

## Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 and encourages the Government to introduce this pro-competitive amendment without delay.

### Key points

1. The price growers are paid for their cane is directly linked to the market value of sugar. To be clear the price growers are paid for their cane is around 2/3rds of the price received for the sugar. Growers bear the greatest risk and therefore it is only fair and reasonable that Growers Economic Interest (GEI) be recognised and that Growers have the right to say who markets the raw sugar that impacts the price they are paid for their GEI
2. We are not saying that Wilmar cannot compete to market GEI sugar but we are saying that Wilmar does not have the right to take control and to strip growers of their right to utilise QSL which is an Australian, not for profit, industry owned, marketing company that is heart of the sugar marketing system, a system which has faithfully served the needs of the Queensland cane industry for over 100 years.
3. The introduction of a pre-contract arbitration process provides a method to resolve deadlocks in regard to the CSA for ALL clauses not just marketing.
4. Wilmar Sugar Australia and Wilmar Sugar Trading are separate legal entities. We understand that WSTrading is a privately owned, for profit, Singaporean based company. This separation may have a negative impact on the company that has responsibility to operate the mills and on the workers employed by that company. Also, Wilmar's current proposal is for WSAustralia to sign a 15 year lock in contract with WSTrading, once this contract is in place Wilmar International could sell WSAustralia and therefore obtain the marketing rights without the need to continue to support the industry.
5. Even if a commercial resolution is reached today – this amendment to the legislation is still needed. As we know from Wilmar's behaviour in this marketing dispute and the CBL growers Supreme Court legal case that even if something is agreed today – Wilmar will never be satisfied until they have everything – they will be back to take more before the ink is dry.
6. To grow this industry, whether for the production of raw sugar or to supply cane for the Government's exciting biofuels mandate requires growers to have confidence. If an international company is allowed to strip Australian growers of their 100 year old rights this will also strip growers of their confidence.
7. A strong cane industry= a strong Burdekin economy and job security



Growers **SHOUTED OUT** a clear message in a survey earlier this year:

- ⇒ 97% of growers want to be able to choose the marketer of their sugar
- ⇒ 95% said the government needs to intervene to protect their rights in this regard
- ⇒ 93% said they don't trust their miller to share profit fairly if they are not made to do so
- ⇒ 93% said they will not have confidence to expand if their marketing choice is denied
- ⇒ 90% said they didn't want access to an independent marketer taken away

**STOP WILMAR STRIPPING GROWERS OF THEIR RIGHTS TO UTILISE QSL**

Thank you for the opportunity to make a submission on this extremely important issue.

An issue that, if not addressed, will **strip Burdekin cane farmers of their rights** to utilise Queensland Sugar Ltd (QSL). QSL is an Australian, not for profit, industry owned, marketing company that is the heart of our sugar marketing system, a system which has faithfully served the needs of the Queensland cane industry for over 100 years.

We wish to make it clear, although we would prefer that the marketing of all Australian sugar was undertaken by QSL (as it was prior to Wilmar International becoming part of the Australian industry) **we are not opposing Wilmar's marketing proposal and we are NOT looking to take anything away from Wilmar.** What we are opposing is that Wilmar is taking away growers rights to utilise and choose QSL. We do not see this as an unreasonable request given that **the price growers are paid for their cane is around 2/3rds of the price received for the sugar. Growers wear the greatest risk and therefore it is only fair and reasonable that Growers Economic Interest (GEI) be recognised and that Growers have the right to say who markets the raw sugar that impacts the price they are paid for their GEI.**

As part of the CANEGROWERS family we are aware that our peak industry body CANEGROWERS Queensland and the Australian Cane Farmers Association are making a joint submission to the Agriculture and Environment Committee. The importance the industry places on this critical issue is highlighted as this is a **UNITED submission from what historically has been two competitive industry bodies.** On behalf of our members in the Burdekin region we express our wholehearted support for the united submission.

## Background

Canegrowers Burdekin Ltd (CBL) is a not for profit, member owned company with voluntary membership. As a collective, we offer the region's cane farmers the CBL Cane Supply Agreement (CSA). We individually represent approximately 33% of the Burdekin cane farmers which equates to between 2.5 million to 3 million tonnes of cane. This cane is supplied to the region's four mills, all of which are owned by Wilmar Sugar Australia Ltd (WSAustralia), a subsidiary of Wilmar International.

