



17 July 2015

Ms Jennifer Howard MP
Chair
Agriculture and Environment Committee
Parliament House
George Street
Brisbane Qld 4000

By e-mail: aec@parliament.qld.gov.au

Dear Ms Howard

The Australian Sugar Milling Council (ASMC) is the peak policy body for Australian sugar milling companies, representing over 95% of Australian raw sugar production. This letter is supported by ASMC's six member companies:

- MSF Sugar Limited
- Isis Central Sugar Mill Company
- Bundaberg Sugar Ltd
- Wilmar Sugar Australia Ltd
- Mackay Sugar Limited
- Tully Sugar Limited

The ASMC is responding to your Committee's invitation to make a submission regarding its examination of the Private Member's Bill *Sugar Industry (Real Choice in Marketing) Amendment Bill 2015* that was introduced into the Queensland Parliament on 19 May 2015. Our detailed submission is attached for the Committee's consideration.

The proposed amendment of the Sugar Industry Act 1999 according to its proponents suggests that it would provide Queensland cane growers with legislated powers to choose who markets their sugar; and to provide greater transparency in negotiation and arbitration processes.

There are a number of matters with relation to this that the Milling Council would like to highlight to members of the Committee as follows:

- It is the view of the Milling Council that there is no economic or commercial evidence or analysis that shows a need for intervention through government regulation into a commercial and competitive sugar industry.
- In his supporting statement to the House when introducing the Bill, Mr Shane Knuth MP suggested that the Bill was a "collaborative effort of the farmers and industry bodies that are the sugarcane industry". The sugar industry can only survive and prosper if the entire supply chain is viable and profitable. There has been no consultation or collaboration with the milling sector in the development of this Bill. Further, implementation of this Bill would be highly injurious to the milling sector; immediate consequences would be the threatened viability of at least one sugar mill in Queensland, and the potential associated loss of hundreds of jobs. Longer



term consequences would see major negative pressure on investment in the milling sector, and likely slow demise of the industry.

- The KAP Party announcement after the Bill was introduced incorrectly stated the millers were breaking away from industry pricing structures. This is false. All millers have committed to retaining the existing Cane Price Formula. The price a farmer is paid for sugarcane is linked to an executed global raw sugar futures price. This is not changing. In this context, the draft legislation has been tabled to be considered by members of Parliament based on an incorrect premise or lack of understanding of how pricing and marketing operates.
- De-regulation in 2006 has given the Queensland sugar Industry the flexibility to better respond to the challenges posed by global market competition. It has provided the opportunity for individual milling regions to be more commercially responsive and better able to take advantage of niche market opportunities as they arise.

The Milling Council respectfully suggests to the Committee that sending the industry back in time to a regulated, moribund, one-size-fits all straight jacket, would have immediate detrimental consequences and would lead to the demise of the industry over time.

The Milling Council welcomes the opportunity to make this submission to the Committee and should you have any further questions or wish to discuss the content of this submission further, please contact me on [REDACTED] or at [REDACTED].

Yours sincerely

Dominic V Nolan
Chief Executive Officer



Submission to the Queensland Parliament Agriculture and Environment Committee

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Executive summary

This executive summary provides an overview of the Australian Sugar Milling Council (ASMC) submission including a synopsis of the milling sector's key concerns that any regulatory intervention is not necessary given there is no evident market failure.

De-regulation was undertaken after extensive Government review and economic analysis

From September 1995 to 2006 there were more than 20 reviews and inquiries initiated and undertaken by state and federal governments and industry, with independent economic analysis examining the sugar industry's viability, the potential for deregulation, and the move to non-statutory marketing arrangements. This included the landmark 2002 Hildebrand Report, which was delivered to the Honourable Warren Truss MP, then Minister for Agriculture.

There are concerns about 'change', but *there is no economic or commercial evidence or analysis that demonstrates market failure and justification of Government intervention.*

De-regulation has made the industry stronger

De-regulation was enacted because the industry was in decline and its viability was at the precipice. The move to a de-regulated market, whereby individual mill and growing regions were given autonomy to deliver their own commercial arrangements for the supply and crushing of cane and sale of raw sugar, delivered almost immediate improvements to the industry.

De-regulation quickly delivered ground breaking innovation, with the introduction of forward pricing and price and currency risk management tools, a concept now embraced by approximately 70 per cent of Queensland cane growers. Most in the sugar industry would agree that access to forward pricing has been the most important change in marketing and pricing for the sugar industry in memory.

'Grower Economic Interest', 'Grower Choice', and ownership of sugar

Sugarcane growers sell cane to mills. Mills take delivery and liability for the sugarcane at designated delivery points, generally at or near the farm, arrange and for the most part pay for transportation to the mill. Cane growers are paid per tonne of cane. The mills process and transform the sugarcane into a new product, raw sugar. At no stage is a cane grower an owner of processed raw sugar. Grower economic interest is a new term in the Raw Sugar Supply Agreement between mills and Queensland Sugar Limited to achieve a specific marketing mechanism that identifies the relative portion of sugar to which growers have price risk exposure. It has become confused with ownership of sugar.

To introduce a new concept whereby sugarcane growers have a direct influence on how sugar mills choose to sell the mills' raw sugar is a direct impact on the legal title of sugar.

The sugar industry already has transparent commercial arrangements

The Australian sugarcane supply chain has a highly developed, clear and transparent system of documentation and contractual arrangements between growers and mills (cane supply agreements or CSAs).

This system includes collective bargaining approved under existing regulation. ***There is no market failure or lack of transparency or lack of clear information in the contractual relationship in the sugarcane supply chain.***

The economic interest of mills and growers is aligned

There is a misinformed perception that sugar mills are able to wield inequitable power over growers in terms of commercial arrangements such as cane supply agreements. This perception is contributed to by the premise that mill-owners and growers in a region have separate pathways to profit and sustainability.

This is often based on irrelevant comparisons with farm gate industries such as cattle and dairy. Mills compete for sufficient cane supply in some instances with each other, and in all instances with other crops and agricultural pursuits, and other land uses.

The Hildebrand report considered and commented on the interdependence of the supply chain, noting: ***“Millers and farmers are therefore jointly reliant in each mill area for profitable outcomes, and each must be profitable for economic sustainability of the mill area.”***

A move to pre-contract arbitration would be an uneconomic and retrograde step for the industry

Arbitration was removed from the sugar industry based on extensive expert economic and market analysis. The CIE Report in 2002 found that the arbitration provisions prevented normal competitive processes, supporting the status quo, and restricting the more progressive growers.

Arbitration prevented supply chain optimisation, while being unnecessary, due to other general dispute resolution mechanisms being available.



1 Introduction

1.1 The Australian Sugar Milling Council

The Australian Sugar Milling Council (ASMC) is an advocacy-based organization, operating in the best interests of Members and the broader Australian sugar industry. ASMC works in the pre-competitive environment on a range of policy and programs that impact the profitability and sustainability of mill businesses and the Australian sugar industry more broadly. There are normal commercial tensions that exist between mill companies, and between participants in the sugar supply chain.

Members of the ASMC are: MSF Sugar Limited; Isis Central Sugar Mill Company Limited; Bundaberg Sugar Ltd; Wilmar Sugar Australia Ltd; Mackay Sugar Limited; and Tully Sugar Limited. Collectively, these companies account for around 95 percent of raw sugar production, and 100 per cent of raw sugar exports. There are a range of commercial matters that ASMC Members do not collectively discuss as they are, in some instances, direct competitors.

