

CHAPTER 206
SUGAR INDUSTRY

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Act No. 8 of 1984; Legal Notices Nos. 112 of 1984, 30 of 1985 and 39 of 1985

AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF THE SUGAR COMMISSION OF FIJI, THE SUGAR INDUSTRY TRIBUNAL, THE SUGAR CANE GROWERS' COUNCIL AND THE MILL AREA COMMITTEES; FOR PRESCRIBING BY A MASTER AWARD OF THE SUGAR INDUSTRY TRIBUNAL STANDARD PROVISIONS GOVERNING THE MUTUAL RIGHTS AND OBLIGATIONS OF CANEGROWERS AND THE CORPORATION; FOR DETERMINING THE BASIC ALLOTMENTS OF CANE AND THE HARVEST QUOTAS OF CANE AND SUGAR; FOR PROMOTING THE EFFICIENCY AND DEVELOPMENT OF THE SUGAR INDUSTRY AND THE COORDINATION OF THE ACTIVITIES OF ALL SECTIONS OF THE SUGAR INDUSTRY; AND FOR PROMOTING GOOD RELATIONS BETWEEN ALL SECTIONS OF THE SUGAR INDUSTRY

Parts I, IV, s. 73, s. 130 and s. 132(2)—[14 December 1984]
 Parts II, III, V, s. 128 and s. 129—[1 May 1985]
 Parts VI, VII, VIII, IX, X, XI, XII, s. 131, s. 132(1), s. 133 and
 Schedule—[17 May 1985]

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Sugar Industry Act.

Interpretation

- 2.—(1) In this Act, unless the context otherwise requires—
 “the Accountant of the Tribunal” means the Accountant of the Tribunal appointed under section 21;
 “the Act of 1961” means the Sugar Industry Act (No. 53 of 1961);
 “the appointed day” means, in relation to any provision of this Act, the day notified by the Minister in the *Gazette* pursuant to subsection (2) of section 1 as being the date on which that provision shall come into force;
 “award” includes an award, order, finding or other decision of the Tribunal, other than the Master Award and any order under subsection (1) of section 69 amending the Master Award;
 “the Board of Directors of the Council” and “the Board” means the Board of Directors of the Council constituted under section 46;
 “cane” means sugar cane;
 “certificate of registration” means a certificate of registration issued under section 74;
 “collective agreement” has the meaning assigned to it by subsection (1) of section 86;

- “the Commission” means the Sugar Commission of Fiji established under section 4;
- “the Corporation” means the Fiji Sugar Corporation Limited incorporated under the Fiji Sugar Corporation Limited Act;
- “the Council” means the Sugar Cane Growers’ Council established under section 31;
- “date of registration” means, in relation to a registered grower, the date on which he was registered in the Register of Growers;
- “district” means a district of a mill area as defined under section 27;
- “employee” means a person who is employed in the industry under a contract (whether the contract is written or oral, express or implied), being a contract of service or apprenticeship or a contract personally to execute any work;
- “employer” means a person by whom an employee is, or, in a case where the employment has ceased, was employed;
- “executive committee” means, in relation to any organisation of employers or employees, the body to which the management of the affairs of the organisation is entrusted by the members of the organisation;
- “farm” means, in relation to any person, the subdivision used or intended to be used by him for the cultivation of cane;
- “farm basic allotment” has the meaning assigned to it by subsection (1) of section 84;
- “farm harvest quota” has the meaning assigned to it by paragraph (c) of subsection (1) section 85;
- “grower” means a person who cultivates cane for sale;
- “the Independent Chairman” means the Independent Chairman appointed under section 3 of the Act of 1961;
- “the industry” means the sugar industry;
- “industrial action” has the meaning assigned to it by section 97;
- “industrial dispute” has the meaning assigned to it by section 102;
- “the Industrial Commissioner” means the officer of the Tribunal appointed under section 22;
- “the Inquiry” means the public inquiry required to be held under subsection (1) of section 66 for the purpose of considering objections to a draft of the Master Award;
- “the institutions of the industry” means the Commission, the Tribunal, the Council, the Corporation, the Mill Area Committees and the recognised trade unions;
- “lock-out” has the meaning assigned to it by paragraph (b) of the definition of “industrial action” in section 97;
- “the Master Award” means the award required to be made by the Tribunal under subsection (1) of section 64; and any reference to the Master Award shall be taken to include a reference to the Master Award as amended by any order made under subsection (1) of section 69;
- “mill” means the mill used by the Corporation for the manufacture of sugar from cane produced in a mill area;
- “mill area” means a mill area as defined under section 27;
- “Mill Area Committee” means a Mill Area Committee constituted under section 56;

- “mill basic allotment of cane” has the meaning assigned to it by subsection (3) of section 84;
- “mill harvest quota of cane” has the meaning assigned to it by paragraph (b) subsection (1) of section 85;
- “molasses” means a solution of sugar and other carbohydrates and mineral salts in water and in the context of the sugar industry is the end product of the sugar manufacturing process from which no more sugar can be economically crystallised by conventional methods;
- “national basic allotment of cane” has the meaning assigned to it by subsection (2) of section 84;
- “national harvest quota of cane” and “national harvest quota of sugar” have the meanings respectively assigned to them by paragraph (a) of subsection (1) of section 85;
- “officer” in relation to the Corporation includes a director, manager or secretary;
- “organisation of employees” means a trade union or any association of employees which is not a trade union and which is registered as an industrial association under the Industrial Associations Act;
- “organisation of employers” means an association of employers which is registered as an industrial association under the Industrial Associations Act;
- “president” means, in relation to a recognised trade union, the person carrying out the functions of president of the union;
- “procedure agreement” has the meaning assigned to it by subsection (2) of section 86;
- “recognised trade union” means a trade union entitled to recognition by the Corporation, or any other employer or any organisation of employers, under Part II of the Trade Unions (Recognition) Act;
- “Register of Growers” means the register required to be kept under subsection (1) of section 72;
- “registered” means registered in the Register of Growers (except in relation to a collective agreement or an award);
- “registered grower” means a grower who is registered;
- “Registrar of the Tribunal” means the Registrar of the Tribunal appointed under section 20;
- “relevant date” has the meaning assigned to it by subsection (6) of section 64;
- “representative member” means, in relation to a Mill Area Committee, a member referred to in paragraph (c), (d), (e), (f) or (g) subsection (1) of section 57;
- “secondary industrial action” has the meaning assigned to it by section 97;
- “sector” means a sector of a district as defined under section 27;
- “successor”, in relation to the employer of an employee, means a person who, in consequence of a change occurring (whether by virtue of a sale or other disposition, or by operation of law) in the ownership of the undertaking or of part of the undertaking for the purposes of which the employee was employed, has become the owner of that undertaking or of that part of it, as the case may be;
- “sugar” means sugar in any of its recognised commercial forms, except the product sold as final molasses;

“trade union” has the meaning assigned to it by section 2 of the Trade Unions Act;

“the tribunal” means the Sugar Industry Tribunal established under section 18; and

“year” means—

(a) in Part VIII, the period of twelve months commencing on the 1st day of April;

(b) in any other Part, any period of twelve months.

(2) Notwithstanding section 21 of the Interpretation Act, any order made or given by the Tribunal under Parts IV, VII and VIII may be published in such manner as the Tribunal may direct and shall come into force on the date specified therein.

Main objects of this Act

3. The main objects of this Act are—

(a) to establish the Commission, the Tribunal, the Council and the Mill Area Committees as institutions of the industry, in addition to the Corporation and the recognised trade unions;

(b) to promote the efficiency and development of the industry;

(c) to co-ordinate the activities of all sections of the industry and to promote goodwill and harmony between them;

(d) to prescribe standard provisions governing the mutual rights and obligations of the Corporation and growers, and to provide for the keeping of an official register of growers;

(e) to regulate the determination of the national, mill and farm basic allotments of cane, the national harvest quotas of cane and sugar and the mill and farm harvest quotas of sugar;

(f) to encourage, and provide the means for, conciliation with a view to the prevention and settlement of all disputes within the industry by amicable agreement; and

(g) to provide means for preventing and settling disputes within the industry which are not resolved by amicable agreement with the maximum of expedition and the minimum of legal form and technicality.

PART II—THE SUGAR COMMISSION OF FIJI

Establishment of the Commission

4. There is hereby established a commission to be called the Sugar Commission of Fiji, which shall be a body corporate with perpetual succession and a common seal, with the capacity to enter into contracts and to sue and be sued in its corporate name, and with 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, including the raising of loans.

Composition of the Commission

5.—(1) The Commission shall consist of the following members, that is to say—

(a) a Chairman;

(b) the Industrial Commissioner;

- (c) the Chief Executive of the Council;
 - (d) five members nominated by the Board of Directors of the Council to represent the Council;
 - (e) The Chief Executive of the Corporation;
 - (f) three members nominated by the Board of Directors of the Corporation to represent the Corporation;
 - (g) a member appointed by the Minister to represent the Government; and
 - (h) two members nominated to represent the recognised trade unions.
- (2) All members nominated for appointment to the Commission shall be appointed by the Minister.
- (3) The Chairman shall be appointed by the Minister, after consultation with the Standing Select Committee of the House of Representatives on Sugar, and shall be an independent person unconnected with any section of the Industry.
- (4) If for any reason the Chairman is absent or unable to act, the Minister may appoint another person qualified for appointment as Chairman to act as the Chairman for so long as the Chairman is absent or unable to act, as the case may be; and, in that event the person appointed to act as the Chairman may exercise all or any of the functions of the Chairman under this Act.
- (5) The members nominated by the Board of Directors of the Council shall be nominated from among the members of the Council.
- (6) The members nominated by the Board of Directors of the Corporation shall be nominated from among the officers and servants of the Corporation.
- (7) Subject to subsection (9), the members nominated to represent the recognised trade unions shall be nominated by the presidents of the executive committees of those unions from among the candidates selected in accordance with subsection (8).
- (8) The executive committee of each recognised trade union shall select two candidates from among the voting members or officials of its union for nomination under subsection (7).
- (9) If a majority of the presidents of the executive committees of the recognised trade unions fail to agree on the making of any nomination under subsection (7) from among the candidates referred to in that subsection, the Minister may make such nomination as he sees fit from among those candidates; and, in that event, the nomination made by the Minister under this subsection shall have effect, for the purposes of this section, as if it had been made by a majority of those presidents under subsection (7).

Tenure of office of the Chairman and other members of the Commission

- 6.—(1) Subject to section 7, the term of office of the Chairman of the Commission shall be three years.
- (2) Subject to section 7, the term of office of the other members of the Commission appointed by the Minister shall be three years or such shorter period as the Minister shall determine.
- (3) The Chairman and any such other member of the Commission shall be eligible for re-appointment upon ceasing to be the Chairman or a member of the Commission, as the case may be.
- (4) The Chairman or any other member of the Commission may resign his office by notice in writing under his hand addressed to the Minister, and he shall be deemed to have vacated his office when the notice is received and accepted by the Minister.

(5) In the event of any vacancy occurring in the office of the Chairman or any other member of the Commission caused by death or resignation, his disqualification under section 7 or any other cause, before the expiration of the term of office for which he was appointed, the vacancy may be filled, in the same manner as that in which the appointment to that office is required to be made under section 5, for the unexpired portion of the term of office of that member.

Disqualifications for membership of the Commission

7. A person shall be disqualified for membership of the Commission if—
- (a) he is a member of either House of Parliament;
 - (b) he is a public officer, except in the case of—
 - (i) Industrial Commissioner;
 - (ii) a member appointed under paragraph (g) of subsection (1) of section 5;
 - (c) in Fiji or elsewhere—
 - (i) he has been adjudged bankrupt or has made a composition with his creditors;
 - (ii) he has been convicted of any offence involving fraud or dishonesty;
 - (d) he is adjudged or otherwise declared to be of unsound mind or is permanently incapacitated from performing his duties;
 - (e) he was appointed under section 5 to represent the Council, upon ceasing to be a member of the Council;
 - (f) he was appointed under section 5 to represent the Corporation, upon ceasing to be an officer or servant of the Corporation; or
 - (g) he was appointed under section 5 to represent the recognised trade unions, upon ceasing to be a voting member or official of any of those unions.

Meetings of the Commission

8.—(1) Subject to subsection (2), the Commission shall meet at least twice a year, and meetings shall be held at such places and times as the Chairman may determine.

(2) The Chairman may at any time convene a meeting of the Commission and shall, on receiving a notice in writing from—

- (a) the Minister;
- (b) the Tribunal;
- (c) the Board of Directors of the Council or of the Corporation; or
- (d) the two members representing the recognised trade unions on the Commission,

requesting that a meeting of the Commission be held for any purpose specified in the notice, convene a meeting of the Commission for that purpose within fourteen days of the receipt by the Chairman of the notice.

Procedure at meetings of the Commission

9.—(1) The Chairman or, in his absence, any person appointed under subsection (4) of section 5 to act as the Chairman, shall preside at a meeting of the Commission.

(2) In the absence of the Chairman and any person so appointed to act as the Chairman from a meeting of the Commission, the Industrial Commissioner shall preside at the meeting.

(3) The quorum for a meeting of the Commission shall be nine members of whom one shall be the Chairman, the person appointed under subsection (4) of section 5 to act as Chairman or the Industrial Commissioner.

(4) A decision of the Commission shall be by a majority of votes, and, in addition to his original vote, the member presiding at the meeting shall have a casting vote in any case where the voting is equal.

(5) The validity of any proceedings of the Commission shall not be affected by any vacancy in its membership or by any defect in the nomination, appointment or qualification of any of its members or of any person purporting to act as one of its members.

(6) Minutes in proper form shall be kept of every meeting of the Commission and shall be confirmed as soon as may be thereafter by the person presiding thereat or at a subsequent meeting of the Commission.

(7) Subject to the foregoing provisions of this section, the Commission may regulate its own procedure.

Seal of the Commission

10. The common seal of the Commission shall not be affixed except pursuant to a resolution of the Commission and in the presence of the Chairman and one other member of the Commission, and the affixing of the seal of the Commission shall be authenticated by their signatures.

