16 October 2014

Committee Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

RE: Current and Future Marketing Arrangements for the Marketing of Australian Sugar

The Australian Sugar Milling Council (ASMC) is the peak industry organisation for raw sugar milling in Australia. There are 24 sugar mills in Australia, owned by eight companies, six of which are ASMC Members. ASMC Members produce some 95 per cent of Australian raw sugar and 100 per cent of Australian raw sugar exports. Around 80 per cent of Australian raw sugar is exported while most refined sugar is sold domestically.

ASMC welcomes the opportunity to provide a submission to the Senate Standing Committee on Rural and Regional Affairs and Transport Inquiry into Current and Future Marketing Arrangements for the Marketing of Australian Sugar.

Yours sincerely

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Executive Summary

Sugar mill businesses, including many that were owned by sugarcane growers at the time, and the Australian Sugar Milling Council, were a major proponent for, and participant in, the deregulation process leading up to 1 January 2006. This was conducted in close concert and negotiation with CANEGROWERS, and the Queensland and Federal Governments.

The Australian Sugar Milling Council does not support moves to re-regulate the industry and revisit the inefficient, anti-competitive practices that characterised the Australian sugar industry prior to 1 January 2006.

In particular, the Australian Sugar Milling Council does not support a reversion to the pre-deregulation era of compulsory arbitration standards that abrogated responsibility for reaching commercial outcomes based on good faith negotiation between suppliers and processors to third party arbiters. The Australian sugar industry spent tens of millions of dollars in unproductive preparation for, and execution of, disputes on cane price and other commercial elements of contractual negotiation in the decades leading to deregulation. This was indicative of the business culture that pervaded the industry leading up to deregulation. A robust, commercially based dispute resolution mechanism is highly desirable in a modern contractual arrangement, however compulsory arbitration does not have a role in the negotiation of those contracts.

There is no ambiguity in relation to the ownership of sugar and other products manufactured by sugar mills. Terms and conditions are clearly stated in contractual arrangements between sugarcane growers and sugar mills, and between sugar mills and their customers for raw sugar sales, currently domestic refineries and Queensland Sugar Limited.

Sugar mills purchase sugarcane from growers under terms and conditions outlined in various Cane Supply Agreements between mills and growers. While these are different for each mill area, and mill areas may have different contracts with different growers and groups of growers, there are some consistent elements in contemporary commercial arrangements.

The Cane Supply Agreement clearly sets out the terms and conditions for payment by the sugar mill to sugarcane growers for sugarcane. Transfer of legal title of sugarcane passes from growers to mills at the point of delivery by the growers to the mill. There are various physical locations that this occurs depending on specific contractual terms, mill transportation infrastructure, and farm location. It is often at the cane railway siding, or collection point for transport of harvested sugarcane to the mill. In sugarcane supply contracts, this ‘delivery’ effectively means that the title and risk in the sugarcane passes to the mill owner at the Point of Delivery.

After arrival at the sugar mill factory, the sugarcane purchased by the mills then undergoes substantial transformation into a range of products and by-products, including raw sugar, molasses, mill-mud and ash, and bagasse (the fibrous material that remains

after crushing sugar cane). Ownership of these products unambiguously resides with the milling company that produces them.

Raw sugar is either transported by the sugar mill company to bulk sugar terminals for storage and subsequent dispatch to the domestic or export market, or transferred directly to a processing facility for refining.

The price that sugarcane growers are paid for their sugarcane is defined in the Cane Supply Agreement and largely determined by the Cane Payment Formula. For all mill areas and all contractual arrangements between sugarcane growers and mills, growers have an underlying exposure to the price of raw sugar through the cane payment formula, but no ownership of the sugar.

The more than 30 significant inquiries, reviews and task force reports initiated by industry and governments from 1982 to 2006 examining the competitive and regulatory framework leading to deregulation of the industry consider a huge array of complex issues.

There is an underlying theme from the many inquiries and reports leading to 1 January 2006, clearly captured in the vision of the Industry Oversight Group in February 2006. This vision was for the industry to become a commercially vibrant, sustainable and self-reliant raw sugar and sugarcane derived products industry through:

- committed cane growers and millers being responsive to international and domestic market forces; and
- operating in an open, deregulated industry environment, within Australia's corporate governance framework.

The Australian Sugar Milling Council supports minimal government intervention in commercial matters unless there is demonstrated market failure that is not addressed in the myriad of existing consumer and competition laws and other safeguard mechanisms. There are adequate provisions in place to deal with any perceived or real imbalances associated with a small number of large suppliers purchasing sugarcane from a large number of small suppliers and there is therefore no case for revisiting the deregulation process that was concluded in January 2006.

The Australian Sugar Milling Council supports efforts around negotiated industry agreements between growers and mill companies and relevant industry organisations to develop and maintain business confidence and industry growth objectives.

1 Introduction

The Australian Sugar Milling Council (ASMC) is an advocacy-based organization, operating in the best interests of Members and the broader Australian sugar industry. ASMC works in the pre-competitive environment on a range of policy and programs that impact the profitability and sustainability of mill businesses and the Australian sugar industry. There are normal commercial tensions that exist between mill companies, and between participants in the sugar supply chain. There are commercial matters that ASMC Members do not collectively discuss as they are direct competitors.

ASMC was a key participant in, and major proponent of, deregulation in the Australian sugar industry from the late 1990s to full implementation of voluntary marketing arrangements in 2006. This period saw numerous inquiries, reports, Government and industry negotiation on a sometimes tense basis, and subsequently, agreement over what would represent the pathway to a sustainable future for the Australian sugar industry.

1.1 Deregulation

Attachment One provides an outline of the key events leading to deregulation from 1982 to 1995, and Attachment Two covers key events from 1995 to full deregulation in 2006.

The timetable leading to deregulation was highly complicated and involved whole of industry and government negotiation across CANEGROWERS, ASMC, and Queensland and Federal governments.

Between 1982 and 1995 there were some 10 major inquiries, reviews and task force reports into the regulatory and competitive position of the sugar industry, at least 3 significant assistance packages, and 10 legislative changes to federal or state laws associated with sugar specific legislation and regulatory provisions.

From September 1995 to 2006 there was more than 20 reviews and inquiries initiated by government and industry examining deregulation and the move to voluntary marketing arrangements. There were at least 6 sugar industry specific regulatory and legislative changes, including the final deregulation that was enacted 1 January 2006, at which time Queensland Sugar Limited (QSL) entered into voluntary contractual arrangements with the majority, but not all, Queensland sugar mills for the marketing of raw sugar for export. There was a further major assistance package of $444 million, again linked to reform and restructure of the industry.

A key influence of the final moves to full deregulation was the Hildebrand Report, received by Minister Truss in June 2002.

The Federal Government noted the findings of the Independent Assessment, particularly the need for a regionally-focused, business-orientated approach to the majority of industry matters.

> "The industry must move from a "one size fits all" approach to developing regionally-based plans that strongly reflect local priorities."

The Independent Assessment:

> *"…found that there is too much reliance on a State-wide approach to industry matters. It is clear that the effective operation of each mill area, or mill region, lies almost entirely in the hands of the local co-dependent participants. And it is important that this responsibility is accepted without resort to wider loyalties."*

The Independent Assessment also noted:

> *"Arbitration is an issue. It is not desirable that arbitration becomes a customary way to avoid the responsibility that should accompany local leadership in genuine negotiation at the mill area level, for the good of participants in that mill area.…"*

Following the Hildebrand Report, the Queensland and Federal Governments signed a Memorandum of Understanding (MoU) in September 2002 to facilitate a partnership approach to sugar industry reform. The Governments agreed that the industry needs to change both its culture and practices in order to:

- improve its efficiency and competitiveness,
- retain its global market share, and
- become more commercial and innovative.

The Governments agreed that the following areas appear to impede increased competitiveness and efficiency, and are detrimental to cultural change and innovation:

- the cane production area system;
- the statutory bargaining system; and
- the compulsory acquisition of raw sugar for marketing and selling within the domestic market.

The industry participated strongly in the deregulation process, including through various Heads of Agreement and jointly signed commitments undertaken by ASMC and CANEGROWERS. In March 2004, a Heads of Agreement saw commitment from CANEGROWERS, ASMC and Queensland Government that:

- The Queensland Sugar Industry and the Queensland Government are committed to supporting and promoting comprehensive reform and restructure;
- It is acknowledged that any legislative impediments to reform must be removed;
- It is recognised by both millers and growers that the future cannot simply be an extension of the past and that previous assumptions driving production and structural arrangements need to be changed;
- Industry is committed to transformational change required to achieve sustainability.
- The industry agreed to establish a working group to develop voluntary marketing arrangements as soon as possible. The objective of this working group was to work towards a new system for marketing of raw sugar prior to the requirement under National Competition Policy for review in 2006.

In May 2005, a Working Group Report comprising senior representatives from CANEGROWERS and ASMC with state government observers recommended a new marketing system for the Queensland Sugar Industry for the 2006/2007 season. This proposal was submitted to the Premier of Queensland. During deliberations, the Working Group sought assistance from the Chief Executive of QSL and also provided the Premier of Queensland with periodic updates on progress.

The Working Group recommended a commercial, non legislative based marketing structure for the sugar industry be developed and that it be based on the recommendations in its report. The key recommendations included:

Recommendation 1
That QSL be the vehicle used as the basis for a contractually based sugar marketing company.

Recommendation 2
In order to ensure maximum participation and ensure that transformation takes place in a timely manner, the Working Group proposes that the initial contractual arrangements between the marketer and suppliers include obligations on the marketer to meet defined milestones by due times. A failure to meet a milestone could enable the supplier to opt out of the supply contract.

Recommendation 3
Sections of the Sugar Industry Act 1999 covering vesting and marketing of sugar in QSL operate only for the 2005/06 season. To facilitate the introduction of commercial, contractually based marketing arrangements from the 2006/07 season, transitional arrangements would need to be introduced during 2005 to enable QSL to enter into contractual arrangements with suppliers.

Recommendation 4
The Board of the marketing company take appropriate steps to address the ownership structure of the company once commercial operations have been commenced. Structural change will necessitate referral to and support of current members.

Recommendation 5
There should be sufficient grower and miller representation on the Board of the marketer to ensure transparency and a number of independent directors to bring a depth of experience and diversity of skills and perspectives. The present composition and skill base would need to be flexible as to ensure that the company is able to respond to a more standard business framework.

Recommendation 7
It is recommended that rules relating to participation, entry and exit would be determined by the Board of the marketer in consultation with suppliers and incorporated into supply contracts. It is recommended that the goal of the marketer is that suppliers should commit to 100% of bulk raw sugar for export.

Recommendation 8
It is recommended that the initial contract arrangement be finalised no later than 31 December 2005 and that the term of that contract should be three years. Beyond that initial three year period, a rolling two year period could be appropriate.

Recommendation 9
It is recommended that the marketer focus on marketing bulk raw sugar for export under contractual arrangements with suppliers.

Recommendation 10
Initially treasury, risk management and pooling functions would be similar to current arrangements but the marketer is expected to develop, in the transition to standard business practice, more innovative arrangements.

Recommendation 11
Bulk sugar terminals and storage operations would continue to be similar to current arrangements. The marketer, in conjunction with STL, will have to develop a third party access protocol prior to the commencement of the 2006/07 season.

1.2 An outline of the current pricing and marketing arrangements in the Queensland sugar industry

From the time it was established in 1999, QSL managed more than 90 percent of Australian raw sugar export marketing and was, up until relatively recently, the primary raw sugar export marketing company in Australia. In the Australian sugar industry, the term 'marketing' is used for the physical sale of sugar to export customers. QSL has 30 members – seven Mill Companies, 21 Grower representative members and two Grower association representatives. QSL is a public company limited by guarantee, and operates on a tax-exempt cost recovery basis.

QSL provides pool pricing and risk management, storage, handling, quality and logistics, financing, and sales and trading services under a Raw Sugar Supply Agreement (RSSA). There are 7 mill company signatories to the RSSA (6 of whom currently sell sugar for export), plus QSL. The RSSA is a voluntary contract with a 3 year rolling term. Changes cannot be made to the RSSA unless all signatories agree.

Sugarcane is supplied to mill companies by growers under commercial contracts known as cane supply agreements between each grower and the mill company they supply.

The current RSSA includes the terms 'Supplier Economic Interest' (SEI) and 'Grower Economic Interest' (GEI). These terms serve to identify the relative portion of sugar to which mills and growers have price risk exposure. Milling companies have the right to elect each season to allocate a quantity, up to the defined quantity of 'Supplier Economic Interest' sugar, to be placed into a Supplier EI Pool, which QSL sells back to mill companies at the bulk sugar terminals. The purpose of the Supplier EI Pools is to allow a milling company to directly market a quantity of their sugar (calculated by the SEI sugar definition) to its own customers.

The remainder of the export raw sugar supplied by mills is currently marketed by QSL. This raw sugar is allocated to a number of other pools, with each of the pools representing different management, pricing and risk strategies.

MSF Sugar Ltd has provided a pricing and marketing service to its Maryborough growers since deregulation in 2006, as did the Mulgrave Mill in the Far North, outside the QSL arrangements. MSF Sugar Ltd subsequently purchased Mulgrave Mill and continued to provide such a service outside of QSL.

Before 2006, the sugar price in Queensland was determined centrally by Queensland Sugar Limited (QSL) (or its predecessors). That is, there was one declared price for sugar – every milling company received the same price for its sugar and every grower had the same sugar price used in the cane payment formula for sugarcane.