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

1.2 Deregulation of the Sugar Industry

As outlined in the ASMC submission to the recently completed Federal Senate Inquiry, the Queensland sugar industry went through deregulation over a protracted, complex process in the years leading up to 1 January 2006. Prior to this, the industry was characterised by inefficient, anti-competitive practices that restricted the capacity of the industry participants to respond to the difficult and challenging global market conditions, and day to day challenges presented by weather and disease.

Sugar mill businesses, including many that were owned by sugarcane growers at the time, and the Australian Sugar Milling Council, were major proponents for, and participants in, the deregulation process, which was conducted in close concert and negotiation with CANEGROWERS, and the Queensland and Federal Governments.

The Australian Sugar Milling Council does not support any moves to re-regulate the industry. There is no evidence of market failure that warrants sugar industry specific government intervention or regulation.

In particular, the Australian Sugar Milling Council does not support a reversion to the pre-deregulation era of compulsory arbitration standards that abrogated responsibility for reaching commercial outcomes based on good faith negotiation between suppliers and

processors to third party arbiters. The Queensland sugar industry spent tens of millions of dollars in unproductive preparation for, and execution of, disputes on cane price and other commercial elements of contractual negotiation in the decades leading to deregulation. This was indicative of the business culture that pervaded the industry leading up to deregulation. A robust, commercially based dispute resolution mechanism is highly desirable in a modern contractual arrangement, however compulsory arbitration does not have a role in the negotiation of those contracts.

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

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

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

A key influence of the final moves to full deregulation was the Hildebrand Report, received by then Federal Minister for Agriculture, the Hon Warren Truss, in June 2002.

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

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

The Independent Assessment:

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

The Independent Assessment also noted:

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

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

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

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

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

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

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

Attachment 1 provides an outline of the key events leading to deregulation from 1982 to 1995, and Attachment 2 covers key events from 1995 to full deregulation in 2006.

2 The concept of 'grower economic interest' and 'Grower Choice'

The current Raw Sugar Supply Agreement, a voluntary commercial contract between a mill company and QSL, includes the terms 'Supplier Economic Interest' and 'Grower Economic Interest'.

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

These terms are a new construct in the past three years (SEI was first introduced in 2012 and GEI in 2014) to achieve a specific marketing mechanism in the existing RSSA. The key in the definition of these terms is the relative portion of sugar to which mills and growers have price risk exposure.

These terms have become confused with the very different concept of ownership of sugar.

Sugarcane growers sell cane to mills, delivered to sidings or nominated collection points. Mills arrange transport from the collection point to the mills, at mills' liability and for the most part at mills' cost. The mills process and transform the sugarcane into a new product, raw sugar. Mills arrange and pay for transportation of their raw sugar to bulk sugar terminals for storage ahead of domestic or export sales.

To introduce a new concept whereby sugarcane growers have a legislated direct influence on how sugar mills choose to sell the mills' raw sugar creates a direct impact on the legal title of sugar. If such a proposal was to be implemented it would alter the fundamental basis of the existing sugar supply chain, and cause a re-examination of the building blocks of the 100-year-old cane payment formula.

A unilateral change to the legal title of raw sugar was the underlying theme of the report commissioned by CANEGROWERS from September 2013, *Marketing Options for Queensland's Raw Sugar Industry*.

Implementation of a legislated 'growers choice' model can only be interpreted as altering the legal title of raw sugar away from sugar mills.

3 Contractual Arrangements in the Sugarcane Industry

The sugarcane supply chain has a highly developed, clear and transparent system of documentation and contractual arrangements between growers and mills (Cane Supply Agreements or CSAs). Supplementing the Cane Supply Agreements are Pricing and Marketing agreements that allow growers to participate in forward pricing pools and arrangements, either as schedules or separate agreements to the CSAs.

The negotiation of Cane Supply Agreements typically occurs between identified bargaining agents on a mill area basis, with growers participating in a collective bargaining process.

The CSAs typically roll over each year without significant changes because they include a wide range of provisions as would be expected from a mature supplier/processor relationship and because negotiations are not simple reflecting the relative bargaining power of the collectives and the mill company.

There is no market failure, or lack of transparency, or lack of clear information in the contractual relationship in the sugarcane supply chain as evidenced in the explanation of current arrangements below.

3.1 Pre-1999

Amongst significant changes that were introduced in the Queensland Sugar Industry Act of 1999 was the move away from Awards published in the Queensland Government gazette that established the terms and conditions covering the supply and crushing of sugarcane in Queensland. These awards had originally been determined by the Central Sugar Cane Prices Board for each mill area before transitioning to being determined annually by mill area negotiating teams from 1991, and were the precursor to the current individual cane supply agreements that must exist between a sugar mill and growers for their cane to be processed.

These Local Board Awards, as they were known, had developed over a long period of time and contained provisions required by the Sugar Industry Act. Included in these Awards were terms and conditions covering:

- The start date for the crushing season;
- Terminating the crushing;
- Pools for payment for cane;
 - The Pools system reflected the amount of sugar for which a market existed and a purchase agreement was in place (No. 1 Pool) or sugar for which a market had to be found and a price established at the time of sale (No. 2 Pool). No. 1 Pool was effectively guaranteed (in some cases this also included the price at which the sugar would be sold and in other cases the mechanism for pricing would be included in the forward sales agreement between the buyer and seller of the sugar). Because of the nature of the No. 2 Pool, this was seen as the 'risk' pool and depending on market conditions could return significantly less than the No. 1 Pool price and on some relatively rare occasions significantly higher.

- Farm peaks (prior to 2000, the industry was regulated with a system of assignments or cane production areas that determined how much cane or sugar a mill could crush or make and the land from which this cane could be supplied) to be paid for from No. 1 pool proceeds. Over peak cane/sugar went into the No. 2 Pool;
- Payment for cane (including the cane payment formula);
- Analysis of cane;
- Consigning of cane;
- Suspense cane;
- Harvesting groups;
- Estimates and allotment;
- Points of delivery / deliveries;
- Haulage or cartage allowance;
- Misappropriation of bins;
- Weighing of cane;
- Burnt cane;
- Extraneous matter; and
- Disputes mediation.

3.2 Current arrangements

A remaining provision in the Sugar Industry Act is that supply contracts must be in place for cane to be supplied by a grower for processing by the miller as follows:

Supply contract

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

The critical interdependent relationship between sugar mills and their growers is formalised through these contracts known as a Cane Supply Agreements (CSA).

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

At a local level growers either become part of a collective to negotiate the terms and conditions of individual cane supply contracts, or negotiate directly with the mill on their own behalf, to form an individual contract.

In essence, the CSA or supply contract provides certainty for mills that sugarcane grown on nominated land will be sold to the mill for crushing and at the same time provides certainty for growers that sugarcane grown on nominated land will be purchased by the mill for crushing.

The CSAs are typically rolling contracts ranging from three to five years in duration. The longer term of the contracts has evolved to provide greater certainty for mills and their growers along with opportunities for forward pricing that is underpinned by the supply contracts.