Committees of the Commission

11.—(1) The Commission may appoint a committee or committees consisting of two or more persons, who may or may not be members of the Commission, to advise the Commission as to the exercise of any of its functions under this Act.

(2) Subject to any general or special direction of the Commission, any such committee may regulate its own procedure.

Officers and servants of the Commission

12. The Commission may appoint and employ a secretary and such other officers and servants as it considers necessary for the proper carrying out of its functions under this Act.

Remuneration and allowances of the Chairman, officers and servants of the Commission

13.—(1) The remuneration payable to the Chairman of the Commission, and the remuneration of any person appointed under subsection (4) of section 5 to act as Chairman, shall be determined by the Minister, with the advice of the Accountant of the Tribunal and after consultation with the Chairman of the Board of Directors of the Council and the Chairman of the Board of Directors of the Corporation.

(2) The remuneration payable to the officers and servants of the Commission shall be determined by the Commission.

(3) The members of the Commission and the officers and servants of the Commission shall be entitled to such allowances for travelling and subsistence as shall be determined by the Commission, with the advice of the Accountant of the Tribunal.

Protection of members, officers and servants of the Commission

14. No matter or thing done, and no contract entered into, by or on behalf of the Commission shall, if the matter or thing was done or the contract entered into *bona fide* for the purpose of this Act, subject any member of the Commission, any member of a committee appointed by the Commission under section 11, or any officer or servant of the Commission, personally to any action, liability, claim or demand in respect thereof.

Functions of the Commission

15.—(1) The functions of the Commission shall be—

- (a) to advise and give guidance to the Minister and to any other institutions or sections of the industry on any matter relating to the industry;
- (b) to co-ordinate the activities of all sections of the industry so as to foster co-operation between them;
- (c) to liaise with, and to make representations to, the Government, any Government department and any other bodies on any matter relating to the industry;
- (d) to promote the more extensive use of sugar and of by-products of sugar;
- (e) to promote the efficiency and development of the industry;
- (f) to advise on the need for evaluations to be made of efficiency at the mill, on the farms and in other sections of the industry;
- (g) to publish and disseminate information about the industry;
- (h) to promote better understanding and knowledge of the industry among the public;
- (i) to discuss and advise upon any matter relating to the industry which has been referred to it by the Minister, the Tribunal or the Chairman of the Commission, and
- (j) to perform such other functions as may be assigned to it by this Act.

(2) Without prejudice to subsection (4) of section 9, in the discharge of its functions under this Act the Commission shall use its best endeavours to ensure that all matters coming before the Commission are resolved by general agreement.

Financial provision

16.—(1) The administrative expenses of the Commission, including the remuneration under this Act of the Chairman, of any person appointed under subsection (4) of section 5 to act as Chairman and of the officers and servants of the Commission, and the allowances paid under this Act to any member of the Commission or to any officer or servant of the Commission, shall, when audited and certified as mentioned in subsection (2), be paid out of, and be a charge on, the proceeds of sale of sugar, molasses and other by-products of sugar as determined in accordance with the Master Award or, pending the making of the Master Award, a contract of general application in pursuance of the Act of 1961, as having effect by virtue of subsection (1) of section 71.

(2) The Commission shall keep proper accounts and other records of all moneys received and expended by it, and such accounts shall be audited by a person appointed by the Minister.

Annual report of the Commission

- 17.—(1) The Commission shall, as soon as may be after the expiration of each crushing season, furnish the Minister with a report containing—
- (a) an account of its activities during the previous twelve months; and
 - (b) a statement of the accounts of the Commission audited in accordance with subsection (2) of section 16.
- (2) The Commission shall publish its report in the Gazette, and the Minister shall cause the report to be laid before Parliament.

PART III—SUGAR INDUSTRY TRIBUNAL

Establishment of Tribunal

- 18.—(1) There is hereby established a tribunal to be called the Sugar Industry Tribunal.
- (2) The Tribunal shall consist of one person, who shall be appointed by the Chairman of the Judicial and Legal Services Commission, after consultation with the Commission, and who shall be a person qualified to be appointed a Judge of the Supreme Court or be a person with extensive experience in economics or industrial relations.
- (3) The term of office of the person appointed to be the Tribunal shall be three years and he shall be eligible for re-appointment.
- (4) Whenever the person appointed under subsection (2) is for any reason unable to perform any of the functions of the Tribunal under this Act, either generally or in relation to any particular matter, or pending the appointment of a person under that subsection, the Chairman of the Judicial and Legal Services Commission, after consultation with the Chairman of the Commission may appoint one or more persons, qualified to be appointed under that subsection, to perform any of those functions, either generally or in relation to any particular matter.
- (5) A person appointed under subsection (4) shall act as the Tribunal in accordance with the terms of his appointment until the expiration of the period of his appointment or until his appointment is revoked by the Chairman of the Judicial and Legal Services Commission, whichever is the earlier.

Seal of the Tribunal

- 19.—(1) The Tribunal shall have an official seal which shall be judicially noticed by all courts, judges and persons acting judicially.
- (2) The seal of the Tribunal shall be kept by the Registrar of the Tribunal, and shall be affixed by him, or any person authorised by him in that behalf, to all awards, certificates of registration and to all collective agreements which have been registered under section 90.

Registrar of Tribunal

- 20.—(1) There shall be an officer to be known as the Registrar of the Sugar Industry Tribunal who shall be appointed by the Tribunal and who shall have such functions as are assigned to the Registrar of the Tribunal by or under this Act or by the Tribunal.
- (2) Nothing in this Act shall be taken as precluding the Tribunal from appointing the Industrial Commissioner or any other officer or servant of the Tribunal to be the Registrar of the Tribunal.

Accountant of Tribunal

21.—(1) There shall be an officer to be known as the Accountant of the Sugar Industry Tribunal who shall be appointed by the Minister, after consultation with the Standing Select Committee of the House of Representatives on Sugar, and who shall be a chartered accountant in practice in Fiji, whether alone or in partnership, under the authority of a certificate of public practice issued under the Fiji Institute of Accountants Act.

(2) The term of office of the person appointed to be the Accountant of the Tribunal shall be five years or such shorter period, not being less than three years, as the Minister may decide.

(3) The Accountant of the Tribunal shall have such functions as are assigned to him—

(a) by or under this Act;

(b) under the Master Award or, pending the making of the Master Award, a contract of general application in pursuance of the Act of 1961 as having effect by virtue of subsection (1) of section 71;

(c) by the Tribunal.

(4) The Accountant of the Tribunal shall have access to such books, records and information as he considers necessary for the proper discharge of his functions.

Industrial Commissioner of Tribunal

22.—(1) There shall be an officer to be known as the Industrial Commissioner of the Sugar Industry Tribunal who shall be appointed by the Chairman of the Judicial and Legal Services Commission, after consultation with the Commission and who shall have such functions as are assigned to the Industrial Commissioner by or under this Act or by the Tribunal.

(2) The term of office of the person appointed to be the Industrial Commissioner shall be three years and he shall be eligible for re-appointment.

Other officers and servants of Tribunal

23. The Tribunal may appoint and employ such other officers and servants as the Tribunal may deem necessary for the purpose of enabling the Tribunal, the Registrar of the Tribunal, the Accountant of the Tribunal and the Industrial Commissioner to carry out their respective functions under this Act.

Remuneration and allowances

24. The remuneration and allowances payable to—

(a) the person appointed under subsection (2) of section 18 to constitute the Tribunal;

(b) any person appointed under subsection (4) of section 18 to perform any of the functions of the Tribunal under the Act;

(c) the Industrial Commissioner;

(d) any person appointed under section 106 to act as assessor at the hearing of any proceedings before the Tribunal under the Act;

(e) the Registrar of the Tribunal;

(f) the Accountant of the Tribunal; and

(g) any other officers or servants of the Tribunal,

shall be determined from time to time by the Higher Salaries Commission.

Protection of Tribunal and officers and servants of the Tribunal

25. The person appointed under subsection (2) of section 18 to constitute the Tribunal or under subsection (4) of that section to perform all or any of the functions of the Tribunal under this Act, and any officer or servant of the Tribunal (including the Registrar of the Tribunal, the Accountant of the Tribunal and the Industrial Commissioner) shall not be personally liable to any action, claim or demand in respect of any matter or thing *bona fide* done or omitted to be done by any of them under this Act.

Functions of the Tribunal

26. The Tribunal shall have power—

- (a) to hear and determine industrial disputes which have been certified by the Industrial Commissioner to be unresolved disputes under this Act;
- (b) to register collective agreements and to hear and determine any question as to the making, registration or interpretation of such agreements;
- (c) to hear and determine any dispute between the Council and the Corporation;
- (d) to hear and determine any question as to the interpretation of this Act and of any award;
- (e) to prepare and make the Master Award and to keep the Master Award under review;
- (f) to hear and determine any question relating to the rights and obligations of registered growers and the Corporation under the Master Award, except where the Master Award otherwise provides, and to hear and determine any question as to the interpretation of the Master Award;
- (g) pending the making of the Master Award, to hear and determine any question relating to the rights and obligations of a registered grower and the Corporation under a contract of general application in pursuance of the Act of 1961, as having effect by virtue of subsection (1) of section 71, except where the contract otherwise provides, and to hear and determine any question as to the interpretation of a contract of general application;
- (h) pending the making of the Master Award, to hear and determine any question as to the holding in stock of sugar and to hear and determine any question as to whether all or any of the expenses incurred by the Corporation in providing and maintaining facilities for the storage of sugar should be paid out of, and be a charge on, the proceeds of sale of sugar, molasses and other by-products of sugar as determined in accordance with a contract of general application in pursuance of the Act of 1961, as having effect by virtue of subsection (1) of section 71;
- (i) to perform such other functions as may be assigned to the Tribunal by the Master Award or by such a contract;
- (j) to prepare and maintain the Register of Growers;
- (k) to hear and determine any question relating to the entitlement of any person to be registered in the Register of Growers, the registration of any person in that register or otherwise in relation to that register;
- (l) following the date of the making of the Master Award, to fix the national, mill and farm basic allotments of cane, the national harvest

- quotas of cane and sugar and the mill and farm harvest quotas of cane;
- (m) to hear and determine any question relating to the closure of a length of tramline;
 - (n) to hear and determine any other matter in pursuance of this Act and any matter affecting industrial relations within the industry which is referred to the Tribunal by the Commission; and
 - (o) to perform such other functions as are assigned to the Tribunal by this Act.

Tribunal to determine number and boundaries of mill areas, districts and sectors

27.—(1) The Tribunal shall, after consultation with the Commission, the Council and the Corporation, by order prescribe—

- (a) for the purposes of Parts IV and V of this Act, the number of mill areas into which Fiji shall be divided the number of districts into which a mill area shall be divided and the number of sectors into which a district shall be divided; and
- (b) by reference to a plan or otherwise, the boundaries of each mill area, district and sector.

(2) The Tribunal shall keep the boundaries of each mill area, district and sector under review and shall, by order, prescribe new boundaries whenever it appears to the Tribunal to be necessary or expedient, and after consultation with the Commission, the Council and the Corporation.

(3) The mill areas, districts and sectors and their respective boundaries in existence immediately before the appointed day shall be deemed to have been prescribed by the Tribunal by order under this section.

(4) Any question as to the boundaries in existence immediately before the appointed day shall, for the purposes of the first general election under Part IV, be determined by the Independent Chairman whose decision on any such question shall be final.

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

28. The Tribunal shall keep itself informed of all matters pertaining to the industry, and for that purpose may—

- (a) direct the Industrial Commissioner to make such inquiries as it may consider necessary or expedient;
- (b) request the Commission, the Council or the Corporation to furnish it with such information, or to carry out, and to report to it, on such investigations as it may consider necessary or expedient.

Financial provisions

29.—(1) The administrative expenses of the Tribunal, including all remuneration and allowances paid under section 24, shall be a charge on the Consolidated Fund.

(2) The Registrar of the Tribunal shall keep proper accounts and other records of all moneys received and expended by the Tribunal, and such accounts shall be audited by the Auditor-General.

Annual report of the Tribunal

30.—(1) The Tribunal shall, as soon as may be after the expiration of each crushing season, furnish the Minister with a report of the activities of the Tribunal and of the Industrial Commissioner during the previous twelve months (including the report of the Auditor-General under subsection (2) of section 29) and as to the extent to which the objects of this Act have been achieved during that period.

(2) The Minister shall cause the report of the Tribunal under subsection (1) to be laid before Parliament.

PART IV—THE SUGAR CANE GROWERS' COUNCIL

Establishment of the Council

31. There is hereby established a council to be called the Sugar Cane Growers' Council, which shall be a body corporate with perpetual succession and a common seal, with the capacity to enter into contracts and to sue and be sued in its corporate name, and with 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, including the raising of loans.

Composition of the Council

32.—(1) The Council shall consist of—

(a) three representatives from each sector who shall be elected to the Council by the registered growers in that sector from among themselves; and

(b) representatives of districts appointed to the Council under section 41.

(2) The Chairman and Vice-Chairman of the Board of Directors of the Council shall act respectively as the Chairman and Vice-Chairman of the Council.

(3) The elected members of the Council shall be taken for the purposes of this Act to represent on the Council the districts and mill areas in which they are registered growers as well as the sectors which they have been elected to represent on the Council, and any member of the Council appointed under section 41 shall be taken to represent on the Council the mill area in which he is a registered grower as well as the district which he has been appointed to represent on the Council.

Disqualifications for membership of the Council

33. A person shall be disqualified for membership of the Council as a representative of any sector if he is not a registered grower in that sector, and as a representative of any district if he is not a registered grower in a sector in that district; or if—

(a) in Fiji or elsewhere—

(i) he has been adjudged bankrupt or has made a composition with his creditors;

(ii) he has been convicted of any offence involving fraud or dishonesty;

(b) he is adjudged or otherwise declared to be of unsound mind or is permanently incapacitated from performing his duties; or

- (c) he is for the time being disqualified by the Tribunal for holding office as a member of the Council under subsection (2) of section 40.

