

A Submission to,
The Senate Committee on Economics

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The Secretary
The Senate Committee on Economics
Parliament House
Canberra ACT 2600

Inquiry into:
Provisions of the Trade Practices Act Legislation amendment
Bill (No1.) 2007

Trade Practices Amendment (Predatory Pricing) Bill 2007

By Alan Edward Barnard

If your committee is looking for an example of Predatory Pricing and Unconscionable Conduct then look no further. Here are the purchasers of a food product without mention of a definite dollar price or fixed payment details in a contract, doing the analysis for that product, while not duly accredited, without a registered measure or measuring machine. I have described the Australian sugar industry millers.

I wish to thank your secretary for giving me the opportunity by notifying me that your committee is looking into sections of the Trade Practices Act.

I am a cane farmer supplying the Mulgrave Central sugar mill in Gordonvale, near Cairns, North Queensland. I am married and have 4 children who have all been university trained. Because of pirates my children will not be entering any primary industries.

You will be aware that the sugar industry has been allocated up to \$444 million for restructuring following many reports and representations to Governments.

The Industry has been deregulated and new income streams have emerged. Low Glycemic Index sugar, Furfural, Co-generated electricity, cattle food and paper are emerging products to name a few.

I have tried on several occasions to get an individual agreement substantially different from the one offered but realize now that any further attempts are futile and I do not have the resources or the time to pursue any legal action. I have also written to the Sugar Industry Commissioner about these matters without success.

MANUAL OF CANE GROWING.

1953

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BY NORMAN J KING, R W MUNGOMERY, C G HUGHES

This is how the ccs formula for cane payment was in 1953. Behne's (Bureau of Sugar Experiment Stations' chemist) ¹description is as follows:

Whilst on the surface it would appear that the transaction whereby the cane farmer sells his cane to the miller represents simply a case of a manufacturer acquiring his raw material from a producer, it is, in fact, an entirely different matter. Indeed, the most satisfactory way of viewing the position is to consider the two parties the grower and the miller—as partners in the one enterprise. The reasons for this are—

- (a) *The grower is compelled to supply the one particular mill.*
- (b) *The miller is compelled to accept the cane from the grower (provided its quality is above a certain low standard).*
- (c) *The sugar manufactured is acquired by the Government.*
- (d) *The price of sugar is determined by the Government.*
- (e) *The price of cane is fixed in relation to the price of sugar.*

Under these conditions there is complete absence of competition and as the money received for the sale of sugar is shared between two parties in a manner determined by law it is obvious why the relationship between the miller and grower has been referred to as a partnership. This is an aspect not always fully appreciated.

In determining the distribution of money between the two parties several methods may be used—and, in fact, are used—in the different sugar countries throughout the world. These vary from very simple methods such as the flat rate method whereby weight of cane only is considered, to complex systems involving evaluation of quality by chemical test. The system

¹ E.R. Behne, *Cane Growers' Quarterly Bulletin*, April, 1948.

in use in Queensland is by far the most highly developed in the world, and by comparison those of other countries are rather crude.

The value received by a Queensland farmer for his crop depends on the weight and the quality of the cane- The weight is, of course, determined directly by means of a weighbridge and the quality by analysis in the mill laboratory of samples of juice taken from the mill. It is from these analyses that is calculated a value known commonly as C.C.S. These letters are the initials of "Commercial Cane Sugar." It is in connection with this C.C.S. as a measure of quality that we are primarily concerned.

The above conditions have now all gone, only CCS remains.

1. Mostly the cane grower can only supply one mill because of distance constraints.
2. Mills only want one contract because 250 individual contracts cause administration problems.
3. The mill controls the analysis there is no accountability or traceability.
4. The mills control the sugar cane transport to the mill.
5. There is no price in the contract or time of payment.
6. The farmer takes all of the risk and absorbs all of the costs as he grows a crop for a year before the miller sees the crop then takes a year to be fully paid
e.g Crops grown but no mill to send it to - West Australian mill debacle 2007, Moreton Mill 2003.
7. There is no mention of any other product except weight by ccs.
8. All information is controlled by the mills.
9. Farmers are competing with government sponsored superannuation funds for land to plant trees that will be decimated by the next cyclone.
10. There is no effective arbitration system.
11. Industry inquiries are like putting the required outcomes as a condition on the back of a cheque.
12. Peak body CANEGROWERS, is more interested in real estate in Brisbane than farmers.
13. The Trade Practices Act appears to scare Solicitors and the ACCC seems too distant as farmers are very busy during the harvest.
14. "If you cannot measure accurately, you cannot manage accurately."