Apart from the provisions in the predecessor Local Board Awards covering payment pools and farm peaks, they are similar in that they provide for:

- Determination of the starting date for the crushing season;
- Payment for cane;
- Arrangements for the harvest and transport of cane to the mill;
- Delivery points for the cane where the risk and title in cane passes to the mill from the grower;
- Weighing the supplied cane;
- Sampling and analysis of the juice from the cane to determine CCS;
- Mapping of the blocks on farms from which cane is harvested and supplied to the mill;
- Harvesting group allotments to ensure growers receive equitable access to the crushing capacity of mills;
- Consignment information about the cane supplied including block and paddock information and the variety and class of the cane;
- Dispute resolution - in general the agreements describe a stepped process that involves mediation between the parties with scope to move to arbitration if the dispute can't be settled through the mediation process - generally the mediator will not be the arbitrator and all agreements have provision for an independent appointment of a suitable arbitrator e.g. requesting the President of the Queensland Law Society to appoint a suitable arbitrator.

Other matters included in the modern day contractual arrangements that are covered by some but not all cane supply agreements include:

- Cane quality provisions and encouragement around good farming practices;
- Planting and productivity incentives to encourage more cane supply (generally on a collective basis e.g. all growers share in an additional payment for cane if a targeted tonnage for the mill area is reached), but planting incentives are also paid separately by many mills to individual growers (these schemes are generally outside the scope of CSAs);
- Cartage allowances paid to growers in recognition of extra distance that some growers have to haul cane to reach agreed delivery points;
- Season length - a variety of approaches that range from agreed number of days based on whole-of-mill area crop size and historical wet weather profiles, to CCS underwriting arrangements that can be applied should a season extend beyond the agreed length and growers are found to suffer an adverse impact in terms of the CCS consideration in the cane payment formula.

The long-standing virtually unchanged arrangements between mills and their growers that continue to be agreed in today's CSAs are a clear demonstration of a mature supplier/processor relationship that works.

The commercial, functional operation of these Cane Supply Agreements clearly demonstrates there is no need for government intervention in the contractual arrangements between mills and growers.

3.3 Cane payment formula

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

All other growers are paid under the following longstanding formula.

$$P_c = 0.009 \times P_s \times (CCS-4) + \$0.608^*$$

Where:

P_c = price of cane (what the grower receives)

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

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

This formula recognized the conditions existing at that time when the CCS of cane was 12 and the mills Coefficient of Work (COW) was around 90. (COW is a measure of mill performance compared to the CCS). The formula provided approximately two-thirds of revenue from sale of raw sugar to growers at 12 CCS and 90 COW.

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

The actual payments for sugarcane made by millers to growers are calculated by the cane payment formula which takes into account the CCS content of the growers' sugarcane combined with the pricing decisions taken by growers. Up until 2006, this price of sugar was determined centrally by QSL (or its predecessors).

Growers now have a range of mechanisms through which they can manage their exposure to sugar price and currency risk that will ultimately be used in their cane payment formula. These include through participation in various mill or QSL pooling arrangements or through agreement with their mills to have their sugar price directly or indirectly hedged via derivatives.

3.4 Sensitivity Analysis of Components of the Cane Payment Formula

Each of the components of the Cane Payment Formula and the sugar price determination were discussed in the ASMC Submission to the Senate Inquiry on Marketing Arrangements. An extract outlining this discussion is provided at Attachment 3.

The variable components of the cane payment formula are managed through normal commercial arrangement between growers and mills.

The CCS measurement and allocation to growers is undertaken by the mill, often with some form of audit process or oversight by grower collectives.

The Sugar Price is made up of two components:

- the ICE11 component, determined by pricing decisions of the cane grower, independent of - and with no impact on - the mill company pricing decisions; and
- the net result of marketing costs and premiums.

Growers' access to pricing tools to manage the ICE11 component is managed either through marketing and pricing agreements separate to the cane supply agreements, or within the cane supply agreement.

Payment of the net result of marketing costs and premiums is managed under the same arrangement, via net proceeds to pool arrangements.

Attachment 4 provides a sensitivity analysis of the various components of the net sugar price. The analysis looks at three variable elements of the cane payment formula that directly impact grower revenue: CCS plus the two elements of net sugar price - ICE11, and net result of marketing costs and premiums.

The sensitivities around marketing premiums move through a range of \$5 per tonne of sugar movement, the range identified by QSL's CEO¹ as a typical range for the net outcome of marketing premiums and costs at the Senate Inquiry public hearings in Mackay.

The range of impact on the payment made per tonne of sugarcane is from \$0.08 per tonne at a \$1.00 net premium on sugar price, through to \$0.40 per tonne sugarcane for a \$5.00 net premium on sugar price.

CCS has a much greater influence on the price of sugarcane than marketing premiums, the difference between a CCS of 13 and 15 is over \$8 per tonne of sugarcane.

For ICE11 movement, the average price of the prompt futures contract each year from 2010 to 2014 varied from \$406 per tonne sugar, to \$533 per tonne sugar. Applying this to the sugar price component in the cane payment formula translates to a movement of up to \$10.29 per tonne of sugarcane for a grower.

While the marketing premium is an important element of the payment made to growers for sugarcane, it is vastly outweighed by the impact of variation in ICE11 movement and CCS variability.

There is no reason why the marketing premium element of the payment for sugarcane should be subject to special government intervention rather than continuing to be managed by normal commercial means.

¹ Hansard, 12 March 2015, Senate Inquiry into the current and future marketing arrangements for the marketing of Australian sugar, Public Hearings, Mackay

4 Profitability and Sustainability of Sugarcane Growers and Mill Companies

There is a claim in the Explanatory Notes relating to the Sugar Industry (Real Choice in Marketing) Amendment Act 2015 of an imbalance in market power between mill owners and growers. This builds on a perception that sugar mills are able to wield inequitable power over growers in terms of commercial arrangements such as cane supply agreements.

This perception is contributed to by the premise that mill-owners and growers in a region have separate pathways to profit and sustainability.

The Federal Government commissioned-2002 report by Clive Hildebrand *Independent Assessment of the Sugar Industry* recognised this by stating in the report that the basic profit centre of the industry is the mill area depicted as

$$\textit{Profit centre} = \textit{mill area} = \textit{farms} + (\textit{harvest} + \textit{transport}) + \textit{factory}$$

Hildebrand correctly points out that *“there is no market for sugarcane, only for products of its manufacture. The marketable raw sugar product results from joint efforts of both farmers and miller. Miller and farmers are therefore jointly reliant in each mill area for profitable outcomes, and each must be profitable for economic sustainability of the mill area.”*

This drew to the conclusion that *“there is no economic alternative to constructive cooperation between farmer and miller.”*

A further conclusion that could be made is that there is almost perfect alignment of the interests of a mill region’s growers and the mill-owner.

Again drawing from the Hildebrand report,

“Farms and mill must be geographically co-located: sugarcane is a giant sweet grass that once cut must be treated within 16 hours or its sweetness and therefore its commercial value deteriorates. For this reason farmers and the nearby mill are wholly co-dependent. This can be summarised as:

- *Cane cannot be economically transported beyond a time-and-cost-limited geographic radius;*
- *On the one hand, farmers seek to ensure that a mill will accept the cane they will grow and harvest over the season for optimum farm proceeds, to a schedule that averages crop and climate event risks between farmers (“farmer equity”); and*
- *On the other hand, a mill seeks to ensure that cane farming is the most profitable use of land in its feeder area, and that its milling capacity is adequate to ensure cane continues to be grown in sufficient quantity by its supplying farmers, in order for the mill to remain economically viable.”*

This section of the Hildebrand report contained some further insightful commentary presenting the notion that *“A profit centre should be able to stand alone”*.

