farms

48.—(1) The Corporation may—

- (a) on application being made to it by any person in accordance with subsection (2), in respect of any farm or any part of any farm in respect of which any other person is registered on the date of the making of the application or was registered within the 12 months next preceding that date; and
- (b) if it is satisfied that the applicant has acquired possession of that farm or that part of that farm,

register the applicant as the grower in respect of that farm or that part of that farm.

(2) An application under subsection (1) must be made in such form as the Corporation shall by rules prescribe and must be accompanied by—

- (a) a statutory declaration containing an undertaking by the applicant that he or she shall cultivate the farm or part of the farm in respect of which the application is made, and stating the true consideration in monetary value for the transfer to him or her of the estate or interest which he or she has acquired in that farm or that part of that farm;
- (b) the certificate of title, lease, sublease, agreement for a lease or sublease or other instrument of title relating to this estate or interest in that farm or that part of that farm;
- (c) if the consent of the Corporation to the making of the application has been obtained, a certificate under the hand of the chief executive officer of the Corporation, or any officer of the Corporation authorised in writing by the chief executive officer of the Corporation that such consent has been given; and
- (d) such other particulars as the Corporation may by rules prescribe or may direct in any particular case.

(3) Where a registration under subsection (1) has been made in respect of any farm or part of any farm, the Corporation shall, upon verifying that any previous entry in the Register in respect of that farm has been cancelled under section 47, make the appropriate entry in that Register in respect of that farm or part of that farm in accordance with section 42.

Certain registered growers to nominate representatives

49.—(1) If a person registered as a registered grower in respect of a farm is not a single individual, the organisation, body or persons so registered may, in writing addressed to the chief executive officer of the Corporation, nominate a person who shall be deemed to be the representative of the registered grower in respect of that farm.

(2) A nomination made under subsection (1) may be altered by the registered grower by notice in writing addressed to the chief executive officer of the Corporation.

New registrations in respect of new farms

50.—(1) On application in writing being made to it by any person in respect of land where no registration is in force, the Corporation may register that person in respect of that land.

(2) In the exercise of its powers under this section, the Corporation shall have regard to any policy guidelines relating to new registrations which may be issued from time to time by the Corporation in consultation with the Council.

Cancellation of registrations in cases of fraud

51.—(1) Where the Corporation, after affording all interested parties the opportunity of being heard, is satisfied that any entry, alteration or cancellation of an entry in the Register has been procured by fraud, or that any entry in the Register has been made on the grant of an application made under this Part together with a statutory declaration in which the consideration for the transfer of any estate or interest is falsely stated, the Corporation shall—

(a) cancel the entry; or

(b) reinstate that entry as it was before that alteration or cancellation was made.

(2) Any cancellation or reinstatement under subsection (1) may be made by the Corporation of its own motion or on application in writing made by any aggrieved person.

(3) The cancellation of any entry in the Register shall be without prejudice to any action which has commenced or course of action which has been accrued by or to the Corporation or any other person before the date of the cancellation, other than a person who was a party or privy to the fraud or false statement by reason of which the cancellation was directed to be made.

Fees

52. The Corporation shall be entitled to charge such fees as the Corporation may, by rules, prescribe in respect of the exercise by the Corporation of any of its functions under this Part, and in particular, in respect of the registration of any grower, the alteration or cancellation of any such registration, the issue and endorsement of any Certificate of Registration and the inspection of the Register.

Inspection of Register

53. Any person may, upon payment of such fee as may be prescribed by the Corporation under section 52, have access to and inspect the Register during such hours and upon such days as the Corporation determines.

PART 7—RESTRICTIONS ON INDUSTRIAL ACTION

Meaning of “industrial action” and “secondary industrial action”

54. For the purposes of this Part, unless the context otherwise requires—

“industrial action” includes a strike and lock-out;

“lock-out” means an action which, in contemplation or furtherance of a dispute, is taken by one or more employers, whether parties to the dispute or not, and which consists of the exclusion of employees from one or more farms, or other places of employment or of the suspension or interpretation of work in one or more such places;

“secondary industrial action” means the performance of work in a manner different from that in which it is customarily performed or the adoption of a practice in respect of such work, the result of which is a restriction or limitation on, or a delay in, the performance of work; and

“strike” means an individual or group or more concerted stoppage of work by a group of two or more farmers, cane cutters or lorry drivers in contemplation or furtherance of dispute or a grievance, whether they are parties to the dispute or grievance or not, and “striker” shall have a corresponding meaning.

