

The Senate

Rural and Regional Affairs
and Transport
References Committee

Current and future arrangements for the
marketing of Australian sugar

June 2015

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Membership of the committee

Members

| | |
|--|------------------------|
| Senator Glenn Sterle, Chair | Western Australia, ALP |
| Senator the Hon Bill Heffernan, Deputy Chair | New South Wales, LP |
| Senator Joe Bullock | Western Australia, ALP |
| Senator Sue Lines | Western Australia, ALP |
| Senator John Williams | New South Wales, NATS |
| Senator Peter Whish-Wilson | Tasmania, AG |

Other Senators participating in this inquiry

| | |
|-------------------------------|-----------------------|
| Senator Matthew Canavan | Queensland, NATS |
| Senator the Hon Ian Macdonald | Queensland, LP |
| Senator Barry O'Sullivan | Queensland, NATS |
| Senator Rachel Siewert | Western Australia, AG |

Secretariat

Mr Tim Watling, Secretary

Dr Jane Thomson, Principal Research Officer

Ms Erin East, Principal Research Officer (from 27 October 2014)

Ms Bonnie Allan, Principal Research Officer (from 2 January 2015)

Ms Trish Carling, Senior Research Officer

Ms Kate Campbell, Research Officer

Ms Lauren Carnevale, Administrative Officer

PO Box 6100

Parliament House

Canberra ACT 2600

Ph: 02 6277 3511

Fax: 02 6277 5811

E-mail: rrat.sen@aph.gov.au

Internet: www.aph.gov.au/senate_rrat

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List of recommendations

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.

Chapter 1

Introduction

Conduct of inquiry

1.1 On 4 September 2014, the Senate referred the following matter to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 27 November 2014:

Current and future arrangements for the marketing of Australian sugar, including:

- (a) the impact of proposed changes on the local sugar industry, including the effect on grower economic interest sugar;
- (b) equitable access to essential infrastructure;
- (c) foreign ownership levels in the industry and the potential to impact on the interests of the Australian sugar industry;
- (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
- (e) any related matters.

1.2 On 2 October 2014, the Senate granted an extension of time for reporting until 30 April 2015. On 26 March 2015, the Senate granted a further extension of time for reporting until 21 May 2015.

1.3 The inquiry was advertised in *The Australian* on 17 September 2014. The committee also wrote to key stakeholder groups, relevant government departments, organisations and individuals to invite submissions.

1.4 The committee received 51 submissions which are listed at Appendix 1. The submissions are also published on the committee's website.

1.5 The committee held three public hearings – in Murwillumbah on 10 March 2015, in Mackay on 12 March 2015 and in Townsville on 13 March 2015. The committee took evidence from a variety of industry bodies – including sugar milling companies and representative bodies, local government bodies, canegrower representative bodies and individual canegrowers. A list of witnesses who appeared at the hearings is provided at Appendix 2.

Structure and focus of the report

1.6 Chapter 2 provides a general background in relation to the Australian sugar industry. The chapter also provides a history of regulation in the Australian sugar industry – with a specific focus on the state of Queensland.

1.7 Chapter 3 outlines the issues currently being faced by the Australian sugar industry and the issues raised by industry stakeholders during the committee's inquiry.

1.8 Throughout the inquiry, the committee was told that the issue of grower economic interest (GEI) sugar is at the heart of many of the challenges currently being experienced across the sugar industry. It is an issue which has consequences for the grower and milling sectors of both the New South Wales and Queensland industries.

1.9 It is clear to the committee that there are a wide range of views, not only in relation to the definition of GEI sugar, but also in relation to the transfer of sugar title and 'ownership' more generally. The contradictory evidence received by the committee reflected a large number of different interpretations around GEI sugar and its practical operation in the market.

1.10 Following its examination of sugar pricing and marketing generally, the committee has found it difficult to gain a clear understanding of GEI sugar – including who determines its value and calculates its price. Identifying a common definition of GEI sugar has in itself proved problematic, given that some sectors of the industry argue that, in reality, GEI sugar does not exist.

1.11 Rather than attempt to provide specific explanations or rigid rationalisations of the way in which Australian sugar is currently traded, processed and marketed, the committee has sought to provide some clarity in relation to the issues currently facing the industry. The committee also sought to articulate the impact these issues are having on stakeholders – particularly current relationships between the growing and milling sectors.

1.12 As a consequence, the committee's report:

- provides a brief outline of the history of the Australian sugar industry – particularly in relation to regulation;
- provides background in relation to the path the industry has taken: from the 1912 Royal Commission through to the 2006 deregulation of the industry;
- details some of the issues that have impacted the industry throughout its transition; and
- presents an overview of the evidence provided by industry stakeholders, and the challenges currently facing the industry.

Acknowledgements

1.13 The committee acknowledges the contribution of all those individuals and organisations who prepared written submissions and those who appeared as witnesses. Their efforts have assisted the committee considerably in the preparation of this report.