Hildebrand cautioned that *“this most important need for profit centres to stand alone is compromised if the first loyalty of farmers or miller in a mill area is to State or corporate based farmer or miller sectional-interest organisations, as sometimes occurs.”*

He went on to suggest that *“first loyalties of all parties should be to their mill area, not to wider sectional bodies. Mill areas are responsible for their own survival, not for that of all other mill areas. There should be no artificial “battle within” - the real “battle” is with the “competitor without”, especially overseas competitors, as more than 80% of Australia’s raw sugar production is exported.”*

Mill companies and regional grower collective bargaining agents must be allowed to commercially negotiate cane supply agreements, including raw sugar marketing arrangements. While the threat of regulatory intervention in support of growers exists, there is little incentive for grower organisations to participate in and conclude a reasonable commercial negotiation.

5 Arbitration

Including pre-contractual arbitration in an amended Sugar Industry Act would be a strong move back to industry regulation. Deregulation of the sugar industry was crucial in improving productivity along the supply chain and providing an industry with the commercial flexibility to be internationally competitive. It is described in detail in the ASMC submission to the *Senate Inquiry into the current and future arrangements for the marketing of Australian sugar*. The deregulation process included many inquiries, reviews and task force reports, industry assistance packages and legislative changes to federal and state laws. A prominent component of the deregulation was the removal of compulsory mechanisms for dispute resolution and mediation with 'final offer' arbitration where mediation failed to find an agreement. The reviews in the lead up to deregulation found that arbitration was blocking productivity gains and were a deterrent to normal / healthy commercial competitiveness, resulting in Australian sugar not being able to compete globally.

The Hildebrand Review in 2002 commented that '*Arbitration is an issue*' resulting in a lack of genuine negotiations and the use of 'final offer arbitration' as a default situation leading to 'an inferior outcome'.

A report by the Centre for International Economics (CIE) commissioned by the Queensland Government in 2002 found that the arbitration provisions prevented normal competitive processes, supporting the status quo and restricting the more progressive growers. Arbitration also prevented supply chain optimisation, while being unnecessary, due to other general dispute resolution mechanisms being available.

The ASMC does not support a return to a less innovative and less productive sugar industry, through compulsory pre-contractual arbitration.

6 Financial Returns for Growers and Mills

The sugarcane industry is unique in Australian agriculture in terms of the mutual reliance of regional producers and processors on each other's viability and sustainability. There is no greater inter-reliance and regional cooperation required for producers and processors than that which exists for the sugarcane industry.

This is evidenced by the contribution of mill companies to sugarcane productivity and development, in the transportation of sugarcane from farm to sugar mill, and in the reliance of mills on throughput of sugarcane supply.

6.1 Sugarcane Productivity

Sugar mill companies contribute more than half of the industry funds towards Sugar Research Australia (SRA), the industry owned research, development and extension organization. Mill companies agree that the highest priority for SRA is improved industry productivity predominantly through new sugarcane varieties and plant technology (66% of SRA research funding is directed to four key focus areas related to farming).

Increased planting by sugarcane farmers will only eventuate through maintaining and enhancing return on investment in growing sugarcane relative to other opportunities. In addition to the major investment in RD&E (milling companies contributed more than half of the \$19.5 million from industry to SRA in 2013/14), almost all mill companies offer some form of planting incentives for either existing or new growers to foster an expansion in the area under sugarcane.

In addition, milling companies are strong contributors to industry owned productivity service organisations investing approximately \$4 million annually. These organisations target the enhancement of productivity in the farming sector of the sugar industry as identified in the following selection of mission statements/objectives:

- (HCPSL) *"Herbert Cane Productivity Services Ltd's core business is to enhance the productivity of the sugar industry. Its mission is to improve the quantity and quality of sugar cane grown in the Herbert Valley, in an environmentally sustainable and economically viable manner."*
- (MAPS) *"Our mission is to enhance the profitability and sustainability of the sugar industry through innovative productivity programs and plant protection services. We are the largest organisation of this type in Australia."* (MAPS - Mackay Area Productivity Services)
- (MCPS) *"The Maryborough Cane Productivity Services is a results-focused organisation that has a goal to increase the productivity, profitability and resilience of cane farms in the Maryborough cane supply area."*
- (Bundaberg Sugar Services) *"...to enhance the productivity of the sugar industry by increasing the quantity and improving the quality of cane produced by crops grown in the Bundaberg district."*

A scan of other agricultural industries including wool, pork, cotton, grains, meat and livestock (MLA) reveals that apart from MLA (approximately 6% of revenue), processors

make very little contribution in cash terms to industry research and productivity efforts to enhance suppliers productivity.

The sugar industry in Australia is different to other rural industries. That mill companies contribute such significant funds to farm productivity in RD&E and productivity organisations is testimony to the inter-reliance of the growing and processing sector that does not exist in any other rural industry in Australia.

6.2 Transportation of Sugarcane

In general, sugar mills pay for transportation of sugarcane on cane railways from agreed delivery points to mills. This can be directly from the farm, or from cane rail sidings or road transport delivery pads/sidings. In many cases where this delivery point is beyond a certain distance, cane supply contracts may provide for an additional payment of a 'cartage allowance' by the mill to growers. Apart from some instances in the dairy industry (nominal gate charges for milk pick-up), bearing the cost burden of bringing the primary product to the factory for processing is unique to the sugar industry. The upside is that this cane transport function is highly organized and ensures that sugarcane is processed in a timely fashion limiting any deterioration in terms of quality between harvest and processing. The average 'cut to crush' period across the Queensland industry in 2014 for a crop of 32.36 million tonnes was 10 hours.

The sugar industry is different to other rural industries. That mill companies arrange (and pay for) the transportation of sugarcane to mills is testimony to the complex logistical challenge and need to rapidly move large volumes of low density product in a short period of time to a mill for crushing before the cane substantially deteriorates in quality.

6.3 Diversification of sugarcane farms

While sugar mills can only process sugarcane, growers are able to diversify more into other crops and in some cases into other land uses (including urban and industrial). A small change in the land under sugarcane or in the productivity of cane land can have a significant impact on the profitability of a sugar mill. The logistics and costs of transporting sugarcane to the mills is the responsibility of the milling company, so fragmentation of cane land (through land use change or other crops being grown) increases the costs for the mill.

Diversification of sugarcane farms to include legume and other green manure crops is actively encouraged in sugarcane production systems to maintain soil health and enhance sugarcane productivity. Diversification is also a good option for farmers to manage financial risks associated with the price of sugar, and therefore the price they are paid for cane, being inextricably linked to the global market. However, loss of land to long term crops such as perennial horticulture, forestry, and animal production is more common in areas which have suitable soils and climate and that have existing processing and storage infrastructure for alternative crops. In this way, mills face constant competition for sugarcane, with other land uses.

