SUPREME COURT OF QUEENSLAND

CITATION:	*Mackay Sugar Ltd & Anor v Quadrio* [2015] QCA 41
PARTIES:	**MACKAY SUGAR LIMITED** ACN 057 463 671 (first appellant) **TABLELAND CANEGROWERS LIMITED** ACN 114 759 365 (second appellant) **v** **PASQUALE QUADRIO** (respondent)
FILE NO:	Appeal No 6990 of 2014 SC No 123 of 2014
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Cairns
DELIVERED ON:	27 March 2015
DELIVERED AT:	Brisbane
HEARING DATE:	17 February 2015
JUDGES:	Carmody CJ and Fraser and Philippides JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal allowed. Set aside order 1 made in the Trial Division on 3 July 2014, and instead order that the respondent's application be dismissed.** **2. Unless within fourteen (14) days of today either party files and serves a written submission about costs, upon the expiry of that period the respondent is ordered to pay the appellants' costs of the proceedings in the Trial Division and of the appeal.** **3. Any such submission about costs must not exceed two A4 pages unless otherwise ordered by the Court, judge of appeal or registrar.**
CATCHWORDS:	STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – GENERAL APPROACHES TO INTERPRETATION – PURPOSIVE APPROACH – GENERAL PRINCIPLES – where the *Sugar Industry Act* 1999 (Qld) required the respondent sign a written supply contract – where the contract was projected onto a screen and only the execution page was printed – where the respondent signed the

execution page – where the execution page contained no contractual terms – where the purpose of the relevant provisions of the Act was to provide growers with greater contractual autonomy – whether the respondent signed a written contract for the purposes of the *Sugar Industry Act* 1999 (Qld)

CONTRACTS – GENERAL CONTRACTUAL PRINCIPLES – FORMATION OF CONTRACTUAL RELATIONS – GENERAL OFFERS AND THEIR ACCEPTANCE – where the respondent was presented with a non-negotiable contract – where the appellant would only be bound if a specified level of other commitments were obtained – where the respondent was not provided with a printed copy of the contractual terms – whether the respondent manifested an intention to be legally bound to the terms of that contract when signing the execution page

Acts Interpretation Act 1954 (Qld), s 36(1), Schedule 1
Sugar Industry Act 1999 (Qld), s 29, s 31(1), s 31(5), s 33(1), s 33(2)
Sugar Industry Reform Act 2004 (Qld)

Attorney-General (NSW) v Brewery Employees' Union (NSW) (1908) 6 CLR 469; [1908] HCA 94, cited
Barker v The Queen (1983) 153 CLR 338; [1983] HCA 18, cited
Cooper & Sons v Neilson and Maxwell Ltd [1919] VLR 66; [1919] VicLawRp 9, cited
Elias v George Sahely & Co (Barbados) [1983] 1 AC 646, cited
Equuscorp Pty Ltd v Glengallan Investments Pty Ltd (2004) 218 CLR471; [2004] HCA 55, cited
Harvey v Edwards, Dunlop & Co Ltd (1927) 39 CLR 302; [1927] HCA 13, cited
J & D Rigging Pty Ltd v Agripower Australia Ltd [2013] QCA 406, cited
Pang v Bydand Holdings Pty Ltd [2010] NSWCA 175, cited
Timmins v Moreland Street Property Co Ltd [1958] Ch 110, cited
Todrell Pty Ltd v Finch & Ors; Croydon Capital Pty Ltd v Todrell Pty Ltd & Anor [2008] 1 Qd R 540; [2007] QSC 363, cited
Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd (2004) 219 CLR 165; [2004] HCA 52, considered
Ultrarad Pty Ltd v Health Insurance Commission (2005) 143 FCR 526; [2005] FCA 816, cited

COUNSEL: D A Kelly QC, with M R Hodge, for the appellants
S L Doyle QC, with M A Jonsson, for the respondent

SOLICITORS: McCullough Robertson for the appellants
Greenwoods for the respondent

[1] **CARMODY CJ:** I agree with the orders proposed and reasons given by Fraser JA.