After complete deregulation in 2006, mills began to take over the management of sugar price risk themselves and through an innovation that is only available in the Australian sugar industry, also began to offer their growers direct access to risk management tools to manage their exposure to sugar price and currency relative to payment for their sugarcane. Access to various pools meant that for the first time, growers were able to fix prices for a portion of the sugar price exposure 3 to 4 seasons beyond the current season to gain greater control over budgets and revenue, with associated ability to finance farm operations and diversify risk.

To prevent 'over pricing', mill companies limit growers forward pricing to a portion of their average annual production. While each mill company has different systems and levels in place, a typical example is that growers can secure pricing for their exposure on up to 70% of their average annual production for the first forward season, 50% of their average annual production for the second forward season and up to 30% of their production for the third forward season.

There are a range of price risk management tools available to growers via different pools managed by sugar mills, QSL, or other third party providers. Different mill companies have different IT platforms and grower pricing services available for their growers. Any sugar that is not actively priced by growers in a current season is priced by QSL or the mill on behalf of the growers. Effectively this means that growers can make a range of choices around how up to 70% of their exposure to sugar price is managed. An individual grower's price matrix for the current season might look like the following table.

An Example of a Current Season Price Matrix for a Sugarcane Grower

Pool	Percent of production	Sugar Price	Tonnes of cane
Shared	10%	$515.00	1,800
Forward pricing	45%	$375.00	8,100
GMP	10%	$390.00	1,800
Harvest	35%	$380.00	6,300
Total/Average	100%	$392.25	18,000

The Forward Pricing and GMP (Grower Managed Pool) pools each have a range of risk characteristics and are entered into on a discretionary basis by growers. The Shared Pool includes all the premiums and costs involved in running the QSL marketing system. The Harvest pool is used to manage production risk, and is priced in season as sugar is manufactured. There is a much narrower range of pricing tools available to pool managers for the Harvest pool.

Underlying raw sugar value

There are many participants in the raw sugar futures market including producers in 31 countries, consumers such as refiners, bankers, soft drink manufacturers, brewers and confectioners, the ethanol market, traders, speculators, pension and index funds among others. The value is disclosed by the actively traded electronic raw sugar futures market, the ICE 11 contract. The physical value of the sugar is determined by this futures price plus premiums minus costs. Premiums and costs are a relatively small portion of the total sugar price, however must be managed professionally and with transparency.

When considering pricing and marketing of raw sugar, it is important to have a clear understanding of the nature, relative size and transparency of the key components of the sugar price that eventually goes into the cane payment formula.

The following section explains and provides an example of how each of these components (ICE 11 – the futures component, premiums (pol premium, physical premium), and costs (storage and handling, marketing, and financing) contribute to the sugar price pools that determine a grower's sugar price component of the cane payment formula.

ICE 11

In the example used, the ICE 11 represents in the order of 87% of the gross sugar price (price paid by the purchaser of physical sugar), and the ICE 11 is just over 100% of the net sugar price (price used in the cane payment formula for payment by mills to growers for purchase of sugarcane). The ICE 11 as indicated above is fully transparent. The example set out later in this section uses an ICE 11 price of $393.61 per tonne IPS drawing from the information shown on Page 8 of the 2013/2014 QSL Annual Report.

The two factors that potentially could influence the dollar value of the growers' exposure to sugar price derived from the ICE 11 would be a reduction in the level of price risk management being offered by mills, and/or the pricing performance of the marketer, including in relation to the balance of the grower's price exposure not actively managed by the grower (i.e. the residual pool to manage production risk plus any exposure the grower does not actively nominate into a pool).

POL premium

The pol premium represents the difference in physical quality attributes of the raw sugar versus the standard quality specification set by the Sugar Association of London (SAL) rules for the ICE 11 contract. The major element of the physical quality attributes is polarisation. The ICE 11 price is based on raw sugar of 96 degrees polarisation. A polarisation premium is available to account for raw sugar which has polarisation higher than 96 degrees and the amount of the premium is determined by the SAL International Pol Scale (see table below). This means that if the average polarisation of a sugar cargo shipped from Queensland was 98.95 then the FOB price of the cargo would be adjusted upwards by 3.7%. The 2013/2014 QSL example uses a value of $13.30 per tonne IPS (3.39% of the final sugar price used in the cane payment formula).

The Pol Premium is calculated on the 'against actuals' price agreed between the purchaser and seller of raw sugar, determined prior to the close of the futures contract or the finalisation of the physical transaction.

Given the rules around determining this premium, it is identifiable and auditable.

International Pol Scale

Min degrees	Max degrees	Percentage pro-rata for each degree
96.00	97.00	1.50%
97.00	98.00	1.25%
98.00	99.00	1.00%
99.00	99.30	0.30%

Physical premium

The physical premium is determined on a contract-by-contract basis by direct negotiation with a customer for raw sugar and by market forces. The value of the physical raw sugar above the ICE 11 futures market price will mainly reflect the freight differential and a regional premium.

The freight element of the physical premium is determined by location of both the supplier and customer for the raw sugar and the location of the next potential supplier of sugar to the customer. This last element is also the major determinant of the regional premium. The relative quality of a supplier's sugar to the next available sugar along with some consideration of shipping flexibility can also contribute to the physical premium. The lack of in season storage capacity in Brazil is also a factor in the availability of the regional premium.

The net value of the physical premium in the QSL example is $17.71 per tonne IPS, made up of a Cost and Freight Premium (CFR) of $42.19 less freight and execution costs of $24.48. The CFR premium is the value invoiced to the customer over and above the ICE contract. Freight and execution costs are the payments made to ocean transport companies for the collection and delivery of product to the end port destination. This is mostly made up of the voyage charter costs, but also includes dispatch earnings and demurrage payments. In this example, the net physical premium of $17.71 is 4.52% of the final sugar price used in the cane payment formula.

While, this is probably the least auditable of the components of sugar price (regardless of who is marketing the sugar), there are independent information sources available to provide some daily visibility in relation to an indication of the market value of the physical premium.

Storage and handling

Storage and handling costs are currently equalised for QSL exported sugar such that the same costs are allocated by QSL to each tonne of raw sugar that is exported via any of the bulk sugar terminals. This means that potentially any changes to raw sugar export marketing may result in winners and losers in terms of terminal costs, depending on the relative costs and other competitive elements associated with storing and handling raw

sugar through each of the terminals. In its lease agreement with QSL, Sugar Terminals Limited has the option to take back the operation of a terminal if QSL percentage of throughput in that terminal falls below a certain point. If this were to happen, STL would need to work through a range of commercial considerations and decisions in relation to future operation or lease arrangements. It is possible different prices could be charged by operators of each bulk sugar terminal compared with current arrangements if QSL was no longer managing all terminals. Storage and handling costs in the QSL example are shown at $21.50 per tonne IPS (5.49% of the final sugar price used in the cane payment formula).

Marketing costs

QSL's total marketing costs annually amount to about $7 million which in 2013/2014 translated to $2.28 per tonne IPS of sugar sold. This is not a large element of the final price. If these costs were to increase for some marketing companies (and decrease from others) because of economies of scale, the overall impact of any changes from not marketing through one agency are not likely to be significant.

Financing costs

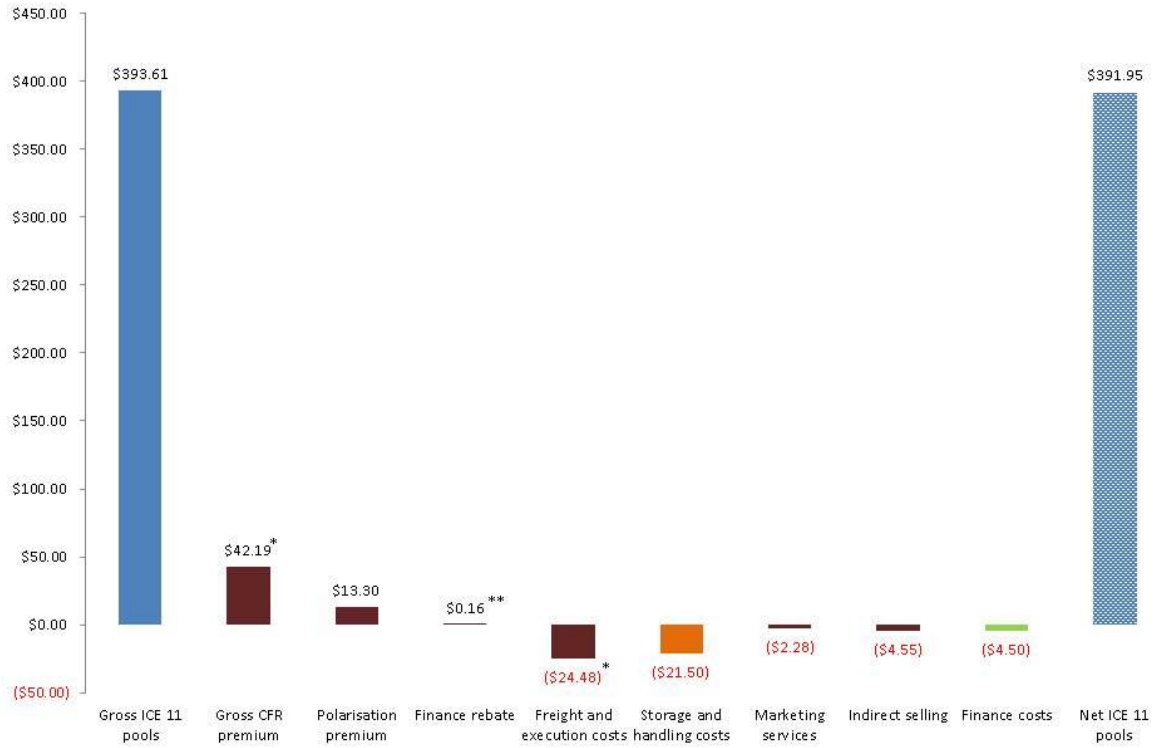
The cost of the advances program is also a small component of the overall price. QSL has been able to access finance at very competitive rates in the past. These costs for 2013/2014 were $13.4 million or $4.50 per tonne IPS. Finance costs could be higher or lower through alternative marketing arrangements, depending on access to finance of the different marketing companies involved. Marketing and Financing Costs in the QSL example are 1.73% of the final sugar price used in the cane payment formula.

Indirect Selling Costs

In the QSL example, Indirect Selling Costs are listed as $4.55 (1.16% of the final sugar price used in the cane payment formula). This is the cost of procuring specific brands of sugar from suppliers to meet the specific market requirements of the customers. This includes the raw sugar quality scheme payments and the premium for making Japanese specification raws. The raw sugar quality scheme is managed by QSL as part of the centralised marketing arrangements, and is shared across RSSA participants. Any ongoing costs associated with raw sugar quality will be managed by each marketing company. Other market specific costs and premiums such as meeting individual market specifications will be incorporated into the operations of each marketing company.

The following graphic depicts the values attached to the components discussed above and shows how each of them influences the final sugar price that feeds into a grower's cane payment formula. This example is drawn from the QSL Annual Report. In this example, the net difference between the starting gross ICE 11 price for sugar (the futures price component) and the net sugar price after premiums have been added and costs deducted is $1.66 per tonne IPS.

An Example of Components of Sugar Price



* The Gross CFR Premium when combined with the freight and execution costs amount to the net physical premium of $17.71.
** Given that this $0.16 has such minimal impact it has not been referred to in the section preceding the graph.

The final element of this analysis is to explain how this net sugar price is then applied in the grower's cane payment formula to arrive at the price a mill company pays a grower for their sugarcane.

The cane payment formula that is used for the majority of payment transactions in the industry is discussed in some detail in Attachment 3 to this submission, and also in Section 2.2. A different formula is used by Mackay Sugar Limited in the Mackay district, as outlined in the attachment.

The actual payments made by millers to sugarcane growers are calculated by this cane payment formula which takes into account the CCS content of the grower's sugarcane combined with a sugar price, determined through the pooling arrangements and a grower's price and currency risk management strategy.

This longstanding formula is

Pc = 0.009 x Ps x (CCS-4) + $0.608*

Where:

Pc = price of cane (what the grower receives)
Ps = price of sugar per tonne IPS (net price for raw sugar taking account of futures component, premiums and costs)
CCS = commercial cane sugar (how much recoverable sugar is in the cane)

*The other element of the formula is a constant agreed to in cane supply agreements and can differ from mill area to mill area (in the order of cents). The constant used in this example is $0.608. It, in the main, represents the outcome of a series of adjustments made over time since the early 1900's to ensure the formula reflected changed conditions since its introduction.

Applying the net sugar price used in the example of $391.95 and using an indicative CCS of 13.75 enables calculation of the sugarcane price as follows:

Pc = 0.009 x $391.95 x (13.75-4) + $0.608
$35.0016 per tonne of sugarcane

In this example, if you applied only the ICE Futures component of the price of $393.61, it would deliver the following result in terms of the price to be paid for sugarcane:

Pc = 0.009 x $393.61 x (13.75-4) + 0.608
$35.1472 per tonne of sugarcane

The premiums outlined in the example total $55.49 (Gross Cost of Freight Premium, Polarisation Premium), with a physical sugar price of $449.10. This is offset in the example by costs totalling $57.31 (Freight and Execution Costs, Storage and Handling, Marketing and Finance Costs and Indirect Selling Costs). Clearly these premiums and costs are important components of sugar price and must be managed accordingly.

