



Queensland Sugar Limited (QSL) thanks the Queensland Government's Agriculture and Environment Committee for the opportunity to participate in their inquiry into the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015.

As a not-for-profit entity, equally owned by growers and mill owners, and with a constitutional objective of promoting the sugar industry in Queensland, QSL is concerned to ensure fair, transparent and competitive outcomes in respect to raw sugar marketing. That includes growers being able to freely choose for QSL to continue to market raw sugar on their behalf and millers being able to ensure a fair return on their investment.

As requested, QSL's feedback regarding the Terms of Reference is as follows:

1. Whether the Sugar Industry Act 1999 (current) adequately protects the interests of growers in collective sugar marketing arrangements

QSL believes that the actions of the marketer significantly influence the returns secured for raw sugar sold on the international market, and as such, we believe that both our grower and miller members should have a choice regarding who provides that service on their behalf. Changes to current title arrangements are not necessary to achieve this, as a Grower Choice system can be implemented under the terms of the current Sugar Industry Act 1999 via a commercial arrangement that is acceptable to all parties. However, in the absence of such an arrangement, the existing regulatory framework does not enable growers to choose which entity markets the quantity of raw sugar to which they have price exposure – their Grower Economic Interest (GEI) sugar.

2. The costs, benefits and impacts on the Queensland sugar industry arising from decisions by some millers to exit the current sugar marketing arrangements (market outside of Queensland Sugar Limited (QSL))

Since our origins as the Sugar Board back in 1923, QSL has worked to serve the interests of sugar cane growers and millers for the long-term prosperity of the Queensland Sugar industry. We provide four key service areas to members, these beings:

- **Financing:** Providing low-cost financing through advance payments to members
- **Pricing:** Providing knowledge, expertise and experience in managing futures markets
- **Marketing:** Maximising returns through optimising sales timing and customer premiums
- **Logistics:** Safe and efficient storage, handling and shipping of raw sugar

QSL is one of the world's leading sugar marketers, with 2014 season pool returns to our members of up to \$70 per tonne IPS above the average market return (the passive management benchmark), and a weighted average of \$40 per tonne IPS above benchmark. In addition to our pooling system,

QSL also provides pricing facilities for growers keen to pursue their own pricing strategies on the international ICE 11 raw sugar market under QSL's funding arrangements.

We provide all of the services outlined above on a cost-neutral basis, with all profits passed back to the Queensland sugar industry, mainly via payments to our members through the Advances Program (a periodic payment system which helps to provide cash flow to members throughout the year) or through industry-good efforts.

Under the current marketing system, the cane payment formula and Raw Sugar Supply Agreements held between QSL and milling suppliers effectively recognise GEI sugar. The Cane Supply Agreements typically provide growers with some ability to make pricing choices in relation to GEI in recognition of their different interests and varying risk appetites, as distinct from those of the mill owner. As a not-for-profit organisation focused on industry benefit, growers value QSL's balanced approach to managing downside risks and our high level of certainty and transparency, free from the potential conflict of interest that other international sugar traders face as a result of their non-Australian-based trading businesses.

The failure of the Queensland sugar industry to resolve the continuing marketing impasse has sparked widespread industry uncertainty, leaving many farmers supplying those mills exiting QSL reluctant to expand production or invest further in their operations. Their ability to actively manage their price risk by forward pricing on the ICE 11 Futures Market has also been compromised, with many growers unwilling to secure potentially acceptable prices for their 2017 and 2018 crops because these fall outside their mills' current contracts with QSL (30 June 2017) and so require new supply and pricing agreements with associated marketing implications.

Unfortunately Queensland cane growers are already experiencing the financial consequences of the decisions outlined above and these will only amplify as we draw closer to July 2017. Queensland millers are also being negatively affected, with those mills exiting the current marketing system facing potential reductions to their cane supply from unhappy growers and all millers concerned that Government intervention could have significant implications for their businesses.

For potential investors, an industry environment fraught with such uncertainty does not engender confidence, nor does the prospect of having a significant portion of your farming enterprise's returns being decided by a marketer over whom you had no input or choice.

This distortion of market dynamics is only being compounded by low international sugar prices and rising farm input costs – all of which make the returns from sugar marketing an even more significant element of grower's final returns. If true competition was allowed in sugar marketing through the introduction of a Grower Choice system where farmers are able to choose who markets their GEI sugar, millers would be encouraged to attract economic interest volumes from growers by providing competitive marketing services. This would allow markets to appropriate value along the supply chain, mitigate risk, encourage innovation and deliver the fairest outcome for all.