[2] **FRASER JA:** In proceedings brought by the respondent, a judge in the Trial Division ordered a declaration that the respondent had not committed to a concluded

and binding contract with the appellants in the terms of an instrument entitled "Tableland Collective Cane Supply and Processing Agreement". The basis of the declaration was the trial judge's conclusion that the respondent had not complied with a provision in the *Sugar Industry Act* 1999 (Qld).

[3] The purpose of the relevant part of that Act is described in s 29 as being "to ensure the supply by growers of cane to a mill and the payment to growers in return are governed by written contracts (each a ***supply contract***) between growers and mill owners". The respondent is a "grower" and the first appellant is a "mill owner" as defined in the Act. The definition of "supply contract" in s 30 simply refers back to s 29. The relevant operative provisions are ss 31(1) and 31(5):

> "(1) A grower may supply cane to a mill for a crushing season only if the grower has a supply contract with the mill owner for the season.
>
> …
>
> (5) Each of the parties to a supply contract must sign the contract."

[4] Similarly, s 33(2) requires each grower in a group of growers to sign a "collective contract", which s 33(1) provides is "a supply contract made between 2 or more growers (a ***group of growers***) and a mill owner". Section 31 is the relevant provision in this case because, despite the word "Collective" in the title of the Agreement, the appellants sought to enter into a separate contract with each of several growers, including the respondent, rather than a contract with several growers.

[5] The second appellant negotiated the terms of the "Tableland Collective Cane Supply and Processing Agreement" with the first appellant and encouraged growers on the Tableland, including the respondent, to enter into contracts with the first appellant in those terms. The negotiated terms included provisions for the supply of cane by the respondent to the first appellant's mill, the Mossman Mill, in return for payment. Section 31(5) therefore required the first appellant and the respondent to sign the Tableland Collective Cane Supply and Processing Agreement. The trial judge held that the respondent had not signed the agreement in accordance with s 31(5).

[6] The consequence, if any, of a grower's failure to comply with s 31(5) is not spelled out in the Act. Upon a literal construction, the prohibition in s 31(1) upon a grower supplying cane to a mill does not apply if the supply and payment provisions are in a written contract even if that contract is not signed by the grower. However the trial judge considered that s 31(1) operated unless the supply contract was signed by each party as required by s 31(5). The appellants did not challenge that aspect of the trial judge's construction of s 31.

The issues

[7] In this appeal the only issue concerning the Act is whether the trial judge erred in holding that the respondent had not signed a "supply contract" as required by s 31(5). The only other issue in the appeal is whether, as the respondent argued, the trial judge erred in holding that one of the prerequisites for a binding contract, that the parties intended to be legally bound, was satisfied.

The agreement

[8] The instrument entitled "Tableland Collective Cane Supply and Processing Agreement" was in evidence at the trial as exhibit 16. It comprises:

(a) A coversheet with the words "Tableland Collective Cane Supply and Processing Agreement" in large bold type, and words which describe it as an agreement between the first appellant as "The Mill Owner", "the party referred to in schedule 1 as the "Grower", and the second appellant.

(b) Twenty-two pages numbered at the foot 1 – 22, with the words "Tableland Collective Cane Supply and Processing Agreement" as a header on each page:

i. Page 1 refers to the document as "This Agreement" and identifies the parties as they are identified on the cover sheet. Recitals on page 1 include statements that the "Grower" will supply cane to "The Mill Owner" subject to the terms and conditions of the Agreement and that the Agreement had been negotiated by the second appellant on behalf of and for its financial members. Part of an interpretation clause is also contained on page 1.

ii. Pages 2 to 21 contain the balance of the interpretation clause, definitions, and the terms of the agreement.

iii. Page 21 also lists the following appendices: "Appendix 1 Cane Analysis Program", "Appendix 2 Cane Analysis Program Auditing Service", "Appendix 3 Crushing Season Performance Summary", "Appendix 4 Factory Work Figures", and "Appendix 5 Final Sugar Price and Pools". (These appendices are also referred to in the preceding pages.)

iv. Page 22 is an execution page in a conventional form, containing provision for signing on behalf of the first appellant (described as "Mill Owner") by an authorised officer, provision for signing on behalf of the second appellant by an authorised officer, and provision for signing by "the Grower". The page is signed by the respondent and for the appellants in the appropriate places. The date upon which the respondent signed is stated in handwriting as 16 April 2013. The authorised officers of the appellants are stated in handwriting to have signed on 17 April 2013.