A key element in the overall determination of sugar price is the experience and expertise of the team managing the various pool products that are available to sugarcane growers. The other major element is the transparency of reporting and information available against each of the components that comprises the net sugar price, and the systems available for sugarcane growers to execute their price and currency risk management strategies.

2 Terms of Reference

a. the impact of proposed changes on the local sugar industry, including the effect on grower economic interest sugar;

2.1 Grower economic interest

The term 'Grower Economic Interest' is one that has emerged in the past 18 months, as a counter to the term 'Supplier Economic Interest' in the Raw Sugar Supply Agreement, a commercial contract between QSL and seven raw sugar suppliers (six mill companies who sell sugar to QSL for export purposes, and one additional signatory who has not supplied sugar for export for some years). The term was introduced to identify the volume of sugar that QSL would make available to sell back to each mill company in order for the mills to market themselves.

The Raw Sugar Supply Agreement is a complex contract between raw sugar suppliers (sugar mill companies) and QSL governing the pricing, financing and marketing arrangements for raw sugar supplied by sugar mill companies for export.

Grower Economic Interest and Supplier Economic Interest do not exist in any regulatory or broader sense outside the existing RSSA. GEI is a term that is used in the construct of the Raw Sugar Supply Agreement, and does not confer any legal title or ownership rights.

2.2 Cane Supply Agreement and Cane Price Formula

Sugarcane growers have an underlying exposure to the price of sugar under the terms of their cane supply agreements with sugar mills, through a formula that includes the price of sugar in determining the price they are paid for their sugarcane.

Attachment 3 provides a more comprehensive discussion regarding Cane Supply Agreements and the Cane Payment Formula. Most growers enter into contracts determined by collectively bargained processes. These cane supply agreements determine the conditions under which payment, harvesting, transport and delivery to mills occurs for each mill area. The negotiation of these factors at a local level ensures that growers and mill companies are able to have supply arrangements best suited to their local conditions.

The Cane Supply Agreement clearly sets out the terms and conditions for payment by the sugar mill to sugarcane growers for sugarcane. The actual payments made by mill companies to sugarcane growers are calculated by the cane payment formula which takes into account the CCS content of the growers' sugarcane combined with the price of raw sugar realized by growers through participation in various mill or QSL pooling arrangements, or via third party pricing products. This is a function of the futures market which allows risk transfer (pricing) to occur at a time opportune or convenient to each of the Australian participants. There are essentially two cane payment formulas in use in Australia, outlined in more detail in the attachment.

Each mill is also responsible for the organisation of several services in its mill area including:

- Co-ordination of harvesting;
- Transport of sugarcane;
- Sampling and analysis of sugarcane;
- Maintenance of accounts and records in order to make payments to their growers, including the advances program, and in most cases to provide opportunities for growers to participate in forward pricing activities

In addition, mills pay the cost of transporting their sugar to bulk sugar terminals.

2.3 The supply chain

Transfer of legal title of sugarcane passes from growers to mills at the point of delivery by the growers to the mill. There are various physical locations that this occurs depending on specific contractual terms, mill transportation infrastructure, and farm location. It is often at the cane railway siding, or collection point for transport of harvested sugarcane to the mill. In sugarcane supply contracts, this 'delivery' effectively means that the title and risk in the sugarcane passes to the mill owner at the Point of Delivery.

After arrival at the sugar mill factory, the sugarcane purchased by the mills then undergoes substantial transformation into a range of products and by-products, including raw sugar, molasses, mill-mud and ash, and bagasse (the fibrous material that remains after crushing sugar cane). Ownership of these products unambiguously resides with the milling company that produces them.

Raw sugar is either transported by the sugar mill company to bulk sugar terminals for storage and subsequent dispatch to the domestic or export market, or transferred directly to a processing facility for refining.

Export Sugar: Under the terms of the existing RSSA, raw sugar suppliers (sugar mill companies) deliver raw sugar to a bulk sugar terminal weighbridge. Legal title of the sugar passes from the sugar mill to QSL at the terminal weighbridge. Depending on the terms of the agreement with QSL, the sugar is then either exported by QSL, or a portion may be purchased back by the sugar mill for their subsequent export.

Domestic sugar: In some circumstances, raw sugar is stored at bulk sugar terminals for the domestic market. This is undertaken on a straight storage and logistics fee per tonne of sugar handled, and title of the raw sugar remains with the sugar mill.

b equitable access to essential infrastructure;

'Essential infrastructure' could include water, land (good quality agricultural land for sugarcane production), cane railways, sugar milling facilities, and bulk sugar terminals.

2.4 Water

Water infrastructure has been a driving force in the development of many areas of the Australian sugarcane industry. There are many examples over a long period of time of irrigation schemes where the sugar industry has directly contributed to capital establishment cost as well as annual operating costs of schemes. A current review in Queensland of local irrigation schemes includes a push in some areas for local management, requiring the ongoing cooperation and collaboration of various supply chain participants, including sugarcane growers and mill companies.

Sugar mills have contributed to the capital costs of irrigation infrastructure, contributing many millions of dollars over a period of decades, and directly funding supplementary irrigation infrastructure along with annual operating expenses of schemes. Irrigation enhances productivity and stability of sugarcane supply, which is important for the profitability of both farming and milling.

In Queensland, contributions to irrigation capital costs have occurred either through a direct contribution from individual milling companies or via a water levy, which was paid each year up until the late 1990's when it was found to be unconstitutional. Some mills had been paying the annual levy for over 20 years, and although originally intended to contribute to capital costs, the levies appeared to have been used for supplementing the cost of scheme operations.

For the last decade, sugarcane growers and mill companies have continued to work together to advocate for water pricing that considers previous capital contribution by the industry and current beneficiaries of the water, including communities that may not be direct users, but benefit from the schemes' existence. The current review in Queensland of local irrigation schemes includes a push in some areas for local management, requiring the ongoing cooperation and collaboration of various supply chain participants, including sugarcane growers and mill companies.

For some of the irrigation schemes that the sugar industry has contributed to, land use change is resulting in water from those schemes being used for other purposes, including urban and industry. For mill companies and farmers alike, maintaining industry scale is critical to its sustainability and they work together to maintain scale through activities such as protecting access to cost effective water for irrigation.

The profitability of sugar milling is dependent on both the price of sugar and on the throughput of the factory. Investment in irrigation infrastructure is just one example of milling companies investing in the productivity improvements for sugarcane growers, which flow onto improved outcomes for mills. More recently, mills have been providing financial support and incentives to bring new land (or land that has been out of cane for

two or more seasons) under sugarcane. Establishing sugarcane on land currently under other uses can be expensive for growers. Various incentives are available via mills to encourage farmers and include direct payments per hectare, low interest loans, fixed sugar pricing over several years, and leasing land to new or existing sugarcane farmers. These activities indicate a committed and productive relationship between mill companies and growers to meet common industry goals.

This strong interdependent relationship is unlikely to be affected by any change in sugar marketing arrangements.

2.5 Land

Access to Good Quality Agricultural Land is already an ongoing challenge for the Australian sugarcane industry. Most Australian sugar mills are under capacity and seek greater throughput of sugarcane, achievable either through improved yields from existing supply areas, or an expansion where possible of areas under sugarcane.

Sugar mill companies contribute more than half of the industry funds towards Sugar Research Australia (SRA), the industry owned research, development and extension organization, Mill companies agree that the highest priority for SRA is improved industry productivity predominantly through new sugarcane varieties and plant technology. Increased planting by sugarcane farmers will only eventuate through maintaining and enhancing return on investment in growing sugarcane relative to other opportunities. In addition to the major investment in RD&E (milling companies contributed more than half of the $19.5 million from industry to SRA in 2013/14), all sugar mills currently offer some form of planting incentives for either existing or new growers to foster an expansion in the area under sugarcane.

This shared need by sugarcane growers and mills to access good quality agricultural land and ongoing productivity improvements is unlikely to be affected by mill companies exercising their right to market their own sugar.

2.6 Cane Railways

The extensive cane railway network in Queensland is owned by sugar mills. In general, sugar mills pay for transportation of sugarcane on cane railways from agreed delivery points to mills. This can be directly from the farm, or from cane rail sidings or road transport delivery pads/sidings. In many cases where this delivery point is beyond a certain distance, cane supply contracts may provide for an additional payment of a ‘cartage allowance’ by the mill to growers. Apart from some instances in the dairy industry (nominal gate charges for milk pick-up), bearing the cost burden of bringing the primary product to the factory for processing is unique to the sugar industry. The upside is that this cane transport function is highly organized and ensures that sugarcane is processed in a timely fashion limiting any deterioration in terms of quality between harvest and processing. The average ‘cut to crush’ period across the Australian industry in 2013 for a crop of 30.5 million tonnes was 10 hours.

Given the costs for achieving this are predominantly met by mills, mills will continue to be incentivised to utilize the most cost-effective means to transport purchased sugarcane from Point of Delivery to mills, regardless of changes to raw sugar marketing arrangements.

2.7 Milling Infrastructure

Access to milling infrastructure is not in most cases currently a competitive matter in terms of sugarcane growers supplying mills due to geographical constraints and prohibitive transport costs. Generally, most mills are under-capacity and seeking access to more throughput of sugarcane through increased land under sugarcane, and increased productivity from existing sugarcane farms.

Sugar mills are not paid in terms of dollars per tonne of sugarcane processed. The mills' remuneration is derived from the proceeds of the sale of the products they manufacture from sugarcane purchased from their growers. The price they pay their growers for the sugarcane is derived from the cane payment formula plus other terms and conditions outlined in cane supply agreements, generally negotiated on a collective basis by regional grower representatives.

Sugar mills have major sunk capital invested in specific sugarcane crushing plant and associated equipment. Sugarcane growers' major capital investment – land – can be utilized for a range of other competing uses. The price mill companies pay for sugarcane will always need to be as remunerative as is possible to continue to incentivise growers to put their land to the use of growing sugarcane. This motivation and incentive is unlikely to change as a result of raw sugar export marketing arrangements in the industry.

2.8 Bulk Sugar Terminals

Bulk sugar terminals are owned by the industry, growers and mills, via G-Class and M-Class shares in Sugar Terminals Limited (STL) and are located on the various Ports Corporations land with 100 year leases, with options for a further 100 years. G Class Shares are listed on the National Stock Exchange. Queensland Sugar Ltd (QSL) manages the terminals under a sub-lease with STL with a range of conditions including nominated volumes of sugar passing through the terminals. The current sublease is for a term of 5 years and expires on 31 December 2018. The ownership and operating arrangements ensure that the sugar mills have access on commercial terms to bulk sugar terminals for storage of sugar ahead of consignment for raw sugar export or domestic refining.

This is in contrast to some sections of the grains industry. In circumstances where the major users of export terminals are also individual owners and operators of the facilities, there is a perception or reality that the owners of the terminals are in a position to disadvantage other users of the terminals. This situation in the grains industry is exacerbated with multiple product owners seeking access to terminal facilities in peak periods, a situation that is unlikely to occur in the case of raw sugar exports. There are currently 6 sugar mill companies exporting raw sugar either on their own account, or via the third party service provider QSL.

As the marketing arrangements change in the sugar industry, it is unlikely there will be a large increase in the number of entities that own and export sugar through the terminals. Mill companies, QSL and the asset owners (Sugar Terminals Limited) will need to work through commercial arrangements for the management and operation of terminals in coming years.

Part IIIA of the Competition and Consumer Act 2010 establishes a legal regime to facilitate third party access to certain services provided by means of significant infrastructure facilities. Under these provisions, access seekers can obtain access to services provided by owners or operators of key infrastructure facilities. In circumstances where seekers and providers of a declared service are not able to come to commercially agreeable terms, either party may request the Australian Consumer and Competition Commission to arbitrate the dispute by making a determination.

c. foreign ownership levels in the industry and the potential to impact on the interests of the Australian sugar industry;

2.9 Foreign investment in milling infrastructure

There has been an increase in foreign ownership of sugar mill companies in the past 5 years. Some 75% of milling capacity in Queensland is owned by foreign parent companies. This investment has been scrutinized and approved by the Foreign Investment Review Board, and in some cases has been by decision of the sugarcane grower shareholders who agreed to sell the companies to foreign investors.

Regardless of where capital is sourced, driving principles in commercial operations in the Australian sugar industry supply chain must be transparency and accountability, and fair commercial relationships. The framework governing the competitive commercial relations that sugar mills operate in with their sugarcane suppliers and others is further discussed in the following point sections 2.10 and 2.11.

d. whether there is an emerging need for formal powers under Commonwealth competition and consumer laws, in particular, whether there are adequate protections for grower-producers against market imbalances; and

2.10 Market Imbalance

Discussion regarding market imbalance and abuse of market power is not unique to the Australian sugar industry. It is a common topic in agricultural industries broadly, and other industries characterised by larger processing companies supplied by many smaller operators.

Sugarcane growers have few options, and in some cases only one option, with respect to where they sell their sugarcane. There are some sugarcane growing regions where a grower can supply a choice of mills with different owners. There are sugarcane growing areas where a grower only has the option of supplying one sugar mill company. Sugar mill

businesses have huge levels of capital sunk into specific sugarcane crushing plant and equipment without alternatives available. The major capital cost of growing sugarcane is usually the cost of land. This land generally has alternative competing uses, including other crops, livestock, and sale for urban development. Sugar milling businesses recognize this ongoing competition to maintain support from sugarcane growers to continue supplying mills.

The legal framework governing the negotiation of cane supply agreements, including access to collective bargaining, provisions for unconscionable conduct and misuse of market power, are discussed in the following section, and have been the subject of broader inquiry through the Harper Review.