Mills have traditionally responded in a number of ways, including providing incentives to encourage new farmers into growing sugarcane, encourage existing farmers to expand sugarcane production, and to increase the yield of the land under sugarcane. Examples of incentives provided by milling companies include grants and low interest loans to farmers to expand land under cane, purchasing land (such as failed MIS forestry land, cattle properties and banana plantations) and converting it to sugarcane production, purchasing land for lease to farmers to grow sugarcane, and low interest loans for improved irrigation equipment. Mills also purchase land and farm it to secure sugarcane supply for the mill in the long term. These expansion options reduce the risk of fragmentation and loss of sugarcane land to other uses. While mill companies will continue to invest strategically in sugarcane production, the overall contribution by mill companies is still only in the order of about 6% of total Australian production.

7 State and Commonwealth Acts relating to sugar industry and competition

In addition to the protection to both the grower and miller afforded by the interdependency of the two sectors, and demonstrated by the high contribution of mills to the production supply chain and to productivity through R&D support, there is state and commonwealth legislation that provides legal frameworks for the negotiation of cane supply agreements between growers and mills.

The ASMC submission to the Senate inquiry into the current and future arrangements for the marketing of Australian sugar outlines legislation, including the *Competition and Consumer Act 2010 (CCA)* and the *Queensland Sugar Industry Act 1999* with subsequent amendments that underpins these negotiations. The March 2015 final report of the Harper Review of the CCA reaffirms that the existing provisions of the CCA are protective of the rights of growers in their dealings with mill companies.

The mills' decision to market their own sugar is an expression (and enhancement) of competition - they choose to sell their sugar themselves or through another agent. Further, the description of mills being monopsonistic and having the capacity to drive down the price they pay for sugarcane over time is inaccurate - mills don't set the price for the sugarcane; it is determined through the cane payment formula and set almost entirely by the global price of sugar (ICE 11).

Conclusion

With both Federal and State Governments strongly promoting a platform of red tape and associated cost reduction, there is no justification for reintroducing government intervention in the Queensland sugar industry through draconian measures that deliver pre-contractual arbitration and impinge on mill company ownership of sugar.

There is no demonstration of market failure in the sugar industry that is not addressed through the existing regulatory framework that all Australian businesses operate within, including the Corporations Act and Consumer and Competition Act.

The Queensland sugar industry is unique, with one of the strongest and most transparent set of commercial arrangements of any sugarcane industry in the world, rivalling any other agricultural industry. Price discovery for sugarcane growers is almost entirely independent of sugar processors, and almost entirely without the competition for margin that exists in most other supplier / processor relationships in agriculture.

Governments must allow normal commercial negotiation to reach natural conclusions in the shaping and operation of marketing arrangements for raw sugar and avoid sending the Queensland sugar industry back to the days of reliance on others to adjudicate these normal commercial negotiations.



THE QUEENSLAND SUGAR INDUSTRY REGULATORY REFORM OUTLINE 1982 - 1994

1982

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

1983

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

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

1984

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

1985

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

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

- End 1985 season Qunaba Sugar Mill closed.

1986

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

1987

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

1988

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

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

- End 1988 season North Eton mill closed.

1989

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

1990

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

1991

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

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

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

1992

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

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

- May 1992 - Minister Crean confirmed tariffs would reduce to \$55 a tonne from 1 July 1992.

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

1993

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

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

1994

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



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



THE QUEENSLAND SUGAR INDUSTRY REGULATORY REFORM OUTLINE 1995 - 2006

- **September 1995.** The Sugar Industry Review Working Party (SIRWP) was established by the Federal and Queensland governments to review the regulatory arrangements of the industry and the need for a tariff on raw and refined sugar. In accordance with the objectives, the working party was required to develop a balanced package of recommendations which would facilitate the sustainable development of an internationally competitive, export-orientated industry, which would benefit both the industry's participants and the wider community. The review was to be undertaken in the context of National Competition Policy.
- **Late 1995** - CANEGROWERS and the Australian Sugar Milling Council engaged **The Boston Consulting Group** to assist in assessing a number of key regulatory arrangements and structures that would deliver the best outcome for producers. The report was considered by industry organisations in December 1995.
- **During 1996** amendments were made to the *Sugar Industry Act* to facilitate the implementation of recommendations arising out of the 1994 Productivity/Cane Payment Package (see attachment 1 for details), including new dispute resolution arrangements (including final offer arbitration) in forming supply agreements between growers and millers.
- **26 November 1996** - Report of the Sugar Industry Working Party released "Sugar - Winning Globally" presented to Federal and State Ministers for Primary Industries. Arising out of the 74 recommendations, nine working groups were established to give effect to recommendations concerning legislative changes and three further reviews were to be conducted. An **Industry and Government Steering Committee** was established to oversee the work of the committees and also a **legislative committee** was established comprising government and industry representatives.
- **From 1997 to 1999** protracted discussions and negotiations on the legislation resulted in the new legislation being delayed by more than one year. The area of dispute related to cane supply and processing arrangements between growers and millers. The legislative proposals provided little benefit to sugar millers and sought to retain key regulatory restraints.
- **March 1997** - A **Parliamentary Sugar Task Force** was initiated by the Prime Minister to examine specified sugar industry issues arising from the Federal Government's endorsement of the recommendations of the SIRWP. The issues related to equity considerations across the three States that had sugar industries and included access to the US quota, overcapacity in the refining sector; ownership structure of the Bulk Sugar terminals; and provision of better export access facilities for NSW. Public hearings took place between April and July 1997. The report, provided to government in early 1998, was never released.
- **April 1998** - The Queensland Government **appointed a mediator** to facilitate consensus on new cane supply and processing arrangements following differing views between ACFA, CANEGROWERS and the Australian Sugar Milling Council on implementing the new arrangements contained in the SIRWP Report.

- **4 May 1998** - The report of the government appointed mediator, Mr David Paratz, outlined the agreed areas including that *there should be an industry review of the desirability and practice of Final Offer Arbitration as the ultimate dispute resolution process prior to, and to apply from, the 2000 season.* (Paratz report included as attachment 2)
- **May 1998** - The State Government agreed to transfer the bulk sugar terminals to the industry and reconstituted the **Sugar Industry Task Force** to develop dispute resolution procedures and time frames for the transfer. **Bulk Sugar Terminals Management Group** established to progress the transfer of the terminals.
- **March 1999** - newly established **Sugar Industry Development Advisory Council (SIDAC)** gave in principle endorsement for an industry owned marketing company to be operational from 1 January 2000.
- **21 July 1999** - *Sugar Industry Bill* introduced into Queensland Parliament by Primary Industries Minister Henry Palaszczuk.
- **September 1999** - Minister Palaszczuk announced a series of amendments to accommodate perceived concerns by growers, including, requiring cane prices to be related to sugar prices unless otherwise agreed; requiring mills to accept cane supplied in accordance with a supply agreement; requiring challenges to individual cane supply agreements between growers and a mill by a mill suppliers' committee to go to compulsory mediation before going to court.
- **October 1999** - Minister Palaszczuk announces further amendments to the Bill to address further perceived grower concerns by requiring that millers could only supply their own cane for crushing outside of collective supply agreements at times that did not result in a significant adverse effect on the collective supply by growers. An additional amendment agreed to was to strengthen the objectives of negotiating teams (and by implication mediators and arbitrators) to have an objective to maximize the profits of growers and millers in forming cane supply agreements.
- **10 December 1999** - Sugar Industry Act passed.
- **22 & 23 March 2000** - Future Directions think tank meeting of key industry stakeholders in growing, harvesting, milling, research and QDPI to create a vision for the future that could be used as a basis for discussion by SIDAC. A Sugar Industry Future Directions Task Force was subsequently established.
- **May 2000** - Federal Government agreed to examine a joint CANEGROWERS and Milling Council request for assistance following a collapse in world prices, adverse weather over three seasons and pest and disease problems.
- **June 2000** - *Sugar Industry Act* amended to provide for the winding up of Queensland Sugar Corporation and the establishment of Queensland Sugar Limited and the transfer of marketing assets to Queensland Sugar Limited and the transfer of bulk terminal assets to Sugar Terminals Ltd.
- **July 2000** - **National Competition Council** released a **Community Information Paper** - *Securing the Future of Australian Agriculture: Sugar.* This paper provided an