(c) One unnumbered page entitled "Tableland Collective Cane Supply and Processing Agreement" and described as "Schedule 1", which sets out the name and address of the respondent and a description and statement of the area of the respondent's cane farms. (The respondent was a co-owner of part of the relevant land but nothing was said to turn upon that.)

The trial judge's findings

[9] The trial judge made findings to the following effect. None of these findings were challenged.

[10] After a sugar mill commenced operating on the Atherton Tableland in 1998 the respondent supplied cane to that mill ("the Tableland Mill"). A sugar mill at Mossman ("the Mossman Mill") was purchased by the first appellant in 2012. The owner of the Tableland Mill and the first appellant were potential rivals in negotiations with the second appellant for a collective contract with Tableland growers. The respondent gave the second appellant written authority to negotiate only with the owner of the Tableland Mill. In 2013, the second appellant purported to act as a bargaining representative for those growers in the negotiation of a new collective contract. The second appellant negotiated with the owner of the Tableland Mill and also with the first appellant.

[11] The second appellant did not reach agreement upon the terms of a contract with the owner of the Tableland Mill but did agree terms with the first appellant. The second appellant then organised a series of meetings with Tableland growers, including a meeting at the Tolga CWA Hall on 16 April 2013 at about 1 pm. The respondent and other growers attended the meeting. Representatives of the first appellant (including its Chief Executive Officer, Mr Hildebrand) and representatives of the second appellant (including its Chairperson, Mr Maisel, its Deputy Chairperson, Ms Salvetti, and its Manager, Ms Dwyer) also attended. Before the meeting Ms Dwyer had contacted the growers requesting that they attend and indicating that their attendance was important. At the beginning of the meeting the growers were required to sign a confidentiality agreement. The first appellant's representatives initially stayed out of the meeting whilst the second respondent's representatives briefed the growers.

[12] Mr Maisel opened the meeting. Ms Salvetti then reviewed the history of failed negotiations with the owner of the Tableland Mill and the successful negotiation with the first appellant, after which Ms Dwyer addressed the meeting. During Ms Dwyer's address the content of the contract negotiated between the second appellant and the first appellant (the Tableland Collective Cane Supply and Processing Agreement) was projected onto a screen and scrolled through. This projection did not include the appendices, which were also not appended to the document the respondent received after the meeting and which became Exhibit 16. Ms Dwyer did not give a complete commentary on each clause. Her address highlighted the main variations between the negotiated contract and the previous agreement. The growers could have asked Ms Dwyer questions about the content or asked her to pause scrolling so that they could read every word of the contract. The latter did not occur. Ms Dwyer told the growers that the contract would be made available to any grower who wanted to show it to a legal representative or business partner and that in the case of partnerships or companies the grower could take the execution page away and have it signed by the correct parties.

[13] After Ms Dwyer's presentation the first appellant's representatives entered. Mr Hildebrand spoke briefly. Each grower present was provided with an execution page in the form of page 22 (see [8](b)(iv) of these reasons) and a single unnumbered page in the form of Schedule 1 (see [8](c) of these reasons). (The respondent accepted in cross-examination that, consistently with evidence given by other witnesses, these pages were provided before Ms Dwyer's presentation.) Ms Dwyer asked the growers to sign their execution page and said that the appellants would sign when a specified minimum total hectares of land under cultivation by the Tableland growers who signed was reached. The respondent signed the execution page he was given. His signature was endorsed as witnessed by Ms Dwyer either then or later. He subsequently received a full copy of the contract, including the annexed execution page signed by him and on behalf of each of the appellants.

