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Australian Government
Productivity Commission
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Inquiry Secretary

Attached please find a submission in regards to the Productivity Commission's ***2016 Draft Report Regulation of Australian Agriculture.***

This submission has been forwarded on behalf of the sugarcane growers who are members of CANEGROWERS Innisfail, representing 80% of the sugarcane growers in the Innisfail area supplying South Johnstone Sugar Mill.

Yours faithfully

Wayne A. Thomas
COMPANY SECRETARY

Productivity Commission Draft Report Regulation of Australian Agriculture

This submission is made by CANEGROWERS Innisfail, representing 80% of the growers from the Innisfail area supplying South Johnstone Mill, which is owned and operated by FNQ Sugar Services as part of the MSF Sugar Group, owned by the Mitr Pohl Group.

CANEGROWERS Innisfail, along with representatives from CANEGROWERS Cairns Region, has recently completed negotiations for a replacement Cane Supply Contract (CSA) for a 3-year period commencing in 2017. This replacement CSA is a Collective Agreement for 90% of the growers supplying South Johnstone Mill and provides for Grower Choice in the marketing of Grower Economic Interest Sugar, which was established through the amendments to the Sugar Industry Act.

The finalisation of negotiations has demonstrated that a milling company and supplying growers can work with the provisions the amendments to the Sugar Industry Act were designed to achieve

The following are matters referring to the Draft Report.

Land Use Regulations

Urban encroachment. Rural landholders are fearful that planning regulations will force the agricultural sector to provide a ”buffer” zones, not the urban developers. Planning laws relating to “peri-urban” areas need to take into consideration the pre-existing land use and not force changes onto the existing landholder. Conversely, any intensification of the land use adjacent to non-rural lands must require a process so that any impact to adjacent land-holders can be analysed. However, such a process should not impose a great burden on the rural landholder.

The Commission's view of "property rights" being of the "community" is not supported. Freehold ownership should bestow a level of property rights and where pre-existing land use exists then a Freehold land owner has the right to claim "property-rights" on any pre-existing use before any non-rural land holder or ahead of any claim for "community property rights".

Draft Finding 2.2

Cannot agree with the Commission's sentiment; *that establishing policies that protect existing landholders use of the land as an a priori objective are unlikely to be consistent with the promotion of efficient land use*. In most cases rural landholders face increasing pressure from expanding urban areas and imposition of restriction on farming practices. Is the Commission suggesting that using land for residential use is more efficient that food production?

Information Request 2.1

The pre-existing land use and the preservation of rural activity should apply. If land adjacent to a rural property is developed, then the developers of that land must acknowledge all pre-existing activities that may impact on the activity planned for the adjacent land. Freehold landholders should have "property rights" above what the Commission has described as property rights of the community. The right of veto is not asked for but the right to continue the activity on the rural property must be preserved.

Consideration of the Impact of Local Government Rating Systems.

Local Government rating systems that impose a higher cost burden on rural properties. In the Cassowary Coast Regional Council area, the rate levy on rural properties is 41.8654 cents/$ of the deemed "unimproved value" and, on residential properties, the levy is 12.955 cents/$ of the actual unimproved land value. There needs to a different method for Local Government to determine Rate Levies, not just using the quasi, "unimproved" land value system that is currently used.

Whilst concern is expressed at particular regulations and legislation, it would be of benefit if there was some form of regulation that protected the farmers with a "right to farm", providing the security to have free enjoyment to use land used for

agricultural purposes without undue objection or harassment from adjoining non-rural landholders. Local Government Planning Schemes identify rural and non-rural lands, however, adjoining non-rural landholders exert rights over rural landholders that restrict and, in some instances, prevent the use and enjoyment of the land by rural landholders.

Vegetation Management and Environmental Regulations

The Vegetation Management Laws applied in Queensland are creating financial and regulatory road-blocks. Rural landholders are required to deal with multiple Government Departments for with separate pieces of legislation relating to Vegetation Management. The proposed changes to the Queensland Vegetation Management Act, left in their present form, create a major impediment to the development of any new agricultural lands in Northern Australia and social disruption that will not lead to the desired outcome of the level of engagement with landholders for adequate vegetation management.

