

# Chapter 3

## Issues currently facing the Australian sugar industry

3.1 The Australian sugar cane industry has undergone significant rationalisation – particularly in the production and processing sectors – over the past ten years. In addition to several mill closures, a number of growers have left the industry, which has resulted in the amalgamation of farming and harvesting operations. This rationalisation has also seen some changes in terms of mill ownership and the implementation of structures which, it was suggested, are designed to promote greater cohesion and efficiency of operations. Industry participants – particularly across the milling sector – indicated that there is an expectation that this type of change will continue to impact the industry.<sup>1</sup>

3.2 As noted in the previous chapter, Australia's sugar industry is largely concentrated along Australia's eastern coastline, in Queensland and New South Wales. Whilst the volume of sugar produced by each state – Queensland's 95 per cent compared to New South Wales' 5 per cent – is vastly different, there are some issues which are of common concern to both states.

3.3 The New South Wales Cane Growers' Association (NSWCGA) noted, for example, that the 'principles that are required to run an efficient sugar industry are enshrined in the Queensland Sugar Industry Act'.<sup>2</sup> The NSWCGA also noted that the New South Wales industry mirrors many of the practices for resource management which are contained in the Queensland Sugar Industry Act, in particular:

... the use of 'allotments' to establish a framework in which the use of land for cane growing is regulated to match the supply and demand for cane in a given mill area, with the intent of ensuring sustainable production and optimum efficient use of production capacity.<sup>3</sup>

3.4 Whilst it is acknowledged that some parallels exist between the two states – and that the changes which have taken place over recent years have impacted the Australian sugar industry as a whole – there is also some contrast. The New South Wales and Queensland industries operate in their own unique environment and under somewhat different circumstances.

3.5 In addition to variations in the way issues are dealt with across state lines, there are also a number of competing and conflicting views across stakeholder groups

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1 Australian Sugar Milling Council, <http://asmc.com.au/industry-overview/>, accessed 30 March 2015.

2 New South Wales Cane Growers' Association Inc., *Submission 4*, p. 3.

3 New South Wales Cane Growers' Association Inc., *Submission 4*, p. 3.

in relation to the concept of change generally, as well as the pace at which new processes are developed, endorsed and implemented.

### ***The New South Wales sugar industry***

3.6 In New South Wales, climatic conditions limit the sugar cane industry to the three most northern coastal floodplains of the state – the Tweed, Richmond and Clarence Rivers. There are currently around 378 cane growing businesses which produce approximately six per cent of Australia's sugar cane yield.<sup>4</sup>

3.7 Typically, cane growers in New South Wales hold around 34,000 hectares of land for production of sugar cane, with the average holding being approximately 90 hectares. The industry currently employs an estimated 2,200 people – including 450 mill workers and 600 cane farmers – and accounts for \$230 million of regional economic output.<sup>5</sup>

3.8 Sugar cane grown in New South Wales is processed at one of three mills located at Condong, Broadwater or Harwood. These mills are owned by the New South Wales Sugar Milling Co-operative Ltd – a co-operative that is owned by New South Wales cane growers.<sup>6</sup> Under current arrangements, all of the co-operative's sugar production is refined and supplied to the domestic market, which makes it a key supplier to many of Australia's major consumers of sugar.<sup>7</sup>

3.9 Several New South Wales industry stakeholder groups told the committee that 'like other commodities with high transport and storage costs, sugar production gives rise to a natural monopoly'<sup>8</sup>. In other words, the sugar milling and refining industry is one in which it is most efficient for production to be concentrated in a single entity.

### ***The Queensland sugar industry***

3.10 The Queensland sugar industry is made up of approximately 4,000 sugar cane farms, 21 mills, six bulk sugar terminals and two sugar refineries. There are currently around 4,000 cane growers, and while the average size of cane farms is around 100 hectares, the size of individual farms varies considerably.<sup>9</sup>

3.11 The 21 Queensland mills are owned by seven different mill owners – Wilmar, MSF Sugar, Mackay Sugar, Bundaberg, Tully Sugar, Isis and WH Heck and Sons. Individual mill owners procure cane from local growers under cane supply agreements

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4 New South Wales Cane Growers' Association Inc., *Submission 4*, p. 1.

5 New South Wales Cane Growers' Association Inc., *Submission 4*, p. 1.

6 New South Wales Cane Growers' Association Inc., *Submission 4*, p. 1.

7 New South Wales Cane Growers' Association Inc., *Submission 4*, p. 1.

8 See for example, NSW Cane Growers Association, *Submission 4*, p. 3 and Richmond River Cane Growers Association Ltd, *Submission 5*, p. 3.

9 Queensland Sugar Limited, *Submission 16*, p. 5.

(CSAs). A number of mills – including Wilmar, MSF Sugar and Mackay Sugar – also either own or lease cane farms close to their respective mills. The raw sugar produced by the mills is then either sold to domestic refineries or exported for sale to international sugar refineries (or QSL or other sugar traders who ultimately sell the sugar to international refineries). Millers generally sell raw sugar to the domestic market directly.<sup>10</sup>

3.12 Queensland has two refineries – the Racecourse Refinery (currently owned by Sugar Australia Limited, which is 75 per cent owned by Wilmar and 25 per cent owned by Mackay Sugar) and the Bundaberg Refinery which is owned by Bundaberg Sugar and located on the same site as the Millaquin mill.

3.13 Approximately 15 per cent of raw sugar produced in Queensland is currently delivered for processing to the two refineries, with the remainder being exported or supplied to interstate refineries.

### **The impact of deregulation**

3.14 Throughout the inquiry, the committee heard various views and opinions about the 2006 deregulation, and the impact the changes, which were set out in the previous chapter, have had across the industry.

3.15 Some submitters, such as MSF Sugar, for example, indicated that deregulation of the sugar industry created an environment which fostered innovation in the growing, milling and marketing sectors of the industry and has led to increased investment in MSF Sugar's milling regions.<sup>11</sup>

3.16 In this regard, MSF Sugar acknowledged that it is viewed by some in the sugar industry as non-conformist because it has 'taken advantage of the opportunities of the 2006 deregulation of the raw sugar marketing to market raw sugar outside of the traditional single desk marketer (QSL)'.<sup>12</sup>

3.17 Others, however, indicated that they view deregulation in a less positive light. Cane grower, Mr Alf Cristaudo, for example argued that:

For many years we have had a very effective and efficient sugar marketing system which has been the envy of every other country in the world. So, sadly, some clever people thought we could not have that and proceeded to deregulate over time.<sup>13</sup>

3.18 Mrs Margaret Menzel also put her views regarding deregulation at the Townsville hearing, when she told the committee that:

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10 Queensland Sugar Limited, *Submission 16*, pp 5–9.