A note on references

1.14 References in this report are to individual submissions as received by the committee. References to the *Hansard* throughout the report are to the proof transcript. Page numbers may vary between the proof and the official transcript. The *Hansard* transcripts of the committee's hearings are available on the Parliament's website at www.aph.gov.au.

Chapter 2

The Australian sugar industry

Background

2.1 It is estimated that the Australian sugar industry directly employs approximately 16,000 people across the growing, harvesting, milling and transport sectors.¹

2.2 The Australian sugar industry produces both raw and refined sugar from sugarcane. The industry's major product is raw crystal sugar which is sold domestically and exported. The industry is largely concentrated along Australia's eastern coastline – between Mossman in far north Queensland, and Grafton in northern New South Wales. Approximately 95 per cent of the sugar produced in Australia is grown in Queensland with the balance being grown in northern New South Wales.²

2.3 The sugar cane industry is one of Australia's largest and most important rural industries and sugar has been identified as Queensland's most important rural crop. The approximately 35 million tonnes of sugar cane grown annually can produce up to 4.5 million tonnes of raw sugar, one million tonnes of molasses and 10 million tonnes of bagasse.³ Approximately 80 per cent of Australia's sugar production is exported as bulk raw sugar, making Australia the second largest sugar exporter in the world. Over recent years, Asian exports have become a major focus, with markets such as South Korea, Indonesia, Japan and Malaysia becoming some of the most important.⁴

2.4 Around 85 per cent of the raw sugar produced in Queensland is exported and generates up to \$2 billion in export earnings. The majority of Australia's domestic market is supplied by sugar cane grown in New South Wales.⁵

2.5 In Australia, there are an estimated 4,400 cane farming entities growing sugar cane on approximately 380,000 hectares annually. These farms – the majority

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- 1 Australian Sugar Milling Council, <http://asmc.com.au/industry-overview/>, accessed 30 March 2015.
 - 2 Department of Agriculture, <http://www.agriculture.gov.au/ag-farm-food/crops/sugar>, accessed 30 March 2015.
 - 3 Bagasse is the fibrous matter that remains after sugar cane or sorghum stalks are crushed to extract their juice. It is used as a biofuel and in the manufacture of pulp and building materials.
 - 4 Department of Agriculture, <http://www.agriculture.gov.au/ag-farm-food/crops/sugar>, accessed 30 March 2015.
 - 5 Australian Sugar Milling Council, <http://asmc.com.au/industry-overview/>, accessed 30 March 2015.

of which are owned by sole proprietors or family partnerships – supply the 24 mills which are owned by seven separate milling companies. The ownership structures of the mills are a combination of publicly owned entities, privately held companies (limited by guarantee) and co-operatives.

2.6 What follows is a summarised history of the regulation of the Australian sugar industry. Whilst the summary focuses primarily on the situation in Queensland, some of the documented reviews, inquiries and the resulting changes also impacted the New South Wales industry.

1912 – Royal Commission

2.7 The Australian sugar industry was first reviewed in 1912. At that time, the Royal Commission on the Sugar Industry reported that the price of cane sugar was set by mill owners, while the prices of raw and refined sugar were set by sugar refineries. The Commission concluded that market forces alone may not provide an equitable distribution of the profits across the sugar supply chain. The report recommended that the raw sugar price be fixed under a sliding scale developed by a commission, and the price of sugar cane be determined by a board in each mill area.⁶

1915 – Introduction of industry regulation

2.8 In response to the 1912 Royal Commission, the Queensland Government introduced the *Regulation of Sugarcane Prices Act 1915* and the *Sugar Acquisition Act 1915*.

Regulating the sugar cane price

2.9 The 1915 legislation regulated the price of sugar, and introduced a system under which growers and millers shared the proceeds of sugar sales.⁷ The Regulation of Sugarcane Prices Act established the Local Sugar Cane Prices Boards and the overarching Central Sugar Cane Prices Board, which were tasked with providing a fair distribution of raw sugar returns between growers and millers.⁸ It was determined that proceeds were to be shared, with two thirds

6 *Report of the Royal Commission on the Sugar Industry*, 4 December 1912, as reported in *The Australian Cane Farmer*, July 2014, p. 3, http://www.acfa.com.au/wp-content/uploads/2013/05/ACF_July-2014-e-webnew.pdf (accessed 9 April 2015).

7 CANEGROWERS, *Sugar marketing: the State government can and must take action*, http://www.CANEGROWERS.com.au/icms_docs/194489_Sugar_Marketing_choice_rights_and_your_future.pdf (accessed 15 December 2014).

