Speech by

Hon. HENRY PALASZCZUK

MEMBER FOR INALA

Hansard 26 October 1999

SUGAR INDUSTRY BILL

Hon. H. PALASZCZUK (Inala—ALP) (Minister for Primary Industries) (4.19 p.m.), in reply: The Sugar Industry Bill is an important piece of legislation and the debate on the Bill clearly indicates its importance. I thank all honourable members who have participated in the debate. Before commencement of debate on the Bill, in the last session of Parliament I announced that a number of amendments to the Bill had arisen from negotiations between my officers and the grower and miller organisations. The members for Mulgrave and Bundaberg have discussed many of those amendments in their speeches. I will briefly address them again now.

I will move an amendment to link the price of cane to the price of sugar. This amendment is about risk sharing in the industry and it links the fate of millers and growers. The members for Crows Nest, Hinchinbrook and Clayfield raised this issue in debate and I trust that they will support my amendment.

I will move an amendment placing an obligation on mills to accept crane for crushing when the cane is supplied in accordance with the supply agreement. This amendment is about the mutual obligations of growers and millers.

I will move an amendment to resolve issues surrounding mills supplying their own cane. In essence, the amendment will treat mill owners or mill-owned cane in a similar way to individual contracts. If the mills propose to supply their cane in a way that will cause significant adverse impact to the collective, growers may take them to court. The member for Crows Nest raised this matter in his speech, so I trust that he will support this amendment as well.

On the issue of what constitutes a significant adverse impact, I will move an amendment to insert an example of such an impact to assist in interpretation. The example is drawn from the report of the Sugar Industry Review Working Party. The member for Crows Nest raised this matter in his speech, so I believe that he should support this amendment also.

Where it is believed that there is a significant adverse impact from an individual agreement, I will move an amendment to provide for compulsory mediation before the matter goes to court. This is to ensure that matters are not sent to court without firstly trying to settle the matters locally. The member for Crows Nest commented on this issue in his speech, so I hope that he will support this amendment also.

I will move an amendment to remove the word "growing" from the list of matters that must be included in a supply agreement in clause 49. This is a matter of concern to some who felt that it would interfere with the grower's right to manage his or her own production. The members for Crows Nest, Mirani, Clayfield and Hinchinbrook mentioned this matter in their speeches, so I trust that they will support this amendment.

I will move an amendment to allow a provision to be included in collective agreements for mills to notify a grower when the grower's cane is rejected. Such provisions are common in most awards in Queensland at the current time. The member for Crows Nest raised this issue in his speech, so I trust that he will support this amendment also.

Similarly, I will move an amendment that will allow provisions relating to mill closures to be inserted into collective agreements. It is not necessary for the Bill to spell out provisions relevant to mill closures when this is something reasonably and correctly left to be determined in each mill area in the

supply agreement. This matter was raised by the members for Crows Nest, Mirani and Clayfield in their speeches, so I hope that they will support the amendment.

As members would be aware, the Queensland Sugar Corporation has the power to direct mills in relation to what brand of sugar they produce. This power is generally not used. Rather, the Queensland Sugar Corporation will negotiate with the mill on what brand should be produced. Growers expressed concern that a change in brand can have an effect on them due to longer crushing time leading to expanded season length. I will move an amendment requiring the Queensland Sugar Corporation to notify the mill suppliers' committee where there is a change to the brand. This notice will assist growers in evaluating the impact of the change. The member for Crows Nest raised this matter in his speech, so I am hopeful that he will support this amendment also.

Honourable members opposite raised some matters that I did not feel warranted amendment to the Bill. I will now address those matters and explain my reasons for not amending the Bill.

Relative Negotiating Power Disparity Between Mill Owners and Growers

The member for Crows Nest stated that the Opposition would move an amendment to require mill owners, for each crushing season, to supply growers with information about the payments received by the mill owner from the Queensland Sugar Corporation. As I have previously indicated, the Government is to move an amendment to clause 49 so that collective agreements may include payment arrangements linking the price of cane to the selling price of sugar. Due to this amendment, I believe that the amendment that was suggested by the member for Crows Nest is now unnecessary.