11 MSF Sugar Limited, *Submission 8*, p. 1.

12 MSF Sugar Limited, *Submission 8*, p. 3.

13 Mr Alf Cristaudo, *Committee Hansard*, 13 March 2015, p. 5.

Undoubtedly, the deregulation of the sugar and other rural and manufacturing industries has proven to be a disastrous failure for all involved and for our communities. This is at the core of the government failures in our industry. It has been driven by a failed ideology of national competition policy, begun in the Keating era, pursued in earnest by the Howard government and, despite its clear failures and damage to rural and regional industries and communities, it is still continuing today.<sup>14</sup>

3.19 The committee was also told that since 2006, deregulation has had a negative impact on cane growers in the Rocky Point district. The Rocky Point District Cane Growers Organisation (RPDCGO) detailed the problems it experienced in attempting to market sugar outside the QSL system. The most recent experience involved the local mill initially presenting growers with two options for the destination of their sugar:

... we as the directors of Rocky Point Cane Growers and the negotiators, chose the QSL model for 2015. Within hours of them being aware that we wanted to go to QSL they had found a mystery buyer and our request was promptly dismissed by the mill. We were told: 'We're going with this mystery buyer.' We suspect it is Wilmar, but we have not been told officially. They just overrode us completely on that one.<sup>15</sup>

3.20 Mr Richard Skopp, representing the RPDCGO, submitted that 'deregulation has been a disaster for Rocky Point growers' and indicated that the growers have experienced financial losses during recent years.<sup>16</sup> According to Mr Skopp, the local miller 'just does not seem to care' when he 'signs a contract with us',<sup>17</sup> but rather leaves the negotiations to the last minute.

3.21 The committee was also informed that several cane growers had already chosen to 'sell out before they go broke'.<sup>18</sup>

There have been quite a few sales to people for lifestyle blocks – mainly the smaller ones – at reasonable prices, but there is not much demand at the moment.<sup>19</sup>

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14 Mrs Margaret Menzel, *Committee Hansard*, 13 March 2015, p. 34.

15 Mr Richard Skopp, Rocky Point District Cane Growers Organisation Limited, *Committee Hansard*, 10 March 2015, p. 50.

16 Mr Richard Skopp, Rocky Point District Cane Growers Organisation Limited, *Committee Hansard*, 10 March 2015, p. 51.

17 Mr Richard Skopp, Rocky Point District Cane Growers Organisation Limited, *Committee Hansard*, 10 March 2015, p. 55.

18 Mr Richard Skopp, Rocky Point District Cane Growers Organisation Limited, *Committee Hansard*, 10 March 2015, p. 56.

19 Mr Richard Skopp, Rocky Point District Cane Growers Organisation Limited, *Committee Hansard*, 10 March 2015, p. 56.

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## Marketing

3.22 The issue of sugar marketing was a primary focus of the committee's inquiry, and one that is of concern to stakeholders across both the New South Wales and Queensland industries. However, given that the Queensland industry is primarily export focused, and the New South Wales industry largely supplies the domestic market, the states are likely to be impacted in slightly different ways.

### *Anticipated changes – post 2017*

3.23 Australia's sugar industry has undergone considerable change – particularly over the past decade. Anticipated changes to the sugar marketing structure post-2017 (and the impacts these changes are predicted to have on the industry) are, therefore, of central importance to industry stakeholders.

3.24 As previously noted, QSL recently advised that three mills – Wilmar, MSF Sugar and Tully Sugar – have given notice to terminate their RSSA agreements with QSL in 2017. The committee was told that the choice made by these mills is cause for concern across the industry. Specifically, the choice made by these mills has created considerable angst for cane growers and their representative bodies.<sup>20</sup>

3.25 Grower representative groups argued that Wilmar's decision to withdraw from QSL 'substantially alters QSL's risk profile',<sup>21</sup> and that this change is 'reflected in MSF Sugar and Tully Sugar's subsequent decisions to give notice to QSL'.<sup>22</sup> Further, it was argued that, should it proceed, Wilmar's decision to withdraw from QSL will result in major changes to Wilmar's CSAs with growers ahead of the 2017 season.

3.26 Grower representative bodies are of the view that GEI sugar is recognised in the current RSSA each mill has with QSL. The current lack of clarity around whether the new – yet to be negotiated CSAs – will include comparable clauses and conditions, has caused considerable concern amongst growers. They are particularly worried that these decisions will deny them any choice in how the GEI sugar that determines the value of their sugar cane is marketed from the 2017 season.

3.27 There were also concerns expressed by grower groups about the potential for milling companies to misuse their market power. It was argued, therefore, that the possibility exists for new marketing arrangements to 'undermine the stability and integrity of the industry's existing marketing structures and alter the way in which rewards and risks are shared across the industry in favour of the mill'.<sup>23</sup>

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20 Queensland Sugar Limited, *Submission 16*, p. 14.

21 CANEGROWERS and Australian Cane Farmers Association, *Submission 23*, p. 3.

22 CANEGROWERS and Australian Cane Farmers Association, *Submission 23*, p. 3.

23 CANEGROWERS and Australian Cane Farmers Association, *Submission 23*, p. 3.

3.28 In giving evidence at the Townsville hearing, cane grower Mr Greg Rossato summarised the issues that have faced the industry since deregulation, and encapsulated the views of a number of stakeholders. Mr Rossato told the committee that he agrees with Wilmar's view that, under deregulation, the company has every right to market the sugar they produce. Mr Rossato went on to say, however, that deregulation works in two ways:

It might give Wilmar the right to market their sugar, but it should also give us our right to be able to achieve a proper commercial rate of return for the cane that we grow. That includes bagasse fibre and molasses. Wilmar only want to pay us for sugar, which again clearly shows them using their monopoly powers. No negotiation. As growers we now have the real chance to modernise our payment formula and to push for real returns for our entire crop. This would be totally consistent with deregulation; it would give each side of the industry a clear view of who owns what and at what point of production. This would also stimulate the mills into more innovation of new products and add value to its bottom line. If we keep the status quo – that is, growers: two-thirds; Wilmar: one-third – and they want to do all the marketing, but we have most of the risk, then I do not think it is too much to ask to be able to have a choice about who markets our two-thirds share. I am sure no-one in any other business would have it any other way than the majority risk taker actually having a say about where their economic interest shall be marketed.<sup>24</sup>

3.29 Mr Rossato concluded by saying that 'Wilmar cannot have it both ways':

They cannot use the excuse of deregulation to do what they want and then turn around and use their monopoly power to deny growers their right to negotiate a proper commercial rate of return for sugar cane, or even to be able to choose who should be able to market our two-thirds risk. While growers have that much risk, I am sure having a choice for between QSL and Wilmar is not too much to ask. But please – give us the choice.<sup>25</sup>

3.30 On the whole, stakeholders acknowledged the Australian sugar industry's recent transition to deregulation, and indicated that they were not seeking to reverse the process and re-regulate the industry. A number of stakeholders did, however, argue that there is a need to modify the legislative framework – particularly in relation to competition policy and the institution of a fair contract negotiation process.<sup>26</sup>

3.31 In evidence, the Chairman of CANEGROWERS Queensland and CANEGROWERS Australia, Mr Paul Schembri indicated that his members were not seeking re-regulation of the industry and in fact argued that 'the institutional

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24 Mr Gregory Rossato, *Committee Hansard*, 13 March 2015, p. 24.