8 Wilmar Sugar Australia, *Submission 10*, Attachment 3, *J.M. Craigie, Regulation and Reform of the Queensland Sugar Industry*, October 2014, p. 6.

provided to the grower and one third to the miller. This tied the price of cane to the price of raw sugar.⁹

2.10 Under this arrangement, growers were considered to have a 'two thirds economic interest' in the raw sugar produced. This approach was reflected in what became a recognised formula for determining the cane price:

Price of cane = Price of sugar x 0.009 x (CCS – 4)/100 + 0.328, where CCS is a measure of the amount of recoverable sugar in the cane, and 0.328 is a constant measure based on industry production values in 1916.¹⁰

2.11 By 1994, the constant measure 0.328 had increased to 0.57.8, that is, 58.7 cents, to adjust the 1916 formula for 1990s industry production values.¹¹

Export restrictions

2.12 The Sugar Acquisition Act authorised the Queensland Government to acquire all raw sugar manufactured in Queensland and to sell it to the Commonwealth Government. In 1923, with the agreement of the Commonwealth, the Sugar Board was established to oversee the export of raw sugar.¹²

1999 – Moves toward deregulation

2.13 In 1995, a review of the sugar industry concluded that, whilst the industry should continue to be regulated, the level of regulation should be reduced.¹³ As a result, the Queensland Government repealed the Regulation of Sugarcane Prices Act, and the Sugar Acquisition Act, and replaced them with a new regulatory framework under the *Sugar Industry Act 1999*.

Regulating the sugar cane price

2.14 Under the new legislation, 'cane production areas', which linked cane growers to local mills, were established.¹⁴ The new legislation also introduced a

9 *Australian Canegrower*, 9 June 2014, p. 7, http://www.CANEGROWERS.com.au/icms_docs/205070_australian_canegrower_2014-06-09.pdf (accessed 17 April 2015).

10 *Australian Canegrower*, 9 June 2014, p. 7, http://www.CANEGROWERS.com.au/icms_docs/205070_australian_canegrower_2014-06-09.pdf (accessed 17 April 2015) and Clive Hildebrand, *Independent Assessment of the Sugar Industry*, 2002, Appendix A.

11 Clive Hildebrand, *Independent Assessment of the Sugar Industry*, 2002, Appendix A.

12 Wilmar Sugar Australia, *Submission 10*, Attachment 3, *J.M. Craigie, Regulation and Reform of the Queensland Sugar Industry*, October 2014, p. 6.

13 Sugar Industry Bill 1999, Explanatory Notes, p. 1.

14 Sugar Industry Reform Bill 2004, Explanatory Notes, p. 4.

requirement that growers and mill owners negotiate income distribution.¹⁵ Whilst the Act allowed for collective and individual negotiations, a grower could not agree to an individual contract if the contract had the potential to adversely affect other cane growers.¹⁶

2.15 *The Sugar Industry Act 1999* also prescribed matters that were to be included in the contracts, including:

- arrangements for harvesting;
- delivery to the mill;
- transport and handling;
- acceptance and crushing by the mill; and
- payment by the mill owner.¹⁷

2.16 The legislation stipulated that the price of cane be linked to the price of raw sugar. However, the contract negotiation team had the discretion to determine a different approach.¹⁸ Dispute resolution mechanisms were also established under the Act.¹⁹

Export restrictions

2.17 The Sugar Industry Act continued the 'single desk policy', under which all raw sugar produced was vested in Queensland Sugar Limited (QSL) (and its predecessors such as the Sugar Board). Only QSL was authorised to market raw sugar milled in Queensland for export, with proceeds pooled and distributed on a pro rata basis.²⁰

The role of Queensland Sugar Limited (QSL)

2.18 Queensland Sugar Limited (QSL) is a not for profit company limited by guarantee which is owned jointly by mill-owner members and grower-members, with voting rights divided evenly between QSL's two classes of members. Under QSL's constitution, the company is required to act in the best interests of the sugar

15 Sugar Industry Bill 1999, Explanatory Notes, p. 2.

16 *Sugar Industry Act 1999*, s.32 –33 and Clive Hildebrand, *Independent Assessment of the Sugar Industry*, 2002, Appendix A.

17 Clive Hildebrand, *Independent Assessment of the Sugar Industry*, 2002, Appendix A.

18 Clive Hildebrand, *Independent Assessment of the Sugar Industry*, 2002, Appendix A.

19 *Sugar Industry Act 1999*, Division 2, Part 2.