Restrictions on industrial action

55.—(1) Subject to subsections (4) and (7), no industrial action by way of a strike shall be taken in respect of a dispute unless a notice in writing, of the intention to take such action, has been given by or on behalf of that organisation, as the case may be, to the other party to the dispute, or where there is more than one, to each of them, and to the permanent secretary.

(2) Subject to subsections (4) and (7), no industrial action by way of a lock-out may be taken in respect of a dispute unless—

(a) the action is taken by an employer who is a party to the dispute, or who is a member of an organisation of employers which is a party to the dispute; and

(b) at least 7 days’ notice in writing of the intention to take such action has been given by or on behalf of that employer or that organisation, as the case may be, to the other party to the dispute or, where there is more than one, to each of them, and to the permanent secretary.

(3) Subject to subsections (4) and (7), a registered grower must not, in furtherance of an industrial dispute, refuse or discontinue to plant, cultivate, harvest or deliver cane unless at least a 7 days' notice in writing of the intention to take such action has been given by or on behalf of that registered grower to the other party to the dispute or, where there is more than one, to each of them, and to the permanent secretary.

(4) Subject to subsection (5), a person shall not be guilty of an offence under subsection (1), (2) or (3) in respect of any action taken by him or her, if at the time of taking that action, 14 days has elapsed since notice was given to the permanent secretary and the permanent secretary has not made its award in respect of the dispute.

(5) The permanent secretary may extend the period of 14 days referred to in subsection (4) if in his or her opinion, it is appropriate to do so having regard to the action before the permanent secretary of any party to the dispute.

(6) A notice under this section must be in a form approved by the permanent secretary, and copies of such form of notice must be available at the Ministry.

(7) Where a party to a dispute gives a notice of intention to take industrial action under this section in respect of the dispute and for the time being such action by that party is not prohibited under the foregoing provisions of this section, any other party to that dispute may take industrial action in respect of that dispute without giving such notice as if the industrial action taken by the first mentioned party is not prohibited.

(8) The Minister may certify a dispute to be an unresolved dispute—

- (a) at any time after a notice under this section has been given to the permanent secretary in respect of that dispute; or
- (b) if any party to a dispute is taking secondary industrial action, whether or not a notice under this section has been given to the permanent secretary in respect of that dispute,

and the Minister shall refer the matter for determination under the provisions of the Master Award for determination in accordance with those provisions.

Sugar Industry Infringement Notice

56.—(1) A person who contravenes any of the sections stated in the first column of Schedule 2 may, as an alternative to prosecution, be served by the permanent secretary or an officer authorised by him or her with a Sugar Industry Infringement Notice under Schedule 1 requiring the person to pay a fixed penalty shown in the second column of Schedule 2 in respect of that section.

(2) The Minister may, by notice in the Gazette, amend Schedule 2 to prescribe other offences or penalties for the purposes of this section.

Penalties for unlawful industrial action

57.—(1) A registered grower who contravenes section 55(3) commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.

(2) Any person who calls for or causes industrial action to be taken in contravention of section 55(1) or (2) or induces or persuades any person to take industrial action in contravention of those subsections, commits an offence and is liable on conviction in the case of—

- (a) such organisation to a fine not exceeding \$1,000;
- (b) any person who is the holder of an office in such an organisation, to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both; or
- (c) any individual, to a fine not exceeding \$500 or to a term of imprisonment not exceeding 12 months, or both.

(3) A person who ceases or refuses to perform any work that he or she is bound to perform under the terms of his or her employment, in circumstances which give rise to reasonable suspicion that he or she is taking part in, or acting in furtherance of, any industrial action in contravention of section 55(1), commits an offence under that subsection and is liable upon conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 3 months, or both, unless he or she satisfies the court that he or she ceased or refused to perform work for reasons wholly unconnected with that industrial action.

(4) Where an offence punishable under this Part has been committed by a body corporate, any person who, at that time the offence was committed, was a direct manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, as well as the body corporate, commits an offence and is liable to be proceeded against accordingly, unless he or she proves that the offence was committed without his or her consent or connivance, and that he or she exercised all reasonable diligence to prevent the commission of the offence.