Right to vote at elections

34.—(1) Subject to subsection (3), the persons entitled to vote as growers in any sector at any election under this Part shall be the persons who are registered as growers in that sector at the date of the election.

(2) The Registrar of the Tribunal shall, upon being required to do so by the Chief Executive of the Council, furnish him with a list, certified by the Registrar of the Tribunal to be correct, showing the names of all the persons who are registered as growers in each sector; and the Chief Executive of the Council shall make available to any candidate for election to the Council as a representative of any sector an extract from that list showing the names of the persons who are registered as growers in that sector.

(3) A person who is adjudged or otherwise declared to be of unsound mind shall not be entitled to vote at any election under this Part.

(4) A registered grower who has a right to vote at an election under this Part shall be entitled to appoint another person, who is managing his farm under a power of attorney, as his proxy to vote at that election instead of him.

(5) An instrument of proxy under this section shall be in such form and shall contain such particulars as the Tribunal or, in the case of the first general election of members of the Council, the Independent Chairman may determine.

(6) Any question as to the right of a person to vote at any election under this Part and any other question arising in connection with that election shall be determined by the Tribunal, on the application of that person or of the Chief Executive of the Council.

Triennial elections of members of the Council

35.—(1) Subject to sections 36 and 37, the members of the Council shall be elected at a general election and shall hold office as members of the Council until the date of the general election next following the general election at which they were elected or last elected, as the case may be, but shall be eligible for re-election.

(2) The first general election under this Part shall take place within the three months next following the appointed day on such date as the Independent Chairman shall think fit.

(3) Subject to subsection (2), every general election under this Part shall be held within the fourteen days next preceding the expiration of the three years commencing on the date on which the next previous general election was held.

Vacation of office of members of the Council

36.—(1) A member of the Council shall vacate his office as representative on the Council of any sector—

(a) if he becomes disqualified from holding that office under section 33;

(b) at the expiration of his term of office under subsection (1) of section 35;

or

(c) if he resigns his office in accordance with subsection (2).

(2) A member of the Council may resign from office by notice in writing under his hand addressed to the Chief Executive of the Council, and he shall be deemed to have vacated his office when the notice is received by the Chief Executive of the Council.

Election to fill vacancy caused by death, resignation or disqualification

37.—(1) Subject to subsections (2) and (3), where there is a vacancy in the Council caused by the death of a member, the disqualification of a member for holding office under section 33 or the resignation of a member in accordance with subsection (2) of section 36, an election shall be held to fill that vacancy in the sector of which that member was a representative in accordance with regulations made under section 39 to fill that vacancy, and the person elected at that election shall, subject to sections 33 and 36, hold office as a representative of that sector on the Council until the date of the next general election under this Part.

(2) Where the vacancy occurs before such regulations have been made, the Board of Directors of the Council may appoint a grower from the sector of which the member whose office has been vacated was a representative to take the place of that member, and a person appointed to the Council under this subsection, shall, subject to sections 33 and 36, hold office as a representative of that sector on the Council until the date of the next general election under this Part.

(3) An election shall not be held under this section in respect of any vacancy occurring within three months of the earliest date on which the next general election may be held under this Part.

First election

38.—(1) The Independent Chairman shall have general responsibility for, and shall supervise the conduct of, the first general election of members of the Council.

(2) The Independent Chairman shall make such arrangements as he thinks necessary for the first general election, in particular, with respect to—

(a) the making and receipt of nominations of candidates;

(b) the manner of voting;

(c) the preparation and distribution of ballot papers;

(d) the establishment of polling stations;

(e) the counting of votes; and

(f) the appointment of persons to receive and count votes.

(3) The Independent Chairman shall cause a notice to be published in the *Gazette*, not less than twenty-eight days before the date fixed by him for the holding of the election, stating the date so fixed by him and the particulars of the arrangements made by him under subsection (2).

(4) The Tribunal may declare the election of any person at the first general election as a representative on the Council of any sector to be invalid, and, in that event, may direct that a fresh election be held in that sector, subject to such conditions and in accordance with such arrangements as the Independent Chairman shall think fit.

Other elections

39.—(1) Every general election of members of the Council, other than the first such election, and every election under section 37 to fill a casual vacancy shall be conducted in accordance with regulations made by the Council and approved by the Tribunal or, in default of the making of such regulations by the Council within the twelve months next following the appointed day, in accordance with regulations made by the Tribunal.

(2) Regulations under subsection (1) shall make provision with respect to the conduct and otherwise of elections under section 37 and, in particular, with respect to the matters specified in paragraphs (a) to (f) of subsection (2) of section 38.

Determination of questions of membership

40.—(1) The Tribunal may, of its own motion or on written application being made to it in that behalf by the Chief Executive of the Council or any registered grower entitled to vote at an election under this Part, hear and determine any question whether—

(a) a person has been validly elected at any election under this Part, other than the first general election, as a member of the Council;

(b) any member of the Council has vacated his office under section 36.

(2) Where the Tribunal is satisfied, at the hearing of any proceedings under subsection (1), that a person claiming to have been validly elected at any election has, in respect of that election, been guilty of such misconduct as would constitute an offence under any other written law had the election been an election of a member or members of the House of Representatives, the Tribunal may make an order disqualifying that person for membership of the Council for such period, not exceeding three years, as the Tribunal may think proper.

Representation on the Council of minority groups

41.—(1) If, following any general election, the Board of Directors of the Council is satisfied, as respects any district, that—

(a) there is a minority of registered growers in that district who were represented in that election by one or more candidates;

(b) such candidate or candidates failed to be elected; and

(c) it is desirable that such minority should be represented on the Council, the Board may appoint the unsuccessful candidate or one of the unsuccessful candidates, as the case may be, to the Council as a representative of that district.

(2) The provisions of this Part shall apply in relation to a person appointed under subsection (1) as they apply in relation to an elected member of the Council.

(3) The Board of Directors of the Council shall consult the Independent Chairman following the first general election as to whether any appointment should be made by the Board under subsection (1).

(4) Any question arising in relation to any district as to the exercise by the Board of Directors of the Council of its power under subsection (1), or the refusal of the Board to exercise that power, may be heard and determined by the Tribunal, of its own motion or on written application being made to it in that behalf by the Board or any registered grower in that district, and in that event the Tribunal may—

(a) confirm, vary or quash any appointment made by the Board in the exercise of that power; or

(b) where the Board has refused to exercise that power, confirm the refusal of the Board or direct the Board to make such appointment as the Tribunal thinks fit.

Functions of the Council

42. The Council shall generally do all such things and take all such steps as it may consider necessary for the protection and development of the industry and of the interests of registered growers, and, in particular, to—

(a) encourage and promote co-operation among registered growers and between registered growers and others engaged in the industry;

(b) remove and obtain redress of all legitimate grievances of individual registered growers, of registered growers generally or of registered growers in any particular sector, district or mill area;

- (c) provide registered growers with goods and services relating to the business of cane-growing and agricultural diversification;
- (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.

District and sector committees of the Council, etc.

43.—(1) The Council shall appoint a committee of the Council for each district and for each sector for the purpose of assisting the Council in the exercise of its functions under this Act within that district or sector.

(2) The mutual relationship of the Council and the district and sector committees appointed under subsection (1) shall be determined by the Council.

(3) The Council may appoint any other committee to advise it on the exercise of any of the Council's functions under this Act.

Procedure and quorum of the Council and committees of the Council

44.—(1) The procedure at, and the quorum for, a meeting of the Council and of any committee of the Council shall be regulated by the Council.

(2) The Council shall meet whenever necessary but in any event at least once a year.

(3) The validity of any proceedings of the Council and of any committee of the Council shall not be affected by any vacancy in the membership of the Council or the committee of the Council or by any defect in the election or appointment or qualification of any member, or any person purporting to be a member, of the Council or the committee of the Council.

(4) Minutes in proper form shall be kept of every meeting of the Council and shall be confirmed as soon as may be thereafter by the person presiding thereat or at a subsequent meeting of the Council.

Seal of the Council

45. The common seal of the Council shall not be affixed except pursuant to a resolution of the Council in the presence of the Chairman and the Chief Executive of the Council or in such other manner as may be authorised by resolution of the Council.

Board of Directors of the Council

46.—(1) There shall be a Board of Directors of the Council with a Chairman and two Vice-Chairmen.

(2) The directors of the Board shall be—

(a) the Chairman;

(b) the two Vice-Chairmen; and

(c) representatives from each district, who shall be called the ordinary directors.

(3) The Chairman and Vice-Chairmen shall be elected by the Council from among the members of the Council.

(4) The representatives on the Council of each district shall elect one ordinary director from among their number to represent that district on the Board.

(5) The first Chairman, Vice-Chairmen and ordinary directors shall be elected at the first meeting of the Council, which shall be convened by the Independent Chairman and shall be presided over by the Independent Chairman until the Chairman of the Board is elected.

(6) The Chairman, Vice-Chairmen and ordinary directors shall hold office until the date of the general election of members of the Council next following the date on which they were elected to the Board or until the date on which they may otherwise vacate their respective offices under subsection (8), whichever is the earlier date.

(7) The Chief Executive of the Council shall convene a meeting of the Council immediately following a general election of members of the Council (other than the first such general election) for the purpose of electing the Chairman, Vice-Chairmen and ordinary directors, and he shall preside over that meeting until the Chairman of the Board is elected.

(8) The Chairman, a Vice-Chairman or an ordinary director shall vacate his office—

(a) upon ceasing to a member of the Council; or

(b) upon resigning his office by notice in writing under his hand addressed to and received by the Chief Executive of the Council; or

(c) upon the Council passing a resolution dismissing him from office as the Chairman, Vice-Chairman or ordinary director, as the case may be.

(9) Subject to subsection (10), where there is a vacancy in the office of Chairman, Vice-Chairman or ordinary director caused otherwise than by the effluxion of time, another person shall be elected in his place in accordance with whichever of the foregoing provisions of this section is appropriate and, upon being so elected, he shall, subject to subsection (8), hold office until the date of the next general election of members of the Council.

(10) An election shall not be held under subsection (9) in respect of any vacancy occurring within three months of the earliest date on which the next general election of members of the Council may be held under this Part.

Proceedings and functions of the Board

47.—(1) The proceedings and functions of the Board of Directors shall be regulated by Standing Orders approved by the Council.

(2) A draft of such Standing Orders shall be submitted to the Council for approval within the three months next following the appointed day.

Chief Executive and officers of the Council

48.—(1) There shall be a Chief Executive of the Council, who shall be appointed by the Board of Directors and who shall perform such functions as shall be assigned to him by the Board.

(2) The Board of Directors may appoint and employ such officers, servants and agents as it thinks fit for the proper carrying out of the functions of the Council and of the Board of Directors under this Act.

Remuneration and allowances

49.—(1) The remuneration and allowances payable to the Chairman and Vice-Chairmen of the Board of Directors, in their respective capacities as

Chairman and Vice-Chairmen of the Council and of the Board, and the remuneration and allowances of the ordinary directors shall be determined by the Council.

(2) The remuneration and allowances payable to the Chief Executive of the Council and to the other officers and servants of the Council shall be determined by the Board of Directors.

(3) The members of the Council shall be entitled to such allowances in respect of travelling and subsistence expenses as shall be determined by the Council.

Protection of members, officers and servants of the Commission

50. Subject to section 55, no act or thing done by—

(a) any member of the Council or of the Board of Directors;

(b) any member of a committee of the Council appointed under section 43;

(c) the person appointed as Chief Executive of the Council or any other officer, servant or agent of the Council,

shall, if the act or thing was done *bona fide* for the purposes of this Act subject him personally to any liability, claim or demand whatsoever.

General levies

51. The Council shall have power to raise a general levy in each year to defray the administrative expenses of the Council and of the Board of Directors.

Special levies

52.—(1) The Council shall have power to raise a special levy from time to time to meet the cost of any capital project of the Council or for any other special purpose.

(2) A decision of the Council to raise a special levy shall not be of any effect unless a poll of all of the members of the Council has been held by secret ballot to approve the raising of the levy and not less than two-thirds of the members of the Council participating in that poll have approved the raising of the levy.

Collection of levies

53.—(1) A general levy under section 51 and a special levy under section 52 shall be deducted in ascertaining the grower's share of the proceeds of sale of sugar, molasses and other by-products of sugar as determined under the Master Award or, pending the making of the Master Award, a contract of general application in pursuance of the Act of 1961, as having effect by virtue of subsection (1) of section 71 and shall be collected by the Council from the Corporation upon the production of a certificate of the Accountant of the Tribunal authorising such deduction to be made.

(2) Subject to subsection (3), the Accountant of the Tribunal shall not issue a certificate under subsection (1) unless he is satisfied—

(a) in the case of a general levy under section 51, that the levy has been approved by the Council;

(b) in the case of a special levy that—

(i) the levy is required for the purpose for which the Council has decided to raise the levy; and

(ii) the levy has been approved in accordance with subsection (2) of section 52 following a poll held under that subsection.

(3) Where the Accountant of the Tribunal, without good cause, fails or refuses to issue a certificate under subsection (1) the Tribunal may direct him to issue the certificate upon written application being made to the Tribunal in that behalf by the Board of Directors.

Annual report and accounts

54.—(1) The Board of Directors shall, as soon as may be after the end of each year, furnish the Accountant of the Tribunal with a detailed financial statement for that year certified by the auditor of the Council.

(2) The auditor of the Council shall be a chartered accountant in practice in Fiji, whether alone or in partnership, under the authority of a certificate of public practice issued under the Fiji Institute of Accountants Act.

(3) The Board of Directors shall submit to the Minister, as soon as may be after the end of each year, a report of the activities of the Council during that year.

(4) Copies of the detailed financial statement and report shall be submitted by the Board of Directors to the Minister and laid before Parliament.