There is a stronger inter-relationship between sugarcane growers and sugar mill companies than most other agricultural industries. Neither can survive without the other maintaining a profitable, sustainable business. The draft findings of the Harper Review indicate that there is no case for special treatment for the sugarcane industry versus any other agricultural industry, or indeed any other industry. It states that the provisions of the Competition and Consumer Laws generally work as intended. There is some opportunity for improvement identified in the Draft Report, and some opportunity for greater communication of provisions within the Act; however, there is no case or finding for special consideration for individual industries.

The extensive powers in the Corporations Act and Consumer and Competition Law must be adequate to deal with the sugarcane industry alongside all other industries.

Sugarcane growers have the option of accessing modern, innovative price risk management tools and products, facilitated by their mill company for generally up to 60 or 70 per cent of their production one year in advance. This decision is not limited or linked to how a mill company chooses to sell its sugar on the domestic or export market.

The other element of price determination for sugarcane in relation to the grower's exposure to raw sugar price is the non-futures market components. These components must be managed in a transparent, commercial manner, and are discussed in section 1.2.

2.11 Competition and Consumer Act

There are a range of statutory provisions under the *Competition and Consumer Act 2010* (Cth) (CCA) designed to protect competition and the misuse of market power. These provisions have been subject of recent review with a Draft Report of the Harper Review panel published on 22 September 2014 (*Harper Review*).

The provisions include Unconscionable Conduct, Collective Bargaining, Misuse of Market Power, and Exclusive Dealing, as well as provisions around misleading or deceptive conduct.

The existing provisions of the CCA are protective of the rights of growers in their dealings with mill companies. The Harper Review confirms that the majority of the existing

protections in the CCA are effective to protect against anti-competitive conduct, unconscionable conduct and misleading conduct. It recommends one change to strengthen the protection against misuse of market power. That change would be relevant across all industries and is not specific to the sugar industry.

Unconscionable conduct – sections 21 and 22, Australian Consumer Law

While a doctrine of unconscionable conduct already exists at common law, sections 21 and 22 of the Australian Consumer Law in Schedule 2 of the CCA supplement and build upon that doctrine.

In essence, the statutory prohibition acknowledges that disparities in bargaining positions can occur between buyers and sellers. The provisions proscribe unconscionable conduct in respect of both consumers and business. The unconscionable conduct provisions proscribe conduct in connection with the supply or acquisition of goods or services which is contrary to good conscience.

The Harper Review Draft Report notes that the current unconscionable conduct provisions are largely working as intended to meet the policy goals of the CCA (namely, to protect competition) however ongoing monitoring of the application of the provisions should continue as matters progress before the courts.[1]

The existing laws relating to unconscionable conduct operate to protect growers if mill companies took advantage of any inequality in bargaining positions in a way that was unfair as assessed against various factors listed in the CCA and at common law.

Collective bargaining – section 45

Contracts, arrangements or understandings which have the purpose, effect or likely effect of substantially lessening competition are prohibited by section 45 of the CCA, as are contracts that involve an exclusionary provision. This type of conduct applies to collective bargaining, subject to permitted exemptions.

In Queensland, the Sugar Industry Act 1999 (Qld), establishes an exemption for collective bargaining in respect of the negotiation of collective contracts between groups of cane growers and a mill owner. This provision helps growers to address concerns about inequality of bargaining power and allows for more efficient commercial outcomes for growers by allowing them to collectively negotiate with mill owners.

As mentioned, one of the prohibitions in section 45 relates to 'exclusionary provisions'.

A provision is an 'exclusionary provision' if the relevant contract, arrangement or understanding is made between persons, any two or more of which are competitive with each other, and the provision has the purpose of preventing, restricting or limiting:

[1] Commonwealth of Australia, *Competition Policy Review: Draft Report* (22 September 2014), [16.3].

- the supply of goods or services to, or the acquisition of goods or services from, particular persons or classes of persons; or
- the supply of goods or services to, or the acquisition of goods or services from, particular persons or classes of persons in particular circumstances or on particular conditions,

by all or any of the parties to the contract, arrangement or understanding.[2]

In any case, the Sugar Industry Act expressly authorises the following matters for the purpose of the CCA, each of which operates to protect growers and mill companies in the context of a collective cane supply contract:

a) the making of the collective contract;
b) the variation of the collective contract;
c) the acceptance and crushing of cane by a mill at a time fixed under the collective contract;
d) the payment of a price for cane by a mill owner to a grower under the collective contract;
e) the receipt of a price for cane by a grower from a mill owner under the collective contract;
f) a financial incentive scheme of premiums, discounts and allowances relating to cane and sugar quality or to anything that may affect cane and sugar quality having regard to best practice under the collective contract.

The Sugar Industry Regulation 2010 includes definition of 4 regions across Queensland for collective bargaining purposes. While regional collectives have recourse to lodge a collective bargaining notice to the ACCC, it is not currently necessary under the relevant provisions of the Sugar Industry Regulations and Competition and Consumer Act.

Misuse of market power – section 46

Section 46 (Misuse of market power) of the CCA prohibits a corporation that has a substantial degree of power in a market from taking advantage of that power for certain prescribed purposes.

Section 46 adopts a purpose-based test. A corporation with market power will only contravene the provision if it takes advantage of its power for one of the proscribed purposes.

It is not necessary to show that the taking advantage of market power is achieved or actually has any anti-competitive effect.[3] In this regard, the High Court has cautioned against confusing legitimate competitive conduct with purposive anti-competitive conduct.[4]

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[2] *Competition and Consumer Act 2010* (Cth), s4D.

[3] *ACCC v Australian Safeway Stores Pty Ltd* (2003) 129 FCR 339.

[4] *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd* (1989) 167 CLR 177.

The Harper Review Draft Report notes that the 'taking advantage of market power' element of the provision is difficult to interpret and apply in practice.[5] It can be difficult to prove the purpose of the relevant conduct because doing so involves a subjective inquiry, whereas proving anti-competitive effect is generally less difficult because it involves objective inquiry.

The draft findings of the Harper Review recommend reformulating the prohibition to target conduct by a corporation with market power that has the purpose, effect or likely effect of substantially lessening competition. If implemented, this change may make it easier to establish a contravention of the misuse of market power provisions.

The type of conduct that may contravene section 46 includes predatory or below cost pricing, refusal to supply, tying and bundling arrangements, refusal to provide access to an essential service and inducing price discrimination.

In the context of the sugar industry, the ACCC can, under current law, act on complaints of misuse of market power by a miller if the relevant miller has substantial degree of market power in the market for the acquisition and supply of cane, and the miller uses that power for one of the forms of anti-competitive conduct described in section 46. The change recommended to section 46 in the Harper Review will make it easier to make out the complaint but the right to prevent misuse of market power already exists and has been used successfully in other industries.

Exclusive dealing - section 47

Section 47 of the CCA proscribes the practice of exclusive dealing by reference to a number of vertical restraint practices. In general terms, vertical restraints are anti-competitive restraints in contracts, arrangements or understandings that impact different levels of the supply chain.

Bundling and tying arrangements that may contravene section 46 (Misuse of market power) may also amount to conduct that contravenes section 47. For example, the practice commonly described as 'full line forcing' or tying may contravene both exclusive dealing provisions (section 47(2)(d)) and misuse of market power provisions (section 46(1)).

For example, arrangements whereby a supplier of goods refuses to supply those goods to a purchaser because the purchaser has failed to accept some restriction required by the supplier on the right to resupply the goods may contravene section 47.

Section 47 also proscribes the conduct known as 'third line forcing'. It has the purpose of prohibiting the supplier of particular goods or services requiring customers to whom it supplies those goods and services being forced (as a condition of the supply) to also acquire goods or services from a third party.

[5] Commonwealth of Australia, *Competition Policy Review: Draft Report* (22 September 2014), [3.7]

Presently, the CCA prohibits third line forcing regardless of its effect on competition. The Harper Review notes that third-line forcing is rarely anti-competitive and should be subject to the well-established effects test adopted by other provisions of the Act.[6] That is, it should only be prohibited where it has the purpose, effect or likely effect of substantially lessening competition.

In some circumstances, a person proposing to engage in exclusive dealing may protect conduct from prosecution by notifying the conduct to the Australian Competition and Consumer Commission (ACCC).[7]

However, the ACCC may subsequently revoke the protection if it decides that the conduct has an anti-competitive effect which is not outweighed by any resultant public benefit.[8]

In the context of the sugar industry, growers enjoy protection under section 47 if, for example, a miller were to refuse to accept cane because the grower has also sold cane to another miller in the same region and that refusal has the purpose or effect of substantially lessening competition. Similarly, section 47 protects growers from otherwise unprotected conditions imposed by a miller that would oblige the growers to acquire goods or services from a third party nominated by the miller.[9]

Misleading or deceptive conduct - sections 18 and 29 of the Australian Consumer Law

Another fundamental protection in the CCA for both sugarcane growers and mill companies is the prohibition against engaging in misleading or deceptive conduct and making false or misleading representations about goods or services (including as to the price of goods or services).

These provisions have a broad application and could be used to address a wide variety of misleading or deceptive conduct during the negotiation or administration of sugarcane supply contracts and other dealings, including any false or misleading representations about price or the nature of services to be provided.

[6] Commonwealth of Australia, *Competition Policy Review: Draft Report* (22 September 2014), [3.10].

[7] *Competition and Consumer Act 2010* (Cth), s93.

[8] *Competition and Consumer Act 2010* (Cth), s93(3).

[9] Conditions can be protected by a notification to the ACCC on public benefit grounds in some circumstances.

3 Conclusion

The Australian Sugar Milling Council supports minimal government intervention in commercial matters unless there is demonstrated market failure that is not addressed in the myriad of existing consumer and competition laws and other safeguard mechanisms. Attachments 1 and 2 detail the extensive process, consultation and negotiation involving growers (predominantly via CANEGROWERS), mill companies (predominantly via ASMC), and the Queensland and Federal Governments. The industry agreement was captured in written documents at the time, including the 2004 Heads of Agreement. This extensive consultation and review process ultimately lead to deregulation enacted on 1 January 2006, including the deregulation of marketing arrangements and the removal of inefficient practices such as compulsory arbitration. Inefficient, non-commercial practices such as compulsory arbitration do not have a place in a modern, commercially driven industry.

In 1982, there were 6,190 growers, 18 sugar milling companies and 30 sugar mills operating in Queensland. In 2014, there are less than 4,000 growers, 7 sugar milling companies and 21 sugar mills operating in Queensland. This industry has operated for well over 100 years in Australia and undergone significant changes over that period. Some of those changes have been challenging, however the industry has demonstrated its ability to eventually embrace and maximise the opportunity that change has delivered.

In the worked example provided in section 1.2 (drawn from the QSL 2013/14 Annual Report), final sugar price used in the cane payment formula to calculate price paid for a growers sugarcane is comprised of:

- Futures component (+ $393.61 / 100.42% of final sugar price)
- Pol Premium (+ $13.30 / 3.39% of final sugar price)
- Physical Premium* (+ $17.71 / 4.52% of final sugar price)
- Storage and Handling Costs (- $21.50 / 5.49% of final sugar price)
- Indirect Selling Costs (- $4.55 / 1.16% of final sugar price)
- Marketing and Finance Costs (- $6.78 / 1.73% of final sugar price)

(*Gross CFR premium less Freight and Execution Costs)

Of these components, the futures component is highly identifiable and auditable, as is the Pol Premium, Storage and Handling Costs and Marketing and Finance Costs. The Physical Premium is probably the least auditable, although there are independent information sources available to provide some daily visibility in relation to an indication of the market value of the physical premium. Any business involved in pricing and marketing raw sugar must have clear and transparent systems in place.

The term Grower Economic Interest does not exist in any regulatory or broader sense outside the existing Raw Sugar Supply Agreement. Grower Economic Interest is a term that is used in the construct of the Raw Sugar Supply Agreement, and does not confer any legal title or ownership rights. Ownership rights in relation to sugarcane, and the basis for payment by mill companies to sugarcane growers for purchase of sugarcane, is documented in cane supply agreements, including cane payment formulas. There is no ambiguity in relation to title of sugar in cane supply agreements.

There will be limited impact on most essential infrastructure in the sugar industry as a result of changes to marketing arrangements, with the exception of bulk sugar terminals. Mill companies have a major sunk investment in sugarcane processing equipment that can't be deployed for other purposes. This is in contrast to sugarcane growers' major capital asset of land, which in many instances can be put to alternative uses including other crops, livestock, and urban development. Mill companies have a driving commercial imperative to ensure sugarcane production is as remunerative as possible for growers to maintain and increase land under sugarcane and milling throughput.

Mill companies, QSL and Sugar Terminals Limited will need to work through commercial arrangements for the management and operation of terminals in coming years.

Regardless of whether capital is sourced within Australia or from overseas companies, driving principles in commercial relations in the Australian sugar industry supply chain must be transparency and accountability, and fair commercial relationships.

There is a stronger inter-relationship between sugarcane growers and sugar mill companies than most other agricultural industries. Neither can survive without the other maintaining a profitable, sustainable business. The relationship is underpinned by the legal framework governing the negotiation of cane supply agreements, including access to collective bargaining, provisions for unconscionable conduct and misuse of market power. There are adequate provisions in place to deal with any perceived or real imbalances associated with small producers negotiating with large processors and there is therefore no case for revisiting the deregulation process that was concluded in January 2006.