Defences available in proceedings for offences under this Part

58.—(1) If any person guilty of an offence punishable under this Part was, at the time the offence was committed, an officer of an organisation of employers or employees, or was purporting to act as such officer, it shall be sufficient defence to such organisation that such person committed the offence without authority.

(2) If any officer, or person purporting to act as an officer of an organisation of employers or employees commits an offence punishable under this Part with the authority of that organisation, it shall be sufficient defence to any other person who was, at that time the offence was committed, an officer of that organisation, that the offence was committed without his or her consent or connivance, and that he or she exercised all reasonable diligence to prevent the commission of the offence.

PART 8—DISPUTES PROCEDURE

Meaning of “dispute”

59. For the purposes of this Part, “dispute” means an actual or apparent dispute between—

- (a) the Corporation and a registered grower where the dispute relates to the—
 - (i) planting, cultivation, harvesting and delivery of cane;
 - (ii) sale of cane to the Corporation;
 - (iii) acceptance and purchase of cane by the Corporation; or
 - (iv) manufacture and sale of molasses and other by-products of sugar by the Corporation of sugar; or
- (b) two or more persons or organisations of employers or employees, other than a dispute between the Corporation and the Council, where the dispute is not an industrial dispute but relates wholly or mainly to any of the matters referred to in paragraph (a), whether or not any party to the dispute is the Corporation or a registered grower.

Functions of the permanent secretary

60.—(1) The functions of the permanent secretary must be to—

- (a) advise and give guidance to the Minister and to any other institution or sectors of the Industry on any matter relating to the Industry;
- (b) coordinate the activities of all sections of the Industry to foster the cooperation between them;
- (c) liaise with and to make representations, to the Government, any government department and any other bodies on any matter relating to the Industry; and
- (d) discuss and advise upon any matter relating to the Industry which has been referred to the Minister or the Tribunal.

(2) Where there is any question or difference as to whether a dispute exists, the permanent secretary may refer the matter to the Tribunal for determination.

Particular powers of the Tribunal in respect of the hearing and determination of disputes and other proceedings

61.—(1) The Tribunal may, in respect of any proceeding relating to a dispute and any other proceedings before the Tribunal under this Act—

- (a) remit any matter in dispute, subject to such conditions as the Tribunal may determine, to the parties for further consideration with a view of settling or reducing matters in dispute;

- (b) make an award, including a provisional or interim award, relating to any or all of the matters in dispute or give a direction in pursuance of the hearing or determination;
- (c) include in an award, or vary an award to include a provision to the effect that engaging in conduct in breach of a specified term of the award shall be deemed to constitute the commission of a separate contravention of that term on each day on which the conduct continues;
- (d) award compensation in respect of any contravention of any term of an award, other than any term of an award for the payment of compensation,
- (e) dismiss any matter, or part of a matter, in dispute or refrain from further hearing or from determining any matter, or part of a matter, in dispute, if it appears that—
 - (i) the matter, or part of the matter, in dispute is trivial; or
 - (ii) further proceedings are unnecessary or are undesirable in the public interest;
- (f) take evidence on oath;
- (g) summon before it the parties to the proceedings and witnesses, and compel the production before it of books, papers, documents and things for the purpose of reference to such entries or other matters as related to any matter in dispute;
- (h) hear and determine the proceedings in the absence of a party who has been summoned or served with notice to appear;
- (i) sit at any place;
- (j) conduct the proceedings or any part of the proceedings in private;
- (k) order any person to be joined as a party to the proceedings, if it considers that such person may be affected by an award or shall in any case be joined as a party to the proceedings;
- (l) order any party to be struck out; and
- (m) generally give all such directions and do all such things as are necessary for the expeditions and just hearing and determination of the dispute or any other matter before it.

(2) In the hearing and determination of any proceeding before the Tribunal under this Act, the Tribunal shall—

- (a) carefully and expeditiously hear, inquire and investigate the matters in dispute and all matters affecting the merits of the case and the just settlement of the matters in dispute; and

- (b) where the matters in dispute affect the public interest, have regard to the state of the national economy and the likely effect on the national economy of any award that the Tribunal may make in the proceedings and to which the proceedings relate, with special reference to the likely effect on the level of employment within and outside the Industry and the general level of wages and prices.