20 *The Australian Cane Farmer*, July 2014, p. 3, http://www.acfa.com.au/wp-content/uploads/2013/05/ACF_July-2014-e-webnew.pdf (accessed 9 April 2015).

industry. It is also a tax exempt, not for profit entity and, as such, it is not permitted to distribute profits to its members.²¹

2.19 The primary activities currently undertaken by QSL include:

- acquiring raw sugar intended for bulk export from Queensland mill owners under the Raw Sugar Supply Agreements (RSSA) (These are discussed below);
- selling the raw sugar acquired to international customers;
- chartering shipping for the raw sugar acquired;
- financing and hedging activities related to that raw sugar;
- sub-leasing, operating and providing storage and handling services at the six bulk sugar terminals; and
- conducting other initiatives considered to be in the best interests of the Queensland sugar industry.²²

2.20 When the Queensland sugar industry was deregulated in January 2006 (see below), QSL entered into voluntary agreements with the majority of Queensland mills to market their export raw sugar. The company currently has RSSAs with each of the seven Queensland mill owners under which each of the mill owners supply 100 per cent of their raw sugar production intended for bulk export to QSL. QSL is therefore responsible for more than 90 per cent of all raw sugar exported from Australia. Raw sugar for domestic supply (or exported in bags or containers) is not supplied under the RSSA and marketing can occur independently of QSL.²³

2.21 QSL undertakes export sales direct to raw sugar refiners in a number of countries. Proceeds are pooled for payment purposes and distributed back to mills and growers after being adjusted for marketing costs incurred by QSL. With the pooling of sales proceeds, producers receive an average of prices received from sales during the course of the year.²⁴

2.22 Returns to producers are determined primarily by the world futures price for sugar but are also influenced by the level of the Australian dollar, regional sugar premiums and the costs of marketing and transporting the product.²⁵

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

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

23 Department of Agriculture, <http://www.agriculture.gov.au/ag-farm-food/crops/sugar>, accessed 30 March 2015.

24 Department of Agriculture, <http://www.agriculture.gov.au/ag-farm-food/crops/sugar>, accessed 30 March 2015.

25 Department of Agriculture, <http://www.agriculture.gov.au/ag-farm-food/crops/sugar>, accessed 30 March 2015.

2002–2005 – industry reviews

2.23 In the early 2000s, successive reviews of the Queensland sugar industry concluded that the regulatory system established under the Sugar Industry Act stifled the industry's productivity. The consistent message coming from the reviews was that the regulatory system 'created a set of formal and informal rules – called the principle of adverse effects – which have the effect of blocking productivity gains'. It was also found that the system created antagonism between growers and mill operators and fostered a resistance to change, which together hindered productivity and diminished innovation.²⁶

2.24 In response to these reviews, a Memorandum of Understanding (MOU) was signed in 2005, between the Queensland sugar industry – represented by the Australian Sugar Milling Council and CANEGROWERS – and the Queensland Government. The MOU noted that all parties recognised that 'the future cannot simply be an extension of the past and that previous assumptions driving production and structural arrangements need to be changed'.²⁷ Industry agreed to move to a commercial, non-legislative marketing structure and the state government agreed to introduce the necessary legislative amendments to support the structural changes.²⁸

2006 – Industry deregulation

2.25 On 1 January 2006, the Sugar Industry Act was amended to deregulate the sugar industry. The new legislation included two significant deregulation measures.

Parties are free to determine contractual terms – including price

2.26 The legislative amendments included changes to the arrangements between growers and mill operators. The amended legislation requires growers and mill operators to enter into contracts for the supply of sugar cane, but does not prescribe matters to be addressed in them.²⁹ In other words, the new legislation created a framework for the sale of sugar cane, but left the parties free to determine contractual terms.

26 Sugar Industry Reform Bill 2004, Explanatory Notes, pp 2–4.

27 Memorandum of Understanding between the Queensland sugar industry and the Queensland government, 13 October 2005, https://www.daf.qld.gov.au/_data/assets/pdf_file/0006/75903/Sugar-Memorandum.pdf (accessed 9 April 2015).

28 Memorandum of Understanding between the Queensland sugar industry and the Queensland government, 13 October 2005, https://www.daf.qld.gov.au/_data/assets/pdf_file/0006/75903/Sugar-Memorandum.pdf (accessed 9 April 2015).

29 *Sugar Industry Act 1999*, s.31 (as amended in 2006).

2.27 In line with the move to a commercial, non-legislative marketing structure, the parties to the contract were left to determine the terms of sale – including the formula for setting the cane price.³⁰ The new legislation also removed the 'cane production area' restrictions, thereby providing cane growers with choice in relation to which mill to supply.³¹ As indicated by a number of stakeholders throughout this inquiry, however, growers are effectively restricted in relation to their choice of mill because cane has a very limited shelf life once harvested.³²

2.28 The 2006 reforms distinguished 'sugar cane' from 'sugar'. The supplier of sugar is taken to be the person who owns the sugar cane at the moment the cane is used to manufacture raw sugar.³³ The Australian Cane Farmers Association (ACFA) has reported that contracts between cane growers and mill operators commonly transfer ownership of the cane from the point of delivery at the mill. In this scenario, it is the mill operators who own the sugar cane at the time it is processed into raw sugar.³⁴

Export restrictions removed

2.29 The 2006 deregulation reforms also removed restrictions on the marketing of raw sugar for export. While QSL would continue to be the industry's preferred bulk raw sugar export marketer, the legislation was amended to no longer prohibit others from marketing raw sugar for export.