Inquiry by Tribunal into certain affairs of the Council

55.—(1) Subject to subsection (2), the Tribunal may upon the written requisition of not less than one hundred registered growers make such inquiry as it deems necessary to ascertain whether the revenues of the Council are being properly used for the purpose of carrying out its functions under this Act.

(2) The Tribunal shall not carry out an inquiry under subsection (1) unless it first satisfies itself that the reason for the requisition for the inquiry is an allegation that the Council is expending money in respect of a function other than a function specified in section 42.

(3) The Tribunal shall publish its finding in respect of an inquiry held under subsection (1) in such manner as it considers appropriate.

PART V—MILL AREA COMMITTEES

Establishment of Mill Area Committees

56.—(1) There shall be a committee for each mill area, which shall be called a Mill Area Committee.

(2) The Mill Area Committees shall be designated as follows—

- (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, the Rarawai Mill Area Committee.

Composition of Mill Area Committees

57.—(1) A Mill Area Committee shall consist of—

- (a) a Chairman, who shall be the Chairman of the Commission;
- (b) the Industrial Commissioner;
- (c) a member who shall be a full-time employee of the Council appointed by the Board of Directors of the Council to represent the Council;
- (d) the representatives of registered growers in the mill area of the Committee referred to in subsection (2);

- (e) three members appointed by the Chief Executive of the Corporation to represent the Corporation;
 - (f) a member appointed by the Minister to represent the Government; and
 - (g) two members who shall be appointed in accordance with subsection (3) to represent the recognised trade unions.
- (2) The Board of Directors of the Council shall appoint—
- (a) to the Labasa Mill Area Committee, six members from among the registered growers in that mill area to represent those growers on that Committee;
 - (b) to the Lautoka Mill Area Committee, six members from among the registered growers in that mill area to represent those growers on that Committee;
 - (c) to the Penang Mill Area Committee, three members from among the registered growers in that mill area to represent those growers on that Committee;
 - (d) to the Rarawai Mill Area Committee, six members from among the registered growers in that mill area to represent those growers on that Committee.
- (3) Subject to subsection (4), the two members appointed to represent the recognised trade unions on a Mill Area Committee shall be appointed by the presidents of the executive committees of those unions from among the candidates selected in accordance with subsection (4).
- (4) The executive committee of each recognised trade union shall select two candidates from among the voting members or officials of its union for appointment under subsection (3).
- (5) If a majority of the presidents of the executive committees of the recognised trade unions fail to agree on the making of an appointment under subsection (3) from among the candidates referred to in that subsection, the Tribunal may make such appointment as it thinks fit from among those candidates; and, in that event, the appointment made by the Tribunal under this subsection shall have effect, for the purposes of this section, as if it had been made by a majority of those presidents under subsection (3).

Tenure of office of representative members of mill area committees

58.—(1) Subject to section 59, the term of office of the representative members of a Mill Area Committee shall be three years.

(2) A representative member of a Mill Area Committee shall be eligible for re-appointment upon ceasing to hold office by effluxion of time.

(3) A representative member of a Mill Area Committee may resign from office by notice in writing under his hand addressed to the Chairman of the Committee, and he shall be deemed to have vacated his office when the notice is received by the Chairman of the Committee.

(4) In the event of any vacancy occurring in the office of a representative member of a Mill Area Committee caused by his death or resignation, his disqualification under section 59 or any other cause, 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 section 57, for the unexpired portion of the term of office of that member.

Disqualifications for membership of a Mill Area Committee

59. A representative member of a Mill Area Committee shall be disqualified for membership of the Committee if—

- (a) he is disqualified for membership of the Council under paragraph (a), (b) or (c) of section 33;
- (b) he was appointed under paragraph (c) of subsection (1) of section 57 as the member to represent the Council, upon ceasing to be a full-time employee of the Council;
- (c) he was appointed under section 57 as a member to represent the registered growers in the mill area to the Committee, upon ceasing to be such a grower;
- (d) he was appointed under section 57 as a member to represent the Corporation, upon ceasing to be an officer or servant of the Corporation;
- (e) he was appointed under section 57 as a member to represent the recognised trade unions, upon ceasing to be a voting member or official of any of those unions.

Functions of Mill Area Committees

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

- (a) to assist in removing and obtaining the redress of all legitimate grievances within that area relating to any of the matters referred in the foregoing provisions of this section;
- (b) to secure the maximum production of cane and sugar in that area within the limits of the mill quotas of cane and sugar for that mill;
- (c) to advise the Tribunal and the Commission of all matters referred to it by the Tribunal or the Commission, as the case may be; and
- (d) to assist within that area in the collection, recording and distribution of information about the industry; and
- (e) to perform such other functions as may be assigned it under this Act.

Meetings of Mill Area Committees

61.—(1) Subject to the following provisions of this section, the Chairman of the Commission shall preside at all meetings of a Mill Area Committee in his capacity as Chairman of the Committee.

(2) In the absence of the Chairman of the Committee any person appointed to act as Chairman of the Commission under subsection (4) of section 5 shall preside at meetings of a Mill Area Committee, and in the absence of both the Chairman of the Committee and of such person, the Industrial Commissioner shall preside at the meeting.

(3) A decision of a Mill Area Committee shall be by a majority of votes and, in addition to his original vote, the member presiding at the meeting shall have a casting vote in any case where the voting is equal.

(4) The validity of any proceedings of a Mill Area Committee shall not be affected by any vacancy in its membership or by any defect in the appointment or qualification of any of its members or of any person purporting to act as one of its members.

(5) The Chairman of a Mill Area Committee shall determine the frequency of meetings of the Committee and the place and time at which any such meeting shall be held.

(6) Minutes in proper form shall be kept of every meeting of a Mill Area Committee and shall be confirmed as soon as may be thereafter by the person presiding thereat or at a subsequent meeting of the Committee.

(7) Subject to the foregoing provisions of this section, the quorum and procedure at such meetings shall be regulated by the Commission.

Allowances

62. The representative members of a Mill Area Committee shall be entitled to such allowances in respect of travelling and subsistence expenses and loss of remunerative time as shall be determined by the Commission.

Financial provisions

63.—(1) The administrative expenses of a Mill Area Committee, including the allowances paid to the representative members of the Committee, shall, when audited and certified as mentioned in subsection (2), be paid out of, and be a charge on, the proceeds of sale of sugar, molasses and other by-products of sugar as determined in accordance with the Master Award or pending the making of the Master Award, in accordance with a contract of general application in pursuance of the Act of 1961, as having effect by virtue of subsection (1) of section 71.

(2) A Mill Area Committee shall keep proper accounts and other records of all moneys received and expended by it, and such accounts shall be audited by a person appointed by the Minister.

PART VI—THE MASTER AWARD

Master Award prescribing standard provisions governing the mutual rights and obligations of registered growers and the Corporation

64.—(1) Subject to sections 65, 66 and 67, the Tribunal shall, as soon as may be after the appointed day, prepare and make an award, to be known as the Master Award, to replace every contract of general application in pursuance of the Act of 1961 subsisting between a registered grower and the Corporation, as having effect by virtue of subsection (1) of section 71, immediately before the date of the making of the Master Award.

(2) The Master Award shall prescribe the standard provisions governing the mutual rights and obligations of a registered grower and the Corporation with respect to the following matters—

- (a) the planting, cultivation and harvesting of cane by the grower;
- (b) the sale and delivery by the grower to the Corporation of cane harvested by the grower;
- (c) the acceptance and purchase by the Corporation of cane delivered to the Corporation by the grower; and
- (d) the manufacture, storage, marketing, delivery and sale by the Corporation of sugar, molasses and other by-products made from cane delivered by the grower to the Corporation,

and shall prescribe those provisions having regard to the provisions of Part VII and Part VIII.

(3) The Master Award shall commence to have effect as between any registered grower and the Corporation on and after the relevant date, and,

notwithstanding anything contained in any agreement or in any written law, shall be binding on the grower and the Corporation in all respects as if it were a legally enforceable agreement entered into by and between the grower and the Corporation.

(4) Subject to section 71—

(a) the Corporation shall not take delivery of any cane for the manufacture of sugar otherwise than from a registered grower in accordance with the Master Award, and

(b) any agreement, whether entered into before or after the appointed day, which purports to annul, add to or modify the rights and obligations of the Corporation or of a registered grower under the Master Award shall be void and of no effect.

(5) The Master Award shall be final and conclusive, shall not be challenged, appealed against, reviewed, quashed or called into question in any court, and shall not be subject to prohibition, *mandamus* or injunction in any court.

(6) For the purposes of this Act “the relevant date” means, in relation to a registered grower and the Corporation and the farm in respect of which the grower is registered—

(a) in the case where the grower was registered in respect of that farm on the date of the making of the Master Award, that date;

(b) in the case where the grower was registered in respect of that farm after the date referred to in paragraph (a), the date of registration or, if the Tribunal thinks it equitable to appoint an earlier date for such purposes, such earlier date as the Tribunal may specify in that behalf in the order under Part VII directing the registration of the grower (not being a date earlier than the date referred to in paragraph (a)).

Consultations and publicity in connection with the preparation of the Master Award

65.—(1) When preparing the Master Award, the Tribunal shall consult the Commission, the Council and the Corporation with respect to all the provisions which the Tribunal proposes to include in the Master Award.

(2) The Commission shall assist the Tribunal in the preparation of the Master Award and shall endeavour to obtain the unanimous agreement of all its members, and the agreement of the Council and the Corporation, to all the provisions proposed by the Tribunal to be included in the Master Award.

(3) Subject to subsection (4), after considering the views which may have been expressed in writing by the Commission, the Council or the Corporation in the course of consultations held under subsection (1), the Tribunal shall—

(a) prepare a draft of the Master Award;

(b) prepare a report on those consultations and the consideration of those views given by the Tribunal;

(c) cause copies of the draft of the Master Award 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 Tribunal shall think 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 Master Award are so available at the registry of the Tribunal and at such other places as shall be specified in the notice; and

- (ii) inviting representations to be made in writing to the Tribunal by any person with respect to the draft of the Master Award within such period as shall be specified in the notice, being a period of not less than three months from the last date on which the notice was published under this paragraph.
- (4) Subject to subsection (5), the Tribunal, after considering the representations made to it in writing by any person with respect to the draft of the Master Award, after consulting the Commission, the Council and the Corporation with respect to those representations, and after considering the views which may have been expressed in writing by the Commission, the Council or the Corporation on those representations, may, if it considers it desirable or expedient to do so—
- (a) prepare another draft of the Master Award, incorporating such modifications of the original draft as the Tribunal may think desirable to make having regard to those representations and views;
 - (b) prepare a report on those representations, the consultations held under this subsection and the consideration of those views given by the Tribunal;
 - (c) cause copies of the draft of the 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 other person at such price as the Tribunal shall think 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 Master Award, as modified, are so available at the registry of the Tribunal and at such other places as shall be specified in the notice; and
 - (ii) inviting representations to be made in writing to the Tribunal by any person with respect to the draft of the Master Award, as modified within such period as shall be specified in the notice, being a period of not less than three months from the last date on which the notice was published under this paragraph.
- (5) The Tribunal shall not include in any draft of the Master Award under this section any provision which has not been agreed by the Commission, the Council and the Corporation unless the Tribunal, after consultation with the Chairman of the Commission, is satisfied that no useful purpose would be served in endeavouring to obtain such agreement.

Public inquiry to be held by the Tribunal with respect to the draft Master Award

- 66.—(1) After considering any representations made to it in writing with respect to any draft of the Master Award under section 65 and any views which the Commission, the Council or the Corporation may have expressed in writing on those representations or otherwise, the Tribunal shall—
- (a) subject to subsection (2), prepare a fresh draft of the Master Award, incorporating such modifications of the original draft, or such further modifications of that draft as modified under subsection (4) of section 65, as the case may be, as the Tribunal may think desirable to make having regard to those representations and views;
 - (b) prepare a report on —
 - (i) all the consultations held by the Tribunal, whether under section 65 or otherwise, in the course of preparing any such draft of the Master Award;

- (ii) the consideration given by the Tribunal on the views expressed in writing by the Commission, the Council and the Corporation following any such consultations; and
 - (iii) the representations in writing made to the Tribunal by any person on any such draft of the Master Award in pursuance of section 65, and the consideration given by the Tribunal to those representations;
- (c) cause copies of any such draft of the Master Award and of that report to be made available for supply, free of charge, to any registered grower and for purchase by any other persons at such price as the Tribunal shall think reasonable; and
- (d) hold a public inquiry for the purpose of considering any objections to the fresh draft of the Master Award prepared under paragraph (a).
- (2) The Tribunal shall not include in the fresh draft of the Master Award under paragraph (a) of subsection (1) any provision which has not been agreed by the Commission, the Council and the Corporation unless the Tribunal, after consultation with the Chairman of the Commission, is satisfied that no useful purpose would be served in endeavouring to obtain such agreement.
- (3) The Tribunal shall, at least six weeks before the date which shall be fixed for the holding of the Inquiry, cause a notice to be published on not less than three occasions in the *Gazette* and in a newspaper circulating in Fiji—
- (a) specifying the date, time and place for the holding of the Inquiry, and stating that the Inquiry will held in public;
 - (b) stating that copies of the fresh draft of the Master Award under paragraph (a) of subsection (1) and of the report under paragraph (b) of that subsection are available at the registry of the Tribunal and at such other places as may be specified in the notice; and
 - (c) inviting objections by any person to be made to the Tribunal at the Inquiry with respect to that draft of the Master Award, and requiring any person intending to make any such objection to furnish the Tribunal, not later than fourteen days before the date specified under paragraph (a) for the holding of the Inquiry, with a statement of the matters to which the objection relates and the grounds on which he intends to make that objection.
- (4) Except as otherwise provided in the following provisions of this section, the Inquiry shall be held in public and the procedure at the Inquiry shall be such as the Tribunal shall determine.
- (5) Subject to subsection (6), every person who has furnished the Tribunal with a statement with respect to the objection he intends to make at the Inquiry, as required by notice published under subsection (3), shall be entitled to present evidence and arguments at the Inquiry in support of his objection.
- (6) The Tribunal may refrain from hearing any evidence or argument—
- (a) in support of an objection which the Tribunal considers to be frivolous or vexatious;
 - (b) which the Tribunal considers to be irrelevant; or
 - (c) which the Tribunal considers to be contrary to the public interest.
- (7) The Minister may appear at the Inquiry by the Attorney-General, or by any public officer appointed by the Minister or the Attorney-General in that behalf, and shall be entitled to be heard on any matter which appears to the Minister to be of public importance or affecting the public interest or both.