The Australian Sugar Milling Council supports efforts around negotiated industry agreements between growers and mill companies and relevant industry organisations to develop and maintain business confidence and industry growth objectives.

THE QUEENSLAND SUGAR INDUSTRY REGULATORY REFORM OUTLINE 1982 - 1994

1982

- 17 November 1982 - **Industries Assistance Commission inquiry into the sugar industry** to report by 18 February 1983 on:
  (a) whether short-term assistance should be accorded to the sugar industry, and if so the nature and extent of assistance;
  (b) whether an interim adjustment should be made to the domestic price of sugar; and
  (c) the domestic price which should apply from 1 July 1983;
  and to then further report by 12 November 1983 on whether assistance should be provided to the sugar industry and if so the nature, extent and duration.
- The industry sought short term financial assistance to at least cover the cash requirements of the major part of the industry.
- December 1982 – Queensland Government approved loans totaling **$10 million** to "bridge" short term cash flow funding deficiencies in six co-operative mills.
- 16 December 1982 the *Sugar Acquisition Act* was amended to clarify the status of the Sugar Board as a body corporate and validate certain raw sugar quality procedures.
- There were 6,190 cane growers in Queensland and 18 sugar milling companies owning 30 sugar mills.

1983

- 18 February 1983 – **IAC Interim Report** recommended no financial assistance be provided to the industry above that available under general provisions is warranted and no interim adjustment should be made to the domestic price of sugar and that the domestic price to apply from 1 July 1983 be determined in accordance with the pricing formula under the Commonwealth/Queensland Agreement.
- November 1983 – **IAC Report on the Sugar Industry** found that:
  The arrangements have restricted the development of the more efficient segments of the industry and have reduced the opportunities of those with limited prospects seeking to adjust out of the industry.
- The IAC considered that *no legislative restraint should prevent the establishment of sugar production and its subsequent export* and made a series of recommendations on legislative reform, including:
  - abolition of the assignment system but retain for up-to-peak cane, a requirement that growers continue to deliver to a specified mill and a requirement that mills be obliged to accept all delivered up-to-peak cane;
  - a proposal that growers and millers should be unconstrained in their ability to negotiate over peak cane and that no appeal rights to arbitration by the Central Board be allowed. The Commission was unconvinced that the bargaining position of millers and growers would be as unequal as witnesses suggested;
  - Controls over the export of sugar and sugar syrups be confined to those necessary to implement Australia's undertakings under any International Sugar Agreement.

- The IAC also recommended that subject to the implementation of the recommendations that an underwriting scheme on No. 1 Pool be introduced for five years from 1 July 1984. The underwriting percentage was 95%. The underwriting price was to be determined on the basis of an average of No.1 Pool return from the lowest three of the preceding five years.
- In 1983 the industry argued that not only were the IAC recommendations for change in too short a time frame but the industry should be given the opportunity to carry out its own internal review to determine the most appropriate way change should be introduced.

1984

- During 1984 and 1985 - **Sugar Industry Steering Committee** undertook an internal review and found that *there was a need to create opportunities for the industry to be increasingly responsive to market forces and to maintain or improve economic efficiency*. The process of consultation and engagement failed to achieve agreement beyond the most moderate of amendments.

1985

- Early 1985 – CANEGROWERS initiated by application to the Central Sugar Cane Prices Board a **review of and sought an increase in cane prices** paid by mill owners but withdrew on the day the hearings commenced.
- 1 April 1985 - A tri-parte **Sugar Industry Working Group** (SIWP) was established by Federal and State governments and industry to develop within 100 days a plan to bring about restructuring and rationalisation with appropriate short and/or long term assistance measures to achieve the objectives of the plan.
- 14 August 1985 – SIWP Report presented to governments. It stated that *moving to a lower cost industry is hampered by the existing regulatory structure which constrains the rate of economic adjustment and hinders the free movement of resources within and between regions to take advantage of more productive land and lower cost production. To reduce overall production costs…*
    - *the industry should be free to respond to changing market forces and adjust to achieve lower cost of production;*
    - *the industry must give priority to economic efficiency over equity considerations.*
- August 1985 to May 1986 – Protracted discussions and negotiations between governments and between governments and industry resulted in a **compromise package** that bore little resemblance to the original report recommendations. The industry was unable to reach consensus and the views of Queensland Cane Growers Council were supported by the Queensland Government but were unacceptable to the Commonwealth.
- Commonwealth Government's response was to place conditions on the **price and adjustment assistance package**, including, area or regional adjustment plans being approved by the governments for rationalising the adjustment of mills, farms, transport and labour requirements for the area or region. The package included **$81m** for price support over 3 years ($230, $225 and $220); **$25m** over 3 years to growers for debt reconstruction, farm build up and farm improvement; **$40m** over 3 years to mills by way of loans, interest subsidies and grants for mill rationalisation and debt reconstruction; and **$4m** for

research including research into ethanol and kenaf. The Package had *as its permanent objective the progressive adjustment of the industry to long term efficient production*.

- End 1985 season Qunaba Sugar Mill closed.

1986

- Late 1986 – To assist growers, limited amendments were made by the Queensland Government to the *Regulation of Sugar Cane Prices Act* covering assignment and farm peak tradability and cane area roaming. These changes were consistent with recommendations contained in the 1983 IAC Report on the Sugar Industry. The State Government gave a commitment to make further amendments once various proposals had been thoroughly evaluated.
- End 1986 season Goondi Sugar Mill closed but only after passage of the *Sugar Milling Rationalisation (Far Northern Region) Act* in early 1987.

1987

- November 1987 – Minister Harper in releasing a Queensland **government "Green Paper"** on a *Regulation of Sugar Cane Prices Bill* encouraged the industry to consider its long term economic future and take steps to rationalise its operations.
- During 1987 CSR Limited acquired Pioneer Sugar Mills Limited (Pioneer, Inkerman and Plane Creek).
- Late 1987 Farleigh, Racecourse, Marian, North Eton and Cattle Creek milling co-operatives merged utilising funds from the 1985 Commonwealth / Queensland assistance package. The proposal included the purchase of Pleystowe Mill from CSR Limited.

1988

- Early 1988 - Howard Smith Limited sold its sugar milling interests (Mourilyan and Moreton) to Bundaberg Sugar Company Limited.
- Early 1988 - The Federal Treasurer advised an **IAC Inquiry** would commence mid 1988 into the industry prior to the renegotiation of the Commonwealth / Queensland sugar agreement. This was met with calls from within the industry that an IAC Inquiry was unnecessary given the "100" day report and would not contribute to the deregulation being achieved nor the rationalisation currently being undertaken.
- 25 May 1988 – The Federal Government, without consultation, removed the embargo on the importation of sugar into Australia and proposed ad valorem tariffs of 35% on raw sugar and 24% on whites from 1 July 1989 and that the tariffs be phased down to 15% on both by mid 1992.
- 21 July 1988 – Queensland Premier and industry representatives met with the Prime Minister and a request that the embargo remain was rejected.
- October 1988 - The Commonwealth introduced a Bill to repeal the *Sugar Agreement Act* with the Queensland Government.
- November 1988 - The Commonwealth introduced a Bill to provide for ad valorem tariffs on raw and white sugars.
- December 1988 - **Senate inquiry into the state of the sugar industry**; likely effects of the customs tariff changes; economic and marketing consequences of

the repeal of the *Sugar Agreement Act*; and identification of measures to promote the industry and its contribution to the Australian economy. The inquiry was seen by Minister Kerin as regrettable (it would only create uncertainty and confusion). One outcome was a recommendation that the IAC inquire into the tariff for sugar in 1991.

- End 1988 season North Eton mill closed.

1989

- 1 February 1989 – Minister Harper announced and subsequently established a Queensland government **inquiry into sugar price pooling arrangements** under the *Sugar Acquisition Act*. The Minister accepted the recommendations in August 1989. The concept of No. 2 Pool being producers risk sugar was replaced with a requirement that the No.1 pool price be 12% higher than the price fixed for No. 2 pool.
- 5 May 1989 - *Sugar Acquisition Act* was amended to strengthen the marketing powers of The Sugar Board, following some legal doubts with respect to some of its powers. The *Regulation of Sugar Cane Prices Act* was amended to incorporate some of the "Green Paper" proposals. To the disappointment of millers, proposals jointly agreed by CANEGROWERS and the Australian Sugar Milling Council to improve mill efficiencies and facilitate further mill area rationalisation were not included in the amendments.
- 21 June 1989 - Commonwealth enacted the *Customs Tariff Amendment Act* to put in place ad valorem tariffs on raw and white sugars.
- 27 June 1989 - Commonwealth enacted the *Primary Industries and Energy Legislation Amendment Act* to repeal the *Domestic Sugar Agreement Act*.
- Babinda Co-operative mill was purchased from the growers by Bundaberg Sugar.
- Bundaberg Foundry purchased by Bundaberg Sugar.

1990

- 1 February 1990 Minister Casey announced the establishment of a **Sugar Industry Working Party** to consider recommendations of "100" day SIWP that were not implemented and recommend changes to restructure the sugar industry to make it more responsive to the world sugar market. During the review, CANEGROWERS made strong representations about the distribution of sugar monies between growers and millers. The Report primarily focused on administrative arrangements in the industry but at the same time proposed mechanisms to allow the industry to progressively adjust on the basis of its own decisions. On issues related to the distribution of sugar monies, the SIWP rejected the request by CANEGROWERS for a special inquiry into sugar monies and advised *that the best course of action lies in direct negotiations between growers and millers in individual areas or regions. This has already commenced in some areas.*
- End 1990 season Cattle Creek mill closed.

1991

- March 1991 – **IAC Inquiry** into *Statutory Marketing Arrangements for Primary Products* handed down its report. The major findings included that with some exceptions, the objectives of statutory marketing arrangements are not sound

from a community-wide viewpoint if they are based on powers which compel producers to participate and many features of these arrangements may adversely effect the efficiency of resource use.

- March 1991 – Federal Treasurer announced an **IAC Inquiry** into the Australian Sugar Industry. Policy guidelines included that the IAC must have regard to the desire of the Federal Government to, inter alia:
  - encourage the development and growth of the industry
  - facilitate adjustment to structural changes
  - reduce regulation in the industry
- Mid 1991 – *The Sugar Industry Act 1991* came into full operation as an Act to provide comprehensively for all matters relating to the promotion and regulation of the sugar industry in Queensland. It integrated statutory responsibilities for production and marketing into one authority. At the insistence of CANEGROWERS the government decided that the legislation should require the newly formed Queensland Sugar Corporation to conduct an **investigation into the division of sugar monies** between growers and millers and report by 16 July 1993.
- September 1991 – CANEGROWERS advised State and Federal Governments that the industry is in crisis, savaged by drought and then low world sugar prices (under 9 US cents per lb). CANEGROWERS called for the need for a safety net to prevent the industry from collapse and sought the retention of the $85 per tonne tariff, interest rate rebates and social security support.
- December 1991 the *Sugar Milling Rationalisation Act* was enacted to provide procedures for the closure of a sugar mill.
- Bundaberg Sugar was acquired by Tate & Lyle PLC.

1992

- 6 March 1992 – Industry Commission report on the sugar industry was released. The IC said that *the industry competes very successfully on the world markets but its growth and performance are being impeded by one of the most restrictive regulatory regimes of any Australian industry.* Recommendations included:
  - Progressive termination of tariffs on sugar imports and a single transitional payment to producers in lieu of tariff assistance
  - Removal of acquisition, except to satisfy long term contracts up until 1997
  - Abolition of the assignment system post 1995 season and voluntary contractual arrangements between growers and millers
  - Ownership of bulk sugar terminals vested in sugar producers

  The IC concluded that *any detrimental effects which might arise from removal of the statutory production and marketing arrangements would be substantially outweighed by the gains that would result*. The Commission was again unconvinced that the bargaining position of millers and growers would be as unequal as some witnesses suggested. While there was support from some industry producers for recommendations freeing up the regulation in the industry, there was strong adverse reaction to the IC Report.
- May 1992 - Minister Crean confirmed tariffs would reduce to $55 a tonne from 1 July 1992.

- June 1992 – Minister Crean advised Parliament he was committed to ensuring the sugar industry has a strong future and Government would work with the industry to bring forward a growth strategy.
- July 1992 - Minister Crean established a **Sugar Industry Taskforce** to identify impediments to sustainable growth and investment; the means of overcoming those impediments; and the appropriateness of future government support including tariffs.
- Late December, Task force submitted its draft Report to Minister Crean.
- There were 6,063 cane growers in Queensland and 11 sugar milling companies owning 26 sugar mills.
- End of 1992 season Hambledon mill closed.

1993

- 2 February 1993 – The Prime Minister and Federal Minister Crean, following consultation with state governments, jointly announced an agreed **sugar package** to ensure the future growth of the industry:
  - Retention of **tariff of $55** per tonne for a minimum of three seasons
  - Assignment system to no longer be a constraint on growth
  - Pool price differential between No. 1 and No. 2 Pools to be reduced progressively – 10% in 1993, 8% in 1994 and 6% in 1995 and 1996 and the future of the differential to be subject to a review under in 1996 under the Sugar Industry Act.
  - Acquisition powers combined with single desk selling arrangements to be reviewed as part of a review of the *Sugar Industry Act* in 1996
  - Ownership of the bulk terminals be transferred to the industry
  - Federal and State funding package of **$40 million** over four years to support infrastructure projects associated with the further development of the industry.