[14] The trial judge rejected the respondent's evidence that at the meeting he thought that the document he signed was merely providing the second appellant with an authority to negotiate. The trial judge accepted the evidence of other witnesses present at the meeting that it was the proposed contract, the terms of which had already been negotiated, that was under discussion. The trial judge rejected the respondent's attempts "to distance himself from having any real understanding of what was explained and shown to him at the meeting"[1], made adverse findings of

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1 [2014] QSC 148 at [34].

credibility about the respondent, found that his assertion that he believed that he was only signing an authority to negotiate was "patently unreliable",[2] and rejected his evidence that when he came to sign the document it was partially obscured by the Schedule 1 page. The trial judge found that the respondent was not uninformed, that the contract, to which the document he signed related, was explained at the meeting by way of overview before the respondent signed, and that the respondent "believed he was signing a document he understood constituted an agreement by him to the collective contract which had been reviewed at the meeting"[3].

Did the parties intend to be legally bound?

[15] The trial judge first considered the question whether a "supply contract" was signed as required by s 31(5) of the Act and found that it was not. The trial judge then considered the question whether, if that conclusion was wrong, the parties intended to be legally bound by the terms of the Tableland Collective Cane Supply and Processing Agreement. The trial judge made it clear that he considered this issue upon the assumption that the signing requirement in s 31(5) was fulfilled.

[16] The respondent contended that the question whether there was an intention to be legally bound should not have been answered upon the assumption that the signing requirement in s 31(5) was fulfilled. The appellants contended that the question whether the statutory requirement for signing was fulfilled could be answered only after the written contract was identified. Both contentions should be accepted. Section 31 applies only in relation to "supply contracts". If the agreement between the first appellant and the respondent did not constitute a supply contract s 31 could not apply. If a supply contract was concluded, it would be necessary to identify the terms of any such contract in order to decide whether the requirements of s 31 were fulfilled.

[17] The trial judge rejected the respondent's argument that the absence of an intention to be legally bound was suggested by the circumstance that the presentation of an execution page and schedule departed from the practice involved in collective agreements made in the past. The trial judge found that on the evidence this approach was not atypical. The trial judge also rejected the respondent's argument that an absence of intention to be legally bound was suggested by circumstances that the proposed transition to a new mill was a significant departure from past arrangements, there was limited time and opportunity for reflection at the meeting or for the respondent to consult others (including his family), and the respondent had expressed dissatisfaction at cane being processed at Mossman rather than on the Tableland. The trial judge accepted that the respondent expressed such dissatisfaction at the meeting but held that it was probable that he relented and decided to sign a document which he understood indicated his assent to the contract which had been reviewed at the meeting. In so concluding, the trial judge referred to the respondent as being assertive, as having appreciated that he could have left the meeting without signing in order to consider the issue further, and as appreciating that by signing the execution page he indicated his intention to enter into the contract which had been discussed. The trial judge also rejected a submission for the respondent that the circumstance that the second appellant had only been appointed in writing as the respondent's bargaining agent in relation to supply to the Tableland Mill told against an intention to be bound in respect of the Mossman Mill. The respondent did not challenge any of those findings.

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2 [2014] QSC 148 at [37].

3 [2014] QSC 148 at [39].

[18] The issue is whether the respondent manifested his assent to entering into a contract on the terms of the Tableland Collective Cane Supply and Processing Agreement by his act of signing the execution page. That comprehends two questions, concerning intention to contract on the one hand and the identification of the contractual terms on the other hand. It is convenient to consider those questions together because much the same evidence bears upon the answer to each of them and an objective analysis must be adopted both in deciding whether there was the requisite intention to create legal relations[4] and in identifying the terms of a contract.[5]

[19] The following circumstances are particularly relevant. At the meeting, the respondent was told that the second appellant had negotiated the terms of a contract with the first appellant. Those terms were, identified as being on pages numbered 1 – 22, headed "Tableland Collective Cane Supply and Processing Agreement", projected onto a screen in the respondent's presence, and explained by way of overview after he was given the execution page (page 22) with the same heading and Schedule 1 with the same title. The respondent was not invited to seek to negotiate the terms. He was presented with the choice of committing to a contract to supply cane to the first appellant on the terms of the Tableland Collective Cane Supply and Processing Agreement by signing the execution page or not entering into a contract to supply cane to the first appellant. He was told that the contract form would be made available to any grower who wanted to show it to a legal representative or business partner and that the grower could take the execution page away to have it signed by the correct parties. He was told that if he signed the appellants would countersign when a specified minimum total hectares of land under cultivation by the Tableland growers who signed was reached.