Draft Recommendation 3.1

The Commission's view that Native vegetation and biodiversity conservation regulations should be changed so that they consistently consider economic, social and environmental factors.

Draft Recommendation 3.2

It is suggested that in supporting the Commission's view that better use could be made of market-based approaches to native vegetation and biodiversity conservation could be achieved if the Local Government land rating system moved away from the quasi "unimproved land values" approach to a "land use category system" that would be linked to Local Planning. All Local Governments have Local Development Plans. Each parcel of "land use" would have a category and the Local Government would then establish a rate levy based on the land use. Native vegetation and areas of biodiversity conservation could be identified in the Land Use Plan and have zero rate levy applied, providing the incentive for landholders to retain such areas. Changes to Land Use would require a process to recognise the change; not a process that restricts or prevents a change, simply one that amends the records and identification on the Land Use Plan.

There are fragmented and inconsistent approaches by the Queensland, Northern Territory and West Australian Governments regarding the governance of vegetation management. This is highlighted by recent action by the Queensland Government for the proposed changes to Queensland's Vegetation Management Laws.

However, we have a perverse approach being adopted by the Queensland State Government, to impose stricter regulations with vegetation management without using sound reasoning for such changes.

On 17 March, 2016, Hon Jackie Trad MP, Deputy Premier, Minister for Infrastructure, Local Government and Planning and Minister for Trade and Investment, introduced the *Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016* to the Queensland Parliament.
In accordance with Standing Order 131 of the Queensland Parliament, the Bill was referred to the Agriculture and Environment Committee for consideration

The Committee has made five recommendations, including omitting a provision that would reverse the onus of proof on those accused of illegal clearing, improving the accuracy of vegetation mapping and outlining the consultation process on the updated self-assessable codes.

Recommendation 1: The Committee recommends that the Minister for State Development and Minister for Natural Resources and Mines explains to the House, during the second reading debate on the Bill, the consultation process that will be undertaken on the updated self-assessable codes, including details of who will be consulted.

Recommendation 2: The Committee recommends that the Minister for State Development and Minister for Natural Resources and Mines provides an update, during the second reading debate on the Bill, on the steps, including the associated time scales, that will be taken: (a) to improve the accuracy of vegetation mapping, and, (b) to proactively engage with landholders to provide them with updated property maps of assessable vegetation, which correct any inaccuracies.

Recommendation 3: The Committee recommends that the element of clause 6 of the Bill, which inserts a new Section 67A into the Vegetation Management

Act 1999 to reverse the onus of proof in relation to vegetation clearing offences, be omitted.

Recommendation 4: The Committee recommends that the Department of Environment and Heritage Protection engage with the property, resources and development sectors to assess and establish the full impact of the proposed amendments to the environmental offsets regime in Queensland.

Recommendation 5: The Committee recommends that the Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef informs the House, during the second reading debate on the Bill, of the outcome of the assessment of the impacts, including potential costs of the proposed amendments to the environmental offset regime and if any actions will be taken.

Of concern are the "general obligation" provisions in the E&B Act that now force landholders to make unscientific and ill-informed decisions relating to their farming activities. Those decisions are subject to interpretation by others, which could lead to action taken against rural landholders for normal farming practices, simply because there had not been a consideration under the "general obligations" provisions of the Act.

Queensland sugarcane growers have to be acknowledged for their efforts to adopt the voluntary Best Management Practice program, Smartcane, despite the draconian regulations that were introduced that imposed highly unnecessary requirements on growers, especially the requirement to develop an Environment Risk Management Plan (ERMP). The Commission should note that, as these plans were rapidly forced on growers, especially in the Wet Tropics, the Qld Department of Environment & Heritage (DEH) ended up in breach of its own regulations by not responding to individual growers regarding individual ERMP's within the required time-frame stipulated in the Act.