25 Mr Gregory Rossato, *Committee Hansard*, 13 March 2015, p. 24.

26 See for example, Mr Warren Males, CANEGROWERS, *Committee Hansard*, 13 March 2015, p. 61, Burdekin District Cane Growers Limited, *Submission 13*, p. 4 and Queensland Sugar Limited, *Submission 16*, pp 3–4.

arrangements in our industry have been the cornerstone of our success; none of this has happened by accident'.<sup>27</sup> Mr Schembri further argued that, in fact, the certainty and stability of the industry's institutional arrangements has given rise to grower confidence.<sup>28</sup> He also indicated that what the industry is seeking is a 'mild form of legislation':

- to apply stronger laws to censure anticompetitive behaviour; and
- to pursue a mandatory code of conduct (to prescribe a pro-competitive environment choice of marketing for Australian canefarmers).<sup>29</sup>

### ***Grower Economic Interest (GEI) sugar***

3.32 As discussed in Chapter 2, the issue of grower economic interest (GEI) is at the heart of many of the concerns expressed by stakeholders. It is also an issue which has consequences for both the New South Wales and Queensland industries.

3.33 Throughout the inquiry, it became increasingly obvious that there are a wide range of views regarding the definition of GEI, the transfer of sugar title and 'ownership' more generally.

3.34 Queensland Sugar Limited (QSL) told the committee that since deregulation, growers have supplied local mill owners under CSAs. QSL indicated that, usually, these agreements provide for growers to receive a price for their cane (which is calculated by reference to the ultimate price obtained for the resulting raw sugar produced from that cane). The price received typically reflects approximately two thirds of the value of the raw sugar being attributable to the cane, and one third attributable to the milling process. The method of calculation used is frequently referred to as the 'cane payment formula'.<sup>30</sup>

3.35 QSL noted that, as a result of the cane payment formula – and under current contractual arrangements – while growers transfer legal title to the cane to the mill owner it is delivered to, growers retain an 'economic interest' in approximately two thirds of the raw sugar produced.<sup>31</sup> It was further noted that:

The resulting separation of legal and economic interests is a creature of contract and not the only possible outcome of such negotiations. Rather it is

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27 Mr Paul Schembri, CANEGROWERS Queensland and CANEGROWERS Australia, *Committee Hansard*, 12 March 2015, p. 2.

28 Mr Paul Schembri, CANEGROWERS Queensland and CANEGROWERS Australia, *Committee Hansard*, 12 March 2015, p. 2.

29 Mr Paul Schembri, CANEGROWERS Queensland and CANEGROWERS Australia, *Committee Hansard*, 12 March 2015, p. 3.

30 Queensland Sugar Limited, *Submission 16*, p. 6.

31 Queensland Sugar Limited, *Submission 16*, p. 7.

a historical legacy of the industry replicating in commercial contracts the transactions which previously occurred under the statutory regime.<sup>32</sup>

3.36 QSL submitted that alternative legal structures have been considered from time to time – for example, tolling, where the grower retains title and pays the mill a tolling fee for crushing their cane. It was argued, however, that the transfer of title to a mill owner was previously not of concern to growers, because mill owners were not seeking to 'use it to control the marketing of the raw sugar the growers had an economic interest in'.<sup>33</sup>

3.37 Further, QSL told the committee that the concept of both GEI sugar and mill owner or supplier economic interest (SEI) sugar are formally recognised in the raw sugar supply agreements between QSL and the mill owners that supply it. It was suggested that issues of title and GEI had become far more critical to growers because of the approach being taken by some mills in relation to how it is intended to market GEI sugar.<sup>34</sup>

3.38 Mackay Sugar Limited, indicated that title to sugar cane – and the raw sugar subsequently produced from that cane – passes to the miller under CSAs.<sup>35</sup>

3.39 NSWCGA, however, told the committee that the New South Wales sugar industry 'has long recognised the grower's economic interest in the sugar produced from the cane they supply'.<sup>36</sup> NSWCGA noted that Cane Supply and Processing Contracts define the links between purchase and selling price for sugar. NSWCGA also indicated that there are a number of specifically defined policies and procedures which are reported against – to the Co-operative Board, Canegrowers and Cane Supply Management Committees.<sup>37</sup> It was argued that it is within this context that mill owners are required to manage the pricing for raw sugar (manufactured from the cane delivered by cane growers), with the aim of:

- undertaking pricing that will deliver cash profits for the New South Wales sugar industry;
- minimising downside risk in the sugar price;
- managing the amount of capital required to undertake pricing programs within reasonable limitations; and

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32 Queensland Sugar Limited, *Submission 16*, p. 7.

33 Queensland Sugar Limited, *Submission 16*, p. 7.

34 Queensland Sugar Limited, *Submission 16*, p. 7.

35 Mackay Sugar Limited, *Submission 7*, p. 4.

36 New South Wales Cane Growers' Association Inc., *Submission 4*, p. 2.

37 New South Wales Cane Growers' Association Inc., *Submission 4*, p. 2.



- minimising the cost of pricing in balance with managing capital requirements.<sup>38</sup>

3.40 NSWCGA submitted that it has serious concerns about the changes that the Australian sugar industry is currently undergoing – particularly in relation to ownership and marketing. It was argued that, as the current system is an 'open book' and one which allows growers to understand how their sugar is being priced, it should not be changed.

3.41 NSWCGA told the committee that any reduction in the price received for raw sugar will contribute to a reduction in the price a grower receives for sugar cane. It was argued that, like any other area of agricultural production, this situation can only be sustained for a short period of time, and in the long term it may threaten the viability of cane farming.<sup>39</sup>

3.42 Tully Cane Growers (TCG) also told the committee that if growers are not given a choice in relation to who markets the GEI sugar produced from the cane they supply, they won't be able to capture all the benefits of the arrangements that are currently available through QSL. The point was made that the current marketing arrangements include income from a number of other revenue streams. However, the proposed new arrangements may result in growers having their cane payment 'being determined from a sugar price that excludes some additional revenues other than the raw sugar futures price'.<sup>40</sup>

3.43 The committee heard evidence from a number of stakeholders who agreed that producers should be provided with a real choice in relation to the marketing and pricing of their product. As the inquiry progressed, it became clear that grower choice in relation to GEI sugar is an issue of central importance to growers and their representative bodies. It is also an issue about which there is general agreement across both New South Wales and Queensland industry stakeholders.<sup>41</sup>

3.44 In a joint submission to the inquiry, CANEGROWERS and the Australian Cane Farmers Association (CANEGROWERS and ACFA), suggested that any real choice for cane growers would be removed if the large milling companies were to take control of the sugar marketing sector.<sup>42</sup> The committee was told that the mills' decisions 'will deny growers any choice in how the sugar (GEI sugar) that determines

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38 New South Wales Cane Growers' Association Inc., *Submission 4*, p. 2.

