CANEGROWERS ROCKY POINT

Submission No. 010

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Ms Jennifer Howard MP
Chair
Agriculture and Environment Committee
Parliament House
George St
BRISBANE QLD 4000

By email: aec@parliament.qld.gov.au

Dear Madam

SUGAR INDUSTRY (REAL CHOICE IN MARKETING) AMENDMENT BILL 2015

Thank you for the opportunity to make our submission to the inquiry into the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015. We are fully supportive of the move taken to restore balance in market power between mill owners and growers.

BACKGROUND

Rocky Point is situated on the coast almost midway between Brisbane and the Gold Coast. We have been producing in the vicinity of 240,000 tonnes of cane annually, or around 30,000 tonnes sugar from 5,000 hectares with some 50 growers. We are the smallest cane growing area and mill in the Australian sugar industry, with no opportunity to expand due to urban encroachment.

Rocky Point is unique from the perspective of land use; we have no crop options other than sugar cane. Landowners' previous experiences with alternate crops were not successful, and this was proved conclusively in 2007 by the CSIRO study entitled "Future use of the Rocky Point Cane Landscapes". Basically we either 'grow sugarcane or starve' and this puts us completely at the mercy of the Miller.

This situation has been exacerbated by the South East Queensland Regional Plan ("SEQRP") denying Rocky Point any non-agricultural options and effectively designates the area as Regional Open Space.

We draw your attention to events that have occurred in Rocky Point between the growers and the Miller since the deregulation of the sugar industry in 2006. Rocky Point has been at the mercy of a monopoly Miller for all but two years since deregulation, when our sugar was marketed through QSL.

The experiences of Rocky Point growers provide many arguments for, and welcome the amendments to the Sugar Industry Act, including the reintroduction of a method of arbitration for the pre and post contract negotiation process. We will address the following discussion topics with reference to the experiences of Rocky Point growers to date.

➢ The current regulation of the sugar industry with respect to sugar marketing arrangements

The current regulations or lack thereof as they pertain to the negotiation process fails growers dismally during the formulation of the Cane Supply and Processing Agreement ("CSPA"). In the years prior to deregulation of the Sugar Industry, our growers had the opportunity to access mediation in the event of an impasse during the contract negotiation process, which could then be referred on to an arbitrator for a determination. However, as a result of deregulation, the option of arbitration was removed due to changes made to the Queensland Sugar Industry Act. Clearly this change was made without consideration of the damaging effects on growers operating alongside a monopoly Miller.

By way of example, prior to deregulation Rocky Point had a positive arbitration outcome after agreeing with the Miller to appoint Hon Richard Chesterman, QC under the Sugar industry Act to resolve an issue during the negotiation of the 1997 CSPA. A series of mediation sessions occurred with no result, ultimately leading to a "final offer" arbitration case between the Mill owner and the Rocky Point Mill Suppliers Committee on behalf of the growers. The case was primarily one of a change of measurement of sugar from what was known as "94nt" to "IPS", Bulk Mills contribution and an increase to cartage allowance. The change of measurement and Bulk Mills contribution meant that the Mill was in receipt of more monies in the form of sugar payments and had refused to share them with the growers. The growers claimed 10 cents of a measured 14.6 cents per tonne. Mr Chesterman found in favour of the Growers and we quote:

"Applying the touchstone of fairness or 'commercial reality' I think the suppliers' offer is to be preferred. The Mill I think offers too little. It focuses too much upon its own difficulties and pays too little regard to the pressure on its suppliers, on whose product it is dependant".

This inability of the Mill to recognise its suppliers as an integral part of the supply chain with a need to maintain profitability still exists today. While growers are covered by a CSPA, the contract contains avenues for dispute resolution. However, during the formulation of a new CSPA contract, legislation denies us any form of recourse, and we are effectively at the mercy of the miller as the sole entity to crush our crop.

Our sugar cane will already have been planted and various input costs incurred, all before the signing off of a CSPA for the harvest the following year. This, in addition to having no other viable milling option, means that we can only negotiate so far before we reach a stalemate. Often, the impasse lasts until the scheduled crush start date, and we are pressured into signing the agreement at terms favourable to the Miller.

We welcome the proposed amendments (Sugar Industry (Real Choice In Marketing) Amendment Bill 2015) to facilitate an avenue for arbitration during the contract negotiation process and the provision of more equitable outcomes for growers; a long overdue acknowledgement of the best interests of sugar cane growers state-wide.