2.30 QSL currently operates within a commercial environment under contractual arrangements with suppliers. These contracts are known as raw sugar supply agreements (RSSAs). Under the new legislation, QSL became a public company limited by guarantee – and while it has grower representative members and mill representative members, its contracts for the sale of raw sugar are with Queensland's mills and not with sugar cane growers.³⁵

2.31 QSL operates a pooling system, whereby profits are divided by mill owners on a contribution percentage basis.³⁶ There are a number of pricing pools, each with separate levels of costs and risks. QSL argued that sugar cane supply contracts may

30 CANEGROWERS, *Cane payment information*, http://www.canegrowers.com.au/page/Industry_Centre/grower-centre/Finance_tools/Cane_payment_information (accessed 19 April 2015).

31 Sugar Industry Reform Bill 2004, Explanatory Notes, p. 4.

32 See, for example, MSF Sugar Limited, *Submission 8*, p.1, Queensland Sugar Limited, *Submission 16*, p. 2 and Tully Cane Growers Ltd, *Submission 26*, p. 1.

33 *Sugar Industry Act 1999*, Schedule (as amended in 2006).

34 *The Australian Cane Farmer*, July 2014, p. 3, http://www.acfa.com.au/wp-content/uploads/2013/05/ACF_July-2014-e-webnew.pdf (accessed 9 April 2015).

35 Queensland Sugar Limited, *Submission 16*, p. 1.

36 Queensland Sugar Limited, *QSL value offering*, March 2014, p. 2.

provide cane growers the right to influence price risks by allowing cane growers to select which of its pricing pool (or pools) the mill will access.³⁷

Grower Economic Interest Sugar (GEI) and Supplier Economic Interest Sugar (SEI)

2.32 The committee received conflicting evidence regarding the concepts of GEI³⁸ and SEI, which refer to a residual interest by the grower and the miller, respectively, in the final price achieved for raw sugar. Contradictory evidence, underpinned by different interpretations of the two concepts, as well as their real-world operation in the market, made a consistent, accurate understanding of their relevance and role difficult for the committee to achieve.

2.33 QSL, for example, told the committee that, traditionally, 'mill owners receive one third and growers two thirds of the net returns achieved, through the cane payment formula for deriving the cane price which existed prior to deregulation and continues generally to be used'.³⁹ Further, it was argued that this situation is reflected by the terms 'supplier economic interest sugar' and 'grower economic interest sugar'.⁴⁰

2.34 The committee was told that the relevant proportion of SEI and GEI varies for each mill, and depends on a number of variables, including whether mill owners grow their own cane, and the terms of its CSAs. Generally, however, SEI sugar is anticipated to be between 33 and 50 per cent.⁴¹

2.35 In December 2013, seven mill owners entered into new RSSAs with QSL. Under the new arrangements, mills were provided the right to elect to market the proportion of the raw sugar they supply to QSL. Under these arrangements, the mill retains the pricing exposure under the cane payment formula, in accordance with their respective cane supply agreements (CSAs) with cane growers (that is, each mill's SEI sugar).⁴²

2.36 QSL submitted that during the 2014 season, this option was exercised by Wilmar, MSF Sugar, Mackay Sugar and Tully Sugar. For each of those suppliers, QSL sold back to the supplier (or a related body corporate) a volume of raw sugar

37 Queensland Sugar Limited, *Submission 16*, p. 13.

38 During the inquiry, various terms were used to refer to 'GEI sugar' - including 'a growers' nominal sugar price exposure' or 'cane pay sugar' which essentially refer to how much raw sugar needs to be priced and marketed to determine the price paid for the cane a grower supplies and accordingly refer to the GEI in the final product marketed.

39 Queensland Sugar Limited, *Submission 16*, p. 13.

40 Queensland Sugar Limited, *Submission 16*, p. 13.

41 Queensland Sugar Limited, *Submission 16*, p. 13.

42 Queensland Sugar Limited, *Submission 16*, p. 1.

reflecting its SEI, which the companies could then market themselves or on-sell again to others in the market.⁴³ As a consequence, several entities are marketing raw sugar for export, including QSL, Wilmar, Copersucar, MSF Sugar and China Foods.⁴⁴

2.37 From the perspective of growers, the Australian Canegrower magazine confirmed that the RSSA between Wilmar and QSL describes growers' share of sugar as 'growers economic interest (GEI) sugar'. According to the magazine, under the RSSA, given that RSSAs now allow mills to market their SEI sugar, it has been argued that 'the next logical step is for growers to have the same rights to choose who sells their GEI sugar'.⁴⁵

