



Sugar Industry (Arbitration for Mill Owners and Sugar Marketing Entities) Amendment Bill 2017



Queensland

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2017

A Bill

for

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

The Parliament of Queensland enacts—

1

Clause 1 Short title

2

This Act may be cited as the *Sugar Industry (Arbitration for
Mill Owners and Sugar Marketing Entities) Amendment Act
2017*.

3

4

5

Clause 2 Act amended

6

This Act amends the *Sugar Industry Act 1999*.

7

**Clause 3 Amendment of ch 2, hdg (Supply contracts and cane
access rights)**

8

9

Chapter 2, heading, after ‘contracts’—

10

insert—

11

, on-supply agreements,

12

**Clause 4 Omission of ch 2, pt 2, div 1 hdg (Cane supply is
governed by supply contracts)**

13

14

Chapter 2, part 2, division 1, heading—

15

omit.

16

**Clause 5 Amendment of s 33A (Arbitration of disputed terms of
intended supply contract)**

17

18

(1) Section 33A(2)(b), ‘(5) to (9)’—

19

omit, insert—

20

(4) to (9) and section 37

21

(2) Section 33A(3), after ‘(9)’—

22

insert—

23

and section 37

24

- (3) Section 33A(11), definition *arbitral tribunal*— 1
omit. 2

Clause 6 Amendment of s 33B (Terms of supply contract about sale of on-supply sugar) 3
4

- (1) Section 33B, heading, from ‘Terms’ to ‘sugar’— 5
omit, insert— 6

Particular terms of supply contract 7

- (2) Section 33B(2)(c)(i)— 8
omit, insert— 9

- (i) a term stating the way in which the mill 10
economic interest sugar is to be worked out 11
and requiring the mill owner to bear the sale 12
price exposure for the sale of the mill 13
economic interest sugar; 14

- (3) Section 33B(2)(c)(ii), from ‘remaining’ to ‘*sugar*’— 15
omit, insert— 16

grower economic interest sugar 17

- (4) Section 33B(2)(d)(i), from ‘agreement’ to ‘interest sugar’— 18
omit, insert— 19

on-supply agreement with a stated entity (the ***GEI*** 20
sugar marketing entity) for the sale of the grower 21
economic interest sugar 22

- (5) Section 33B(2)— 23
insert— 24

- (f) a term providing for a process for dispute 25
resolution including arbitration and 26
requiring the grower and mill owner to 27
attempt to resolve any dispute about a term 28
of the supply contract by using the process. 29

Clause 7	Replacement of s 34 (Parties must use dispute resolution process stated in supply contract)	1 2
	Section 34—	3
	<i>omit, insert—</i>	4
	34 Contracting out prohibited	5
	A supply contract is void to the extent to which it—	6 7
	(a) is contrary to this Act; or	8
	(b) purports to annul, exclude, restrict or otherwise change the effect of a provision of this Act.	9 10 11
Clause 8	Omission of ch 2, pt 2, div 2 hdg and s 36	12
	Chapter 2, part 2, division 2, heading and section 36—	13
	<i>omit.</i>	14
Clause 9	Relocation and renumbering of s 37 (No final offer arbitration)	15 16
	Section 37—	17
	<i>relocate</i> to chapter 2, part 3A as inserted by this Act, and	18
	<i>renumber</i> as section 42.	19
Clause 10	Insertion of new ch 2, pts 3 and 3A	20
	After section 35—	21
	<i>insert—</i>	22
	Part 3 On-supply agreements	23
	36 Arbitration of disputed terms of intended on-supply agreement	24 25
	(1) This section applies if—	26

-
- (a) either— 1
- (i) a supply contract between a grower and 2
a mill owner includes a term providing 3
for an entity (the **relevant marketing** 4
entity) nominated by the grower to be 5
the GEI sugar marketing entity; or 6
- (ii) the following apply— 7
- (A) a GEI sugar marketing term is a 8
proposed term of an intended 9
supply contract between a grower 10
and a mill owner; 11
- (B) the grower has nominated an 12
entity (also the **relevant** 13
marketing entity) to be the GEI 14
sugar marketing entity for the 15
intended supply contract; 16
- (C) the entity has agreed to be the GEI 17
sugar marketing entity; and 18
- (b) the relevant marketing entity is not the mill 19
owner or a related body corporate of the mill 20
owner; and 21
- (c) the relevant marketing entity or the mill 22
owner is negotiating, or has attempted to 23
negotiate, an on-supply agreement (an 24
intended on-supply agreement) with the 25
other party; and 26
- (d) the relevant marketing entity or mill owner 27
gives the other party a notice requiring the 28
other party to use all reasonable endeavours 29
to negotiate an on-supply agreement within 30
a stated period (the **negotiation period**) of at 31
least 10 business days; and 32
- (e) at the end of the negotiation period, the 33
relevant marketing entity and mill owner 34
dispute a proposed term of the intended 35
on-supply agreement. 36

