AGRICULTURE AND ENVIRONMENT COMMITTEE

Members present:

Ms JR Howard MP (Chair)
Mr SA Bennett MP
Mrs J Gilbert MP
Mr LP Power MP
Mr EJ Sorensen MP

Staff present:

Mr R Hansen (Research Director)
Mrs M Johns (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO THE SUGAR INDUSTRY (REAL CHOICE IN MARKETING) AMENDMENT BILL 2015

TRANSCRIPT OF PROCEEDINGS

MONDAY, 31 AUGUST 2015

Brisbane

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Committee met at 9.31 am

CHAIR: Welcome. I declare this meeting of the Agriculture and Environment Committee open. I want to acknowledge the traditional owners of the land on which this meeting is taking place today. My name is Jennifer Howard, the member for Ipswich and the chair of the committee. Other committee members are Stephen Bennett, the member for Burnett and deputy chair; Julieanne Gilbert, the member for Mackay; Linus Power, the member for Logan; and Ted Sorensen, the member for Hervey Bay. The other member of the committee is Robbie Katter, the member for Mount Isa. He sends his apologies for today. He is chairing a rural crisis summit in Charters Towers with the member for Dalrymple, Shane Knuth, and we wish them well with the summit.

The proceedings today are being transcribed by our parliamentary reporters and broadcast live on the parliament of Queensland's website. The purpose of the meeting is to assist the committee in our examination of the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015. The bill was introduced by the member for Dalrymple and subsequently referred to the committee on 19 May for examination and report. The committee's report is due on 14 September 2015. The program for the hearing is intended to give a fair allocation of time to growers and mill owners, and for cane growers groups we have invited your state executive to decide which of you to involve. For everyone who expressed an interest in appearing at this hearing, we sincerely thank you for your interest. Before we start, I ask that all phones be switched off or put on silent mode.

BUDDEN, Mr Shane, Manager, Advocacy and Policy, Queensland Law Society

FITZGERALD, Mr Michael, President, Queensland Law Society

GRACE, Mr David, Chair, Competition and Consumer Law Committee, Queensland Law Society

CHAIR: Our first witnesses are from the Queensland Law Society. Welcome. Would anybody care to make a brief opening statement?

Mr Fitzgerald: Madam Chair, given that we did not make a submission but were invited by the committee to come here and answer questions, we do not propose to make a statement but are more than happy to try to answer questions that the committee may have. I appear with my colleagues David Grace, the chair of our Competition and Consumer Law Committee, and Shane Budden, the manager of advocacy and policy. Thanks, Madam Chair.

CHAIR: Thank you for that.

Mr BENNETT: Good morning and thank you for your time. I have some issues around property law and property title. If we talk about the concept of grower economic interest proposed in the bill, do you foresee any legal issues that may arise out of property title issues that have been raised in the bill?

Mr Grace: No, I do not. The sugar industry appears to be quite unique in that the sugar cane is processed and becomes in effect something else in sugar and therefore the notions around grower economic interest are an acknowledgement, I think, of the reality of this industry in that what you grow is within less than 24 hours transferred or transmitted into something else and therefore the property that has been produced by the producer and given to the miller means that what the miller produces the miller therefore owns. In order to have a fair system in what is, in the agricultural business, a little different, you have to have a notion of something that reflects the grower's economic interest in the output. So I think the grower's interest is the property. It is the grower's economic interest in the substance that is traduced which is marketed, and therefore there has to be an economic reality which is protected by law, and that is what I think this bill seeks to achieve.

Mr BENNETT: Thank you. So with regard to the preparation about the property rights issue that keeps being raised within this grower economic interest proponent particularly in 33A and 33B of the bill, do you think there is a need for us to further avoid that discussion around property rights as has been raised particularly by the milling sector?

Mr Grace: I think you do need to avoid it because the traditional way of looking at an agricultural product, say cotton, is to say, 'Who owns the cotton?' and when it is processed it is still cotton. So the contract governs that. As I have said, the sugar industry is different for the reasons I have stated and I think what is being done in 33A and 33B of the bill reflects the reality of the industry. So I would stay away from the discussion around property. I think the bill addresses what the grower has. It produces sugar cane, harvests it, transports it to the mill and the miller then processes it. What the grower owns is a grower economic interest in the outcome. Therefore, that is what needs to be protected. That needs to be the focus of the law.

Mr BENNETT: Thank you. I think we asked you this before, but I just reiterate that we do not expect legal recourse if we continue to talk about the property rights issue, or would we expect challenges in that space?

Mr Grace: There may be people seeking to argue property rights to push their own views of the way it ought to be, but for the reasons I have stated I believe that the way the bill addresses grower economic interest is an appropriate way, given the special treatment needed within the sugar industry.

Mrs GILBERT: We have had a lot of submissions coming into the committee and it is claimed that the sugar industry has little protection from the Australian commercial consumer protection laws when negotiating their contracts and especially where there is dispute with the mill owners who may have a monopoly in the area. In my area in Mackay, if you have a farm in South Mackay the only mill that you can take your sugar to is Wilmar. If you are in another area, there are the Mackay Sugar mills. Can you explain what legal protections may apply to the commercial and contract agreements and negotiations for the farmers in these situations?

Mr Grace: Under the bill, the protection that is afforded farmers is the right to give a notice to the mill owner of not less than 10 business days, and that is found in 33A of the bill, to negotiate terms of the contract. The bill provides that if at the end of that time a term or terms are not agreed then that is a dispute that is referred to the commercial arbitration processes. The commercial arbitration processes then deal with those disputes and resolve them and make determinations. The determinations they make with respect to each term in dispute is a determination of that term and is binding upon the miller and the grower. So the process says that you have the right in that 10 business days, or further time if given, to agree things, what is agreed and what is not agreed and thereafter determined in commercial arbitration forms the basis of the contract. That, I think, is fair.

Mrs GILBERT: Is there dispute resolution access to the farmers and the millers at the moment?

Mr Grace: At the moment?

Mrs GILBERT: Yes, that are existing already. Would this improve that process?

Mr Grace: I am not sure what the provisions are at the moment. Are you able to answer?

Mr Budden: At the moment the way that you would get access to commercial arbitration is if you already had an agreement. It comes out of an existing agreement. This bill effectively gives you an arbitration process for the negotiation of the supply agreement, so it gives you access to something that you do not currently have access to if you do not have an agreement. There are other things obviously available to you such as other court proceedings, but, again, with something like sugar, where you could take nine months to sort something out in the Federal Court, you would lose your growing season. So this would speed it up. I think that is the value of it.

Mrs GILBERT: Thank you.

Mr POWER: You said this process would speed it up. My understanding is that in a system where only one party has cause to call for arbitration—final and binding arbitration—is that something that has perverse outcomes in commercial negotiations? Obviously it is preferable that any commercial parties seek negotiated outcomes that they both are in agreement with. Where one party has an ability to go to arbitration relatively quickly, does that have perverse effects in the long term?

Mr Budden: I suppose anything can go wrong if people try hard enough, but the big advantage to arbitration with that 10-day process is that you are taking it out of your hands and putting it in the hands of the arbitrator. Unlike a standard mediation, where a mediator will bring parties together and say, 'Right. I'm not going to solve this; you're going to solve this,' with an arbitrator if you have a dispute you are acknowledging that you cannot solve it and the arbitrator will make the decision for you.

There are similar systems in Canada in terms of their shipping goods across the country. Again, they deal with some monopsonies there and they have a system of final-offer arbitration, where

everyone puts in their best offer and the arbitrator gets to pick between the two. The reason behind that is: if you know you are going to be stuck with something you will make a reasonable offer and not a ridiculous one because if the other party makes a less ridiculous one it is your problem. They have a series of statutory requirements built around that. For example, in those circumstances the arbitrator must take into account certain things such as whether or not there is another option or whether or not someone can use a different form of transport to get their wood or whatever across Canada.

The big advantage to this is that in arbitration you are going to get a decision. It is not going to be like a mediation where at the end of the day you might still not agree on everything. This system will say, 'Well, at the end of the day you'll get something that everyone has to live with.' That is why I think it has an advantage in terms of speed, because you are not tied up in a court process and the arbitrator is going to come to a decision on the matters in dispute.

Mr POWER: So you found an analogy in the Canadian system of transport of, presumably, wheat across the Canadian prairies?

Mr Budden: Yes. When I researched this we were looking for other examples of final-offer arbitration and that sort of thing. That is the one that came up. Again, they seem to be dealing with a fairly similar issue. We also found that prior to March 2014 the Chicken Meat Industry Committee Act regulated the chicken meat industry and the chicken meat industry is very similar. Between 2001 and 2011 there was a massive consolidation of ownership of the processors, so the growers were finding themselves in these monopsonies again where they are dealing with one or two big processors. That chicken industry committee act had a simple way of resolving these things so that it was intended to address the marketing imbalance in power between the big chicken processors and the chicken growers. That was abolished in March last year. I do not know how that has affected the chicken industry. I have not found anything. It might be something the committee can look into if they want to see how a monopsony operates without that sort of protection. That may be of some use to you. That was probably the closest analogy that I could find: the chicken meat industry.

Mr POWER: In the Canadian situation there seems to be one point of dispute—the cost of transport and maybe the timing—but in this arbitration there may be a variety of issues. Is final-offer arbitration appropriate when there are a variety of issues that have to be determined? It makes it much more subjective balancing between a number of issues.

Mr Budden: Yes, final-offer arbitration is good when it is a simple process. As I said, the Canadian legislation also says the things that the arbitrator must take into account and it includes whether or not you have another option of transporting your goods, so it is a little different from this. Final-offer arbitration would not work as well as the process being proposed here, I think. I have not practised in commercial arbitration previously, but this one would appear to allow the arbitrator to take into account all sorts of relevant things. Again, it would depend on getting the right arbitrator, too. Someone with a strong background in the sugar industry is obviously going to be better than, dare I say, one of us lawyers, who is just going to turn it into a court process because that is what we know.

Mr BENNETT: Thank you for your overviews about the arbitration process. Proposed new section 33A has seen some fundamental legislative principles commentary around that. When you say that it is going to streamline it, I would suggest that there may be some problems with new section 33A(1) (b). This is the 10 business days. Would you care to comment on new section 33A(1) (b) about negotiating a supply arrangement after at least 10 days? What we are saying is that we think arbitration should take place after that mandatory process has expired, if we are going to do it at all.

Mr Grace: It is at least 10 business days. I think it is intended that there be an absolute minimum period of two weeks—10 business days. But if the matters to be contemplated and negotiated are more complex and need more time, the common-sense approach would be that the time should be a longer period of time. However, what the bill does provide is a period which is final. If the parties have been unable to reach agreement on a particular term or terms within that period, it goes off to arbitration. In the context of an industry that runs a seasonal business and you need in place a contract at the beginning of the season so that there is certainty for the grower and certainty for the mill owner of what the terms are, there needs to be a process to get the thing moving quickly. I support what Mr Budden says in relation to the desirability of having an arbitrator who has experience in the sugar industry so that he or she will know the pathways down which to go in order to get the matters resolved.

Mr BENNETT: But we are now advocating, though, that before the negotiations have reached conclusion, arbitration. Surely that is going to be a sticking point and it is going to prolong the process of what already exists in the sugarcane agreements?

Mr Grace: There are transitional provisions with respect to the current agreements, so I will let the transitional provisions deal with those. In respect of new agreements, however, I do not think that the fact that the negotiation period is fixed and at the end of that there will be arbitration should be seen as a threat. Rather, it should be seen as this: parties can decide to keep the matter within their own control and reach agreement. Once it goes to arbitration, it is outside of your control and both parties know that. Both parties are at risk. There is always risk in litigation and there is always risk in arbitration, but there has to be a provision that brings finality to the business of the negotiator. This does it. Whether the 10 business days should be 15 business days I am not in a position to say, but what I do recognise as a matter of legal process is that what the bill proposes is reasonable in the sense that it does say at least 10 business days.

It is not as if the parties are coming to talk about something that they have not talked about before. They clearly know their business on both sides. It is part of a supply chain. It is very important that this process be finalised; otherwise it can create chaos for the business, for the industry. So it is important to have a process like this. I think the process that is outlined in the bill is not unreasonable in that respect.

CHAIR: Thank you. You have probably answered this in some way already, but there is a lot of concern from canegrowers about them losing their marketing choice and that there is an imbalance between the profits of the millers and the growers. In your opinion, would you say that there is an imbalance in the market power between canegrowers and millers?

Mr Grace: I think the industry has changed over the years. There is no doubt about that. We now have concentrations of power in the millers in foreign corporations. That has, as I understand, given growers concerns about, if the miller is to be the marketer, how that affects the growers' potential profits for his or her or their own business? If that concern is correct, I think that is a fair concern.

At the present time, Queensland Sugar Ltd is the marketer and Queensland Sugar Ltd is a company limited by guarantee and therefore is not a for-profit company. It is, therefore, one that sits there in the industry and the members of the industry are the members of that company and therefore appoint its board of directors. So that current position is changed.

Millers have given an indication that after 2016 they are not going to have QSL continue to market it. Therefore, the question becomes: who should market it? The principles of competition would advocate choice. Therefore, for the growers to have the right to choose who should market their product, their sugar, at the end of the process I think is a fair one. The right of choice is an essential and critical path for protection of competition. The policy of competition is not to protect corporations but rather to protect competition. The right of a grower to elect who it is that will market his, her or their product is, I think, fundamental to protect competition policy. I think this bill addresses it in a fair way.

Mr POWER: I would like to further expand on something that the member for Burnett mentioned. The millers have used the very strong term of expropriation of property rights, seemingly flagging a legal challenge in the future. Can you give us some detail about the expropriation of property rights from a legal point of view, whether that is flagging a legal challenge and whether the bill is sustainable in that sense?

Mr Grace: I think I answered this in part before when I said that—

Mr POWER: Sorry, maybe more on the expropriation—what they are directly flagging there.

Mr Grace: I understand that. I just wanted to take you back to my comments earlier. In talking about expropriation of rights, what is it that is really being looked at? At the moment, what the miller must do is sell it to QSL and Queensland Sugar Ltd markets it, so that is going to stop. It then becomes a question of who it is that is going to market it. From a competition policy perspective, if the miller says, 'I've got it. It's mine. Therefore, I should have the sole say in marketing it,' given what we are talking about in the sugar industry is unique in that you have a product which goes into the mill and comes out as a modified product—sugar, not sugar cane, which is the juice—the need to protect the economic rights of the grower is a fundamental need that the state needs to address. Arguments about expropriation of rights simply deny the fairness of the notion of the grower's economic interest, because it means that the miller would have the sole rights to determine your markets. They may do a good job or they may do a bad job, but the grower is totally dependent upon the commercial ability of a miller to market. That miller may be a very good miller; it does not make him a very good marketer.

Understanding world markets in sugar is not a simple thing in that there are great changes in that from time to time. The miller gets the milling fee anyway. He gets paid to do what he does, as he

should. But the end result of what the grower gets in an international marketplace for sugar is a very different question, and the grower should have the right to protect that economic interest by nominating someone else to market the sugar if he, she or they believe that it is better to do so.

To address your point, the expropriation of property rights is, I think, an illusory expression. No-one can say that someone may take it on challenge, because if people want to challenge it they will challenge it. What will the court do? I think the way the bill is presently drafted is fair and recognises the supply chain, recognises the growers' economic interest, recognises the millers' rights to mill. The miller gets paid for that. The grower is totally dependent upon that process occurring within a period of time. I do not think the argument about the expropriation of property rights in sugar is a fair one, given that it has taken in sugar cane, processed it and gets paid for that. I think the producer should have the right to say, 'So-and-so should market it.' If there is to be some sharing of the profit between the miller and the grower in relation to that process, that can be done as part of the term of the contract, but I do think that is fair.

Mr POWER: You talked about the miller not having an understanding of international sugar prices. The suggestion would be, then, that growers have a better understanding of the international sugar market and prices and, further, that their interests are not aligned—that the millers do not want the highest price for the sugar in exactly the same way as the growers.

Mr Grace: As to the knowledge of the grower of marketing sugar, that is not the issue. The issue is that the grower has the right to appoint someone who does. So if the grower is not satisfied that the miller has that right then the grower should not be stuck with the miller simply because the miller did the milling of the sugar cane. It is not to cast a view on whether the miller is good or not at marketing the sugar; it is rather to say that freedom of choice by those who produce it is an essential part of fair and competitive practice in the community.

Mr POWER: So the suggestion would be, then, that the growers of the cucumbers that are grown in Logan or the oranges that are grown within the member for Burnett's seat should have a choice over which juicer markets their product?

Mr Grace: No, it is quite different because what you have in an orange is an orange. You do not have any change in the nature or substance of what you sell. You grow oranges, you decide who buys them and what that person does as a wholesaler is up to that person. It is quite different with sugar because of the way in which sugar is grown, the limited amount of time between the cutting of the cane and the time that it needs to be processed. It has to go to the local mill. Because it has to go to the local mill, does it therefore have to stay there for marketing? The current arrangement within the industry is that it does not. It goes to Queensland Sugar Ltd. That is being changed so there needs to be, as part of that change, a different process for protecting the growers' economic interest, which is, I believe, set out fairly in this bill and addresses those needs.

CHAIR: Thank you. As I said earlier, our committee's role is to look at the legislation before us today so we do appreciate your time. Because we have you here and I know you have to go, from a legal perspective, overall what is your assessment of the proposals in the bill? Are there any other legal issues arising from the bill that you would like to draw to the committee's attention?

Mr Grace: Not for me, personally.

Mr Fitzgerald: Certainly not for me.

Mr Budden: Not for me. I suspect throughout the day you will get other people raising a lot of issues for you. Thank you.

CHAIR: There being no other questions, thank you very much for your time. It has been very helpful.

COYNE, Ms Kim, Principal Policy Officer, Plant Industries Food and Trade, Department of Agriculture and Fisheries

DURANCE, Mr Bob, Director, Plant Industries Food and Trade, Department of Agriculture and Fisheries

LETTS, Mr Malcolm, Executive Director, Regions and Industry Development, Department of Agriculture and Fisheries

WEGENER, Dr Malcolm, Honorary Senior Research Fellow, University of Queensland

CHAIR: Welcome, everybody. Thank you again for joining us. Would anybody care to make a brief opening statement?

Mr Letts: If I can just clarify that the department has provided several responses already to the committee and, at this stage, we do not want to add to those responses in terms of opening comments. Dr Wegener is an ex-member of the University of Queensland, not a member of the department. I want to clarify that. He is here as an independent expert, if you like, in relation to sugar marketing.

CHAIR: Are there any questions from the committee?

Mr BENNETT: Good morning, everyone. Thanks very much for your time. I am sure you heard the previous witnesses from the Law Society talk about price exposure, risk and economic interest. How do you see sugarcane pricing from the cane supply agreements that are worked out and what are they based on from your understanding?

Dr Wegener: I think the cane supply agreements are a critical issue in this whole matter. I have only had a look at one of them, which is the one from the Burdekin district where it clearly says that the ownership of the cane transfers to the mill at the point of delivery. That seems to be a critical point in this whole issue. As far as pricing goes, we have traditionally used a cane price formula, which is really a revenue-sharing equation, to split the revenue from sugar sales between growers and millers. That has had a long history. It was developed 100 years or so ago. It was designed to share the revenue from sugar sales basically in proportion to the capital assets of the growers collectively and the mill. That worked out to be roughly one-third to the mill and two-thirds to the grower. It may well be quite a bit different now.

The nature of that formula had c.c.s. minus four units incorporated in it, which allocated four units of the then average c.c.s. to the mill as their reward for processing cane and the balance of the revenue went to the growers. There was a coefficient in there to reward efficiency in the mill as the mill became more efficient, because when the formula was developed only about 90 per cent of the sugar in the cane could be extracted. As milling processes improved, that coefficient in the formula allowed the mill owner to gain more revenue.

I think that revenue-sharing formula was ideal in the old days when sugar became the property of the Queensland government when sugar was made. That ceased with the deregulation of the industry. We are now in a much more commercial environment, although people have still tended to base sugar pricing more or less on that revenue-sharing formula.

Mr BENNETT: The issue of marketing is key to what we are talking about. With the impacts of marketing, the sugar price and the price paid to the growers for the sugar cane, does that price depend on who is actually marketing the sugar and how it is done, in your opinion?

Dr Wegener: I think only to a limited extent. The product we sell is bulk raw sugar, which is a bulk commodity. It is traded on the world market. Basically, the price that Australia obtains for sugar is determined by the New York No. 11 contract. We do get some premium for our location being close to our markets and probably a pretty significant premium because of the quality of our sugar. I do not think you can influence the price too much by marketing activities, like we see in marketing other commodities, driven by advertising and things like that.

Mrs GILBERT: Dr Wegener, we are looking in this field at legislating for grower economic interest and grower choice. You have a long history of looking at the sugar industry. Do you think that having legislation will change the relation of the marketing of sugar and change the way that industry currently operates?

Dr Wegener: I would have to say yes, but add that I have not looked at the current legislation. Any legislation is going to affect the way that an industry operates.

Mrs GILBERT: Can the existing market structure and commercial arrangements accommodate for grower choice without legislating for it?

Dr Wegener: I think that is a difficult issue. As the people from the Law Society were pointing out, some of the milling groups are proposing to market the sugar that they process and withdraw from Queensland Sugar. Therefore, that really limits or excludes grower choice in marketing. Any other primary producer usually has a choice about where he can sell his produce. If he does not like the return he is getting from one buyer, he can seek another. However, because of the unique nature of the sugar industry and now with the limited number of mills in all the cane growing areas, many of them in one area are owned by the same milling group and they do not have that choice. To follow on from that, to provide that choice then becomes a really difficult and challenging issue.

Mr POWER: I just go back to the marketing premium. Unlike orange juice where people can have creative brands where they attract a market premium with their marketing, you said before that most of the advantage to Queensland Sugar is due to cheaper shipping locations—basically, because we are closer than Brazil to our Asian markets—and also the quality of the sugar for some manufacturing processors. None of those factors change under which marketer has the product, for the most part. What percentage of farmgate profits are we actually talking about, as opposed to one marketer over another?

Dr Wegener: I do not have information on that.

Mr POWER: We are talking about a relatively small premium of a bulk product that fundamentally does not change in nature and a shipping advantage that does not change in nature, really, does it?

Dr Wegener: No. I guess another point that Australian sugar has is reliability of supply. In the past the marketer has arranged the shipping to the destination, which means that buyers can guarantee that the sugar will arrive when they have asked for it.

Mr POWER: So the sugar gets landed on the docks in Korea as part of the contract?

Dr Wegener: Yes.

Mr POWER: With the percentage that we are talking about in marketing premium of one versus the other, when much of the premium is due to things that will not change from one market to another, we are not talking about a huge amount, not at the farm gate but at the mill debate or the shared economic interest that they have as part of the equation.

Dr Wegener: Yes, at the world sugar terminal. I think it is has to be a relatively small amount.

Mr POWER: The other thing is that there are relatively complex pricing structures where risk can be mitigated against future market volatility. Those are not under consideration as a part of the marketing. Farmers can engage any provider of those types of services regardless of marketing at the moment, so they could take out a financial product that secured them against future price dips or took a long-term average or a medium-term average, depending on their appetite for risk. That is not part of the process here, is it?

Dr Wegener: If we move from what has traditionally happened with sugar marketing where those options where available to growers, I guess it depends on the commercial attitude and interests of the—

Mr POWER: But, for instance, lots of producers of agricultural commodities, such as wheat growers, manage that type of forward risk and pricing through mechanisms other than utilising a marketer.

Dr Wegener: Sure.

Mr POWER: It certainly would be open to growers to take those forward-risk financial options in different ways.

Dr Wegener: Yes.

Mr POWER: That is not really under discussion economically as part of the growers in this bill.

Dr Wegener: Perhaps that option needs to be there, because—

Mr POWER: By legislation, though? It does not seem to be part of the legislation, either.

Dr Wegener: Okay. I guess I have to wonder whether you need to provide that provision by legislation. That seems to me to hark back to the old regulated marketing system where everything is specified, if we are moving towards a more commercially oriented system. Certainly QSL used to provide those sorts of options to growers. I guess you are right in saying that if there are other people

marketing sugar, like they have in cotton and other commodities, growers have the option of taking a position in the futures market, getting involved in currency. They have those other risk-mitigating options, but I guess there is quite a lot of risk associated with getting involved in those things, as many primary producers in the past have discovered.