It is in the best interests of our entire industry that a resolution to this matter be secured as a matter of high priority.

- 3. Whether provisions in the Bill are viable and will achieve their stated objective:**
- a. Supply contracts that give legal recognition to 'grower economic interest' sugar (GEI)**
 - b. Growers' choice by nomination of marketing entities within supply contracts for GEI**
 - c. Arbitration of disputed terms in a supply contract**

QSL believes that it is important to maintain focus on several key sugar marketing elements which we consider are ways to successfully implement a truly competitive and sustainable raw sugar marketing system in Queensland:

1. An obligation for mill owners and growers to negotiate in good faith regarding the terms on which growers supply cane to mill owners;
2. Cane supply arrangements which provide for the price paid for the cane to be referable to the market price obtained from a corresponding quantity of raw sugar, and which also give the grower the right to choose the entity which will market the grower economic interest (**GEI**) sugar (via on-sale to the chosen entity at cost or other mechanism acceptable to the grower);
3. An obligation for mill owners to publish specified information to growers in relation to their marketing activities (so that a grower can make an informed choice about whether to utilise the mill owner's marketing services or utilise the services of QSL or others);
4. A prohibition on mill owners discriminating against growers who choose to have an entity other than the mill owner or their affiliates market their GEI (or seeking to prevent or hinder growers making such a choice).

The Bill in its current form addresses several of these key elements, however, QSL has provided (as a Schedule to this submission) some suggested amendments to enhance its effectiveness (both on these key issues and some other matters) and remove uncertainty as to its operation for the benefit of all stakeholders in the industry.

4. Alternative ways to improve sugar marketing outcomes for growers and millers.

As stated previously, an enduring, industry-negotiated commercial outcome acceptable to all parties is QSL's preferred solution to the current sugar marketing impasse.

We see the implementation of Grower Choice in raw sugar marketing as the next step in the deregulation process. It can easily be implemented with no changes to existing title arrangements and would bring true competition to our industry while encouraging innovation and ultimately delivering the fairest outcome for both millers and growers. As the Queensland sugar industry's premier service organisation, QSL is well-placed to introduce and manage a transparent and effective Grower Choice system, and we welcome Government efforts to help secure such an arrangement in the absence of a commercial outcome.

In closing, QSL sincerely thanks the Committee for taking the time to address this important sugar industry issue. Should you require any further information or assistance regarding this matter, please do not hesitate to contact QSL's Chief Executive Officer and Managing Director Greg Beashel.

Schedule – Suggested Amendments and Additions

Sugar Industry (Real Choice in Marketing) Amendment Bill 2015

Clause 6 – Proposed s 33A and 33B:

33A Arbitration of disputed terms of intended supply contract

insert new subsection (7) – (8) (and renumber the proposed subsection (7) to subsection (10))

(7) In determining the terms of the supply contract, the arbitral tribunal must have regard to the historical allocation of reward as between mill owners and growers as reflected in the traditional cane payment formula or other formulas previously agreed to in a supply contract.

(8) During a negotiation period –

(a) a grower may request a mill owner to provide specified information (in addition to that to be provided under section 39), including in relation to their marketing activities, for the purpose of negotiating the terms of a supply contract; and
(b) a mill owner must comply with a request mentioned in subclause (a), within 10 Business Days of receiving the request, if:

(i) the information requested is not confidential or commercially sensitive;

(ii) the information does not relate to another grower; and

(iii) providing the information would not be unduly onerous for the mill owner having regard to the following:

- A. the operational, commercial and logistical information that a grower may require to use a sugar milling facility;
- B. whether the mill owner has access to and control of the information;
- C. the staffing, technical and financial capability of the mill owner to obtain and provide the information; and
- D. the volume of information and time-frame within which it is requested.

(9) For the avoidance of doubt, where a group of growers has appointed a bargaining representative to negotiate a collective contract on behalf of the group in accordance with section 33, an arbitration under this section 33A can occur in relation to the collective contract (and determine the dispute between each of the growers in the group and the mill owner), and the bargaining agent can give all notices to be given by a grower under this section or the *Commercial Arbitration Act 2013* on behalf of each of the growers in the group.