2.38 The evidence provided by the milling sector offered a different perspective in relation to the concept of GEI sugar. Wilmar, for example, acknowledged that growers 'have an underlying exposure to sugar price' and therefore 'an interest in the price that millers receive for the sale of their sugar production'. It noted, however that the growers' interest in the price that millers achieve does not translate to growers having any title or ownership of the sugar produced by a mill. Wilmar in fact suggested that the term 'GEI sugar' first appeared in 2014, in the RSSA between millers and growers. Wilmar argued that the term was initially defined with the intention of determining the amount of SEI sugar; being that portion of the total sugar a miller supplies to QSL, and which QSL agrees to sell back to that miller (an amount of approximately one third) to enable them to directly manage the physical sales to end customers.⁴⁶

2017 – Anticipated future changes to the marketing structure

2.39 QSL have advised that three mills – Wilmar, MSF Sugar and Tully Sugar – have given notice to terminate their RSSA agreements with QSL in 2017.⁴⁷

2.40 The concepts of SEI and GEI, together with current and anticipated changes to the marketing structure post 2017, which see millers take on an export and marketing role (formerly solely undertaken by QSL), are at the heart of the committee's inquiry. The possible consequences of the changes, and the concerns raised by stakeholders are examined in more detail in Chapter 3.

43 Queensland Sugar Limited, *Submission 16*, p. 13.

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

45 *Australian Cane Grower*, 9 June 2014, p. 7, http://www.CANEGROWERS.com.au/icms_docs/205070_australian_canegrower_2014-06-09.pdf (accessed 17 April 2015).

46 Wilmar Sugar Australia Limited, *Submission 10*, p. 18.

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

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.¹

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'.² 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.³

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

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.⁴

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.⁵

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.⁶ 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.⁷

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'⁸. 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.⁹

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

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.¹⁰

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.¹¹

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)'.¹²

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.¹³

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

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.¹⁴

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.¹⁵

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.¹⁶ According to Mr Skopp, the local miller 'just does not seem to care' when he 'signs a contract with us',¹⁷ 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'.¹⁸

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.¹⁹

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.

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.²⁰

3.25 Grower representative groups argued that Wilmar's decision to withdraw from QSL 'substantially alters QSL's risk profile',²¹ and that this change is 'reflected in MSF Sugar and Tully Sugar's subsequent decisions to give notice to QSL'.²² 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'.²³

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.²⁴

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.²⁵

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.²⁶

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

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'.²⁷ Mr Schembri further argued that, in fact, the certainty and stability of the industry's institutional arrangements has given rise to grower confidence.²⁸ 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).²⁹

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'.³⁰

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.³¹ 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

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.³²

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'.³³

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.³⁴

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.³⁵

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'.³⁶ 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.³⁷ 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

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.³⁸

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.³⁹

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'.⁴⁰

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.⁴¹

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.⁴² The committee was told that the mills' decisions 'will deny growers any choice in how the sugar (GEI sugar) that determines

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'.⁴³ 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'.⁴⁴

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'.⁴⁵ 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.⁴⁶

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.⁴⁷

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.⁴⁸

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.⁴⁹

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:⁵⁰

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.⁵¹

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.⁵²

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'.⁵³

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'.⁵⁴

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

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.⁵⁵

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'.⁵⁶ 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.⁵⁷

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.⁵⁸

3.56 MSF Sugar Limited (MSF Sugar) – which described itself as an 'integrated sugar cane grower, sugar miller, marketer and exporter of raw sugar'⁵⁹ – 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.⁶⁰

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

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.⁶¹

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.⁶²

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'.⁶³ 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.⁶⁴

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

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.⁶⁵

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'.⁶⁶ 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.⁶⁷

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.⁶⁸

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.⁶⁹

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.⁷⁰

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

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'⁷¹ is cause for considerable concern.

Dumping

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

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.⁷³ 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'.⁷⁴

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.⁷⁵

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.⁷⁶

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'.⁷⁷

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.⁷⁸

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.⁷⁹

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.

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.⁸⁰

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'.⁸¹

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).⁸²

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.

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.⁸³ 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.⁸⁴

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'.⁸⁵ 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.⁸⁶

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.⁸⁷

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

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',⁸⁸ 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.⁸⁹

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.⁹⁰

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.⁹¹

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'.⁹²

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.⁹³

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,⁹⁴ 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'.⁹⁵

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.⁹⁶

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

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',⁹⁷ 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.

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.⁹⁸

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.