There are no 60% of the growers in Queensland who area actively engaged under the Smartcane BMP program. There is continuing effort to increase that participation rate. In the Innisfail area, 32% of the area cultivated for sugar cane (12,000 hectares) is now has accreditation under the BMP program and of the remaining 69% of the area, (8,160 hectares), 85% (6,936 hectares) is currently

involved actively in the BMP program and working towards gaining accreditation. It is expected by mid-2017 90% of the area will be accredited under the Smartcane BMP program,

Common sense is now prevailing with DEH only seeking to "check" on growers complying with regulations only if they are not actively engaged in the BMP program. Imposing regulations to "force" an outcome is not the right approach.

However, there is confusion between what the Federal Government, and what the Queensland State Government is aiming to achieve, through regulations. This confusion is not helping growers when they consider the changes they could make to their farming practices and farming activities that will create issues under either State or Federal regulations. There needs to be a single set of regulations, especially in relation to providing resilience to the Great Barrier Reef. While this confusion continues, growers are moving on and adopting the Smartcane BMP program and adoption of farming practices, which all focus on better water quality outcomes.

Competition Regulation

Draft Recommendation 11.2

The recommendation is not supported. The evidence provided to the Commission does not support this recommendation. The amendments to the Sugar Industry Act were made by the Queensland Parliament, for the good of Queensland and the Queensland Sugar Industry. The following are points that should have been noted and recognised by the Commission, that would have led to an opposite view and the Commission not making the Draft Recommendation.

Statutory Marketing arrangements, previously used by the Queensland Sugar Industry, were used as a way of ensuring that the unique relationship between grower and miller was provided for under the previous Sugar Industry Act, and ensure that the price formula, used to formulise the division of proceeds for the industry, (and the interaction between milling companies and growers), was applied. The creation of the cane pricing formula was the catalyst for the adoption

of regulations, through the Primary Producers Organisations Act, that gave structure for producers, through the Sugar Industry Act and the formulised the relationship between milling companies and growers.

Deregulation – 2006

The deregulation of the Australian Sugar Industry Act in 2006 came after lengthy consultation with the Queensland Government and the sugar industry. At the time most of Australia's competitors in the world sugar market both envied and detested the statutory "Single Desk" arrangements that Queensland had developed.

As part of the agreed deregulation of the Queensland sugar industry, the "industry" agreed to continue to have a single marketer under a restructured, industry-owned marketing company. The "industry" agreed at that time, through a Memorandum of Understanding, to develop "voluntary" marketing arrangements as an alternative to the previous statutory arrangements.

During the transition away from the Statutory arrangements, costs were incurred by the industry. As with any change to entity structures and, in this case the move away from a statutory structure to a corporate structure, considerable resources and costs were required. The industry recognised that the benefits far outweighed the costs. With the recent changes, as a result of the amendment, there are again costs to be incurred.

It was recognised that the retention of an industry-owned, marketing company would provide the benefits of the existing arrangements; including transparency, cost savings from efficient co-ordination of storage, transport and marketing and access to market premiums, for the industry. So, the transition costs involved were far outweighed by the benefits for the industry as a whole.

It was also recognised that the deregulation process would contribute to the efficiency and competitiveness of the industry, with greater opportunity for value-adding and other investment opportunities. However, there were some unexpected benefits on the global front, the transition of QSL as an industry-owned marketer from a "State Trading Enterprise" (as it was recognised under

Article XVII of the GATT 1994 Agreement) allowed international trade talks to move forward and helped unleash the full potential of the Doha Development Agendas.

Contractual Agreements in Place

Contractual-based arrangements were developed between milling companies and QSL. Raw Sugar Supply Agreements became the accepted arrangement. The previous statutory Local Board Awards, governing the arrangements between growers and milling companies, were replaced with contractual agreements covering the supply of cane and the crushing and processing of cane. All of these new contract arrangements retained the formula used to determine the value of the cane supplied by growers, which, at its core, uses the sugar price achieved for the sugar produced from sugarcane supplied to milling companies.