[20] In those circumstances, the respondent's conduct in signing plainly signified his assent to being bound to a contract in the identified terms upon the appellants accepting his offer. It would have been perfectly clear to a reasonable person in the respondent's position that signing in the space provided on the execution page signified an offer to enter into a contract with the appellants upon the terms of the Tableland Collective Cane Supply and Processing Agreement.

[21] The respondent argued that a circumstance telling against an intention to be legally bound was that the appellants were not to be bound unless and until they had secured a specified level of commitments from other growers and countersigned the execution page. The trial judge rejected a similar argument, observing that there was no need for the parties to the contract to execute it simultaneously and the circumstance that the appellants' "intentions were qualified in the sense they needed enough growers to enter into the contract to meet the contract's minimum hectares under cultivation"[6] did not suggest an absence of intention to be legally bound after all parties had executed the contract. I agree. Indeed, this circumstance positively supported the appellants' case in so far as it demonstrated that a grower's signature signified a commitment which might be acted upon by the appellants countersigning the agreement.

[22] The respondent relied upon the fact that he had not been provided with a printed copy of the contractual terms in pages 1 – 21. That consideration carries little weight in

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4 *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165 at [38], quoting from *Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95 at [25].

5 *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165 at [37] – [41]; *Equuscorp v Glengallan Investments* (2004) 218 CLR 471 at [34].

6 [2014] QSC 148 at [55].

circumstances in which it had been communicated to the respondent that those pages contained the terms of the proposed contract, those pages had been projected on to a screen in the respondent's presence, and it was open to him to read them and to take a printed copy away from the meeting to obtain legal advice if he wished. For similar reasons, whilst the appendices contained provisions of importance to the operation of the contract, there is not much weight in the consideration upon which the appellants relied that the respondent had not seen the appendices. The appendices were clearly identified as part of the (proposed) contract on page 21 and in other pages, all of which were projected onto a screen in the respondent's presence before he signed. Upon an objective analysis, the circumstances that the respondent signed without reading all the terms (if that is what occurred) and without insisting upon being shown a copy of the appendices simply suggests that he was content to leave it to the second appellant to negotiate the terms.

[23] The respondent cited authority[7] which was said to support a conclusion that the extent of missing components of the contract indicated that the appellants could not be taken to have been authorised to complete the contract so as to put it into final form. It is not necessary to discuss the cited cases. The Tableland Collective Cane Supply and Processing Agreement set out or incorporated by reference all of the agreed terms of the parties' contract.

[24] For these reasons, which substantially reflect submissions by the appellants, the respondent did manifest his assent to entering into a contract on the terms of the Tableland Collective Cane Supply and Processing Agreement by signing the execution page.

Did the respondent sign a written supply contract in accordance with s 31 of the *Sugar Industry Act* 1999 (Qld)?

[25] The remaining question is whether a written supply contract was signed by the respondent in accordance with s 31 of the *Sugar Industry Act* 1999 (Qld). In concluding that a supply contract was not signed by the respondent as required, the primary judge reasoned as follows. Section 31(5) required a grower to sign a supply contract.[8] It was "the contract" which must be signed.[9] Cases such as *Toll v Alphapharm*[10] were distinguishable on the ground that the contracts in those cases contained some of the contractual terms.[11] Because the execution page signed by the respondent "contained no contractual terms"[12] and did not incorporate by reference any contractual terms[13] it "did not have any content sufficient for it to meet the description of a contract".[14] That document was therefore not a "contract" so that the mandatory requirement in s 31(5) that the respondent sign a "supply contract" was not fulfilled.[15] The respondent supported that reasoning.