➢ Benefits and/or impacts arising from the decision by some millers to exit the current sugar marketing arrangements (markets outside of QSL)

Rocky Point growers have been forced to endure the nightmare of marketing outside of QSL and based on this experience we can only envisage negative impacts for the sugar industry as a whole arising from the decision by a number of millers to exit QSL.

Since deregulation in 2006, Rocky Point growers have had no transparency of sugar marketing activities undertaken by the Miller and it is irrefutable that this has been to the growers' financial detriment.

During the first year of deregulation, our miller contracted a sale with Golden Circle at approximately $100.00 per tonne of sugar more than the Discretionary Pool managed by QSL, for around half of sugar produced at Rocky Point, with the rest sent to the QSL Discretionary Pool. The transaction did not go well, as the Miller attempted to defraud the growers with partial payment rather than the full amount. Settlement was only reached after input from a mediator who had previously assisted us to set up the transaction. We were eventually paid for the balance of the sugar sales in June, July and August of the next year. As this sugar was delivered by the end of December 2006 (the previous year), earlier payment should have been achievable, but with no transparency and a refusal by the Miller to allow the contract to be viewed, we were forced to accept what was offered. The payment debacle ended up with the Miller making 3 separate payments after the due date, each time claiming the account had been paid in full. This, our first foray into a deregulated marketing system left us wary; there was no transparency and the only mitigating factor was the fact that the independent mediator had irrefutable records to prove our case.

2007 and 2008 were without incident, with sugar going through QSL with full transparency and payment of sugar quality bonuses, Far East premiums and the US Quota.

The sale of the Brisbane Sugar Terminal in 2009 left our Miller with the option of either selling to local markets or shipping to Bundaberg, the closest terminal with substantial transport charges (or so the Miller informed us). As the Miller was the owner of the sugar, the growers were not privy to discussions with QSL. Historically, the Miller has paid the freight to the nearest QSL terminal.

The Miller then approached us with a 3 year offer of $423.75 a tonne sugar for 10,000 tonnes fixed from both Miller's and grower's cane (around 1/3rd of our production) and refused to divulge the buyer. We were given 7 days to consider and respond. After deliberation, we agreed and most growers committed to be part of same. For the rest of the crop, we were offered access to a hedging facility on bank swaps alone with a committee established from the growers to set and accept the prices received. (A bank swap is a product offered by commercial banks whereby forward hedging on commodities can be transacted; with the banks offering a price lower than the New York No. 11 but transacting on the Number 11). We were then informed the end buyer was Manildra in NSW. Throughout these contract negotiations we insisted that rather than the complicated system we were being forced into, we either send the rest to QSL or the Mill could do what it wanted with the sugar and pay us QSL equivalent. The Mill refused, stating that there was risk involved and as they would not accept that risk, they wanted to spread that risk onto the growers. We assumed the risk was that QSL may strike better prices than the Miller and the Mill would have to cover the difference.

With our sugar being sent to NSW rather than through QSL, we were told that NSW were covering the cost of freight.

We discussed the inclusion of bonuses and premiums for sugar quality, Far East premiums and US Quota, which under QSL we had always received on a shared basis. The Miller told us that with domestic marketing these "extras" **no longer applied**. As we had always produced sugar that attracted bonuses, we were surprised that the local market destination would not acknowledge sugar quality and pay a premium accordingly. The Miller also advised that selling locally (rather than through QSL) would no longer entitle us to a share of US Quota or Far East premiums. We accepted this with reservations as to the truth of the matter. At different stages through this process we

requested access to marketing contracts (even to the extent of it being one director signatory to a non-disclosure agreement) but were consistently refused access by the Mill.

We recently discovered that bonuses and premiums for sugar quality, and Far East premiums would have been received by the Miller but were not shared with the growers. Further, US Quota was received in the form of an "entitlement" which was on-sold to QSL and kept by the Mill.

This is an example of the consequences of no transparency and no access to an independent arbitration process to settle a contract negotiation dispute in a fair and equitable manner. We estimate that we have been short-changed hundreds of thousands of dollars for these "extras" from 2006 to 2014. Had we had ownership of our Economic Interest in the sugar, this situation would never have occurred.