With this transition and the requirement to have commercial contractual contracts to replace the previous statutory arrangements, there were costs incurred by all of the industry. As with any change, especially when commercial contracts are involved, there will be costs incurred. The Commission is incorrect in its claim that there are too many costs that are not off-set by the benefits achieved. A more competitive nature with marketing will achieve better outcomes for the industry.

Following changes to the ownership of milling companies, contractual arrangements with the industry-owned marketing company were terminated. Without the previous arrangements, with milling companies taking on the solely responsible for the marketing and pricing the sugar they produce, despite growers having the exposure of the value achieved for the sugar produced from their sugarcane, has created a lack of security for growers. Growers faced having no control over their economic interest in the sugar produced. Facing total, dictatorial control by the milling companies, growers had to seek some relief from that.

The failure to reach any consensus between grower representatives and the various milling companies, that had announced their intentions to undertake the marketing of sugar produced at their mills, coupled with the milling companies departing from the industry-agreed, marketing arrangements contained in the Memorandum of Understanding, forced grower representatives to seek redress

and have instilled in the Sugar Industry Act the intent and philosophy contained in the Memorandum of Understanding. The amendments to the Sugar Industry Act allow the milling companies departure from the Memorandum of Understanding but give growers a choice of how their economic interest is managed. The changes to the Sugar Industry Act are not re-regulation, as the Commission has incorrectly quoted - the Sugar Industry Act has been amended to allow for growers to have a choice regarding who will undertake the marketing of their economic interest sugar.

All Sugar marketed Through ICE

One aspect the Commission has missed is that all sugar traded on the world market is traded through the ICE New York, in the #11 Contract. Irrespective of who undertakes the marketing, the marketer will still have to use an ICE contract. The difference between a market chosen by the grower and the one chosen by the milling company is that the marketer for the grower will seek to obtain the best outcome for the grower. The marketer for the milling company may only seek to secure what would be considered a “fair price”. As the Commission would fully understand, the prime objective of a company is to produce the best possible outcome for the company. They will not be seeking the best possible outcome for their suppliers. The recent revelations of the outcomes between milk producers and processors is an example of this.

False Reliance on QPC Report

The Commission has relied too heavily, with their considerations into the amendments to the Sugar Industry Act, on the outcomes of the Queensland Productivity Commission (QPC). That report failed to recognise that there is grower economic interest with marketing and pricing outcomes.

The QPC had a “blinker view” of the manner in which QSL markets sugar in suggesting that “grower confidence in the pricing practices of QSL has meant that maintaining transparency and equitable pricing are frequently conflated with the goal of maintaining a single-desk marketing arrangement”. This is simply not the case. Marketing of sugar through pooling arrangements allows QSL to target sugar prices across four ICE contracts over a 12-month period, not simply targeting high periods and creating a higher risk exposure. The outcomes

achieved for each of the pools offered are able to be identified in a transparent fashion.

Individuals have also been able to target sugar prices using Forward Contracts, which has helped individuals achieve better outcomes than those offered through the pools but carries a higher risk exposure and a commitment to supply.
It must be pointed out that the industry created the guidelines for the parameters QSL must operate under, with the offered pools and the production risk management through the Seasonal Harvest Pool. Industry set the parameters QSL could operate under. Industry decided on the limit of 60% that an individual grower may participate in nominated pricing options (targeted or pools).

No Anticompetitive Behaviour

The Commission again falsely adopts the view of the QPC in regard to anticompetitive behaviour, in suggesting that growers will force milling companies to enter into contracts with sugar marketers of the growers' choice. These matters are subject to a commercial negotiation process. An example of this is the finalisation of such negotiations between MSF Sugar and their growers in the South Johnstone Mill supply area. Milling companies will not be forced to accept a marketer. Commercial contractual agreements have to be negotiated. A milling company simply will not enter into a commercial contractual relationship with Dodgy Brothers Inc.