(8) The Commission, the Council and the Corporation shall be entitled to be represented at the Inquiry—

- (a) in the case of the Commission, by the Chairman of the Commission or any other member of the Commission duly authorised in that behalf; and
- (b) in the case of the Council and the Corporation by any of their respective directors, officers or servants duly authorised in that behalf,
- and shall be entitled to be heard on any matter on which evidence or argument is presented to the Tribunal at the Inquiry.

(9) Any organisation of employers or employees may be represented at the Inquiry by a member, officer or employee of the organisation, and shall be entitled to be heard on any matter on which evidence or argument is presented to the Tribunal at the Inquiry.

(10) The Tribunal may, at any time before or during the holding of the Inquiry, remit to the Commission any matter relating to an objection made or intended to be made at the Inquiry for the Commission to inquire into and to report to the Tribunal on its findings with such recommendations as the Commission shall think fit.

(11) The Tribunal shall not be bound to follow any rules of evidence at the Inquiry, but may inform itself on any matter in such manner as it thinks fit.

(12) The Tribunal, if it appears that two or more objections are so similar in substance that it is unnecessary to consider them separately, may elect any one of the persons making those objections to present the case at the Inquiry on behalf of all those persons.

(13) The Tribunal may adjourn the Inquiry from time to time as the Tribunal thinks fit and may hold adjourned sittings at such times and places as appear to the Tribunal to be suitable having regard to the circumstances of the case and, in particular, the convenience of the persons appearing at the Inquiry.

(14) The Tribunal may exclude any person from any sitting of the Tribunal at the Inquiry if the Tribunal considers that it is necessary to do so in order to preserve order.

(15) Notwithstanding subsection (8) and (9), any person presenting evidence and argument at the Inquiry may be represented by a barrister and solicitor.

Procedure after the Inquiry

67.—(1) Before finally determining the provisions to be included in the Master Award, the Tribunal, after the close of the Inquiry and after taking into consideration the evidence and arguments presented to the Tribunal at the Inquiry, shall consult the Commission, the Council and the Corporation as to the need for, or desirability of, amending the draft of the Master Award prepared under paragraph (a) of subsection (1) of section 66, having regard to that evidence and those arguments.

(2) The Tribunal shall not include in the Master Award any provision which has not been agreed by the Commission, the Council and the Corporation unless the Tribunal, after consultation with the Chairman of the Commission, is satisfied that no useful purpose would be served in endeavouring to obtain such agreement.

(3) The Tribunal, after considering the views which may have been expressed in writing by the Commission, the Council or the Corporation in the course of consultations held under subsection (1) shall prepare a report—

- (a) containing a summary of the evidence and arguments presented to it at

- the Inquiry and the consideration given by the Tribunal to that evidence and those arguments; and
- (b) on the consultations held under subsection (1) and the consideration given by the Tribunal to any such views so expressed by the Commission, the Council and the Corporation.

Publication of Master Award

68. Upon making the Master Award, the Tribunal shall—
- (a) cause a copy of the Master Award to be published in the *Gazette*;
- (b) cause copies of the Master Award and of the report under subsection (3) of section 67 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 Tribunal thinks reasonable; and
- (c) cause a notice to be published in the *Gazette* and in a newspaper circulating in Fiji stating that such copies are so available at the registry of the Tribunal and at such other places as shall be specified by the Tribunal.

Variation of Master Award

- 69.—(1) Subject to subsection (3), the Tribunal shall keep the provisions of the Master Award under review and may, by order, amend any of those provisions.
- (2) Subject to subsection (3), the Tribunal may exercise its power under subsection (1) of its own motion or on application in writing being made to it in that behalf by the Council or the Corporation.
- (3) The provisions of sections 65, 66, 67 and 68 shall apply *mutatis mutandis* in relation to the preparation and making of an order under subsection (1) as they apply in relation to the making of the Master Award.
- (4) The provisions of subsection (5) of section 64 shall apply *mutatis mutandis* in relation to an order made under subsection (1) as they apply in relation to the Master Award.

Permissible deductions by the Corporation under the Master Award

70. 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 to deduct under the Master Award from that amount.

Contract of General application in pursuance of Act of 1961 to continue to have effect pending the making of the Master Award

- 71.—(1) Notwithstanding the repeal of the Act of 1961 by section 131—
- (a) every contract of general application in pursuance of the Act of 1961 subsisting between a grower and the Corporation immediately before the date of the repeal of that Act shall continue to have effect as if that Act had not been repealed, subject to the modifications set out in the Schedule, until the making of the Master Award or until the earlier termination of that contract in accordance with the provisions of that contract, as so modified;
- (b) the Corporation shall, until the making of the Master Award, continue to have the power to issue an additional contract of general application in pursuance of that Act, as if that Act had not been repealed, in any case where the Corporation was empowered to issue such an additional contract before the date of the repeal of that Act,

and any such additional contract shall have effect as if that Act had not been repealed, subject to the modifications set out in the Schedule, until the making of the Master Award or until the earlier termination of that contract in accordance with the provisions of that contract, as so modified.

(2) The provisions of sections 69 and 70 shall apply in relation to the provisions of a contract of general application in pursuance of the Act of 1961, as having effect by virtue of subsection (1), as if any reference in those sections to the Master Award were substituted by a reference to that contract; and the provisions of sections 65, 66, 67 and 68 shall apply in relation to an order made under section 69, as having effect by virtue of this subsection, amending that contract.

PART VII—REGISTRATION OF GROWERS

The Register of Growers

72.—(1) The Registrar of the Tribunal shall keep a register, to be called the Register of Growers, in such form as the Tribunal shall determine, and shall enter the following particulars in that register—

- (a) the name of every person entitled to be registered as a grower under section 73;
- (b) the date on which the entry is made;
- (c) the number assigned to that person under subsection (3);
- (d) the location and area of the farm belonging to that person;
- (e) particulars of the 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 that farm;
- (f) the contract area;
- (g) the sector, district and mill area comprising the contract area;
- (h) the farm basic allotment and the farm harvest quota of cane in respect of that farm;
- (i) the method of delivery of cane to the Corporation applying to that person; and
- (j) such other particulars as the Tribunal may by rules prescribe or may direct in any particular case.

(2) In this Part “contract area”, in relation to a registered grower, means the maximum area of land comprised in his farm from which cane may be harvested in each year (within the meaning of Part VIII) for delivery to a mill, as shall be determined by the Tribunal from time to time, after consultation with the Corporation.

(3) Upon registering a person as a grower, the Registrar of the Tribunal shall assign to him a distinctive number, which shall be called the “registration number”.

(4) Where a person is entitled to be registered as a grower under section 73 in respect of more than one farm, separate entries shall be made in the Register of Growers in accordance with subsection (1) in respect of each farm.

Persons entitled to be registered as growers

73.—(1) Before the date of the making of the Master Award, a person shall be entitled to be registered as a grower in respect of any farm if he was, immediately before the date of registration—

- (a) the holder of a valid contract of general application in pursuance of the

Act of 1961, as having effect by virtue of subsection (1) of section 71, in respect of that farm; and

(b) recognised by the Corporation to be the grower for the purpose of that contract, or required to be so recognised in pursuance of a decision of the Tribunal under that contract.

(2) On and after the date of the making of the Master Award, a person shall be entitled to be registered as a grower in respect of any farm if an order has been made by the Tribunal under the following provisions of this Part directing the Registrar of the Tribunal to register that person in respect of that farm.

Certificate of Registration

74.—(1) The Registrar of the Tribunal shall issue to a registered grower a certificate of registration, in such form as the Tribunal shall determine, in respect of the farm in respect of which he has been registered.

(2) A certificate of registration in respect of any farm shall contain all the particulars mentioned or referred to in paragraphs (a) to (j) of subsection (1) of section 72 in relation to that farm.

(3) A certificate of registration shall be authenticated under the seal of the Tribunal and shall be received in all courts as evidence of the particulars contained in, or endorsed on, the certificate in accordance with this Part and of such particulars being entered in the Register of Growers.

(4) A certificate of registration shall, unless the contrary be proved by the production of the Register of Growers, be conclusive evidence that the person named in the certificate is the person registered in respect of the farm to which the certificate relates.

(5) A registered grower, his personal representatives or any other person in possession of a certificate of registration in respect of any farm shall, if required to do so by or on behalf of the Registrar of the Tribunal, produce the certificate of registration held by him to the Registrar of the Tribunal—

(a) for endorsement, where the Registrar is required to endorse the certificate under section 75; or

(b) for cancellation, where the entry in the Register of Growers relating to the registration of that grower in respect of that farm has been cancelled in pursuance of an order of the Tribunal under section 77 or section 81.

(6) A person who contravenes subsection (5) shall be guilty of an offence and liable to a fine of \$200.

(7) Where the Registrar of the Tribunal is satisfied that a certificate of registration has been lost or destroyed, or has been defaced or become illegible, he may issue another certificate of registration containing all the entries and endorsements which were made or appeared on the original certificate, so far as can be ascertained from the corresponding entry in the Register of Growers, and stating that it is a substitute certificate.

(8) Any person who wilfully defaces, alters or destroys a certificate of registration shall be guilty of an offence and liable, to a fine of \$1000 and to imprisonment for a term of six months.

Endorsement of certificates of registration

75. There shall be endorsed by the Registrar of the Tribunal on a certificate of registration relating to any farm any alteration made to the entry in the Register of

Growers relating to that farm in pursuance of any order made by the Tribunal under this Part or Part VIII.

Rectification of Register

76. The Tribunal may, if it is satisfied on the written application of any person that any entry in the Register of Growers is incorrect, by order, direct the Registrar of the Tribunal to make such alteration to that entry as it deems necessary to rectify that entry.

Cancellation of registrations

77.—(1) Subject to subsection (6), where, before the date of the making of the Master Award, the Tribunal is satisfied that a registered grower has ceased for any reason to be the holder of a valid contract of general application in pursuance of the Act of 1961, as having effect by virtue of subsection (1) of section 71, in respect of any farm, the Tribunal shall, by order, direct the Registrar of the Tribunal to cancel the entry in the Register of Growers relating to the registration of that grower in respect of that farm.

(2) Subject to subsections (3) and (6), where, on or after the date of the making of the Master Award, a registered grower ceases for any reason to be in possession of any farm, or any part of any farm, or dies, the Tribunal shall, of its own motion or on application in writing made to the Tribunal in that behalf by the grower, his personal representatives or the Corporation, by order, direct the Registrar of the Tribunal to cancel the entry in the Register of Growers relating to the registration of that grower in respect of that farm or that part of the farm, as the case may.

(3) Subsection (2) shall not apply in any case where the Tribunal is satisfied that—

- (a) a registered grower has ceased to be in possession of an insubstantial portion of his farm; and
- (b) the rights of the Corporation in respect of that farm are not prejudiced thereby or only to an inconsiderable extent,

and, in that event, the Tribunal shall, by order, direct the Registrar of the Tribunal to make such consequential alterations as the Tribunal thinks necessary to be made to the entry in the Register of Growers relating to the registration of that grower in respect of that farm.

(4) Subject to subsection (6), where, on or after the date of the making of the Master Award, the Corporation and a registered grower have agreed to extinguish their respective rights and obligations under the Master Award in respect of any farm, the Tribunal shall, upon application in writing being made to the Tribunal in that behalf jointly by the Corporation and that grower, by order, direct the Registrar of the Tribunal to cancel the entry in the Register of Growers relating to the registration of that grower in respect of that farm.

(5) Subject to subsection (6), where, on or after the date of the making of the Master Award, the Tribunal is satisfied that—

- (a) a registered grower or the Corporation is in breach of any obligation on the part of the grower or the Corporation under the Master Award; and
- (b) the grower or Corporation, as the case may be, has failed to make good such breach within thirty days after receiving notice in writing from the other party requesting such breach to be made good,

the Tribunal may, upon application in writing being made to the Tribunal in that behalf by the other party, by order, direct the Registrar of the Tribunal to cancel the entry in the Register of Growers relating to the registration of that grower in respect of that farm.

(6) The cancellation of an entry in the Register of Growers in pursuance of any order under this section shall be without prejudice to any action which had been commenced or cause of action which had accrued before the date of the cancellation of that entry.

New registrations in respect of existing farms, following the making of the Master Award

78.—(1) Subject to subsection (3), the Tribunal—

(a) on application being made to it in that behalf by any person in accordance with subsection (2), on or after the date of the making of the Master Award, 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 twelve 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,

may, by order, direct the Registrar of the Tribunal to register the applicant as the grower in respect of that farm or that part of that farm.

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

(a) a statutory declaration containing an undertaking by the applicant that he will cultivate the farm or part of the farm in respect of which the application is made, and stating the true consideration in money or money's worth for the transfer to him of the estate or interest which he 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 his 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 of the Corporation, or any officer of the Corporation authorised in writing by the Chief Executive that such consent has been given; and

(d) such other particulars as the Tribunal may by rules prescribe or may direct in any particular case.

(3) The Tribunal shall not grant an application made under subsection (1) if—

(a) the applicant is not an individual;

(b) the consent of the Corporation to the application has not been obtained, unless the Tribunal is satisfied that such consent is being unreasonably withheld; or

(c) in the case where the application relates to part only of any farm, if that part is of an area of less than the minimum area, which, in the opinion of the Tribunal, is necessary in order to constitute an economic unit.