- (2) The relevant marketing entity 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 (4) to (8) and section 37.
- (3) If the relevant marketing entity or mill owner refers a dispute about a proposed term of the intended on-supply agreement to arbitration, the *Commercial Arbitration Act 2013* applies to the arbitration subject to subsections (4) to (8) and section 37.
- (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) A term of the intended on-supply agreement must not have the effect of unreasonably treating the relevant marketing entity less favourably than a related body corporate of the mill owner would be likely to be treated if the related body corporate were to be the GEI sugar marketing entity.
- (7) Without limiting subsection (6), a term of the intended on-supply agreement would have the effect of unreasonably treating the relevant marketing entity less favourably for the subsection if the effect were that the entity would unreasonably incur a higher cost to supply a service under the agreement than a related body corporate of the mill owner would incur if the related body corporate were the GEI sugar marketing entity.
- (8) Each party must bear the party's own costs of the arbitration.

- (9) If the arbitral tribunal decides each dispute about the proposed terms of the intended on-supply agreement, the relevant marketing entity and the mill owner are taken to have made an on-supply agreement including—
 - (a) any terms agreed between the parties; and
 - (b) the terms decided by the arbitral tribunal.

37 Concurrent arbitration of supply contract and on-supply agreement disputes

- (1) This section applies if—
 - (a) it is a proposed term of an intended supply contract between a grower and a mill owner that the mill owner is required to have an on-supply agreement (also an *intended on-supply agreement*) with a GEI sugar marketing entity to be nominated by the grower; and
 - (b) the grower or mill owner has referred a dispute about the proposed GEI sugar marketing term (the *supply contract dispute*) to arbitration under section 33A; and
 - (c) the arbitral tribunal appointed for the arbitration (the *supply contract arbitrator*) has started but not finished dealing with the supply contract dispute; and
 - (d) under section 36(1)(a)(ii), a relevant marketing entity has been nominated by the grower and has agreed to be the GEI sugar marketing entity for the intended on-supply agreement; and
 - (e) the relevant marketing entity or the mill owner has complied with section 36(1)(c) and (d) and the parties dispute a proposed

-
- term of the intended on-supply agreement (the *on-supply agreement dispute*); and
- (f) the mill owner or relevant marketing entity refers the on-supply agreement dispute to the supply contract arbitrator to be arbitrated concurrently with the supply contract dispute.
- (2) Section 36(2) to (9) applies in relation to the arbitration of the on-supply agreement dispute, subject to subsection (3).
- (3) The supply contract arbitrator must conduct the arbitration for the on-supply agreement dispute concurrently with the arbitration for the supply contract dispute in the way it considers appropriate.
- (4) Without limiting subsection (3), the supply contract arbitrator may—
- (a) deal with a matter relating to the on-supply agreement dispute at the same time as a matter relating to the supply contract dispute or at another time as it may order; or
- (b) defer dealing with a matter relating to the on-supply agreement dispute or supply contract dispute until a matter relating to the other dispute is dealt with.
- (5) In this section—
- matter* includes an aspect of a matter.

38 Particular terms of on-supply agreement

- (1) This section applies to an on-supply agreement between a GEI sugar marketing entity and a mill owner for the sale of grower economic interest sugar unless the GEI sugar marketing entity is a related body corporate of the mill owner.
- (2) An eligible grower may be a party to the

-
- on-supply agreement if the GEI sugar marketing
entity and mill owner give their approval.
- (3) If an approval is given under subsection (2), it
cannot—
- (a) be subject to conditions; or
- (b) be varied or revoked.
- (4) The on-supply agreement must be made for a
period including, at least, the crushing seasons to
which the original supply contract for the
agreement relates.
- (5) The on-supply agreement must include each of
the following—
- (a) a term requiring the mill owner to deliver for
sale the grower economic interest sugar as
directed by the GEI sugar marketing entity
within a stated reasonable period;
- (b) a term providing for the quality of the
grower economic interest sugar required to
be delivered for sale under the agreement;
- (c) a term otherwise providing for the way in
which the grower economic interest sugar is
to be delivered to or for, and stored by or for,
the GEI sugar marketing entity;
- (d) a term stating the way in which the sale
price of the grower economic interest sugar
is to be worked out;
- (e) a term providing for a process for dispute
resolution including arbitration and
requiring the parties to attempt to resolve
any dispute about a term of the agreement
by using the process.
- (6) Without limiting subsection (5)(a), the stated
period must be reasonable having regard to the
likely period in which the mill owner could
deliver the grower economic interest sugar for
sale to a related body corporate of the mill owner.