33B Terms of supply contract about sale of on-supply sugar

Amend the proposed section 33B as follows:

(2) The supply contract must include each of the following –

(a) a mechanism to determine the amount of the payment paid to the grower for the supply of the cane which is to be calculated based on the traditional cane

payment formula or other formula agreed between the parties which provides a link between the price for cane paid to a grower and the selling price of the raw sugar;

(b) a mechanism by which the proportion of Grower Economic Interest Sugar and Mill Economic Interest Sugar can be calculated;

(c) a provision permitting a grower to access Marketing Services of their choice from a third party entity other than the mill owner in respect of the Grower Economic Interest Sugar;

(d) provisions relating to procedures for managing the crushing capacity of the mill, scheduling, season length, weather interruptions and quality controls for the acceptance of cane;

(e) a provision requiring the mill owner to have an agreement with a stated entity (the **GEI sugar marketing entity**) to sell that quantity of on-supply sugar at least equal to the proportion of Grower Economic Interest Sugar; and

(f) a term providing that if a grower and mill owner are unable to agree which entity will be the GEI sugar marketing entity, the grower must nominate a credible and established entity to be the GEI sugar marketing entity and the mill owner must accept that nomination. The Grower may allocate part of his supply to the mill and part to the nominated entity.

(3) However, subsection (2) (e) and (f) does not apply if the grower and the mill owner have agreed, and the supply contract states that the mill owner will sell the on-supply sugar.

(4) The supply contract must not discriminate between a grower accessing Marketing Services from a third party entity other than the mill owner and a grower accessing Marketing Services from the mill owner.

(5) Without limiting subsection (4), a supply contract will be discriminatory if it has the effect that a grower accessing Marketing Services from a third party entity unreasonably pays more for Sugar Milling Services than a grower accessing Marketing Services from the mill owner or is otherwise liable for additional penalties, costs or expenses due to accessing Marketing Services from a third party entity.

New proposed clause:

Insertion of new Division 3 (of Chapter 2, Part 2) General Obligations

After section 37 –

Insert –

38 Obligation to deal in good faith

A mill owner and a grower must at all times deal with each other in good faith, including in relation to negotiation of a supply contract or variations to a supply contract.

39 Obligation to provide information regarding Marketing Services

A mill owner must, within 5 days of commencing a negotiation period (as defined in section 33A(1) (b)), provide the relevant grower or growers with:

(1) details of past performance of the mill owner in respect of Marketing Services over at least the last 3 seasons, including factors that provide material context for that performance

such as the volume marketed, marketing, pricing, hedging and other risk strategies adopted, raw sugar quality and seasonal factors;

(2) details of the terms on which any trading with related or affiliated refineries occurs;

(3) a summary of marketing, pricing and strategies to be utilised (including how the marketing of the relevant Queensland raw sugar will form part of any wider Australian or international sugar trading activities conducted); and

(4) any administration fees, commission, profit margin or other amounts to be charged by the mill owner in connection with marketing, pricing or logistics in respect of GEI sugar.

40 Mill owner not unreasonably discriminate

(1) A mill owner, in providing Sugar Milling Services to a grower, must not discriminate in favour of itself, or a cane producer which is an associated entity.

(2) A mill owner must not engage in conduct for the purposes of preventing or hindering a grower's access to Sugar Milling Services.

(3) For the purposes of subsection (2), the withdrawal or suspension of services by a mill owner in accordance with the terms of a supply contract is not regarded as hindering that grower's access to Sugar Milling Services.

41 Access to Sugar Milling Services

A mill owner must enter into a supply contract or enter into negotiations about the terms of a supply contract with a grower if the grower has applied to the mill owner to enter into a supply contract.

Clause 10 - Amendment of Schedule (Dictionary)

Propose inserting the following definitions:

Grower Economic Interest Sugar means the amount of sugar supplied by a grower to the mill owner for which the grower bears the price exposure, based on the relevant proportion agreed to, or determined by an arbitration section 33A, in a supply contract.

Marketing Services means pricing, marketing and logistics services provided by a mill owner in connection with the sale of raw sugar.

Mill Economic Interest sugar means the total sugar that a mill produces for which the mill bears the price exposure. For the avoidance of doubt, this excludes Grower Economic Interest sugar (other than for any grower that is a Related Body Corporate of the mill).

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Sugar Milling Services means the crushing of sugar cane and production or part-production of raw sugar being a service provided by means of a sugar mill (either in connection with or independently of acquisition of the relevant sugar cane).