(4) Where an order under subsection (1) has been made in respect of any farm or part of any farm, the Registrar of the Tribunal shall, upon verifying that any previous entry in the Register of Growers with respect to that farm has been cancelled under section 77, make the appropriate entry in that register with respect

to that farm or part of that farm in accordance with section 72 so as to give effect to the order.

Re-registration of a grower in respect of existing farm, following the making of the Master Award

79.—(1) Subject to subsection (3), the Tribunal on application being made to it in that behalf by any person in accordance with subsection (2), on or after the making of the Master Award, in respect of any farm or part of any farm of which that person—

- (a) was the registered grower within the twelve months next preceding the date of the making of the application; and
- (b) has retained possession since ceasing to be the registered grower in respect of it,

may, by order, direct the Registrar of the Tribunal to register the applicant as the grower in respect of that farm or that part of that farm.

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

- (a) a statutory declaration containing an undertaking by the applicant that he will cultivate the farm or part of the farm in respect of which the application is made, and, where he has retained only part of the farm, stating the true consideration in money or money's worth for the transfer by him of his estate or interest in the other part;
 - (b) if the consent of the Corporation to the making of the application has been obtained, a certificate under the hand of the Chief Executive of the Corporation or any officer of the Corporation authorised in writing by the Chief Executive that such consent has been given; and
 - (c) such other particulars as the Tribunal may by rules prescribe or may direct in any particular case.
- (3) The Tribunal shall not grant an application made under subsection (1) if—
- (a) the applicant is not an individual;
 - (b) the consent of the Corporation to the application has not been obtained, unless the Tribunal is satisfied that such consent is being unreasonably withheld; or
 - (c) in the case where the application relates to only part of the farm of which the applicant was the registered grower, if that part is of an area of less than the minimum area which, in the opinion of the Tribunal, is necessary in order to constitute an economic unit.

(4) Where an order under subsection (1) has been made in respect of any farm or part of a farm, the Registrar of the Tribunal shall make the appropriate entry in the Register of Growers with respect to that farm or that part of that farm in accordance with section 72 so as to give effect to the order.

New registrations in respect of new farms, following the making of the Master Award

80.—(1) Subject to subsection (2), on application in writing being made to it in that behalf, on or after the date of making of the Master Award, by the Corporation and any other person in respect of land in respect of which no registration has been in force at any time within the twelve months next preceding the date of the application, being land of an area of not less than the minimum area, which, in the opinion of the Tribunal, is necessary in order to constitute an economic unit, the Tribunal, may by order, direct the Registrar of the Tribunal to register that person in respect of that land.

(2) The Tribunal shall not make any order under subsection (1) except to meet such deficiency as mentioned in subsection (5) or subsection (6) of section 85 or in such other circumstances as, in the opinion of the Tribunal, shall not prejudice the rights of registered growers generally.

(3) In the exercise of its powers under this section the Tribunal shall have regard to any policy guidelines relating to new registrations which may be issued from time to time by the Commission.

Cancellation of registrations in cases of fraud

81.—(1) Where the Tribunal, after affording all interested parties the opportunity of being heard, is satisfied that any entry, alteration or cancellation of an entry in the Register of Growers has been procured by fraud, or that any entry in the Register of Growers 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 Tribunal may, by order, direct the Registrar of the Tribunal—

(a) to cancel the entry; or

(b) to re-instate that entry as it was before that alteration or cancellation was made.

(2) An order under subsection (1) may be made by the Tribunal of its own motion or on application in writing being made to the Tribunal in that behalf by the Corporation or by any aggrieved person.

(3) The cancellation of an entry in the Register of Growers in pursuance of an order made under subsection (1) shall be without prejudice to any action which had been commenced or cause of action which had accrued by or to the Corporation or any other person before the date of the cancellation, other than a person who was party or privy to the fraud or false statement by reason of which the cancellation was directed to be made by the order.

Registration fees

82. The Registrar of the Tribunal shall be entitled to charge such fees as the Tribunal may by rules prescribe in respect of the exercise by the Registrar of any of his functions under this Part, and in particular, in respect of the registration of any person, the alteration or cancellation of any such registration and the issue and endorsement of certificates of registration.

Inspection of Register of Growers

83. Any person may, upon payment of such fee as may be prescribed by the Tribunal under section 82, have access to and inspect the Register of Growers during such hours and upon such days as the registry of the Tribunal is open.

PART VIII—THE BASIC ALLOTMENTS OF CANE AND QUOTAS OF CANE AND SUGAR

The national, mill and farm basic allotments of cane

84.—(1) On and after the date of the making of the Master Award, the Tribunal shall from time to time, by order, after consultation with the Commission, the Council and the Corporation, fix the farm basic allotment of cane in respect of each farm in respect of which a grower is registered, being the minimum amount of cane which may reasonably be expected to be produced on that farm as calculated on the basis of the average yearly production of cane on that farm over such period as the Tribunal thinks proper for the purpose of making such a calculation.

(2) Subject to subsection (4), the aggregate of the farm basic allotment of cane for the time being of all farms shall be the national basic allotment of cane, which shall be used by the Tribunal as the basis for calculating the national, mill and farm quotas of cane under section 85.

(3) Subject to subsection (4), the aggregate of the farm basic allotment of cane for the time being of all farms in any mill area shall be the mill basic allotment of cane for that area.

(4) The national basic allotment of cane and a mill basic allotment of cane may be adjusted from time to time by the Tribunal so as to take in account any change in the area of land used for the cultivation of cane.

(5) The Registrar of the Tribunal shall insert the farm basic allotment of cane for any farm in the entry in the Register of Growers with respect to that farm, being—

(a) before the date of the making of the Master Award, the farm basic allotment of cane for that farm for the time being as fixed in accordance with the contract of general application in pursuance of the Act of 1961 relating to that farm, as having effect by virtue of subsection (1) of section 71; and

(b) on and after that date, the farm basic allotment of cane for that farm for the time being as fixed by an order of the Tribunal under subsection (1),

and shall alter that entry in so far as it relates to the particulars relating to the farm basic allotment of cane for that farm whenever that allotment is altered under that contract or by such an order.

(6) The Tribunal shall make an order under subsection (1) altering the farm basic allotment of cane in respect of any farm whenever it is required to do so under the provision of the Master Award.

The national harvest quotas of cane and sugar and the mill and farm harvest quotas of cane

85.—(1) On and after the date of the making of the Master Award, the Tribunal shall, before 1 April in each year and after consultation with the Commission, the Council and the Corporation—

(a) fix the national harvest quota of cane, expressed as a percentage of the national basic allotment of cane (hereinafter referred to as “the national percentage”), being the quantity of cane which the Corporation shall be authorised to purchase under the Master Award from all registered growers for use in the year commencing on the 1st day of April in the next following year (hereinafter referred to as “the relevant year”) in manufacturing the national harvest quota of sugar, that is to say, the maximum tonnage of sugar for export from Fiji and for sale for consumption in Fiji, in respect of the relevant year, as calculated by the Tribunal in accordance with subsection (2);

(b) fix the mill harvest quota of cane for any mill area (expressed as a percentage of the mill basic allotment of cane for that area, which percentage shall be the same as the national percentage), being the quantity of cane produced in that mill area which the Corporation shall be authorised to purchase under the Master Award from all growers registered in respect of farms in that area for use in the relevant year in manufacturing sugar to meet the national harvest quota of sugar; and

- (c) fix the farm harvest quota of cane for each farm in respect of which a grower is registered (expressed as a percentage of the farm basic allotment of cane for that farm, which percentage shall be the same as the national percentage), being the quantity of cane produced on the farm which the Corporation shall be authorised to purchase from that grower, and that grower to sell to the Corporation under the Master Award for use in the relevant year in manufacturing sugar to meet the national harvest quota of sugar.

(2) In fixing the national harvest quotas of cane and sugar under subsection (1), the Tribunal shall have regard to the total amount of sugar likely to be exported from Fiji and sold for consumption in Fiji without resort to unreasonably low prices, to the maintenance of adequate, but not excessive, stocks of sugar, to stand-over cane, to mill capacity and to the anticipated production of sugar from cane.

(3) The Corporation shall not, as respects any year, purchase in excess of the national harvest quota of cane fixed under subsection (1) for that year or take delivery of cane from the registered growers in any mill area in excess of the mill harvest quota so fixed for that area for that year unless the Corporation is authorised by the Tribunal to do so in pursuance of a decision of the Tribunal under subsection (5) or (6).

(4) In determining farm harvest quotas under subsection (1), the Tribunal shall ensure, so far as may be reasonably practicable, fair treatment between all registered growers.

(5) If, after the date of the making of the Master Award, the Tribunal is satisfied that the total supply of cane from a mill area in any year is likely to result in a deficiency in the total of farm harvest quotas fixed under subsection (1) for that year for that area, the Tribunal may—

(a) by order increase all or some of those quotas, and direct the Registrar of the Tribunal to make such alterations to the appropriate entries in the Register of Growers necessary to give effect to the order;

(b) make orders under subsection (1) of section 80; or

(c) by order increase all or some of those quotas as mentioned in paragraph (a) and make such orders as mentioned in paragraph (b),

to the extent that the Tribunal deems necessary to meet that deficiency.

(6) If, after the date of the making of the Master Award and at any time after the 15th day of May in any year, the Tribunal is satisfied that additional markets for sugar have become available or that the average yield of sugar from cane has fallen or is likely to fall below that anticipated at the time the national harvest quota of sugar for that year was fixed under subsection (1), the Tribunal may, after consultation with the Commission, the Council and the Corporation—

(a) by order increase all or some of the farm harvest quotas for that year, and direct the Registrar of the Tribunal to make such alterations to the appropriate entries in the Register of Growers necessary to give effect to the order;

(b) make orders under subsection (1) of section 80; or

(c) by order increase all or some of those quotas as mentioned in paragraph (a) and make such orders as mentioned in paragraph (b),

to the extent that the Tribunal deems necessary to meet that deficiency.

PART IX—COLLECTIVE AGREEMENTS

Meanings of "collective agreement" and "procedure agreement"

86.—(1) For the purposes of this Act "collective agreement" means an agreement which—

- (a) is made by or on behalf of one or more organisations of employees and one or more employers or organisations of employers; and
 - (b) prescribes (wholly or in part) the terms and conditions of employment of employees of one or more descriptions,
- or an agreement relating to one or more of the matters specified in subsection (2), or both.

(2) For the purposes of this Act "procedure agreement" means so much of a collective agreement as relates to any of the following matters—

- (a) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, terms and conditions of employment;
- (b) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, other questions arising between an employer or group of employers and one or more employees or organisation of employees;
- (c) defining procedures relating to the redundancy, standing down or suspension of employees;
- (d) negotiating rights;
- (e) procedures relating to dismissal;
- (f) procedures relating to matters of discipline other than dismissal;
- (g) procedures relating to grievances of individual employees;
- (h) such other matters as the Tribunal may by rules prescribe.

Form and commencement of collective agreement

87.—(1) A collective agreement shall be in writing.

(2) A registered collective agreement shall take effect from the date on which it is signed by the parties to it or on such other date as may be agreed between the parties.

Collective agreements to be filed in the Registry of the Tribunal for registration

88. A collective agreement shall, upon being executed by all the parties to it, be filed in the Registry of the Tribunal together with—

- (a) a request in writing by the parties to the agreement or any of them, for the agreement to be registered by the Tribunal under section 90; and
- (b) where the request is made by an organisation of employers or employees, a statutory declaration by an officer of the organisation, authorised in that behalf by the executive committee of the organisation, declaring that the agreement has been approved by the committee.

Industrial Commissioner to examine and report on collective agreements filed for registration

89.—(1) When a collective agreement has been filed under section 88, the Industrial Commissioner shall examine the terms of the agreement and shall report to the Tribunal whether in his opinion the agreement is consistent with this Act and any other written law.

(2) Where the Industrial Commissioner advises the Tribunal under subsection (1) that in his opinion a collective agreement is inconsistent with this Act or any other written law he shall serve a copy of his report on the parties to the agreement.

Registration of collective agreements

90.—(1) After considering the report of the Industrial Commissioner under section 89 and any representations made to it by any party to the collective agreement the Tribunal shall—

- (a) register the agreement; or
- (b) refuse to register the agreement on the grounds that it is inconsistent with this Act or any other written law.

(2) The Registrar to the Tribunal shall inform the parties to the agreement of the action taken by the Tribunal under subsection (1).

Void collective agreement

91. A collective agreement shall be void and of no effect for the purposes of this Act to the extent that it contains any provision which—

- (a) is in conflict with any written law;
- (b) discriminates between employees undertaking the same or substantially the same work on the grounds of whether or not those employees are members of a particular organisation of employees;
- (c) excludes or limits the application of this Act;
- (d) limits the application of the agreement; or
- (e) requires an employer to employ only members of a particular organisation of employees.

Enforceability of registered collective agreements

92. A collective agreement, as from the date on which it is registered under section 90 or such other date as the Tribunal shall appoint in that behalf, shall be binding on all the parties to the agreement and shall be implied in every contract of employment between an employer and an employee to whom the agreement is expressed to apply, in so far as those terms are applicable to them.

Parties to registered collective agreements

93. For the purposes of section 92 the following persons and organisations shall be deemed to be the parties to a registered collective agreement—

- (a) any organisation of employees which has entered into the agreement;
- (b) any employer who has entered into the agreement or who is the member of an organisation of employers which has entered into the agreement; and
- (c) any person who is a successor to, or an assignee of, such an employer.

Duration, rescission and variation of registered collective agreements

94.—(1) A registered collective agreement remains in force until rescinded or varied by another collective agreement made between the same parties.

(2) The provisions of this Part shall apply *mutatis mutandis* in relation to a collective agreement rescinding or varying a registered collective agreement as they apply in relation to an original collective agreement.

Existing collective agreement and exclusion of Trades Dispute Act

95.—(1) A collective agreement in force immediately before the appointed day which is a collective agreement within the meaning of this Act, and—

- (a) has been registered under subsection (1) of section 34 of the Trade Disputes Act; or

(b) was deemed to have been made and registered under that Act by virtue of subsection (4) of section 34 of that Act, shall be deemed to have been filed in the Registry of the Tribunal in accordance with section 88 on the appointed day and shall thereupon be dealt with in accordance with this Part.

