

Wilmar Sugar

Wilmar Sugar Australia Limited
ABN 47 098 999 985

Level 22, 300 Queen Street
Brisbane QLD 4000

GPO Box 2224, Brisbane
QLD 4001 Australia

Tel + 61 7 3364 1681
Fax + 61 7 3364 1611
info@wilmar.com.au

www.wilmar-international.com



2 May 2017

Committee Secretary
Agriculture and Environment Committee
Parliament House
George Street
Brisbane QLD 4000

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

Dear Mr Hansen

Sugar Industry (Application of Transitional Provision) Amendment Bill 2017

Thank you for the opportunity to make a submission to the Committee in respect of the Bill introduced to the Parliament on 2 March by the Member for Buderim, Mr Steve Dickson MP.

Attached is our brief submission.

Yours sincerely

A handwritten signature in cursive script that reads 'A. W. Rutherford'.

██████████
Executive General Manager, Strategy and Business Development
Wilmar Sugar Australia



Wilmar Sugar Australia
Submission to the Agriculture and Environment Committee
2 May 2017

Table of contents

1. The Bill.....	3
2. Our submission	3
2.1 False premise	3
2.2 Redundant	4
2.3 Risk, cost and delay.....	4
3. Recommendation.....	5

1. The Bill

On 2 March 2017 the Member for Buderim, Mr Steve Dickson MP, introduced the **Sugar Industry (Application of Transitional Provision) Amendment Bill 2017**.

When inviting submissions on this Bill, the Agriculture and Environment Committee identified the objective of the amendment to be the delay of commencement of certain provisions of the *Sugar Industry Act 1999* for 12 months – until 1 July 2018 – in order to allow Queensland Sugar Limited and Wilmar Sugar to continue negotiations without the deadline pressure to complete.

In presenting his amendment to the Queensland Parliament, Mr Dickson said:

“Currently Wilmar Sugar has not finalised its agreement with QSL due to ongoing negotiations resulting in the delay in reaching suitable terms of contract to growers with Wilmar pursuant to their cane sale agreement. As a result, the cane growers cannot lock in the forward-pricing contracts. This amendment to the act allows the current agreement to be extended for one year to allow the existing contract to be carried over by those growers supplying cane to Wilmar Sugar and hence enable forward-pricing contracts to be finalised. Equally, this amendment allows QSL and Wilmar Sugar to continue negotiations without the deadline pressure to complete.

Mr Dickson's proposed amendment to section 299 of the *Sugar Industry Act 1999* seeks to extend the period during which cane supply agreements (CSAs) between growers and millers are not required to contain terms prescribed in section 33B (Grower Choice).

2. Our submission

It is Wilmar Sugar Australia's submission that:

1. The Bill was based on false premise.
2. The Bill has been rendered redundant by developments subsequent to its tabling.
3. Any further legislative intervention in implementation of grower choice – particularly at this late stage - produces potential for significant commercial risk, cost and delay.

2.1 False premise

False Premise One

Mr Dickson's statements to the Parliament on 2 March suggest a misunderstanding of events. Specifically, Mr Dickson appears to have acted in the belief that cane growers supplying Wilmar mills were 'unable' to sign CSAs, and/or were 'prevented' from forward pricing because of protracted commercial negotiations between Queensland Sugar Limited (QSL) and Wilmar Sugar Australia (Wilmar) in relation to an on-supply agreement.

Neither presumption is correct.

Growers who have not signed 2017 CSAs with Wilmar and locked in forward prices have done so by choice.

In 2014 Wilmar offered growers an interim arrangement allowing them to forward price through the transitional 2017 season as Wilmar implemented new marketing arrangements. Some growers took up that offer.

Following December 2015 amendments to the Act, Wilmar drafted CSAs to comply with new legislation and in July 2016 offered 2017 CSAs that provided for grower choice of marketer for Grower Economic Interest (GEI) Sugar.

Sugar Industry (Application of Transitional Provision) Amendment Bill 2017

Submission to the Agriculture and Environment Committee

When negotiations with QSL on an on-supply agreement continued beyond October 2016, Wilmar extended 2017 CSA nomination deadlines and offered growers a new transitional arrangement under which they could sign a CSA, forward price with Wilmar, and still preserve the right to change their marketing nomination as and when QSL and Wilmar executed an on-supply agreement.

Growers who did not take up this offer, apparently chose not to do so on the advice of grower organisations looking to maximise leverage for QSL during the negotiations with Wilmar.