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

- **17 July 2000** - Productivity Commission releases a staff research paper, *Single-desk Marketing: Assessing the Economic Arguments*. The paper found that most of the potential benefits of single-desk arrangements can be achieved without compulsion.
- **1 September 2000** - Agriculture Minister Truss announces Federal Sugar Assistance Package of up to \$83 million for cane growers. To the disappointment of millers, assistance proposals jointly agreed between CANEGROWERS and the Australian Sugar Milling Council to assist sugar mills were not included in the assistance package. The Federal Government shared concerns with CANEGROWERS regarding the ongoing commercial vulnerability of the sugar industry and asked CANEGROWERS to work towards positioning the industry to ensure its long-term viability and to present firm proposals for comprehensive industry-wide structural reform by June 2002. (Note: Commonwealth Sugar Assistance Package provides short-term assistance for cane growers - eventually \$60m paid in income support, interest subsidies on planting and general interest subsidy)
- **24 August 2001** - A Futures Steps Forum of industry leaders met in Brisbane to address major unaddressed issues arising from the SIDAC futuring process to-date. There was agreement to establish three groups to action the outcomes:
 - Group 1 Product Development from cane and sugar with ability to track product in an environmentally sustainable way with appropriate risk and reward systems
 - Group 2 Systems to improve & sustain productivity & best practice agriculture
 - Group 3 Integration of harvest/transport systems as a component of the value chain - including environmental sustainability and appropriate risk and reward systems.
- **15 February 2002** - Minister Truss announces **Independent Assessment of the Sugar Industry lead by Clive Hildebrand** to examine the overall state of the Australian sugar industry, with particular reference to its key economic, social and environmental drivers.

Clive Hildebrand and the Secretariat of the Independent Assessment consulted with industry organisations, cane farmers, government agencies and other stakeholders in Brisbane, Mackay, Bundaberg, Townsville, Cairns, and the NSW & WA cane growing regions. A series of public meetings were held late April / early May in Innisfail, Mackay, Bundaberg and Townsville. Over 200 written submissions were received.
- **15 April 2002** - Sugar Industry leaders brief State Parliament on the state of the sugar industry.
- **3 May 2002** - State Government establishes an **Inter-agency Working Group** to tackle the growing problems of the State's sugar industry.

- **6 June 2002** - CANEGROWERS call for urgent emergency assistance to avoid a collapse in the sugar industry's productive capacity and to prevent further financial disintegration of regional sugar communities.
- **22 June 2002** - Report of the Independent Assessment of the Sugar Industry received by Minister Truss. The Federal Government noted the main findings of the Independent Assessment, particularly the need for a regionally-focused, business-orientated approach to the majority of industry matters. "The industry must move from a "one size fits all" approach to developing regionally-based plans that strongly reflect local priorities." The Independent Assessment "...found that there is too much reliance on a State-wide approach to industry matters. It is clear that the effective operation of each mill area, or mill region, lies almost entirely in the hands of the local co-dependent participants. And it is important that this responsibility is accepted without resort to wider loyalties." The Independent Assessment also noted: "Arbitration is an issue. It is not desirable that arbitration becomes a customary way to avoid the responsibility that should accompany local leadership in genuine negotiation at the mill area level, for the good of participants in that mill area...."
- **10 September 2002** - Minister Truss announces **Sugar Assistance Package** and the involvement of the Queensland Government in reform.
- **25 September 2002** - **Memorandum of Understanding (MoU)** between Federal and State Governments signed to facilitate a partnership approach to sugar industry reform. The Governments agreed that the industry needs to change both its culture and practices in order to:
 - improve its efficiency and competitiveness,
 - retain its global market share, and
 - become more commercial and innovative.
 The Governments agreed that the following areas appear to impede increased competitiveness and efficiency, and are detrimental to cultural change and innovation:
 - the cane production area system;
 - the statutory bargaining system; and
 - the compulsory acquisition of raw sugar for marketing and selling within the domestic market.
- Under the MoU, the Governments agreed that the operation of the single desk for exports of raw sugar should be retained. The Governments agree that, notwithstanding any regulatory change that occurs as a result of the MoU agreement, the review of the Sugar Industry Act will proceed in 2006 as scheduled.
- Pursuant to the MoU the Commonwealth agreed to provide **up to \$120 million** in assistance and the Queensland Government agreed to provide **up to \$30 million**. The package involved the establishment of an overarching **Industry Guidance Group** and the establishment of **Regional Guidance Groups**. This package was never implemented in its original form.
- **October 2002** - CANEGROWERS request the State Government enact measures to provide security over cane payments. The Australian Sugar Milling Council did not support special legislation to elevate the current status of growers above unsecured creditors. The State Government engages a **consultant** to review arrangements in other industries and to make recommendations back to government.

- **9 December 2002** - State Government commissioned **regulatory impact analysis on the Sugar Industry legislation** by Centre for International Economics presented to industry - *Cleaning up the Act: The Impacts of Changes to the Sugar Industry Act 1999*. The terms of reference were confined to the industry's regulatory structure other than single desk for export. The Report concluded with the following verdicts:-
 - ***Verdict 1: the cane production area system***
 - Removal of the cane production area (CPA) system is a low-risk, high payoff strategy for the industry and regions, because it will encourage competition for cane supply.
 - The CPA system cannot be viewed in isolation to changes to the statutory bargaining system.
 - ***Verdict 2: the statutory bargaining system***
 - Given the price outlook for the industry, it is hard to see (the sugar industry) surviving if it continues to block productivity gains by its reliance on the adverse effect test within the statutory bargaining system.
 - Removal of statutory bargaining is a low risk economic option that may hold the only promise of the industry's survival, but it is a high risk political option that will attract opposition from less efficient growers.
 - Unless the statutory bargaining and adverse effects test are removed, the leadership and management required to implement change and achieve the high rate of productivity growth required, is almost certain to fail.
 - ***Verdict 3: compulsory acquisition on the domestic market***
 - Removal of compulsory acquisition of sugar for sale on the domestic market is a low-risk strategy with some possible small benefits.
 - The main benefit is to provide increased market orientation to producers and give them some responsibility for marketing.

