

Sugar Industry (Real Choice in Marketing) Amendment Act 2015

Explanatory Notes

Title of the Bill

The short title of the Bill is the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015*.

Policy Objectives

The *Sugar Industry (Real Choice in Marketing) Amendment Act 2015* provides cane growers with the right to have real choice over who sells and prices Grower Economic Interest (GEI) sugar and addresses the imbalance in market power between mill owners and growers.

Reasons for the Bill

The imbalance in market power between mill owners and growers is characteristic of sugar industries around the world and is recognised by governments in all sugar producing countries. This has resulted in a suite of regulations governing the commercial relationship between millers and growers in each of those countries.

The imbalance and the power of the regional monopoly enjoyed by each mill in the market for sugarcane was first recognised in Australia in the early years of the 20th century, when sugar industry regulations were introduced to prevent mills from exercising their ability to squeeze the primary producer.

These regulations, recognising the interdependence of growers and millers, ensured growers and mills shared market rewards and risks from the sale of sugar.

Although not described as such, the concept of Grower Economic Interest (GEI) sugar was given effect.

Sugar industry regulations were replaced with voluntary structures in 2005. In April 2014, Wilmar issued a public statement indicating its intention to exit the current sugar marketing arrangements from the end of the 2016 season. Shortly after, two other milling groups, MSF Sugar (owned by Thailand's Mitr Phol Group) and Tully Sugar (owned by China's COFCO) also announced their intention to exit current marketing structures from the end of the 2016 season. These unilateral mill decisions will deny growers any choice in how their share of the production, their GEI sugar, is marketed in the future. Unless addressed, these anti-competitive actions will restore the monopoly position of mills in the market for sugarcane, with ramifications across the whole industry. All milling companies and their supplying growers will be affected, including those that have elected not to withdraw from the marketing structures.

Achievement of Policy Objectives

The *Sugar Industry (Real Choice in Marketing) Amendment Act 2015* acknowledges the need for an amendment to the existing legislation which will provide growers with the ability to proactively be involved in the marketing of their own sugar. The Bill recognises that both millers and growers have an economic interest in the sugar produced. It requires millers to provide a transparent platform for sugar marketing that provides growers a choice in who markets their GEI sugar and provides mills with symmetric rights in relation to MEI sugar.

There is no existing legislative or regulatory framework to ensure that the millers act in the best interest of cane farmers. This legislation creates a real choice by allowing growers to choose who markets their sugar and ensures transparency in this process.

Alternative Ways of Achieving Policy Objectives

There is no alternative method of achieving the objectives other than by legislative amendment.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles and with national competition policy.

Estimated Cost of Government Implementation

It is expected that there will be minimal to no cost to Government.

Consultation

Extensive consultation and research has been conducted with stakeholders including cane farmers, Australian Cane Farmers Association (ACFA) and CANEGROWERS. CANEGROWERS and ACFA recommend that the Queensland Government introduce pro-competition amendments to the *Sugar Industry Act 1999*. Industry representative groups have examined early drafts and provided feedback which went into the development of the Bill.

Consistency with other Jurisdictions

The changes, consistent with the principles of National Competition Policy (NCP), are designed to increase competition for sugar marketing services relating to sugar produced in Queensland, delinking the provision of marketing services from the provision of sugarcane crushing services. The Queensland Government has the policy instruments necessary to introduce NCP consistent regulations that recognise GEI sugar and to give growers the right to determine how that sugar is priced and sold.

A key principle of the National Competition Policy is that competitive markets will generally best serve the interests of consumers and the wider community. A key strength of the Australian *Competition and Consumer (ACC) Act 2010* is in the protections it affords consumers from the misuse of market power by monopoly sellers. The ACC Act is much weaker in the protections it affords agricultural producers from the misuse of market power from monopsony (monopoly) buyers of their products. It was the concern about the imbalance of market power and its misuse by regional mill monopolies that underpinned the original establishment of sugar industry regulations by the Queensland Government in 1915.