In the example cited above, during 2009 we received $423.75 fixed price for our sugar, while growers in NSW (where our sugar was sent), received around $473 per tonne of sugar. With no transparency, we will never know if our Miller also received $473 per tonne of sugar while only paying Rocky Point growers $423.75. We estimate our losses to be in excess of $2 million, taking into account this $50 differential and the spike in market prices during the three year period in question.

With the Mills ability to dictate the terms of sale, customer and payment arrangements, financial returns to growers are at risk. With QSL's proven track record and high credit rating, risk is minimal. In the case of our Miller contracting to unknown parties, no transparency of terms, payment schedules and an unknown capacity to pay, risk is high and is reflected in grower confidence moving forward.

We have no doubt that the move by millers to exit QSL will result in wide-spread exploitation of growers, unless legislative change intervenes to restore growers' rights.

- **Comments on the proposal outlined in the Bill to provide for:**

a) Supply contracts that give legal recognition to 'grower economic interest' sugar (GEI)

The situation in Rocky Point is unique in that we believe our economic interest in sugar has been unofficially recognised already. We have been pricing our interest in the sugar since 2009 on bank swaps and more recently in 2015 through the Mill directly on the New York number 11, unlike most other mill areas.

The challenge for us has been to obtain official recognition of the grower economic interest in sugar via our CSPA. The changes as written in the Sugar Industry (Real choice in Marketing) Amendment Bill 2015 if adopted in the current form appear to give growers recognition of GEI and has our support.

b) Growers choice by nomination of marketing entity within supply contracts for GEI

Our experience in this area is best described by example during the negotiation of the 2015 CSPA. We attempted to start negotiations in October of 2014 with the intention of signing off on a revised CSPA by the end of November 2014, to allow a greater window for sugar pricing, in contrast to previous years. This did not occur, with the Miller notifying us at the end of January that the previous buyer of sugar (NSW Manildra) no longer required our sugar. We were well aware it was unlikely NSW would take our sugar as we had meet with them in August of the previous year and were informed of such. (This was a meeting to ascertain some transparency in the marketing of our sugar by discussing same with the customer). Regardless of the destination of our sugar, we should

have been able to have the majority of the CSPA drafted beforehand but due to stalling tactics by the Mill this was not possible.

In early February, the Miller notified us that our only option was to market through QSL, which had been our preference for several years. The Mill was required to sign off with QSL by the 28 February 2015 and nominate pricing pools for either a 1 year or 2 year agreement. Within days of the QSL proposal we were invited by the Mill to discuss a counter proposal from an 'unknown' buyer. The Mill made this new offer from the mystery buyer and requested an answer from us the same day. We had less than 8 hours to consider and respond on a proposal that would be the basis of payment for the next 3 to 4 years (the CSPA being negotiated was for a 3 year term with a 1 year option).

Our obvious choice was QSL despite the Mill producing a spread sheet claiming a few cents better with the mystery buyers' new proposal. We notified the mill of our preference for QSL. The Mill subsequently requested an urgent meeting the next day at which time they advised us that they were going with the 'mystery buyer', signing off that day regardless of our request for QSL. They were exercising their right of ownership of the sugar.

Further, the Miller requested the growers accept a reduction in the price of sugar by 50 basis points below market price (New York Number 11) ultimately after extensive negotiations we were forced to settle on 22 basis points ($4.50 tonne sugar = 42 cents a tonne of cane). The Miller also refused the growers payment for Far East premium, sugar quality bonuses and US Quota, giving a total reduction in the order of some $1.42 per tonne of cane. (It must be noted that figures quoted excepting the 22 basis points are estimates only). The Miller cited the end buyer as refusing to pay full value for the sugar, any premiums and bonuses excepting US Quota which the Miller was keeping to his own account.

We draw the readers' attention to the fact that these 3 items of payment have always been part of growers' payments under QSL's selling regime. Information to hand indicates the end buyer of Rocky Point's sugar as Wilmar.

This was a grossly distorted outcome where we had been forced to participate in a contractual arrangement to (what at the time was) an unknown buyer with an unknown capacity to pay. In fact, this arrangement will provide lower returns to growers than QSL. The question could be asked, why agree to this? The answer being: we did not wish to, but we own a perishable product that is in the final stages of growth; the input costs having been already spent, excluding harvesting and transport. The Miller is a monopoly and exercising its dictatorial powers ruthlessly. Most growers carry debt and lenders will not wait for repayments while the grower refuses to sign an agreement to crush and receive payment for his cane. Under the Sugar Industry Act we cannot refer the matter to an independent arbitrator or court for settlement and as evidenced in previous years, growers with commitments can be pressured to sign off on an unfair agreement, ultimately breaking grower cohesion to the detriment of all growers.

