

Sugar Industry (Arbitration for Mill Owners and Sugar Marketing Entities) Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the *Sugar Industry (Arbitration for Mill Owners and Sugar Marketing Entities) Amendment Act 2017* (the Bill).

Policy objectives and the reasons for them

The objectives of the Opposition's amendments are to ensure:

- Sugar Mill owners and sugar marketing entities undertake negotiations in a fair, timely and business-like manner to finalise 'on supply' agreements – formal contracts that allow sugar produced by mills to be delivered, held in storage and subsequently sold by marketing entities.
- In the event of breakdown in protracted negotiations both parties, sugar mill owners and marketing entities, are required to enter into formal arbitration to resolve any disputed terms in the intended on-supply contract.
- After a negotiating period (of at least 10 business days) either party can give notice to refer disputes for formal arbitration under the *Commercial Arbitration Act 2013*.
- The arbitration tribunal will decide disputes about proposed terms of the intended on-supply agreement.
- Each party will pay its own costs for arbitration.
- The Bill provides for concurrent arbitration to occur for on-supply agreements between sugar mill owners and marketing entities and between sugar cane growers and mill owners for cane supply agreements which is already provided in current legislation.

Achievement of policy objectives

The Opposition's policy objectives are achieved by amending the Bill:

- To ensure there is genuine 'choice in marketing' for sugar cane growers for Grower Economic Interest (GEI) sugar.
- To ensure that all contracts, between cane growers and sugar millers and marketing entities are negotiated and finalised in timely manner to allow all contracts to be in place well before the start of each crushing/milling season.
- To ensure any disputes are resolved so that all contracts, between cane growers and sugar millers and marketing entities, are negotiated and finalised in timely manner and are in place well before the start of each crushing/milling season.

Alternative ways of achieving policy objectives

There are no other viable alternatives that would achieve the policy objectives other than amending the Bill.

Estimated cost for government implementation

There are no cost impacts of these amendments.

Consistency with fundamental legislative principles

The amendments are consistent with the fundamental legislative principles.

Consultation

The Opposition has developed these amendments from very extensive direct stakeholder and community engagement and feedback.

Consistency with legislation of other jurisdictions

There are unique arrangements in Queensland for the sugar growing, milling and marketing industry, however the arbitration process is a standard process.

Notes on provisions

Clause 1 gives title to the Bill

The short title of the Bill is the *Sugar Industry (Arbitration for Mill Owners and Sugar Marketing Entities) Amendment Act 2017* (the Bill).

Clause 2 amends the Act

This Act amends the *Sugar Industry Act 1999*.

Clause 3 amends ch 2, headings to broaden the definition of contracts

To include 'on-supply' agreements between sugar millers and sugar marketing entities.

Clause 4 amends the Bill for clarification

Removes ch 2, pt 2, div 1 heading – *Cane supply is governed by supply contracts*.

The dispute resolution currently in chapter 2, part 2, division 2 will be relocated to new chapter 2, part 3A so that the material can apply to on-supply agreements as well as supply contracts.

Clause 5 amends s 33A of the Bill to allow for concurrent arbitration of supply contract and on-supply agreement disputes

Makes it clear that the arbitration framework under the *Commercial Arbitration Act 2013* only applies to pre-contract disputes and that for the purposes of the *Commercial Arbitration Act 2013* the parties are taken to have an arbitration agreement under that Act.

The definition for arbitral tribunal is omitted and replaced with a definition in the dictionary.

Clause 6 amends s 33B of the Bill – Terms of supply contract about sale of on-supply sugar

The heading is no longer accurate because the terms of contract covered by the section will no longer be limited to terms about sale of on-supply sugar.

This section also sets out the way mill economic interest is to be worked out and requires the mill owner to bear the sale exposure for the sale of the mill economic interest sugar; defines on-supply agreement with the GEI sugar marketing entity for the sale of the grower economic interest sugar; and provides for process of dispute resolution including arbitration.

Clause 7 amends s 34A of the Bill to ensure contracts are not contrary to this Act

Former section 34 that addressed dispute resolution under supply contracts is now addressed in section 33B(2)(f) and section 38 being inserted by these amendments will require supply and marketing contracts to include dispute resolution terms, and new chapter 2, part 3A will require the parties to use dispute resolution processes under the contracts (for post-contractual disputes).

New section 34 prohibits contracting out and states a supply contract is void if it is inconsistent with the Act or purports to restrict the provisions in the Act.

Clause 8 amends the Bill to remove unnecessary heading and section

Former section 36 is no longer required as pre-contract disputes are addressed in the specific sections and disputes under contract are addressed in Part 3A.

Clause 9 amends Bill to reallocate and renumber s 37

Former Section 37 is relocated to chapter 2, part 3A, and renumber as section 41.

Clause 10 amends the Bill to insert a new chapter to include arbitration of disputed terms of intended on-supply agreements –through sections 36, 37, 38, 39, 40 & 41

Sets out the mechanism for dispute resolution through arbitration for supply contracts between cane growers and sugar millers, including nomination by the growers of the marketing entity to market their GEI sugar.

Sets out process and timelines for arbitration and confirms reasonable and fair treatment for all marketing entities, including entities related to mill owners.

Confirms that each party must meet its own costs for arbitration.

Allows for concurrent arbitration of supply contracts and on-supply agreement disputes.

Sets out particular terms of on-supply agreement, including that an eligible grower may be a party to the on-supply agreement if the GEI sugar marketing entity and mill owner agree. Importantly, the particular terms are inclusive not exhaustive and an on-supply agreement may contain other terms agreed between the parties.

Sets out key inclusions for the on-supply agreement, including that the minimum term is the term of the cane supply agreement to which the on-supply agreement relates. This gives growers confidence and certainty that actual choice is available.

Sets out the term for which the mill owner is required to deliver for sale the GEI as directed as directed by the GEI sugar marketing entity within a stated reasonable period.

Sets out dispute resolution processes when a term of an intended on-supply agreement cannot be agreed, confirms that the parties must attempt to resolve the dispute by using the processes for dispute, including use of arbitration – under the *Commercial Arbitration Act 2013*.

Clause 11 amends s 237 (Collective Contracts)

Confirms terms for making and variation of collective contracts and terms on which on-supply sugar to which the collective contract relates is to be sold under on-supply agreements.

Clause 12 amends s 238 (Sale of on-supply sugar)

Expands the specific authorisation for the competition legislation to cover supply and sale of on-supply sugar and related things to include sale of grower economic interest sugar.

This authorisation extends even if the grower isn't party to the on-supply agreement and for a group of growers whether they are engaged in collective bargaining or not.

Clauses 13 and 14 inserts new chapters 10, Part 1 – Sugar Industry (Real Choice in Marketing) Amendment Act 2015, and Transitional provisions for Sugar Industry (Arbitration for Mill Owners and Sugar Marketing Entities) Amendment Act 2017

Inserts a new 299 that provides transitional provisions for existing can supply contracts so that certain amended sections do not apply to existing contracts, including if those existing contracts are renewed, including renewals after the commencement date.

Inserts a new section 300 that provides transitional provisions for existing on-supply agreements so that certain amended sections do not apply to existing on-supply agreements including those existing agreement that are renewed, including renewals after the commencement date.

Clause 15 amends schedule (Dictionary) to define the following terms:

On-supply sugar; arbitral tribunal; grower economic interest sugar; intended on-supply agreement; intended supply contract; mill economic interest sugar; on-supply agreement; and on-supply sugar.