As of 2 March (when the Bill was tabled) 234 growers (with more than 3 million tonnes of cane) had signed complying 2017 Wilmar CSAs. All growers who have signed CSAs with Wilmar have the ability to forward price and many have done so.

False Premise Two

The Bill has apparently been proposed on the assumption that Wilmar would be willing, and easily able to extend existing 2016 CSAs for 2017.

If the Bill was prepared on such assumptions, it is a false premise.

Wilmar's 2016 CSAs have expired or terminate upon completion of payment for the 2016 season. The 2016 CSAs were all premised on Wilmar voluntarily selling 100% of its sugar to QSL under contractual arrangements that will terminate at the end of the 2016 season. Wilmar provided notice of this termination in 2014 as it was not willing to continue to sell to QSL under these grossly non-commercial arrangements.

By contrast with the 2016 CSAs, all existing 2017 Wilmar CSAs contain grower choice provisions to comply with December 2015 legislation.

2.2 Redundant

Notwithstanding the false premise of the Bill, it was rendered redundant almost immediately by subsequent events.

Mr Dickson informed the Parliament on 2 March that the objective of his amendment was to allow QSL and Wilmar to continue negotiations for an on-supply agreement without a deadline pressure to complete.

However, Wilmar and QSL reached agreement-in-principle on 2 March - the same day the Bill was introduced. The major stumbling blocks for the on-supply agreement were resolved through commercial negotiation and with the assistance in the final stage of a skilled mediator.

The parties are now in the final stages of formalising the documentation of the agreement for execution.

Therefore, the rationale for the proposed amendment – to allow QSL and Wilmar to complete negotiations without CSA deadline pressure – was (and still is) not relevant and therefore the Bill is not necessary.

2.3 Risk, cost and delay

Yet another intervention in sugar industry legislation – particularly on the threshold of the 2017 crushing season – threatens disruption to operations, commercial risk, legal dispute, cost to all parties and, ultimately, unnecessary delay in the implementation of grower choice.

Wilmar has invested heavily during the past 16 months to implement changes to its business model, systems and processes required by December 2015 legislative amendments to the Act. Grower choice legislation fundamentally altered the legal and commercial relationship between growers and millers, and millers and marketers.

Sugar Industry (Application of Transitional Provision) Amendment Bill 2017

Submission to the Agriculture and Environment Committee

Wilmar incurred significant cost in developing new systems, processes and agreements to comply with the December 2015 amendments, and subsequently in protecting its interests during a failed compulsory arbitration that saw provisions introduced in 2015 being declared by an arbitrator to be unconstitutional and invalid.

The Queensland Parliament rejected an attempt earlier this year to further amend the Act to introduce mandatory pre-contract arbitration between miller and marketer.

Most recently, the Federal Government regulated under the *Competition and Consumer Act 2010* in parallel to Queensland legislation to impose a mandatory code of conduct on the industry.

With every new legislative intervention has come added complexity, less commercial certainty and greater risk. Each intervention has also increased the risk of delay to the commercial process to finalise an on-supply agreement between Wilmar and QSL and see all growers sign CSAs.

Wilmar has committed millions of dollars to implementing grower choice and its transition to the new operating environment is all but complete. The transitional process has attracted close attention from regulators such as the ACCC and seen Wilmar, other millers and QSL involved in legal action.

It is unreasonable and impractical to expect Wilmar to stop these changes at this late stage and construct systems and implement arrangements to cater for two classes of grower – those wishing to extend 2016 agreements without choice, and those wishing to proceed with 2017 agreements while exercising choice.

With the 2017 crushing season just weeks away, it is not feasible to complete consultation with 1,500 growers or scope, develop and implement parallel systems before the start of the crush.

Beyond challenges of practical application, the Bill also raises potential equity issues for growers, and could arguably disadvantage some growers. The Bill would create two classes of grower supplying Wilmar – those who opt to supply under 2016 terms without choice of marketer and growers who have already signed (or who would sign) a 2017 Wilmar CSA and nominated Wilmar as GEI marketer. The risk is that one of these classes of grower will be disadvantaged (or perceive to be disadvantaged) by processes and systems implementing parallel but different arrangements.

3. Recommendation

Wilmar recommends the Committee not support the **Sugar Industry (Application of Transitional Provision) Amendment Bill 2017** and advise the Parliament accordingly.