The Burdekin's economy has a major reliance on the cane industry. The average annual crop of 8 million tonnes equates to between \$280m and \$320m of revenue for our small economy and the industry is by far the largest employer. To provide an example of the region's reliance on the cane industry, cane farmers pay close to half the Burdekin Shire's general rates.

CBL is part of the CANEGROWERS family and we work closely with our fellow CANEGROWERS groups based in Herbert River, Proserpine and Plane Creek (Mackay). Between our four individual companies we represent over 10 million tonnes of cane, all of which is supplied to mills that are owned by Wilmar. 10 million tonnes equates to approx. 70% of the total cane crushed in WSAustralia owned mills. We are aware that our colleagues in Herbert River and Mackay are making individual submissions to the Agriculture and Environment Committee. We fully support these submissions and advise that in this/our submission we have endeavoured to avoid repetition.

## Overview of recent history

1. WSAustralia became the owner of the four local mills and the supporting rail infrastructure at the end of 2010.
2. There was a lot of goodwill within the local industry towards WSAustralia in the early years. This goodwill was enhanced due to WSAustralia's commitment to invest in the industry. This investment included significant contributions to improve the performance of the four local mills. This was a particularly important point for growers as when the mills performed well the crush could be completed within a shorter time frame meaning the following year's crop would have a longer growing period which should result in a better crop, result more cane which benefits everyone.
3. Early 2012, CBL completed our strategic planning process. We agreed on a vision that by 2017, we would endeavour to increase the region's cane crop by 50% from 8 million tonnes to 12 million tonnes. We shared this vision with the local WSAustralia Management team and we agreed that to achieve this growth one thing was critical and that was that growers would need to have confidence in the industry and for this to occur they needed to have trust in the mill owner. Things appeared to be going well.
4. In April 2012, Wilmar Sugar Trading (WSTrading) first made contact with CBL expressing interest in changing the 100 year old sugar marketing arrangements. This worried growers immediately. We understand that **WSTrading is a privately owned, for profit, Singaporean based company that is a separate legal entity to WSAustralia.**
5. In 2014, WSTrading put forward their NO CHOICE – NO QSL marketing proposal and WSAustralia gave notice to exit QSL. Our growers' voted unanimously that they condemn the NO CHOICE – NO QSL proposal as it takes away their rights to utilise QSL, the successful Australian, not for profit, industry owned, marketing company. Many of our growers are well over the age of 55 and QSL has faithfully served their needs for many many many decades. **Wilmar's decision to take control of the marketing of all raw sugar without growers agreement has created a lot of concern, uncertainty and anger amongst our grower members.**

# CBL Cane Supply Agreement

The current CBL CSA is a three year agreement covering the crushes for 2014, 2015 and 2016.

WSAustralia has given notice to terminate the CBL CSA at the end of the 2016 crush.

Historically the CSA is rolled forward year by year. This roll over typically happened after any changes to terms and conditions within the CSA were negotiated on an annual basis.

CBL negotiates any changes to the terms and conditions of the CBL CSA with Wilmar selected negotiators.

To endeavour to obtain the best outcome from the negotiating process CBL invested in our Directors (who are all local cane farmers) complete professional negotiation training. However, as the Committee could imagine, a small, local, not for profit, member owned company, facing a negotiation with a large international that holds a monopolistic position, **the commercial imbalance is massive.**

The negotiation is made even more difficult as not only do the growers have no option but to contract with WSAustralia to have their cane crushed but once the cane is burnt and harvested there is only a short time frame (around 16 hours) whereby the cane must be crushed before the sugar content of the cane deteriorates.

