



Wednesday, 24th August, 2016

Regulation of Australian Agriculture
Productivity Commission
Locked Bag 2, Collins Street
MELBOURNE VIC 8003

By email: agriculture@pc.gov.au

Dear Review Commissioner

Response to the draft report on the Regulation of Australian Agriculture

Thank you for the opportunity to participate in the public hearing to respond to the Productivity Commission's draft report "Regulation of Australian Agriculture".

Canegrowers Burdekin Ltd has considered the draft report and supports many of the recommendations made. However, we have major concerns relating to the Commission's draft recommendation 11.2 which puts forward that *the Queensland Government should repeal the amendments made by the Sugar Industry (Real Choice in Marketing) Amendment Act 2015* and we strongly endorse that this be removed from the report.

CBL is a small 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 30% of the Burdekin cane farmers which equates to between 2.5 million to 3 million tonnes of cane.

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 equate to approx. 70% of the total cane crushed in Wilmar Sugar Australia (WS Australia) owned mills.

Burdekin cane farmers have no choice but to contract with Wilmar to have their cane crushed. The farmers grow the crop, harvest the crop and transport the crop to a designated delivery point. As soon as the cane is delivered the title to the cane transfers to Wilmar. Wilmar's contractual role is then to manufacture the cane into raw sugar and transport the raw sugar to the Townsville Port. As soon as the raw sugar is delivered title of the raw sugar transfers to the marketing company, currently QSL. A Free in Store (FIS) process. The fact is that Wilmar currently holds title to the GEI raw sugar for around 24 hours.

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 raw sugar. Growers wear the greatest risk and therefore it is only fair and reasonable that Growers have the right to say who markets the raw sugar that impacts the price they are paid for their GEI.

On 3rd April 2014, Wilmar attempted to take control of the marketing of all of the raw sugar without growers' agreement. Wilmar put forward their NO CHOICE – NO QSL marketing proposal and gave notice to exit QSL and subsequently gave notice to cancel the long standing CSA. CBL growers' voted unanimously that they condemn Wilmar's NO CHOICE – NO QSL proposal as it takes away their rights to utilise QSL, the successful Australian, not for profit, non-taxable, 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 action lead to over 18 months of dispute and impasse which was only resolved in December 2015 by the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015*.

Since January, 2016 CBL has been endeavouring to negotiate a CSA with Wilmar for 2017 onwards. This negotiation has been extremely difficult as although Wilmar have stated that they will comply with the new requirements to offer growers choice in marketing, the fact is that right now there is no choice as Wilmar's negotiation position has been such that it is unacceptable to QSL and we understand no other market has indicated any interest. The major issue relates to Wilmar's attempts to completely change the marketing process from FIS to Free on Board (FOB) this small change will mean that Wilmar will go from holding title to the GEI raw sugar from a maximum of 24 hours to an average of 3,500 hours (145 days).

If the Queensland Government repealed the amendments made by the *Sugar Industry (Real Choice in marketing) Amendment Act 2015*:

1. CBL's negotiation position with Wilmar for a CSA for 2017 onwards would be dramatically weakened due to the loss of the Arbitration clause;
2. The potential removal of marketing choice will most likely mean:
 - a. that cane farmers will be stripped of their rights to utilise Queensland Sugar Ltd, an Australian, not for profit, non-taxable, industry owned, niche 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; and
 - b. that cane farmers may receive increased risk and a lower payment for their cane as:
 - i. the GEI raw sugar would most likely be marketed by Wilmar's chosen marketer who is a non-Australian, for profit, privately owned, taxable, non-niche marketing company which could result in farmers facing increased risk due to reduced security of payment; and
 - ii. although Wilmar have been very vocal that their marketing option is superior to QSL, the results have indicated that QSL is outperforming the Wilmar option as can be seen in a comparison of the 2015 managed pools for Australian raw sugar where the QSL Actively Managed Pool outperformed the Wilmar Managed Pool by \$30 per tonne and the early indications for 2016 show that Wilmar is also behind QSL by \$70 per tonne of raw sugar. Wilmar International's just released 2nd Quarter results state that Sugar had made a loss of US\$78m which was double the loss from the same time the previous year of \$US\$37m. Apparently rallies in sugar futures caught out Wilmar's marketing team.
3. Growers confidence in the industry will be further damaged and their willingness to employ and to invest in the cane industry will be constrained. Grower's current investment is estimated at \$11.5B.