[26] The question turns upon the meaning to be given to "written contract" in s 29 and to "sign the contract" in s 31(5). The word "contract" has an established legal meaning. It should be given that meaning in the Act unless the context indicates that it bears

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7 *Iacullo v Remly Pty Ltd* [2008] NSWSC 1176 and *Wright v Gasweld Pty Ltd* (1991) 22 NSWLR 317, at 323.
8 [2014] QSC 148 at [43].
9 [2014] QSC 148 at [43].
10 (2004) 219 CLR 165.
11 [2014] QSC 148 at [45].
12 [2014] QSC 148 at [46].
13 [2014] QSC 148 at [46] – [47].
14 [2014] QSC 148 at [48].
15 [2014] QSC 148 at [48].

a different meaning.[16] Although nothing appears to rebut the presumption that "contract" bears its usual legal meaning in s 31(1), s 31(5) comprehends a "proposed contract". The word "contract" is commonly used in that way. Section 31(5) should not be construed as imposing the absurd requirement that each party must sign twice – once when the first party signed the contract form as an offer and the second party signed it as an acceptance, and again after the contract was concluded upon the second party returning the signed contract to the first party.

[27] Otherwise the answer to the present question depends upon the content to be given to the generally expressed requirements for writing and signature. The term "written contracts" is open to a number of different constructions and its meaning is inevitably influenced by the context, including the statutory purpose.[17] The same must necessarily be true of the requirement that the written contract be signed. The terms of the operative provisions do not shed much light on the intended meanings of the critical words. The purpose of the relevant provisions is stated in s 29 as being to ensure that the supply of cane by, and reciprocal payment to, growers is "governed by written contracts (each a ***supply contract***) between growers and mill owners." That does not explain why the Act insists upon writing and signing. The Explanatory Notes for the Bill for the *Sugar Industry Reform Act* 2004 (Qld) which introduced these provisions do assist in elucidating the statutory purpose. That material may be taken into account in construing the ambiguous provisions in ss 29 and 31. The context was that, before the introduction of these reforms, negotiations and contracts for the supply of cane to mills were very highly regulated. The Explanatory Notes explained that the reforms were intended to secure to individual growers more autonomy in negotiating and contracting to supply cane to mills. Most relevantly, the Explanatory Notes state:

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

[28] The purposes expressed in the Explanatory Memorandum stand in stark contrast with the purpose of the writing and signature requirements for various contracts stated in the preamble to the *Statute of Frauds* 1677 (Imp): "For prevention of many fraudulent Practices, which are commonly endeavoured to be upheld by Perjury and Subornation of Perjury…". Sections 29 and 31 do not seem to have been based upon any similar concern about the evidence by which contracts might be proved in the case of a dispute. The emphasis upon grower autonomy in negotiating and contracting also suggests that, whilst the grower and mill owner must "sign" a "written contract", no particular form of written contract or signature is required. So far as a grower is

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16 *Attorney-General (NSW) v Brewery Employees Union (NSW)* (1908) 6 CLR 469 at 531; *Barker v The Queen* (1983) 153 CLR 338 at 341; *J & D Rigging Pty Ltd v Agripower Australia Ltd* [2013] QCA 406 at [13].

17 See *Ultrarad Pty Ltd v Health Insurance Commission* (2005) 143 FCR 526 (French J) at [54] – [57].

concerned, the purposes of requiring writing and signing appear to be to emphasise the existence of the choice, and to facilitate the making of the choice, whether to contract individually or collectively. Those purposes are fulfilled if the grower has the opportunity of reading the proposed contract before contracting and signs in circumstances which signify the grower's assent to being contractually bound by those terms. Consistently with the statutory purposes, the Act should not be construed either as requiring a written contract to be in a single document[18] or in any particular form, or as excluding oral evidence to prove that the grower signed in circumstances which signified the grower's assent to being contractually bound.

