Parliamentary Committees

Sugar Industry (Real Choice in Marketing) Amendment Bill 2015

Report No. 6, 55th Parliament
Agriculture and Environment Committee
September 2015

Parliamentary Committees

Sugar Industry (Real Choice in Marketing) Amendment Bill 2015

Report No. 6, 55th Parliament
Agriculture and Environment Committee
September 2015

Agriculture and Environment Committee:

Chair	Ms Jennifer Howard MP, Member for Ipswich
Deputy Chair	Mr Stephen Bennett MP, Member for Burnett
Members	Mrs Julieanne Gilbert MP, Member for Mackay
	Mr Linus Power MP, Member for Logan
	Mr Robbie Katter MP, Member for Mount Isa
	Mr Ted Sorensen MP, Member for Hervey Bay
Committee Staff	Mr Rob Hansen, Research Director
	Mrs Megan Johns, Principal Research Officer
	Ms Maureen Coorey, Executive Assistant
Technical Scrutiny Secretariat	Ms Renee Easten, Research Director
	Mr Michael Gorringe, Principal Research Officer
	Ms Kellie Moule, Principal Research Officer
	Ms Tamara Vitale, Executive Assistant
Contact Details	Agriculture and Environment Committee Parliament House George Street Brisbane Qld 4000
Telephone	07 3553 6662
Fax	07 3553 6699
Email	aec@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/aec

Acknowledgements

The committee thanks the Department of Agriculture and Fisheries for their advice during the inquiry, and the groups and individuals who provided submissions and gave evidence at the committee's public hearing held in Brisbane on 31 August 2015.

Contents

Abbreviations

ACFA	Australian Cane Farmers Association
ASMC	Australian Sugar Milling Council
Canegrowers	Queensland Canegrowers Organisation Limited
CSA	Cane supply agreement
DAF	Department of Agriculture and Fisheries
GEI	Grower Economic Interest
KAP	Katter's Australian Party
MEI	Miller Economic Interest
QPC	Queensland Productivity Commission
QSL	Queensland Sugar Limited
RIS	Regulatory Impact Statement
RSSA	Raw sugar supply agreement
Sugar Act/SIA	*Sugar Industry Act 1999*
SRRATRC/Senate Committee	Senate Rural and Regional Affairs and Transport References Committee
Wilmar	Wilmar Sugar Australia Limited

Chair's foreword

This Report presents a summary of the Agriculture and Environment Committee's examination of the *Sugar Industry (Real Choice in Marketing) Amendment Bill 2015*, a private member's Bill introduced by the Member for Dalrymple. The intent of the Bill is to protect the interests of Queensland's canegrowers in the State's vitally important sugar industry as mill owners opt out of long-standing sugar marketing arrangements with Queensland Sugar Limited.

It was apparent to the committee that the impasse over marketing arrangements is a highly emotive and very important issue to all those involved in the sugar industry – growers and millers alike. The Member for Dalrymple and the Katter Australian Party should be acknowledged for bringing this important matter to the attention of the House.

The committee's task was to consider the policy outcomes to be achieved by the proposed amendments to the *Sugar Industry Act 1999*. I wish to commend all members of the committee on the objective basis by which they conducted the inquiry, despite there being political issues underpinning the process. It was also apparent to the committee that, having endured a difficult phase of change since deregulation in the early 2000's, relationships within the industry are somewhat strained. This is evident in the conflicting positions of key industry participants regarding support for and material impacts of the Bill's proposals.

For the committee there were unfortunately too many unresolved matters and concerns for the possible regulatory impacts to provide unequivocal support for the Bill in its current form. Such an important piece of legislation should not proceed without there being robust and independent assessment of its regulatory impacts.

I acknowledge the view of many within the industry that the impasse over marketing arrangements could only be resolved through government intervention. But, in this instance, there is a risk that a regulatory intervention may not be forthcoming. The committee encourages growers and mill owners to continue to negotiate in good faith and to fully utilise the federal-government-led mediation process to resolve the current impasse. It is the committee's opinion that, where possible, commercially negotiated outcomes can produce better outcomes for all those involved in the Queensland sugar industry.