**Specific response to matters raised in the draft report under the heading
“Reregulation of Sugar Marketing in Queensland” pages 418 to 426**

1. Reregulation: We strongly object to the use of the word reregulation and are firmly of the view that amendments to the Sugar Industry Act do not reregulate the industry. The amendments to the Queensland Sugar Industry Act 2015 include provisions that endeavour to stop growers being stripped of their rights to utilise Queensland Sugar Ltd, an Australian, not for profit, non-taxable, industry owned, niche 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;
2. Transparency: We have no issues with the comprehensiveness and transparency being offered by Wilmar. The issue has always been that Wilmar has endeavoured to strip growers of their rights to utilise the marketer of their choice. Wilmar’s actions have resulted in growers’ loss of trust and the relationship between growers and the miller has never been at a lower point;
3. Cost impacts: Wilmar make regular comments in regard to the resources and costs they are incurring to draft contracts for 2017. Little thought has been given to the resources and costs incurred by growers and their representatives since 2013 when Wilmar initiated this nightmare. CBL is a very small company with very limited resources. The time spent on the marketing issue over since 2013 has been a huge percentage of our operational costs. In addition, growers have been unable to take advantage of very attractive forward prices for 2017 as they are unable to forward price due to Wilmar’s actions.
4. Market Failure: We are surprised and disappointed that anybody could conclude that there has not been a case of Market Failure.
 - a. Australia has had a market process in place that has benefited millers and growers for over 100 years. We understand this marketing process is the envy of other countries throughout the world. Wilmar International, fresh to Australia, came to growers and said they want to completely smash this process. Growers clearly **SHOUT OUT NO** and our region and others vote unanimously to condemn Wilmar’s proposal. Even though it is growers who have 66% of the risk, Wilmar International ignores growers’ wishes and continues with their actions. A survey of growers is then undertaken which indicates:
 - 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
 - b. Cane Price Formula: the price our growers receive for their cane is an equation using the Cane Price Formula. The price received for raw sugar is the key determinant of the Cane Price Formula and is a critical component that effects grower’s payment for their cane. Without QSL, a foreign trading company will have full control over the price received for raw sugar and subsequently full control over what the growers will be paid for their cane. We also point out that within the Cane Payment Formula the 4 units that are taken off are for the payment to the mill for crushing the cane ...our view is that the mill is paid to crush the cane with this

compensation, the cane price formula is agreed by millers and growers, through the formula millers are paid by growers to manufacture sugar

- c. Collective Bargaining: The ability for growers to bargain collectively has not placed growers on a level playing field when it comes to negotiating. In fact, the current Qld SIA Guidelines prevents the four CANEGROWERS Collectives in the Wilmar supply area from bargaining together. As proof of this lack of bargaining power we can provide a copy of the very first post deregulation Canegrowers Burdekin Cane Supply Agreement (2006) together with a copy of the 2016 version. The Commission would see that in all of this time our grower negotiators have been unsuccessful in achieving any major improvements for growers. Wilmar are currently endeavouring to remove significant sections of the CSA to avoid collective bargaining e.g. Molasses Gain Sharing.
 - d. Investment in the Industry: QSL has a track record of investing in the sugar industry, both from the “Industry Good Investment Pool” and their niche marketing services plus in their management and investment in the bulk storage port facilities. There are regular comments of the investment made by millers this investment has not been for the industry good it has been for the millers good.
 - e. Millers v Marketers: We also put forward our view that millers are millers; now and in 2017... millers are not the marketing entity. The new marketing company is not the same as Wilmar Sugar Australia the milling company...it is a different legal entity
 - f. Unconscionable Conduct: there is mention that growers could take legal action if there was “unconscionable behaviour” or “an abuse of market power”. Canegrowers Burdekin is currently acting as the agent for **315 growers in a \$10m legal case against Wilmar Sugar Australia relating to the 2010 shortfall**. This case has been running for over 4 years and went to the Supreme Court on 30th November 2015, we are currently awaiting the Judge’s decision. Unconscionable conduct is a part of this case. **The HUGE EXTREMELY HIGH costs associated with this action and the time and resources it has consumed make it very very clear that only a very very large group of growers could ever contemplate taking legal action of this type.** Our experience, as our growers’ agent in this legal dispute, 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
 - g. There may not currently be market failure but there certainly will be if a Cane Supply Contract for 2017 cannot be agreed upon.
5. On 13th October, 2005, prior to deregulation, the Queensland Sugar Industry and the Queensland Government signed a Memorandum of Understanding (MOU) ([Click here](#)). The MOU included the following statements:
 - a. the working group recommend a commercial, non-legislatively based marketing structure for the sugar industry be developed and that it be based on the recommendations of the working group report. **The key principles include that QSL would continue to be the industry’s preferred bulk raw sugar export marketing company**

- b. The Australian Sugar Milling Council stated: **All members of the Australian Sugar Milling Council remain committed to working with QSL to assist QSL to remain the preferred marketer by suppliers and customers of Queensland produced bulk raw sugar for export.**

6. Investment and Innovation: There are comments that the amendments to the *Queensland Sugar Marketing Act 2015* will constrain millers' willingness to invest in the industry. We point out that the investment in innovation in areas such as co-generation and biofuel has been to the sole financial benefit of the milling companies. To our knowledge growers have received no benefit from these innovations and our lack of bargaining power has stopped us from obtaining a flow through of this benefit to growers. The forward pricing innovation was only implemented by CSR, the then owner of Sucrogen, after significant pushing from growers. Growers were charged a fee for each and every transaction to cover the cost of developing this system. This fee is still being charged today, even though the system must be well and truly paid for by now.