CHAIR: Given your long history, it is great that you are here. It is very helpful for us. I have a question for you. There has been a Senate inquiry into the sugar industry quite recently and I understand the federal minister for agriculture, Ian Macfarlane, is looking at holding a forum or a round table around the sugar industry quite soon. How do you think this legislation fits with what the federal government are working on, if you are aware of it?

Dr Wegener: No, I am not really aware of it. Sorry, but I did not do any homework on that.

CHAIR: No, that is fine.

Dr Wegener: But clearly whatever you do has to fit in with what the national government tries to do and also it is in the national obligations that are signed up to.

CHAIR: That is right. It is something we will have to look at. Assuming the bill is passed and a system of grower interest in mill sugar is introduced, it is something that we would have to look at with this legislation. Do you think that there is a risk of mills exiting the market if a bill like this was introduced?

Dr Wegener: Certainly they have voiced strong opposition or strong concern about people who are opposing what they want to do, but they have made a big investment. I guess if they did exit they would probably lose substantially on their investment. It seems unlikely that they would.

Mr SORENSEN: Just on the question of playing the game on the futures market, are farmers going to take the risk of the futures if they cannot deliver the product at the end of the day, because you do have droughts and floods and all that sort of thing? Who is going to wear that? Do they have to go out and buy that sugar and then sell it if they cannot produce it?

Dr Wegener: Yes. That is what happened to Queensland Sugar a few years ago.

Mr SORENSEN: Yes, in 2010.

Dr Wegener: Yes.

Mr SORENSEN: But if it is all handed over to just the farmers and they make a decision to forward sell it like that, they will have to take the risk themselves.

Dr Wegener: Sure. The intent is that if they are selling sugar they are going to get a better price, but a better price usually comes with more risk.

Mr SORENSEN: Yes, but if you run the risk and you cannot produce it because of something, it is your risk then, is it not?

Dr Wegener: Yes, it sure is.

Mr SORENSEN: It is the same thing.

Dr Wegener: The positive thing about that is that the farmers themselves are perhaps in a better position to make decisions about forward selling than someone else who makes that decision on their behalf and perhaps lacks some of the knowledge that the individual farmer has.

Mr SORENSEN: Thank you.

Mr BENNETT: This is for the department. We have had some discussions over the last couple of months around evidence of market failure and some of the discussions that may have come out of that, and of course we acknowledge that you wrote to us on 24 August indicating that there was no evidence. For the committee's benefit, could you just give what you would consider to be a market failure or a market imbalance in dealing with growers or the mills—that is, what you would consider to be evidence of market failure?

Mr Letts: I might ask Dr Wegener to comment on this as well. In relation to the concept of market failure, generally the term is used around production inefficiencies, so the market forces are such that the full efficiencies of the system are not realised. So there is, in this case, a monopsony but there would be forces within the market that do not allow or do not send signals to the various players in the industry to maximise or optimise the efficiency of their systems. An example of that in the sugar industry has been, as I think Dr Wegener explained earlier, the price formula. We have seen an improvement in c.c.s. levels on average across the industry in recent times and we have also seen an improvement in the efficiency of the production of raw sugar from cane in the milling

processes. Those signals are very important in relation to optimising the overall productivity of the industry.

The other area of market failure that is commonly referred to in public policy is associated with not creating a demand in the market, so there is no actual market created. Examples of those are things like education and health in remote areas. We are not seeing any evidence of that sort of market failure in the sugar industry at this point in time, but really the overall concept is that a free market will actually generate the most efficiency in the system and will lead to the best returns overall for the industry. But Dr Wegener might like to make a comment on that as well.

Dr Wegener: Yes. I would strongly support what Malcolm has just said, but I think we have to distinguish here between what is commonly called market failure and what it really is which is monopolistic competition where we have large buyers of the product and a number of small sellers. In a competitive market a rise in the price of a commodity would normally bring forth increased supply. When we have market failure is when that sort of relationship does not work properly. There is certainly imbalance in market power in the sugar industry where the mills are a much larger economic entity than the growers that supply it. I guess what I would be hoping that you can achieve is appropriate means to rebalance that market power, and that is possibly available through collective bargaining by growers to establish appropriate cane supply conditions that might be more relevant to trying to overcome this perceived market failure.

Mr BENNETT: I go back to the department then. Has the department referred any complaints of possible or anticompetitive behaviour to the ACCC or the Queensland Competition Authority that you could comment on?

Mr Letts: None that I am aware of, no.

Mrs GILBERT: The mills are wanting to leave QSL as the seller of sugar and the farmers seem to believe that QSL has been the best place for their sugar to be sold. Could you comment on the effectiveness of QSL over recent years and why there may be that motivation to leave the market of them as their marketer?

Dr Wegener: I guess one of the issues is what we talked about a minute ago with the big loss that QSL made by overselling sugar a few years ago which the industry had to bear. I am not sure how valid their claims are, but certainly the milling companies are claiming that they have been able to achieve better prices recently. I guess that reflects my recollection of what happened years ago in the cotton industry where we had regulated marketing of cotton in Queensland but companies operating in New South Wales and some farming families had farms in both Queensland and New South Wales and could actually compare the results of those two operations. I guess that is not convincing proof that companies are always going to do better than a large organisation, but this does seem to be some evidence that that is the case. I suppose I would have to offer a personal comment that large multinational companies based in Asia selling sugar to Asian companies are probably going to be fairly good at it.

CHAIR: Our committee understands from media releases issued last year that the former minister was writing to the federal government about possible problems in the operation of the sugar industry. Did the former minister get a response to his letter from the federal government and can we be provided with that response if you have it?

Mr Letts: There was an initial preliminary response which indicated that there would be a more thorough response provided in the future and then we had the change of government in Queensland and there has been no response since. There is no requirement for the federal government to respond to the new government.

CHAIR: Thank you.

Mr POWER: My question is firstly for Dr Wegener. You mentioned collective bargaining. There is no capacity or reference to collective bargaining in this bill, is there, so that is a secondary issue? Either of you can answer this to make it clear.

Mr Letts: Yes. The existing Sugar Industry Act already contains provisions for collective bargaining and it is quite common practice within the industry.

Mr POWER: But there is no reference to the changes that are put forward in this?

Mr Letts: No.

Mr POWER: No. You always look for market imbalance and market problems and monopoly and monopsony problems when there is a large single buyer or, in this case because of a perishable good and high transport costs, a necessary single buyer. However, there is also in this case the

shared economic return that usually comes through the reflection of the final sale price. In that case, aren't the interests of the growers and the miller aligned in getting the highest sale price?

Dr Wegener: Yes, I think they would be, but I guess there have to be exceptions to every rule and sometimes things go bad. In the interests of creating competition, one option that might be thought about, although I do not think it is particularly practical, is to try to encourage the millers to make some of their crushing capacity available to either growers or a third party—

Mr POWER: But when their interests are aligned in gaining the highest price on the international sugar market, is that simply a distraction when they both have interests aligned of the highest price, and we are talking about here whether there is a monopoly problem or a monopsony problem? Is it not effectively that within the world sugar market the various millers and growers are partners into selling into a highly competitive world sugar market so therefore there is reasonable competition and it is better to reflect the miller and the grower as a partner in extracting the highest price in a competitive world sugar market? I am not necessarily saying this is my view, but it has certainly been put. Is it worth commenting on and what contradictions are there?

Dr Wegener: Yes, that is the initial view you would probably take. Growers and millers have always had a fairly adversarial arrangement, partly I guess brought about by the regulated history of the industry. They are perhaps a bit inclined to see problems where problems do not exist. I tend to agree with you that the interests of the millers and the growers pretty much coincide in trying to get the best price for their sugar and it is a question of selling Australian sugar in competition with Thai sugar or Brazilian sugar which may be the source of some of their concern. They see a company that is based in Thailand with Thai sugar to sell in competition with Australian sugar. Would they sell their Thai sugar preferentially rather than Australian sugar?

Mr POWER: I think this is more the nub of the question: with vertically integrated companies with diverse sugar interests, is there a transparency in extracting the highest price given that it is a bulk commodity but there is some differentiation? We could not give a percentage on that, but this is about whether a vertically integrated company with different sources of sugar maximises price for Australian sugar and how we make that transparent. Are there mechanisms for making it transparent to the growers that they are doing that process through these companies?

Dr Wegener: I guess that is going to be a really difficult one to try to get companies to reveal basically the profitability of their overseas operations and the prices that they are getting for overseas sugar relative to Australian sugar.

Mr POWER: So within that, the keeping of QSL as a competitive sales option is not one where there is a misalignment of interests and a monopsony or monopoly problem but more one where the keeping of QSL as an option provides an alternative transparency because there is an alternative setting of a price; would that be a fair thing to say?

Dr Wegener: Yes, except that if two to 2½ million tonnes of sugar is taken away from QSL they are probably not going to get as good a price as they might have in the past when they had all the Australian sugar to sell.

Mr POWER: On that, obviously QSL does not market New South Wales sugar, but that is pretty small. We are not a huge player on the world export trade. The Brazilians are huge.

Dr Wegener: Yes.

Mr POWER: Within that, is QSL a price setter in the way that some single desks used to be? Is it big enough to do that, or is it one that has limited options in terms of price setting, finding customers, reliability and all those sorts of things?

Dr Wegener: We are pretty significant in terms of trade of sugar, probably No. 3 or No. 4 in the world.

Mr POWER: But given that No. 1 is—

Dr Wegener: Huge compared with us. That is going to be what really sets the price, the benchmark. We can affect that a bit by the premiums that we get for quality and location. I guess the more sugar a company has available to sell the more options it has, the more markets it can supply and presumably the better prices it is going to get because it can supply right throughout the year and things like that.

Mr POWER: Is there any determination of at what point QSL would be ineffective as a marketer of sugar and a transporter of sugar, because that is part of delivering to the docks, I would imagine?

Dr Wegener: I think there are probably fairly substantial economies of size in all those operations. It then becomes a question of whether the competition from selling sugar through other

companies outweighs some of those disadvantages if you reduce the quantity that is sold through QSL.

Mr POWER: That being said, though, some of the millers who have an economic interest in delivering the highest price are significantly smaller than QSL when taking on the marketing of their own sugar.

Dr Wegener: In terms of Australian sugar—

Mr POWER: But some of them have extensive overseas operations and others don't, do they?

Dr Wegener: I guess two of the three main ones, Wilmar and Mitr Phol, have pretty extensive resources overseas combined with Australian sugar.

Mr BENNETT: I have a question for the department. We note that the director-general wrote to us recently particularly about 33A and 33B and the arbitration issue. We have a lot of submissions particularly on that issue. Would you propose any other mechanisms, perhaps consultation, before we have to be forced into the arbitration process? I think we have had briefings from the department before about the history since 2006 going forward on how the industry has worked pre arbitration issues being raised with the millers and the growers. Am I getting a blank look there?

Mr Letts: I probably just need to clarify the question.

Mr BENNETT: Certainly. Are there any alternatives to the regulatory approach that has been portrayed in 33A and 33B of the bill?

Mr Letts: The position that the minister has taken throughout is that his preference would be to seek a commercial solution to the situation. In our assessment of the bill as it currently stands, we have not been able to identify any alternative amendments to the bill at this point in time that go to that end, if you like.

CHAIR: A 10-year review of the sugar act is almost due to happen. Will this be a root-and-branch review of the act? As part of the review, will the department consider whether the act is dealing adequately with commercial arrangements and disputes between growers and millers?

Mr Letts: The nature and extent of the review has not been determined and I would suggest is largely a policy question for the parliament to deal with.

Mrs GILBERT: I would like to ask the department a question about consultation. This is a private member's bill and it has far-reaching impacts on the sugar industry, local communities, the business sector and government. Do you believe we have had enough consultation on this bill, given that if it were a government bill we may have taken further steps in terms of consultation?

Mr Letts: Thank you for the question. As you have rightly indicated, the normal process for the introduction of a bill other than a private member's bill would involve a regulatory impact statement which would have within it a process for extensive consultation. That is not involved at this point. Therefore, there is a fundamental difference between the two approaches.

Mr POWER: The bill suggests that millers would have a right to choose the marketer of a proportion of the crop and that growers would also have a right to select to be part of that pool of marketing. Given the recent history of marketing problems, a reasonable proportion of growers would select to have a relationship or at least a trial relationship of having their sugar marketed with the miller or alternative growing arrangements to QSL. When we are talking about marketing a bulk sugar product with an advantage in the quality of Queensland sugar, which does not change, an advantage in shipping cost-benefit over ICE 11 prices which does not change either, this bill would also have a fair proportion, or some proportion at least, choosing to use the marketing that would be available from their miller. We are also talking about a reduction in the amount of sugar going to QSL. We can probably anticipate a reduction in the amount of sugar going to QSL. Either way, we are probably not talking about a huge amount of difference between how much QSL markets and how much QSL does not market. Would that be fair to say, or is that anticipated differently? That is probably to the department and to Dr Malcolm Wegener.

Mr Letts: Can I clarify that? Are you saying if the bill were to come into force it would not make much difference in what proportion of the total sugar is marketed by QSL?

Mr POWER: No, I am suggesting that the idea of the benefit of a single desk with the full economic power of Queensland Sugar would not be the case under the bill in that those millers who chose to market would still have a fair proportion of the throughput of their mill to take in their own marketing mechanism and that some of the growers might also select to be part of that pool of marketing. Therefore, there would be a reduction regardless and QSL would no longer act as an effective single-desk marketer with that benefit of economic power.

Mr Letts: I think that is a fair statement. Obviously we do not have a crystal ball, but we have already seen the mills indicating in their own submissions—and in one case they are already buying some sugar back from QSL to market themselves. So we would anticipate there would be an overall reduction in the amount of sugar that QSL would have to market.

Mr POWER: Regardless of whether this bill was implemented or nothing was done?

Mr Letts: Correct.

Mr POWER: Dr Wegener, is that your understanding? We do not have a crystal ball, and we do not know in what way growers would act, and that might vary from growing year to growing year but—

Dr Wegener: Yes. The only thing I could add is the experience with the cotton industry, where people will use all the options available. Some growers will put some of their cotton into pool. They will sell some with merchant A or merchant B. They will use a whole range of devices. I guess that is what choice is about: for them to explore the options and see which is the best one that suits them.

Mr POWER: But in this case it was presented that an effective single desk in marketing sugar perhaps had some sort of economic power on the world market. That economic power would be reduced regardless of this bill or no action being taken; would that be fair to say?

Mr Letts: Yes, I think that is a fair statement. I think the question earlier in relation to the percentage of difference that marketing makes also goes to the answer to your question in relation to the scale of the difference in the industry.

Mr POWER: Thank you.

CHAIR: As there are no further questions, thank you very much for your time. We will now have a short break.

Proceedings suspended from 10.41 am 11.04 am

BEASHEL, Mr Greg, Managing Director and Chief Executive Officer, Queensland Sugar Ltd

CHAIR: This hearing will now resume. For the next 30 minutes we have Greg Beashel. He is the managing director and chief executive officer of Queensland Sugar Ltd. Thank you, Greg, for joining us. Would you like to start with a brief opening statement?

Mr Beashel: Thank you, Madam Chair. Yes, I have a brief opening statement, but I would like to leave most of the time just to answer your questions about our submission or any other matters. Thank you for the opportunity to address you today. As our submission outlines, QSL is a not-for-profit industry service organisation that has been representing the interests of Queensland's canegrowers and sugar millers since its origins as the state's sugar board back in 1923. We currently provide finance, pricing, marketing and logistics services to seven mill owners and over 4,000 Queensland sugar growers.

It was the decision last year by three of our supplying millers, Wilmar, Cofco and MSF, to withdraw from the current industry marketing arrangements from July 2017 that prompted widespread calls for grower choice in marketing and has ultimately led us here today. QSL appreciates the committee's efforts to address this important issue, which has already had substantial consequences for our industry, including increased finance costs, limitations on many growers' forward pricing options and continuing uncertainty regarding future operating arrangements that discourages investment by current and potential industry stakeholders.

Our focus with regard to this bill has been its recommendations regarding marketing arrangements. QSL believes that the actions of the raw sugar marketer significantly influence the returns secured for raw sugar. As such, we believe that both our grower and miller members should have a choice regarding who provides that service on their behalf. A grower choice system can be implemented under the terms of the current Sugar Industry Act via a commercial arrangement and this remains our preferred solution to this problem.

In the absence of such an arrangement, the existing regulatory framework does not enable growers to choose which entity markets the quantity of raw sugar to which they have price exposure. The introduction of true competition in Australia's raw sugar marketing services is the next logical step in the deregulation process that began back in 2006 and is essential in order to promote innovation and deliver the best value for both growers and millers. It is imperative that a solution to the current impasse is secured as a matter of urgency and we thank the committee for its efforts in this regard.

CHAIR: Thank you. Are there any questions for Greg?

Mr BENNETT: Thanks, colleagues, for letting me go first. Welcome, Greg. I appreciate your time. You mentioned in your opening statement deregulation, of course, of the QSL single desk back in 2006. Could you briefly explain why this was considered to be the best option and the preferred outcome at that time?

Mr Beashel: Back in 2006 there was a single desk for sugar marketing, where the state took ownership of sugar produced at a mill and all sugar had to be sold by QSL. Since that time, it has been a voluntary system. My own view is that competition gives better results for everyone and I think that the system in place since 2006 has been better than the system that was in place prior. But competition has to be allowed to work and the proposal by three mill owners, Wilmar, Cofco and MSF, to take the sugar and market it themselves and not give a choice to their growers about marketer, in our view, does not deliver the competition that was intended back with deregulation in 2006.

Mrs GILBERT: You have already outlined that some millers have stepped out of the process. Is there a minimum share that QSL needs to stay viable? Can we be looking at some percentage here or does it all need to come back to the single desk?

Mr Beashel: Probably just to correct the record from some earlier statements that I heard, all millers have not pulled out of QSL. There are seven milling companies in Queensland. Three of them have given notice to QSL to take their tonnage away and market it themselves in 2017. The other four have renewed their arrangements with us. Unfortunately, the three are the big three representing about 80 per cent of the tonnage. That change will happen, unless something changes in between, in 2017. So it is up to our individual clients to decide at which tonnage we are viable or worthwhile using in the future. Clearly, the view of the four millers has been that the tonnage that we had contracted is enough. It is about 600,000 tonnes as the minimum in 2017.

We have two plans for our business. One plan is what we call the minimum contracted volume. So nothing happens with grower choice legislation. There are no other changes and we get on and

do the job with 600,000 tonnes. We have a plan for doing that and we believe that we have a viable organisation with a good-value proposition with that tonnage. We also have a plan around grower choice. We think that we would be able to win a significant amount of the growers' business if they had genuine choice about marketer. We are planning for around two million tonnes of sugar to market in that scenario.

CHAIR: Greg, it is likely that there are going to be regulatory impacts of this private member's bill—some intended and some not. Has QSL considered the impacts that the proposed amendment may have on business practices in the sugar industry and on the viability and operations of QSL?

Mr Beashel: Yes, we have. We prefer a solution without regulation. That is our preferred position. We say that if that cannot be delivered—and it is looking increasingly likely that the parties cannot sort that out between themselves; it has been a long time in negotiations so far and it really has not got very far at all—we see that regulation is required. We have made what I would call some minor mark-ups to the bill to make it clearer and remove any unintended consequences that might happen, but I think overall we think that it is pretty good. There are some minor amendments that are detailed in our submission.

CHAIR: So in your view would amending the sugar act to establish growers' interest in the marketing of sugar and the proposed statutory arbitration process for precontract and contractual disputes between growers and millers affect cash flows, profitability, investments or prices in the sugar industry?

Mr Beashel: We have been mainly focusing on the marketing issue, not the arbitration issue. Our area of expertise is around the marketing. As I said in my earlier statement, we believe that the marketer has a very significant impact on the price of sugar achieved.

There are a few things at play there. First of all, it is appetite to risk. A lot of people in the sugar industry ask QSL to set the price for them and we have a variety of risk management pools that we use to set the price for those who want us to do that. The price of sugar, I am sure you know, varies wildly. In my 20-odd years—

Mr POWER: Just to clarify that, that pricing and appetite to risk is separate from the marketing premium. That is effectively a product that is available to lots of agricultural producers and perhaps could be provided externally to QSL, although it is a service that you provide. Indeed, you could be the provider of that service to people who market sugar through other avenues; is that correct or not correct?

Mr Beashel: Could be, yes—not necessarily would be, but could be. I think to answer your question properly, we would need to just clarify that the sugar futures market is a very volatile market. In my 20-odd years in the industry I have seen prices range from below $100 a tonne to well over $600 a tonne. So the decision as to when to lock your price in is a very important one that industry players rely on their marketer to do. They can make that decision themselves as well.

However, there is not just one price. There are four futures contracts on the board every year, they vary in price quite substantially and the marketer decides the ratio between them all. You need to have what we call back-to-back arrangements, where the sugar that you are pricing is priced against the sugar that you are selling. To separate the role of the marketer from the pricer relies on some really good communication and information between the two. I think it is better if the marketer is running the pricing options, but it does have a very big effect on the price received as to the decisions about which futures contract you sell against and when you lock in that futures price.

Mr POWER: I am sorry, I interrupted your earlier answer.

Mr Beashel: It was along similar lines, so I am happy that I have given the response that I wanted to.

Mrs GILBERT: Sugar is certainly a very important industry for Queensland's economy and we would like to see sugar remaining very viable within the Queensland economy. Does QSL believe that the changes in the proposed bill could reduce productivity within the sugar industry? Could the changes make it more difficult for growers, millers and owners to do business?

Mr Beashel: We see that the changes around marketing—in the absence of a commercial agreement that negates the need for it to happen—will make the industry more competitive. We think competition is the best way. A lot of people expected QSL to say that we did not agree with competition, but right from the start of this debate, when traders have bought into the milling sector, we have had conversations with them and they have said, effectively, that they think they can do a better job of marketing than QSL. We said, 'Okay, for the amount of sugar that you keep the price risk for or you keep the money for'—what we call the mill economic interest—'we will sell that back to

you today, even though we had that sugar contracted until 2017.' We have made that option available for all of our milling clients. A lot of them have taken up that option already.

What we have said to them, though, is, 'If you want to market the grower economic interest sugar, you need to convince the growers that that is a reasonable thing to do.' At the moment, the growing sector—the majority of them at least—have not been able to be convinced about that. You will hear from them later today. We are saying that while the sugar is contracted to us we will not allow grower economic interest sugar to be marketed by the mill, unless the grower agrees.

Mrs GILBERT: With the changes and the pressures on the sugar business and marketing, does QSL envisage that you need to change any of your plans in the future to be able to convince the millers to stay with you? Is there any restructuring or anything that you are looking at doing to keep the market together so you stay as the No. 1 seller of sugar?

Mr Beashel: Yes. I think competition makes us all better and makes us change faster. Since 2006, there have been big changes in the way that we operate the business, our approach to risk, the products we offer, the way we do business with our customers, the way we share information with the industry. There have been big changes around all of those things. We see that we have to offer something competitive to win the business of the sugar industry. That is what we are focused on doing.

I might make a couple of comments. There have been some comments about the 2010 season and that some people may not want to use QSL's services because of the 2010 season losses. That is a decision that people have to make. About that we say that it was the millers' responsibility to tell us how much sugar they had for us to sell. There was a big change in that right at the end of the season. We see the 2010 season costs as a non-delivery cost relating to that shortfall in the estimates due to the wet weather at the end of the season**.**

In relation to the price achieved for sugar, we say that those prices should be compared on an apples-with-apples basis. There have been comparisons of prices achieved outside of the pricing window, where we price the sugar effectively over about an 18-month period. With a falling market, of course, if you priced the sugar before our pricing window opened you would have received a better result. We have one pool competing with our pools this year by Wilmar and we are very happy that it is on an apples-with-apples basis. We are very happy with our performance compared to that pool this year. We think that should be the way things are compared going forward, on an apples-with-apples and a full-disclosure basis, like you see with a lot of financial products out in the marketplace.