(2) This Act shall apply in the industry to the exclusion of the Trades Dispute Act (other than sections 35, 36, 37 and 38 of that Act) on and from the relevant appointed day.

Remedial action where procedure agreement does not exist or is defective

96.—(1) Where the Industrial Commissioner is of the opinion that the development or maintenance of harmonious industrial relations between one or more employers and any employees or descriptions of employees has been, is being, or is likely to be, seriously impeded as the result of the absence of a procedure agreement or the unsuitability of such procedure agreement as may exist for the purpose of settling disputes or grievances promptly and fairly, he may, of his own motion, or on application in writing being made to him in that behalf by any such employer or by an organisation of such employers or employees, promote and assist discussions between those employers and employees, or any organisation of such employers and employees, with a view to obtaining their agreement to a new or revised procedure agreement.

(2) Where the Industrial Commissioner is satisfied—

(a) that any party refuses to enter into discussions under subsection (1); or

(b) that no useful purpose would be served in continuing such discussions;

the Industrial Commissioner shall treat the matter as an unresolved industrial dispute between the parties and shall certify the matter accordingly and refer it to the Tribunal for determination under Part XI.

PART X—RESTRICTIONS ON INDUSTRIAL ACTION

Meaning of "industrial action" and "secondary industrial action"

97.—(1) For the purposes of this Act "industrial action" means—

(a) a strike, that is to say, a concerted stoppage of work by a group of employees in contemplation or furtherance of an industrial dispute, whether they are parties to the dispute or not, whether (in the case of all or any of those employees) the stoppage is or is not in breach of their terms and conditions of employment;

(b) a lock-out, that is to say, action which, in contemplation or furtherance of an industrial 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, factories or other places of employment or of the suspension of work in one or more such places, or of the collective, simultaneous or otherwise connected termination or suspension of employment of a group of employees.

(2) For the purposes of this Act "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 relation to such work the result of which is a restriction or limitation on, or a delay in, the performance of work.

Restrictions on industrial action

98.—(1) Subject to subsections (4) and (7), no industrial action by way of a strike shall be taken in respect of an industrial dispute—

- (a) unless the action is taken by employees who are a party to the dispute or who are members of an organisation of employees which is a party to the dispute;
- (b) unless at least fourteen days' notice in writing of the intention to take such action has been given by or on behalf of those employees 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 Registrar of Tribunal; and
- (c) if the industrial Commissioner has, at the time the action is taken, certified the dispute to be an unresolved dispute under subsection (2) of section 96, section 104 or subsection (8) of this section.

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

- (a) unless 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;
- (b) unless at least fourteen 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 Registrar of the Tribunal; and
- (c) if the Industrial Commissioner has, at the time the action is taken, certified the dispute to be an unresolved dispute under subsection (2) of section 96, section 104 or subsection (8) of this section.

(3) Subject to subsections (4) and (7), a registered grower shall not in furtherance of an industrial dispute refuse or discontinue to plant, cultivate, harvest or deliver cane—

- (a) unless at least fourteen days' notice in writing of the intention to take such action has been given by or on behalf of that grower to the other party to the dispute or, where there is more than one, to each of them, and to the Registrar of Tribunal; and
- (b) if the Industrial Commissioner has, at the time the action is taken, certified the dispute to be an unresolved dispute under section 104.

(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 if at the time of taking that action twenty-eight days has elapsed since notice was given to the Registrar of the Tribunal and the Tribunal has not made its award in respect of the dispute.

(5) The Tribunal may extend the period of twenty-eight days referred to in subsection (4) if in its opinion it is appropriate to do so having regard to the action before the Tribunal of any party to the dispute.

(6) A notice under this section shall be in such form and shall contain such particulars as shall be determined by the Tribunal, and copies of such form of notice shall be available from the Registrar of the Tribunal.

(7) Where a party to an industrial dispute gives a notice of intention to take industrial action under this section in respect of that 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 for so long as the industrial action taken by the first-mentioned party is not prohibited.

(8) The Industrial Commissioner may, and if so directed by the Tribunal shall, certify an industrial dispute to be an unresolved dispute—

(a) at any time after a notice under this section has been given to the Registrar of the Tribunal 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 Registrar of the Tribunal in respect of that dispute,

and thereupon the Industrial Commissioner shall refer the matter for determination by the Tribunal under Part XI or, where the dispute is required to be determined otherwise than by the Tribunal under the provisions of the Master Award or, pending the making of the Master Award, of a contract of general application in pursuance of the Act of 1961, as having effect by virtue of subsection (1) of section 71, for determination in accordance with those provisions.

Penalties for unlawful industrial action

99.—(1) An employee who contravenes subsection (1) of section 98 shall be liable to a fine of \$500 and to imprisonment for twelve months.

(2) An employer who contravenes subsection (2) of section 98 shall be liable, to a fine of \$1000 and to imprisonment for twelve months.

(3) A registered grower who contravenes subsection (3) of section 98 shall be liable to a fine of \$500 and to imprisonment for twelve months.

(4) An organisation of employees or of employers, any person who is the holder of an office in such an organisation or any other individual, that calls for or causes industrial action to be taken in contravention of subsection (1) or (2) of section 98 or induces or persuades any person to take industrial action in contravention of those subsections, shall be liable—

(a) in the case of such organisation to a fine of \$1000;

(b) in the case of any such person who is the holder of an office in such an organisation, to a fine of \$500 and to imprisonment for twelve months; and

(c) in the case of any such other individual, to a fine of \$500 and to imprisonment for twelve months.

(5) A person who ceases or refuses to perform any work, which he is bound to perform under the terms of his employment, in circumstances which give rise to reasonable suspicion that he is taking part in, or acting in furtherance of, any industrial action in contravention of subsection (1) of section 98 shall be deemed to be guilty of an offence against that subsection unless he satisfies the court that he ceased or refused to perform that work for reasons wholly unconnected with that industrial action.

Liability of officers of bodies corporate

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

Defences available in proceedings for offences under this Part

101.—(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 employees or employers, 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 employees or employers 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 the time the offence was committed, an officer of that organisation, that the offence was committed without his consent or connivance or that he exercised all reasonable diligence to prevent the commission of the offence.

PART XI—DISPUTES PROCEDURE

Meaning of "industrial dispute," etc.

102.—(1) For the purposes of this Act "industrial dispute" means an actual or apprehended dispute—

(a) between one or more employers or organisations of employers and one or more employees or organisations of employees, where the dispute relates wholly or mainly to any one or more of the following, that is to say—

- (i) the terms and conditions of employment, or the physical conditions in which any employees are required to work;
- (ii) the engagement or non-engagement, or termination or suspension of employment, of one or more employees;
- (iii) the allocation of work as between employees or groups of employees;
- (iv) a procedure agreement or any matter to which in accordance with subsection (2) of section 86 a procedure agreement can relate;

(b) between two or more organisations of employees, or within such an organisation, as to the rights, status or functions of the members of those organisations or of that organisation or otherwise, in relation to the employment of those members;

(c) between the Corporation and a registered grower where the dispute relates to any of the following matters—

- (i) the planting, cultivation and harvesting of cane;
- (ii) the sale and delivery of cane to the Corporation;
- (iii) the acceptance and purchase of cane by the Corporation; and
- (iv) the manufacture and sale by the Corporation of sugar, molasses and other by-products of sugar;

(d) between 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 a dispute of any of the descriptions set out in paragraph (a) or (b) and relates wholly or mainly to any of the matters referred to in paragraph (c), whether or not any party to the dispute is the Corporation or a registered grower.

(2) Any reference in this Part to any proceedings before the Tribunal under this Act shall not include the Inquiry required to be held under subsection (1) of section 66.

Functions of Industrial Commissioner

- 103.**—(1) The Industrial Commissioner shall endeavour by conciliation—
- (a) to maintain harmonious relations between all persons engaged in the industry so as to prevent industrial disputes; and
 - (b) to promote the settlement of an industrial dispute, expeditiously and fairly—
 - (i) before the dispute is certified by him under this Act to be an unresolved dispute; and
 - (ii) after he has so certified the dispute, on the request of the Tribunal.
- (2) In endeavouring to promote the settlement of an industrial dispute in accordance with subsection (1), the Industrial Commissioner shall—
- (a) if, in his opinion, it is appropriate to do so, or on being directed to do so by the Tribunal, use the machinery or arrangements which exist under a registered procedure agreement binding on the parties to the dispute;
 - (b) in any other case, take such steps as he deems to be fair and reasonable.
- (3) Where there is any question or difference as to whether an industrial dispute exists, the Industrial Commissioner may refer the matter to the Tribunal for determination, and the Tribunal may determine the matter in a summary manner without hearing witnesses.

Disputes unresolved by conciliation

- 104.** If the Industrial Commissioner is satisfied—
- (a) that no useful purpose would be served by continuing to conciliate under section 103 for the purpose of promoting the settlement of an industrial dispute; or
 - (b) that any party to an industrial dispute refuses to enter into any conciliation for that purpose;
- the Industrial Commissioner shall certify the industrial dispute as an unresolved dispute and shall refer the matter for determination by the Tribunal under this Part or, where the dispute is required to be determined otherwise than by the Tribunal under the provisions of the Master Award or, pending the making of the Master Award, of a contract of general application in pursuance of the Act of 1961, as having effect by virtue of subsection (1) of section 71, for determination in accordance with those provisions.

Particular powers of the Tribunal with respect to the hearing and determination of industrial disputes and other proceedings

- 105.**—(1) The Tribunal may in relation to any proceedings with respect to an industrial 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 or to the Industrial Commissioner for further consideration with a view to settling or reducing the 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 so as 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, or in respect of any contravention of any term of a collective agreement;
 - (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—
 - (i) that the matter, or part of the matter, in dispute is trivial; or
 - (ii) that further proceedings are unnecessary or 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 relate 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 should 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 or expedient for the expeditious and just hearing and determination of the dispute or any other matter before it.
- (2) In the hearing and determination of any proceedings 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 affects 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

106.—(1) The Tribunal may, before or at any stage during the hearing of any proceedings 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 relation to an industrial dispute or other proceedings before it, that there should be two assessors having respectively interests in common with employees and employers; 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 an industrial dispute or other proceeding before the Tribunal.

Intervention of Minister

107.—(1) The Minister may, for the purpose of giving such assistance to the Tribunal as he may be able to provide in any proceedings before the Tribunal under this Act, intervene, whether at his own instance or at the request of the Tribunal, if it appears to the Minister that some question of public importance or affecting the public interest, or both, has arisen and that it is proper and fit that the public interest should be represented at the hearing of the proceedings.

(2) No intervention in any proceedings 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 by the Tribunal as to costs or otherwise.

(3) Where the Minister intervenes in any proceedings under subsection (1), he may appear by the Attorney-General or by any public officer appointed by the Minister or the Attorney-General in that behalf.

Representation of parties

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

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

(2) A party—

- (a) being the Corporation or the Council, may be represented respectively by a director, officer or servant of the Corporation or of the Council;
- (b) being an organisation of employers or employees, may be represented by a member, officer or employee of the organisation;
- (c) in any other case may be represented by—
 - (i) an employee of the party; or
 - (ii) a member, officer or employee of an organisation of employers or employees of which the party is a member.

Procedure of Tribunal

109.—(1) In the hearing and determination of any proceedings before the Tribunal under this Act—

- (a) the procedure of the Tribunal shall be, subject to this Act and any rules prescribed by the Tribunal, within the discretion of the Tribunal;
- (b) the Tribunal shall not be bound to follow any rules of evidence, but may inform itself on any matter in such manner as it thinks just; and
- (c) the 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 evidence or argument to be presented in writing, and may decide the matters upon which the Tribunal will hear oral evidence or argument.

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

Powers of inspection

110.—(1) The person constituting the Tribunal or appointed under subsection (5) of section 18 to perform any of the functions of the Tribunal under this Act, 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 proceedings are 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 about to be committed;

(b) inspect those 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 those premises or at that place and inspect the same; and

(d) examine any person engaged in such premises or at such place in relation to any matters on which information may reasonably be required by the Tribunal.

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

(3) A person who contravenes subsection (2) shall be guilty of an offence and liable to a fine of \$100 and 3 months' imprisonment.

Orders for taking of evidence

111. 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 proceedings 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.

Reference of disputes to Mill Area Committees

112.—(1) The Tribunal may refer an industrial dispute to a Mill Area Committee for investigation and report, and may at any time revoke such a reference.

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

PART XII—AWARDS

Form of awards

113. 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

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

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

Registration and publication of awards, etc.

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

(2) Copies of an award shall be made available by the Registrar to any organisation or person entitled to appeal against the award under section 123.

Award not to conflict with any written law

116.—(1) The Tribunal shall not make an award which 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 other written law.

(2) The Tribunal, in making an award containing any terms as to the safety, health or welfare of employees at work shall 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 investigations made under such law which may be of relevance.

Relief granted not limited to any relief claimed

117. In making an award in relation to any proceedings before the Tribunal under this Act, the Tribunal shall 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 thinks necessary or expedient, in particular in the case of proceedings relating to an industrial dispute, for the purpose of preventing or settling the matter in dispute or of preventing further disputes.

Common rules

118.—(1) The Tribunal may, if it appears to be necessary or expedient for the purpose of preventing or settling an industrial dispute before it or of preventing further industrial 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 thinks fit, 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 to be represented before the Tribunal; and

(b) consult the Commission, the Council and the Corporation in the matter, and the Tribunal shall hear all interested persons and organisations so appearing or represented.

Interpretation of award

119.—(1) If any question arises as to the interpretation of an award, the Tribunal, of its own motion or on a reference made to it by the Industrial Commissioner, shall determine the question after hearing the parties bound by the award or, if the Tribunal thinks fit, without hearing the parties.

