

KAP Sugar Industry (Real Choice in Marketing) Amendment Bill 2015

Explanatory Notes

Explanatory Notes for amendments to be moved during Consideration in Detail by Deb Frecklington MP, the Member for Nanango

Short title

This Bill may be cited as the Queensland Sugar Industry (Real Choice in Marketing) Amendment Bill 2015

Policy objectives and the reasons for them

The objectives of the Amendments are to:

- Give Canegrowers real choice in marketing in a deregulated market;
- Provide a resolution to the impasse that arose when Wilmar announced on May 21, 2014, when Wilmar, subsequently joined by Mitr Phol's MSF Sugar and COFCO's Tully Sugar, announced it would withdraw from the industry's collaborative marketing arrangement through Queensland Sugar Limited (QSL) from the end of the 2016 season (July 2017);
- Redress deep concern held by canefarmers that any end to the long-standing marketing arrangement with QSL will result in loss of real choice and potentially lead to lower returns to growers and regional cane communities; and
- Help redress the situation where 18 months on from the initial announcement by Wilmar that it would withdraw from the marketing arrangement with QSL, no solution has been reached and the industry needs certainty and confidence to keep investing.

Achievement of policy objectives

To achieve the desired results the LNP proposes several clarifying amendments to KAP Bill.

Alternative ways of achieving policy objectives

There are no alternate ways of achieving the same policy objectives.

Estimated cost for government implementation

There will be no costs associated with the implementation of these amendments.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles and also consistent with the Sugar Industry Act 1999.

Consultation

Broad and extensive consultation was undertaken with industry.

Consistency with legislation of other jurisdictions

The amendments directly relate to The Bill which is specific to the State of Queensland and the marketing of sugar.

Notes on provisions

1 Clause 2 (Commencement)

Page 4, lines 5 and 6—

omit.

This is needed to take account of existing agreements.

2 Clause 6 (Insertion of new ss 33A and 33B)

Page 5, lines 14 and 15, from ‘(the *referral agreement*)’ to ‘arbitration’—

omit, insert—

(the *referral agreement*)—

(a) to refer the dispute to arbitration; and

(b) for the dispute to be arbitrated under the *Commercial Arbitration Act 2013* subject to subsections (5) to (9)

This is needed to refer deadlocks in negotiation of the Cane Supply and related Agreements required under the Sugar Industry Act 1999 to the commercial dispute resolution processes contained in the Commercial Arbitration Act 2013.

3 Clause 6 (Insertion of new ss 33A and 33B)

Page 5, line 20, ‘and (5)’—

omit, insert—

to (9)

Needed to re-number the page.

4 Clause 6 (Insertion of new ss 33A and 33B)

Page 5, after line 26—

insert—

(6) Subsection (7) applies if a GEI sugar marketing term is a proposed term of the intended supply contract and the grower proposes to nominate an entity to be the GEI sugar marketing entity.

(7) A term of the intended supply contract must not have the effect of unreasonably treating the grower less favourably than the grower would be likely to be treated if a mill-related entity were to be the GEI sugar marketing entity.

(8) Without limiting subsection (7), a term of the intended supply contract would have the effect of unreasonably treating the grower less favourably for the subsection if the effect were that the grower would unreasonably pay more for a service provided by the mill owner under the intended supply contract than the grower would pay for the service if a mill-related entity were the GEI sugar marketing entity.

(9) Each party must bear the party's own costs of the arbitration.

Changes are self-explanatory and set out the non-discriminatory provisions to ensure canegrowers are not unfairly treated when marketing their GEI sugar through their GEI sugar marketing entity.

5 Clause 6 (Insertion of new ss 33A and 33B)

Page 5, line 27, '(6)'—

omit, insert—

(10)

Needed to re-number page.

6 Clause 6 (Insertion of new ss 33A and 33B)

Page 5, line 33, '(7)'—

omit, insert—

(11)

Needed to re-number page.

7 Clause 6 (Insertion of new ss 33A and 33B)

Page 5, after line 35—

insert—

mill-related entity means—

- (a) the mill owner; or
- (b) a related body corporate of the mill owner.

Needed to ensure that related party contracts of a mill are covered.