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**

Appendix 1

Submissions received

| Submission Number | Submitter |
|--------------------------|---|
| 1 | Sugar Terminals Limited |
| 2 | Tweed Shire Council |
| 3 | Mr Alan Barnard |
| 4 | NSW Cane Growers Association |
| 5 | Richmond River Cane Growers Association Ltd |
| 6 | NSW Sugar Milling Cooperative Ltd |
| 7 | Mackay Sugar Limited |
| 8 | MSF Sugar Limited |
| 9 | Tully Sugar Limited |
| 10 | Wilmar Sugar Australia Limited |
| 11 | Australian Sugar Milling Council |
| 12 | Bundaberg Sugar Ltd |
| 13 | Burdekin District Cane Growers Ltd |
| 14 | The Hon Bob Katter MP |
| 15 | Isis Central Sugar Mill Company Limited |
| 16 | Queensland Sugar Limited |
| 17 | Maryborough Canegrowers Limited |
| 18 | CANEGROWERS Mackay |
| 19 | Mr Sib Torrisi |
| 20 | Mr Arthur Woods |
| 21 | CANEGROWERS Cairns Region Limited |
| 22 | Mr Mario Quagliata |
| 23 | CANEGROWERS and Australian Cane Farmers Association |
| 24 | Mr Philip Marano |
| 25 | CANEGROWERS Herbert River |
| 26 | Tully Cane Growers Ltd |
| 27 | Mr Lex Exelby |
| 28 | Mr Joseph Marano |
| 29 | CANEGROWERS Burdekin |
| 30 | Mr Brian Stevens |
| 31 | Mr Roger Piva |
| 32 | CANEGROWERS Plane Creek Area Committee |

- 33 Mr Paul Steine
- 34 Mr Kevin Borg
- 35 Mr Jeffrey Cantamessa
- 36 Mr RJ and AM Sluggett
- 37 Mr Paul Sgarbossa
- 38 Mr Colin Ivory
- 39 Mr Mark Girgenti
- 40 Mr Serg and Sandra Berardi
- 41 CANEGROWERS Proserpine
- 42 Ms Judith Thatcher
- 43 Mr Alf Cristaudo
- 44 Mr Greg Rossato
- 45 Mr John Marano
- 46 Mr Ralph Gard
- 47 Mr Graham Cousens
- 48 Mr Anthony Despot
- 49 CANEGROWERS Rocky Point
- 50 Mr Adrian Ivory
- 51 SISL Group

Additional information received

- Received on 16 and 18 March 2015, from the NSW Sugar Milling Cooperative Ltd. Answers to questions taken on notice on 10 March 2015.
- Received on 16 March 2015, from Mr Kerry Latter, Chief Executive Officer, CANEGROWERS MACKAY. Additional information.
- Received on 17 March 2015, from Mr Kevin Borg. Additional Information.
- Received on 19 March 2015, from CANEGROWERS. Answers to questions taken on notice on 12 March 2015.
- Received on 25 March 2015, from Queensland Sugar Limited. Answers to questions taken on notice on 12 March 2015.
- Received on 26 March 2015, from Tully Cane Growers Limited. Answer to a question taken on notice on 13 March 2015.
- Received on 30 March 2015, from the Burdekin District Cane Growers Limited. Answer to a question taken on notice on 13 March 2015.
- Received on 30 March 2015, from Wilmar Sugar Australia. Answer to a question taken on notice on 13 March 2015.
- Received on 30 March 2015, from Mr Shayne Rutherford, Executive General Manager Strategy and Business Development, Wilmar Sugar Australia Limited. Wilmar response to key themes raised by Committee members.
- Received on 30 March 2015, from Mr Shayne Rutherford, Executive General Manager Strategy and Business Development, Wilmar Sugar Australia Limited. Updated tabled document from 13 March 2015 hearing.
- Received on 1 April 2015, from Mr Warren Males, Head Economics, CANEGROWERS. Additional information.
- Received on 12 May 2015, from Mr Dominic Nolan, Chief Executive Officer, Australian Sugar Milling Council. Additional information.

Tabled documents

12 March 2015, Mackay, QLD

- Tabled by Mr Rob Sluggett. Submission notes.
- Tabled by Mr Brian Stevens. Opening statement.
- Tabled by Mr Serg Berardi. Opening statement.
- Tabled by Mrs Judith Thatcher. Opening statement.

13 March 2015, Townsville, QLD

- Tabled by Mr Steve Guazzo. Cane Supply Agreement – Herbert Mills.
- Tabled by Mr Greg Rossato. Opening statement.
- Tabled by Mrs Carol Mackee. South Burnett Times – Article.
- Tabled by Mr Shayne Rutherford, Executive General Manager Strategy and Business Development, Wilmar Sugar Australia Limited.
 - Guide to the Interim Forward Pricing Agreements, December 2014.
 - Wilmar Sugar Australia and Canegrowers Correspondence.
 - Wilmar Sugar Australia and BDCG Correspondence.
- Tabled by Mr Thomas Harney, Chairman, Tully Cane Growers Limited. Additional Evidence in support of submission 26.