39 New South Wales Cane Growers' Association Inc., *Submission 4*, p. 2.

40 Tully Cane Growers, *Submission 26*, p. 2.

41 See for example, Queensland Sugar Limited, *Submission 16*, p. 19, Maryborough CANEGROWERS Limited, *Submission 17*, [p. 2], Mackay CANEGROWERS Limited, *Submission 18*, p. 2, Tully Cane Growers Limited, *Submission 26*, p. 2, Mr Roger Piva, *Submission 31*, p. 1, Mr Paul Sgarbossa, *Submission 37*, p. 1 and Mr Serg and Ms Sandra Berardi, *Submission 40*, p. 1.

42 CANEGROWERS and Australian Cane Farmers Association, *Submission 23*, p. 3.

the value of their sugarcane is marketed from the 2017 season'.<sup>43</sup> Specifically, it was stressed that cane growers should have the right to decide how GEI sugar is priced and sold, given that the 'market value (price + premiums net of costs) of this sugar passes directly to the price of sugarcane'.<sup>44</sup>

3.45 The committee also heard from submitters with concerns about the concept of grower choice. Cane grower, Mr Max Menzel, for example, suggested that there should be compulsory acquisition 'as it was before, through the sugar board and then QSL'.<sup>45</sup> Mr Menzel predicted that, in the short term, grower choice may result in large companies such as Wilmar offering growers more for their cane, however:

After they have done it for three or four years – it will not even be that long – you will not have QSL. You have to legislate to make all sugar produced, including Wilmar's in the Burdekin, where they have a considerable amount of cane they send to the mills, should go through QSL as a single desk. It is the only way it will work.<sup>46</sup>

3.46 Wilmar Sugar Australia Limited (Wilmar) also commented on the issue of GEI sugar. Wilmar submitted that there are a number of stakeholders who believe that growers have a form of ownership or a stake in the sugar that is manufactured by millers such as Wilmar – and therefore have the right to determine how this sugar is marketed.<sup>47</sup>

3.47 Wilmar disputed this claim, and argued that the proposition of GEI sugar is:

... without foundation and a misrepresentation of the long-standing arrangements established under the cane price formula which recognises growers have an exposure to the net sugar price, and thus have an interest in how their exposure to the sugar price is managed.<sup>48</sup>

3.48 Wilmar argued that in the current debate, some stakeholders would like to change what has been a long-standing principle – from one of pricing into actual ownership or control of the sugar manufactured by mills.<sup>49</sup>

3.49 Wilmar pointed to several reports which 'clearly demonstrate, there is absolutely no historical or legal basis for this proposition', and told the committee that the company:<sup>50</sup>

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43 CANEGROWERS and Australian Cane Farmers Association, *Submission 23*, p. 3.

44 CANEGROWERS and Australian Cane Farmers Association, *Submission 23*, p. 3.

45 Mr Max Menzel, *Committee Hansard*, 13 March 2015, p. 35.

46 Mr Max Menzel, *Committee Hansard*, 13 March 2015, p. 35.

47 Wilmar Sugar Australia Limited, *Submission 10*, p. 5.

48 Wilmar Sugar Australia Limited, *Submission 10*, pp. 5–6.

49 Wilmar Sugar Australia Limited, *Submission 10*, p. 6.

- does recognise that growers have an exposure to the net sugar price because of its relationship to the cane price formula; and
- strongly supports providing growers with a choice of mechanisms to manage their sugar price exposure.<sup>51</sup>

3.50 Wilmar did argue very strongly, however, that:

Any recommendation that growers have some sort of legal ownership or 'economic interest' in sugar or control over the marketing of sugar would be highly undesirable and would have serious consequences for the commercial and contractual arrangements that govern the relationship between growers and millers. It would be an issue of significant concern for mill owners, future investment in the Australian sugar industry, and indeed Australia's broader trading interests. ... It would represent an overturning of the objectives behind sugar industry reform over the past couple of decades.<sup>52</sup>

3.51 MSF Sugar Limited argued that GEI sugar is a term that has emerged in the industry over the past three years. Specifically, it was argued that the term emerged during negotiations with QSL, on a new RSSA to allow millers to market (within the QSL system) part of the raw sugar produced by a mill. MSF Sugar told the committee that the 'reality is that this terminology does not appear in any cane agreement and is a catchphrase invoked throughout the growing side of the sugar industry'.<sup>53</sup>

3.52 MSF further argued that the risk on raw sugar is transferred to the mill when title for the cane is transferred to the miller. This transfer happens when a grower delivers sugar cane to an agreed rail siding or truck pickup point. It is from this point that the miller takes responsibility for 'transporting the cane to the mill, the conversion of the sugar cane into raw sugar and the delivery of the raw sugar to the export bulk terminal'.<sup>54</sup>

### ***Transparency***

3.53 The inquiry brought to the fore a complete lack of clarity around the issue of GEI sugar and growers' rights to choose who markets their sugar. Notwithstanding this point, there remains intense agreement across both the New South Wales and

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50 Reports included as attachments to Wilmar Sugar Australia Limited, *Submission 10*, The Centre for International Economics, *Current and future arrangements for the marketing of Australian sugar: Senate Inquiry*, October 2014, Minter Ellison, *Australian Sugar: a review of current and future arrangements for the marketing of Australian Sugar*, October 2014 and J.M. Craigie, *Regulation and Reform of the Queensland Sugar Industry*, October 2014.