- (7) In this section— 1
- eligible grower* means a grower who, under the 2
original supply contract for the on-supply 3
agreement, is required to bear the sale price 4
exposure for the grower economic interest sugar. 5
- original supply contract*, for the on-supply 6
agreement, means the supply contract including 7
the GEI sugar marketing term requiring the mill 8
owner to have the on-supply agreement with the 9
GEI sugar marketing entity for the sale of the 10
grower economic interest sugar. 11

39 Contracting out prohibited 12

An on-supply agreement is void to the extent to 13
which it— 14

- (a) is contrary to this Act; or 15
- (b) purports to annul, exclude, restrict or 16
otherwise change the effect of a provision of 17
this Act. 18

Part 3A Dispute resolution 19

under contract 20

40 Application of pt 3A 21

This part applies if a dispute arises between any or 22
all of the parties to a supply contract or an 23
on-supply agreement about its terms. 24

41 Using dispute resolution processes under 25 **contract or agreement** 26

- (1) The parties to the contract or agreement must 27
attempt to resolve the dispute by using the 28
processes for dispute resolution provided for in 29
the contract or agreement. 30

	(2) If, under subsection (1), the parties use arbitration to attempt to resolve a dispute, the <i>Commercial Arbitration Act 2013</i> applies to the arbitration subject to subsection (3) and section 42.	1 2 3 4
	(3) Each party must bear the party's own costs of the arbitration.	5 6
Clause 11	Amendment of s 237 (Collective contracts)	7
	(1) Section 237(1)—	8
	<i>insert—</i>	9
	(c) the terms on which on-supply sugar to which the collective contract relates is to be sold under an on-supply agreement between the mill owner and a GEI sugar marketing entity.	10 11 12 13 14
	(2) Section 237(4), definition <i>settlement</i> —	15
	<i>insert—</i>	16
	(d) a GEI sugar marketing entity.	17
	(3) Section 237(4)—	18
	<i>renumber</i> as section 237(5).	19
	(4) Section 237—	20
	<i>insert—</i>	21
	(4) For subsection (3)(a) or (b), the making or variation of the collective contract includes the making or variation of a GEI sugar marketing term of the contract or a term mentioned in section 33B(2)(e).	22 23 24 25 26
Clause 12	Amendment of s 238 (Sale of on-supply sugar)	27
	(1) Section 238, heading, from 'Sale' to 'sugar'—	28
	<i>omit, insert—</i>	29
	Supply and sale of on-supply sugar and related	30

things	1
(2) Section 238(a), from ‘a grower’ to ‘making’—	2
<i>omit, insert—</i>	3
the making or variation of	4
(3) Section 238(b)—	5
<i>omit, insert—</i>	6
(b) the making or variation of an on-supply	7
agreement for the sale of grower economic	8
interest sugar in compliance with a GEI	9
sugar marketing term;	10
(ba) a grower negotiating with a mill owner or	11
GEI sugar marketing entity the terms, or a	12
variation of the terms, of an on-supply	13
agreement to the extent the terms of the	14
agreement relate to the terms of a supply	15
contract between the grower and mill owner;	16
(4) Section 238(c), ‘agreement mentioned in paragraph (b)’—	17
<i>omit, insert—</i>	18
on-supply agreement	19
(5) Section 238(ba) to (d)—	20
<i>renumber</i> as section 238(c) to (e).	21
(6) Section 238—	22
<i>insert—</i>	23
(f) a mill owner and a GEI sugar marketing	24
entity being taken to have made an	25
on-supply agreement under section 36(9);	26
(g) any 2 or all of a grower, mill owner and GEI	27
sugar marketing entity making, varying or	28
giving effect to a contract relating to any of	29
the following—	30
(i) a supply contract made, or an intended	31
supply contract to be made, between	32
the grower and mill owner;	33