Farmers on the other hand are told by inquiries and millers that they are inefficient and they need to change. This is illustrated in the following quotes:

Sugar industry tested "The Cairns Post" 6/3/02

CSR chief executive Ian McMaster said yesterday.

"As scale economies become more critical, the industry is likely to support, in my view, less participants in the future than it does at present," the head of the Queensland-based sugar group said.

"We're going to have to deal with the issue of how do we find effective mechanisms for people to exit the industry." I expect this means farmers.

\$4m pay for CSR chief By Teresa Ooi 16th June 05 "The Courier Mail"

The earnings lift came as sugar demand soared in Asia where a two-year drought in India and Thailand hit sugar crops and helped drive up raw sugar prices. Sugar earnings more than doubled to \$89.8 million from \$37.6 million a year ago. (Did farmers' income double? No.)

Low moisture mill mud spells savings for return to field “The Australian Cane Farmer”, May 2007.

Many mills experience losses of sucrose in mud, with estimates suggesting this costs medium to average sized mills up to \$750,000 a year. (This is the farmers’ loss.)

When a cane farmer sells his sugar cane there is no accreditation or quality assurance of his product as mill laboratories are not NATA registered, but sugar mills get a Brisbane Laboratory (AMDEL) to give International Standard accreditation to their sugar for sale.

Mr. Scott Grimley at an ASSCT² Conference Townsville.27-30th, April 1999 said, “Currently the Australian sugar industry pays growers on tonnage and CCS of cane supplied to the mill. CCS provides a remarkably good estimate of the amount of sugar recovered by a reasonably efficient mill.” I would have expected after 39 years since the introduction of the National Measurements Act that the unit of measure would have all the vagaries removed and CCS would be a Registered Unit of Measure, but the Minister for Industry, Ian McFarlane, wrote telling me that CCS is traditional measure but not a registered measure.

One of the machines used for ccs determination is NIR (Near Infra-red Reflectance), which measures the light reflectance of fibre, is a secondary measurement. It is not a registered measuring machine and on checking with NATA, I found no sugar mill laboratory is registered to do cane analysis to Australian Standard (AS17025).

My difficulty is that Government has just spent \$444 million to streamline the sugar industry to take it into the future, yet the most important fundamental aspect, analysis methods and payment system, has been overlooked by the Sugar Industry Oversight Group in their 145 page report.

We are approaching a time when crystal sugar will be of minor importance because other products will be worth more than sugar. If farmers were more aware of the product value in their cane then millers would have to be more diligent in their use of cane products. The mills with co-generation of electricity capacity slow down crushing rate to take advantage of peak electricity prices. This penalizes the farmers by lengthening the harvest season and shortening the next growing season. Would you believe that farmers are penalized further for having fibre in the cane by the present payment system?

I have been told that Cuba and Brazil extracts about 90 products from sugar cane. The present CCS analysis system inhibits farmers from getting a fair return and locks them into the corrupt sugar market.

A selection of quotes about sugar industry matters:

Australian CANEGROWER (18/3/96) Mulgrave upgrades Plant.

“The new crushing unit has been part of our planning since the closure of the Hambleton Mill in 1991, and will provide security of plant capacity if one of the other units suffers a breakdown, while increasing the efficiency of the recovery of sugar from the cane,” Mr. Shaw said.

The AUSTRALIAN CANEGROWER (17/11/97) Mulgrave suffers low sugar content.

² “ASSCT”, Australian Society Sugar of Sugar Cane Technologists

Mulgrave Mill is expected to finish crushing on 21 November, despite the failure of a hydraulic drive motor which had put the No 1 mill out of action until 17 November. Estimated tonnage now stands at a reduced 1.34 Mt and the final CCS is forecast at a disappointing 11.8, a figure which may be further reduced due to some farms supplying cane with CCS levels as low as 7.

Charlie McKillop in the Sunday Mail (2/12/98) Sugar ccs plunges to record low.

CCS levels, the commercial content in *sugar*, have only dropped below 12.0 Units four times in the past century — three of those since 1993.

As a consequence, large quantities of cane returned less this year than the growing and processing costs, inflicting losses of about \$8m on the mill alone. Most growers will lose up to half of their “normal” income for the year.