51 Wilmar Sugar Australia Limited, *Submission 10*, p. 6.

52 Wilmar Sugar Australia Limited, *Submission 10*, p. 6.

53 MSF Sugar Limited, *Submission 8*, p. 6.

54 MSF Sugar Limited, *Submission 8*, p. 6.

Queensland industries that, above all, the sugar marketing system should be both fair and transparent.<sup>55</sup>

3.54 The Tweed Cane Growers Association (TCGA) argued that 'the most important thing in all of this marketing is that the growers are able to sell their sugar into a system that is completely open and transparent'.<sup>56</sup> The TCGA also noted that the organisation shares Queensland growers' concerns that:

If the system they have is replaced with any new type of marketing regime, even though the grower maintains his two-thirds share of division money, the big question is: what is the final price? That is the big issue. It has to be completely fair and transparent.<sup>57</sup>

3.55 Mackay Sugar Limited told the committee that foreign ownership is not the issue. Rather the concern for growers is the transparency of marketing and pricing of the raw sugar. MSF suggested that the imbalances growers are seeking to address are:

- having a transparent pricing alternative to which the miller pricing could be benchmarked; and
- allowing growers to choose who they want to price and market their sugar.<sup>58</sup>

3.56 MSF Sugar Limited (MSF Sugar) – which described itself as an 'integrated sugar cane grower, sugar miller, marketer and exporter of raw sugar'<sup>59</sup> – acknowledged that some sectors of the cane growing community feel insecure around the changes in the marketing of raw sugar. Further, MSF noted that the sugar industry is one where consecutive generations have farmed sugar cane, and that any perceived change can, and does, create apprehension and fear – particularly when some growers mistrust large organisations, including the sugar milling sector.<sup>60</sup>

3.57 Additionally, MSF Sugar argued that:

- there is an historic dependence on single desk marketing (previously the QSL model);
- despite the best efforts of MSF Sugar and other sugar industry bodies (including QSL), there remains a considerable misunderstanding by a

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55 See for example, Tweed Shire Council, *Submission 2*, p. 2, Richmond River Cane Growers' Association, *Submission 5*, p. 2, MSF Sugar Limited, *Submission 8*, p. 15 and Mr Brian Stevens, *Submission 30*, p. 1.

56 Mr Robert Hawken, Tweed Cane Growers Association, *Committee Hansard*, 10 March 2015, p. 43.

57 Mr Robert Hawken, Tweed Cane Growers Association, *Committee Hansard*, 10 March 2015, p. 43.

58 Mackay Sugar Limited, *Submission 7*, p. 5.

59 MSF Sugar Limited, *Submission 8*, p. 7.

60 MSF Sugar Limited, *Submission 8*, p. 7.

significant number of growers about the link between the world sugar price and the price of cane; and

- many growers do not understand how the 'numbers' are achieved; and
- across the industry, there is a lack of understanding about what happens to raw sugar once it leaves a mill.<sup>61</sup>

3.58 The committee was told, however, that in MSF Sugar's two milling regions (Mulgrave and Maryborough), where growers have had direct connection to the marketing of raw sugar to the final buyers, the engagement and level of understanding is greater and apprehension is less. It was also noted that in these two regions, cane growers have been involved at the local level in developing and evolving a cane pricing model.<sup>62</sup>

3.59 Tully Sugar Limited (Tully Sugar) also suggested that 'if anything the proposed changes to raw sugar marketing in the Tully sugar industry will allow growers to take greater control over the management of the price they receive for their product'.<sup>63</sup> It was argued that:

Growers have been able to manage their price risk independently of the mill for a number of years. This will not change, and indeed with Tully Sugar no longer solely relying upon QSL to develop the required price risk management tools, the capacity now exists to access a wider range of services for the growers in the Tully sugar region.<sup>64</sup>

3.60 The importance of growers having some control over the marketing of their product was also raised in terms of the problems both growers and millers are having in reaching agreement on new CSAs. Cane grower representative bodies pointed to the unequal power relationship between growers and millers. These issues are discussed in more detail later in this chapter.

### ***Domestic market***

3.61 As previously noted, the NSW Milling Co-operative (NSWMC) is owned by New South Wales cane growers, with all cane growers having shares in the co-operative. Historically, the majority of the state's sugar has been refined by the Co-operative and sold largely on the domestic market. NSWMC told the committee, however, that as a result of what is currently happening in the marketplace, this situation is changing:

... we are now in a situation where, because of the impacts of the way that Wilmar are effectively marketing sugar into the domestic market, we will

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61 MSF Sugar Limited, *Submission 8*, p. 8.

62 MSF Sugar Limited, *Submission 8*, p. 8.

63 Tully Sugar Limited, *Submission 9*, p. 6.

64 Tully Sugar Limited, *Submission 9*, p. 6.

be exporting somewhere between 50,000 and 75,000 tonnes of our production this season coming up.<sup>65</sup>

3.62 NSWCGA argued that the premiums received for raw sugar are being eroded – or in some cases negated – 'because of the aggressive activities of Wilmar and in some cases importers'.<sup>66</sup> The association further argued that the premiums received in the domestic market are entrenched in the long term pricing targets of raw sugar marketers such as the NSW Sugar Milling Co-operative and others. Therefore, any actions which erode premiums (and thereby reduce the raw sugar price to a level below the cost of production) will result in an unsustainable price – in both the short and long term.<sup>67</sup>

3.63 The committee was told that, more recently, there has been some reluctance on behalf of the companies involved in Sugar Australia – Wilmar and Mackay Sugar – to provide raw sugar to New South Wales refineries.<sup>68</sup>

3.64 NSWCGA reminded the committee that, historically, the New South Wales industry has used an 'allotment' structure as the basis for its land use framework. Under this system, the use of land for cane growing is regulated to match the supply and demand for cane in a given mill area; with a view to ensuring sustainable production and optimum use of production capacity.<sup>69</sup>

3.65 The association also noted that, as a consequence of the foreign ownership changes that have taken place, there are now market participants with supply chains that operate outside these principles. It was submitted that:

Imported raw sugar, with its cost of production subsidised by country of origin subsidies comes at a lower cost of storage and transport, thereby making it economically desirable for foreign owned Australian refineries to purchase and refine imported raw sugar. ... The prospect that foreign owned refineries may be able to access imported raw sugar at subsidised costs is highly objectionable to NSW Cane Farmers on the basis that it brings about inefficient allocation of resources.<sup>70</sup>

3.66 NSWCGA also expressed concern about reports of anti-competitive pricing practices and the NSW SMC being refused access to raw sugar from mill owners such as Wilmar and Mackay Sugar. It was noted that whilst increased foreign ownership is

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65 Mr Christopher Connors, New South Wales Sugar Milling Co-operative Ltd, *Committee Hansard*, 10 March 2015, p. 14.

66 NSW Cane Growers Association, *Submission 4*, p. 2.

67 NSW Cane Growers Association, *Submission 4*, p. 2.

68 New South Wales Sugar Milling Co-operative Limited, *Submission 6*, [p. 3].

69 New South Wales Cane Growers' Association, *Submission 4*, p. 3.

70 New South Wales Cane Growers' Association, *Submission 4*, p. 3.

'not of great concern to the NSW Cane Growers Association, a concentration of market power with access to subsidised raw sugar'<sup>71</sup> is cause for considerable concern.