	(ii) an on-supply agreement made, or an intended on-supply agreement to be made, between the mill owner and GEI sugar marketing entity.	1 2 3 4
(7)	Section 238— <i>insert—</i>	5 6
	(2) Subsection (1)(c) applies whether or not the grower is, or becomes, a party to the on-supply agreement.	7 8 9
	(3) In this section, a reference to a grower may be taken to include—	10 11
	(a) a reference to a group of growers; and	12
	(b) a reference to a group of growers for whom a bargaining representative is acting.	13 14
Clause 13	Insertion of new ch 10, pt 1 hdg	15
	After chapter 10 heading—	16
	<i>insert—</i>	17
	Part 1 Sugar Industry (Real Choice in Marketing) Amendment Act 2015	18 19 20
Clause 14	Insertion of new ch 10, pt 2	21
	After section 298—	22
	<i>insert—</i>	23
	Part 2 Transitional provisions for Sugar Industry (Arbitration for Mill Owners and Sugar Marketing Entities) Amendment Act 2017	24 25 26 27 28 29

299 Existing cane supply contract

- (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(2)(f) does not apply to the existing cane supply contract.
- (3) Pre-amended section 34(1) applies to the existing cane supply contract.
- (4) Subsections (2) and (3) stop applying—
 - (a) when the current contract period for the existing cane supply contract ends; or
 - (b) if the existing cane supply contract is terminated.
- (5) Despite subsections (2) and (3), the existing cane supply contract is taken to be a supply contract.
- (6) To remove any doubt, it is declared that section 34(a) does not apply to the existing cane supply contract only because subsections (2) and (3) apply to the contract.
- (7) In this section—

current contract period, for the existing cane supply contract—

 - (a) means the period stated in the contract as the period 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.

pre-amended section 34 means section 34 as in force immediately before the commencement.

300 Existing on-supply agreement

- (1) This section applies to an agreement (an *existing*

on-supply 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 a relevant cane supply contract; and
 - (b) that was in force immediately before the commencement.
- (2) Section 38(4) to (6) and chapter 2, part 3A do not apply in relation to the existing on-supply agreement.
- (3) Subsection (2) stops applying—
- (a) when the current agreement period for the existing on-supply agreement ends; or
 - (b) if the existing on-supply agreement is terminated.
- (4) To remove any doubt, it is declared that section 39(a) does not apply to the existing on-supply agreement only because subsection (2) applies to the agreement.
- (5) In this section—
- current agreement period*, for the existing on-supply agreement—
- (a) means the period stated in the agreement as the period for which it is in force; but
 - (b) if the agreement is extended or renewed on or after the commencement, does not include a period to which the extension or renewal relates.
- relevant cane supply contract* means a contract that, before the commencement, was a supply contract in force under chapter 2.

Clause 15 Amendment of schedule (Dictionary)

- (1) Schedule, definition *on-supply sugar*—

<i>omit.</i>	1
(2) Schedule—	2
<i>insert—</i>	3
<i>arbitral tribunal</i> see the <i>Commercial Arbitration Act 2013</i> , section 2.	4 5
<i>grower economic interest sugar—</i>	6
(a) to which a supply contract relates—means the proportion of the on-supply sugar, other than the mill economic interest sugar to which the contract relates, for which the grower is required to bear the sale price exposure under the contract; or	7 8 9 10 11 12
(b) to which an intended supply contract relates—means the proportion of the on-supply sugar, other than the mill economic interest sugar to which the intended contract relates, for which it is proposed the grower will be required to bear the sale price exposure under the supply contract as made.	13 14 15 16 17 18 19 20
<i>intended on-supply agreement</i> see sections 36(1)(c) and 37(1)(a).	21 22
<i>intended supply contract</i> see section 33A(1)(a).	23
<i>mill economic interest sugar—</i>	24
(a) to which a supply contract relates—means the proportion of the on-supply sugar for which the mill owner is required to bear the sale price exposure under the contract; or	25 26 27 28
(b) to which an intended supply contract relates—means the proportion of the on-supply sugar for which it is proposed the mill owner will be required to bear the sale price exposure under the supply contract as made.	29 30 31 32 33 34
<i>on-supply agreement—</i>	35

-
- (a) for the sale of grower economic interest sugar, means a written agreement made between a GEI sugar marketing entity and a mill owner to sell the quantity of the on-supply sugar to which a supply contract relates that is at least equal to the quantity of the grower economic interest sugar; and
- (b) includes an on-supply agreement taken to have been made under section 36(9).
- on-supply sugar***—
- (a) 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; or
- (b) to which an intended supply contract relates, means the raw sugar proposed to be manufactured from the cane proposed to be supplied under the supply contract as made.
- (3) Schedule, definitions *bargaining representative, group of growers* and *interested third party*, ‘, for chapter 2, part 2,’—
omit.
- (4) Schedule, definition *supply contract*, paragraph (a), ‘division 1,’—
omit.