Mr BENNETT: You were just talking about transparency and some other issues. In your opening you talked about a not-for-profit, limited-by-guarantee organisation. There was a report done in 2013 for Canegrowers, and I acknowledge Green Pool Commodity Specialists. It says that QSL provides little additional price transparency. Would you like to expand on that and comment on that report? I suppose this is all about the conversation we are having about where QSL will fit into the market in the future.

Mr Beashel: Thank you for the question. It is a topic that I was hoping was going to be addressed today. Transparency is an interesting word. I think in the sugar industry people take it to mean that they can be confident about the price being achieved. As a not-for-profit, we choose not to publish each of our sales results with individual clients. We think that would be detrimental to the relationship with those clients and the final price achieved, in fact, so we choose not to do that. We hear people say that QSL is more transparent than any other entity marketing sugar. I think the reason they say that is that we are a not-for-profit; we clean the bank account out at 30 June and pay all the money out in our pool, so people are not concerned that there is money flowing where it should not be.

I think one of the issues with the proposals from some of the milling companies about marketing is that they are selling sugar to themselves. Whilst you might publish the details of every individual sale, there is a concern about the motivation to get the best price on those sales when you are selling to yourself. I think that is what is meant by transparency. Whilst you might say, under the strict definition of transparency, publishing the details of every individual sale might tick a box, if you are selling sugar to yourself I really wonder whether it does.

CHAIR: Greg, earlier you mentioned that of the 11 millers currently only four are going to stay with QSL. Have the other seven spoken to you or had any discussions with you around their reasons?

Mr Beashel: I have probably confused you with the numbers. There are seven milling companies in total: four are remaining with the QSL in the 2017 season and three have given notice.

The main reason provided to us, as I understand it, is that these companies are traders of sugar, they have skills similar to QSL and they want to undertake that function themselves. We say that it is fine to do that, but we also say that with the growers' portion of the sugar, which they keep the revenue for, they should have a choice about that portion and who the marketer is. They should not be forced to use the mill's marketing system.

Mr POWER: You have agreed to give back the millers' proportion. How much tonnage are you marketing at the moment?

Mr Beashel: We have four areas of our business and there are different tonnages in each of them. If you think about marketing as the—

Mr POWER: You said before that you had a minimum model of 600K tonnage as a forward business model and two million anticipated under the bill. How much tonnage are you marketing now, just on that same basis?

Mr Beashel: It is not the same basis because we are offering an option on the sugar we are selling. The financing, the pricing and the storage operation remains with QSL at the moment.

Mr POWER: I understand.

Mr Beashel: To answer your question, the mill economic interest option accounts for about one million tonnes of the 3.5-odd million tonnes of exports. We are doing two to 2.5 million tonnes of sales to customers and the milling sector is doing about one million tonnes themselves—high-level numbers.

Mr POWER: Having that reduced bulk as a player on the international market, does that reduce your capacity to get the highest price possible for Queensland growers?

Mr Beashel: It is something very hard to measure. I think a commodity company is better with a bigger volume. My own view of it is that the more volume you have, the better job you will be able to do and the better price you will be able to get. I think balancing that is that competition makes us all better. If there is just one person doing the job with a big volume, possibly they will not get as good a price as if you have a competitive arrangement with some big players all competing with each other.

Mr POWER: Being a marketer of 600,000 tonnes, does that make you a creative niche marketer or does that make you not have enough volume to deliver to bigger customers?

Mr Beashel: Our volume would be reduced by 80 per cent, so our marketing strategy would change substantially where we would target the highest returning markets for that 600,000 tonnes and we would not, obviously, have the presence in the markets that we do today.

Mr POWER: With the growers having a choice over their marketers, would there be fluctuations in the amount that you had as growers made different choices from season to season?

Mr Beashel: Yes, of course there would be. We would see that, depending on the historical performance and the reputation that you had in the marketplace, tonnages would move between competitors regularly.

Mr POWER: Setting aside the management of risk, which means forward pricing—and I fully admit this is difficult to do, as they are reasonably bound up—the fluctuations in currencies and also forward contracts on what a marketer seeks to deliver and what happens to the rain at the end of the season, for instance, we are talking about a marketing premium. That means that we know that the ICE 11 price provides a floor or a real guide to pricing. On top of that, there are other fixed advantages to the Queensland crop: the quality of the sugar for some refiners and also the closeness of transport. When you are marketing a bulk commodity such as this, how much marketing advantage is there purely on the marketing side?

Mr Beashel: There is about $100 million of cost and revenues outside of the ICE 11. That is made up of freight, marketing premiums, marketer's costs, financing costs—

Mr POWER: I am sorry to interrupt: a lot of that shipping cost is relatively fixed, because we have a set advantage because of our proximity to markets, don't we? And the marketer does not provide that advantage; geography does, effectively.

Mr Beashel: I think you are talking about the difference between freight from Brazil to Asian customers and freight from Queensland to Asian customers, and supply and demand.

Mr POWER: Effectively.

Mr Beashel: That is what we call the Far East premium. It does vary a fair bit through the year as the world freight market moves. You typically see a range from maybe $40 down to almost nothing. It is pretty low at the moment. The decision for the marketer as to when to sell the sugar to maximise

the premium is an important one. Things like how the marketer chooses to run its freight operation are also important. QSL effectively tenders cargoes to the international freight market and we take a view of the market and we tender the cargo when we think freight prices are good.

The model proposed by Wilmar, for instance, is that in some cases they will provide the ships themselves to the customer and they will still have a tender on the market so that they know what freight rate to charge the growers. My challenge to that would be if I am a ship owner receiving a tender from a company that is going to do the shipping themselves, I do not think I would put in the most aggressive freight rate. So you will probably see some difference in some of the costs and revenues outside of the ICE 11 in the different marketing systems. That is okay if you have competition, but if someone is forced to use one system I do not think that is okay.

Mr POWER: You did not really get to the question though: of the price that the farmer gets, what can we identify as the marketing premium?

Mr Beashel: The marketing premium typically refers to that difference between Australian freight and Brazil freight, and it can range from virtually zero up to about $40 a tonne. Typically, the marketing premium is around $15 or $20 a tonne.

CHAIR: Our time is up. Thank you very much for joining us and for your answers. Anybody who was watching the broadcast online this morning would not have been able to hear us. There were problems with the sound, apparently. I just want to let those people know that the transcript will be available in the coming days. The sound issues have now been rectified.

ATKINSON, Mr Jeff, Chairman, Maryborough Canegrowers

BARRY, Mr Mike, Chief Executive Officer, MSF Sugar Ltd

HEAGNEY, Mr Paul, General Manager, Marketing, MSF Sugar Ltd

TURNER, Mr Trevor, Manager, Maryborough Canegrowers

CHAIR: I would like to welcome our next panel. We have invited people from MSF Sugar and also representatives from Maryborough Canegrowers. We have invited these two groups because their views are different and they will provide us with some insight into the issues. Thank you for joining us. We will start with Mike and Paul from MSF Sugar. Would either of you like to make a brief opening statement?

Mr Barry: Thank you. I have been the CEO of MSF Sugar Ltd since 2007. Our company started out as the Maryborough Sugar Factory based out of Maryborough. It was a publicly listed company, listed on the Australian Stock Exchange back in 1956. The company was ultimately taken over in 2012 by Mitr Phol out of Thailand—the biggest sugar producer in Thailand and second biggest in China. They are No. 4 in the world. We have four sugar mills: one in Maryborough, of course; the Mulgrave Central Mill just south of Cairns; one in Innisfail; and then one up on the Atherton Tableland. We crush about 4.3 million tonnes, about 15 per cent, of the Australian sugar crop. We are also a very large canegrower. We are the largest. This year we will be growing around 660,000 tonnes of cane. That represents about 15 per cent of our overall throughput. The rest we source from around 600-odd private growers in those regions. Milling assets, by way of background, are quite expensive. Replacement costs for mills are somewhere between $200 million and $500 million. We also have a rail line. If you were to replace it, the replacement value for the 700-odd kilometres is about a million dollars a kilometre. So there are some extremely heavily sunk assets there.

In terms of background for today, the Maryborough business when it was a single entity, was outside the single desk immediately after deregulation. So in 2007 it was marketing independent of QSL. It was selling its sugar at that time to a domestic refinery at Yarraville in Australia and that was not allowed to be captured under the single desk arrangement due to ACCC rules. So from day one it was outside and we had to carve out our own existence. We acquired the Mulgrave Central Mill in 2008. It was a cooperative mill. Whilst it was a cooperative back in 2007 they themselves decided to exit the single desk arrangements after deregulation and they established their own marketing and pricing capability and infrastructure. Ultimately, we acquired that business and then we sought to amalgamate those two operations. In my eyes we have had a successful marketing and pricing regime since that time.

I am not exactly certain the need for this bill, not certain what the market failure is. The key issue for a milling company is that we only have one product that we can crush. We cannot crush multiple products. We cannot crush corn, sorghum or other products like that. We can only process sugar cane. Yet the land that we draw product from is contestable. I closed the Babinda Sugar Mill in 2011 simply because of competing land uses. That competed away around about a million tonnes worth of sugar cane and made that mill unviable. A lot of that went to bananas which were far more profitable at that point in time. A lot of land was sold to managed investment tree schemes, some went to cattle, some went to other crops. We are under pressure to make sure that we have the most attractive crop and profitable crop for our growers otherwise there is no doubt they will vote with their feet and we will be stuck with stranded assets.

On top of our cane supply agreements we also have in place quite a range of support programs to ensure that our growers are increasingly viable, profitable and sustainable; things like leasing them land to help with scale, low-interest loans and various incentives to help them fund and improve the viability and profitability of their businesses. We put a lot of effort into that. We now have three full-time people whose only job is to make our growers more profitable and sustainable. We are helping the growers and, we think, helping them transition to more efficient farming systems. That is the only role of those people. That is probably all I can say as an opening statement.

CHAIR: Jeff and Trevor, do you have anything you would like to share with us?

Mr Atkinson: As the chairman of Maryborough Canegrowers, I have been on a pricing committee since deregulation in 2006. Because of what Mike said, under the changes to the regulations, we had no alternative but to set up our own marketing program. We actually begged and pleaded with QSL to help us out at the time. They said under the situation as it was then that they could not help us. We had visits from QSL and they said, 'No, we can't help.' So with that we set up

our own marketing pricing system with MSF and that has been the road we have been on ever since. That was with deregulation. It has obviously been a big learning curve, but I believe the growers are happy with what we have done.

Then come 2013 MSF re-signed the RSSA with QSL. Under that RSSA MSF growers were required within a year—we got it extended, but originally it was only 12 months—to go back to QSL. They had no choice. That made our growers irate because in 2010 we did not lose any money, we did very well. We had our feet on the ground and we knew that we were not going to get the crop off. If you are not sure what somebody is telling you and mills are telling you, there are plenty of phones around so you can soon make a phone call. You can find out what is out there. We took the view that the crop was not going to come off so we did not get caught in 2010. I think that is a credit to the marketing committee which was set up. Out of the choice the growers were given then before MSF pulled back out of the RSSA after 2006, there was only one grower left out of the total area that went back to QSL so I think that is a testament to the system that we had in place.

The growers were not against choice. The growers actually asked for choice but they did not want to be forced so that they had no choice to either way. But that was not provided. QSL were not in that, in the current RSSA, and that was disappointing to the growers because the growers wanted choice and they were not able to get choice. In that case one grower left. The remaining growers have been quite happy. But we have not been against choice, we have got no problem with choice. We have a system that works well. I probably will not say any more. That is probably it for now.

CHAIR: We might start with some questions then.

Mr BENNETT: Good morning, gentlemen. Thanks for coming. Thank you, Jeff, for alluding to the options that were provided by MSF after 2014. Are you able to provide a bit more information on those pricing pools that you now have available to the growers? Mike might be able to help you out. I am interested in those. MSF went from two to five, as I understand it, with the loyalty shown to you by the growers, is that correct?

Mr Heagney: I might answer that one.

Mr BENNETT: Thank you, Paul. I did not give you an opportunity.

Mr Heagney: I think the reason we expanded our pricing pools was really to reflect the offering from QSL. So by and large the types of pools that QSL offer are very similar to the types of pools that we offer and that is in terms of discovering the No. 11 price component for the cane price formula. Growers are able to forward price their cane and they have got an exposure to the No. 11 futures price. I think earlier on the member for Logan asked a question with regard to the physical marketing. That is what I do. I negotiate the sale of a cargo of raw sugar with a customer in Korea, for example. I will negotiate a delivered price. That is a C&F price—cost and freight price—essentially. Part of that price is a premium. That is a premium that is basically derived compared to what the next best competitive alternative might be. That might be Thai sugar, it might be Brazil sugar—certainly not Korean sugar. Let us say it is Thai sugar. It is essentially a premium compared to the delivered cost from another origin. The physical premium probably makes up a very small part of the outright, total price for the sugar received.

The other thing that we will negotiate is which No. 11 futures contract that sugar will be priced against and that is dictated by the delivery period. To put that into context, the net price—so the physical premium plus or minus the marketing costs—could vary from minus $5 to plus $5 over time. Whereas the real financial return, the most part of the price, is made up by the futures exposure, the ICE No. 11 component of the price. It is at least 90 per cent if not closer to 98 per cent.

Mr POWER: Is that 98 per cent of variability or is that 98 per cent of the whole price?

Mr Heagney: That is 98 per cent of the total price.

Mr POWER: What percentage is that of the general variability over forward? Is it hard to say because it is hard to say?

Mr Heagney: It is hard to say. The No. 11 price is quite volatile. It is one of the most volatile futures contracts because it is quite liquid. It is a very heavily traded contract but it also reflects the basic elements of supply and demand so that it is actually a very transparent method of price discovery.

Mr BENNETT: What does MSF do differently with its growers given the five different pricing pools they have available to them? Is there an educational program or opportunities for administrative support in that process?

Mr Barry: In terms of our approach, we do have an open-book approach. So there is the two components: there is the physical sugar and then there is the futures pricing. In terms of the physical sugar, Paul sells it. We have an open-book arrangement with the growers and we share the outcomes and there is an arrangement where those outcomes are audited. We do not sell sugar to ourselves. We are owned by Mitr Phol out of Thailand, but Thailand is a net exporter of sugar so we do not send any sugar to Thailand. So there is an open-book arrangement on the physical side of it. That is audited. Growers get a copy of the audit. We are happy to change the audit. They can meet the auditor. They can do whatever they like. They also throughout the year get the opportunity in that Paul and his team present to the grower a grower reference panel—a selected group of growers—and they present to them the marketing program, give them details about activity, what is going on, market feedback, the whole lot. It gives them some insights as to the physical marketing program and how it is performing. That is that side of it.

On the futures side of it, the growers have pretty much got the capability to make whatever arrangements they want. We have workshopped it a few times over the last few years. We have gone from an arrangement where the growers have had one big pool that they have managed themselves. We transitioned to quite a number of different offerings and different risk profiles and the ability there for individual growers to price big chunks of their own exposure themselves. It is fair to say that we are flexible. We have been working with the growers. We are talking about another modification right now to that. We are pretty much indifferent to that. We are happy to see the right risk/reward outcome. We are delighted for them to be absolutely in control of their futures pricing.

Mr SORENSEN: Anyone can answer this. If this bill were passed and made law, how would that affect your operations at the Maryborough sugar mill and right across-the-board as well? How would it affect your operations?

Mr Barry: There are a couple of material issues with the bill. One is that it does transfer title of the end product. I heard the commentary earlier about ex-appropriation, which is exactly right. So today by law MSF Sugar has the right to market 100 per cent of the sugar that we produce. That is a right. If the bill goes through, that right will be taken away from us. That is a material issue. It will affect our balance sheet. It has a lot of knock-on effects, so that is a major issue.

The other issue is it affects how we can conduct our business going forward. There is a lot of discussion in Queensland now about ethanol. We compete with Thailand and Brazil in raw sugar. Both of those sugar industries have very vibrant ethanol industries. For Brazil, in particular, not quite half of their sugar gets diverted into producing ethanol and they have very big revenue streams coming out of it. Queensland is not there. This bill here says that the sugar that we produce then is under the direction of the growers, so we would not have the capacity unless there was some other arrangement that could be entered into to be able to build ethanol plants for instance or any other higher value sugar product.

We do not have a refinery bolted on to our sugar mills, but if you had a refinery bolted on this bill would not allow you to absolutely direct the sugar you are producing out of the co-located mill into that refinery next door. That happens in Bundaberg. That happens in Mackay. So that is a major show stopper. In terms of precontract arbitration, I think that would send the whole industry into the legal battleground—a place that we do not need to go—and we would be chewing up heaps of resources. That is something that the industry used to have and the various inquiries and reports that have been produced said that it was something that the industry should get away from. We have operated since 2006 fine. We have had a couple of arm wrestles. We have never even come close to having any disputes, I think. Would that be fair to say?

Mr Atkinson: Yes. We have had differences at times, but we have always managed to sort it out without arbitration. Maybe in our area it is not a problem while maybe up north it could be a different issue, but certainly in our area we have been able to work through it and come up with a solution.

Mr Barry: Just to finish off, one of the other key elements is that we have around 600 growers. This bill would give the right to the 600 growers to give whoever they nominate the opportunity to market the physical raw sugar. Conceptually, there could be 600 different trucks turn up. There is no facility for consolidation. Managing logistics would be a nightmare. It would force us then to deal with counterparties who we may choose not to deal with. We would no doubt still hold the right or the obligation to pay the growers their cane pay, but we would be forced to give up the sugar to a counterparty that we have no control over to recover the funds from the sugar sold and we could end up with 600 of them. I have no idea how the logistics would happen. It would be a major issue for the industry, and that is just 600 for us. Across the industry it would be a big number.

Mrs GILBERT: I want to go back to something that you were alluding to previously when you were talking about the bioproducts from sugar. Do you believe that this bill will stop the sugar industry from diversification and allowing the sugar industry to take the whole of sugar—the sugarcane stick—into other by-products? You were saying that you are just looking at selling sugar and then you could not look at refineries and other products. Did I hear that correctly?

Mr Barry: As it currently stands, it refers to sugar as I am aware. I have not reread it lately, but it refers to the sugar produced and then the growers indicating where that sugar goes. It does not make any provision for any other different types of products at all and it gives the growers the absolute right to determine who is going to market it. So if we had an appetite—and the environment has certainly been spoken about—for having an ethanol industry and if we had a desire to convert crystal sugar or what could be crystal sugar into ethanol, we would not have the legal right to do that under this bill.

Mrs GILBERT: So you see that as a glaring gap in this bill that needs to be included—having that ability for you to be able to take that raw sugar product into other areas?

Mr Barry: In terms of this type of bill, I am not aware of anything like this existing across the world and I have been involved in the sugar industry in many other parts. So I am not exactly sure why anything would need to be included nor why this bill is necessarily needed. I am not quite sure what it adds. But, yes, there are certainly some material problems with it operationally as far as I am concerned.

Mr POWER: I spent time in Babinda when the mill was still operating, so there is some nostalgia about that. But obviously you face real competitive pressures when there is alternatives for growers to move across that encourages you to give the best price to growers. At the same time when bananas, cattle and tax incentives for forestry are not there, there must be years where cane growing is by far the most attractive choice and you are not under threat from farmers switching; would that be correct? So when the sugar price is high, it must be quite attractive for growers?

Mr Atkinson: Yes, it certainly is when it is high as opposed to when it is low, but that would depend on different districts and different areas of what growers can turn to. I know in some areas it is probably very difficult to turn to other crops, but in our area in the south there are alternatives. But sugar is a long-term crop and it is not something you jump in and out of overnight, so you like to stick into it with a future. Even when a price is down, you like to hope that it is going to go up. So it is not something you can jump in one week and hop out the next week.

Mr POWER: But certainly there would be times when the millers are pretty confident that growers are going to stick with them because the sugar price looks good, at least in the short term?

Mr Atkinson: Yes, that is right. When the sugar price is good, growers are obviously happy.

Mr POWER: Mr Heagney, Mitr Phol obviously have a sugar marketing desk as well and they probably work collaboratively to get the best price across the world.

Mr Heagney: We certainly speak to each other.

Mr POWER: So when sugar prices are high, there would be less pressure on switching to other crops from your growers. Is there an incentive there that perhaps of all the contracts that are out there the company would get more profit from perhaps where there is not a shared economic interest and perhaps where you have more vertical integration in the beginning? For the best contract the Thai selling desk might want to take the best contract out of Korea and leave those lower on the cost curve for the Maryborough growers. Is there an issue of transparency and a conflict of interest between them? Do you understand what I am saying?

Mr Heagney: Yes, sure. We do not have any related to party transactions.

Mr POWER: No, I understand that, but there is also a cost curve of potential contracts that are out there for bulk sugar. But there might be incentives across the company for the more profitable ones to go to the Thai producers in certain years.

Mr Heagney: I think that the refiners will make the decisions about that. The refiner—the end user; the destination refiners, so the Koreans in this example—will make the decision about where they buy their sugar from based on the landed cost. So if MSF Sugar was not competing at a particular period during the year, it certainly would have the sugar from Queensland competing for that outlet at the same time. So it is not that we would step back and not compete because our parent was in the market. The other difference is that Mitr Phol are basically a white sugar exporter. They refine their own raw sugar and export it as white sugar.

Mr POWER: Thanks for that. That was a pretty hypothetical question, so thanks for taking that seriously.

Mr BENNETT: This is probably to Jeff or Trevor. While you are experiencing good relationships with your mill at the moment, does this bill in some way give you some hope on behalf of the other growers across Queensland that, should things change within the multinational supply arrangements, you may get some opportunities for some discussions around the protection of your grower economic interest?

Mr Atkinson: Good question. I understand where you are coming from. Yes, there is always that risk. We have had three different mill owners in that 10 years and we have managed to get along with them all. I suppose when there is a risk that the growers might leave and do something else, you only take a person down once, don’t you? But there is that risk and whether this can be sorted out without a bill, I do not know. We probably could in Maryborough, but I do not know if they can anywhere else. So that is probably an issue. There is always a risk and, like I said, in 2013 our growers wanted a choice. They did not want to be told they had to go to one or the other, so our growers had no problem with choice. So they support choice.

CHAIR: Jeff, you mentioned earlier that all but one grower has stayed with MSF after the recent negotiations. How many are there in total? So that is one out of how many?

Mr Atkinson: Roughly 99 or something—yes, 99 growers—and we have 95 per cent Canegrowers support as well.

CHAIR: This is probably one for Mike or Paul. Have any of the other mills that are proposing exiting QSL had discussions with you about your model and how it works?

Mr Heagney: We have certainly had discussions. We are a member of the Australian Sugar Milling Council. We have had some fairly transparent discussions with other mills about how our model works and certainly shared some information with them.

Mr SORENSEN: With your growers and suppliers and the cane price calculation, do the growers receive a complement in the marketing premium you receive for the sugar you export and that type of thing?

Mr Heagney: The cane price formula has not changed basically since the early 1920s, so the way that our growers are paid is the way that they have always been paid and that cane price formula is the same and there is certainly no proposal for it to be changed.

CHAIR: Are there any more questions?

Mr Heagney: Would you mind if I just added a comment?

CHAIR: Certainly.

Mr Heagney: In terms of one of the key questions about why does the system work with MSF Sugar and Maryborough and Mulgrave, I think the key is it is about trust and transparency and that is something that cannot be legislated for. Our interests are equally aligned, so we are equally exposed to premiums and price risk as much as the growers are. So we have the same skin in the game as the growers.

CHAIR: Thank you. That is very helpful. As there are no further questions, we will move to our next witnesses from Canegrowers Queensland and the Australian Canegrowers association.

GALLIGAN, Mr Dan, CEO, Canegrowers Queensland

HARNEY, Mr Tom, Chairman, Canegrowers Tully

KIRBY, Mr Steve, Managing Director, SISL Group

MALES, Mr Warren, Head Economist, Canegrowers Queensland

MARANO, Mr Philip, Chairman, Canegrowers Burdekin

MURDAY, Mr Don, Chairman, Australian Cane Farmers Association

RYAN, Mr Stephen, General Manager, Australian Cane Farmers Association

SCHEMBRI, Mr Paul, Chairman, Canegrowers Queensland

CHAIR: I would like to introduce our next panel. We have representatives from Canegrowers Queensland and also from the Australian Cane Farmers Association. From Canegrowers Queensland, do we have a short opening statement?