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

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

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

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

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



- **13 May 2003** - Qld Premier writes to Prime Minister seeking to progress industry reform.
- **4 June 2003** - Prime Minister writes to Qld Premier identifying issues and suggests relevant Ministers meet to discuss issues.
- **5 June 2003** - Ministers Truss and Barton meet and agree on reforms to CPA and reforms to domestic marketing.
- **June 2003** - Premier writes to Prime Minister with an offer on the outstanding issue of arbitration. Arbitration issues remain unresolved.
- **30 June 2003** - Industry Guidance Group submits **Draft Overarching Industry Reform Plan** to Minister Truss. Minister Truss has not yet decided to release the draft Plan.
- **February 2004** - CIE Report entitled “Cleaning up the Act, more important than ever” found that if \$A200/tonne prices persist to 2006/07 and there is no reform, then the industry would cease to exist in all regions, and there would be strong regional multiplier effects. This highlighted the urgency of reform. CIE noted that the reforms proposed were hardly radical and would have brought the sugar industry into line with other industries (subject to not addressing the single desk for exports of raw sugar).
- **February 2004** - The board of CANEGROWERS and members of ASMC met and established a co-coordinating group to formulate a united industry position on industry reform and restructure.
- **17 February 2004** - CANEGROWERS and ASMC made a joint submission to The Hon. John Howard MP, Prime Minister of Australia on a proposal for a sugar industry rationalisation and restructure adjustment program. The immediate outlook and opportunities had been eroded. It was clear that the industry would not benefit from trade liberalisation. To facilitate comprehensive rationalisation and restructure and diversify its base, the industry required an immediate and substantial increase in the previously announced and not yet implemented, reform package. In response the industry committed to supporting and promoting comprehensive reform and restructure. Within that, it was acknowledged the legislative impediments to reform must be removed and the current legislative issue must be resolved.
- **1 March 2004** - Heads of Agreement between CANEGROWERS, ASMC and the Queensland Government on comprehensive reform of the Sugar Industry Act was signed as a pathway to securing Federal and Queensland Government commitment to progressing real regulatory reform to ensure the long-term future of the industry.

All parties agreed:

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



- Industry is committed to transformational change required to achieve sustainability.
 - The industry agreed to establish a working group to develop voluntary marketing arrangements as soon as possible. The objective of this working group was to work towards a new system for marketing of raw sugar prior to the requirement under National Competition Policy for review in 2006.
- **18 March 2004** - The Hon. Henry Palaszczek, MLA introduced the Sugar Industry Reform Bill into Parliament.
- **29 April 2004** - The Sugar Industry Reform Program (SIRP) 2004 was announced by the Prime Minister. In his address he stated:
- The Australian Government's Sugar Industry Reform Programme 2004 recognises the continuing importance of the sugar industry to rural and regional Australia.
 - The Government has agreed to provide a comprehensive range of measures of up to \$444 million to help the industry reform and assist individual cane farmers and their families in need.
 - The package recognises that there has to be a strong commitment by industry to reform and restructuring.
 - The industry has undertaken to develop and implement genuine, realistic and regionally based reforms that strongly reflect local priorities, to help achieve the needed changes and ensure the industry's long-term sustainability.

A key feature of SIRP was the payment of a Sustainability Grant of up to \$125 million in recognition of immediate difficulties and to sustain growers and millers through the transition phase. Payment of the Sustainability Grant was in two instalments, subject to the following requirements:

- before receiving the first instalment, industry groups were asked to sign up to a Statement of Intent on behalf of the industry committing to achieving real reform and restructuring;
 - before receiving the second instalment, the government required that satisfactory progress was being achieved with industry reform, including development of regional plans.
- **6 May 2004** - The Sugar Industry Reform Act 2004 received Assent. The long title states it was “an Act to amend the Sugar Industry Act 1999 to implement the commitment by the Sugar Industry and government to comprehensive reform for the long term future of the sugar industry”.

Key amendments were:

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

Changes were phased in for the dispute resolution system:

- Compulsory arbitration was only available in 2005 if the Sugar Industry Commissioner was satisfied that the dispute had not been resolved by

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

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

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

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

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

Under the Statement of Intent, the industry agreed that:

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

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

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

- **January 2005** - The Hon. Warren Truss, MP, Minister for Agriculture, in an interview with ABC, advised that the second tranche of the Sustainability Grant which was due to be paid by 30 January would not be paid but deferred. He stated that there was insufficient evidence of industry-wide reform and almost all the regional plans were only at a preliminary stage. Accordingly the government was not satisfied with the progress of industry reform, particularly at a regional level. The government was disappointed with the lack of progress as it listened to industry concerns that this time the downturn was different, brought about by intense international market conditions and the industry would go through significant restructure.
- **16 May 2005** - The Report of the Working Group proposing a new marketing system for the Queensland Sugar Industry for the 2006/2007 season was submitted to the Premier of Queensland. The Working Group comprising senior representatives from CANEGROWERS and ASMC and state government (as observers) worked on the premise that at some future point in time, the Sugar Industry Act 1999 would be repealed. During deliberations the Working Group sought assistance from the Chief Executive of QSL and also provided the Premier of Queensland with periodic updates on progress.

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

Recommendation 1

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

Recommendation 2

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

Recommendation 3

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

Recommendation 4

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

Recommendation 5

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

Recommendation 7

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

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

Recommendation 8

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

Recommendation 9

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

Recommendation 10

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

Recommendation 11

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

The impact of the recommendations were:

- Raw sugar was no longer compulsorily acquired by QSL -
 - The domestic sugar market with statutory price control was deregulated;
 - The export market for non bulk raw sugar (bags and containers) and other forms of sugar for the export market was deregulated;
 - The export market for bulk raw sugar was deregulated and participation by suppliers with QSL as the marketer was governed by an initial three year commercially negotiated contractual arrangement;
 - Suppliers could opt out after the initial period of 3 years if QSL was not transforming into a market responsive company by meeting specified targets;
 - Suppliers could opt out in accordance with the notice period set out in subsequent contract;
 - There was now no longer a need to have a full review of compulsory acquisition in accordance with National Competition Principles.
- **June 2005** - CIE presented the Queensland Government with its report entitled "Unshackling Queensland Sugar". Key messages included:
- A proposal to free up Queensland sugar marketing is overwhelmingly in the public interest;
 - Marketing based on compulsory vesting is holding the industry back;
 - The industry clearly needs a new marketing system;
 - Adopting the Working Group's proposal would go a long way in this regard;
 - Some transition features of the proposal could defer benefits;

- Some implementation issues also need to be resolved;
 - Removing statutory marketing interventions would impact in various ways;
 - Adopting the proposed change would open the industry to an exciting future.
- **1 August 2005** - A meeting with the Premier, Taskforce Ministers and their Director-Generals and advisers and chairs, deputy chairs and General Managers of ASMC and CANEGROWERS.

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

The initial draft HoA was unacceptable to ASMC as it:

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

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

- **24 August 2005** - A special meeting of the Council of ASMC was held to consider VMA. The revised 2nd MoU:
- no longer made any reference to single desk selling or centralised marketing;
 - now more adequately reflected the principles underlying the recommendations in the Working Group’s report that had been accepted by CANEGROWERS, ASMC and the State Government;
 - The purpose of the draft 2nd MoU when signed was to enable Cabinet to give authority to prepare the amending legislation;
 - The Government would only introduce the amending Bill into Parliament provided it was satisfied there was sufficient support from suppliers to successfully implement the recommendations;

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

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

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

Question 9: Who would make decisions about whether QSL is the marketing company?