The growers in Rocky Point, prior to the current abuse of monopoly marketing power by the Miller were already worse off than their peers though-out the industry in so much as they pay most of the transport costs of sugar cane haulage. (In most other areas this is 100% a Mill cost); a cost that once again has become open ended because of a monopoly Miller situation.

As the Miller owns the sugar, under the current Sugar Industry Act, we have no control over who they sell the sugar to or under what conditions. All we can do is negotiate the price or pricing mechanism for our sugar cane.

Grower choice of GEI marketing entity will alleviate the situation as experienced; both Miller and Grower are looking to maximise returns this is a simple commercial reality. Unfortunately, as

demonstrated, our Miller saw reducing the grower share as a method of increasing returns. Under Grower Choice by nomination of Marketing Entity for GEI, the abuse of marketing by the Miller will cease and a system of discussion and transparency will result.

c) Arbitration of disputed terms in a supply contract

The reinstatement of a system of mediation and arbitration into supply contracts is essential. As demonstrated in this submission, the removal of this provision in 2006 left us with no legislative or regulative framework to ensure growers a "fair deal". In fact it left us to the mercy of an unscrupulous Miller intent on increasing his share of the profits at the expense of the grower sector.

➢ Recommendations and/or alternative approaches to address marketing and other industry concerns

We do not believe there is any other method other than by legislative amendment to the sugar industry act to achieve an outcome that will force Millers to treat growers in a fair and equitable manner. This is partly demonstrated by discussions as follows during the 2015 CSPA negotiating process.

A major discussion point during the 2015 CSPA negotiations was the inclusion of a clause in the CSPA to acknowledge and accept recommendations from the Federal Government's Senate Inquiry, which we believed could be in the form of a "Code of Conduct" for sugar industry participants. The Mill response was: "*a Code of Conduct means nothing and there is no need to make reference to this in our CSPA, but if legislation changes, we will all have to comply"*.

If we extrapolate the view of WH Heck & Sons as representative of all Mill owners, then a Sugar Industry Code of Conduct will need the force of legislation behind it, particularly in the areas of the mill supply negotiation process, transparency and arbitration.

CONCLUSION

We make this submission on behalf of cane growers in a Mill area that has suffered the worst effects of ill-considered and unfinished deregulation. We are sharing our experiences so that growers and government know what lies ahead of the sugar industry if the current marketing intention is maintained and legislative amendment in its entirety relative to marketing, GEI and the provisions of Commercial Arbitration are not adopted. The Rocky Point cane growers are substantially worse off, as demonstrated, than the rest of the sugar industry because of our lack of choice, transparency and ownership of our share of sugar.

There is a clear imbalance of power within the industry that needs addressing. During CSPA contract negotiations there is currently no mechanism for dealing with an impasse, and the economic pressure placed on a grower who has invested in growing a perishable crop which only has one market (a monopoly Miller), puts them at a disadvantage in what should be commercial negotiations.

In any business relationship, trust is paramount. Millers and growers need each other, and for growers to be confident that they are getting the maximum return on their investment, they need choice and transparency of transactions. When Millers can dictate terms and there is an absence of an independent arbitrator or such similar method to give balance to the final outcomes, the grower section of the industry will cease to prosper in the long term.

The lack of transparency in dealings with our Miller has severely impacted the confidence of grower participants, with numerous farms for sale, a shrinking grower base and reducing tonnages supplied to the Mill. The lowering returns to farmers, also effectively reduces land values. The Miller refuses to recognize these effects; believing we have no other choices regarding alternate crops or land use, the Miller believes the growers are effectively "locked in" to supplying him regardless of circumstances.

We are fully supportive of Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 as a means of re-instating some measure of equity in the grower-miller relationship. Without this change, monopolistic millers will continue to avoid their responsibilities as good corporate citizens, and growers will continue to have their hands tied in relation to who sells and prices their GEI sugar and final outcomes of CSPA negotiations.

Please do not hesitate to contact me should you require any further information in relation to the matters raised.

Yours faithfully

CANEGROWERS Rocky Point
Richard Skopp
Chairman