Mr Schembri: I am the chairman of Queensland Canegrowers. Madam Chairman and members of the committee, we appreciate the opportunity to speak to your committee today. I want to make it very plain that we strongly support the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 and we will very much rely on our submission. I guess you have our submission and we would be more than happy to answer any question relative to that submission or, in fact, respond to any line of questioning that you have.

If I could just give a brief statement to open proceedings. This is a joint submission on behalf of the Canegrowers organisation and the Australian Cane Farmers Association. It is certainly a joint submission in that we can clearly advise that we represent 90 per cent of the growers in Queensland, so our submissions and representations today represent the greater bulk of the growers of Queensland.

For the record, can I hasten to add that I have been involved in the industry for 33 years in an elected representative capacity and I have never seen the grower side of the industry so galvanised in terms of grower unity and grower solidarity around a single issue. I think that gives you some sense of how strongly we feel about this issue.

We strongly support this bill and it is our hope that this bill could go forward for consideration by the Queensland parliament. This bill ticks the boxes for growers in terms of the concerns that we have vented about this vexed issue of raw sugar marketing. Certainly, it creates fairness of market power, which is the thrust of our submission, and it also provides a framework for resolving disputes within the industry.

The heart of this issue—and this bill deals with it—is an issue of fairness based around market power in the industry. It is our contention that there is a serious commercial imbalance in negotiating power between growers and millers, an enormous commercial mismatch between growers and millers, which is to the detriment of growers and which we believe is undermining confidence. It is our view that unless a remedy is applied as per this bill this will impact upon the future growth and development of the industry.

Growers and millers are interdependent. I grow cane just north of Mackay. My business is worthless unless I have a viable processor. Equally, for a processor to produce sugar and a suite of other products, their business is worthless without viable growers. I am stating the obvious, but that is the nature of the contractual arrangements that we need to enter into. But the mills, we would contend, which is a product of deregulation not clearly thought through, have the upper hand, or the whip hand, in terms of market power. So this is an issue for us of fairness in market power.

Perhaps I can drill into that. One would assume that in a deregulated market there are choices, and competitive options lever up economic opportunity. Ninety per cent of the cane is, if I can use the word, welded to a sugar mill. Hence the options for growers to move their cane around are extremely limited. If I have a dispute with my mill in Mackay and I do not like the marketing services being proposed, I have to assemble all of my cane in Farleigh and truck it up the road to Proserpine or take it to Sarina. That is obviously not practical. For that reason we believe that the current system, as the deregulation cards fell, has obviously skewed the market power in favour of the mills. It is simply that

the mills are exercising a regional monopoly status and it is our view—and we have approached the ACCC—that coupling the processing of cane and the marketing of sugar is anticompetitive.

For the record, there are 4,500 growers. I am not going to go into a long spiel about the importance of the industry, but I want to point out that our growers have capital assets of $11 billion at risk. I have heard the statements that someone purchased assets in Australia worth $1.75 billion. Collectively, we have real skin in the game at $11 billion. Our farms are traditionally family owned businesses and represent in the main many generations. So we have a lot of economic skin in the game but a huge social investment in the industry. This is the key issue, Madam Chairman. We perform two-thirds of the financial risk, but we do not have market power that is commensurate with that risk. For two-thirds of the industry risk transaction, we exercise little or no market power.

I know that you do not want a historical discourse—and I will avoid that—but I just want to highlight one historical fact which is key to this issue. In 1915 the Queensland Labor government intervened in the industry and did two things. It institutionalised statutory single-desk selling. It did that to do two things. It wanted to ensure that farmers were not price takers at the farm gate, that we had an economic loop from the farm gate right through to the marketplace. But it also wanted to obviate the experience that was around in 1912—and believe me, I was not there—where the farmers were at the mercy of monopoly processors and were only capturing a farm gate price. Secondly, the government applied a cane price formula. It has often been talked about. It has certainly been replicated in other parts of the world. Fundamentally, it splits the revenues between growers and millers, two-thirds to growers and one-third to millers.

From that point, indisputably a grower economic interest was created. It is irrefutable that for 102 years we have used that as our platform to determine the management, pricing and marketing of sugar. So I would argue very strongly that in 2006—albeit a lot of regularity measures were removed from the industry—grower economic interest was never changed. The cane price formula is still being used in every district in 2015 as it was in 1915. Hence the grower economic interest was never extinguished and it has been the platform by which we have exercised an influence in the market.

I want to make this point very strongly to repudiate some of the comments that have been made by the mills. In 1915 we were made sugar producers. In 2015 we are still sugar producers. We do not supply a raw material to a factory and cease to have an interest in where the product at the end of that mill ends up being marketed and, ultimately, what destination it arrives at. We have an interest in it.

When we met with you the other day, I think good advice was rendered to us that said, 'Avoid the emotion and talk about what is happening in the industry.' I would like to, if I could, just cite an example. This is not just an issue that is occurring in mill areas that have been taken over by foreign corporations. It has been unhelpful that this debate has been characterised as being anti foreign investment. Nothing could be further from the truth. I had a phone call over the weekend from a group of growers—a group of growers who you never hear much from south of here, Rocky Point, around Coomera. They asked me to present this today. It is an Australian owned mill and their circumstance this year was that the mill owner advised them that for financial reasons they would be giving them a reduced price. Some of the sugar premiums would be held back. Reluctantly, those growers agreed. This is the point that I am making. They have no recourse. Their only recourse, to me, was to stop growing cane or truck it to New South Wales or up to Maryborough, and that is not practical. So I make this point: this is not confined to the areas that have been taken over by foreign corporations; this issue is occurring up and down the coast. There has been on the grower side a loss of market power which is not commensurate with the risk that the growers are undertaking.

I want to close by making two points and then I am happy to take some questions. We are not seeking to reregulate the industry. We are not seeking to take it back to the 1950s. Believe me, we are not going in that space. But it seems to me that we want to complete, which this bill does, the proper deregulation of the industry. It seems to me that if you have deregulation it presupposes that there are competitive environments and the players can compete against each other for leverage in terms of economic opportunity. But you cannot have it both ways. If there are competitive forces applying in the industry, you cannot conveniently close your eyes and ignore the fact that some monopolies are alive and well and restricting the competitive forces that should apply within the industry. So my message is this: if you are going to have a deregulated industry, you cannot have it both ways. You cannot be half-pregnant on this issue. It has to be the proper deregulation of the industry.

My final point is in respect of financial returns. I listened to some evidence a couple of minutes ago that said that this bill would severely undermine the financial strength of milling companies. Nothing could be further from the truth. Nothing could be further from the truth. This, in fact, confirms

the status quo. We do not want to take one single cent off the mills, nor are we endeavouring to lever up one more cent than we currently have. In fact, if you were to commission some financial modelling it would confirm very strongly that the overall returns to millers and to farmers in terms of the equity and the relativity between both parties will be unchanged. That may be an issue that you might want to take some further advice on.

Finally, we support this bill going forward to the House for consideration. The situation for us in the industry is that it is critical. We need this issue resolved. We have a view that this is about market fairness and choice. Competition is being exercised by the mills to lever up economic opportunity. We do not have that choice. I would make the comment that if governments—state and federal—choose to do nothing, it seems ironic that we are going to be thrown back down the time tunnel 102 years ago at a farm gate where we are just farmgate price takers. We think that that would not be progress. In fact, I would think that would be regression. I will stop there. Don Murday, the chairman of the ACFA, might want to make some other comments, but we would be happy to take questions.

CHAIR: Thank you, Paul. Before we ask questions, would you like to make a statement, Don?

Mr Murday: Yes. I would like to second what Paul said and maybe add the fact that this bill does not prevent a grower from choosing his miller to be his marketer. Recently on the Tablelands about 15 per cent of the growers who can exercise choice in a mill that they supply chose to send their cane to Mossman rather than MSF because they chose to market through QSL. That is, unfortunately, not a thing that can be exercised by all the growers in the industry. We are relying on this bill to give growers the choice of whether they choose a market of their choice as in QSL or their miller.

Milling companies like to say that 98 per cent of the final price we receive is ICE 11. I would like to dispute that. If in fact that were the case, why would they not be happy to accept that price and why do they expect us to? We expect a share in the premiums and we expect to grow economic interest in that sugar so that we can do what we have done for over 100 years. I second what Paul said and welcome questions.

CHAIR: Don, you would be aware of the Senate inquiry into the sugar industry. There has been some recent movement, I understand, around a possible forum being held with stakeholders shortly. Would you care to make any comment on the Senate inquiry and the direction you think the federal government is heading in? It relates to the bill that we are looking at. Would you care to make a comment?

Mr Murday: I very much support the process that the federal government went through with the Senate inquiry and the outcome of that. It is a process that I think will take potentially longer than this process. I would like to see both a state and federal resolution to this problem to offer greater security to growers and certainty. The big issue here is that we cannot afford this to drag on for too long. There is the future of QSL and there is a history in this industry of neglecting organisations until they fall over so they are no longer there. We need QSL to be there as a benchmark, as an alternative pricer and marketer of our sugar. It is absolutely critical that this process is not delayed.

We thought we were in a process of negotiating an industry outcome from a meeting we held seven weeks ago. We have had no response from the milling sector for seven weeks so we are questioning the value of the meeting in Canberra next week. Where exactly are we going to get to in one hour when we have not been able to achieve anything in nearly two months?

CHAIR: Are there any questions from the committee?

Mr BENNETT: I am not sure whether Warren wants to take this question. I want to talk more about clauses 33A and 33B around the process of arbitration. With all the reviews you have done on this, I am curious whether you see any possible legal ramifications or problems going forward, particularly with those two clauses and the process, and where that leaves you with your negotiations with the mill industry. I am offering it to the panel.

Mr Males: Thanks for the question, Mr Bennett. Those arbitration clauses refer specifically to individual clauses where growers are not able to reach agreement with their mills. I am not a lawyer, so please take that into account, but it seems to me that they offer an opportunity for growers, where there is a disagreement with a mill on a particular term in a contract, to have that particular term taken to an independent arbitration. The way that I read it, it relates, as I say, to a particular term, not to the whole contract. I think that is really important. It is a way of resolving a deadlock. Some of my colleagues here who have had issues in reaching commercial agreement with their mills have not

had the ability to take those deadlocks to arbitration. As a consequence, they remain unresolved in their mill area.

Mr BENNETT: I have a supplementary to drag that one out. Understanding that arbitration is an important part of the bill that is before the House, has there been any thought as to whether the arbitration should take place after the negotiation period of 10 days and after you have concluded your overall agreement with the milling company or your supplier who markets your sugar as opposed to perhaps being bogged down in prenegotiation arbitration?

Mr Males: As I read the terms of this proposed bill it suggested that the contract goes forward, and it is the particular terms that are unresolved at the conclusion that go forward into the referral agreement. It is those terms that the mediator, or the arbitrator, ultimately makes a determination upon.

Mr BENNETT: Am I making the assumption that you are quite comfortable with that proposal of 33A and 33B from Canegrowers' perspective?

Mr Males: Yes. Canegrowers sees two clear objectives with this amendment to the Sugar Industry Act. One is to enable grower choice and two is to enable a dispute resolution process along the terms of the Commercial Arbitration Act to resolve disputes that arise within the contracts but also in the process of negotiating those contracts.

Mrs GILBERT: One of the things that the committee needs to consider is whether there has been consultation and whether that has occurred across the whole industry. Have you been involved in the consultation of the preparation of the bill?

Mr Schembri: From a very early stage when the Katter's Australian Party made it plain that it wanted to introduce a private member's bill, we were engaged. Certainly we have had an enormous amount of discussion with that party. When the draft bill was first released, we had significant consultation. The short answer is that we have had an enormous amount of consultation. We have suggested amendments, changes and so forth but we have certainly been engaged in the consultation.

Mrs GILBERT: Was the consultation across all regional areas for all of your members?

Mr Schembri: I can only speak on behalf of the Canegrowers organisation. We have a structure where the policy council, which is the supreme decision-making body of the organisation, meets three times a year. We regularly have telephone conferences. We have a very strong network and relationship with our regional officers so they are well aware of the bill. A lot of people have contributed ideas, thoughts and modifications to it. Certainly all parts of the organisation have been engaged.

If the thrust of the question is about whether some areas strongly support this or not, we have had every mill area agree to support it. There are some mill areas where the relationship between the grower and the miller is stronger than other areas. We accept that. But those areas have very strongly lent their support to this bill.

Mrs GILBERT: We just need to ensure that everybody is consulted.

Mr POWER: Anyone can jump in and answer this question, but it is an economic one. When you make reference to market power, it is often where there is a large buyer whose interests are not aligned with the grower. In the case of the cane industry, with the cane formula both parties have an interest in the highest price of sale because they both benefit because of that formula. Does that not mean that the interests of the grower and the interests of the miller are, as we heard in the previous case, aligned in that both benefit from a higher sugar price?

Mr Schembri: The current formula that we have, one would need to understand, was put together in 1870. So some of the financial drivers of that cane payment formula probably do not sit all that well with a modern sugar industry. If I can apply your question to issues around market power, for instance, the formula is such that the longer the season goes the greater capitalisation by a miller, and for a grower the shorter the season goes means a greater return. It is in that interface where all the arguments occur. Certainly we have seen situations—and Mr Harney from Tully can annunciate that case far better—where because the mill is in a monopoly position it will say, 'This is the season length that you are going to get. It is going to be a long one.' The growers simply have no recourse because under the deregulation they have no other choice in terms of access to marketing services and the arbitration was greatly reduced. That is typical of where these disputes can occur within the industry and market power. The issue I am describing about marketing is merely an extension of that where growers do not have the proper competitive environment and recourse to other mills.

Mr Murday: Can I add to that? Currently the premiums achieved on the sale of physical sugar are distributed to the growers on roughly two-thirds to one-thirds depending on what your local contract says. Already one of the mill's companies has said that under the new deal they are forcing upon their growers only 50 per cent of those premiums will be passed on. That is just an example of how things can be changed to the detriment of growers, and they do not find themselves in a position to be able to negotiate away from that.

Mr Kirby: Can I add one final point to that. Your question presupposes, and your question is entirely correct, that the mill has no downstream assets—in other words, if the mill that you supply does not own refiners or has no other economic interest beyond delivering sugar to the QSL terminal. If your mill has other assets or is related to those other assets downstream, the opportunity exists for a myriad of transfer pricing in other activities, so there is no alignment between the miller and the grower at that point.

Mr POWER: Effectively, are we having a discussion about transparency, transfer pricing and where profit occurs?

Mr Kirby: That is a second issue. Your question discussed whether the mill and the grower are aligned and the answer to that is, no if the mill has any connection with anything beyond the mill gate.

CHAIR: Stephen Ryan, would you like to add something?

Mr Ryan: Thank you, Madam Chair. I want to add one small but important aspect of that. As we have heard, the formula was designed a long time ago and it was designed in the context of creating one pot of value of revenue from the sugar. The formula was thereupon designed to divide up that value according to the alignment of interests. What has happened since deregulation is that the formula has been effectively used to create two pots and two sets of values, and it has been used in a way that it was not originally intended to be used. I think that is an important distinction to make.

Mr POWER: Can you explain more about the two pots?

Mr Ryan: Yes. Under the previous system, undivesting, or under a system of a voluntary arrangement where everybody participates, we create one pot and one pool, and we may have different pools within that system, but effectively we are creating one big pot of value and the formula there is designed to provide a value payment to millers and a value payment to growers. What has happened subsequently, when people have left the QSL system, providing that they are using the traditional formula—and most people are using that system—what they are doing in using that formula is, instead of carving up the value, they are using it to carve up the physical sugar. The mill will go away and create their value with their share, if you like, and leave the growers to create their value with their share. Depending on the system that is in play, the mill could seek to do that on behalf of the growers in their system, but the transparency that you mentioned comes into play because there is a lack of transparency as one side does not really, perhaps, know what the other side is doing. The other aspect of that is that there is a concern in some areas that there is a very real probability that the mill does see what the growers are actually achieving for their pricing, but certainly it is not the other way around; the growers are not seeing what the mill is achieving for their pricing, so there is a transparency and almost a competitive issue.

Mrs GILBERT: I want to go back to something that you were saying about mills that just produce sugar. The last group of people from MSF Sugar Ltd said that this locks mills into sugar production and they are not able to diversify. That came a little out of left field, as to how that would operate. Would this bill lock farmers into being only sugar producers, rather than being able to take advantage of the diversification that the industry is looking at now to ensure the life of the cane industry—that is, it is not so much just sugar as a food process?

Mr Schembri: I heard those comments and I strongly disagree with those comments. It was an overstating of the potential consequences of this bill and it was overstating it by a village mile. Let me go into that in some detail. This bill simply provides an opportunity for growers to have an option in terms of marketing the sugar. This does not preclude other commercial arrangements from taking place. I am in a cooperative at Mackay, so we own the mills. We produce, obviously, raw sugar, we produce refined sugar, cogen and so forth—a suite of products. This legislation will actually complement the development of those industries because the growers and the mill can sit down and reach a commercial outcome. In fact, if it was the view for the local industry that both parties would be served by assigning some of that sugar to a different form of value adding, they can still do that. I am just a little bit annoyed that people are trying to frighten people off supporting this bill because of those sorts of consequences. The opportunities still exist.

Mrs GILBERT: To follow up on that, with the processing of sugar, it gets milled several times. Does there need to be something put into the bill that would stop a miller from just doing the one process and then using the rest of that by-product, so that you are not getting as much sugar out of the cane, or is my understanding of the milling process wrong?

Mr Murday: There is only one process, which is to make refined sugar. This bill only relates to that sugar that is produced. Sugar mills produce filtered mud, bagasse and molasses. I do not believe there is any interest in the Australian industry to develop an ethanol industry, but if there were the ethanol would be made from cane molasses. Currently, growers have no access to the revenue which would be generated from that. Potentially, if this bill were to get through, we may be in a position to be able to negotiate something with that, but currently the bill only affects raw sugar.

Mr Schembri: To add one further point, it is rather interesting that governments are putting out policy about renewable energy and ethanol and so forth, but I think it needs to be understood, and people have not cottoned on to this, that growers receive zero. They receive zilch for ethanol, zilch for cogeneration, zilch for refined sugar. In fact, it is our view that this bill, if it were to go ahead, would develop the right sort of partnerships between growers and millers in an economic loop in getting some of those industries going.

CHAIR: Philip Marano would like to add something.

Mr Marano: Member for Mackay, I think the question you were asking, which may have been missed, is could they not process the cane as well to get the maximum amount of sugar out of it? Our sugar content is measured at the first expression of juice, so that is where it is measured. What they do after that, if they do not extract the full amount of sugar, really does not concern us because it has been measured. We know what our sugar should be and that is what we get paid upon.

While I have the floor, I would like to add a few more comments. Nothing in the bill, from what I can see—and I have to admit that I am not an expert in bills and legislation—will stop a miller from doing anything. What it will help do is that they need to respect growers and talk to growers and negotiate with growers. At the moment, they do not have to. On 1 April 2014—I supply Wilmar mills; I cannot supply anyone else—when they had a meeting with us in Townsville and laid out their grand plan to strip growers' long-held rights from them in taking over the marketing of the sugar, I actually asked the question: what happens if growers do not want this to happen? This is not word for word so I am not quoting anything, but what I heard was: 'It doesn't matter. We are going to do what we want to do and the growers have no say in anything that happens.' If that is not an abuse of a monopoly power, nothing is. That is the problem. They do not have to negotiate with growers for anything if they do not want to. In the old days after deregulation, we had millers who were used to regulation and understood they could not overstep the bounds. The miller we have now is more than willing to exercise its power and overstep every boundary and strip away all the long-fought-for rights that growers have. That is the problem and we need some protection from that.

I listened to MSF Sugar saying it would be difficult for them to diversify. I was astounded when they said that. They have such a good relationship with their growers that with one mill that they purchased all the growers left, because they did not want MSF Sugar to market their sugar, but that is beside the point. If they have such a good relationship with their growers, they simply present the case to growers and say, 'We are all going to make money.' Growers are not silly. We want to make money, too. We will go with the best deal. I supply sugar to Wilmar Sugar. Given the choice, if Wilmar Sugar can come to me and put the case on the table that they are going to do a really good deal, why would I not go with them? All I am asking for is choice.

As far as transparency goes, they can have the most transparent system in the world. Under the regime we have now, if I see through all the transparency that they are doing an absolutely terrible job, I cannot do anything about it because I have no choice to go anywhere else. I am locked in. I am a peasant. I do not want to be a peasant farmer. I am fairly well educated and most of the farmers are fairly well educated and, given the choice, they will make the right decision based on their circumstances. Our miller does not want us to have a choice. It is as simple as that. The mills will come in and even canegrowers, I suppose, have made it very complex and talked about all the intricacies, but it is really simple to me. It is simple: we want choice.

We need some sort of precontract arbitration. I have been involved in representing growers for a long time and negotiating agreements. In all that time, even when we were under regulation and we had final-offer arbitration, it was very rarely used. I can tell you that when it was, the growers always won because it was always the millers trying to take something away from the growers. We need that. We desperately need that. That is about all I have to say, thank you.

Mr BENNETT: Thanks for that. It was very well articulated. Have you been practising that one?

Mr Marano: No. I even forgot a lot of stuff that I wanted to say.

Mr BENNETT: Let's talk about the bill, which is important as well. My next question to the panel is about your supply contracts and, of course, giving growers the choice of who markets their sugar, as you have eloquently led us to. This is a question probably for Warren. With regard to new section 33B in the bill, some of the submissions have talked about it being very definitive, and I have alluded to this before. I am wondering whether the canegrowers would like to make a comment about the choice about the strict dictation of new section 33B in clause 6, and whether the canegrowers would like to see perhaps it being a little more reflective of the canegrowers' outcomes.

Mr Males: Thanks for that question. New section 33B deals with the terms of the supply contract about the sale of on-supply sugar. It says at part 2—

The supply contract must include each of the following—

(a) a term requiring the amount of the payment to the grower for the supply of the cane to be worked out in a stated way by direct or indirect reference to an estimated sale price of the on-supply sugar ...

That is the present system under the cane supply arrangements. It also states—

(b) a term providing for the proportion of the on-supply sugar for which the mill owner must bear the sale price exposure;

(c) a term providing for the proportion ... of the on-supply sugar for which the grower must bear the sale price exposure ...

It labels that term 'grower economic interest sugar'. It is interesting: this clause in part reflects the present situation in the industry in the raw sugar supply agreements that each mill has with QSL. In the raw sugar supply agreement, the mill economic interest sugar is calculated by difference. The first quantity of sugar that is calculated in the raw sugar supply agreement is grower economic interest sugar. That is calculated by a derivation of the cane supply agreement. Mill economic interest sugar is the total sugar that a mill produces less the grower economic interest sugar. That gives rise to the two piles of sugar that Mr Ryan spoke about. We have a pile of sugar that is clearly in the mill's economic interest and another pile that is clearly in the grower's economic interest.

Picking up Mr Ryan's point, if we go back to the cane supply agreement in a highly regulated industry, that cane supply agreement was focused on the distribution of the proceeds of the sale of vested sugar. So the mills and the growers shared equally in the net proceeds from the sale of that sugar. Under the raw sugar supply agreement and the industry arrangements as they have evolved, we have two piles of sugar, in effect: the pile that is called grower economic interest sugar and the pile that is called mill economic interest sugar. The full value of the export of the grower economic interest sugar goes back to the growers. Sure it is a payment that is made by the mills, but the full value of that goes back to the growers in the form of cane payment. The mills receive the full value of the mill economic interest sugar. None of that part of the sugar is shared with the growers. Under the evolution of the raw sugar supply agreement that was signed at the end of 2013 or the beginning of 2014 it was agreed that mills would have an ability if they chose to do so to sell the mill economic interest sugar on their own account without it passing through QSL. My understanding is that each of the mills has exercised that option.

Grower economic growth sugar continues to be marketed by QSL and the full value, as I mentioned a few moments ago, goes back to the growers in the payment system. Having signed that agreement at the end of 2013 or the beginning of 2014, we fast forward to April 2014 and we find that Wilmar Sugar closely followed by MSF Sugar and Tully Sugar, who is now owned by Cofco, gave notice on that agreement. When it gave notice on the agreement, Wilmar said that it wanted to market all of the sugar, which includes the grower's share. It has come up with what it describes as a fantastic marketing proposal. Whether it is fantastic or not goes back to the observation that Mr Marano made. Let the growers choose. If their model is great, some of the growers or maybe all of the growers may also choose the Wilmar model, but they will also have the option available to them to go back to the QSL model. That is really the essence of what we are looking for: for growers to have the same choice that the mills have under the existing structures. For 100 years up to the changes that we have seen, growers and the mills have shared in the proceeds of the sale of vested sugar.