Consultation by Negotiating Team Prior to Signing Collective Agreement

The honourable member for Crows Nest has stated that the Bill is silent on the obligations placed on negotiating teams to consult with growers before a collective agreement is signed. The members for Clayfield and Hinchinbrook also commented on this issue. The member for Crows Nest indicated that the Opposition would move an amendment to place an up-front, positive and clearly stated statutory obligation on each negotiating team to consult properly with growers about collective agreements before they are signed. The nature of this consultation is to be specified in a written directive of the Minister.

This amendment is considered unnecessary for the following reasons: negotiating teams are equally representative of mill owners and growers, and members are nominated from within the local area; ministerial involvement is not necessary; it is the nature of negotiating teams that they are well versed in local issues affecting local industry; in being responsible for negotiating the collective agreement, negotiating team members will have little choice but to extensively consult with local industry—as my colleague the honourable member for Bulimba stated, how can negotiating teams negotiate if they do not talk to the people; and, at the end of the day, they need to be left to get on with the position to which they were appointed.

Appeal by Grower Aggrieved by Terms of Collective Agreement

The honourable member for Crows Nest has stated that "there is no scope for appeal by an aggrieved grower", with reference to a grower aggrieved by the terms of the collective agreement. The collective agreement is negotiated by the negotiating team, which is equally representative of mill owners and growers. Decisions of negotiating teams are unanimous or subject to a dispute resolution process determined by the negotiating team or, if no process has been determined, then in accordance with a process to be detailed in a regulation. The absence of appeal rights from decisions of negotiating teams is no different from the current position, which has worked well, agreed by industry and incorporated by 1996 amendments to the Sugar Industry Act 1991.

The Bill ensures that, as far as possible, the negotiating team reaches its significant decisions for the local mill area only after exhaustive discussion and assessment of all of the issues. A negotiating team's decision in relation to a collective agreement may be challenged under clause 44 of the Bill on application of 20 or more growers within 21 days of a collective agreement being published. This could result in the collective agreement being varied. If the Bill were to allow a variation of the agreement by complaints from a fewer number of growers, there would be potential for agreement to not be finalised.

Cancellation of Cane Production Area on Breach of Collective Agreement

The honourable member for Crows Nest has indicated that the Opposition considers that on a grower breaching a collective agreement a mill owner should have the capacity to apply to the cane production board and have the grower's cane production area cancelled. The member has indicated that this would be in addition to the right granted to cane production boards under clause 31. Apparently, this is to also prevent the parties ending up in the Supreme Court or even the Court of Appeal. Cane supply and processing agreements are contractual. The normal remedies available under contract law should apply. The reasons for which a cane production area may be cancelled have been detailed in the Bill.

Mill Owners' Negotiating Advantage

The honourable member for Crows Nest has referred to a concern of the Australian Cane Farmers Association in asserting that growers who are in a collective agreement could be in a disadvantageous position. Reference in support of this assertion is made to both the mill owner being party to both the collective and individual agreements and growers who choose to negotiate an individual agreement. The honourable members for Clayfield and Hinchinbrook also commented on this issue. Under the Bill, within seven days of a collective agreement being made a mill owner must give the mill suppliers committee notice of every individual agreement the owner has entered into for all or part of the collective period.

The honourable member for Crows Nest has quoted from the ACFA Australian Sugar Digest of 4 August 1999 in saying that the growers, in seeking an individual agreement with the mill owner, will not know the implications of a collective agreement or arrangement until after an individual agreement is required to be settled, and that the mill owner's negotiating strength is enhanced compared with that of the grower seeking an individual agreement. I understand that the Opposition will be moving an amendment requiring the mill owner to give the mill suppliers committee a copy of each individual agreement before a collective agreement is made. All of these assertions that have been made by the honourable member for Crows Nest ignore the fundamental concept behind individual and collective agreements, that is, that they are commercial contracts and, as such, principles of confidentiality are relevant.

There is provision in clause 47 for notice of enough details of individual agreements to allow the effect of the agreement on the collective to be decided. These details, for confidentiality reasons, need not include details of the price payable to the grower under the individual agreement. The honourable member for Clayfield commented that mill owners should be required to inform the mill suppliers committee of what individual agreements it proposes to enter before a collective agreement is finalised. However, a mill owner may not be in a position to know this, since a grower approaches a mill owner regarding negotiation of an individual agreement, rather than a mill owner proposing to enter into one.