Assessors

62.—(1) The Tribunal may, before or at any stage during the hearing of any proceeding before the Tribunal under this Act, appoint one or two assessors for the purpose of advising it on any matter.

(2) An assessor appointed under subsection (1) shall be an independent person, unless the Tribunal is of the opinion, in respect of other proceedings before it, that there shall be two assessors having interests in common with each of the parties in dispute, in which event, the Tribunal shall appoint such assessors under that subsection.

(3) An assessor appointed under subsection (1) shall not take part in the determination of other proceedings before the Tribunal.

Intervention of the Minister

63.—(1) The Minister may intervene, whether at his or her own instance or at the request of the Tribunal, if it appears that some question of public interest has arisen and that it is proper and fit that the public interest be represented at the hearing of the proceedings.

(2) No intervention in any proceeding by the Minister under subsection (1) shall be taken to cause the Minister to become a party to the proceedings, and accordingly no award may be made against him or her by the Tribunal as to costs or otherwise.

(3) Where the Minister intervenes in any proceeding under subsection (1), he or she may be represented by the Attorney-General or by any public officer appointed by the Minister or the Attorney-General.

Representation of parties

64.—(1) In proceedings before the Tribunal under this Act, a party may—

- (a) appear in person;
- (b) be represented by a barrister and solicitor; or
- (c) be represented as provided by subsection (2).

(2) A party being the Corporation or the Council, may be represented respectively by a director, officer or servant of the Corporation or of the Council;

Procedure of the Tribunal

65.—(1) In the hearing and determination of any proceeding before the Tribunal under this Act, the—

- (a) procedure of the Tribunal shall be, subject to this Act and any rules prescribed by the Tribunal, within the discretion of the Tribunal;

- (b) Tribunal shall not be bound to follow any rules of evidence, but may inform itself on any matter in such manner as it deems appropriate; and
- (c) Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms.

(2) The Tribunal may determine the periods which are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to the proceedings before it and require that those cases be presented within the respective periods so determined.

(3) The Tribunal may require arguments or evidence to be presented in writing, and may decide the matters upon which the Tribunal shall hear oral evidence or argument.

(4) The Tribunal may exclude any person from the hearing of any proceeding before it if it considers that it is necessary to do so in order to preserve order.

Powers of inspection

66.—(1) The Tribunal or any person authorised in writing by the Tribunal may, at any reasonable time—

- (a) enter any premises or place in which—
 - (i) work is being or has been done or commenced, or a matter or thing is taking or has taken place, in relation to which any proceeding is pending under this Act or an award has been made; or
 - (ii) an offence against this Act or a contravention of any of the terms of an award or registered collective agreement is suspected to have been or is likely to be committed;
- (b) inspect the premises or that place and inspect or view any work, material, machinery, appliance or thing in such premises or at such place;
- (c) require the production of any article, book, paper, document or thing kept in such premises or at such place and inspect the same; and
- (d) examine any person engaged in such premises or at such place in respect of any matters on which information may reasonably be required by the Tribunal.

(2) A person must not hinder or obstruct a person in the exercise of his or her powers under subsection (1), or make to a person exercising his or her powers under that subsection a statement or representation which is false or misleading in a material particular.

(3) A person who contravenes subsection (2) commits an offence and is liable upon conviction to a fine not exceeding \$500 or to a term of imprisonment not exceeding 6 months, or both.

Orders for taking of evidence

67. The Tribunal may, subject to such conditions as the Tribunal may direct, authorise a person to take evidence, on its behalf in respect of any proceeding before it under this Act and in that event, that person shall have all the powers of the Tribunal under this Part to secure the attendance of witnesses, the production of books, papers, documents and things, and the taking of evidence on oath.

Referral of disputes to Mill Area Committees

68.—(1) The Tribunal may refer a dispute to a Mill Area Committee for investigation and report and may at any time revoke such a referral.

(2) On the report of a Mill Area Committee, the Tribunal may, with or without hearing further arguments or evidence, or both, determine the dispute and make its award.

