



Queensland

Sugar Industry (Real Choice in Marketing) Amendment Bill 2015

Includes amendments agreed during Consideration



Queensland

Sugar Industry (Real Choice in Marketing) Amendment Bill 2015

Contents

		Page
1	Short title	4
3	Act amended	4
4	Amendment of s 29 (Purpose of pt 2)	4
5	Amendment of s 30 (Definitions for pt 2)	4
6	Insertion of new ss 33A and 33B	4
	33A Arbitration of disputed terms of intended supply contract	4
	33B Terms of supply contract about sale of on-supply sugar	6
7	Amendment of s 34 (Parties must use dispute resolution process stated in supply contract)	8
8	Insertion of new s 238	8
	238 Sale of on-supply sugar	9
9	Insertion of new ch 10	9
	Chapter 10 Other transitional provisions	
	298 Transitional provision for Sugar Industry (Real Choice in Marketing) Amendment Act 2015.....	9
10	Amendment of schedule (Dictionary)	11

2015

A Bill

for

An Act to amend the *Sugar Industry Act 1999* for particular purposes

The Parliament of Queensland enacts

1 Short title

This Act may be cited as the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015*.

3 Act amended

This Act amends the *Sugar Industry Act 1999*.

4 Amendment of s 29 (Purpose of pt 2)

Section 29, from ‘written’—

omit, insert—

supply contracts.

5 Amendment of s 30 (Definitions for pt 2)

Section 30, definition *supply contract*—

omit.

6 Insertion of new ss 33A and 33B

After section 33—

insert—

33A Arbitration of disputed terms of intended supply contract

(1) This section applies if—

- (a) a grower is negotiating, or has attempted to negotiate, a supply contract (an *intended supply contract*) with a mill owner, whether the grower is acting on the grower’s own behalf or is in a group of growers that has appointed a bargaining representative to

-
- negotiate the contract on behalf of the group; and
- (b) the grower or bargaining representative gives the mill owner a notice requiring the mill owner to use all reasonable endeavours to negotiate a supply contract within a stated period (the *negotiation period*) of at least 10 business days; and
 - (c) at the end of the negotiation period, the grower and mill owner dispute a proposed term of the intended supply contract.
- (2) The grower and mill owner are taken to have made an agreement (the *referral agreement*)—
 - (a) to refer the dispute to arbitration; and
 - (b) for the dispute to be arbitrated under the *Commercial Arbitration Act 2013* subject to subsections (5) to (9).
 - (3) If the grower or mill owner refers a dispute about a proposed term of the intended supply contract to arbitration, the *Commercial Arbitration Act 2013* applies to the arbitration subject to subsections (4) to (9).
 - (4) Despite the *Commercial Arbitration Act 2013*, section 7, the referral agreement is taken to be an arbitration agreement under that Act.
 - (5) The arbitral tribunal appointed for the arbitration may decide the dispute about the proposed term only by deciding the term.
 - (6) Subsection (7) applies if a GEI sugar marketing term is a proposed term of the intended supply contract and the grower proposes to nominate an entity to be the GEI sugar marketing entity.
 - (7) A term of the intended supply contract must not have the effect of unreasonably treating the grower less favourably than the grower would be

likely to be treated if a mill-related entity were to be the GEI sugar marketing entity.

- (8) Without limiting subsection (7), a term of the intended supply contract would have the effect of unreasonably treating the grower less favourably for the subsection if the effect were that the grower would unreasonably pay more for a service provided by the mill owner under the intended supply contract than the grower would pay for the service if a mill-related entity were the GEI sugar marketing entity.
- (9) Each party must bear the party's own costs of the arbitration.
- (10) If the arbitral tribunal decides each dispute about the proposed terms of the intended supply contract, the grower and mill owner are taken to have made a supply contract including—
 - (a) any terms agreed between the parties; and
 - (b) the terms decided by the arbitral tribunal.
- (11) In this section—

arbitral tribunal see the *Commercial Arbitration Act 2013*, section 2.

mill-related entity means—

 - (a) the mill owner; or
 - (b) a related body corporate of the mill owner.

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

- (1) This section applies to a supply contract for cane between a grower and a mill owner unless the grower is a related body corporate of the mill owner.
- (2) The supply contract must include each of the following—

- (a) a term providing for the amount, or the basis for working out the amount, of the payment to the grower for the supply of the cane (the *cane payment*);
- (b) unless the grower and mill owner otherwise agree—a term (a *related sugar pricing term*) requiring the amount of the cane payment to be worked out in a stated way by linking that amount to the sale price of the on-supply sugar to which the supply contract relates;
- (c) if the supply contract includes a related sugar pricing term, both of the following, unless the grower and mill owner otherwise agree—
 - (i) a term requiring the mill owner to bear the sale price exposure for the sale of a proportion of the on-supply sugar that is worked out in a stated way;
 - (ii) a term (a *GEI sugar price exposure term*) requiring the grower to bear the sale price exposure for the sale of the remaining on-supply sugar (the *grower economic interest sugar*);
- (d) if the supply contract includes a GEI sugar price exposure term—
 - (i) a term (a *GEI sugar marketing term*) requiring the mill owner to have an agreement with a stated entity (the *GEI sugar marketing entity*) to sell the quantity of the on-supply sugar that is at least equal to the quantity of the grower economic interest sugar; and
 - (ii) unless the grower and mill owner otherwise agree, a term providing for an entity nominated by the grower to be the GEI sugar marketing entity;