With the industry facing crisis, Opposition leader Rob Borbidge this week revealed the Sugar Research and Development Corporation would be allocating \$2.6m to fast-track research into declining CCS levels.

The money represents the first installment of a \$13.5m Federal funding package announced in July, to be spent by the SRDC over four years, and comes on top of a recent \$1 m commitment by the State Government to tackle the issue of declining CCS.

Mulgrave Mill production manager Glen Pope said he believed the industry was still in a "state of shock" over the results of the season. “It's a total disaster, there's no other word for it. We never in our wildest dreams thought we'd see a day when Mulgrave would be getting as low as 9 (units) in mid-October at the peak of the season - it defies imagination," he said. "That's why we've had relative silence from growers, people are so shocked at how bad it really is."

The Courier Mail Weekend By Mathew Faynes-Clinton (31/7/99) Crushed, the new Poor

ACCORDING to Bebrouth (Innisfail CANEGROWERS), the most frustrating aspect of declining sugar content is that the trend has been happening for 20 years.

“The grower, rewarded for sweeter cane, faces, on average, eight times greater risk of exposure to rises and falls in the ccs than the mill. As scientists work on solving the ccs riddle, they do so in the knowledge that, strangely, during the past five years sugar content levels have increased in the rest of the state.”

The ccs shortfall appears to stop at Tully, 60km south of Innisfail. Mill averages in the mid to high 13 ccs are being posted in the Burdekin and Mackay areas, with some growers realising as much as 17 ccs.

“Last year, we (the far north district) finished at 10.72 ccs,” says Fichera. “Realistically, that’s crap.”

Chizzotti adds: “The world price is critical. But if we had the ccs, we wouldn’t notice it as much.”

Mr. Colin Story, a sugar industry expert wrote in the Q’ld **Cane Growers Quarterly Bulletin**. (1/10/69). “*A high standard of milling is essential to recover this sugar.*” when commenting on Pleystowe Mill obtaining weekly averages over 17 CCS for 8 consecutive weeks in 1968.

A summary of these quotes is that Mulgrave had installed at the cost of \$5.5m. by Bundaberg Foundry, a new Super Mill minus juice grooves. A mill without juice grooves is referred to as a “Backfiring mill” (like the old clothes mangle) as there is no place for the 85% volume of expressed juice to escape except against the flow of fibrated cane. This causes violent expulsions of fiber from the rollers, continued backfiring results in the failure of the mill drive mechanism.

To continue crushing without backfiring, roller pressure must be relieved until there is no reaction. The sugar content is only measured from the first expressed juice of No1 mill as water is added to the fibre after this mill. Consequently, the juice is not properly expressed from the fibrated cane and the payment results are questionable. This situation continued for four seasons nearly bankrupting the farmers and the mill. The problem was solved when a new chief engineer was appointed and had juice grooves machined into the rollers. This problem flowed on to cause other difficulties which may be confusing.

I know everybody makes mistakes but if the Unit of measure was registered and the laboratory was NATA accredited then this may not have occurred.

The National Measurement System web site, page 3, gives the following guidelines;

4. **Laboratory accreditation**

To ensure that measurements are reliable, not only do measuring instruments have to be calibrated with traceability to SI units, but they have to be managed and used in a competent manner. The requirements of ISO 17025 define the processes for competent management and operation of a calibration or testing facility, and the process of assessing compliance with ISO 17025 is known as laboratory accreditation, The National Association of Testing Authorities, Australia (NATA) is Australia's laboratory accreditation organisation.

5. **Quality systems certification**

Quality systems standards, such as the ISO 9000 series of standards, are adopted as a means of managing the quality of an organization's products and services. Often buyers require suppliers to have a quality system in place to provide assurance that the goods or services that are being supplied will meet quality expectations. To demonstrate that the quality system has been implemented properly, suppliers seek third-party certification the certification bodies themselves must demonstrate competence in their role, and this is achieved by accreditation to ISO Guide 23. The joint Accreditation System of Australia and New Zealand (JAS-NAZ) is the organisation responsible for accreditation of quality system certifiers in Australia and New Zealand.