PART 9—AWARDS

Form of awards

69. An award shall be framed in such manner as best to express the decision of the Tribunal and to avoid unnecessary technical expressions.

Commencement of awards

70.—(1) Unless the Tribunal otherwise directs, an award shall not have effect until after the expiration of 28 days from the date of the award.

(2) The Tribunal may direct that an award have retrospective effect.

Registration and publication of awards

71.—(1) The Ministry must register an award and shall cause the same to be published as soon as practicable after it is made in such a manner as the Tribunal may determine.

(2) Copies of an award must be made available by the Ministry to any organisation or person entitled to appeal against the award under section 79.

Award not to conflict with any written law

72.—(1) The Tribunal must not make an award that is—

- (a) inconsistent with the provisions of any other written law regulating the wages, hours of work or other terms or conditions of, or affecting the, employment of any person; or
- (b) less favourable to any person than any award or order lawfully made in pursuance of any written law.

(2) The Tribunal shall, in making an award containing any terms as to the safety, health or welfare of employees at work, have regard to the provisions of any written law relating to the safety, health or welfare of persons at work and to any report of any investigation made under such law which may be of relevance.

Relief granted not limited to any relief claimed

73. In making an award in respect of any proceeding before the Tribunal under this Act, the Tribunal must not be restricted to any specific relief claimed by any party or to the demands made by any party in the course of the proceedings, but may include in the award any matter or thing which the Tribunal deems necessary, in particular in the case of proceedings relating to a dispute, for the purpose of preventing or settling the matter in dispute or of preventing further disputes.

Common rules

74.—(1) The Tribunal may, if it deems necessary for the purpose of preventing or settling a dispute before it or of preventing further disputes, declare that any term of an award shall be a common rule of the Industry or of a section of the Industry.

(2) Before a common rule is declared under subsection (1), the Tribunal shall—

- (a) by notice published in the Gazette, and in such other publications as the Tribunal deems appropriate, make known that all persons and organisations of employers or employees interested and desiring to be heard may, on or before the date specified in the notice, appear or be represented before the Tribunal; and
- (b) consult the Council and the Corporation in the matter and the Tribunal must hear all interested persons and organisations so appearing or represented.

Interpretation of award

75.—(1) If any question arises as to the interpretation of an award, the Tribunal must, of its own motion, determine the question after hearing the parties bound by the award or, if the Tribunal deems appropriate, without hearing the parties.

(2) The provisions of this Part relating to the hearing and determination of any proceeding by the Tribunal under this Act shall have effect in respect of the hearing and determination of any question under subsection (1) and the determination of that question shall, for the purpose of this Act, have the same effect in all respects as the original award.

On whom award binding

76.—(1) An award determining any proceeding before the Tribunal under this Act shall be binding on—

- (a) all parties to the proceedings who appeared or were represented before the Tribunal;
- (b) all persons who were summoned or notified to appear as parties to the proceedings, whether such persons appeared or not, unless such persons satisfied the Tribunal that they were not parties to the proceedings;
- (c) any person who is the successor to, or assignee of, the undertaking of an employer who was a party bound by the award;

(d) all organisations and persons on whom the award is binding as a common rule by virtue of a declaration made by the Tribunal under section 74(1); and

(e) all the members of organisations bound by the award.

(2) For the purpose of this section, any question whether a person is bound by any award by virtue of subsection (1) shall be determined by the Tribunal and shall be binding on that person and on all the other persons so bound by the award.

Cancellation, variation and suspension of awards

77.—(1) The Tribunal may, of its own motion—

(a) cancel an award or any of the terms of an award;

(b) vary any of the terms of an award; and

(c) suspend, for such period and subject to such limitations and conditions as the Tribunal deems appropriate, all or any of the terms of an award.

(2) The provisions of this Part shall apply in respect of proceedings for the cancellation, variation or suspension of an award or of any of the terms of an award as they apply in respect of proceedings for the making of an original award.

Awards to be final, except in certain cases

78. Subject to section 79, an award shall—

(a) be final and conclusive; and

(b) not be challenged, appealed against, reviewed, quashed or questioned in any court of law.