Cane and Sugar Quality—Mandatory for Supply Agreements

The honourable member for Crows Nest has indicated that the Opposition will consider an amendment in order that provisions relevant to cane and sugar quality must be included in supply agreements. Currently, cane and sugar quality may be considered by negotiating teams in negotiating a collective agreement. Matters which must form part of a supply agreement include provisions regarding the rights and obligation of growers and mill owners in relation to harvesting, delivery of cane to the mill, transport and handling of cane, acceptance and crushing by the mill, and payment by the mill owner. These are fundamental issues relevant to the process of supply, crushing and payment. In order to ensure flexibility of the negotiations throughout mill areas, all other issues have reasonably been left as optional considerations in the Bill.

Growers' Cash Flow

The honourable member for Crows Nest has indicated that the Opposition will consider moving an amendment to require negotiating teams to consider cash flow. The honourable members for Mirani, Clayfield and Hinchinbrook also raise this as an issue. The Government considers such an amendment to be unnecessary. The Sugar Industry Review Working Party specifically considered the issues of profitability and cash flow and determined that the Bill should not be so prescriptive as the Sugar Industry Act of 1991 in requiring that mill owners make payments to growers within 30 days of the end of the month in which cane is supplied. The report stated specifically that the relevant provision of the Act should be made non-mandatory. The aim of this was to improve flexibility and local area negotiations regarding cane payment. The nature of supply agreements is that they are commercial contracts between the parties. Accordingly, the Bill provides some detail as to the content of supply agreements in clauses 49 to 54 inclusive.

Provisions regarding the rights and obligations of mill owners and growers in relation to payment by the mill owner must be included in supply agreements by virtue of clause 49(1)(f). Clause 54 further provides that cane payment arrangements may be considered by the negotiating team. More specific detail is appropriately left for negotiation in each local area, as is the nature with negotiations for commercial contracts. I am aware that the Australian Cane Farmers Association has stated its case for legislation so that growers are paid at least 30 days following the end of the month in which cane was supplied.

My department has been advised by the Australian Sugar Milling Council that the reality is that the majority of cane supplied is paid for by mill owners within three days of the mill receiving payment from the Queensland Sugar Corporation.

Funding of Negotiating Teams

The honourable member for Mirani raised the issue of the absence of any provision for the funding of the dispute resolution mechanism for negotiating teams. The provisions of the Bill are consistent with normal processes for costs by private persons entering into contractual arrangements.

Members of negotiating teams are the chosen representatives of private parties to a commercial contract. Government does not appoint them and there is no requirement for the Bill to provide for the funding of negotiating teams as is required for bodies appointed by Government. Specific provision has not been made in the Bill for payment of fees and allowances and it is anticipated that growers will continue to contribute to the negotiating teams as and when required.

Under the 1991 Act, fees and allowances for members of negotiating teams were paid by the entities that nominated the members, that is, by the mill owner and the mill supplier committees. In the event that a negotiating team engages, for example, an arbitrator under its dispute resolution process, it is anticipated that the mill owner and mill suppliers committee will jointly pay for the costs of the arbitrator.

Conflict of Grower Member of Negotiating Team Negotiating Collective Agreement When S/He Has Entered into an Individual Agreement

The honourable member for Mirani has raised the question as to whether a conflict exists in relation to a grower representative on a negotiating team who has negotiated an individual agreement for himself or herself being responsible for drafting the collective agreement. Mill suppliers committees are responsible for nominating grower representatives of negotiating teams and they must be trusted to make appropriate appointments. Negotiating team members should have the appropriate expertise, be able to operate on a commercial in confidence basis and be professional about their interests. Negotiating teams, rather than the Bill, set the requirements for members. Requirements for disclosure of interests and other like matters are accordingly anticipated to be along usual probity lines. It is therefore not reasonable to attempt to ensure that grower members of negotiating teams will not enter into individual agreements for some or all of their cane production area.