Economic Interest – Not Ownership of Sugar

The reliance on the QPC's view regarding ownership of sugar is also flawed. Sugarcane is not "sold" to the milling company. Growers are not claiming any ownership of the sugar produced by milling companies. The amendments to the Sugar Industry Act give recognition of the economic interest that growers have in the sugar produced by the milling company, from the sugarcane they supply, because of the inherent connection between the Cane Price and the price of the sugar. The Cane Price is completely reliant on the value obtained for the sugar produced from the sugarcane supplied to the milling company.

Grower Economic Interest (GEI) is implied in the Cane Price Formula. The established Cane Price Formula, which has been used by the Australian Sugar

Industry since 1916, was devised as a method to share the proceeds produced by the industry. Sugarcane, when processed, produces crystal sugar and that is the product that is sold. The value for the sugarcane is derived from the value obtained by the sugar crystals produced.

Competition will Produce Premiums

The Commission further has falsely relied on the views of the QPC in accepting the views of milling companies that they will seek higher premiums through alternative marketing arrangements. (The opposite may in fact be the outcome). Higher premiums can only be achieved through competitive marketing arrangements.

It is suggested that, for milling companies here in Australia to gain a marketing edge, particularly against Brazilian sugar producers, the recognised "Far East Premium" may not be sought, so sugar produced in Australia can be delivered into Asia significantly cheaper than sugar procured out of Brazil (as a result of the significant freight advantage that exists). The "Far East Premium", by default, recognises this freight advantage and adds value to sugar procured from Australia. If this was the outcome, it is the growers who would be most exposed. If the value per tonne of sugar is decreased, with Growers Economic Interest of around 66% and the milling company 33%, then any lesser value for a tonne of sugar would be felt greater by growers. A milling company selling into Asia, with sugar from Australia, will have a significant market advantage and will ultimately gain a greater share of the Asian market intensifying the reduced return to growers.

The amendments to the Sugar Industry Act don't prevent the above outcome but have created competition with marketers, and the reliance of having a supply of sugar, backed by a supply of sugarcane, to market will be dictated by the outcomes achieved by the marketers. Growers will make a choice between a marketer achieving or not achieving the best outcome.

No Additional Costs

The claim that there are additional costs as a result of the amendments to the Sugar Industry Act, with additional costs incurred as a result of complex redrafting

processes - This may be correct with complex legal views and the complex nature of the required contractual relationships that need to be established, but, as previously identified, with any change, particularly those involving commercial contractual agreements, legal costs will be incurred by all parties, not just milling companies.

Forward pricing is Available (to some)

The claim that the amendments are limiting the ability to take advantage of forward selling rests with the milling companies not having a Cane Supply Agreement in place. Some milling companies have put in place interim arrangements to allow individual growers to undertake Forward Pricing and the mill to have the security of a supply of sugarcane committed to be supplied, so they could also Forward Price their economic Interest.

The Sugar Industry Act requires that a sugarcane grower must have a Cane Supply Agreement to supply sugarcane to a milling company and that a milling company must have a Cane Supply Agreement with a sugarcane grower to accept delivery of sugarcane from a grower. This was not a recent amendment. This is sensible regulation.

Forward Pricing cannot be arranged unless there is a Cane Supply Agreement in place that provides for the commercial contractual relationship between a sugarcane grower and a milling company. This is attached to other contractual arrangements, which then allows a commitment of supply from the sugarcane grower and a commitment by the milling company with any forward pricing contractual arrangements with marketing.

The inability for around 60% of the sugar produced by the Australian sugar industry to be Forward Priced is only due to the myopic view taken by Wilmar. Sensible negotiations to sort out commercial negotiations, like other milling companies have done, would have alleviated the situation.