**CBL strongly supports the introduction of an "Arbitration of disputed terms of the intended supply contract"** to endeavour to rectify the commercial imbalance and highlights that this **arbitration process would cover all sections of the disputed supply contract not just the sections relating to marketing.**

## Ownership of the raw sugar

Much has been made as to who owns the sugar in the current marketing debate,. The **only legal reference** on this point is contained within the CBL CSA and is as follows: *6.3 Risk and title: Title and risk in the Cane shall pass to Wilmar Sugar immediately upon delivery of the Cane to Wilmar Sugar at the Delivery Point.*

Wilmar have stated on numerous occasions that in 2017 "they own the sugar". The Committee will note, as detailed above, WSAustralia has given notice to terminate the CBL CSA from the end of the 2016 crush. There is no contract in place for 2017 and onwards. We find it presumptuous that Wilmar are making statements relating to an agreement that has not yet been negotiated. We feel that this is yet another indication of Wilmar relying on their monopolistic power and again stress our support for a pre-contract Arbitration process.

Recent media reports make it appear that growers are seeking to steal something that is rightfully Wilmar's. An example of reported comments by a Wilmar's Executive: *"We have raised our concerns about the expropriation of our manufactured sugar with both the Australian and the Singapore Governments. Why would anyone want to invest in an Australian manufacturing or processing business if it doesn't own and control the product it makes?"*

We point out the following facts:

1. Wilmar made a decision to buy the mills on the basis that it did not control the marketing of the raw sugar. Nothing has been taken away from Wilmar.
2. Although it is true under the current Cane Supply Agreement, Wilmar does have the title of the sugar but it is only for a blink of time in the process. Wilmar has title for about 24 hours from the time the cane is delivered to the siding to the time the processed raw sugar is delivered to the Townsville Port bulk sugar terminal. Reference clause 6.3 (a) Cane Supply Agreement (CSA).
3. Once the raw sugar is delivered to the bulk terminal the title transfers to QSL. QSL then holds title of the sugar until it is sold which could be up to 12 months or longer. Reference 9.1 of the Raw Sugar Supply Agreement (RSSA).
4. Wilmar gave notice to cancel the RSSA ...thus ceasing the transfer of title to QSL effective from the end of the 2016 crush
5. Wilmar has given notice to cancel the CBL CSA ...thus ceasing the transfer of title to Wilmar effective from the end of the 2016 crush.

We struggle to see how Wilmar can feel aggrieved that **THEIR MANUFACTURED SUGAR HAS BEEN STOLEN OR EXPROPRIATED????**

Separately, since 2010 growers utilising the CBL CSA have been in a \$10m legal dispute with WSAustralia relating to a shortfall. Our experience, as our growers agent in this legal dispute, which is set to go to trial before the Supreme Court on 30<sup>th</sup> November, 2015, from this matter has made us very wary of Wilmar's claims that their marketing proposal will provide growers with full transparency. It is also of interest, that Wilmar's view is that in 2010 growers were liable for the shortfall in sugar. Now in 2015, Wilmar believes that they own the sugar.



# CANEGROWERS Burdekin members support the Amendment Bill

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I support the Amendment Act for the sake and destiny of current and future generations of family-based cane growing businesses to have some protection against exertion of monopoly miller power.

*Kathleen (Rogers) Cross*  
**Cane Farmer**

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Wilmar have stated in many communications to growers that I received that they believe they own all the sugar. It is clear to me that in 2017 Wilmar does not own any sugar because there is no cane supply agreement. The fact that they continue to say that they own the sugar would seem that they are making it a precondition for the processing of my cane, something that is clearly an abuse of their monopoly position.

*John Marano*  
**Cane Farmer & Harvest Contractor**

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At the moment we have a grower miller owned NOT FOR PROFIT organisation called Queensland Sugar Limited. This organisation has on more occasions than not beaten the world benchmark for sugar prices, and being NOT FOR PROFIT hands all of these profits back to the industry which is 1/3 for the miller and 2/3 for the grower. The only reason I can see why Wilmar wants to change the marketing of sugar is that they want to make more than their 1/3 share.

*Greg Rossato*  
**Cane Farmer**

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I have no proof as yet Wilmar can increase my returns only a reduction in 2010.

*Paul Sgarbossa*  
**Cane Farmer & Harvest Contractor**

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Once again, we appreciate the opportunity to make a submission on this extremely important issue and welcome the chance to discuss this submission further.

Philip Marano  
Chairman  
CANEGROWERS Burdekin Limited  
20 July 2015