8 Clause 6 (Insertion of new ss 33A and 33B)

Page 6, lines 9 to 33—

omit, insert—

- (a) a term providing for the amount, or the basis for working out the amount, of the payment to the grower for the supply of the cane (the ***cane payment***);
- (b) unless the grower and mill owner otherwise agree—a term (a ***related sugar pricing term***) requiring the amount of the cane payment to be worked out in a stated way by linking that amount to the sale price of the on-supply sugar to which the supply contract relates;
- (c) if the supply contract includes a related sugar pricing term, both of the following, unless the grower and mill owner otherwise agree—

- (i) a term requiring the mill owner to bear the sale price exposure for the sale of a proportion of the on-supply sugar that is worked out in a stated way;
- (ii) a term (a ***GEI sugar price exposure term***) requiring the grower to bear the sale price exposure for the sale of the remaining on-supply sugar (the ***grower economic interest sugar***);
- (d) if the supply contract includes a GEI sugar price exposure term—
- (i) a term (a ***GEI sugar marketing term***) requiring the mill owner to have an agreement with a stated entity (the ***GEI sugar marketing entity***) to sell the quantity of the on-supply sugar that is at least equal to the quantity of the grower economic interest sugar; and (ii) unless the grower and mill owner otherwise agree, a term providing for an entity nominated by the grower to be the GEI sugar marketing entity;
- (e) if the supply contract provides for an entity nominated by the grower to be the GEI sugar marketing entity—a term requiring the mill owner to deliver for sale the quantity of the on-supply sugar that is at least equal to the quantity of the grower economic interest sugar, as directed by the entity, within a stated reasonable period.

Needed to allow a canegrower and a mill to come to a commercial agreement.

In the absence of an agreement it is needed to link the price of sugar to the price of sugarcane. It establishes the Grower Economic Interest (GEI) component and establishes the requirement for a mill to have an agreement with the GEI sugar marketing entity. It requires a mill to promptly deliver the GEI sugar to the GEI sugar marketing entity.

9 Clause 6 (Insertion of new ss 33A and 33B)

Page 6, line 34, ‘and (e)’—

omit.

Needed to allow for inclusion of new ss 33A and 33B.

10 Clause 6 (Insertion of new ss 33A and 33B)

Page 6, line 37 and page 7, lines 1 and 2—

omit, insert—

- (4) Without limiting subsection (2)(e), the stated period must be reasonable having regard to the likely period in which the mill owner could deliver the on-supply sugar for sale to a related body corporate of the mill owner.

Needed to allow for inclusion of new ss 33A and 33B.

11 Clause 8 (Insertion of new s 238)

Page 7, lines 21 and 22, from ‘the term’ to ‘(e)’—

omit, insert—

a GEI sugar marketing term

Needed to require a mill to have an agreement with the GEI sugar marketing entity.

12 Clause 8 (Insertion of new s 238)

Page 7, lines 25 and 26, from ‘the term’ to ‘33B(2)(d)’—

omit, insert—

a GEI sugar marketing term

Needed to require a mill to have an agreement with the GEI sugar marketing entity.

13 Clause 8 (Insertion of new s 238)

Page 7, after line 29—

insert—

(d) a grower and mill owner being taken to have made a supply contract under section 33A(10).

Needed to ensure that an arbitrated outcome is taken to be a supply contract.

14 Clause 10 (Amendment of schedule (Dictionary))

Page 9, line 3, ‘33B(2)(d)’—

omit, insert—

33B(2)(d)(i)

Needed to re-number the clause.

15 Clause 10 (Amendment of schedule (Dictionary))

Page 9, after line 3—

insert—

GEI sugar marketing term see section

33B(2)(d)(i).

Needed to insert the term ‘GEI sugar marketing term’.

16 Clause 10 (Amendment of schedule (Dictionary))

Page 9, after line 7—

insert—

related body corporate see the Corporations Act, section 50.

Needed to insert the term ‘related body corporate’.

17 Clause 10 (Amendment of schedule (Dictionary))

Page 9, line 17, ‘33A(6)’—

omit, insert—

33A(10)

Needed to re-number the clause.