Mr BENNETT: I might not have been clear with my question. I understand all that and we have prosecuted that a couple of times this afternoon. About 33B, my question is—and I will try to make it more succinct—are you happy that it has a strict dictation and a strict reference to that cane service agreement or would you prefer it to be perhaps a little bit more reflective of the way the growers would like it to reflected? I suppose 33B is very strict and it is very definitive. My question is: have the canegrowers looked at that, or would they prefer to see possible changes to reflect exactly the same outcomes with it not being so descriptive?

Mr Males: We have looked at the principles that the bill seeks to achieve. We have not delved into the intricacies of the legislative drafting. We think there are experts in this place who can look at that. To the extent that it describes what grower economic interest sugar is, we think that is worthwhile. To the extent that it describes mill economic interest as the sugar that the mill owner must bear the price exposure for, we think that is appropriate. Perhaps it could be a little crisper in its presentation, but I will leave that to the legislative drafting experts to come up with the best way of doing that.

CHAIR: Member for Hervey Bay.

Mr SORENSEN: I am just sitting here listening to this. This bill is all about selling sugar. What happens if at the end of the day ethanol is worth more than sugar? Would you guys only get the c.c.s. price for that cane that you actually sent in and the miller would then buy that sugar and turn it into ethanol?

Mr Males: Under the current structures, as Mr Murday described, cane is assessed at the first mill; the juice extracted from that cane is expressed at the first mill and the value from that is determined or the share of the sugar that is growers sugar is determined at that point through the calculation of the cane payment formula and the value then is determined by applying the price of raw sugar to it. If there was an ethanol activity, unless the growers and the mills came to an agreement that the revenues from ethanol would be shared, then they would not be. I note the bill suggests here that the price of cane should be related to the price of sugar unless the parties agree to do otherwise. To that extent it contemplates that possibility.

Mrs GILBERT: I was going to add to that that in our discussions we have said that we do not want to see canefarmers missing out on any of the changes in the industry that may come up that this bill may hinder you from moving forward with the industry if there are changes.

Mr Marano: That is an important point and that is why we really need some sort of precontractual arbitration. Without that and with the monopoly power that the mills enjoy, with any new product that comes along growers might not necessarily be able to share in that because mills will continue to exercise their monopoly power whilst they can.

Mr Harney: If I could add a bit of value to that with an example, in Tully the whole industry saw that there was value in electricity generation that comes from the gas and that type of thing. What we growers and millers agreed to is we had a commercial negotiation of growers entering into some sort of bargaining enterprise involving the millers and the growers on that. The growers forgave some payments that we receive from the mill and we bought our way into the molasses sales and co-generation. That was just a commercial negotiation we had. We now receive a part payment of what we call MC—molasses and co-generation. I see that still continuing.

Mr POWER: Mr Schembri mentioned before that the traditional one-third to two-thirds equation of expression of economic interest was not fixed in stone. That is still not fixed in stone under this bill, is it?

Mr Schembri: Again, I am not an expert on this bill line by line and perhaps Warren might be best to answer it, but I understand this bill actually defines the term 'grower economic interest'. I understand it also prescribes the calculation, how you would arrive at it. It is not rocket science. For 102 years we have been separating the revenues between growers and millers by formula. It is not hard to do and, equally, it would not be an onerous exercise to allocate the grower economic interest and the mill economic interest.

Mr POWER: But we are not seeking to legislate the share.

Mr Murday: No, I do not believe so because that is always a negotiated position.

Mr POWER: That is what I was trying to get to. Being a negotiated position, this does not fix that. When it comes to marketing, there is a sense that that would give you greater power over the miller and perhaps greater power to extend that share. Is that what you are attempting to do?

Mr Murday: No, I do not believe we are trying to use any sort of power to get a better share. Whatever is negotiated in your contract is the division of the sugar money, it is that percentage. Rather than change that percentage, we would rather have a choice on who markets that percentage.

Mr POWER: I understand.

Mr Murday: Who is to say that that percentage will not change over time? It has changed over time in the 120-year history of the industry. With diversification and other things, if there is an opportunity to change that ratio, then we look forward to the opportunity to negotiate an outcome.

Mr POWER: I just wanted to get the common point of agreement. That being said, if we are not fighting about the share of economic interest, what percentage difference do you see to the farmer in choosing between QSL and their millers and possibly another service provider? What difference would it make to a farmer?

Mr Schembri: If I can answer that and Steve can follow up, it goes to the very heart of this issue which is around transparency. We have been around for 150 years—

Mr POWER: I understand the transparency, but what kind of anticipated dollar benefit would there be?

Mr Schembri: I could not speculate what it would be, but presumably in a marketplace it may well be that you could have a situation with QSL and, say, the home miller. It might be MSF; it might well be Cofco. Presumably all of those players would put forward various offers to growers in terms of the market success. It could be a whole range of other offerings around financial flexibility, advanced payments and other offerings. It is not outside the realms of possibility. All of that is very much possible. I would add that some growers may well take the comfort of wanting to have it marketed through QSL because he is more confident of the transparency and nobody is clipping the ticket, so to speak.

Mr POWER: He may want that comfort, but to take it back, when you are talking about those products which are financial products—I know they are not expressed that way. But managing future currency and ICE 11 fluctuations, you can get them offered, just as many other agricultural providers look to other providers for that kind of comfort and insurance. What we are talking about is the marketing premium where one body finds customers in East Asia and finds the best price. What we are talking about is the difference, are we not?

Mr Schembri: Correct, and the physical marketing of the sugar.

Mr POWER: For the most part the premium that we talk about is partially because of that nature of Queensland sugar being a particular product that attracts a premium. That is fixed and the other part is the benefit that we are much closer to East Asia.

Mr Schembri: Yes, a regional player.

Mr POWER: And neither of those two factors really change that much, do they?

Mr Schembri: No.

Mr POWER: We obviously do not move ourselves closer or further away from East Asia and we do not change the nature of our sugar. How much variability is there in choosing marketers?

Mr Kirby: I want to get away from the nitty-gritty of all of that. I really need to step back and say to you that the purpose behind being able to choose your marketing pathway is exactly that. If I adopt Adam Smith economics, the famous philosopher and economist from the 1700s, he said we all earn our living from doing things that benefit us. We all make our own choices. It is impossible to tell you whether it will be $1 or $10 more because that is up to each grower to make their choice. If I make the wrong choice and I get $10 less than I could have, poor me, but I made that choice. By not having this bill, you deny growers the opportunity to exercise the economic interest and the economic choices that we all take for granted every day.

CHAIR: Thank you, Steve. Philip Marano was hoping to add something.

Mr Marano: This is the mills that are doing it. We are getting dragged into 'our product is better than what the growers' product is', and it is not about that. It is not about who has the best product because from year to year they will always be different. The mills cannot guarantee that they will be better than QSL and QSL can never guarantee that they will be better than the mills. It is impossible. It cannot happen.

I know that Wilmar has said that they perform better, but they cherrypick their figures. They talk about transparency. We have asked to see those figures from day one and they will not show us a proper set of figures on how they arrived at their price saying they got $46 a tonne more. They just will not do it. It is too complicated. We cannot understand it, they tell us. That is how they treat us—we cannot understand it. We need to sit down with them for two days to understand the figures they put in front of us. That is what they tell us. It is just ridiculous.

I would like to touch on Wilmar's claim of expropriation. I think that they are really trying to mislead everyone in that game. I think it should be noted that, with the cane price formula as it stands today, I, as a grower, pay Wilmar to process my cane into sugar. I think that is lost on a lot of people. I pay for them to turn my cane into sugar. They say they buy cane off me. If they simply just buy cane off me, why am I paying them to turn the thing into sugar? They have tried to compare themselves to

a four mill. No-one who supplies grain to a flour mill pays the flour miller to turn it into flour. That is why we feel that we should have, if not ownership—I am certainly not pushing ownership—after having paid to get our cane turned into sugar we should reasonably expect that we have some say in how that sugar is marketed. It is as simple as that. Do not be scared about their claims of expropriation. They have threatened everyone. They have threatened growers. They have threatened the state government. They have threatened the federal government. This is how they behave. Just imagine how us poor growers are faring.

CHAIR: Stephen Ryan, did you have anything to add?

Mr Ryan: Yes, thank you, Madam Chair. There is an important underscoring of a point that has been made and I believe that I made the same point at the first hearing with the member who tabled the bill and that is that the growers own half of QSL. It is their business. When you own a business and you have confidence in your own business, but you are prevented from having a direct commercial relationship with your own business just because of the way, unfortunately, the knock-on effects of deregulation have occurred—and these sorts of things no doubt were unforeseen—one might argue as a perverse outcome of policy, an unfortunate outcome, that those who, in the growers' case, own their business cannot really deal with their own business. That is absurd commercially. It is not practical and it is not really workable. So again, choice allows a person to work with their own business. Whether or not their business gets the best outcome in any given series of years—they may or may not, but that is not really the point—the point is having confidence to use your own business because you can.

Mr POWER: The member for Burnett and I were lucky enough to go up to the Burdekin last week. We saw some rice fields. Do growers have an economic power in the ability to change crop? Is there enough economic power in order to ensure that decent prices flow through from the mills, at least in your experience?

Mr Marano: I myself am trialling some rice at the moment. It is the first time I have ever grown rice.

Mr POWER: One of the things that the mill told us is that they would prefer a lot more throughput and would make more money on throughput, but they cannot get it.

Mr Marano: They will not get it the way they are behaving. Anyway, I myself am growing rice for the first time ever. The price of sugar is low so it is an economic decision, but I do not see rice as getting rid of or taking over from cane. It is just an opportunity crop. The one thing about cane is that prices go up and down. We understand the price cycles of sugar. We have dealt with it all of our lives. I am a third-generation canefarmer, so we know what goes on. There is no long-term viable replacement for cane. There might be years where another crop might do a little bit better than cane, but certainly, farmers are long-term people. We invest for the long term. We are not in it for the short term. Like I said, I am third generation. So far, nothing has been identified that will replace cane as a long-term crop. It is as simple as that. The miller would not be doing what they are doing and how they are doing it unless they knew that as well and, quite frankly, they know it.

Mr BENNETT: This is a question to the panel. I assume an economic type of question warrants that. As canegrowers, have you looked at what this bill may add to the cost of doing business in Queensland? I suspect a supplementary question would be that, if we end up in a number of escalating disputes, what would that mean to growers or the Canegrowers association, of whom we have a number represented here this afternoon?

Mr Males: Mr Bennett, I would start by responding that what this bill will do is it will enhance grower confidence because it will give them choice in the marketing of their product. It will give them an ability to engage in pre and post contractual dispute resolution where there happens to be deadlocks with their growers. That process in and of itself will instil confidence in the growers and their long-term investment decisions in our industry.

Will it add costs? I think that, as that confidence grows and with that confidence the relationship between the growers and their mills matures because the mills see that they are in a more competitive situation and they must make competitive offerings with their growers, that will enhance the maturity of the relationship between the growers and the millers. Earlier in this conversation there was a description of a lack of trust in the relationship between some of the units of our industry and some of the mill owners. In some areas, that trust is very strong and that is good. But in those areas where it is not, this bill and the competitive forces that it will unleash will help that relationship to mature, the confidence to grow and the trust to be there. So rather than add costs, I think it will reduce costs in our industry.

Mr BENNETT: I have a quick supplementary question. Has either organisation kept statistical data of canegrower disputes over the last five- to 10-year period? Is there statistical data that currently exists?

Mr Schembri: We do not collect it as a matter of course, but the grapevine is pretty good at telling us what sort of funds have been defrayed in terms of those disputes. Can I just comment on from what Warren said? When the industry was deregulated in 2006, one of the views at the time was that a lot of frivolous and vexatious issues were tying up all of the arbitration processes in the industry. But in endeavouring to resolve that issue they threw the baby out with the bathwater. Do you really need for a mature industry to have a system of dispute resolution and arbitration? Certainly, it is not the experience of every mill area to be in dispute resolution or in the courts every five minutes to resolve issues. So I do not think it will add costs.

I just want to make one other comment. I notice the previous contribution from MSF indicated that this will be a nightmare, as if this will create extra costs in the industry. I want to clear up that issue. One thousand trucks would appear picking up different piles of sugar. That is rubbish. Let us be clear about this issue. Practically, it would go to QSL or it would go to maybe MSF or Cofco or Wilmar—whatever the case might be. Co-mingling is a process that the industry has operated with for a long time. Basically, they are big piles of sugar. If I, Paul Schembri, put $5 in a bank in Brisbane I do not expect to go to Mount Isa to pull out the same $5. Basically, there would be a pile of sugar, QSL would know what sugar was its and so the piles would obviously be allocated on the basis of which marketing agency is taking that sugar. So I want to reject this thing that suddenly this competitive choice is going to churn out millions of dollars of process costs. That is not right.

CHAIR: Somebody wanted to add something?

Mr Marano: Was the question about disputes? I did not quite hear it?

Mr BENNETT: Yes. This is just for the information of the committee. I was just asking whether the organisations ever collected statistical data on the number of disputes or arbitration that may have already been entered into. It is purely just to establish a benchmark or a time line of information. I think it has been very well—

Mr Marano: I have something to add about disputes. I know quite a lot about it, actually. We have been in dispute with Wilmar Sugar since 2010. Clearly, the dispute resolution clause we have in our cane supply agreement does not work because Wilmar simply ignored it. We are currently before the Supreme Court after all of this time, after what I believe has been Wilmar trying to drag this on as long as possible so that we would give up and go away. We finally have a court date set for 30 November. This claim of Wilmar's that the dispute resolution clauses as they stand are adequate is farcical. That is all I have to add.

Mr BENNETT: And I think because it is before a court we probably should not comment in a parliamentary committee as well.

Mr Harney: I would just like to give evidence to what that question you raised there means to Tully, because we consider that that is quite substantial—the cost—to the Tully growers. I need to explain our situation so that you can grasp what I am referring to. Tully is a $2.7 million tonne area. Tully Canegrowers represents 90 per cent of our growers. So we have good support from our growers. When Cofco bought Tully Sugar in 2011, they made many commitments and promises to us. One of them was that, if we could not come to an agreement in our cane supply negotiations, they would move to a dispute resolution process. The other thing they also stated was that they were quite happy with QSL running the system that they have right now.

We were also fortunate that, just prior to our negotiations, Tully Canegrowers and the mill signed a pre-agreement before we went into our negotiations. It basically supported what Cofco had already committed to us—that if we stalled or could not proceed any further in the negotiation that we would move into a dispute resolution process. We also got agreement from Tully mill that they would also enact all of the promises that Cofco made to us at the time and we were pursuing a collective supply contract.

To cut the story short, after some time it was obvious that we were not proceeding in our negotiations. The mill was setting the agenda. The mill was including into their written contract exactly what they wanted and anything of substance that was of no concern to them they would talk to us and listen to us about and maybe include, but anything of substance that related to growers' income we just could not get anywhere with. So it was obviously a stalemate. We requested our mill that we move to the pre-agreement on the dispute resolution. They promptly replied to us to say that they

would not proceed with that. They were not going to honour their commitment and there is nothing we could do about that. We could not force them, so we thought.

So we attempted to resolve this situation. We considered we would employ some help just to try to proceed with the negotiations. Rather than go through litigation—that is not our purpose—we tried to get on amicably with our mill. We employed Michael Klug from Clayton Utz here in Brisbane. He is a professional negotiator who is on the mediating side. It is a legal firm, but they do not pursue litigation. That did happen for a short amount of time and he got nowhere. He achieved nothing at all. In fact, the supply contract goy worse. It was worse after he finished his job than before it. That is how powerless he was also.

We were again stuck in a hard place. We decided then to seek advice from a Queen's Counsel, Mr Graham Gibson. We asked him the likelihood of enforcing Cofco Tully Sugar to proceed to this pre-agreement dispute resolution process. His summary was—I will not give his whole version of it as it would take too long, but a brief summary of what he replied was that it is possible but not likely. In other words, that meant if we were trying to pursue this dispute resolution, which they had agreed to—we have written signed documents on that—it was going to be a long legal battle, and we did not wish to go down that track.

By this time—it had all taken a long period of time—the growers had to sign a supply contract to harvest their cane to go out and do future pricing and things like that, and obviously the mill knew this. Time was in their favour; we had no time. The growers are committed to actually taking off their crop because they have a financial investment already put into that crop and they had to get it off. So it was with reluctance that we dropped our pursuance of a collective supply contract. We could not do it and the growers had to take up the individual supply contract that was offered by the mill. I think the expense that it cost us is just an example of what it could cost us in the future.

We do see that there needs to be a formal process as put up in this bill. There needs to be something in place obviously, because we are not on a level playing field with these people. They have a monopoly situation in Tully. We are just takers. We sit back and may as well just let them tell us what they need to say and it will run that way. We see that this bill is important to the industry.

Just of note also, in the Sugar Act previously, before 2006, where there was a dispute resolution process there with arbitration, Tully never used it. In fact, it was a deterrent not to go there. If you were being unfair in your negotiation you would more than likely go into this dispute resolution process and the arbitrator would realise that you were being unfair and he would more than likely rule against you. It was there as a deterrent. We never used it. It worked great.

Also of note, the new supply contract, the individual supply contract that we have from Cofco Tully Sugar at the moment, at the end of last year, the first year of operation, there were five growers who were in dispute of the process that happened in that contract. Just recently, I am happy to say, the mill gave up on that a bit—well, they did give up on that payment, of their holding of the payment, and they paid the growers their full payment for their cane payment for the 2014 season. Already we are experiencing problems and we can only see to have a viable future for the industry we need to be on a level playing field, which is the same as sugar marketing. We need a choice which will bring in competition, and competition is good.

Mr BENNETT: Thank you. It is good that we can get all these issues out on the table, but I would like to come back specifically to interests around the timing of the bill. I welcome comments from the panel about the disputes that we have heard and now where you see the concept in this legislation fitting into your immediate short-term future.

Mr Schembri: Our view is that this issue needs to be resolved sooner rather than later. I want to follow on from some comments made by Mr Murday. We have attempted to have some negotiation with the mills to reach a commercial solution. To date they have not yielded any results. I am not going to speculate whether they can or cannot achieve an outcome. What we do know is that the time is fast running out. The clock is up and running. It is our strong view that we need some determination of this issue by Christmas. QSL, for its future and its surety, needs some determination early in 2016. Certainly the landscape at this point in time—not all areas, but particularly in the Wilmar areas—is that there are no contracts in place for 2017. Time is of the essence so that this industry can secure some surety and certainty to go forward.

Mr POWER: Mr Schembri, just to clarify, you may have an understanding that the standing orders of the parliament are that when a private member's bill is set down on the *Notice Paper* post this process at least three calendar months shall elapse until the commencement of the second reading debate unless the bill is declared urgent. Do you have any comment on that?

Mr Schembri: It is not for me to comment on the processes of the parliament. You have to manage that and I need to respect that, but I can only give you the sense of urgency about how soon we would want this issue resolved. As you know, the federal government has intervened and announced a code of conduct. It, too, is pursuing processes to bring that to fruition as well. Without being long-winded, this has been around in the industry for 18 months. Investment cycles are going to be influenced very shortly. We particularly would want this issue resolved sooner rather than later to give surety.

Mr POWER: No worries. I just wanted to give you that opportunity on the record.

CHAIR: Thank you.

Mr Marano: I would just like to add the point, as I have mentioned already, that I supply Wilmar Sugar mills. At the moment I cannot forward-price for 2017 unless I accept Wilmar's proposal as they have put it on the table without any negotiation. So, they are, I think—I believe—holding me to ransom. Forward pricing is an important tool for growers. Unless I bow down and accept what I believe are unjust terms that Wilmar are offering, they refuse to let me forward-price. So it is urgent in my case. But as Paul said, we are not going to tell the government how they should do their business simply because we are not experienced enough in that regard.

Mrs GILBERT: In discussions as a committee we were talking about how we do not have a great understanding of the pricing of Wilmar and QSL. What you are saying is that what Wilmar is offering you compared to what you could get with QSL is quite different.

Mr Marano: No, what I am saying is they will not let me forward-price in 2017 unless I accept that Wilmar will market the sugar, and I do not accept that. I believe I am being held to ransom. They refuse to let me forward-price. They could let me forward-price and say, 'Well, whatever happens in the future we can facilitate that,' but I have to sign a contract that says they are marketing the sugar if I want to forward-price.

Mrs GILBERT: So you are locked into that.

Mr Marano: So I do not want a forward-price because I think they are being unjust and unreasonable.

Mr Kirby: Can I give you a little bit of background and then I am going to talk to that. We are an investment fund so we are not your typical canegrower. We run about 4,000 acres in Burdekin so we are a very large canegrower. Our concern is exactly what Phil has talked about. It is not that we think Wilmar will do better or worse than we otherwise might do, but we want the chance to make that choice. We want the opportunity. It is very important. If I was to say as an investor, 'I put my faith in someone else's hands,' that is not much of an investment manager if you are investing in my business, so why on earth would you invest more money? In fact, that is the question at our board table at this very minute. We are actually considering divesting if this proceeds. So the risk to the industry is not that we do this but that we do not do this bill. If we do not do this bill—and I am an example of the kind of person who is going to help ageing canefarmers liberate their superannuation—and conclude deregulation, as Paul eloquently says, and complete the deregulation process, I am not going to be around and it is unlikely there will be anyone else like me. In that case you have a whole bunch of canefarmers who cannot liberate the value in their assets. That amounts to expropriation in reverse. That amounts to essentially the mills being able to take the value in those cane farms for themselves. There is a whole bunch of detail that I could go into about why that happens, but that is reverse of what Wilmar are asserting at the moment: that expropriation is us trying to take their property. In fact, it is the reverse. My point would be that this is not about whether we will do better or worse, but it is us taking control of our own destiny and that is what we all should have.

Mr BENNETT: This morning we have heard a lot about transparency and the trust issues. QSL, in a previous presentation before you gentlemen, talked about the transparency issue when it was posed to them about the publication and the devolution of information. By their own admission, they do not publish information but pay on 30 June to clear their accounts on their cane payments. Because QSL is jointly owned, as I understand it, by canegrowers and the millers, would you like to comment on that assertion that QSL are more or less transparent than the current arrangements you can do with your cane agreements with the millers?

Mr Schembri: The word transparency is used widely in the industry. I use the word transparency to denote confidence in a system. You could argue that the word transparency is the abundant publication of information. I have to say, and I will speak for myself as a grower, it is the transparency around confidence. I want to drill into that very carefully. I am not going to get caught

up in an argument about who publishes what information and makes it public. Because QSL is industry owned, it is a not-for-profit company, it is a creature of the industry, it is the industry honest broker, it is obviously in its best interests to do the best for the industry. One point that is sometimes forgotten is that each year all QSL's balances tip over to zero. It purges all of its accounts of money to go back to growers and millers so that the growers know that no-one in between is getting a piece of the action. QSL has no shareholders who want a dividend. It is a not-for-profit company. That is, Mr Bennett, our interpretation of the word transparency. Yes, I can agree that from time to time you could argue that there would be a greater case for release of information and pricing information that growers could make decisions on, but that is not the sense when we use the word transparency.

Mr Kirby: Can I add some more? I said this in front of the Senate inquiry: the fact that an organisation needs to engage in theatrical gymnastics over transparency tells you something about the fundamentals of the relationship between the parties. If an organisation needs to engage lawyers and accountants and auditors and all sorts of other individuals to confirm data or otherwise, that tells you that people do not trust each other, but more important it tells you that there is an underlying conflict of interest. That is the problem that growers all see with handing the mill unfettered control of the raw sugar that is their share. Giving growers choice allows them to still hand that sugar to the miller but it is their choice and they take good or bad.

