



**QUEENSLAND
PRODUCTIVITY
COMMISSION**

Summary - *Sugar Industry (Real Choice in Marketing) Amendment Bill 2015* Decision Regulatory Impact Statement (RIS) November 2015

Queensland sugar industry

The sugar industry is Queensland's second largest agricultural export industry after beef. It generates around \$2 billion per year in earnings and employs approximately 16,000 people. Around 80 per cent of raw sugar is exported.

There are almost 4,000 cane farming enterprises in Queensland supplying 21 mills, owned by seven different milling companies.

With few exceptions, growers and millers receive revenue based on the Cane Price Formula (developed in 1915) which divides the net sales of raw sugar between growers and millers on an approximate 2:1 ratio.

Around 99 per cent of the value of raw sugar exports is determined by the world sugar price. The remaining 1 per cent is derived from net premiums.

On average, net premiums are estimated to be worth around \$21 million per annum – with \$14 million distributed to growers and \$7 million to millers.

What are the issues?

When the sugar industry was deregulation in 2006, millers signed Raw Sugar Supply Agreements with Queensland Sugar Limited (QSL) to market and manage the majority of Queensland's raw sugar exports. This reflected a Memorandum of Understanding signed by the

Queensland Government and the sugar industry to support an orderly transition to contractually-based marketing arrangements for export raw sugar.

In 2014, Wilmar Sugar Australia, MSF Limited and Tully Sugar Limited announced that they would not be renewing their contracts with QSL beyond 30 June 2017. Instead, these millers will market their own export raw sugar.

These millers, and the growers supplying their mills, have been seeking to negotiate new Cane Supply Agreements (CSAs). Despite protracted negotiations, growers and millers have yet to reach agreement about the new arrangements. One of the main unresolved issues is about the marketing of raw sugar.

Intent of the Bill

On 19 May 2015 the Member for Dalrymple, Mr Shane Knuth MP, introduced the *Sugar Industry (Real Choice in Marketing) Amendment Bill 2015* to the Queensland Parliament.

The objects of the Bill are:

- To ensure that a grower has real choice in terms of nominating the marketing entity for on-supply sugar in which they have an economic interest.
- To facilitate the fair and final resolution of any commercial disputes that 'rise between a grower or bargaining representative and a mill owner, including by arbitration'.

Reason for the RIS

As the Bill is a private member's Bill, it was not subject to a RIS. The Queensland Parliament's Agriculture and Environment Committee noted this, and recommended that a RIS be completed prior to the Bill's second reading speech.

The purpose of a RIS is to identify the case for government intervention and provide decision makers with the information they need to make an assessment of the benefits and costs of regulatory intervention on the affected stakeholders including business, community, employment, environment and the economy.

The Bill's intent is to 'protect the interests of Queensland's canegrowers in the State's vitally important sugar industry as mill owners opt out of long-standing sugar marketing arrangements with QSL'.



Growers' views

Growers are seeking recognition of their 'economic interest' in raw sugar and want the ability to choose who markets their interest in raw sugar. They have proposed that this would increase competition for marketing services.

Growers consider Government intervention is required to address issues, including:

- concern about the potential for millers to abuse their market power when negotiating Cane Supply Agreements (CSA)
- concern about potentially reduced transparency about net premiums, and that this could reduce grower protection that is seen to be provided through QSL
- concern that, in the future miller marketing may reduce the returns to growers
- concern that continuing uncertainty could have adverse impacts on future investment in Queensland cane farms.

Millers' views

Millers are concerned that the Bill interferes with their property and has the effect of conferring an ownership right to the growers. Millers consider deregulation has achieved the objectives of increased investment and innovation in the Queensland sugar industry and that regulatory intervention is not warranted.

Wilmar, MSF and Tully Sugar Limited consider they can increase the returns from the sale of export raw sugar by organising the marketing of export raw sugar themselves, rather than through QSL – with the benefits shared with growers under the Cane Price Formula. The other millers have elected to remain with QSL, at least for the 2017 season.

Draft impact assessment

On 30 October 2015 we published a Consultation RIS, addressing the questions:

- is there evidence of market failure in the sugar industry arrangements that would indicate the need for government intervention?
- is there a net benefit from the Bill; or are there alternative options that would meet the overall industry objective?

It was our draft assessment that the existing legislative framework:

- supports a pricing negotiation framework which provides an appropriate balance of risk and reward between growers and millers
- allows for millers to provide transparency about pricing and premiums to growers and there is evidence that they are doing so
- supports investment in the sugar industry, which is important to the long-term economic sustainability of the sugar industry.

We received twelve submission in response to our Consultation RIS. The milling sector strongly supported our conclusion. Cane grower organisations considered our conclusions to be flawed and inconsistent the National Competition Policy. They considered coupling of sugar production and marketing activities to be anti-competitive and there is a market failure because millers are not providing growers with choice of marketer.

Final assessment – Decision RIS

We have considered the submissions and made some amendments to the analysis. However, we were not provided with additional evidence that suggested the need to alter the draft conclusions.

The Decision RIS concludes the right to exercise of choice is typically attached to ownership, and there is no evidence to suggest that millers do not have title to the raw sugar. We do not consider there is market failure because millers are not offering growers choice to determine the marketing arrangements for raw sugar. It also concludes enactment of the Bill (to provide grower choice of marketer):

- interferes with the property rights of millers (unless there are major changes to the nature of CSAs), which creates sovereign risk and could reduce future miller investment in Australia
- could reduce the overall returns to the sugar industry and add extra costs
- miller marketers seem to have sufficient transparency that if a disadvantage were to arise, it would be identifiable to the growers
- re-introduces pre-contract arbitration, which may lead to both financial (legal) and time loss costs for the industry
- could leave parties exposed to action by the ACCC, if the Australian Government does not accept that there is a net benefit from the authorisation of anti-competitive conduct included in the Bill.

Overall, the Decision RIS concludes there was no evidence to support a case of market failure in the Queensland sugar industry that would indicate the need for additional Government intervention; and the benefits of regulation, as proposed by the Bill, do not outweigh the costs. The Decision RIS concludes that retaining the existing regulatory framework – with no additional regulation – will provide the greatest net benefit to Queensland.