Stalling Tactics by Wilmar

Wilmar has demonstrated their total unwillingness to work with growers and take an interest in the “economic interest” in the sugar produced for growers’

sugarcane; firstly, by not entertaining any negotiations with grower representatives, in fact going out of their way to only deal with individual growers, secondly by insisting a change for the industry convention of recognising at which point Grower and Miller Economic Interest is identified, and International Commercial Term, FIS (Free In Store) basis to instead insist using FOB (Freight on Board) basis, and thirdly by announcing that they will not manage payments to growers from the funds of sugar marketed by another marketer. Clearly the actions of Wilmar have not been in the best interests of the industry and they only have a focus on what is good for Wilmar.

The Commission should note that before the amendments were made to the Sugar Industry Act, a number of milling companies had contractual arrangements with QSL that allowed the milling companies to market their "economic interest" in the sugar and leave the "economic interest" held by the sugarcane growers to be handled by QSL; in effect providing for an alternative marketer.

No Additional Costs Incurred

There is no evidence that additional costs have been incurred. The costs to develop contractual arrangements are incurred with every negotiated outcome. Cane Supply Agreement and Cane Analysis Programs have been negotiated since 2006; costs associated with the development of these contractual arrangements have not incurred excessive costs. As previously mentioned, and which I'm sure the Commission acknowledges, with anything new, or significant changes, there will be additional costs to reach final negotiated arrangements, such as the case after changes to the Sugar Industry Act in 2006, milling companies did not express concerns then. The costs incurred are those that would be incurred with any contractual arrangements, nothing exceptional.

Actions by Milling Companies Have Created New Cost Structures

It is interesting that the Commission has highlighted the claim by the Australian Milling Council that amendments to the Sugar Industry Act will impose a raft of new costs to stakeholders across the supply chain and significantly limit the opportunity for innovation and flexibility. By the very nature of having a number of marketers, innovation and flexibility will be created.

What the Milling Council ignores is that, by fragmenting the current single desk marketing arrangement, each individual milling company will be exposed to greater costs with storage, handling, marketing, transport and shipping costs. Under the current arrangements these costs are managed by the industry-owned marketing company, QSL, and are spread across the industry. There is currently flexibility with storage and shipping. QSL can direct ship loading at any one of the Bulk Sugar Terminals, depending on the location, ship size and availability of sugar; especially throughout the crushing season.

I will provide an example of this: when there was an emergent increase in Australia's tariff-rate quota for imports of sugar into the United States, when a fire occurred at a US refinery. The US needed additional raw sugar and the United States Department of Agriculture allowed Australia to supply additional sugar, with an increase in the Quota. With the flexibility that is in-built into QSL's operations, the quantity of sugar required, the loading and the shipping, the request for the additional quota sugar was able to be sourced and shipped. It is unlikely that any one milling company will have the flexibility and the cost structure to achieve that same outcome. It is pointed out that the US market is consistently the most profitable for the Australian Sugar Industry.

The Commission will recognise that economy of scale can deliver improved profitability. This is not unique to the sugar industry. Having milling companies market all the sugar they produce will not change the current situation.

- The issue with improving farm size is a much more complex one, with a number of factors involved. In recent years it has been the poor returns, as a result of lower world market prices. Milling companies marketing all the sugar they produce will not change this.

- The ability to service a large debt is a contributing factor. Milling companies marketing all the sugar they produce will not change this.

- Availability and the loss of suitable, agricultural land is a contributing factor. Milling companies marketing all the sugar they produce will not change this.

- There is no need for any further structural change. Natural progression, land values and market forces will all play their part to change land holdings by individuals.

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Structural Adjustment and Productivity Growth Not Constrained

The Commission's view that there is evidence that the agreement between industry and the Queensland Government (MOU) to retain a voluntary, industry-owned, single marketing arrangement following deregulation, constrained structural adjustment and productivity growth is incorrect. This view does not take into consideration that there has been a reduction in the number of growers active in the industry, a significant reduction in the number of smaller farms and an overall reduction in sugarcane production. The Commission makes comparison with an industry where milk producers were "forced" out of their industry.

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