If we proceed with the proposal that Wilmar has put in front of all of the growers in the Burdekin, we will be locked in for 15 years with no choice, and you will need all of those theatrics about who sold what to whom and all the rest of it, but it still will not tell you that they necessarily got the best price because the counterfactual, the alternative to what they have done, is not on the table. You do not know what that number is. I work in financial markets every day and I can tell you there are squillions of pages of data that you can be handed and you will still be none the wiser. So you need to be allowed to make your choice. Transparency will not necessarily give you confidence.

CHAIR: Mr Marano?

Mr Marano: You were talking about perhaps QSL is not transparent enough. I think it should be noted that the growers have no say in what happens at QSL at the moment. All the millers are the customers and really it is the millers, for their own interests, that have cut growers out of what happens with QSL, and QSL is bound by agreements they have with the millers and how much information they can release. But if growers are given the choice, that does not mean QSL is going to have a free ride. They are going to have to pick up their act. They are going to have to compete for growers just like the miller will. It is not the case that they can sit back and relax and say, 'All right, we're safe now.' No way in the world. If they are not doing a good job, I am not going to go with QSL. It is about competition; it is about creating the best environment for everyone.

Mr BENNETT: I just want to clarify that I did not actually make any inference that they were not transparent; I was just passing comment that they do not publish their data. Just to be clear, I just asked for comment about that issue.

Mr Marano: My comment was that the mills control all that.

CHAIR: Thank you.

Proceedings suspended from 1.30 pm to 2.32 pm

BARRY, Mr Mike, Chief Executive Officer, MSF Sugar

GORRINGE, Mr John, Chief Executive Officer, Isis Sugar

HATT, Mr Ray, Chief Executive Officer, Bundaberg Sugar

HEAGNEY, Mr Paul, General Manager, Marketing, MSF Sugar

NOLAN, Mr Dominic, Chief Executive Officer, Australian Sugar Milling Council

OLIVER, Mr Justin, Advisor, Australian Sugar Milling Council

PRATT, Mr John, Executive General Manager, North Queensland, Wilmar Sugar

RUTHERFORD, Mr Shayne, Executive General Manager, Strategy and Business Development, Wilmar Sugar

SALTER, Mr Nigel, Commercial Manager, Tully Sugar

WATERS, Mr Nick, Marketing Manager, Mackay Sugar

CHAIR: Welcome, everybody. It is wonderful that you could take the time to come here and help enlighten the committee today. At the table we have representatives from the Australian Sugar Milling Council. There are obviously a few organisations represented here this afternoon, so perhaps we could have a short opening statement from Dominic.

Mr Nolan: Thank you very much, Madam Chair, and thank you to the committee. Each of the members of the ASMC are here this afternoon. I will make some brief opening comments and, in the interests of time, we are then happy to move straight into questions from the committee. Unless the question is company specific, I will provide a brief sector response and then seek input from the various expertise from the mills that are represented here this afternoon. There may also be times when an answer from each of the people here present might also be in order, so we will take that as it comes.

The Australian Sugar Milling Council has six members accounting for 97 per cent of raw sugar production in Queensland and 100 per cent of raw sugar exports in Queensland, and around 95 per cent of Australian raw sugar production is in Queensland. Our members are MSF, Isis, Bundaberg, Wilmar, Mackay and Tully Sugar. All of the members of the Australian Sugar Milling Council are here because this private member's bill, if enacted, would undermine future investment in the milling sector, it would impair asset value of mill businesses and it would fundamentally alter the structure and the operation of the Australian sugar industry supply chain. There is no sugar industry in the world where growers have property rights over raw or refined sugar. This bill, if enacted, would not create any additional value in the Queensland sugar industry. There has been no economic modelling or financial evidence to suggest that it would. This bill would introduce costs and harm our international competitiveness and, at best, it would see a contraction of the industry over time to the detriment of growers, mills and associated businesses and communities.

Our industry was deregulated just nine years ago. Deregulation cost governments and taxpayers almost $500 million. As an industry, growers and mills agreed to accept that taxpayer money and to transition to deregulation. Our industry is operating as it was always envisaged through deregulation. The milling sector would welcome a discussion on opportunities to emphasise fairness in commercial dealings between growers and mill companies and maximise return for the industry, particularly given the extremely challenging financial circumstances of the current sugar market. Unfortunately, neither this private member's bill nor most of the discussion regarding future marketing arrangements for the Australian sugar industry, and in particular the public debate, has strayed into the territory of economic facts and objective analysis of what are the concerns in relation to the marketing of sugar and how they can be addressed.

So what are the blockages to progressing an industry resolution to marketing arrangements? There are two key threshold fundamentals for the milling sector. No mill company supports precontract arbitration. Precontract arbitration does not exist in any other business context in Australia between a supplier and processor or manufacturer. The only instance of precontract arbitration in agribusiness in Australia deals specifically with disputes arising in respect of access to essential infrastructure through the Port Terminal Access (Bulk Wheat) Code of Conduct. This would add cost

to business and it removes the motivation for businesses to negotiate in good faith to reach commercial agreement for the supply and purchase of goods and services.

The second threshold fundamental is that no mill company supports changing ownership rights of raw sugar. The proposal to change ownership rights of raw sugar by giving growers a new right to dictate physical sale arrangements for the mill's manufactured product would be unprecedented in Australian business. It would profoundly alter the current supply chain commercial arrangements for the Queensland sugar industry and it would lead to greater inefficiency and increased costs, loss of jobs and poorer economic performance by the Queensland sugar industry. These are two threshold issues that mills do not and cannot support. There is no economic evidence to support either of these two issues.

There is progress being made in respect of regional negotiation of marketing arrangements. There is in fact, as you heard earlier today, a fully functional marketing arrangement in place supported by growers and their mill company operating outside QSL, with appropriate checks and balances, transparency and protections for growers. This demonstrates that it can be done and it can be done successfully for the betterment of the regional industry. However, while legislative restructuring of the industry such as this proposed bill is being offered publicly, there is little incentive for grower organisations to consider a real commercial outcome.

There is no jeopardy for grower organisations in not participating in industry negotiation and holding out hope for legislated precontract arbitration and change of ownership rights in future marketing arrangements. Despite this, there is progress being made in the regions. There are genuine discussions happening in different regions with individual growers and independent bargaining groups on opportunities to provide transparency in arrangements, emphasising fairness in commercial dealings between growers and mill companies, and maximising returns for the industry. That is what was always envisaged with the sugar industry deregulation in 2006 and that is where this discussion needs to get to. At this point I want to hand over to Justin Oliver. Justin is a partner with Minter Ellison law firm. We wanted to bring Justin in to talk to those two key threshold issues that I mentioned around precontract arbitration and ownership issues associated with raw sugar.

Mr Oliver: I will aim to be fairly brief. Really there are just two topics that I want to comment on from a purely legal standpoint—the question of property rights and the question of arbitration. Starting with property rights, it is a concept which I think is quite central to this bill and its impact and understanding the effect of this proposed legislation. To do that, I think it is appropriate just to take a few steps back to 2006, and Dominic referred to the point about deregulation of the sugar industry. Immediately prior to the passage of the amendments to the Sugar Industry Act in 2005, the act provided that all sugar when it was created vested in QSL. That provision was repealed, among other things, in 2006 with the reforms to the industry that were then enacted. The effect of that was to create the position that we have today in terms of the supply chain, and in one sense—only one sense—that is relatively straightforward.

We have canegrowers who produce and sell sugar cane to the mill and the mill owner who takes that cane, crushes it and produces it and sells raw sugar. Of course, in reality and commercially it is a lot more complicated than that and it is true the canegrower is heavily exposed to the price for raw sugar and that is because of the price formula that is contained in the cane supply agreement, as I am sure you probably all know very well by now. But that exposure to the sugar price does not translate to any sort of title over the sugar itself or any sort of proprietary interest in the raw sugar that is produced by the mill. The industry over the last few years has worked on ways to help growers manage that exposure to sugar prices and currency fluctuations and so forth, but again that is a financial transaction—a risk management transaction—which sits outside the actual process of manufacturing and selling the raw sugar.

The title to the raw sugar and the property in that sugar certainly since 2006 vests in the mill owner that creates it. Again, in one sense that is a pretty uncontroversial and fairly orthodox and common situation—a person who creates property, generally speaking, is the owner of that property. They might enter into a contract to encumber their title and there might be a statute which changes that situation. In Queensland there was once, but that was repealed and it has restored the fairly common situation that the mill owner creates certain property—raw sugar. Of course, one of the rights inherent in the ownership of property is the right to deal with it and we have seen mill owners exercising that right since 2006. Most of it for at least the bulk of the sugar produced in Queensland has been sold by mill owners to QSL for export under these raw sugar supply agreements. Those are contracts freely entered into by mill owners.

They contain provisions, amongst other things, for termination, and we have seen in recent months some of those provisions have been triggered by some mill owners but not others. In other

instances, mill owners might sell their sugar to a different entity for marketing—QSL is not the only entity which does this—on world sugar markets or they might take the sugar themselves or supply it through a different channel. These are all episodes where mill owners are exercising their property rights to deal with their property. Of course, in most of the cases you would be right to assume the mill owners in exercising these choices are driven by a desire to maximise price—maximise the return—on the sugar that they sell in no small part because, under the pricing formula for cane, the bulk of the proceeds of that sale has to then be passed on to canegrowers. That is again reflective of the interests that the grower has in the sugar price.

If we turn to the bill and what the bill does in this context and why we talk about expropriation of property rights, it creates a mechanism whereby that choice which the mill owners have been exercising since 2006—how to deal with their property, where to deal with it and whom to sell it to—is to be taken away from the mill owner, at least with respect to the bulk of their sugar output and given to canegrowers. When we talk about expropriation, we are talking about the taking of those rights inherent in the ownership of that property from the mill owner and giving it to the canegrower instead. The bill does not in terms say that the title to raw sugar vests in somebody other than the mill owner that produced it, but that is to a very large extent the effect of the bill. By taking away from the mill owner the right to decide how to deal with their property and creating a regime where ultimately the mill owner is then forced—it is described as an agreement with the marketing body, but it is not an agreement the mill owner enters into voluntarily. It is an agreement they are forced to enter into with a marketing body designated by the canegrower to market and sell that sugar, a choice which today the mill owner is entitled to make.

To conclude these opening remarks on the question of arbitration, in particular precontract arbitration, it is very common to see in any sort of contract provisions for dispute resolution, and more often than not those provisions will include provisions for arbitration. It is quite rare in Australia, at least, to see provisions to provide for dispute resolution about what the terms of the contract will be. Dominic referred to infrastructure regulation. That is the main space where you see this. We have access regimes in the Competition and Consumer Act. There is a similar regime in the Queensland Competition Authority Act and in other legislation around gas and electricity networks. Generally speaking, it is focused on essential infrastructure which (a) is a bottleneck—you need access to that infrastructure in order to get access to another market—and (b) it is infrastructure which generally speaking is not feasible to duplicate—gas pipelines, electricity grids and railway networks. Sugar mills, of course, are routinely duplicated. There are numerous mills in the various cane-growing areas in Queensland so that is quite common. I do not think anyone would seriously argue that there are natural monopoly characteristics which would suggest that they qualify as the kind of essential infrastructure that you would regulate that way. That precontract access regulation or negotiate-arbitrate regime tends to be applied quite sparingly for the fairly obvious reason that one normally expects that commercial negotiation is going to produce better outcomes than one which is imposed by an arbitrator.

Where we have seen serious disputes in Australia around access to infrastructure—railway networks in Western Australia and other sorts of facilities—they have tended to be very protracted. Certainly the question of whether to regulate in some cases has taken years to resolve and has usually left one party very unhappy with the outcome and sometimes two.

There is a lot said about the market power of mill owners and questions around monopsony and so forth. Those are not new issues. They have been around for a long time and they have been addressed before through the authorisation of collective bargaining on the part of canegrowers when they deal with mill owners. It may be that there may only be one mill owner in a particular region who can take the cane—not everywhere but in some places—but typically speaking they are negotiating with a small number of collectives who themselves have a lot of countervailing market power. In that process of dependence you see a negotiated result which may or may not make everyone happy. The proposition that you would necessarily produce better outcomes through arbitration is not one that you see embraced very often, certainly in business in Australia. That is probably all I want to say by way of introduction on the legal issues. Subject to any other comments, I am happy to assist the committee in any other way I can.

CHAIR: Would anyone else like to make an opening statement? We will go straight into questions, then.

Mr BENNETT: Good afternoon. I would like to talk about the property rights issue. I am not sure who would like to take the question. I will put it to Dominic out of respect and then you can delegate, if that is okay.

Mr Nolan: That is fine.

Mr BENNETT: In the bill that is one component of a fairly complex issue. If that issue could be dealt with and amendments made, could there be further negotiations within the private member's bill that is currently before the House on the property rights issue?

Mr Nolan: We have not sat down and worked through how we could amend the bill in its current construct. We were not involved in any of the consultation in respect of the bill. We had no discussions about the bill prior to the bill being tabled. So it is very difficult to start cutting and chopping and changing the sorts of amendments that we might see in order for it to be acceptable. There is no question that all of the mills are very supportive of putting very strong protections, transparency and fairness provisions in place. We believe we can do that on a commercial basis. We believe the sugar industry is a lot more advanced than a lot of other agricultural issues in terms of the commercial arrangements that we have in place and the transparency and contractual documentation that is in place and on the table for consideration.

One of the key challenges we have had from the outset with this issue around future arrangements for the marketing of sugar is identifying what is the key concern and how that can best be addressed. All of our cane supply agreements have commercial arbitration as part of those cane supply agreements, and I think that is proper. Outside of that it is difficult for us to identify where there is market failure that would warrant regulatory intervention, particularly regulatory intervention of the nature and scale that is being suggested in this bill. Are there any other members who wanted to make a comment on that?

Mr BENNETT: We did introduce two threshold issues quite prominently, one being property rights and the other one being precontract arbitration. I am trying to flush out whether there is any movement within the milling sector that might want to have a conversation around whether those clauses could be amended to better reflect what you are trying to propose under your two threshold issues.

Mr Nolan: If we could move away from precontract arbitration to arbitration, which is essentially a reflection of what is already in place, then I think this is a discussion that the milling council and members will have and are entering into at a regional level and at a leadership level. Precontract arbitration as it is written, though, is not something that we can support. If you are talking about changing that so that it is no longer precontract arbitration, I guess from our perspective that is a reflection of the status quo that exists commercially anyway.

Mr BENNETT: Without putting words in your mouth, would dispute resolution be a better outcome as opposed to prearbitration which you have now under your CSAs anyway, as I understand it?

Mr Nolan: In contract dispute resolution, absolutely.

Mr BENNETT: There has been some talk or inference this morning about communication with different key stakeholders that are involved in this. Would the milling council collectively or individually like to give the committee some idea about the endeavours you have undertaken with the sector to try to put your point forward? I am talking about your conversations particularly with the cane-growing sector.

Mr Nolan: I might lead off on that. It is a question which each of the mills present might like to give their own perspective on.

I think the only viable solution or only viable outcome in regard to the marketing arrangements is a commercial outcome. I think any other outcome would be suboptimal and would lead to inefficiency and cost in our sector. From that respect, yes, we are willing and ready to engage in discussions at the leadership level in terms of the Australian Sugar Milling Council, the mills and the canegrower organisations. We have engaged in those discussions and we have indicated that we are more than willing to continue and to proceed down that path.

I would also say, however, one of the challenges here is that when you start talking about legislative solutions you are talking about a one-size-fits-all solution for a very broad and very diverse industry. It is really difficult to capture the full range of commercial potential that exists when you start trying to implement that legislation across-the-board from our perspective. When we deregulated in 2006, a lot of the drivers for that were to allow and enhance regional discussions. It was acknowledged through a range of studies and reviews commissioned by industry and government at that time that one of the impediments to commercial development of the industry was this centralist approach that we took to commercial activities. The arbitration aspects that were in place were specifically identified in the Hildebrand report and the CIE report as being impediments to the commercial development of our industry. Those reports also identified that mills and growers are the

profit centre for the industry and that the two have to work together in order to grow profit for the industry. One cannot work in isolation from the other. That was the deregulation process that we went through in 2006, and that is where we are continuing to proceed to. Yes, we are willing to engage in those discussions and we are at the leadership level within the Sugar Milling Council and with the mills. I think it is also important to understand what is happening on a regional basis, on a company by company basis.

You have probably already heard this morning from MSF Sugar, but we might start with MSF in terms of what it is doing and how it is engaging with its growers at a regional level. We might just track through each of the mill companies to give you a demonstration of the differences and the efforts that are occurring, if that is okay.

CHAIR: Would anyone else like to speak?

Mr Heagney: You probably have not heard enough from us yet. In terms of our mill areas, as you heard this morning, in Maryborough we have a very established, transparent and open relationship with our grower suppliers. All except for one, we market the sugar on behalf of them. In Mulgrave we have marketed raw sugar outside the QSL system since 2006. The system is very similar, and the discussions and the transparency with growers are much the same.

The newer mill areas around Innisfail were historically aligned with QSL. We are making quite a deal of progress with those mills, looking at what would happen if QSL did not exist, but we were derailed a little by some of the proposed federal legislation that has rightly or wrongly created an expectation that some of the code of conduct may or may not be implemented. If we had some clear air and that had not come out, we would probably be much further progressed on those discussions with growers in that area.

Mr Rutherford: We have adopted an approach to consultation and engagement on two levels both with our collectives and with our growers. Very briefly by way of background, we have eight sugar mills and about 1,500 growers of our mills in the Herbert, Burdekin, Proserpine and Mackay areas. Upon announcing our intention to exit QSL, we immediately began an extensive consultation process with government, industry and all other stakeholders. We have held meetings with the collectives. We have well over 20 different collectives, although we have probably five major collectives, four regional canegrower collectives and one large independent collective in the Burdekin, and a lot of other minor and independent collectives. We have held a series of meetings with all of those collectives. We have probably had between six and 10 meetings with each of those five collectives. In particular, we developed a comprehensive suite of draft contracts, reports, transparency and protection measures.

We provided copies of those draft contracts to all the collectives that would meet with us and also to state and federal departments of agriculture and the ACCC back in November 2014. In November 2014 we formally issued an invitation to all our collectives to embark upon a constructive period of engagement with us including a process that was independently facilitated. We also offered funding to pay for independent legal and marketing reviews by all our collectives of those draft agreements that we developed. Discussions are continuing, although I would echo the words of my colleagues here: I think the government intervention in terms of the spectre of grower choice and precontract arbitration has made it very difficult to progress those negotiations in a meaningful way. To date we have not had any constructive or detailed feedback, negative or positive, on any of the measures in our draft contracts.

I am pleased to report, however, that one group of growers and independent collectives has taken up our offer to independently review the agreements. They have engaged their own marketing and legal experts. We hope to have those reviews completed in September, and that process is going very well. That is the first plank of our engagement. The second plank is actually talking to individual growers. We have 1,500 growers. It is very difficult to get around to growers. We have held focus groups with an independently accredited research firm. We have taken on board the feedback from those focus groups that growers like to be spoken to in small groups where it is more informal. We have hired an additional three people to build our grower pricing team to five. This is a group of people who do nothing else but try to help growers make the best possible price risk management decisions. That team of five is going door to door, shed to shed with our 1,500 growers.

To date we have had 500 individual one-on-one meetings. Sometimes these meetings last for two or three hours. We have made a thousand one-on-one phone calls. We are logging the reaction to our engagement. We are finding that about 76 per cent of those meetings and phone calls indicate that our individual growers are either positively predisposed to our new marketing arrangements or neutral. The positives are running at about 39 per cent.

We have also embarked upon a detailed program of grower education and engagement around grower pricing. It has nothing to do with our agreements per se, but our focus groups did identify that growers are struggling with some of the finer points of price risk management, and marketing is a complex area. That gives you a bit of an idea of where we are going and we are continuing that work as we speak.

Mr Salter: We have come from a long way behind the other mills. When we gave notice to quit QSL about 15 months ago we really had no alternative plans on the table at all. We started by running a series of monthly meetings with growers whilst simultaneously looking around to see what other pricing and services were available. We ran that right up until about June this year. Since that time we have gone to smaller group grower meetings. We have five to 12 growers in a shed and we have a presentation. The whole structure is designed to give them confidence that there can be life after the current arrangements, that the current marketer is not the only one who can deliver a reasonable outcome for maximising their price. We are not looking for commitments. We are not looking for undertakings. We are certainly not surveying them at this time.

We are also putting a lot of focus on a draft cane supply contract. The first draft went to our September board meeting and was referred to our audit and finance committee for a detailed go-through. That has happened and the draft contract will go back to the October board meeting, hopefully for endorsement. Then we will roll that out, first of all with distribution to our collective bargaining agents—Tully canegrowers—and then as a subject for shed meetings.

We do not have some of the complications of others. We are a single-mill operation so we only have one collective group to bargain with. We probably account for about 11 per cent of the industry's total. We also have the doubtful distinction of planning to sell our physical sugar to a fellow subsidiary company from 2017 onwards.

Transparency is a word that has been bandied around quite a lot today. For us, it does not necessarily mean that by default the growers are going to come off second best in the arrangements. We really need to have our processes documented squeaky clean. I notice there was a reference before to having audits and independent examinations as being a lack of trust. Every corporate organisation that lodges annual returns with ASIC in Australia has an audit report. It is just a factor of commercial reality today.

We acknowledge that we have a lot of work to do on establishing credibility that we are going to deliver an arm's-length result from an arm's-length transaction. I guess we have a lot of work to do. To date, we have probably spoken to about 40 per cent of our canegrowers in terms of cane supply. That would represent maybe 35 per cent in number. We will continue those meetings. We are getting good responses and a good, positive outcome.

Mr Hatt: Just to give you a bit of a story on the other side of the coin, 10 years ago Bundaberg Sugar had three sugar factories in the Bundaberg area: Millaquin, Bingera and Fairymead. We used to crush around 3.6 million tonnes of cane. Over the years due to pressure from alternative crops, competition with our colleagues at Isis—and Isis equally suffers with cane volumes and alternative crops like macadamias et cetera—we were forced to close the mill. I think it was about seven or eight years ago now. Do not forget: these are $250 million to $300 million assets. That mill was closed. That was Fairymead. That was because we could not retain cane supply. Growers chose to move out of growing cane—deregulation. It was their choice. They could do what they wanted, so they went to alternative crops. We are not here asking you to regulate to make those growers grow cane. We understand there is a commercial reality in that. That is, if you like, the other side of the coin in this story.

We are now in negotiations with our growers to work out how we might improve cane supply in our area. It is a constant battle. We need to get to at least two million tonnes of cane in order to keep the two factories that we currently have operational. At the moment we are 1.75 million tonnes of cane. It is a bit of an uphill battle but it is something we do willingly and in conjunction with our growers. We work very closely with them. We have an extremely good relationship. Stephen is from our area. He knows whom I am speaking about. We work well together.

It does concern me to see the issues that are being raised at the moment. It worries me if it is just for political gain. To be quite honest with you, we see the cane supply agreements that we have as adequate. So do our growers. We rarely actually negotiate anything to do with the supply agreement; they are so well established. The cane price formula is so well established. It is not a contentious issue. I guess we are a little bit concerned. If it ain't broke, why are we trying to fix it?

Mrs GILBERT: Thank you for all those reports. It is good to hear your side of it. The canegrowers we heard from before the lunch break were talking about transparency. Some of them

felt like 'take it or leave it' was the deal that they were being presented with when they were looking at their 2017 contracts and from then on. They are feeling as though they have lost complete power over being able to negotiate with their millers in their particular areas. To help us out—and because this is a private member's bill; it is not a bill that government has worked on, so we are in the same position as you—what is there that we can put within the bill so that you would see that there is that balance between millers and sugar growers? They are talking about transparency as well, which is coming through clearly from your side where you are saying that you would like to see everything being very transparent.

Mr Nolan: I might start and it probably then goes to a couple of the mills that have specific proposals on the table in terms of discussion around transparency. I think this discussion between the issue of transparency and trust has been lost. There is more transparency than what is in place today. In fact, there is probably less transparency in what is in place today with the arrangement with QSL than what some of the mills have put on the table in terms of what they are proposing to work towards. I should also say that they have put those proposals on the table and asked for feedback and detailed response in terms of those contractual arrangements.

With regard to the issue around trust, you cannot legislate for trust and you cannot contract for trust. All you can do is put in place a set of commercial arrangements and try to build as much robustness, transparency, clarity and understanding around those commercial arrangements and then let them operate and build trust over a period. You cannot force that trust to exist. I think the issue of transparency and trust is being confused in some of the discussion we have had around what we are seeking to achieve.