Appeal to the High Court

79.—(1) Subject to subsection (2), any person or organisation bound by an award may appeal to the High Court against the award or any of the terms of the award on any of the following grounds—

(a) the Tribunal had no jurisdiction or exceeded its jurisdiction in the matter to which the appeal relates;

(b) the award has been obtained by fraud; or

(c) the decision of the Tribunal is erroneous in law,

and with the leave of the High Court, if the High Court is of the opinion that the matter is of such importance that, in the public interest, an appeal shall lie.

(2) A person who is bound by an award as a member of an organisation bound by the award shall not have a right of appeal under subsection (1) in respect of that award.

(3) An appeal under subsection (1) shall be made within 21 days of the award appealed against.

(4) Where an appeal is brought under subsection (1), the High Court may, subject to such conditions as the High Court deems appropriate, make an order that the operation of the whole or part of the award appealed against be stayed pending the determination of the appeal or until further order of the High Court.

(5) On hearing an appeal brought under subsection (1), the High Court may—

- (a) admit further evidence; and
- (b) direct the Tribunal to submit a report to the Court in respect of any specified matter.

(6) On hearing an appeal brought under subsection (1), the High Court may—

- (a) confirm, quash or vary the award appealed against;
- (b) make an award in respect of the subject matter of the award appealed against;
- (c) set aside the award appealed against and order that a new hearing be held; or
- (d) order a new hearing, without interfering with the award appealed against.

(7) On hearing an appeal brought under subsection (1), the High Court shall dismiss the appeal if it considers that no substantial miscarriage of justice has occurred notwithstanding that the High Court is of the opinion that any question raised at the hearing of the appeal might have been decided in favour of the applicant.

(8) The foregoing provisions of this Part relating to the hearing and determination of any proceeding before the Tribunal shall apply to the hearing and determination of an appeal brought under this section.

Statement of case to the High Court pending hearing of dispute

80. The Tribunal may, at any stage of any proceeding before it under this Act, state, in the form of a special case for the opinion of the High Court, any question of law arising in the course of the proceedings.

Costs

81. The Tribunal may make such order as it deems appropriate in respect of the costs and expenses, including the expenses of witnesses, of proceedings before it.

Enforcement of awards

82.—(1) An award may be enforced in the same manner as a Judgment or order of the High Court is enforced.

(2) The Arbitration Act (Cap. 38) shall not apply to any proceeding of the Tribunal or to any award made by the Tribunal.

Contempt of the Tribunal

83. The Tribunal shall have the same power to punish contempt of its power and authority as is possessed by the High Court in respect of contempt of the Court.

PART 10—TRANSFER AND CONVERSION OF SHARES, ASSETS AND LIABILITIES

Transfer of shares in the Corporation

84. The total number of shares held by the shareholders in the Corporation, except for the shares held by the Government, must, upon or as soon as practicable after the commencement of this Act, be transferred to the Government at a value derived from the most recent independent valuation of the Corporation immediately before the commencement of this Act.

Conversion of shares in the Corporation

85. All loans that the Government advanced to the Corporation and accrued interests therefore, immediately before the commencement of this Act must upon or as soon as practicable after the commencement of this Act be converted into shares at a value derived from the most recent independent valuation of the Corporation and such shares be held by the Government.

Conversion of shares in South Pacific Fertiliser Limited

86. Any monetary loan that Government advanced to South Pacific Fertiliser Limited before the commencement of this Act shall, upon or as soon as practicable after the commencement of this Act, be converted into equivalent shares in South Pacific Fertiliser Limited and such shares shall be held by Government.

Transfer and acquisition of assets and liabilities to the Corporation

87.—(1) As soon as practicable after the commencement of this Act, all assets, interests, rights, privileges, liabilities and obligations of the Sugar Research Institute of Fiji must be transferred to and vested with the Corporation without conveyance, assignment or transfer.

(2) If a question arises as to whether any particular property, asset, interest, right, privilege, liability or obligation has been transferred to or vested in the Corporation under subsection (1), a certificate signed by the Minister must be conclusive evidence that the property, asset, interest, right, privilege, liability or obligation was or was not so transferred or vested.

Transfer of employees

88.—(1) As from the date of commencement of this Act, all persons employed immediately before that date in the Sugar Research Institute of Fiji must be transferred to the Corporation.