(2) The provisions of this Part relating to the hearing and determination of any proceedings by the Tribunal under this Act shall have effect in relation to 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

120.—(1) An award determining any proceedings 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 they appeared or not, unless they 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 118; and
- (e) all 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

121.—(1) The Tribunal may, of its own motion or on a reference made to it by the Industrial Commissioner—

- (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 it thinks fit, all or any of the terms of an award.

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

Awards to be final, except in certain cases

122.— Subject to section 123, an award—

- (a) shall be final and conclusive; and
- (b) shall not be challenged, appealed against, reviewed, quashed or called in question in any court.

Appeal to Supreme Court on point of law

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

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

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

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

or by leave of the Supreme Court, if the Supreme Court is of the opinion that the matter is of such importance that, in the public interest, an appeal should 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 the award.

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

(4) Where an appeal is brought under subsection (1), the Tribunal or the Supreme Court may, subject to such conditions as the Tribunal and Supreme Court think fit, 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 Tribunal or Supreme Court.

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

(a) admit further evidence; and

(b) direct the Tribunal to submit a report to the Court with respect to any specified matter.

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

(a) confirm, quash or vary the award appealed against;

(b) make an award with respect to 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, as respects any other question.

(7) On hearing an appeal brought under subsection (1), the Supreme Court may dismiss the appeal if it considers that no substantial miscarriage of justice has occurred, notwithstanding that the 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 proceedings before the Tribunal shall apply to the hearing and determination of an appeal brought under this section.

Statement of case to Supreme Court pending hearing of dispute

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

Costs

125. The Tribunal may make such order as it thinks just as to the costs and expenses (including the expenses of witnesses) of proceedings before it.

Enforcement of awards

126.—(1) An award may be enforced in the same manner as a judgement or order of the Supreme Court to the same effect.

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

Contempt of the Tribunal

127. The Tribunal shall have the same power to punish a contempt of its power and authority as is possessed by the Supreme Court in respect of contempts of the Court.

PART XIII—MISCELLANEOUS

Transfer of assets and liabilities of Sugar Board to the Commission

128. All real and personal property vested in the Sugar Board immediately before the appointed day shall be vested in the Commission, and all rights, obligations and liabilities of the Sugar Board subsisting immediately before the commencement of this Part shall be deemed to be the rights, obligations and liabilities of the Commission.

Rules of the Tribunal

129.—(1) Subject to subsection (2), the Tribunal may make rules for prescribing anything which may be prescribed under this Act by rules of the Tribunal and for carrying into effect the provisions of this Act relating to the Tribunal, and, in particular, for any of the following matters—

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

(2) No rules made by the Tribunal under this Act shall be of any effect unless they have been approved by the Chairman of the Judicial and Legal Services Commission.

Restriction on disclosure of information

130.—(1) Subject to subsection (2), no person shall disclose in any manner, except in so far as it is necessary for him to do so in carrying out any of his functions under this Act, any information which has come to his knowledge, directly or indirectly in the exercise of his functions under this Act in any case where the person from whom such information has been obtained, or from whose custody there was produced the books, accounts or other documents from which such information was derived, would not, but for this Act, have been under a duty to furnish such information or to produce those books, accounts or other documents.

(2) Subsection (1) shall not prevent the making of any observations or recommendations, on the basis of any information disclosed to any person, in any report required to be made under this Act.

(3) A person who contravenes subsection (1) of this section shall be guilty of an offence and liable to a fine of \$1,000 and six months' imprisonment.

Repeal of Act of 1961

131. The Sugar Industry Act (No. 53 of 1961) is repealed.

Savings and transitional provisions

132.—(1) Notwithstanding the repeal of the Act of 1961 by section 131, and without prejudice to section 71 and to section 18 of the Interpretation Act—

(a) the Act of 1961 shall continue to apply to any proceedings under that Act before any person appointed by the Chief Justice under section 14 of that Act as if that Act had not been repealed;

(b) any award made under the Act of 1961 by the Independent Chairman and in force immediately before the repeal of that Act shall have effect as if it was an award of the Tribunal, and the provisions of this Act shall apply in relation to that award accordingly; and

(c) any instrument made or any other thing done under any of the provisions of the Act of 1961 shall continue in force and shall have effect, so far as it could have been made or done under this Act, as if made or done under the corresponding provisions of this Act.

(2) The Minister may by regulations make provision for any other savings or transitional matter connected with the coming into force of this Act.

Savings and transitional provisions with respect to the Independent Chairman and the Independent Accountant of the Sugar Board

133.—(1) Notwithstanding the repeal of the Act of 1961 by section 131, the Independent Chairman in office immediately before the repeal of that Act shall continue in office until such time as the Minister shall determine for the purpose—

(a) of carrying out the functions assigned to the Independent Chairman under section 38 in relation to the first election of members of the Council; and

(b) carrying out such other functions as may be assigned to him by the Minister for the purpose of facilitating the bringing into operation of any of the provisions of this Act.

(2) There shall be payable to the Independent Chairman in respect of the carrying out by him of any of the functions assigned to him under subsection (1) such remuneration and allowances as shall be determined by the Minister.

(3) The remuneration and allowances paid to the Independent Chairman under subsection (2) shall be included in the administrative expenses of the Tribunal, and section 29 shall have effect accordingly.

(4) The person appointed under section 3 of the Act of 1961 to be the independent accountant for the industry and in office immediately before the repeal of the Act of 1961 by section 131 shall be deemed to have been appointed as the Accountant of the Tribunal under section 21 with effect from the date of the coming into force of Part III.

SCHEDULE
(Section 71)

MODIFICATIONS OF CONTRACT OF GENERAL APPLICATION
PENDING MAKING OF MASTER AWARD

<i>Clause</i> (1)	<i>Modifications</i> (2)
1	<p>(1) Immediately before the definition of "Authorised Assignment", there are inserted the following definitions—</p> <p style="padding-left: 40px;">"The Accountant of the Tribunal" means the Accountant of the Tribunal appointed under section 21 of the Act.</p> <p style="padding-left: 40px;">"The Act" means the Sugar Industry Act, 1984".</p> <p>(2) Immediately after the definition of "Authorised Assignment", there is inserted the following definition—</p> <p style="padding-left: 40px;">"The Council" means the Sugar-Cane Growers' Council established by section 31 of the Act".</p> <p>(3) In paragraph (d) of the definition of "Cane varieties", there is substituted the word "Tribunal" for the words "Independent Chairman", wherever those words occur.</p> <p>(4) Immediately after the definition of "Cane varieties", there is inserted the following definition—</p> <p style="padding-left: 40px;">"The Commission" means the Sugar Commission of Fiji established by section 4 of the Act".</p> <p>(5) The definitions of "Independent Chairman", "Independent Vice-Chairman" and "Independent Accountant" are deleted.</p> <p>(6) Immediately after the definition of "Mill", there is inserted the following definition—</p> <p style="padding-left: 40px;">"Mill Area Committee" means a Mill Area Committee established by section 56 of the Act".</p> <p>(7) In the definition of "Programme", there is substituted the word "Tribunal" for the words "Sugar Advisory Council".</p> <p>(8) In the definition of "Publish", there is substituted the word "Tribunal" for the words "Independent Chairman".</p> <p>(9) The definitions of "Sugar Board" and "Sugar Advisory Council" are deleted.</p>

- (10) Immediately before the definition of "Year" there is inserted the following definition—
 " "The Tribunal" means the Sugar Industry Tribunal established by section 18 of the Act".
- 2 (1) Paragraph (a) is substituted by the following paragraph—
 "(a) This contract shall have effect by virtue of subsection (1) of section 71 of the Act until the date of the making of the Master Award under section 64 of the Act or until such earlier termination as provided in this contract".
- (2) In paragraph (c), there is substituted the word "Tribunal" for the words "Independent Chairman", wherever those words occur.
- (3) Paragraph (f) is deleted.
- 3 (1) In paragraph (c) there is substituted the word "Tribunal" for the words "Sugar Board", wherever those words occur, and for the words "Independent Chairman".
- (2) In paragraph (d)—
 (a) there is substituted the word "Tribunal" for the words "Sugar Board", wherever those words occur, and for the words "Independent Chairman"; and
 (b) there is substituted the words "the Commission and the Council" for the words "the Growers' representatives on the Sugar Advisory Council".
- 4 (1) In paragraph (b), there is substituted the word "Tribunal" for the words "Independent Chairman".
- (2) In paragraph (d), there is substituted the word "Tribunal" for the words "Independent Chairman".
- 5 (1) In paragraph (a)—
 (a) immediately after the words "Sugar Advisory Council", there are inserted the words—
 "before the repeal of the Sugar Industry Act repealed by section 133 of the Act"; and
 (b) there are substituted the words "may have been made by the Sugar Advisory Council or may be made by the Tribunal" for the words "may hereafter be made".
- (2) In paragraph (c), at the end of the paragraph, there are inserted the words "by the Tribunal".
- (3) In paragraph (d), there are substituted the words "Chairman of the Commission" for the words "Independent Chairman".
- (4) In paragraph (e), there are substituted the words "Chairman of the Commission" for the words "Independent Chairman".
- 7 (1) In paragraph (a)—
 (a) there is substituted the word "Commission" for the words "Sugar Advisory Council"; and

- (b) there is substituted the word "Tribunal" for the words "Independent Chairman".
- (2) In paragraph (e), there is substituted the word "Tribunal" for the words "Independent Chairman".
- (3) In paragraph (i), there is substituted the word "Tribunal" for the words "Independent Chairman".
- 8 In paragraph (g), there is substituted the word "Tribunal" for the words "Independent Chairman".
- 10 In paragraph (b), there is substituted the word "Tribunal" for the words "Independent Chairman".
- 12 (1) In paragraph (b), there is substituted the word "Tribunal" for the words "Sugar Board".
- (2) In paragraph (c), there is substituted the word "Tribunal" for the words "Sugar Board".
- 14 (1) In paragraph (a), there is substituted the word "Tribunal" for the words "Independent Chairman and Independent Accountant".
- (2) In paragraph (e), there is substituted the following sub-paragraph for sub-paragraph (i)—
- “(i) the certified costs of the Tribunal, the Commission and the Mill Area Committees”.
- (3) There is substituted the following paragraph for paragraph (f)—
- “(f) In these these definitions “certified” means certified by the Tribunal, on the advice of the Accountant of the Tribunal, to be proper; but, prior to the issue of such certificate, the accountant of the FSC appointed under paragraph (h) of this clause and the accountant of the Council appointed under that paragraph shall be entitled in confidence to examine the relevant books and accounts to make such representations as they think fit to the Accountant of the Tribunal and to the Tribunal in respect thereof, and, after taking those representations into account, the Tribunal shall issue its certificate”.
- (4) In paragraph (g)—
- (a) there is substituted the word "Tribunal" for the words "Independent Chairman"; and
- (b) there is substituted the words "Accountant of the Tribunal and the accountants of the FSC and the Council mentioned in paragraph (f) of this clause" for the words "Independent Accountant, the growers' accountant and the FSC's accountant".

- (5) At the end of the Clause, there are added the following paragraphs—
- “(h) The FSC and the Council shall respectively appoint an accountant, approved by the Tribunal, to represent them for the purposes of paragraph (f) of this Clause;
- (i) the accountant appointed to represent the FSC under section 8 of the Sugar Industry Act repealed by section 133 of the Act and in office immediately before the repeal of the Sugar Industry Act shall be deemed to have been appointed under paragraph (h) of this clause to represent the FSC, and the accountant appointed under section 8 of the Sugar Industry Act to represent the growers on the Sugar Board and in office immediately before the repeal of that Act shall be deemed to have been appointed under that paragraph”.
- 15 (1) There is substituted—
- (a) the word “Commission” for the words “Sugar Advisory Council”; and
- (b) the word “Tribunal” for the words “Independent Chairman”.
- (2) The expression “under clause 19 hereof” is deleted.
- 16 In paragraph (a), there is substituted the word “Tribunal” for the words “Sugar Board”.
- 17 In paragraph (a)—
- (a) immediately after sub-paragraph (ii), there is inserted the following sub-paragraph—
- “(iii) the amount of any general levy or special levy raised by the Council and which the FSC is authorised to deduct under section 53 of the Act”; and
- (b) the existing sub-paragraph (iii) is redesignated as sub-paragraph (iv).
- 18 (1) In paragraph (b), there is substituted the word “Tribunal” for the words “Independent Chairman”.
- (2) In paragraph (e), there is substituted the word “Tribunal” for the words “Independent Chairman”.
- 19 This clause is deleted.
- 21 There is substituted—
- (a) the words “Industrial Commissioner of the Tribunal” for the words “Independent Chairman”; and
- (b) the words “the Act” for the words “the Sugar Industry Act”.

Schedule 1

Paragraph 2

There is substituted the word "Tribunal" for the words "Sugar Board".

Paragraph 3

There is substituted—

- (a) the words "the Council" for the words "growers representatives on the Sugar Advisory Council"; and
- (b) the word "Tribunal" for the words "Sugar Board" wherever these words occur.

Paragraph 5

There is substituted the word "Tribunal" for the words "Independent Chairman", wherever these words occur.

Controlled by Ministry of Primary Industries

SECTION 132—SUGAR INDUSTRY (TRANSITIONAL PROVISIONS)
REGULATIONS

TABLE OF PROVISIONS

REGULATION

1. Citation
2. Cane growers deemed to be registered
3. Contracts of general application

Legal Notice No. 111 of 1984
Legal Notice No. 22 of 1985

Citation

1. These Regulations may be cited as the Sugar Industry (Transitional Provisions) Regulations.

Cane growers deemed to be registered

2. Where, pursuant to subsection 73(1) of the Act, a person is entitled to be registered as a grower in respect of a farm he shall, until such time as he is so registered, be deemed to be registered as a grower in respect of that farm.

Contracts of general application

3. Every contract of general application in pursuance of the Act of 1961, as having effect by virtue of subsection 71(1) of the Sugar Industry Act, 1984, shall be read as if in sub-paragraph 14(e) (iii) for the words "chosen by the Independent Chairman" there appeared the words "chosen by the Council".