[s 7]

- (e) if the supply contract provides for an entity nominated by the grower to be the GEI sugar marketing entity—a term requiring the mill owner to deliver for sale the quantity of the on-supply sugar that is at least equal to the quantity of the grower economic interest sugar, as directed by the entity, within a stated reasonable period.
- (3) However, subsection (2)(d) does not apply if the supply contract states that the mill owner will sell the on-supply sugar.
- (4) Without limiting subsection (2)(e), the stated period must be reasonable having regard to the likely period in which the mill owner could deliver the on-supply sugar for sale to a related body corporate of the mill owner.

Note—

See section 298.

7 Amendment of s 34 (Parties must use dispute resolution process stated in supply contract)

- (1) Section 34(1), after ‘resolution’—
insert—
including by arbitration
- (2) Section 34—
insert—
 - (3) Subject to subsection (4), the *Commercial Arbitration Act 2013* applies to an arbitration mentioned in subsection (1).
 - (4) Each party must bear the party’s own costs of the arbitration.

8 Insertion of new s 238

Chapter 6—

insert—

238 Sale of on-supply sugar

The following things are specifically authorised for the competition legislation—

- (a) a grower and mill owner making a supply contract including a GEI sugar marketing term;
- (b) a mill owner and GEI sugar marketing entity making an agreement to sell on-supply sugar in compliance with a GEI sugar marketing term;
- (c) a GEI sugar marketing entity selling on-supply sugar under an agreement mentioned in paragraph (b);
- (d) a grower and mill owner being taken to have made a supply contract under section 33A(10).

9 Insertion of new ch 10

After section 297—

insert—

Chapter 10 Other transitional provisions

298 Transitional provision for Sugar Industry (Real Choice in Marketing) Amendment Act 2015

- (1) This section applies to a contract (an *existing cane supply contract*) that, immediately before the commencement, was a supply contract in force under chapter 2.
- (2) Section 33B does not apply to the existing cane supply contract.

[s 9]

- (3) Subsection (2) stops applying if both of the following happen—
 - (a) the current contract period for the existing cane supply contract ends or the contract is terminated;
 - (b) the current agreement period for an existing related raw sugar supply agreement, if any, for the existing cane supply contract ends or the agreement is terminated.
- (4) Despite subsection (3), subsection (2) stops applying on 1 July 2017.
- (5) Section 34, as in force immediately before the commencement, applies to—
 - (a) the existing cane supply contract; and
 - (b) any existing arbitration.
- (6) Subsection (5)(a) stops applying—
 - (a) when the current period for the existing cane supply contract ends; or
 - (b) if the existing cane supply contract is terminated.
- (7) Despite subsections (2) and (5), the existing cane supply contract is taken to be a supply contract.
- (8) In this section—

current agreement period, for an existing related raw sugar supply agreement, means the period stated in the agreement for which it is in force but does not include a period to which an extension or renewal of the agreement relates.

current contract period, for the existing cane supply contract—
 - (a) means the period stated in the contract for which it is in force; but
 - (b) if the contract is extended or renewed on or after the commencement, does not include a

period to which the extension or renewal relates.

existing arbitration means an arbitration proceeding authorised by the existing cane supply contract that has started and not been completed before the commencement.

existing related raw sugar supply agreement, for the existing cane supply contract, means an agreement—

- (a) for the sale of raw sugar that has been manufactured, or is to be manufactured, from the cane supplied, or to be supplied, under the existing cane supply contract; and
- (b) that was in force immediately before the commencement.

10 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *grower* and *supply contract*—

omit.

- (2) Schedule—

insert—

GEI sugar marketing entity see section 33B(2)(d)(i).

GEI sugar marketing term see section 33B(2)(d)(i).

grower—

- (a) generally, means a person who supplies cane to a mill; and
- (b) may, if the context permits, include a person who proposes to supply cane to a mill.

on-supply sugar, to which a supply contract relates, means the raw sugar manufactured, or to be manufactured, from the cane supplied, or to be supplied, under the supply contract.

[s 10]

related body corporate see the Corporations Act, section 50.

sell, on-supply sugar, includes set a sale price for, market, export or otherwise arrange to sell, the sugar.

supply contract—

- (a) means a written contract, complying with chapter 2, part 2, division 1, made between a grower and a mill owner for the supply of cane by the grower to the mill; and
- (b) includes a supply contract taken to have been made under section 33A(10).

© State of Queensland 2015
Authorised by the Parliamentary Counsel