(2) Until such time as terms and conditions, including rules as to the conduct and discipline of its employees are drawn up by the Minister, the terms and conditions applicable to the employees immediately before the commencement of this Act shall continue to apply to every person transferred under subsection (1).

(3) For the purposes of every enactment, law, award, determination, contract and agreement relating to the employment of a transferred employee, the contract of employment of that employee is deemed to have been unaffected and the period of employment is for all purposes deemed to have been a period with the Corporation.

Existing agreements and contracts

89. All deeds, bonds, contracts, agreements and instruments to which the Sugar Research Institute of Fiji is a party subsisting immediately before the commencement of this Act must with effect from the commencement of this Act continue to be in force and must be enforced by or against the Corporation as if the Corporation had been named therein or had been a party thereto.

Continuation of proceedings

90. All actions and proceedings instituted by or against the Sugar Research Institute of Fiji and pending on the date of commencement this Act, must be deemed to be actions and proceedings instituted by or against the corporation and may be continued without amendment to the documents already filed and completed and enforced accordingly.

No benefit in respect of abolition of office

91. A person who is transferred to the Corporation is not entitled to claim any benefit on the ground that he or she has been retired from the Sugar Research Institute of Fiji on account of the abolition of office in consequence of the repeal of the Sugar Research Institute of Fiji Act 2005.

PART 11—MISCELLANEOUS

Rules of the Tribunal

92. The Tribunal may, following the approval of the Chief Justice, make rules to give effect to the provisions of this Act relating to the Tribunal, and, in particular, to—

- (a) regulate the sittings of the Tribunal for the hearing and determination of any proceeding before the Tribunal under this Act;
- (b) regulate the practice or procedure of the Tribunal; and
- (c) prescribe the forms to be used in respect of such proceedings.

Restriction on disclosure of information

93.—(1) A person must not reveal or disclose any information which may come to such persons knowledge in the course of performing the duties and functions under this Act, other than for purposes required or permitted under this Act or any other written law.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 6 months, or both.

Regulations

94. The Minister may make Regulations to give effect to the provisions of this Act.

Repeal and transitional

95.—(1) Subject to the provisions of this Act, the Sugar Industry Act (Cap. 206) and the Sugar Research Institute of Fiji Act 2005 are repealed.

(2) Notwithstanding the repeal of the Sugar Industry Act (Cap. 206) and the Sugar Research Institute Act 2005, all rules and regulations made under those Acts, in so far as they are not inconsistent with the provisions of the Act must continue to be in operation until rescinded or amended under this Act.

(3) The Minister may by regulations provide for further transitional provisions as may be necessary or expedient.

SCHEDULE 1
(Section 56)

SUGAR INDUSTRY INFRINGEMENT NOTICE

To: _____ of _____

Place of Offence:

Date of Offence:

Time of Offence:

YOU ARE HEREBY CHARGED as follows:

Statement of Offence: _____

contrary to _____

Maximum Penalty: _____ (\$)

Particulars of Offence: _____

TAKE NOTICE that, if not later than 21 days from the date hereof, payment of the fixed penalty of _____

(\$) is received as specified below at the Ministry, all liability in respect of the offence will be discharged and no further action will be taken. **HOWEVER**, if the fixed penalty is not paid within the specified time you will be required to attend court at _____ Magistrates Court to answer the charges set out above on the _____ day of _____ 20____.

Signed.....
Authorised Officer

Designation:.....

Date:

**See back of form for Affidavit of Service and Written Plea of Guilty*

AFFIDAVIT OF SERVICE
(To be completed in all cases)

I, _____ the authorised officer whose signature appears at the foot of the Sugar Industry Infringement Notice above, make oath and say that, on the _____ day of _____, 20 _____ at _____ I did serve upon the accused person specified therein a true copy of that Sugar Industry Infringement Notice.

Sworn by the above named authorised officer at this ____ day of _____ 20__.