    While there was support for a single seller for export, some producers advocated deregulation of the domestic market to facilitate value adding and improved returns from local consumption. **The recommendations of the IC which would have advanced deregulation were essentially buried by the Task Force process.**
- July 1993 – The Distribution of Sugar Proceeds of Vested Sugar Report was presented to Minister Casey. QSC had engaged **The Boston Consulting Group** to assist in the investigation. The Report said that the current rules and procedures for distributing the proceeds between growers and millers have served the industry well. After reviewing alternative arrangements, QSC proposed a co-operative formula approach and recommended that if this approach was adopted then it should be negotiated using a dispute resolution process of negotiation, mediation and final offer arbitration.
- Bundaberg Sugar made an offer to purchase the grower owned mills - Tully and South Johnstone. The offers were subsequently rejected by the growers.

1994

- During 1994 there were further amendments to the *Sugar Industry Act* to implement the Federal/State agreed sugar package.

- Early 1994 – CANEGROWERS initiated by application to the Sugar Industry Tribunal a **review of and sought an increase in cane prices** paid by mill owners but Minister Casey intervened.
- July 1994 – Minister Casey brokered the **Productivity/Cane Payment Package.** Under the Package a series of **Working Parties** were established to submit reports to the Minister on various regulatory aspects of the industry, including dispute resolution. The reports were submitted over 1994. **The recommendation of the co-operative formula approach was buried by the package.** Under the package millers agreed to pay an additional 25 cents per tonne of cane in return for growers and millers working together at a local level to identify, implement and share productivity/cost reduction measures worth at least 50 cents per tonne of cane. The package was of little benefit to millers but the growers continue to receive additional payments of about $8 million per annum in each year since 1994.

THE QUEENSLAND SUGAR INDUSTRY
REGULATORY REFORM OUTLINE 1995 - 2006

- **September 1995**. The Sugar Industry Review Working Party (SIRWP) was established by the Federal and Queensland governments to review the regulatory arrangements of the industry and the need for a tariff on raw and refined sugar. In accordance with the objectives, the working party was required to develop a balanced package of recommendations which would facilitate the sustainable development of an internationally competitive, export-orientated industry, which would benefit both the industry's participants and the wider community. The review was to be undertaken in the context of National Competition Policy.

- **Late 1995** – CANEGROWERS and the Australian Sugar Milling Council engaged **The Boston Consulting Group** to assist in assessing a number of key regulatory arrangements and structures that would deliver the best outcome for producers. The report was considered by industry organisations in December 1995.

- **During 1996** amendments were made to the *Sugar Industry Act* to facilitate the implementation of recommendations arising out of the 1994 Productivity/Cane Payment Package (see attachment 1 for details), including new dispute resolution arrangements (including final offer arbitration) in forming supply agreements between growers and millers.

- **26 November 1996** – Report of the Sugar Industry Working Party released "Sugar – Winning Globally" presented to Federal and State Ministers for Primary Industries. Arising out of the 74 recommendations, nine working groups were established to give effect to recommendations concerning legislative changes and three further reviews were to be conducted. An **Industry and Government Steering Committee** was established to oversee the work of the committees and also a **legislative committee** was established comprising government and industry representatives.

- **From 1997 to 1999** protracted discussions and negotiations on the legislation resulted in the new legislation being delayed by more than one year. The area of dispute related to cane supply and processing arrangements between growers and millers. The legislative proposals provided little benefit to sugar millers and sought to retain key regulatory restraints.

- **March 1997** – A **Parliamentary Sugar Task Force** was initiated by the Prime Minister to examine specified sugar industry issues arising from the Federal Government's endorsement of the recommendations of the SIRWP. The issues related to equity considerations across the three States that had sugar industries and included access to the US quota, overcapacity in the refining sector; ownership structure of the Bulk Sugar terminals; and provision of better export access facilities for NSW. Public hearings took place between April and July 1997. The report, provided to government in early 1998, was never released.

- **April 1998** – The Queensland Government **appointed a mediator** to facilitate consensus on new cane supply and processing arrangements following differing views between ACFA, CANEGROWERS and the Australian Sugar Milling Council on implementing the new arrangements contained in the SIRWP Report.

- **4 May 1998** – The report of the government appointed mediator, Mr David Paratz, outlined the agreed areas including that *there should be an industry review of the desirability and practice of Final Offer Arbitration as the ultimate dispute resolution process prior to, and to apply from, the 2000 season*. (Paratz report included as attachment 2)

- **May 1998** – The State Government agreed to transfer the bulk sugar terminals to the industry and reconstituted the **Sugar Industry Task Force** to develop dispute resolution procedures and time frames for the transfer. **Bulk Sugar Terminals Management Group** established to progress the transfer of the terminals.

- **March 1999** – newly established **Sugar Industry Development Advisory Council** (SIDAC) gave in principle endorsement for an industry owned marketing company to be operational from 1 January 2000.

- **21 July 1999** - *Sugar Industry Bill* introduced into Queensland Parliament by Primary Industries Minister Henry Palaszczuk.

- **September 1999** – Minister Palaszczuk announced a series of amendments to accommodate perceived concerns by growers, including, requiring cane prices to be related to sugar prices unless otherwise agreed; requiring mills to accept cane supplied in accordance with a supply agreement; requiring challenges to individual cane supply agreements between growers and a mill by a mill suppliers' committee to go to compulsory mediation before going to court.

- **October 1999** – Minister Palaszczuk announces further amendments to the Bill to address further perceived grower concerns by requiring that millers could only supply their own cane for crushing outside of collective supply agreements at times that did not result in a significant adverse effect on the collective supply by growers. An additional amendment agreed to was to strengthen the objectives of negotiating teams (and by implication mediators and arbitrators) to have an objective to maximize the profits of growers and millers in forming cane supply agreements.

- **10 December 1999** – Sugar Industry Act passed.

- **22 & 23 March 2000** – Future Directions think tank meeting of key industry stakeholders in growing, harvesting, milling, research and QDPI to create a vision for the future that could be used as a basis for discussion by SIDAC. A Sugar Industry Future Directions Task Force was subsequently established.

- **May 2000** – Federal Government agreed to examine a joint CANEGROWERS and Milling Council request for assistance following a collapse in world prices, adverse weather over three seasons and pest and disease problems.

- **June 2000** – *Sugar Industry Act* amended to provide for the winding up of Queensland Sugar Corporation and the establishment of Queensland Sugar Limited and the transfer of marketing assets to Queensland Sugar Limited and the transfer of bulk terminal assets to Sugar Terminals Ltd.

- **July 2000** – **National Competition Council released a Community Information Paper** - *Securing the Future of Australian Agriculture: Sugar*. This paper provided an

overview of the issues surrounding the sugar industry in Queensland and argued that *a failure to maximise efficiency and flexibility at each stage of the sugar production and marketing process limits Australia's ability to compete internationally, thus undermining its long term prosperity*. The NCC argues that *short-term concerns, if used as an impediment to much needed change, may turn out to be shortsighted if they delay or prevent necessary restructuring, investment and efficiency gains that will improve the sugar industry competitiveness*.

- **17 July 2000** – **Productivity Commission releases a staff research paper**, *Single-desk Marketing: Assessing the Economic Arguments*. The paper found that most of the potential benefits of single-desk arrangements can be achieved without compulsion.

- **1 September 2000** – Agriculture Minister Truss announces Federal Sugar Assistance Package of up to $83 million for cane growers. To the disappointment of millers, assistance proposals jointly agreed between CANEGROWERS and the Australian Sugar Milling Council to assist sugar mills were not included in the assistance package. The Federal Government shared concerns with CANEGROWERS regarding the ongoing commercial vulnerability of the sugar industry and asked CANEGROWERS to work towards positioning the industry to ensure its long-term viability and to present firm proposals for comprehensive industry-wide structural reform by June 2002. (Note: Commonwealth Sugar Assistance Package provides short-term assistance for cane growers - eventually $60m paid in income support, interest subsidies on planting and general interest subsidy)

- **24 August 2001** – A Futures Steps Forum of industry leaders met in Brisbane to address major unaddressed issues arising from the SIDAC futuring process to-date. There was agreement to establish three groups to action the outcomes:

  Group 1 Product Development from cane and sugar with ability to track product in an environmentally sustainable way with appropriate risk and reward systems
  Group 2 Systems to improve & sustain productivity & best practice agriculture
  Group 3 Integration of harvest/transport systems as a component of the value chain – including environmental sustainability and appropriate risk and reward systems.

- **15 February 2002** - Minister Truss announces **Independent Assessment of the Sugar Industry lead by Clive Hildebrand** to examine the overall state of the Australian sugar industry, with particular reference to its key economic, social and environmental drivers.

  Clive Hildebrand and the Secretariat of the Independent Assessment consulted with industry organisations, cane farmers, government agencies and other stakeholders in Brisbane, Mackay, Bundaberg, Townsville, Cairns, and the NSW & WA cane growing regions. A series of public meetings were held late April / early May in Innisfail, Mackay, Bundaberg and Townsville. Over 200 written submissions were received.

- **15 April 2002** – Sugar Industry **leaders brief State Parliament** on the state of the sugar industry.

- **3 May 2002** – State Government establishes an **Inter-agency Working Group** to tackle the growing problems of the State's sugar industry.

- **6 June 2002** – CANEGROWERS call for urgent emergency assistance to avoid a collapse in the sugar industry's productive capacity and to prevent further financial disintegration of regional sugar communities.

- **22 June 2002** - Report of the Independent Assessment of the Sugar Industry received by Minister Truss. The Federal Government noted the main findings of the Independent Assessment, particularly the need for a regionally-focused, business-orientated approach to the majority of industry matters. "The industry must move from a "one size fits all" approach to developing regionally-based plans that strongly reflect local priorities." The Independent Assessment *"…found that there is too much reliance on a State-wide approach to industry matters. It is clear that the effective operation of each mill area, or mill region, lies almost entirely in the hands of the local co-dependent participants. And it is important that this responsibility is accepted without resort to wider loyalties."* The Independent Assessment also noted:
"Arbitration is an issue. It is not desirable that arbitration becomes a customary way to avoid the responsibility that should accompany local leadership in genuine negotiation at the mill area level, for the good of participants in that mill area…."

- **10 September 2002** - Minister Truss announces **Sugar Assistance Package** and the involvement of the Queensland Government in reform.

- **25 September 2002** - **Memorandum of Understanding** (MoU) between Federal and State Governments signed to facilitate a partnership approach to sugar industry reform. The Governments agreed that the industry needs to change both its culture and practices in order to:
  - improve its efficiency and competitiveness,
  - retain its global market share, and
  - become more commercial and innovative.

  The Governments agreed that the following areas appear to impede increased competitiveness and efficiency, and are detrimental to cultural change and innovation:
  - the cane production area system;
  - the statutory bargaining system; and
  - the compulsory acquisition of raw sugar for marketing and selling within the domestic market.

- Under the MoU, the Governments agreed that the operation of the single desk for exports of raw sugar should be retained. The Governments agree that, notwithstanding any regulatory change that occurs as a result of the MoU agreement, the review of the Sugar Industry Act will proceed in 2006 as scheduled.

- Pursuant to the MoU the Commonwealth agreed to provide **up to $120 million** in assistance and the Queensland Government agreed to provide **up to $30 million**. The package involved the establishment of an overarching **Industry Guidance Group** and the establishment of **Regional Guidance Groups**. This package was never implemented in its original form.

- **October 2002** – CANEGROWERS request the State Government enact measures to provide security over cane payments. The Australian Sugar Milling Council did not support special legislation to elevate the current status of growers above unsecured creditors. The State Government engages a **consultant** to review arrangements in other industries and to make recommendations back to government.

- **9 December 2002** – State Government commissioned **regulatory impact analysis on the Sugar Industry legislation** by Centre for International Economics presented to industry - Cleaning up the Act: The Impacts of Changes to the Sugar Industry Act 1999. The terms of reference were confined to the industry's regulatory structure other than single desk for export. The Report concluded with the following verdicts:-

  Verdict 1: the cane production area system
  - Removal of the cane production area (CPA) system is a low-risk, high payoff strategy for the industry and regions, because it will encourage competition for cane supply.
  - The CPA system cannot be viewed in isolation to changes to the statutory bargaining system.

  Verdict 2: the statutory bargaining system
  - Given the price outlook for the industry, it is hard to see (the sugar industry) surviving if it continues to block productivity gains by its reliance on the adverse effect test within the statutory bargaining system.
  - Removal of statutory bargaining is a low risk economic option that may hold the only promise of the industry's survival, but it is a high risk political option that will attract opposition from less efficient growers.
  - Unless the statutory bargaining and adverse effects test are removed, the leadership and management required to implement change and achieve the high rate of productivity growth required, is almost certain to fail.

  Verdict 3: compulsory acquisition on the domestic market
  - Removal of compulsory acquisition of sugar for sale on the domestic market is a low-risk strategy with some possible small benefits.
  - The main benefit is to provide increased market orientation to producers and give them some responsibility for marketing.

- **February to April 2003** – Commonwealth and Queensland governments develop and agree on the principles of legislative reform.

- **6 March 2003** – CANEGROWERS and ASMC meet with Minister Truss to discuss views about the deregulation of the sugar industry. CANEGROWERS did not support the legislative changes being proposed by the State Government and the Commonwealth was reluctant to support them in the absence of industry consensus.

- **28 April 2003** - State Development make a presentation on proposed principles of legislative reform agreed between the Federal and State governments to representatives from ACFA, ASMC, CANEGROWERS, Cane Harvesters Association and QSL and advised that the only matters that would be subject to consultation with industry were those related to content application problems.