I would probably throw to a couple of the mills to talk about what it is they have done in terms of trying to put information on the table and the feedback that they are seeking to try to develop the proposals that they have come forward with and to try to enhance that transparency element. My issue is that I do not think this bill does anything around transparency and it certainly is difficult in terms of the element of trust.

Mr Pratt: Just to talk to the 2017 draft agreements, as Shane mentioned earlier, we started to table such agreements with our growers from November last year. We fully understand that the suite of agreements that are involved are, by their very nature, complex because they need to describe in detail everything that needs to occur. To assist the grower groups in coming to terms with those agreements, we made an offer to fund independent legal advice and independent marketing advice. So we fully recognise that in the absence of expert assistance it would be a difficult job for grower representatives to assess those agreements on their merits.

As my colleague Mr Rutherford has said, we have been unable to advance the discussion in the main as to the adequacy of the measures within those agreements because, basically, negotiations have become stymied with the prospect of political intervention at either federal or state level. Where we would like to see the discussion move to is the adequacy of the transparency measures and everything that we have in the agreements. We fully recognise that growers are absolutely exposed to the sugar price. We understand those concerns. We understand concerns around transparency, and we have gone to great detail to try to address those concerns. I could go through the individual ones in our contracts. We are talking about cargo, disclosure of prices, competitive quotation, bidding the market—all those types of measures—to assure growers that what they are getting is a fair price and there is nothing being siphoned off the marketing premium they would receive. We are more than happy to discuss ways that those measures may be further improved, but to do that we would have to move the discussion along to have a sensible discussion on the merits of the agreements. As I said, our minds are open to take the transparency measures further and we are more than happy to understand where they can be improved.

CHAIR: I would like to ask the mill owners: what really is your motivation for exiting QSL?

Mr Nolan: That is probably a specific question for the three companies that have given notice to answer. The fundamental answer is that they believe that they can get a better return for themselves and their growers outside of QSL than what they were getting inside QSL. However, why and how is going to be a different answer for each of those companies. I will go to Wilmar, Tully and MSF to provide that answer.

Mr Rutherford: Thank you, Dominic. That really hits the nail on the head. We are in the business of making the best profit we can for ourselves and the highest sugar price for our growers so that they can be the most profitable they can be. Our motivation in exiting QSL is purely about obtaining better returns through a higher sugar price that is going to benefit both growers and Wilmar. I think this morning the committee was given a bit of information about the difference between

pricing—in other words, the futures component of pricing—and the physical premiums that are associated with the marketing of the physical sugar. The issue about pricing, I think, is a nonissue because QSL can price, we can price. Growers have a whole range of pricing options. However, we are exiting primarily to maximise the physical premiums and are leveraging off Wilmar's global trading expertise to do so. We have already been marketing some of our own sugar outside the QSL system.

We have published information, which I can table for the benefit of the committee, that showed that on averages over the 2013 and 2014 seasons we achieved a premium that was 60 per cent higher than the premium achieved by QSL. In 2014, our premium was almost 50 per cent higher than the premium achieved by QSL. We conservatively estimate that across ourselves and our grower group, there is approximately $46 million of potential opportunity cost, which would be distributed about $10 million to Wilmar and $36 million to our growers. At a time when the global sugar price is at all-time lows, it is absolutely crucial that we get the best possible premiums and they are reflected in the highest possible sugar price that goes back to ourselves and the highest possible cane price for our growers. We want our growers to have the best possible price, because our business is so highly leveraged to cane volumes. Everyone has their own cane-volume sensitivity, but in our case if our cane volume was to fall by only five per cent we would incur more than a 20 per cent impact on our profit before tax. We are absolutely motivated to get the best possible cane price for our growers so that they are sustainable and profitable and, as a result of that, we will still have eight mills in 10 years time, not six or seven.

Mr Salter: Our issues initially stem more from sustainability. The arrangements with QSL are voluntary arrangements. In fact, they used to be called a VMA or voluntary marketing agreement. Each of the mills has up until 30 June each year to give three years rolling notice to quit QSL. For the past four or five years, every 30 June has been a period of great tension for everybody in the industry. In June 2014, or slightly before in the case of Wilmar, Wilmar followed by MSF gave notice to quit QSL. Our board sat down with the best interests of the growers and our own operation at the heart of the discussions. We were concerned that, with 70 per cent of the sugar leaving QSL's controls, what was left would not really constitute a viable ongoing business. We believed we could deliver better, securer and more lasting outcomes for both ourselves and our growers going forward. We have been working on that premise ever since.

Mr Barry: In terms of MSF, I agree with Nigel that we had a similar view about the sustainability of QSL. In particular, we had been going through the process every 30 June about whether one or more milling companies were going to give notice. It was obvious pretty much from day one when Wilmar bought the CSR business and equally when Cofco bought the Tully business—it seemed apparent to me—that ultimately they would be dealing in their own sugar. That just seemed logical, given the parent entities. That was one major issue.

Another issue was the fact that it is a collective arrangement and it provides a sharing of costs and a sharing of quality which, in our case, we felt did not favour us. We felt disadvantaged by that. That was a second issue.

The third issue was that we already had a pre-existing arrangement in a couple of our areas that worked well. We had some difficulties, and I think Jeff Atkinson spoke about that this morning, in being able to continue that on. Any changes to the raw sugar supply agreement, which governs the marketing of sugar, requires agreement of all of the industry participants, all of the people here, which is pretty challenging at times. We had to put through a modification to enable a limited carve out for some of our regions. That took more than a year to do. It is hard work to try to customise it.

Separate to that, we have been able to work with our growing regions that have been outside of a QSL arrangement, to look at really innovative solutions. We have been able to adapt, be really quite flexible and really meet their needs and the overall needs of our regions.

CHAIR: I would like to ask a question of Wilmar. What sort of reassurance could you give growers that, were they to sign up with you, you would not sell their sugar at an artificially reduced price to a Wilmar group company in Singapore as a tax dodge here in Australia? What sort of surety could you give your growers here that a scenario like that would not happen?

Mr Rutherford: I guess the best answer to that question is in the very detailed set of protections and transparency measures that we have put in our draft contracts. There is a whole range of them, which I can go through. I am happy to table those at a later date for your information, as well. In essence, we have undertaken to document the sale arrangements between ourselves and our parent trading entity. Although growers are not a party to that contract, that contract will be recognised in the cane supply agreements. We will not be able to change that contract without grower approval. All the provisions in that contract deal explicitly with things like arm's length transactions. In effect, our trading

company will act as an agent for us in selling to end customers. Whatever premium they receive in terms of the sale to the destination customer will be, in fact, the premium that they pay us for the sugar. In a sense, the transactions between ourselves and our parent company are profitless for our parent company.

In that full suite of arm's length protections, we have committed to undertake an audit by a big-four accounting firm every year at our cost, including things such as reviewing every single transaction. We have provision for subsequent grower audits, if they wish. We have made provision for a grower transparency committee that, as John mentioned, will have access to the full sale transaction of every single cargo of sugar that leaves Australia. Where it is a related party transaction on a transaction-by-transaction basis, we will have to provide documentary evidence to the grower transparency committee and to the satisfaction of the auditor that that transaction was, indeed, at arm's length. It is quite a comprehensive suite.

In addition to that, obviously, we have things such as transfer pricing rules under the ATO rules and a whole suite of existing regulatory structures, which would prevent us doing that in any case. But that is not our motivation. Our motivation is to get the best possible premiums and reflect that back to the Australian business, where Wilmar has a significant capital investment, and also to our growers.

Mr SORENSEN: On the potential to increase the disputes between growers and millers with the arbitration process proposed in the bill, will this reduce the incentive for growers to negotiate in good faith with the millers or will it have the opposite effect?

Mr Nolan: I am happy to provide an initial answer and there may be some other answers from around the table. Our concern with the concept of precontract arbitration—and we need to be clear: there is no contract in place. There is no agreement between two bodies under which there is a dispute that you can go through a mediation process, take it to an arbitrator and say, 'Here's the area of dispute that we have and this is what we want you to make a decision against.' It is an open book. No contract, we have a disagreement, it can go to arbitration. It is a challenging kind of concept and it takes the onus of reaching a commercial decision away from the parties involved. Effectively, you have the incentive to negotiate without necessarily thinking that you need to reach a final point, because you know that ultimately you can just throw it to somebody else and get them to make a decision in terms of the question that is at hand. From our perspective, it does not seem to encourage normal commercial good faith negotiation and maximising the efficiency and the benefit of the outcome for both parties. Are there any other comments that anyone wants to make?

Mr Oliver: If I may endorse and supplement that comment. There have been some reviews and so forth of these sorts of access regimes done in the past. They have looked at this question of incentives to negotiate and what it does. I would endorse Dominic's comment that once you have a situation where there is potentially an arbitrator or somebody who can come in and impose an outcome, and both sides might form a view on what that outcome might be, that becomes their counter factual. That can really remove the incentive to reach a deal if, at the end of the day, you think you might do better from that arbitrator. That does have the risk to reduce the likelihood of getting a negotiated outcome.

If you look at, for example, the telecommunications access regime, which is in part 11C of the Competition and Consumer Act, that provided for a long time—no longer, but for a long time—for the ACCC to arbitrate access disputes between various access seekers and, chiefly, Telstra. At one point in time, if you go back about 10 years or so, there were many, many access disputes outstanding. It seemed that every negotiation in that negotiate-arbitrate framework went to arbitration before the ACCC because there was a lack of an incentive on one side or the other—and it could be on either side; it really does depend on the party's assessment of where the arbitrator might land—but that can really remove that incentive to reach a negotiated outcome. That risk is heightened in a situation where the arbitration is really a blank sheet of paper, because now both sides really have to speculate a bit about what the arbitrator might do and that speculation will inform their approach to the negotiation. There is no certainty that that would be the outcome, but in terms of the effect of such a scheme on incentives to negotiate, I think that is a real risk.

Mr SORENSEN: Do you see this dragging out the argument and then the legal costs will go through the roof?

Mr Oliver: It is a risk. It is certainly a possibility. I will not comment adversely on the possibility that legal costs might increase, because it is what I do for a living, but from everyone else's standard point I think it would be a terribly poor outcome if that were to occur. Yes, I think it is a definite risk. It would not necessarily happen. It is a complicated process, but it is a possibility.

Mr Nolan: This industry has a history and a reputation of spending an inordinate amount of money in legal fees prior to deregulation. It was part and parcel of the business that mills on one side and growers on the other side engaged lawyers and QCs to argue points ad infinitum. There were huge costs expended. At times, it was not even necessarily to take it to a full conclusion for a decision, but it was in the preparation to get ready for the fights. That was just what this industry did. We moved away from those regulated days and that binding situation that we had, to move into a much more normal commercial framework that we see businesses across the country engage in. To contemplate taking a step back into that kind of framework is really quite concerning.

Mr BENNETT: Earlier we spoke about property rights. It is a very important point. As you have raised, it is one of your two threshold issues. For the committee's benefit I want to explore that, because it is complex. Justin obviously gave us an insight. I am not after a *War and Peace* on this, but we need to acknowledge that this is a key part of this legislation. It has been raised by a number of proponents to the committee. Could I ask for your indulgence to reiterate the importance of this property rights issue and where you see that falling under this proposed legislation?

Mr Nolan: There are probably three key elements around this concept of grower choice and title. The first is exactly what you are talking about around property rights. Grower choice cannot be achieved without giving growers property rights over sugar. That does not currently exist. That is just a fundamental. Growers currently have no proprietary or legal right to tell mills how and where to sell raw sugar. There is no business in Australia where that is the case—where suppliers have a legislated right to tell the manufacturing business how and what to do with their manufactured property. It would be of great concern for all of the milling companies who have invested in significant assets to manufacture sugar in Australia if they were told that they no longer have the right to access the product that they manufacture with those assets in full.

The second element is around this issue of the clearly demonstrated evidence of upside opportunity from mills marketing their own sugar. Some mills have documented evidence and offered to table that, if requested to, of the better marketing results they can get through their global operations. That is the reason they have taken that decision. As a deregulated industry, it was always the intention that our industry could go down this path. At the time that we deregulated, it was clearly stated that the decision on whether or not to continue to supply QSL in raw sugar, to sell raw sugar to QSL, would be a decision to be taken by the mill companies. That is what has been occurring since 2006 in the case of two mills in Maryborough and Mulgrave and that is the decision that three mill companies took just over 12 months ago.

We do not have, on the other hand, any evidence—any economic analysis or financial analysis—that would suggest that the concept of grower choice will bring a positive return to the sugar industry in Queensland. There is no macro-economic analysis that would suggest that there is going to be a better outcome for Australian sugar if we end up in a situation where you have potentially a large range of marketing companies owning sugar in sugar sheds in Queensland. There are practical considerations, there are inefficiencies associated with that and there has been no discussion around how all of that could be managed if a bill such as this were introduced where there were multiple owners forced into dealing with mill companies, mill companies being forced to deal with multiple owners of raw sugar in the storage and handling units in bulk sugar terminals in Queensland.

Mr BENNETT: But it is highly unlikely that that will occur. We have QSL and we have the mill owners who would only ever be the marketers. Is that a long bow to draw? I see everyone shaking their head.

Mr Nolan: There is nothing in this bill that says that it has to be QSL.

Mr BENNETT: But the growers inevitably would go with the strongest marketing agent, being the person who is going to get the best price.

Mr Nolan: But there is nothing in this bill that says that that would be QSL or the mill company. It could be anyone else. It could be any trading company, and there are significant trading companies globally that would see this as a great opportunity.

Mr BENNETT: Could we ask the CEO of Isis for your comment, because you have not said anything yet.

Mr Gorringe: The Isis sugar mill is a grower owned company. We are relatively small—about five per cent of the industry—and we are one of the milling companies that has remained in the QSL system for the 2017 season, although for this coming season we have elected to withdraw our supplier economic interest in sugar and have it marketed by a Japanese trade house, Itochu.

This issue of marketing is not a major commercial issue in our district. One of the reasons for that is that growers have many choices. As Mr Hatt mentioned earlier, there is competition for cane supply among milling companies in our area and there are many alternative crops that growers can elect to apply to their land. So growers have many choices and they act commercially in exercising those choices and can transition out of cane if it is economically beneficial for them.

Mr BENNETT: So you did reaffirm that there is an independent marketing firm from Japan now in Queensland sugar marketing; is that what you said before?

Mr Gorringe: Yes. For this 2015 season we will market about 60,000 tonne of sugar through a Japanese trade house, Itochu.

Mrs GILBERT: It is interesting to hear that those growers have choice. That has been one of the major issues that has come through all morning. Growers are saying that they are forced into one set of rules where they have no choice with what is going to happen with the pricing of sugar. One thing that came up this morning with the growers was the inability to do forward pricing, which they have been used to doing. Could somebody explain the concept of that and why that is no longer available to sugar growers?

Mr Nolan: I will make a broad comment around this issue of choice and competition and then I might hand over for a specific comment in terms of current arrangements and pricing. Whilst this has been billed as an issue all around choice, I think it is wrong to say that growers do not have choice. I think we have heard a couple of different mill companies today suggest that growers have a large range of commercial choices in relation to their land and how they choose to exercise that capital, that asset in terms of sugar cane, the potential for other crops, livestock, urban encroachment. These are all things that are impacting on growers' commercial decisions around what they do with their assets.

In the case of sugar mills, there is only one thing that a sugar mill can do—it can do it for about six months of the year—and that is crush sugar cane. You cannot do anything else with that sugar mill. It is also true to say that there will be some cases where growers do not have alternative crops available and that sugar cane is the most viable option for them.

The issue is that we compete for sugar cane every day as sugar mills. We compete against alternative crops, we compete against livestock, we compete against houses, we compete against people exiting the industry and not continuing to grow sugar cane full stop, and we see that evidence. It is not that we are going to lose 100 per cent of our sugar cane supply, but we do not need to lose 100 per cent of our sugar cane supply. If you lose five per cent or 10 per cent of your sugar cane supply on a sustained basis, that has a huge impact on your viability as a sugar mill, and if you lose on a sustained basis 10 or 15 per cent of your sugar cane supply it will put the viability of the mill under threat. We have seen mills shut over the last decade. We compete for sugar cane supply every day of the week.

In terms of the pricing, with the proposals that have been put forward by those mill companies that have indicated that they are going to exit QSL, they have all made it very clear that they will make pricing alternatives available to their growers. So if they want to choose third-party pricing managers and access pools from other operators, they have made it clear that they will facilitate that within their commercial arrangements. So the issue that we are talking about is the physical element of the sugar. I think in some of the supplementary material that we are providing to the committee we will clearly demonstrate that the vast majority of the income that growers receive in relation to the sugar cane that they sell to the mill is determined by the decisions that they make around pricing and the global sugar price, the global sugar market. Probably 99 per cent of their income is determined by the decisions that they make in terms of pricing. We are back down to that one per cent, which is the physical premium.

At the Mackay sugar Senate hearing, the QSL CEO stated that, in general terms, as far as QSL goes the net marketing premium is generally up or down $5 per tonne of sugar cane. That translates roughly to somewhere around 40 cents per tonne of cane for growers. That is the element that we are talking about in terms of physical premiums. So there is choice and there will be choice available in terms of pricing. What we are talking about is the physical. But in terms of options for forward pricing, which goes to the heart of your question, I might hand to John or Shane to answer that in the first instance.

Mr Heagney: For the member for Mackay I might be able to clarify the context of the discussion this morning. For a grower to be able to forward-price their cane, they need to have a cane supply agreement. Without a cane supply agreement in place, they cannot price their cane. I think that was

part of the context of what was said this morning. Because they do not have a cane supply agreement in place they are unable to price their cane forward.

Mr Salter: If I could just comment on that? To show that we are all different, our cane supply contracts are existing ones and enable growers to price beyond 2017. It will be on our facilities, not QSL's, but the contract is deemed to roll on if they price beyond its term. That is the good news. The sad news is that the market is in such a bad state that nobody is taking us up on it.

Mrs GILBERT: Just to clarify that for myself, once that grower who was talking about the forward pricing this morning signs their agreement, they can negotiate around the forward pricing?

Mr Rutherford: I think all the milling companies are a bit different, and I endorse the comments that Paul Heagney has made. Growers need a cane supply agreement because, in effect, mill companies would have to go out into the market and put derivative contracts in place. There is a counter party risk and we need to know that we are going to get the cane so that we can make the sugar to satisfy those contracts. Otherwise we have an exposed or uncapped hedging liability.

But as a show of good faith, irrespective of the fact that we do not have cane supply agreements for 2017 we offered an extension of our existing forward-pricing arrangements for growers. We kept that facility open for a full year until June 2015. We offered to growers that, if they executed that agreement, they could add a subsequent date any time between now and 2017 and undertake forward pricing if the market were to be attractive. That was us taking on some risk for the benefit of growers. We marketed the fact that we were doing that.

We did have one particular grower group—one collective—who saw that as an opportunity. Around 20 per cent of our growers have taken up that opportunity to execute that agreement, yet they have not actually done any forward pricing. So in a sense, it was a free option that we offered people.

But for 2017 going forward, for those growers who did not sign the temporary forward-pricing agreement, we have said, 'If you would like to sign the draft agreements that we put forward for 2017 to give us surety of cane supply, we would allow forward pricing.' But we also made the commitment that, while we are still negotiating those contracts, should their collectives ultimately come to a different agreement with us or there is some form of regulatory intervention, we would honour those forward-pricing commitments and roll them into whatever agreements were subsequently negotiated. So I think we are bending over backwards to try to facilitate the continuation of forward pricing for our growers while being mindful of our commercial exposure as well.

CHAIR: If the bill is not passed, it seems fairly clear from the earlier hearing that we had that it is really not an exaggeration to describe it as an industry impasse. There seems to be really strong feelings on both sides. Are mill owners here today willing to re-enter into negotiations with growers and canegrowers to resolve the marketing issues if the bill is not passed in the parliament?

Mr Nolan: Regardless of what happens with the bill, we have been, we are and we continue to be willing to enter into negotiations on a commercial basis. If the bill is not passed, yes we are more than willing to sit down at a leadership level and to continue those discussions which have already commenced and we are also willing to sit down at a regional level, and each of our mill companies is doing just that, meeting at a regional level with their growers, to try to move things forward on a company-by-company basis. From our perspective, this bill that is on the table currently makes it very difficult for us to progress those commercial discussions, but the answer unequivocally is yes, we are ready, willing and able and have been and continue to engage.

CHAIR: If the bill is passed and grower market choice and economic interest are introduced, have you considered how you will respond to that?

Mr Nolan: I think, to be honest, if this bill were passed there is a whole suite of impacts that have not even been contemplated by the drafters of this bill, by the proponents of this bill or, frankly, by anyone. The practical reality of this bill would be to fundamentally alter the supply chain in the sugar industry. From, I think, the mill's perspective, all of the existing commercial arrangements that are in place would need to be re-examined from the beginning and worked through line by line because this fundamentally turns all of the existing commercial arrangements on their ear. So, no, we have not commenced that exercise. Our focus has been to make sure that we get the factual information across in relation to this bill and to demonstrate the impracticality and the concerns that we have with this bill and the impact that it would have on the Queensland sugar industry.

Mr BENNETT: I was going to lead in about the legal issues. I would welcome Justin's comments. I know I have been over this area a couple of times this afternoon but, of course, we are talking about the precontract arbitration possible amendments and property rights issue. Would you

like to propose some comments around legal challenges or the legal ramifications for the milling sector if the bill does make it through the legislative process?

Mr Nolan: Again, I think the only thing that we can say on that is that we have not contemplated any kind of legal challenge or that kind of process. All that we are doing is focusing on the major concerns, the impracticalities and the detrimental impact that this bill would have on the Queensland sugar industry and making sure that we get that across clearly. Legal challenges and other things are not something that we are engaged with at this time.

Mr BENNETT: But you have looked at rural competitiveness in your markets, of course, and the ramifications that that may have, your operational capacity and other things within your own sector? Surely there has been some work done around the ramifications of the legal side of this?

Mr Nolan: Again, we have got legal advice in relation to the bill and that is partly why Justin is here. We have looked at that element of it, but taking that forward to a situation of a legal challenge or anything else is not something that we are contemplating. We are wanting to work constructively with the committee in terms of its review of the bill and to put forward our concerns and the problems that we see with the bill. Yes, we have looked at what the ramifications for our businesses would be and the impacts on our competitiveness and efficiency, but again this is not a light touch of regulation or a light intervention from a government perspective, this is fundamentally changing the nature of the sugar business in Queensland and we would have to re-examine the whole basis for the commercial arrangements that are in place for the sugar industry today. Are there other comments that anyone would like to make there?

Mr Hatt: I guess that does raise the spectre of toll crushing which I think would be the death knell for the industry. At the moment, growers and millers tend to share risk and reward. At the moment none of us are doing particularly well. We have a very poor sugar price. But if we do not have the product, if we do not own the sugar, we would be, I guess, offering a service to growers to mill their cane to make their sugar so we become a service provider. I mean, that is an extreme, but I think that is where it could go, which means we would become a cost plus operation. We would no longer share the risk and reward and I do not think the industry can bear that. Equally, at the moment Bundaberg Sugar is with QSL. If grower choice is introduced and we have to offer a choice, does that mean that we have to exit QSL in order to be able to provide that choice? So I think the ramifications of where all this might go if this bill were ever passed would be disastrous for the industry.

Mr SORENSEN: Just to follow up on what you said there, I was just thinking about that. If traders take over the control of selling all the sugar in Australia, where does that leave the millers? At the end of the day, where does that leave our competitive edge on world markets? I was just sitting here thinking about what you were just saying then. If you become a miller you just become the provider of manufacturing cane into sugar. Where is that going to leave the industry?

Mr Hatt: That is a good question. I wish it was not me who was answering it. But, honestly, that is the concern. The concern is that this will fragment the industry. We will have multiple growers with ownership of the sugar from their 5,000 tonne of cane or their 3,000 tonnes of cane. It would become logistically unmanageable. Again, that is the extreme, but that is where it could go if the bill were passed the way it is at the moment. Yes, there is nothing to stop it.