Before: _____
 Justice of Peace or Commissioner for Oaths _____
Authorised Officer

WRITTEN PLEA OF GUILTY

I, _____ being the person named above hereby enter a plea of guilty to the charge specified

Signed _____ Date: _____

SCHEDULE 2
(Section 56)

FIXED PENALTIES

<i>Section</i>	<i>Fixed Penalty</i>
57(1)	\$500
57(2)(a)	\$100
57(2)(b)	\$500
57(2)(c)	\$100
57(3)	\$500

REFORM OF SUGAR CANE INDUSTRY BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Sugar Industry Act (Cap. 206) (**‘former Act’**) was enacted in 1984 and provides for the regulation and administration of the sugar industry.
- 1.2 To improve the livelihood on nearly 200,000 Fijians who either directly or indirectly rely on the industry, an industry-wide restructure plan was implemented from 2009.
- 1.3 In 2010, a new dedicated Ministry of Sugar Industry was created as well as a Sugar Task Force.
- 1.4 To continue to improve the efficiency and effectiveness of the industry, the Bill provides for the next stage of the industry reform by further driving out costs in the industry. This is being done by merging functions and dissolving historical institutions of the industry that no longer adds value.

2.0 FEATURES OF THE BILL

- 2.1 Part 1 of the Bill provides for the preliminary provisions of the Bill. These include the short title and commencement of the Bill, the interpretation of terms used throughout the Bill and the objectives of the Bill.
- 2.2 Part 2 of the Bill establishes the Sugar Industry Tribunal (**‘Tribunal’**). The Tribunal is a person who is appointed by the Chief Justice. The Tribunal must be a person who is qualified to be appointed as a High Court judge or has extensive experience in economics and industrial relations.
- 2.3 Under Part 2 of the Bill, those persons employed by the Sugar Industry Tribunal which was established under the former Act will be transferred to the Ministry of Sugar.

- 2.4 Part 3 of the Bill establishes the Council of Sugar Cane Growers. The composition of the Council under the former is retained under the Bill.
- 2.5 Part 4 of the Bill establishes four mill area committees. These committees for the Labasa, Lautoka, Penang and Rarawai mill areas.
- 2.6 Part 5 of the Bill deals with the Sugar Industry Master Award. The Master Award was made by the Sugar Industry Tribunal which was established under the former Act, and is continued under the Bill.
- 2.7 Part 6 of the Bill deals with the registration of growers. Under this part, the Fiji Sugar Corporation (**'FSC'**) must keep and maintain the Register of Growers (**'Register'**). The Register will contain—
- (a) the name of every person entitled to be registered as a grower;
 - (b) the date on which the entry in the Register is made;
 - (c) the registration number assigned to that person;
 - (d) the location and area of the farm belonging to that person;
 - (e) particulars of a certificate of title, lease, sublease, agreement for a lease or sublease, or other instrument of title relating to the estate or interest of that person in the farm;
 - (f) the registered area;
 - (g) the sector, district and mill area in which the farm is situated;
 - (h) any farm basic allotment fixed by the Corporation in respect of that farm;
 - (i) the method of delivery of cane to the Corporation applying to that farm; and
 - (j) such other particulars as the permanent secretary may direct in any particular case.
- 2.8 Parts 7 of the Bill deals with industrial actions.
- 2.9 Part 8 of the Bill deals with procedures relating to disputes.
- 2.10 Part 9 of the Bill deals with awards made by the Tribunal. The awards will be registered and made available to those entitled to appeal against the awards.
- 2.11 Part 10 of the Bill deals with the transfer and conversion of shares in FSC and South Pacific Fertiliser Limited (**'SPFL'**), as well as the transfer of assets and liabilities.

- 2.12 The total number of shares held by the shareholders in FSC, except for the shares held by the Government, will be transferred to the Government at a value derived from the most recent independent valuation of FSC before the commencement of the new Act.
- 2.13 All loans and associated accrued interests that the Government advanced to FSC will, be converted into shares at a value derived from the most recent independent valuation of FSC and such shares will be held by the Government.
- 2.14 Any monetary loan that Government advanced to SPFL will be converted into equivalent shares in SPFL and such shares will be held by the Government.
- 2.15 Part 11 of the Bill empowers the Tribunal to make rules relating to the functions of the Tribunal. The rules are to be made following the approval of the Chief Justice.
- 2.16 Part 11 of the Bill also empowers the Minister to make regulations to give effect to the provisions of the new Act. Also, the former Act will be repealed by new Act.
- 2.17 The Sugar Industry Infringement Notice and fixed penalties are attached as schedules to the Bill.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for sugar.

A. SAYED-KHAIYUM
Attorney-General