Appendix 2

Public hearings and witnesses

10 March 2015, Murwillumbah, NSW

- BAKER, Mr Ken, Member,
Combined Tweed Rural Industries Association
- BARTLETT, Mr David, President,
Tweed Cane Growers Association
- BROOKS, Mr Colin Raymond, President,
Combined Tweed Rural Industries Association
- CONNORS, Mr Christopher, Chief Executive Officer,
New South Wales Sugar Milling Co-operative Limited
- FARLOW, Mr Ross Andrew, President,
New South Wales Cane Growers' Association Inc.
- FRASER, Mr Matthew John, President,
Tweed Heads Chamber of Commerce and Industry
- HAWKEN, Mr Robert Harry, Vice-President,
Tweed Cane Growers Association
- HUTH, Mr Anthony, Deputy Chair,
Rocky Point District Cane Growers Organisation Limited
- OSBORNE, Mr Alick, Chief Executive Officer,
Tully Sugar Limited
- QUIRK, Mr Robert, Branch Council Member,
Tweed Cane Growers Association
- RESTALL, Mr Brian, Chief Executive Officer,
Cape Byron Power
- RUSSELL, Mr Stuart, Senior Strategic Planner,
Tweed Shire Council
- SKOPP, Mr Richard, Chairman,
Rocky Point District Cane Growers Organisation Limited
- SZANDALA, Mr Eli, Program Leader, Sustainable Agriculture,
Tweed Shire Council
- TICKLE, Mr Mark, Economic and Corporate Planner,
Tweed Shire Council
- ZIPF, Mr Greg, Director,
Rocky Point District Cane Growers Organisation Limited

12 March 2015, Mackay, QLD

- BEASHEL, Mr Gregory John, Chief Executive Officer, Queensland Sugar Limited
- BERARDI, Mr Sergio, Private capacity
- BLAIR, Mr Mark Alfred, Member, Proserpine Grower Group
- BORG, Mr Kevin Joseph, Chairman, Mackay Canegrowers Limited
- CAPPELLO, Mr Andrew, Chairman, Mackay Sugar Limited
- CLARKE, Mr Glenn Andrew, Member, Proserpine Grower Group
- CONSIDINE, Mr Gary William, Member, Proserpine Grower Group
- CRANE, Mr James, Senior Executive Officer, Industry and Communications, Australian Sugar Milling Council
- GORRINGE, Mr John, Chief Executive Officer, Isis Central Sugar Mill Limited
- HATT, Mr Raymond, Chief Executive Officer, Bundaberg Sugar Limited
- HAWE, Mr Peter, Chief Financial Officer, Bundaberg Sugar Limited
- HILDEBRAND, Mr Quinton, Chief Executive Officer, Mackay Sugar Limited
- KIRBY, Mr Steve, Director, SISL Group
- LATTER, Mr Kerry, Chief Executive Officer, Mackay Canegrowers Limited
- MURDAY, Mr Donald, Chairman, Australian Cane Farmers Association
- NOLAN, Mr Dominic, Chief Executive Officer, Australian Sugar Milling Council
- RAITERI, Mr Luigi James, Member, Proserpine Grower Group
- RUSSO, Mr Peter, Chairman, Isis Central Sugar Mill Limited
- RYAN, Mr Stephen, General Manager, Australian Cane Farmers Association
- SCHEMBRI, Mr Paul, Chairman, Canegrowers Queensland and Canegrowers Australia

- SLUGGETT, Mr Robert John,
Private capacity
- STEVENS, Mr Brian Stuart,
Private capacity
- THATCHER, Mrs Judith Ann,
Private capacity

13 March 2015, Townsville, QLD

- ARTIACH, Ms Julie, Manager and Company Secretary,
Burdekin District Cane Growers Limited
- BURGESS, Mr David, General Manager, Marketing,
Wilmar Sugar Australia
- CANTAMESSA, Mr Jeffrey,
Private capacity
- CONDON, Mr Christopher, Director,
Tully Cane Growers Limited
- CRISTAUDO, Mr Alf,
Private capacity
- EXELBY, Mr Lex,
Private capacity
- GIRGENTI, Mr Mark,
Private capacity
- GUAZZO, Mr Steve,
Private capacity
- HARNEY, Mr Thomas, Chairman,
Tully Cane Growers Limited
- KEMP, Mr Ian,
Private capacity
- MACKEE, Mrs Carol,
Private capacity
- MALES, Mr Warren, Head, Economics,
CANEGROWERS
- MARANO, Mr Joseph,
Chairman, Innisfail Canegrowers
- MARANO, Mr Philip,
Private capacity
- McNEE, Mr Russell, Representative,
Burdekin District Cane Growers Limited
- MENZEL, Mr Max Richard,
Private Capacity

- MENZEL, Ms Margaret,
Private capacity
- PIVA, Mr Roger,
Private capacity
- PRATT, Mr John, Executive General Manager, North Queensland,
Wilmar Sugar Australia
- ROSSATO, Mr Gregory,
Private capacity
- RUTHERFORD, Mr Shayne, Executive General Manager, Strategy and
Business Development, Wilmar Sugar Australia
- SGARBOSSA, Mr Paul,
Private capacity
- SGROI, Mr Dean, Representative,
Burdekin District Cane Growers Limited
- STEINE, Mr Paul,
Private capacity
- WOODS, Mr Arthur,
Private capacity