Mr Nolan: The issue of toll crushing has been raised from time to time. It is something that some of the mills have looked at and gone into in terms of some analysis and I think some of the mill companies have had discussions with their growers about what toll crushing might or might not involve. We cannot design a toll crushing model that we could see that would be sustainable into the future. The sugar industry is different to other agricultural industries where toll crushing might be in place. Look at the cotton industry. Growers take cotton to the gin and it is processed and cotton comes out the other side. There is not the same level of capital investment in terms of the assets required to process that product, there is not the same substantial transformation of the product that occurs when you take sugarcane—completely destroy that product, it ceases to exist—and create a whole new product in sugar and take it through. So the range and level of investment and the transformation process is substantially different—fundamentally different—in the sugar industry compared to some of those other industries that might have a toll crushing type arrangement.

My understanding of the discussions that some of the mills have had with their growers around toll crushing has indicated that some of the canegrower organisations have said that they are not interested in looking at a toll crushing type arrangement. I think the reason for that is that essentially if you move into this arrangement of toll crushing it would not be on the basis of the same cane payment formula that we have currently got in place, except that you physically give growers part of your manufactured product, your sugar. I mean, there are different ways you could look at it, but if

you went to the process plus the production costs plus a return on assets, the type of arrangement that Ray was mentioning earlier, you take away that risk sharing that exists currently in the industry, the risk and reward. You would have a mill operation that is completely reliant on sugarcane supply coming in without the mill participating in that market signal and the sugar price signal that currently exists. You disconnect the relationship in the supply chain and the industry. You no longer have growers and mills working together for substantially the same outcome. The whole incentive and the whole structure of the supply chain in our view would break down.

Mr Pratt: If I could just add on the question of other traders entering this industry, the only rationale for a trader who does not have an investment in this industry to enter it would be to extract a profit—to make a profit in his trading activities. That merely becomes another mouth to feed in the food chain—in the supply chain of our industry. So we see a real concern there about erosion of returns to our growers. It is quite a different situation to the one that we are proposing where the marketing premiums flow back in their entirety to growers on a dollar-per-tonne basis.

I would take the opportunity at this point to correct something that was said this morning. I think there was an inference made that Wilmar would be returning 50 per cent of net marketing premiums to growers. That is clearly incorrect. It is 100 per cent of marketing premiums. But in addition to that we are proposing to return 50 per cent of arbitrage profits that arise between Wilmar's global book and the Australian book which is an opportunity created through Wilmar's global footprint that largely does not exist with QSL just having a domestic sugar book.

Mr Barry: Just in terms of the comments there about competitiveness, with my Mitr Phol hat on, the Thai sugar industry is very well diversified. It is an industry that over the last 20 years has grown from about 40 million tonnes of cane. Last year they did 106 million tonnes of cane. They are heading up towards 150 million tonnes and beyond. It is absolutely diversified into all of the Mitr Phol mills and most of the competition is stock in trade to have large-scale sophisticated co-generation, ethanol—Mitr Phol themselves are the largest producers of ethanol in the ASEAN region. They produce particle board which are plants co-located at their facilities, high value-added refined sugar they export right throughout the region. At the moment we are in a really difficult sugar price environment. In Australia most of the industry will not be profitable at these levels. In Thailand they absolutely are and the industry is growing.

For us, as part of the Mitr Phol group, we do not see the future being the status quo. The industry needs to get out of the raw sugar trap. We are absolutely beholden to the New York No. 11. We are trying to fight over the last one per cent here at the moment. The future for us is really about higher value-added products, investments in large-scale co-generation and in ethanol and higher value bioproducts and diversifying our revenue base and that of the growers and derisking the overall industry. At the moment we are relatively uncompetitive compared to the likes of Thailand and now, with the currency movements in particular, Brazil. With this bill it structurally changes our business so we go from something where we can absolutely make decisions about investments and value adding to becoming, put simply, a toll processor of producing raw sugar where you are not in control of the end product at all, you are not in control of actually making the commercial arrangements with your suppliers either. So it structurally changes it. We have not given it a lot of thought but it is not really one that we are that interested in—with my Mitr Phol hat on. It does not provide the right framework for investment going forward.

CHAIR: We are quite close to the end of our session. We probably have a minute or two if anyone else from the panel has anything they would like to share.

Mr Waters: I missed the opportunity earlier, like John from Isis, to say a piece from Mackay Sugar's point of view. Mackay Sugar is a grower owned entity, crushing about 20 per cent of the industry's cane. We are the second largest milling group in Australia. We are in a slightly different situation from the guys who are exiting QSL but the same as Bundaberg and Isis in that we are staying with QSL. We elected to stay with them last year. We are also grower owned so it is a different dynamic for us.

Our drivers are very much aligned with our growers and our shareholders who are our growers, but we have also taken the election, similar to what John from Isis mentioned earlier, to market our own EI sugar through the export channels. We have partnered up with the largest global trader of sugar in doing that to provide competitiveness to our growers but also to give us access to market intelligence and to provide a backdrop in case the QSL platform is weakened going forward.

From our point of view, we are very much aligned with the ASMC group in terms of the two thresholds that Dominic mentioned earlier. We think that precontract arbitration is not a good

commercial outcome for the industry, and we think messing with property title and title to sugar is a very dangerous area to be entering into.

CHAIR: Thank you all for coming this afternoon and shedding some light on this complex issue.

ARTIACH, Ms Julie, Manager and Company Secretary, Burdekin District Cane Growers Ltd

McNEE, Mr Russell, Grower Representative, Burdekin District Cane Growers Ltd

CHAIR: Welcome and thank you for your time this afternoon. Would you like to start with a brief opening statement?

Ms Artiach: Madam Chair, thank you. I do have a prepared opening statement. Our organisation appreciates the opportunity to address the committee in relation to Mr Knuth's private member's bill. I propose to make a brief opening statement and then focus on responding to the committee's questions. Briefly, Burdekin District Cane Growers, which we call BDCG, has three member organisations—Pioneer canegrowers, Kalamia canegrowers and Invicta canegrowers. By way of clarification, BDCG has no affiliation with Canegrowers Queensland.

BDCG was created to enable the three organisations to bargain collectively for their respective members pursuant to section 33(3) of the Sugar Industry Act. BDCG currently represents between five million and six million tonnes of cane or approximately 60 per cent of the cane grown in the Burdekin and supplied to all four Wilmar Sugar mills. BDCG is in a unique position in that it only represents growers in the Burdekin who only supply to Wilmar Sugar. Consequently, our comments today will focus on Wilmar Sugar.

I will give a summary of BDCG's position. BDCG supports the objectives of Mr Knuth's private member's bill—namely, to prescribe growers a choice of marketer and an arbitration mechanism to assist growers and millers negotiate the terms and conditions of a supply contract. Monopoly millers are a characteristic of the Queensland sugar industry—that is, the norm is one miller per sugar-growing region. Wilmar Sugar is seeking to bundle together milling and marketing services relying upon its monopoly infrastructure. There is no competition for milling services, and this is unlikely to change in the foreseeable future. Growers have no option but to supply cane to Wilmar Sugar and ultimately accept the commercial terms proffered by Wilmar Sugar.

There has been a lot said by millers regarding their ownership of the sugar. However, their current ownership of the sugar is not by a common law right but by agreement of the growers. The growers agreement was predicated at the time of deregulation on QSL, an industry owned company, being the marketer not the miller and title to sugar passing from the miller to QSL under the millers contract with QSL. The practical effect of the growers' current contract with Wilmar Sugar is that Wilmar Sugar provides only milling services—that is, it currently acts only as a toll crusher. It crushes the cane, produces the raw sugar for which the growers pay the miller four units of c.c.s. and whatever the miller extracts above 90 per cent efficiency. The growers pay QSL to market their sugar in that the growers are only paid the net sugar value rather than the gross sugar value determined by QSL's marketing their sugar. Simply, the growers currently pay QSL's costs.

The growers have made their position clear. They do not accept the miller substituting itself for QSL as the marketer, thereby being a monopoly miller and a monopoly marketer. Despite the growers' objections, Wilmar Sugar has refused to negotiate any other marketing model other than Wilmar Sugar being the marketer of the sugar. This equates to a misuse of market power. The process of deregulation should be completed and growers are entitled to competition for marketing services. Thus without government intervention Wilmar Sugar will rely upon its monopoly position and dictate commercial terms to growers. The growers have no bargaining power, even bargaining collectively.

To balance this inequity in bargaining power the growers are seeking a commercial arbitration mechanism to ensure that the supply contract is fair and reasonable. What is now commonly referred to as precontract arbitration is not an interference with Wilmar Sugar's commercial rights. Precontract arbitration exists in legislation—for example, the wheat port access code of conduct and the New South Wales Mining Act where the terms of an access agreement between landholders and mining exploration companies cannot be agreed upon. Some form of arbitration also exists in commercial documents such as review calls in leases or put-and-call options in a share sale agreement where the value of the shares cannot be agreed upon when the option is exercised at some future time.

In conclusion, whilst it is BDCG's position that the private member's bill needs some amendments, the fundamentals of the bill—that is, choice of marketer and commercial arbitration mechanism—are essential. The fundamentals of the bill are a proportionate response to the misuse of market power and balance the inequity in bargaining power.

CHAIR: Thank you. Are there any questions?

Mr BENNETT: Good afternoon and thanks for coming. As I have done to all the other proponents today, I would like to get your comments on expropriation of property rights. I would like to expand that out. You concluded your opening statement—and I am not trying to put words in your mouth—by saying there needs to be some amendments to suit your outcomes in the proposed legislation. Can we start with the expropriation of property rights and get your comments on that, Julie or Russell?

Ms Artiach: I think Russell would probably prefer if I handle the expropriation of property rights question. At the time of deregulation the growers agreed to a particular commercial arrangement. That commercial arrangement was that growers would sell their cane to a mill. The mill would therefore pass title to QSL because QSL, as the physical marketer, requires title—that is, you cannot sell what you do not own.

Mr BENNETT: Julie, just to clarify, that was an unwritten agreement or an understanding; is that fair?

Ms Artiach: That is correct. When we talk about expropriation of property rights, it has to be based upon the fact that you actually own something. For someone to expropriate your property rights, you have to first have ownership. When Wilmar Sugar purchased the CSR mills, or the Sucrogen mills as they were known, they purchased infrastructure; they did not purchase an automatic right to sugar. Therefore, you go back to whether they had a common law right to ownership. You either have a common law right to ownership, a contractual right to ownership or a legislative right to ownership. Those are the ways you acquire title. There is no common law position that I am aware of unless the growers agree that the processer ends up with title to the commodity.

I can refer to Wilmar Sugar's submission in which Minter Ellison and Mr Oliver, who was here this morning, refer to an English decision to try to establish a common law right to title—that is, if you are the manufacturer you automatically have title to the commodity or the product that is produced. With interest, I note it is an English decision. Nowhere in his decision does he make reference to it being followed in Australia or there being an Australian decision supporting that position.

Basically, the only way at common law a miller can have an automatic right to ownership of the commodity is if the grower agrees that all it is doing is selling cane. If that is the case, then absolutely. But what the growers are saying to you is that they are not agreeing to that. They are not agreeing for the growers to only sell their cane to Wilmar Sugar, so that common law right therefore does not exist. Currently, Wilmar Sugar has title to the sugar via the existing contract. That contract concludes at the end of the 2016 season, so from 2016 onwards currently Wilmar Sugar neither owns the cane nor the sugar because there are no contractual arrangements. That then leaves the third option which is legislation. The Sugar Industry Act does not give Wilmar Sugar or millers title to sugar, so at the moment it is the growers' position that they do not have a common law right to ownership, they do not have a contractual right to ownership and there is no legislative right to ownership. If you do not own the sugar, it cannot be ex-appropriated. I know that is a pretty complicated legal position and I am wearing my lawyer's hat when I respond to you.

Mr BENNETT: There has also been a lot of discussions particularly around your comments, but it is very unique that canegrowers own certain interests past the point of sale at the mill gate, if you like. We have heard about the grazing sector and we have heard about the cotton industry and others, so it is quite unique that the canegrowers have an economic interest past that point of sale. Would you like to comment, Julie?

Ms Artiach: No, I would probably disagree and, again, I cannot help myself. I go back to what the current arrangements are. The current arrangements are you have an independent marketer, not a miller, with conflicted interests, so where they acquire title at the moment from the contract the growers have agreed to that otherwise it is a matter for commercial negotiation. The growers either agree to sell the cane to Wilmar Sugar and that is the end of the commercial arrangement and title therefore passes and all they are entitled to is a debt due and payable or alternatively they turn around and say, 'No, the contractual arrangement that we want, given the particular characteristics of our industry which can be distinguished from most other commodities in Australia, is that that is not acceptable to us where you're relying upon your monopoly position to be able to act as the marketer.' What the growers are saying is that is not a contract they are prepared to accept. So if that is the case, then at the moment Wilmar Sugar does not have title to anything in 2017 so therefore we are going to be at a bit of a stalemate, I tend to think.

Mrs GILBERT: The committee understands that your submission and your position differs slightly from that of Canegrowers Queensland and the ACF. Could you please outline your preferred regulatory approach?

Ms Artiach: Our position is not fundamentally different. Likewise with Canegrowers and ACFA, what we are seeking is competition for marketing services and precontract arbitration, so in that regard the fundamentals of what we are seeking are the same. The rhetoric that we are using is perhaps different or the ways by which we are seeking to achieve those two objectives and how we get to it might be slightly different. At the end of the day, I think what the growers are interested in is achieving those two objectives. Again, I think the actions of the millers, and in particular Wilmar Sugar, have changed forever the landscape of how this industry currently operates. I think that the only thing that you can do from now going forward is to try and make the best of it, and in that regard how do we most efficiently achieve those two objectives? I am going to call a spade a shovel. At the end of the day, if we are going to have a choice of marketer, the growers must control the relationship with the marketer. It cannot be done by the miller.

I think to do that creates a whole set of legal conundrums that we cannot yet possibly imagine, and what I mean by that is this: say, for example, a grower uses Louis Dreyfus. There is an issue in relation to that contractual relationship between Wilmar Sugar and Louis Dreyfus about payment. I can guarantee you that in the contract between Wilmar Sugar and the grower there will be a clause that says, 'We won't pay you if Louis Dreyfus doesn't pay us,' which means then the grower has to rely upon Wilmar Sugar to recover the payment from Louis Dreyfus. That is a very complicated legal relationship. It should be the case that payment to the grower should not go back via the miller; it should go from the marketer direct to the grower. For that to be the case, the grower just has to own the sugar. Title has to pass from the grower to the marketer; otherwise that arrangement legally is a nightmare. So that is the fundamentals of why we have taken a more direct approach. The effect is the same. Whichever way you look at it, at some point in time title must pass from the miller to the grower's choice of marketer otherwise the marketer cannot complete the physical sale—that is, simplistically—and I know it is simplistic—you cannot sell what you do not own. So at some point in time title is passing.

In the current arrangement title passes from the miller to QSL when the sugar hits the port, so at the moment there is a transfer of title now. What we are looking at we do not see as much different to the current arrangements except that it will not be QSL, or it could be QSL because anyone can be the marketer. The contractual arrangement is basically Wilmar Sugar acting as the miller providing milling services, their being whoever is the marketer providing marketing services, but the grower must control the relationship with both the miller and the marketer, and the marketer can be Wilmar Sugar. It is not BDCG's position that the growers are not interested in using Wilmar Sugar as a marketer. What they do not want is Wilmar Sugar saying, 'You have no choice but to use us,' and they do so reliant upon their monopoly position.

Mrs GILBERT: So do you support the bill proceeding in its current form?

Ms Artiach: No, and I can take you through the reasons as to why. I think there must be amendments just to make sure that the objectives are very clearly defined and understood, and the reason being is this: I do not know if most people understand this, but as members of parliament I am sure that you do, but for the record it is—

Mr McNee: If I can just interrupt, because Julie is going to take you down a legal path. We agree with the objectives that the bill is trying to achieve. Julie with her legal hat on sees some of the sections of it as being ambiguous and requiring amendment. But I just want to go through it briefly, and bear with me. I know it is difficult at this time of the afternoon for me to say anything that has not been said before, so I will try and be brief. Why BDCG believes there is a need for legislation—and both the previous government and this government have advised us that they see this as a problem that needs commercial resolution rather than government intervention—is that we simply believe that it is not going to happen without government intervention through legislation. Much has been made today of the successful arrangement between MSF and their growers in terms of how well that has worked. I would suggest that the underlying reason for that is that in that particular case the growers had choice. Even though only one grower, I think they said, took the opportunity, nevertheless they had the choice, and that is simply what we are asking for except Wilmar is not prepared to offer that choice.

Wilmar wants to market all the sugar, and growers do not have any objection to Wilmar marketing the sugar. I want to make that very clear. They do not have any reservation about Wilmar's capability. They do have some reservations about Wilmar's conflicts of interest in marketing that sugar given that they have refineries. Wilmar's solution to that is transparency and transparency is an all-encompassing word. You can only audit what you can see. Because sugar marketing is very complex, the growers are saying, 'We don't have the skills to audit. We'd have to pay. It'd be an expensive, time consuming operation to audit it. The simple solution is competition.' If Wilmar can live

up to its rhetoric and provide an extra $4 a tonne of cane to growers, believe me, the growers are not going to leave that on the table, or even $2 a tonne. So they see that as being the simple solution. It is giving Wilmar the opportunity to market all the sugar if they are good enough. It is not as if we are saying, 'No, we want to retain the status quo where QSL markets all the growers' economic interests in sugar.' We are more than happy for Wilmar to market the sugar provided they are prepared to compete and provided they are prepared to offer growers a choice as MSF did.

I am conscious of time, but while I am going I might as well keep going in terms of why we see the need for legislation with commercial arbitration. The simplest way to explain that I think is to try to explain to you how negotiations will take place if growers have not got access to commercial arbitration with Wilmar. Negotiations have already started and it is quite easy for Wilmar to simply say no to any issue that is important to growers but they see as detrimental to their operations. The Law Society this morning made mention of the industry being in a unique situation. Without elaborating on it, they were probably referring to the connection we have with raw sugar pricing, but I think they were also probably referring to the unique agronomy of growing sugar cane and why Wilmar can exploit that situation in negotiations. Some 75 per cent to 80 per cent of the 2017 crop is in the ground now. By April, in our area anyway in the Burdekin, of 2016 there will be all but 100 per cent of the crop in the ground. Growers will be fully committed. They have expended the money to grow the crop, and that is more than 12 months before there is a cane supply agreement required for that cane to be crushed. So Wilmar simply has to delay, procrastinate, say no until that time and from that point on once the growers are fully committed it gets increasingly harder for the growers not to accept what Wilmar is offering. The joke going around in our area is that once that period arrives if the growers are not prepared to sign the contract their bank managers will.

That is why we need commercial arbitration so that at a point before the growers are fully committed we can refer the issues that we cannot agree on to commercial arbitration. Growers are not so naive to think that they can be unrealistic in their expectation and their demands and go to arbitration and get a win. As a matter of fact, we see commercial arbitration quite differently than the Sugar Milling Council do. We see it as an incentive to try to negotiate, because you would have to be very naive to believe it would go to arbitration and you would always get a win on it. But, nevertheless, win, lose or draw, because we are saying it has to be done within certain time frames, it would give the growers some certainty before they have to fully commit to the next season's crop. It would also give the millers certainty. I might just leave it at that and let Julie go down the legal path.

Ms Artiach: Member, you were asking me a question as to what our concerns were in relation to the bill. Predominantly, it is ambiguity. Ambiguity in fact works against us because, as you are aware, the parliament does not resolve the issue of interpreting the legislation; the court process does. So if we go to assert a right that we say the legislation provides us and it is challenged by a miller, where we will end up is before the courts seeking an interpretation of the legislation. If we can resolve any issues of ambiguity now by amendments to the bill, that is for us a far better way of dealing with the situation than it becoming a long, drawn-out and very expensive court process.

Mrs GILBERT: Do you have a set of amendments?

Ms Artiach: The amendments ideally would be the proposed draft sugar regulation that we attached to our submission to the committee. Of course, that is the wish list, if I could put it that way. I can certainly address the areas of concern in relation to both sections 33A and 33B, if the committee is interested in hearing that. I am going to stick to only those couple of points that we say are substantive. For example, proposed section 33A(5) talks about the tribunal appointed for the arbitration 'may' decide the dispute, which gives an option. It 'must' decide the option. That is a very simple example of how wording can create difficulties for us.

In relation to section 33A, which is all about the arbitration process, there are two fundamentals for us that must be addressed. One is the time of the arbitration process. Unchecked, an arbitration process might take three months, six months, 12 months, 18 months. That is not an acceptable position for growers. As you are aware, under the Sugar Industry Act a grower cannot supply cane to a miller without a cane supply agreement. Therefore, there has to be some certainty in getting a resolution. In that regard, in our proposed regulation we have chosen a six-month period. It is based on legal experience that we nominated a six-month period rather than a three-month period.

The second point is that the arbitration process needs guidelines. It just cannot simply be a reference to the Commercial Arbitration Act. Basically, the Commercial Arbitration Act repeats the court process and it gives the arbitrator an enormous amount of discretion. The process that we believe should be followed is that there are guidelines, so again it maintains the arbitrator's discretion as in the Commercial Arbitration Act, but these are guidelines that the arbitrator should take into account when they are setting out the timetable under which the arbitration is going to proceed. In

that regard, and it is set out in our submission, we refer to the opinion of Mr Bret Walker SC. He was instructed or retained by the New South Wales government to review the arbitration process in the New South Wales mining act.

Basically, there are significant similarities between the financial resources and sophistication of a mining exploration company and a landholder as there is with an agribusiness company the size of Wilmar Sugar and the growers. In that regard, we thought it was extremely relevant to look at the experiences that landholders in New South Wales had had in relation to trying to negotiate access agreements with mining exploration companies. That legislation also sets out an arbitration process. What Mr Walker was finding was that the process was blowing out to 18 months, which was not an acceptable position. He set out something like 31 recommendations, and the New South Wales government accepted all 31 recommendations in relation to guidelines that needed to be put in place with respect to the arbitration process. What I am suggesting to the committee is that we learn by someone else's mistakes. Instead of just having this open-ended slather in relation to the arbitration process, we should assist the arbitrator and put in some guidelines.

The other thing is—and much of the concern—who is going to be the arbitrator and what pool is he or she picked from? Again, in the regulation that we attached to our submission we have sought to define that pool. We think that is very important, particularly given the characteristics of what we would be looking at. To not define the pool would make it very difficult for the parties to agree on an arbitrator. They are the fundamentals in relation to section 33A.

Section 33B looks at what should be the terms and conditions of a supply contract, but predominantly it focuses on the choice of marketer. Section 33B(2) (a) predominantly looks at trying to link the payment for cane to the ICE 11 price, or the sale of sugar, in other words. I do not believe that legislation should be defining or limiting what a grower can be paid for the cane. It is assuming that what the grower is selling is nothing more than cane. The value is in the sugar. It is more a matter of commercial negotiation, rather than it being prescribed by legislation. I think it was mentioned earlier in one of the questions from the committee that there could be a value-adding to the value of the cane that we have not even thought about at this point in time. Legislation should not be restrictive in relation to what a grower can and cannot get paid. In that regard, it is not a term in the format that it is currently worded that I would find would be beneficial.

The other predominance—and I think I mentioned this earlier—was section 33B(2) (d). That clause basically says that the mill owner has the arrangement with the marketer. It is not a position that we think should be the case. It should be the grower who controls the relationship with the marketer, not the miller. Of course, the subsequent clause, which is subclause (e), talks about the choice of marketer. Again, the grower should have the choice via ownership of the sugar. If you own the sugar then it is a matter for you to sell the sugar, rather than it being by agreement with the miller as to who the marketer is and if there is no agreement the grower chooses. It should be a lot more definitive a process. It is the grower who is negotiating the commercial terms in relation to the relationship with the marketer, rather than the miller's involvement in it. Therefore, it should be quite distinct. I know I have been quite complicated in relation to the issues that we have with the proposed bill.

CHAIR: That has actually been very helpful, thank you. That does bring our session to a close, though. Again thank you both so much. Being the last act of the day is not always easy, but I think I can speak on behalf of the whole committee when I commend you for the succinctness and articulateness of what you shared, so thank you. I declare the hearing closed.

Committee adjourned at 4.39 pm