- **29 April 2003** – Queensland Government issues a **White Paper** "Sugar – The Way Forward"

- **29 April 2003** - Minister Palaszczuk introduces new legislation to provide for the establishment of marketing arrangements for domestic and export supply of sugar into Parliament. The Bill included some departures from the CIE verdicts in the areas of dispute resolution and domestic marketing as a result of consultations between the Federal and State governments.

- **13 May 2003** – Qld Premier writes to Prime Minister seeking to progress industry reform.

- **4 June 2003** – Prime Minister writes to Qld Premier identifying issues and suggests relevant Ministers meet to discuss issues.

- **5 June 2003** - Ministers Truss and Barton meet and agree on reforms to CPA and reforms to domestic marketing.

- **June 2003** – Premier writes to Prime Minister with an offer on the outstanding issue of arbitration. Arbitration issues remain unresolved.

- **30 June 2003** – Industry Guidance Group submits **Draft Overarching Industry Reform Plan** to Minister Truss. Minister Truss has not yet decided to release the draft Plan.

- **February 2004** - CIE Report entitled "Cleaning up the Act, more important than ever" found that if $A200/tonne prices persist to 2006/07 and there is no reform, then the industry would cease to exist in all regions, and there would be strong regional multiplier effects. This highlighted the urgency of reform. CIE noted that the reforms proposed were hardly radical and would have brought the sugar industry into line with other industries (subject to not addressing the single desk for exports of raw sugar).

- **February 2004** - The board of CANEGROWERS and members of ASMC met and established a co-coordinating group to formulate a united industry position on industry reform and restructure.

- **17 February 2004** - CANEGROWERS and ASMC made a joint submission to The Hon. John Howard MP, Prime Minister of Australia on a proposal for a sugar industry rationalisation and restructure adjustment program. The immediate outlook and opportunities had been eroded. It was clear that the industry would not benefit from trade liberalisation. To facilitate comprehensive rationalisation and restructure and diversify its base, the industry required an immediate and substantial increase in the previously announced and not yet implemented, reform package. In response the industry committed to supporting and promoting comprehensive reform and restructure. Within that, it was acknowledged the legislative impediments to reform must be removed and the current legislative issue must be resolved.

- **1 March 2004** - Heads of Agreement between CANEGROWERS, ASMC and the Queensland Government on comprehensive reform of the Sugar Industry Act was signed as a pathway to securing Federal and Queensland Government commitment to progressing real regulatory reform to ensure the long-term future of the industry.

  All parties agreed:
  - The Queensland Sugar Industry and the Queensland Government are committed to supporting and promoting comprehensive reform and restructure;
  - It is acknowledged that any legislative impediments to reform must be removed;
  - It is recognised by both millers and growers that the future cannot simply be an extension of the past and that previous assumptions driving production and structural arrangements need to be changed;

- Industry is committed to transformational change required to achieve sustainability.
- The industry agreed to establish a working group to develop voluntary marketing arrangements as soon as possible. The objective of this working group was to work towards a new system for marketing of raw sugar prior to the requirement under National Competition Policy for review in 2006.

- **18 March 2004** - The Hon. Henry Palaszczck, MLA introduced the Sugar Industry Reform Bill into Parliament.

- **29 April 2004** - The Sugar Industry Reform Program (SIRP) 2004 was announced by the Prime Minister. In his address he stated:
  - The Australian Government's Sugar Industry Reform Programme 2004 recognises the continuing importance of the sugar industry to rural and regional Australia.
  - The Government has agreed to provide a comprehensive range of measures of up to $444 million to help the industry reform and assist individual cane farmers and their families in need.
  - The package recognises that there has to be a strong commitment by industry to reform and restructuring.
  - The industry has undertaken to develop and implement genuine, realistic and regionally based reforms that strongly reflect local priorities, to help achieve the needed changes and ensure the industry's long-term sustainability.

  A key feature of SIRP was the payment of a Sustainability Grant of up to $125 million in recognition of immediate difficulties and to sustain growers and millers through the transition phase. Payment of the Sustainability Grant was in two instalments, subject to the following requirements:
  - before receiving the first instalment, industry groups were asked to sign up to a Statement of Intent on behalf of the industry committing to achieving real reform and restructuring;
  - before receiving the second instalment, the government required that satisfactory progress was being achieved with industry reform, including development of regional plans.

- **6 May 2004** - The Sugar Industry Reform Act 2004 received Assent. The long title states it was "an Act to amend the Sugar Industry Act 1999 to implement the commitment by the Sugar Industry and government to comprehensive reform for the long term future of the sugar industry".

  Key amendments were:
  - The Cane Production Area (CPA) system was removed from the Act on 1 January 2005. This removed restrictions on growers being able to transfer cane from one mill to another.
  - The statutory bargaining system was removed from 1 January 2005 and replaced by a system where growers have greater choice about how to bargain with millers.

  Changes were phased in for the dispute resolution system:
  - Compulsory arbitration was only available in 2005 if the Sugar Industry Commissioner was satisfied that the dispute had not been resolved by

mediation with the exception that it could not be used to resolve disputes about –

- The cane price formula
- Exemptions from vesting
- Whether a person is a supplier

The industry parties had to decide their own dispute resolution process in 2006 and beyond in forming agreements and could only include arbitration by agreement. The Act continued to provide for dispute resolution for disputes arising out of contracts.

So far as vesting was concerned the Act created no ownership issues about vested sugar – the relationship between millers and QSL continued in terms of schemes of payment, productions of brands, sugar quality standards and exempt sugar for local consumption.

- **17 June 2004** - Statement of Intent agreed to and signed by the Chairs of CANEGROWERS and ASMC. It reflected the requirement by the Australian Government of achieving real regulatory reform by the industry actively pursue long term economic, social and environmental sustainability by:
  - undertaking significant reform across all sectors;
  - comprehensively rationalising and restructuring its operations;
  - diversifying its economic base; and
  - adapting to its new operating environment.

  Under the Statement of Intent, the industry agreed that:

  It would undertake structural change, crucial to the industry's future, based upon a strong mill area and regional focus of operations;

  - *Some industry participants will need to re-establish themselves in the new operating environment and that this in turn will promote the longer-term prospects for the industry as a whole;*
  - *Growers, harvesters and millers will critically examine their businesses and work to improve their commercial viability;*
  - *Rationalisation and restructuring, which will enhance revenue and cost efficiency and facilitate environmental and social sustainability, will be undertaken through a "whole-of-system" regional approach;*
  - *It will support the adoption of regionally-based plans to be developed and implemented through Regional Advisory Groups. These plans will strongly reflect local priorities and help achieve the necessary changes to sustain regional communities;*
  - *Raw sugar continues to be the industry's core business, however there will be a serious exploration of new opportunities for the alternative uses for sugar cane, current sugarcane land and value adding opportunities.*

The above commitments by industry in this Statement of Intent reflected ideas and action recommendations outlined in the Independent Assessment of the Sugar Industry (Hildebrand) in 2002. In recognition of the industry agreement to reform, the Australian Government authorised payment of the first tranche of the Sustainability Grant.

- **January 2005** - The Hon. Warren Truss, MP, Minister for Agriculture, in an interview with ABC, advised that the second tranche of the Sustainability Grant which was due to be paid by 30 January would not be paid but deferred. He stated that there was insufficient evidence of industry-wide reform and almost all the regional plans were only at a preliminary stage. Accordingly the government was not satisfied with the progress of industry reform, particularly at a regional level. The government was disappointed with the lack of progress as it listened to industry concerns that this time the downturn was different, brought about by intense international market conditions and the industry would go through significant restructure.

- **16 May 2005** - The Report of the Working Group proposing a new marketing system for the Queensland Sugar Industry for the 2006/2007 season was submitted to the Premier of Queensland. The Working Group comprising senior representatives from CANEGROWERS and ASMC and state government (as observers) worked on the premise that at some future point in time, the Sugar Industry Act 1999 would be repealed. During deliberations the Working Group sought assistance from the Chief Executive of QSL and also provided the Premier of Queensland with periodic updates on progress.

  The Working Group recommended a commercial, non legislative based marketing structure for the sugar industry be developed and that it be based on the recommendations in its report. The key recommendations included:

  Recommendation 1
  That QSL be the vehicle used as the basis for a contractually based sugar marketing company.

  Recommendation 2
  In order to ensure maximum participation and ensure that transformation takes place in a timely manner, the Working Group proposes that the initial contractual arrangements between the marketer and suppliers include obligations on the marketer to meet defined milestones by due times. A failure to meet a milestone could enable the supplier to opt out of the supply contract.

  Recommendation 3
  Sections of the Sugar Industry Act 1999 covering vesting and marketing of sugar in QSL operate only for the 2005/06 season. To facilitate the introduction of commercial, contractually based marketing arrangements from the 2006/07 season, transitional arrangements would need to be introduced during 2005 to enable QSL to enter into contractual arrangements with suppliers.

  Recommendation 4
  The Board of the marketing company take appropriate steps to address the ownership structure of the company once commercial operations have been commenced. Structural change will necessitate referral to and support of current members.

  Recommendation 5
  There should be sufficient grower and miller representation on the Board of the marketer to ensure transparency and a number of independent directors to bring a depth of experience and diversity of skills and perspectives. The present composition and skill base would need to be flexible as to ensure that the company is able to respond to a more standard business framework.

  Recommendation 7
  It is recommended that rules relating to participation, entry and exit would be determined by the Board of the marketer in consultation with suppliers and

incorporated into supply contracts. It is recommended that the goal of the marketer is that suppliers should commit to 100% of bulk raw sugar for export.

Recommendation 8
It is recommended that the initial contract arrangement be finalised no later than 31 December 2005 and that the term of that contract should be three years. Beyond that initial three year period, a rolling two year period could be appropriate.

Recommendation 9
It is recommended that the marketer focus on marketing bulk raw sugar for export under contractual arrangements with suppliers.

Recommendation 10
Initially treasury, risk management and pooling functions would be similar to current arrangements but the marketer is expected to develop, in the transition to standard business practice, more innovative arrangements.

Recommendation 11
Bulk sugar terminals and storage operations would continue to be similar to current arrangements. The marketer, in conjunction with STL, will have to develop a third party access protocol prior to the commencement of the 2006/07 season.

The impact of the recommendations were:

- Raw sugar was no longer compulsorily acquired by QSL -
    - The domestic sugar market with statutory price control was deregulated;
    - The export market for non bulk raw sugar (bags and containers) and other forms of sugar for the export market was deregulated;
    - The export market for bulk raw sugar was deregulated and participation by suppliers with QSL as the marketer was governed by an initial three year commercially negotiated contractual arrangement;
- Suppliers could opt out after the initial period of 3 years if QSL was not transforming into a market responsive company by meeting specified targets;
- Suppliers could opt out in accordance with the notice period set out in subsequent contract;
- There was now no longer a need to have a full review of compulsory acquisition in accordance with National Competition Principles.

- **June 2005** - CIE presented the Queensland Government with its report entitled "Unshackling Queensland Sugar". Key messages included:

    - A proposal to free up Queensland sugar marketing is overwhelmingly in the public interest;
    - Marketing based on compulsory vesting is holding the industry back;
    - The industry clearly needs a new marketing system;
    - Adopting the Working Group's proposal would go a long way in this regard;
    - Some transition features of the proposal could defer benefits;

- Some implementation issues also need to be resolved;
- Removing statutory marketing interventions would impact in various ways;
- Adopting the proposed change would open the industry to an exciting future.

- **1 August 2005** - A meeting with the Premier, Taskforce Ministers and their Director-Generals and advisers and chairs, deputy chairs and General Managers of ASMC and CANEGROWERS.

  The Premier advised that Cabinet had discussed the recommendations of the Working Group earlier that day. The Premier was seeking, through a Memorandum of Understanding of two pages between CANEGROWERS, ASMC and the Queensland Government, a continuing commitment to reform and to the new marketing system. In addition, the Premier was seeking through the Milling Council a commitment from the milling sector to participate in the new marketing system. The Premier had not understood but was apprised that such a commitment could not be given at this stage as QSL had yet to finalise the supply contracts and the boards of milling companies would not be in a position to make a decision before the final contracts become available. It was also emphasised that the new marketing system is a voluntary system. Nevertheless, the Premier sought to ascertain the level of support before committing to replacing compulsory vesting with contractual arrangements. This was best demonstrated not through ASMC but through the concluded negotiations between QSL and individual milling companies.

  The initial draft HoA was unacceptable to ASMC as it:

  - Sought to define the New Marketing System in a way that was inconsistent with recommendations of the VMA Working Group as follows -
    - "QSL would continue to operate as a single seller for export of bulk raw sugar"
  - Attempted to lock ASMC into advising that "the clear economic weight of the milling sector is committed to a single desk selling approach as outlined in the Proposal"
  - It made reference to CANEGROWERS "reaffirming its commitment to the benefits of centralised selling on the export market".

  A small working Group including the General Managers of ASMC, CANEGROWERS and a government office was set up to revise the 2nd MoU.