### **Dumping**

3.67 The issue of 'dumping' is also of primary concern to New South Wales' cane growers.<sup>72</sup>

3.68 NSWSMC noted that, according to Australian Bureau of Statistics (ABS) data, there has been a significant increase in imported refined sugar into Australia.<sup>73</sup> It was argued that the two major suppliers – Malaysia and Thailand – have subsidised domestic sugar pricing arrangements and that at times of lower world prices, 'exports are effectively "dumped" into lower price markets'.<sup>74</sup>

3.69 NSWSMC also submitted that:

- some of the growth in Thai origin white sugar has been due to the Thai miller – Mitr Phol – owning sugar mills in Australia, but having no Australian refining capacity;
- Mitr Phol has in the past five years rapidly modernised its white sugar production, storage and handling capacity in Thailand, and has sought new outlets in Asia, Africa and Oceania; and
- Malaysia and Thailand both have subsidised systems which enables a profitable base from which to deliver imported products into Australia, thus distorting pricing to the disadvantage of the Australian industry.<sup>75</sup>

### **Land use**

3.70 The committee received evidence regarding the importance of the sugar industry to the New South Wales economy, particularly in rural and regional areas. Specifically, in Murwillumbah, the committee heard that the sugar industry is an important economic driver in the Tweed – with the local sugar industry contributing to the Tweed Shire's environmental and energy needs.<sup>76</sup>

3.71 The committee was told that the loss of the sugar industry to the Tweed would have 'fundamental repercussions not only to the Tweed economy but also to the future

71 New South Wales Cane Growers' Association, *Submission 4*, p. 3.

72 See for example, New South Wales Cane Growers' Association, *Submission 4*, p. 3, Mr Brian Restall, Cape Byron Power, *Committee Hansard*, 10 March 2015, p. 1 and Mr Christopher Connors, New South Wales Sugar Milling Co-operative Limited, *Committee Hansard*, 10 March 2015, p. 21.

73 New South Wales Sugar Milling Co-operative Limited, *Submission 6*, [p. 3].

74 New South Wales Sugar Milling Co-operative Limited, *Submission 6*, [p. 3].

75 New South Wales Sugar Milling Co-operative Limited, *Submission 6*, [p. 3].

76 Mr Mark Tickle, Tweed Shire Council, *Committee Hansard*, 10 March 2015, p. 8.

land uses in the agricultural areas as well as the visual character that sugar cane represents in the Tweed'.<sup>77</sup>

3.72 A representative of the Tweed Shire Council also acknowledged, however, that, over recent years, one of the biggest pressures placed on the council in relation to the agricultural land it manages – through land use planning and zoning – is to have that land used for other purposes. It was stated that, being right on the border with Queensland, and near the Gold Coast means that 'urban development is a major pressure on the Tweed'; an issue which was explored further by the committee:

**Senator Williams:** So do you get a lot of calls to split the farms up to put them into little farm blocks?

**Mr Tickle:** Absolutely, and the state government and Tweed Shire Council for many years have put special protection through zoning protection to prevent that from happening. That is where the state government put the special agricultural land protection policy in place where the lands have to be given special approvals before they are rezoned or subdivided.

One of the reasons is that there is a quantum that is reached in the amount of land that is required to run and operate the mills, to the best of our understanding. ... The age of the average farmer is increasing and the potential use of those lands is putting pressure on council. It is that aspect that we are trying to keep ahead of and make sure that we give the industry every possible opportunity to continue at its best.<sup>78</sup>

3.73 As previously noted, evidence provided to the committee indicated that for some growers deregulation has had a negative impact – with some experiencing financial losses over recent years. It was against this background that the committee questioned the future for Rocky Point growers:

**Senator Williams:** Just one question, Mr Skopp: if the Queensland government allowed you to rezone that area, all that land where you are growing the cane, and it was subdivided and it went into houses, with people building there and establishing themselves there, and the mill shut down and you all sold up and left the industry, is that going to please everyone? Do the people you represent feel happy about that, or do they just go along battling?

**Mr Skopp:** Yes. We have had meetings regarding land use changes over quite a period of time, ever since 2004, and the overwhelming majority of farmers in the Rocky Point area are seeking land use changes.<sup>79</sup>

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77 Mr Mark Tickle, Tweed Shire Council, *Committee Hansard*, 10 March 2015, p. 8.

78 Mr Mark Tickle, Tweed Shire Council, *Committee Hansard*, 10 March 2015, p. 9.

79 Mr Richard Skopp, Rocky Point District Cane Growers Organisation Limited, *Committee Hansard*, 10 March 2015, p. 58.



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## Contract negotiations

### *Dispute resolution*

3.74 As previously indicated, growers are keen to maintain a certain level of control over the way in which their sugar is marketed. Growers are acutely aware that they are at a disadvantage when it comes to the amount of power the milling companies currently hold. The committee was told that, in fact, both sectors of the industry have been experiencing considerable difficulties in their attempts to decide on terms and reach agreement on new contracts.<sup>80</sup>

3.75 A number of industry stakeholders suggested that Wilmar was not interested in engaging with growers or their representatives on future marketing arrangements. Wilmar responded to claims that the company is not keen to enter into further negotiation – or in achieving a commercially negotiated outcome – by saying that the claims were 'demonstrably incorrect'.<sup>81</sup>

3.76 Wilmar told the committee that – consistent with the terms of its agreement with QSL and the *Sugar Industry Act 1999* – the company had announced its intention in April 2014 to leave the QSL voluntary marketing arrangement from 2017. It was argued that the company's actions are consistent with the requirement to provide three years' notice of the change. Wilmar added that the decision to leave the QSL arrangement had been preceded by two years of discussions with sugar industry leadership (about ways in which a greater return could be achieved for growers and millers from the sale of raw sugar).<sup>82</sup>

3.77 Wilmar also noted that its proposal for a new marketing model had been the subject of 'extensive consultation with growers and their representative bodies', including:

- grower information sessions – attended by approximately 500 growers;
- group meetings with the leadership of grower collectives from each region;
- group meetings with large growers (including those not part of a collective); and
- meetings with Queensland Canegrowers Limited and Burdekin District Cane Growers.

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80 See for example, Tully Cane Growers Limited, *Submission 26*, p. 2, Wilmar Sugar Australia Limited, *Supplementary Submission 10*, p. 9, Queensland Sugar Limited, *Submission 16*, p. 24, CANEGROWERS Mackay, *Submission 18*, p. 2 and CANEGROWERS Cairns Region Limited, *Submission 21*, [p. 2].