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

- **30 August 2005** - CANEGROWERS passed the following resolutions:
 - *That CANEGROWERS confirm its endorsement of the Working Group Report and its commitment to centralised marketing arrangements; and*
 - *reinforce the requirement that a clear and binding commitment to this process is provided by sugar milling companies.”*
 - *“That CANEGROWERS strongly recommend to the State Government that it take no action in respect to current legislative arrangements before contractually binding undertakings have been finalised between sugar milling companies and Queensland Sugar Limited.”*
 - *“That CANEGROWERS endorse the draft Heads of Agreement subject to satisfactory commitment by sugar milling companies.”*
 - *“That CANEGROWERS communicate its position to the Australian Sugar Milling Council and to Government as soon as possible.”*
- **2 September 2005** - Mr Ian McMaster, Acting Chair of ASMC wrote to the Premier advising:
 - ASMC endorsed the wording of the revised 2nd MoU, and subject to CANEGROWERS unequivocal endorsement, has authorised him to sign the HoA;
 - Reaffirmed its support for the removal of legislative impediments to reform to allow the industry to take responsibility for its own future in a commercial

environment;

- **22 September 2005** - The second tranche of the Sustainability Grant was paid bringing the total paid under this component to \$146 million.
- **29 September 2005** - CANEGROWERS wrote to the Deputy Premier advising that after considering various issues including the positive response and indication of support provided by milling representatives and his own comments, CANEGROWERS would endorse a revised MoU but raised that:

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

The changes in the MoU were minor and included:

- under “A new marketing system for the sugar industry”, the word “preferred” was inserted in the first dot principle so that it read “QSL would continue to be the industry’s preferred bulk raw sugar export marketing company”. This change was previously sought by ASMC.
 - under the same heading in the second dot point delete the word “entirely” after the word “operate” so it reads “QSL would operate within a commercial environment under contractual arrangements with suppliers”. The change was of little consequence as one either operates commercially or does not.
- **13 October 2005** - A MoU was executed between the Queensland Government, CANEGROWERS and ASMC to progress the proposal by the Working Group of a new marketing system.

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

It also included the following commitments:

The Australian Sugar Milling Council:

1. *Reaffirms its commitment to supporting the removal of legislative impediments to reform and allow the industry to progress towards meeting the challenge of taking responsibility for its own future within a commercial environment;*
2. *Has consulted its member companies regarding the proposal and supports the introduction of the new marketing system in 2006;*
3. *Advises that all members of the Australian Sugar Milling Council remain committed to working with QSL to assist QSL to remain the preferred marketer by suppliers and customers of Queensland produced bulk raw sugar for export;*
4. *Recognises that commitment by suppliers is a matter for negotiation between QSL and individual suppliers.*

CANEGROWERS:

1. *Reaffirms its support for increased flexibility with the retention of benefits that exist under the current export marketing arrangements;*
 2. *Will communicate with growers regarding how the new marketing system would operate;*
 3. *Supports the introduction of the transition to a contractual basis for raw sugar marketing from 2006, provided there is sufficient support from suppliers to successfully implement the recommendations of the working group.*
- **28 November 2005** - Sugar Industry Amendment Act 2005 receives Assent and came into operation on 1 January 2006. The purpose of the Amending Act was to replace the compulsory acquisition or “vesting” of raw sugar under the Sugar Industry Act 1999 with new contract-based arrangements, thereby allowing all the provisions of the Act dealing with vesting and statutory based marketing arrangements to be repealed. The amendments also Authorised Queensland Sugar Limited (QSL), for the purposes of the Trade Practices Act 1974 (TPA), to negotiate, for three years, commercial export contractual arrangements with millers providing for collective selling and uniform pool pricing. As a consequence of removal of vesting the Sugar Authority was dissolved.

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

2006

- **1 January 2006** - The Queensland sugar industry was deregulated on 1 January. QSL entered into voluntary agreements with the majority of (but not all) Queensland mills to market their export raw sugar. This made it responsible for more than 90% of all of raw sugar exported from Australia. Mills not contracted to QSL independently marketed their own sugar.
- **9 February 2006** - The Industry Oversight Group (IOG) presented its Strategic Vision to the Federal Minister for DAFF, The Hon Peter McGauran, MP.

The IOG’s Vision was for:

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

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

On regulatory reform, the IOG noted:

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

become self-reliant. P.4

and

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

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

On vesting, the IOG stated:

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

On regulation the IOG stated:

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

Points made by the IOG included:

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



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



Cane payment formula

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

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

Supply contract

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

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

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

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

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

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



All other growers are paid under the following longstanding formula.

$$P_c = 0.009 \times P_s \times (CCS-4) + \$0.608^*$$

Where:

P_c = price of cane (what the grower receives)

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

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

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

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

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

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

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

Cane price formula $[0.009 \times \text{sugar price} \times (\text{ccs} - 4)]$ — sensitivities to marketing premiums and sugar content

Mill efficiency	CCS	ICE#11 Sugar price per tonne IPS	Net Marketing Premium	Growers cane Price per tonne	Marketing premium improvements	<u>INCREASE in Growers cane Price per tonne</u>
0.009	13	\$ 450.00	Nil	\$ 36.45	Baseline	
0.009	13	\$ 450.00	\$ 1.00	\$ 36.53	\$1.00 increase in marketing premium	\$.08c per tonne
0.009	13	\$ 450.00	\$ 2.00	\$ 36.61	\$ 2.00 increase in marketing premium	\$.16c per tonne
0.009	13	\$ 450.00	\$ 3.00	\$ 36.69	\$ 3.00 increase marketing premium	\$.24c per tonne
0.009	13	\$ 450.00	\$ 5.00	\$ 36.85	\$ 5.00 increase in marketing premium	\$.40c per tonne

Mill efficiency	CCS	ICE#11 Sugar price per tonne IPS	Net Marketing Premium	Cane farmer's Price per tonne	CCS increase	<u>INCREASE in Growers cane Price per tonne</u>
0.009	13	\$ 450.00	\$ 2.00	\$ 36.61	Baseline	
0.009	13.5	\$ 450.00	\$ 2.00	\$ 38.64	0.5 unit increase in CCS	\$2.03 per tonne
0.009	14.0	\$ 450.00	\$ 2.00	\$ 40.68	1.0 unit increase in CCS	\$4.07 per tonne
0.009	15	\$ 450.00	\$ 2.00	\$ 44.75	2.0 units increase in CCS	\$8.14 per tonne

Cane price formula $[0.009 \times \text{sugar price} \times (\text{ccs} - 4)]$ — sensitivities to ICE#11 based on average achieved by QSL over 5 years from July 2009 to 2014

Year ending June	Mill efficiency	CCS	ICE#11 Sugar price per tonne IPS	Growers cane Price per tonne	ICE#11 increase in actual sugar price over baseline of 2014	<u>INCREASE in Growers cane on baseline Price per tonne</u>
2014	0.009	13	\$ 406.00	\$ 32.88	Baseline (lowest price achieved – 2014)	
2010	0.009	13	\$ 529.00	\$ 42.85	\$ 123.00 increase in actual sugar price	\$ 9.97 per tonne
2011	0.009	13	\$ 460.00	\$ 37.26	\$ 54.00 increase in actual sugar price	\$ 4.38 per tonne
2012	0.009	13	\$ 533.00	\$ 43.17	\$ 127.00 increase in actual sugar price	\$ 10.29 per tonne
2013	0.009	13	\$ 455.00	\$ 36.85	\$ 49.00 increase in actual sugar price	\$ 3.97 per tonne
2014	0.009	13	\$ 406.00	\$ 32.88		