[29] It is not necessary to attempt a comprehensive catalogue of the forms of contract which would meet the Act's requirements as informed by those statutory purposes. It may be sufficient if the signatures are applied to a document in circumstances which convey assent to contracting on terms recorded in other writing, but it is not necessary to go so far in this case. The statutory requirements for writing and signing are met if the supply and payment terms are contained in writing which existed at the time of signing and which is directly or indirectly referred to in other writing signed by the parties, whether or not oral evidence is required to identify the writing containing the terms. So much is sufficient for compliance with the requirements for a signed contract in writing or memorandum of the contract in legislation derived from the *Statute of Frauds* 1677 (Imp).[19] It must also be sufficient for these statutory provisions which, whilst requiring growers to sign written contracts, were designed to deregulate negotiating and contracting, secure to growers increased autonomy in those activities, and preserve normal commercial processes.

[30] The form of the contract in this case goes further than was necessary to meet those requirements. The projection onto a screen of pages 1- 21 (which incorporated the appendices by reference) amounted to writing: the relevant part of the Act does not displace the provision in s 36(1) and Schedule 1 of the *Acts Interpretation Act* 1954 (Qld) that the word "writing" in any Act (which, in conformity with s 32 of that Act, prima facie comprehends the word "written") "includes any mode of representing or reproducing words in a visible form". The heading, number, and form of the page signed by the respondent and handed to the appellants as an offer to contract identify that document as the execution page of the "Tableland Collective Cane Supply and Processing Agreement", thereby designating the respondent's signature as an adoption of that instrument. It is not in issue that the appellants accepted that offer in writing by signing and returning it to the respondent. A contract formed by a written offer and acceptance in that way is appropriately described as a written contract.[20] That accords with the purposes of s 29.

[31] If, contrary to my own opinion, more is required, it is found in the annexation of the terms of the agreement to the appellants' acceptance of the respondent's offer. Since the respondent's signature signified assent to be bound by all of the terms of the agreement, the appellant's act of incorporating those terms by annexation of the written agreement to the signed execution page was authorised by the respondent's offer. Thus the parties' contract may be found in a single, signed document (save for the appendices, which were incorporated by reference).

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18 cf *Ultrarad Pty Ltd v Health Insurance Commission* at [58].

19 *Stokes v Whicher* [1920] 1 Ch 411 at 418; *Harvey v Edwards, Dunlop & Co Ltd* (1927) 39 CLR 302 at 307; *Timmins v Moreland Street Property Co Ltd* [1958] Ch 110 at 130; *Elias v George Sahely & Co* [1983] 1 AC 646 at 655; *Todrell Pty Ltd v Finch & Ors; Croydon Capital Pty Ltd v Todrell Pty Ltd & Anor* [2008] 1 Qd R 540 at [89]-[93]; *Pang v Bydand Holdings Pty Ltd* [2010] NSWCA 175 at [21]-[22].

20 See *Ultrarad Pty Ltd v Health Insurance Commission* at [54].

[32] The respondent advanced four arguments in support of the trial judge's conclusion.

[33] First, the respondent argued that what the respondent signed could not be characterised as a "supply contract" because it did not have the content necessary for it to meet the description of a "contract" and the alleged contract comprised an amalgam of what the respondent signed, other documents available on the occasion he signed (pages 1 to 21), statements in the discussions on that occasion, and other pages (the appendices) which were not identified. The respondent's second contention was that the appellant's case that the contract was written could not be made out because the appendices were not proved to be written.

[34] As to the appendices, they were incorporated by reference and the word "appendix" on page 21 of the contract refers to something in writing. Furthermore, I accept the appellants' argument that the respondent's contention that it was not proved that the appendices were in writing was not in issue at the trial. The statement of claim alleged that the Tableland Collective Cane Supply and Processing Agreement (the copy annexed to the pleading did not include the appendices) was not signed by the respondent in the manner required by s 31(5), "namely by applying his signature to and thereby affirming his written commitment to that instrument in entire form",[21] and that "[b]y signing merely the execution page…the [respondent] did not thereby manifest an intention to become legally bound to the entirety of the… '*Tableland Collective Cane Supply and Processing Agreement*'…". [22] Those allegations did not give notice of the surprising contention made on appeal that the appendices were not in writing, much less the contention that a result of the appendices not being in writing was that the parties had not made a supply contract. The trial judge was not asked to adjudicate upon any such case. Although the respondent's counsel remarked in the course of submissions at the trial that there was "the appendices point",[23] he did not argue that the absence of the appendices from the document propounded as the contract justified a conclusion that a contract had not been formed or that there was a non-compliance with the Act. The lengthy written submissions for the respondent at the trial did not include any such contention. Had this argument been advanced at trial the appellants might well have met the point by evidence. The respondent should not be permitted to take this point on appeal for the first time.