81 Wilmar Sugar Australia Limited, *Supplementary Submission 10*, p. 9.

82 Wilmar Sugar Australia Limited, *Supplementary Submission 10*, p. 9.

3.78 Grower representative bodies argued that in negotiating terms, cane growers are at a disadvantage, given that there is often only one viable market for their cane.<sup>83</sup> TCG for example, advised the committee that:

In our view the ability of growers to successfully negotiate a cane supply contact is limited and market power rests with the sugar miller. During contract negotiations there is currently no mechanism for dealing with an impasse, and the economic pressure placed on a grower who has invested in growing a perishable crop, which only has one market, puts them at a disadvantage in commercial negotiations.<sup>84</sup>

3.79 Burdekin District Cane Growers Limited (BDCG) also argued that the current tension between growers and millers such as Wilmar 'has more to do with the imbalance of bargaining power between growers and Wilmar Sugar, than it does with Wilmar Sugar being a foreign owned company'.<sup>85</sup> BDCG added that whilst it acknowledges the importance of Wilmar's investment in the sugar industry:

... growers also have a large investment in the sugar industry and as a result are entitled to have a choice of marketer or a commercial relationship with Wilmar that balances the interests of growers and Wilmar Sugar.<sup>86</sup>

3.80 At the Townsville hearing – during discussions regarding marketing and the negotiation of contracts – cane grower, Mr Roger Piva, expressed the following view:

Perhaps I could add something there. Regarding this negotiation, you have come out and said that Wilmar have said they are worried about alternate crops and not having enough sugar throughput, but (1) why don't they come and talk to us? And (2) the problem is that there are probably a couple of hundred cane farmers in the room here today and, while Wilmar and the bigger companies speak with one voice and stay on that one single line, you will have 200 farmers here and get 200 different ideas of what we want, and it is hard to correlate all that. What we are asking for at the moment is a choice just to start off with and a recognition of our sugar interests. After it is milled I still have, I believe, some entitlement to that sugar. We need these companies to recognise that immediately.<sup>87</sup>

3.81 In response to concerns raised by grower groups, Wilmar indicated that the company was 'committed to ongoing open and transparent consultation and

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83 See for example, CANEGROWERS and Australian Cane Farmers Association, *Submission 23*, p. 2, Mr Paul Sgarbossa, *Submission 37*, p. 1, Mr Alf Cristaudo, *Submission 43*, [p. 2] and Rocky Point District Cane Growers Organisation Limited, *Submission 49*, p. 7.

84 Tully Cane Growers Ltd, *Submission 26*, p. 2.

85 Burdekin District Cane Growers Limited, *Submission 13*, p. 3.

86 Burdekin District Cane Growers Limited, *Submission 13*, p. 3.

87 Mr Roger Piva, *Committee Hansard*, 13 March 2015, p. 30.

engagement with our growers as we progress our discussions on future marketing arrangements',<sup>88</sup> adding that it was also:

... finalising a program of engagement with grower collectives in coming months. This engagement will be focused on discussion and agreement of interim forward pricing arrangements and a future marketing model that will deliver better returns to growers and provide growers with increased flexibility over sugar price exposure management.<sup>89</sup>

3.82 During the committee's Townsville hearing, the committee received evidence regarding the current state of negotiations – and the types of difficulties growers have been experiencing, particularly in their dealings with Wilmar. It was cane grower Mr Philip Marano, however, who was able to summarise the primary issues of concern when he said:

If I may: we are not here to tell Wilmar how to do their business. I think we need to focus on what we are actually here for, and that is marketing and some sort of mechanism for fair and equal negotiations. I see those as the two major points, and everything else that has been talked about today will flow if they are sorted out, I believe.<sup>90</sup>

### ***Regulatory intervention/arbitration***

3.83 It was also argued that, in attempting to address the problems associated with contract negotiations, there is little assistance offered by the current legislative arrangements.<sup>91</sup>

3.84 BDCG noted, for example, that there is currently no statutory or mandatory dispute resolution process which would assist sugar industry stakeholders – both cane growers and millers – to resolve commercial disputes. Further, BDCG argued that it would be in the interests of both growers and Wilmar to provide stakeholders with access to 'enforceable and mandatory dispute resolution frameworks to assist in resolving a wide range of business to business disputes'.<sup>92</sup>

3.85 Wilmar however, argued that the existing regulatory arrangements and oversights – including the role of the Australian Competition and Consumer Commission (ACCC) – and the undertakings Wilmar has given to the Foreign Investment Review Board should therefore provide sufficient comfort for industry participants, without the requirement for additional regulatory intervention.<sup>93</sup>

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88 Wilmar Sugar Australia Limited, *Supplementary Submission 10*, p. 9.

89 Wilmar Sugar Australia Limited, *Supplementary Submission 10*, p. 9.

90 Mr Philip Marano, *Committee Hansard*, 13 March 2015, p. 29.

91 Tully Cane Growers Ltd, *Submission 26*, p. 4.

92 Burdekin District Cane Growers Limited, *Submission 13*, p. 2.

93 Wilmar Sugar Australia Limited, *Submission 10*, p. 39.

3.86 This view was supported by several other stakeholders,<sup>94</sup> including the Australian Sugar Milling Council (ASMC) which argued that 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'.<sup>95</sup>

3.87 QSL indicated that commercially negotiated agreements remained its preferred option. It also argued, however, that an important part of the grower choice regime being sought by many industry participants, is the ability to resolve – by arbitration if necessary – the terms on which cane is supplied to a mill in situations where the parties are unable to reach an agreement.<sup>96</sup>

### **Committee view**

3.88 The committee is acutely aware that the sugar industry is one of Australia's largest and most important rural industries. The committee notes, for example, that approximately 85 per cent of the raw sugar produced in Queensland is exported, (generating up to \$2 billion in export earnings), while the New South Wales industry provides a reliable supply of refined sugar to the domestic market.

3.89 Australia's sugar industry is an integral part of the rural and regional communities along the east coast. The committee therefore acknowledges the concerns raised by a number of industry stakeholders throughout this inquiry. It is clear that the changes currently occurring in the sugar marketing sector are creating a high level of anxiety for stakeholders – particularly cane growers – who view the changes as a threat to both their own livelihoods and the sustainability of the communities in which they live.

3.90 In addition to its direct agricultural output (and its value of production), the industry provides environmental and social benefits to the communities in which it operates. The industry generates employment and commerce for a range of small businesses, and in some areas – such as the Tweed – the industry makes a significant contribution to renewable energy generation. In other regions – for example, areas of coastal floodplains – sustainable cane farming also plays an important stewardship role in relation to land use and managing environmental impact.

3.91 The committee is very aware that the history of the Australian sugar industry is one of change and transition – with the first Commonwealth government review of the sugar industry undertaken by a Royal Commission in 1912. The introduction, in 2006, of sugar marketing reforms came after many years of consultation, discussion, investigation, reviews and reports. All of these activities involved stakeholders from

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94 See for example, Isis Central Sugar Mill Company Limited, *Submission 15*, p. 3, Bundaberg Sugar Ltd, *Submission 12*, [p. 2] and Tully Sugar Limited, *Submission 9*, p. 6.

95 Australian Sugar Milling Council, *Submission 11*, p. 26.

96 Queensland Sugar Limited, *Submission 16*, p. 10.

across the industry, including individual milling companies, miller representative bodies, grower representative groups and individual growers, as well as Commonwealth and state governments.