- **24 August 2005** - A special meeting of the Council of ASMC was held to consider VMA. The revised 2nd MoU:

  - no longer made any reference to single desk selling or centralised marketing;
  - now more adequately reflected the principles underlying the recommendations in the Working Group's report that had been accepted by CANEGROWERS, ASMC and the State Government;
  - The purpose of the draft 2nd MoU when signed was to enable Cabinet to give authority to prepare the amending legislation;
  - The Government would only introduce the amending Bill into Parliament provided it was satisfied there was sufficient support from suppliers to successfully implement the recommendations;

- The timing of introduction of the amending Bill into Parliament was that it must occur before the end of October if the amendments were to come into operation on 1 January 2006. It was expected that by early October, QSL would be in a position to advise the Government of the extent of supplier support to successfully implement the recommendations;
- The draft 2nd MoU now better reflected the views of ASMC and CANEGROWERS;
- The draft 2nd MoU no longer sought commitments out of milling companies through ASMC to participate in the New Marketing Scheme but provided that members would remain committed to the process of working with QSL to assist QSL to remain the preferred marketer by suppliers and customers of Queensland bulk raw sugar.

There was unanimous support for ASMC to endorse the 2nd MoU.

Also considered and agreed at this meeting was a joint ASMC and CANEGROWERS statement on Voluntary Marketing Arrangements and a Question and Answer paper, including the following:

Question 9: Who would make decisions about whether QSL is the marketing company?
It is the supplier, as the owner of the sugar, who has the capacity to enter into a contractually based marketing arrangement. Ownership of the raw sugar would be decided under a cane supply contract between a grower or a group of growers and the relevant miller. Although the owner could be either a grower or group of growers or the miller, it is expected that in the initial years the owner would be the miller.

- **30 August 2005** - CANEGROWERS passed the following resolutions:
  - *That CANEGROWERS confirm its endorsement of the Working Group Report and its commitment to centralised marketing arrangements; and*
  - *reinforce the requirement that a clear and binding commitment to this process is provided by sugar milling companies."*
  - *"That CANEGROWERS strongly recommend to the State Government that it take no action in respect to current legislative arrangements before contractually binding undertakings have been finalised between sugar milling companies and Queensland Sugar Limited."*
  - *"That CANEGROWERS endorse the draft Heads of Agreement subject to satisfactory commitment by sugar milling companies."*
  - *"That CANEGROWERS communicate its position to the Australian Sugar Milling Council and to Government as soon as possible."*

- **2 September 2005** - Mr Ian McMaster, Acting Chair of ASMC wrote to the Premier advising:
  - ASMC endorsed the wording of the revised 2nd MoU, and subject to CANEGROWERS unequivocal endorsement, has authorised him to sign the HoA;
  - Reaffirmed its support for the removal of legislative impediments to reform to allow the industry to take responsibility for its own future in a commercial

environment;

- **22 September 2005** – The second tranche of the Sustainability Grant was paid bringing the total paid under this component to $146 million.

- **29 September 2005** - CANEGROWERS wrote to the Deputy Premier advising that after considering various issues including the positive response and indication of support provided by milling representatives and his own comments, CANEGROWERS would endorse a revised MoU but raised that:

  It will be important that both Government and industry have a common view of when "sufficient support", in the form of contractual commitment, has been achieved. It is understood that the current contractual provisions provide exit clauses in the event that an appropriate centre of mass is not achieved and it will be important that these exit clauses are not able to be exercised after amending legislation relating to acquisition is enacted.

  The changes in the MoU were minor and included:
  - under "A new marketing system for the sugar industry", the word "preferred" was inserted in the first dot principle so that it read "QSL would continue to be the industry's preferred bulk raw sugar export marketing company". This change was previously sought by ASMC.
  - under the same heading in the second dot point delete the word "entirely" after the word "operate" so it reads "QSL would operate within a commercial environment under contractual arrangements with suppliers". The change was of little consequence as one either operates commercially or does not.

- **13 October 2005** - A MoU was executed between the Queensland Government, CANEGROWERS and ASMC to progress the proposal by the Working Group of a new marketing system.

  The MoU included continuing commitment by the Queensland sugar industry and by the Queensland Government to ongoing reform to maintain industry competitiveness and retain sugar's position as a vital exporter for Queensland and Australia.

  It also included the following commitments:

  The Australian Sugar Milling Council:

  1. *Reaffirms its commitment to supporting the removal of legislative impediments to reform and allow the industry to progress towards meeting the challenge of taking responsibility for its own future within a commercial environment;*
  2. *Has consulted its member companies regarding the proposal and supports the introduction of the new marketing system in 2006;*
  3. *Advises that 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;*
  4. *Recognises that commitment by suppliers is a matter for negotiation between QSL and individual suppliers.*

CANEGROWERS:

1. *Reaffirms its support for increased flexibility with the retention of benefits that exist under the current export marketing arrangements;*
2. *Will communicate with growers regarding how the new marketing system would operate;*
3. *Supports the introduction of the transition to a contractual basis for raw sugar marketing from 2006, provided there is sufficient support from suppliers to successfully implement the recommendations of the working group.*

- **28 November 2005** - Sugar Industry Amendment Act 2005 receives Assent and came into operation on 1 January 2006. The purpose of the Amending Act was to replace the compulsory acquisition or "vesting" of raw sugar under the Sugar Industry Act 1999 with new contract-based arrangements, thereby allowing all the provisions of the Act dealing with vesting and statutory based marketing arrangements to be repealed. The amendments also Authorised Queensland Sugar Limited (QSL), for the purposes of the Trade Practices Act 1974 (TPA), to negotiate, for three years, commercial export contractual arrangements with millers providing for collective selling and uniform pool pricing. As a consequence of removal of vesting the Sugar Authority was dissolved.

  The explanatory memorandum to the Bill confirmed CANEGROWERS, ASMC and QSL supported the legislative changes needed to underpin the new Marketing System.

2006

- **1 January 2006** - The Queensland sugar industry was deregulated on 1 January. QSL entered into voluntary agreements with the majority of (but not all) Queensland mills to market their export raw sugar. This made it responsible for more than 90% of all of raw sugar exported from Australia. Mills not contracted to QSL independently marketed their own sugar.

- **9 February 2006** - The Industry Oversight Group (IOG) presented its Strategic Vision to the Federal Minister for DAFF, The Hon Peter McGauran, MP.

  The IOG's Vision was for:

  A commercially vibrant, sustainable and self-reliant raw sugar and sugarcane derived products industry through:

  - committed cane growers and millers being responsive to international and domestic market forces; and
  - operating in an open, deregulated industry environment, within Australia's corporate governance framework.

  On regulatory reform, the IOG noted:

  The repeal of sugar industry specific legislation in Queensland should ensure that sugarcane producing regions and milling areas have the commercial flexibility necessary to reform and restructure. The historic response of the industry had been to oppose deregulation. With staged deregulation, the response by some is to seek to maintain the structure and cultures of past regulation. The consequent preservation of practices and delay in adoption of innovative approaches has impeded the industry's drive for international competitiveness. Some industry participants find it difficult to move away from past cultures. The industry requires a cultural shift to develop flexibility to respond to market forces and

become self-reliant. P.4

and

To achieve the IOG Vision the industry needs to reform. This entails a fundamental change to a new 'cultural' paradigm that achieves real long-term economic benefits….The necessary prerequisite for the implementation of these reforms is the industry's acceptance of a future, without sector-specific legislation, which allows economic signals to flow along the value chain to ensure there is a proper response to real costs and prices.

The historic, often adversarial, relationship between growers and millers, some of which stems from the precedent of arbitrated decisions, appears a significant barrier to reform within the industry. However, the relationship between sugarcane growers and millers is important. There is more interdependence between the sugarcane-growing sector and the sugarcane-milling sector than in many other agricultural business relationships, for various reasons. In moving towards deregulation, relationships within the industry need to be based on commercial principles and an accurate knowledge of where costs and efficiencies lie throughout the value chain. This could lead to a reduction in costs and to different methods of pricing for various stages in the value chain. p.11

On vesting, the IOG stated:

The 2005 repeal of 'vesting' should provide the Queensland industry with greater options in servicing export markets. Most Queensland mills have entered into supply contracts for three years with Queensland Sugar Limited (QSL). In that timeframe, participants in the Queensland industry are expected to graduate from a statutory relationship to a contractually-based commercial relationship with QSL or a marketing entity of their choice. P.88

On regulation the IOG stated:

As can be seen from the legislative and review timetable, over a 100-year timeframe, the industry has been highly regulated. Legislation has historically governed most aspects of the industry. Development and commercial activity was premised on a remunerative price and 'grower equity'. Prescriptive government regulation can have benefits as it establishes rules to manage the behaviour of industry participants. It provides certainty, because of the recourse to legal sanctions, and possibly reduces compliance costs. It also has potential drawbacks, however, as it may be standardised and inflexible and may not adequately allow for a diversity of conditions or changes over time. It may also impede progress and innovation. Over time it can generate further regulation. The industry-specific regulations and arbitrated decision making have had widespread ramifications for the behaviour of industry participants, allowing certain behaviours to become regarded as 'conventional'. Ideally, the move to a deregulated industry means that these 'conventions' will hopefully become part of the industry's history, rather than its future, and will not become enduring precedents in Australia's sugar industry. pp.88-89

Points made by the IOG included:

- Australia's sugar industry has a history of legislation and regulation;
- Regulation tends to mask commercial market and economic signals;
- The past 20 years has seen nearly all of the industry's production exposed to cyclically volatile world market prices;

- There have been a succession of reviews and protracted assistance packages from governments;
- The outcomes of the sequence of reviews and reports into the industry have identified the complexity of the challenges the sugar industry faces and agreed that comprehensive solutions are difficult to identify and effect;
- The sugar industry in total is a relatively modest, declining contributor to Australia's GDP;
- As statutory vesting authority ceased from 1 January 2006, QSL needs to consider reviewing its structure and its relationship with suppliers. P.109

Cane payment **formula**

Growers and millers are dependent on one another for the supply of sugarcane to the mills and the milling of cane into raw sugar for sale.

At a local level growers either become part of a collective to negotiate the terms of conditions of individual cane supply contracts or negotiate directly with the mill on their own behalf to form an individual contract. A remaining provision in the Sugar Industry Act is that such contracts must be in place for cane to be supplied by a grower for processing by the miller as follows:

Supply contract
(1) A grower may supply cane to a mill for a crushing season only if the grower has a supply contract with the mill owner for the season.
(2) A supply contract may be for 1 or more than 1 crushing season.
(3) A supply contract may be either an individual contract or a collective contract.
(4) An interested third party may be a party to a supply contract between a mill owner and a grower.
(5) Each of the parties to a supply contract must sign the contract.

Most growers enter into contracts determined by collectively bargained processes. These cane supply agreements determine the conditions under which payment, harvesting, transport and delivery to mills occurs for each mill area. The negotiation of these factors at a local level ensures that growers and millers are able to have supply arrangements best suited to their local conditions.

Each mill is also responsible for the organisation of several services in its mill area including:

- Co-ordination of harvesting;
- Transport of sugarcane;
- Sampling and analysis of sugarcane;
- Delivery of sugar to bulk storage terminals;
- Maintenance of accounts to provide for payments to be made to growers and In most cases to provide opportunities for growers to participate in forward pricing activities

In most mill areas a strong working relationship exists between representatives of the mill and the cane growers who supply that mill. This relationship is essential to ensure that both growers and millers are able to operate their businesses.

There are two cane payment formulas under which growers in Queensland are paid. The growers supplying Mackay Sugar's three mills in the Central region are paid on a relatively new basis (since 2005) that replaces CCS with the Percent Recoverable Sugar (PRS) to determine the sugar component of the cane payment formula. The Mackay Sugar Cane Price Formula is based on providing growers with a fixed 62.33% of all the income produced from their cane. The 62.33% was based on audited figures of Mackay Sugar's 10 year cane payments prior to its introduction in 2005 compared to its income from Sugar, Molasses and Co-generation.

All other growers are paid under the following longstanding formula.

Pc = 0.009 x Ps x (CCS-4) + $0.608*

Where:

Pc = price of cane (what the grower receives)

Ps = price of sugar per tonne IPS (net returns for raw sugar)

CCS = commercial cane sugar (how much sugar is in the cane)

This formula recognized the conditions existing at that time when the CCS of cane was 12 and the mills Coefficient of Work (COW) was around 90. (COW is a measure of mill performance compared to the CCS). The formula provided 2/3rd of revenue to growers at 12 CCS and 90 COW. This is where the long-held belief that growers are entitled to 2/3rd of income originated. This was not the case and is confirmed by the Central Sugar Cane Prices Board judgement in 1924 which stated that…'*the whole of any further value attaching to the cane by CCS being in excess of 12 is given to the grower whilst the value of any COW in excess of 90 is reserved to the mill.*'

To summarise, the formula was initially based on the facts that

- grower's costs were about twice those of the mills;
- grower's capital investment was about twice that of the mills;
- at standard performance of 12 CCS and 90 COW the cane price to growers would be 2/3 of the sugar revenue;
- it rewards growers for CCS increases greater than 12;
- it rewards mills for improvements in factory efficiency; and
- the value of molasses was included indirectly in obtaining the cane price.

*The constant used in this example ($0.608) is indicative and can be different (in the order of cents) from one mill area to the next. It, in the main, represents the outcome of a series of adjustments made over time since the early 1900's to ensure the formula reflected changed conditions since its introduction.

The method by which mills pay growers is determined in the negotiated cane supply contract. The actual payments made by millers to growers are calculated by the cane payment formula which takes into account the CCS content of the growers' sugarcane combined with the price of raw sugar realised by growers. Up until 2006, this price of sugar was determined centrally by QSL (or its predecessors). Growers now have a range of mechanisms through which they can influence the price of sugar that will ultimately be used in their cane payment formula. These include through participation in various mill or QSL pooling arrangements or through agreement with their mills to have their sugar price directly or indirectly hedged via derivatives.