[35] It is necessary to add only that there is no basis for thinking that oral statements made at the meeting formed part of the contract. The evidence accepted by the trial judge made it plain that what was under discussion was a contract in the form which was projected on a screen at the meeting together with the execution page and Schedule 1 handed to the respondent. Otherwise, my reasons for rejecting the respondent's first and second arguments will already be apparent.

[36] The respondent's third argument was that the language and purpose of the Act showed that what was required was a written contract signed by each party as the repository of their bargain; that objective would be thwarted unless the act of signing signified assent to a document containing or expressly incorporating the terms of the bargain. The respondent's fourth argument may be broken down into two propositions. Firstly, bearing in mind that some of the terms on pages 1 – 21 were unusual, the written part of the contract (which was submitted to include only the execution page and Schedule 1) did not incorporate those terms because the appellants had not taken

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21 Statement of claim at para 7(a), with reference to para 6(e).

22 Statement of claim at para 8(a).

23 Transcript 1 July 2014 at 2-62.

reasonable steps to draw them to the respondent's attention. The taking of such steps was said to be required by *Hardwick Game Farm v Suffolk Agricultural Poultry Producers Association*.[24] Secondly the requirement for a signed, written contract was not satisfied if the content of the contract depended upon potentially contentious questions about the extent to which the terms were discussed.

[37] Those arguments wrongly assume that the terms on pages 1 – 21 were not written. For the reasons already given, those terms were "written" for the purposes of s 29, and that writing was identified both in the respondent's signed offer and in the appellant's signed acceptance of that offer. This is not a case such as *Hardwick Game Farm v Suffolk Agricultural Poultry Producers Association* in which written terms were said to have been assented to only orally or by conduct. The "Tableland Collective Cane Supply and Processing Agreement" was the parties' "final and complete repository of their contractual intentions".[25] Because the circumstances proved in evidence established that the respondent's act of signing the execution page signified his assent to being bound by all of the terms of that written contract, it was not necessary for the appellants to go further and prove that the respondent had taken advantage of the opportunity he was afforded to read the terms or that the appellant had taken any particular steps to bring unusual terms to his notice.[26]

Disposition and orders

[38] The appeal against the substantive order should be allowed. The trial judge ordered that there be no order as to costs. Upon the material in the record I would favour orders that the respondent pay the appellants' costs of the proceedings in the Trial Division and in this appeal, but because the costs order in the Trial Division seems unusual and the parties were not heard about costs I would allow them an opportunity to make submissions upon that topic.

[39] I would make the following orders:

1. Allow the appeal, set aside order 1 made in the Trial Division on 3 July 2014, and instead order that the respondent's application be dismissed.

2. Unless within fourteen days of today either party files and serves a written submission about costs, upon the expiry of that period the respondent is ordered to pay the appellants' costs of the proceedings in the Trial Division and of the appeal.

3. Any such submission about costs must not exceed two A4 pages unless otherwise ordered by the Court, judge of appeal, or registrar.

[40] **PHILIPPIDES JA:** I have had the advantage of reading the reasons of Fraser JA and agree with those reasons and the orders proposed.

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24 [1966] 1 WLR 287 at 340.

25 *Cooper & Sons v Neilson & Maxwell Ltd* [1919] VLR 66 at 77 (Cussen J), quoted by French J in *Ultrarad Pty Ltd v Health Insurance Commission* at [55].

26 *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165 at [52] – [55], [59], [63].