Finally, the committee has recommended that the Treasurer consider making the confidential advice on regulatory impacts from the Queensland Productivity Commission available for the development of private members' Bills. It is the committee's view that all legislative proposals should demonstrate best regulatory practice which includes balanced consultation and impact assessment.

On behalf of the committee, I thank those individuals and organisations who provided written submissions to our work. I also thank the Department of Agriculture and Fisheries for their advice on the history, structure and operations of the sugar industry.

I commend this Report to the House.

Jennifer Howard MP

Chair

Recommendations

The committee recommends that the completion of the regulatory impact assessment of the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 by the Department of Agriculture and Fisheries be required before the House considers the passage of the Bill in its present form.

The committee recommends that the Minister requests his Department of Agriculture and Fisheries to conduct a regulatory impact assessment of the Bill in conjunction with the Queensland Productivity Commission, and that the Minister tables the department's report on this assessment prior to the Bill being brought on for the second reading debate.

Minister responsible: Minister for Agriculture and Fisheries and Minister for Sport and Racing

The Committee recommends that the Department of Agriculture and Fisheries in its periodic review of the *Sugar Industry Act 1999* consider:

- the efficacy of the collective bargaining provisions
- the need for recognising 'grower choice' in cane supply agreements
- the need for arbitration to be made an option for resolving contractual and pre-contractual disputes between growers and mill owners, and
- the future viability of Queensland Sugar Limited should mills exit current sugar marketing arrangements.

Minister responsible: Minister for Agriculture and Fisheries and Minister for Sport and Racing

That the Treasurer consider whether arrangements should be provided for members to access confidential advice on regulatory impacts from the Queensland Productivity Commission in relation to the development of their private members' Bills.

Minister responsible: Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships

1. Introduction

1.1 Role of the committee

The Agriculture and Environment Committee is a portfolio committee appointed by a resolution of the Legislative Assembly on 27 March 2015. The committee's primary areas of responsibility are: Agriculture, Fisheries, Sport and Racing; Environment and Heritage Protection; and National Parks and the Great Barrier Reef.[1]

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles (FLPs).[2] In relation to the policy aspects of Bills, the committee considers the policy intent and the effectiveness of consultation with stakeholders. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

FLPs are defined in Section 4 of the *Legislative Standards Act 1992* as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

1.2 The referral

On 19 May 2015 the Member for Dalrymple, Shane Knuth MP, introduced the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 and tabled Explanatory Notes.

The Bill was referred to the committee in accordance with SO131. The default six months reporting deadline was subsequently reduced by one month to 14 September 2015 by a motion of the House on 2 June 2015. That Motion was moved by the Member for Callide.

The Member for Dalrymple tabled replacement Explanatory Notes for the Bill on 14 July 2015.

1.3 The committee's processes

For its examination of the Bill, the committee:

- wrote to stakeholders inviting written submissions. The committee accepted and published 25 written submissions. A list of the submissions is at **Appendix A.** A summary of the points made by submitters is at **Appendix B**
- sought expert briefings from the Department of Agriculture and Fisheries (DAF) on the sugar industry
- sought advice from the Member for Dalrymple and DAF on issues raised in submissions and on possible FLP issues with the Bill
- sought advice from the Member for Dalrymple, DAF and the Australian Sugar Milling Council on other aspects of the Bill
- sent representatives to meet with the Canegrower Queensland Policy Council and Canegrower groups in Maryborough and Mackay
- sent representatives to meet with representatives of Wilmar Sugar Australia Limited and to inspect crushing operations at Ayr-Home Hill, and
- convened a public hearing on 31 August to hear evidence from submitters and other interested parties. A list of witnesses who appeared is at **Appendix C**. The transcript of the hearing is available from the Parliament of Queensland website.

[1] Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.