Length of Individual and Collective Agreements

The honourable member for Clayfield made comment on a matter that I consider should be addressed. The honourable member stated that collective agreements can be negotiated for an unlimited period and that this could result in being unfair to some areas and to some growers. The member also commented on the ACFA assertion in the Australian Sugar Digest that individual agreements were limited for a term that could not exceed that of a collective agreement for a particular mill. The honourable member considered it to be "asking for trouble" if individual agreements were able to run for longer than the collective agreement and could result in individual agreements being tied up for far too long.

The Government will move an amendment to clarify what has always been intended regarding the length of individual agreements. These agreements are not to be limited to the length of the collective agreement. Part of the premise of the Bill, as determined by the Sugar Industry Review Working Party, is to enable greater flexibility to growers in their cane supply arrangements. For the first few years, no doubt all agreements will be negotiated for one or two year periods. It is anticipated that following that, longer agreements will be entered into.

Grower to Decide to Leave a Collective Agreement after Four Years

The honourable member for Clayfield commented on a grower, relevant to a collective agreement longer than four years, having to nominate before the agreement is made that he or she will leave the agreement at the end of four years. This provision has been incorporated in the Bill in order to enable growers wanting to permanently exit canegrowing to leave their collective agreement after four years by giving notice of his or her intention to leave it before the agreement that is to be for more than four years is made. This means that on leaving the grower would not be in breach of the agreement.

Prior to commencing negotiations for the collective agreement, the negotiating team must publish in the local newspaper the period or range of periods that the collective agreement may possibly cover. This is found under clause 41(1)(d). On seeing that the proposed length of the agreement is more than four years, a grower could notify the negotiating team as to the grower's wish to leave the agreement—and growing—once four years have passed. The provision requires notice before the agreement is made in order that the negotiating team is aware, as far as possible, of the tonnage of cane that will be supplied to the mill owner for crushing under the agreement. If growers were able to nominate to leave an agreement part way into it without repercussion, a situation could arise in which it would not be economically viable for a mill owner to continue crushing. This would then directly affect the viability of the mill area.

Another amendment that the Government will move relates to the objectives of the negotiating team in reaching an agreement on expansion. As the Bill currently stands, there are no guiding principles in this regard. I will move an amendment to provide that the negotiating team has the objective of maximising the profit of growers and millers in reaching an agreement on expansion.

As honourable members would appreciate, this is a complex piece of legislation—but necessarily so, because it regulates a complex industry. I believe that the Bill with the amendments as outlined will serve the industry well and place it on a better footing for the future. I can only hope that

the future brings more cooperation amongst the various industry organisations. I have been disappointed by the way that internal industry politics have got in the way of rational, effective debate on this Bill.

Before I continue, I want to comment on a couple of matters that the honourable member for Burnett raised in relation to proposed section 210 and the cane harvesters. The matters relating to harvesting contractors are not the subject of the Bill. Rather, these are private matters for individual growers to resolve. Proposed section 210 does not establish harvest equity committees or dictate their composition. Rather, this section simply describes these committees in a factual way for the purposes of the Trade Practices Act. At the moment, harvest equity committees only consist of grower and/or miller representatives. Changing this section would not compel growers and millers to include the harvesters. I understand the harvesters' concerns and the concerns of the honourable member, but I do not believe that any amendment to proposed section 210 would in any way reflect what they want.

In conclusion, recently I attended the farewell of Dr David Rutledge, Chief Executive of the Queensland Sugar Corporation. David served as CEO of the Sugar Corporation for 11 years and he made a tremendous contribution to the welfare of the sugar industry in this State. I want to take the opportunity of thanking him publicly in this House for his work.

In my remarks on the evening of his farewell, I indicated that it was timely that we reflect on the qualities that David brought to his position. He has been innovative, commercially oriented, focused on the world market, conscious of the needs of our customers and, of course, committed to the industry as a whole. These are qualities which everyone in the sugar industry should aspire to and emulate. I would urge all industry leaders to look at, and follow, David Rutledge's example.

In commending the Bill to the House, I would just like to raise one more issue. I direct this to honourable members opposite, especially the One Nation members and the honourable member for Tablelands. On the issue of transferability, I have in my possession here a heads of agreement signed by both Mr Harry Bonanno, Chairman of the Canegrowers Association, and Mr Geoff Mitchell from the Australian Sugar Milling Council giving their support to the provisions of this Bill.