3.92 The committee acknowledges, however, that despite stakeholder involvement prior to the 2006 deregulation of the industry, industry participants still hold a range of views about the benefits, or otherwise, of the changes. At the same time, however, the committee also notes that regardless of personal views, the majority of stakeholders have accepted the reality that they are operating in – and will continue to operate in – a deregulated environment.

3.93 The committee notes that any move toward re-regulation would be contrary to the stated policy objectives of both the state and Commonwealth governments. More importantly, the committee is of the view that any move toward re-regulation of the industry would not be in the best interests of the industry – particularly over the longer term.

3.94 At the same time, however, the committee is very aware that the recent decisions of Wilmar, MSF Sugar and Tully Sugar (to terminate their RSSA agreements with QSL at the end of the 2016 season) have led to a high level of anxiety across the industry. It is the proposition of millers taking on the sugar export and marketing role – previously undertaken solely by QSL – which is at the heart of the committee's inquiry. The committee therefore understands that cane growers and their representative bodies have very real concerns about the potential which would exist, under new arrangements, for milling companies to misuse their market power.

3.95 The committee is aware that current ownership structures for sugar are determined by the provisions of CSAs. It is noted that, historically, title to sugar had not been an issue because any financial gain from the sale of sugar was shared between growers and millers. It is also understood that under Queensland Government legislation – at the crucial stage of marketing and selling – title to the raw sugar was vested in QSL (and its predecessors).

3.96 The committee acknowledges the argument put forward by grower groups that the decision made by Wilmar to terminate its agreement with QSL represents a substantial change to QSL's risk profile. The committee also notes that some stakeholders believe that Wilmar's decision to withdraw influenced the later decisions made by MSF and Tully Sugar to also give notice to QSL.

3.97 The committee is aware of the view held by a majority of cane growers that the concept of GEI sugar is one that is recognised in the current RSSA that each mill has with QSL. The committee understands, therefore, that the current lack of clarity around their yet to be negotiated CSAs (with millers) is creating a high level of stress and anxiety for growers.

3.98 In summary, the committee is concerned that:

- changes to CSAs have yet to be agreed;

- in the absence of revised CSAs, there is no agreement for mills to purchase or process independent growers' cane for the 2017 season and beyond; and
- there is considerable ambiguity and a lack of clarity around new CSAs – particularly in relation to whether they will contain the same, or similar, clauses as existing CSAs.

3.99 With so much ambiguity surrounding the future of the industry, the evidence provided by growers and their representative bodies regarding the current state of contract negotiations – and the problems being experienced with milling companies such as Wilmar – is the cause of considerable concern for the committee.

3.100 The milling sector of the industry is clearly of the view that the provisions currently in place (to deal with the imbalances associated with small producers negotiating with large processors) are adequate. The milling sector, therefore, see no need to revisit a deregulation process it argues was completed in 2006.

3.101 The committee notes that there is a legal framework which underpins the negotiation of CSAs. It is also acknowledged that the framework includes provisions in relation to:

- access to collective bargaining;
- provisions for unconscionable conduct; and
- misuse of market power.

3.102 In addition, the committee notes that a number of reviews, legislative actions and programs (designed to support industry transition and adjustment) have been introduced over recent years. The committee has doubts, however, about whether the current framework will prove sufficient for growers and millers to work their way through the current impasse and reach agreement on new CSAs and, ultimately, on the future of the industry.

3.103 Whilst the committee can appreciate the position of stakeholders who suggested that 'nothing short of government intervention is going to fix the problems' of the sugar industry',<sup>97</sup> the committee is of the view that major re-regulation of the industry is not the answer.

3.104 The committee does, however, agree with stakeholders who argued that there is an urgent need to review the current legislative framework – particularly as it relates to the issues of competition policy, and the establishment of a fair and equitable contract negotiation process.

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97 Mr Paul Schembri, CANEGROWERS Queensland and CANEGROWERS Australia, *Committee Hansard*, 12 March 2015, p. 1.

3.105 The committee has observed the strong inter-relationship and inter-dependence which exists between sugar cane growers and sugar milling companies. It is clear that neither sector would be able to survive without the other remaining profitable and sustainable. What is also apparent is that there is a lack of trust on behalf of cane growers in relation to the large milling companies – particularly Wilmar.

3.106 The committee did, however, receive evidence which suggested that during the early years of Wilmar's Queensland operations, goodwill did exist between cane growers and the milling company. The committee suggests that it is perhaps time to go back and build on that initial relationship – particularly as Wilmar has publicly indicated that it is committed to 'ongoing open and transparent consultation and engagement' with growers.<sup>98</sup>

3.107 The committee is of the view that milling companies – particularly Wilmar which is a relatively new player in the industry – need to come to the table prepared to engage in positive negotiations with cane growers and their representatives. It is important that any negotiations provide grower groups with the opportunity to clearly articulate, not only their views, but their specific interpretations of key issues (such as GEI sugar).

3.108 At the same time, the committee is also of the view that the growing sector similarly needs to show that it is willing to negotiate in a positive way. The committee suggests that growers and their representative bodies take the opportunity to review current marketing processes, seek clarification around ownership issues and develop a more modern payment formula (that can be agreed to by both sides of the industry).

3.109 As noted previously, the committee is not convinced that the existing legal framework is adequate – particularly given that the problems currently facing the industry are in large part due to the imbalance of bargaining power between growers and millers. The committee is of the view, therefore, that there is a need for the industry to develop and implement a mandatory Code of Conduct.

3.110 A mandatory Code of Conduct would provide stakeholders with access to impartial, affordable dispute resolution processes and would go some of the way to addressing the inequities in bargaining power between millers and growers.

3.111 The committee is also of the view that a Code of Conduct should include formal dispute resolution frameworks which support both growers and millers negotiating supply contracts.

3.112 The committee supports the work currently being undertaken by the Sugar Marketing Code of Conduct Taskforce (the Taskforce) in developing a Code of Conduct for the industry. The committee is of the view that this is a positive step toward rectifying some of the problems identified during the committee's inquiry.

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98 Wilmar Sugar Australia Limited, *Supplementary Submission 10*, p. 9.

3.113 The committee acknowledges the progress being made by the Taskforce in relation to the development of a Code of Conduct. The committee is also of the view, however, that extensive industry consultation and the negotiations currently being undertaken between industry stakeholders are vitally important to the industry's future.

**Recommendation 1**

**3.114 The committee recommends the development and implementation of a mandatory sugar industry Code of Conduct, acknowledging that, provided appropriate stakeholder consultation is undertaken, the work of the Sugar Marketing Code of Conduct Taskforce may provide a foundation upon which a Code of Conduct may be established.**

**Senator Glenn Sterle  
Chair**