[2] Section 93 of the *Parliament of Queensland Act 2001*.

1.4 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

In relation to the passage of the Bill, the committee was advised by the department:

> *The position that the minister has taken throughout is that his preference would be to seek a commercial solution to the situation. In our assessment of the bill as it currently stands, we have not been able to identify any alternative amendments to the bill at this point in time that go to that end, if you like.*[3]

In other evidence the committee heard from Queensland Sugar Limited (QSL) that the objective of securing grower choice about the marketing of raw sugar can be achieved under existing legislation without the Bill:

> *QSL believes that the actions of the raw sugar marketer significantly influence the returns secured for raw sugar. As such, we believe that both our grower and miller members should have a choice regarding who provides that service on their behalf. A grower choice system can be implemented under the terms of the current Sugar Industry Act via a commercial arrangement and this remains our preferred solution to this problem.*[4]

The committee has considered policy objectives the Bill seeks to achieve as well as information provided by DAF and submitters. The committee brings the following significant and unresolved matters, discussed in detail in sections 3, 4 and 5 of this report, to the attention of the house:

- unsatisfactory consultation process which excluded key stakeholders,
- the potential for the Bill to impose significant and unknown changes on the sugar industry and the absence of objective assessment of the Bill's regulatory impacts,
- insufficient clarity of evidence of regulatory or market failure to justify the need for significant regulatory amendments,
- conflicting and irreconcilable position of key industry participants regarding support for and material impacts of the bills proposals, and
- possible interference with the fundamental legislative principle of the rights and liberties of individuals to conduct business.

In light of these matters, the committee concludes that the Bill should not be passed in its current form and without further assessment of the regulatory impacts.

The lack of understanding of the likely regulatory impacts of the Bill has also prevented the committee from determining what would be suitable amendments that might make the Bill suitable to be passed.

Recommendation 1

The committee recommends that the completion of the regulatory impact assessment of the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 by the Department of Agriculture and Fisheries be required before the House considers the passage of the Bill in its present form.

1.5 Should the Bill be treated as an urgent Bill?

Once the committee has reported, the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 will be set down on the notice paper for its second reading stage in the House in accordance with SO 136(4). The timing of this debate is governed by SO 136(6) which stipulates that at least three months

[3] Letts, M., 2015, *Draft public hearing transcript*, p. 11.

[4] Beashel, G., 2015, *Draft public hearing transcript*, p. 13.

must elapse until the commencement of the second reading debate, unless the Bill is declared an urgent Bill. This means the Bill will not be debated until February 2016 at the earliest, based on the Parliament's proposed sitting calendar, unless the Bill is declared an urgent Bill.

The Member for Burnett in a document provided to the committee on 7 September 2015 proposing amendments to the Bill also proposed that:

> *The Bill be recommended as an urgent Bill to be debated and resolved by the 15th December 2015 to allow essential negotiations to continue, failure to do so would be catastrophic to the industry.*[5]

Growers have sought a resolution of the consideration of the Bill by Christmas 2015. The Chairman of the Queensland Canegrowers Organisation Limited (Canegrowers), Mr Paul Schembri, told the committee:

> *The situation for us in the industry is that it is critical. We need this issue resolved. We have a view that this is about market fairness and choice. Competition is being exercised by the mills to lever up economic opportunity. We do not have that choice. I would make the comment that if governments—state and federal—choose to do nothing, it seems ironic that we are going to be thrown back down the time tunnel 102 years ago at a farm gate where we are just farmgate price takers.*[6]

And:

> *Our view is that this issue needs to be resolved sooner rather than later… We have attempted to have some negotiation with the mills to reach a commercial solution. To date they have not yielded any results. I am not going to speculate whether they can or cannot achieve an outcome... It is our strong view that we need some determination of this issue by Christmas. QSL, for its future and its surety, needs some determination early in 2016. Certainly the landscape at this point in time—not all areas, but particularly in the Wilmar areas—is that there are no contracts in place for 2017. Time is of the essence so that this industry can secure some surety and certainty to go forward.*[7]