Measurement Laws

By now, you will be saying, 'We have Laws for measurements.' (For your convenience) *The Australian Constitution. Part v. s 51.* The Parliament shall, subject to this Constitution have power to *make* laws. For the peace, order, and good government of the Commonwealth with respect to;—

(xv.) Weights and measures:

From the *National Measurement Act (1960)* we can define,

Unit of measurement includes any word or expression that is used in conjunction with numerical values in order to describe the magnitudes of physical quantities.

use for trade, in relation to a measuring instrument, means use of the measuring instrument for either or both of the following purposes:

- (a) determining the consideration in respect of a transaction;
- (b) determining the amount of a tax.

5 Act to bind the Crown

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island and any authority constituted by or under a law of the Commonwealth or of a State or Territory.

12 Trade contracts etc. to be expressed in Australian legal units of measurement

(1) On and after the date from which the Australian legal units of measurement of a physical quantity are the sole legal units of measurement of that physical quantity, every contract, dealing or other transaction made or entered into for any work, goods or other thing that is to be done, sold, carried or agreed for by measurement of that physical quantity shall be made or entered into by reference to Australian legal units of measurement of that physical quantity, and if not so made or entered into is void.

Trade Measurements Act (Q'ld) (1990), and the various Sugar Industry Acts under competition principles are supposed to mirror The National Measurements Act.

There are solicitors to help, well, I have tried four solicitors and one barrister who just listen, then, courteously decline to help and show me the door.

Mr. Bonanno (former chairman of CANEGROWERS) in the Cairns Post (12/2/91)

Lessons for sugar from wool plight saying,

“People are the ones who get hurt when things go bad. The Queensland Canegrowers Organisation is too close to its grower members not to be in touch with the reality down on the farm.”

CANEGROWERS failure to act on behalf of cane growers for over 40 years by not insisting on the implementation of NMA (1960) while the sugar industry was still regulated caused me to cease voluntary levy payment to this company after deregulation, resulting in my interests in CANEGROWERS Ltd. being revoked in 2002, after my family contributed to its considerable assets for 49 years.

Last week on ABC radio there was a commentator talking about the Australian Capital Reserve (ACR) debacle and the point he made was this,

“The wild west of America was wild not because of the lack of Laws but because there was not enough dedicated people enforcing the Laws.”

I have written to the Prime Minister, The Minister for Industry, The Minister for Agriculture and Fisheries The Q'ld Minister for Justice, The Minister for Primary Industries and The Minister for Fair Trading in Queensland and was told that (8/10/2004), Mr. Malcolm Bartlett, Manager, Trade Measurements Branch would keep me informed.

Would it be possible to write plainly into the Trade Practices Act the requirement for laboratory compliance and unit of measurement registration for all business contracts?

Sugar industry 1915 at Mulgrave	Sugar Industry 2005 at Mulgrave
Cane was cut by hand for less than 1 shilling per ton of cane	All cane cut by machines around \$7 per tonne of cane
Sugar Cane varieties were selected Noble canes.	All varieties carefully selected for sugar content
Horses were used to cultivate and haul cane. A horse cost about 5 pound.	All by machines A tractor costs about \$1000 per horsepower.
Available analysis of sugar was by using hydrometers and prisms takes 20 minutes. Results to farmers weekly	Available analysis, HPLC, NIR takes one minute instant results to mobile phone.
Land for growing cane, "assigned" to a particular mill	No assignment, anyone can grow cane anywhere.
Weighing was mechanical.	All digital
Mill crushed 53,227 tonnes of cane for 6,625 tonnes of sugar at 8.04 tons cane to ton of sugar. CCS 15.69	Mill crushed 1,272,095 tonnes of cane for 166,856 tonnes of sugar at 7.62 tonnes cane to tonne of sugar CCS 12.82
Steam engines powered the mills, 300 hp	Steam turbines, 3000 hp power mills
Sugar was bagged for handling	Sugar handled in bulk
Wharfies loaded the boats, weeks to load boats of 5000 tonnes. Harbour Boards owned facilities	All bulk Handling 1 day for 75000 tonnes Sugar Terminals own Facilities
Sugar was vested by the State Government	Sugar after 2005 is owned by the Miller

As Kris Kristoffsen wrote in his song, *Me and Bobby McGee*
 "Freedom's just another word for nothing left to loose." That sums up my position.

When CCS was first put into the Sugar Acquisition Act 1915, Sugar Cane Prices Act (1915) the regulations were strict on growers and millers, before control of the sugar industry was given by the Commonwealth to the Queensland Government in 1923.

I hope that this submission helps you with your understanding of the economic situation within the sugar industry

Alan E Barnard

3/6 /2007