Suggestions about mill improvements is questionable in our region as detailed in the below tables.

Mill Crush Rate (tonnes through the rollers per hour)					
	Invicta Mill	Inkerman Mill	Pioneer Mill	Kalamia Mill	Regional Average
Best Performance between 2002 and 2012 this information has been supplied by Wilmar Sugar Australia	1,034	566	550	509	2,659
Provisional results for the 2015 season this information has been supplied by Wilmar Sugar Australia	1, 014	558	523	480	2,575

Mill Reliability (Availability)				
	Invicta Mill	Inkerman Mill	Pioneer Mill	Kalamia Mill
Best Performance between 2002 and 2012 this information has been supplied by Wilmar Sugar Australia	87%	92%	92%	92%
Provisional results for the 2015 season this information has been supplied by Wilmar Sugar Australia	88.6%	87.5%	92%	92.5%

7. Marketing Options & Higher Premiums: Initially Wilmar stated that the Singaporean based "for profit" privately owned trading company they are going to sign a 15-year contract with, could obtain a better results than QSL.
- Although that has not been the case to date with Wilmar's sugar trading activities in a comparison of the 2015 managed pools for Australian raw sugar where the QSL Actively Managed Pool outperformed the Wilmar Managed Pool by \$30 per tonne and the early indications for 2016 show that Wilmar is also behind QSL by \$70 per tonne of raw sugar. Maybe in the future they will do better. But the issue is once our growers are stripped of their rights to utilise QSL our growers will never know what they may have obtained from QSL.
 - The other issue is that once Wilmar destroy QSL's current operations than QSL will struggle to

obtain the results it has in the past. Wilmar's actions over the past 2 years has already added over \$1m to QSL's interest expense and has already damaged QSL's credit rating.

8. Property Rights: In regard to statements about interfering with the property rights of millers we wonder about the interference with the property rights of QSL and point out the following facts:
 - i. Wilmar International made a decision to buy Sucrogen (who then owned the mills) knowing full well that Sucrogen did not control the marketing of the raw sugar. (Refer to the MOU ([Click here](#))). Nothing has been taken away from Wilmar.
 - ii. 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)
 - iii. 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).
 - iv. Wilmar gave notice to cancel the RSSA ...thus ceasing the transfer of title to QSL effective from the end of the 2016 crush
 - v. 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.

9. Returns and Costs: In regard to statements relating to *additional legislation potentially reducing the overall returns to the sugar industry and adding extra costs* ...exactly the same can be said for the changes Wilmar is forcing on growers.
 - i. Wheat Board comparison: We found very interesting the case study presentation ([click here](#)) by Ms Sarah Scales former General Manager of Australian Wheat Board International Ltd and a Director of QSL. We note the large similarities between the sugar and wheat industries. Ms Scales provides an in-depth overview of the losses suffered by wheat farmers and the Australian economy. An overview of the presentation was covered in 13 June 2014 edition of *canenews* ([click here](#)). Ms Scales summaries as follows: **“the end result was wheat farmers now face a higher risk profile with higher execution costs and there is less global competition”**
 - ii. Transparency: in regard to the comments that transparency will allow growers to identify if they are disadvantagedwe ask **“Then what”**? If a grower did find out that they had been disadvantaged what would they possibility do? Under the proposal Wilmar is endeavouring to force on growers there is no competition so the growers cannot go elsewhere and the VERY VERY HIGH costs of litigation make it near impossible to undertake legal action
 - iii. Pre-Contract Arbitration: the concern that pre-contractual arbitration could result in both financial (legal) and time loss costs for the industry may have missed that right now (without pre-contractual arbitration) due to Wilmar's actions of trying to force a complete change on the industry ...a change that growers have SHOUTED OUT that they do not want the industry is suffering both financial and time loss costs. This marketing impasse has absorbed huge amounts of resources from the industry at a time when we should have been focusing on critical issues such as a resolution to the

unaffordable electricity costs. In addition, Wilmar's action has affected grower's confidence to forward price and this has the potential of impacting growers' profitability for years to come.

In closing, we restate that we have major concerns relating to the Commission's draft recommendation 11.2 which puts forward that *the Queensland Government should repeal the amendments made by the Sugar Industry (Real Choice in Marketing) Amendment Act 2015* and we strongly endorse that this be removed from the report.

A strong cane industry= a strong Burdekin economy and job security.

We appreciate the opportunity to make a submission on this extremely important issue and welcome the chance to discuss this submission further.

Yours sincerely

Philip Marano
Chairman

Debra Burden
General Manager