And:

> *… I can only give you the sense of urgency about how soon we would want this issue resolved. As you know, the federal government has intervened and announced a code of conduct. It, too, is pursuing processes to bring that to fruition as well. Without being long-winded, this has been around in the industry for 18 months. Investment cycles are going to be influenced very shortly. We particularly would want this issue resolved sooner rather than later to give surety.*[8]

The committee invited Canegrowers to further explain what they consider to be the justifications for urgency. In correspondence[9] to the committee, they advised:

- 'Growers want choice of marketer (for the raw sugar) are unwilling to commit to the regional monopoly marketing system run by the mill'
- growers are unable to forward price for the 2017 season except for growers supplying the Bundaberg, Isis and Mackay mills
- the uncertainty is impacting on the ability of QSL to market sugar and '…risks reputational damage to QSL in the export market and is likely to adversely impact sales returns'

[5] Bennett, S., *Correspondence*, 7 September 2015.

[6] Schembri, P., 2015, *Draft public hearing transcript*, p. 25

[7] Schembri, P., 2015, *Draft public hearing transcript*, p. 34

[8] Schembri, P., 2015, *Draft public hearing transcript*, p. 35

[9] Canegrowers Queensland, *Correspondence,* 9 September 2015.

- 'Bundaberg, Isis and Mackay mills have delayed their decision of whether to continue with QSL for the 2018 season until 15 December 2015' and '…there is a risk that the continuing mills will withdraw from QSL at the conclusion of the 2017 season
- uncertainty over future marketing structures is impacting the decisions of people looking to enter the industry and adversely impacting farm values
- the change from QSL's relationships-focussed approach to marketing to Wilmar's 'transactional focused approach' will … 'change the industry and the way export customers view the industry', and
- the removal of QSL as a viable marketer will also open questions about the future operation of the industry's raw sugar storage and handling facilities and the industry's skills and experience in delivering high quality in-spec sugar on a just in time basis'.

None of the points offered by Canegrowers, which may be relevant to the consideration of the merits of the Bill, are imperatives that establish that the Bill needs to be considered by Parliament urgently.

The Australian Cane Farmers Association (ACFA), in their evidence at the hearing, also supported the need for a speedy resolution:

> *I very much support the process that the federal government went through with the Senate inquiry and the outcome of that. It is a process that I think will take potentially longer than this process. I would like to see both a state and federal resolution to this problem to offer greater security to growers and certainty. The big issue here is that we cannot afford this to drag on for too long. There is the future of QSL and there is a history in this industry of neglecting organisations until they fall over so they are no longer there. We need QSL to be there as a benchmark, as an alternative pricer and marketer of our sugar. It is absolutely critical that this process is not delayed.*[10]

The committee notes that the inquiry into the current arrangements for the marketing of Australian sugar by the Senate Standing Committee on Rural and Regional Affairs and Transport (SSCRRAT), referred to by ACFA, resolved that any move to reregulation of the sugar industry would be contrary to the intent of deregulation and not in the best interests of the industry over the longer term. The SSCRRAT also encouraged growers and millers to demonstrate a commitment to negotiate in a positive and constructive manner and to rebuild a relationship of goodwill. [11]

In their hearing evidence, the Australian Sugar Milling Council (ASMC) and mill owners also saw the need for the Bill to be resolved without delay, but for different reasons:

> *There is progress being made in respect of regional negotiation of marketing arrangements… However, while legislative restructuring of the industry such as this proposed bill is being offered publicly, there is little incentive for grower organisations to consider a real commercial outcome.*[12]
>
> *As my colleague Mr Rutherford has said, we have been unable to advance the discussion in the main as to the adequacy of the measures within those agreements because, basically, negotiations have become stymied with the prospect of political intervention at either federal or state level.*[13]

Millers have advised that concerns raised by some growers at the public hearing that forward pricing would not be available to them, a possible argument for treating the Bill as urgent, are unfounded.[14]

---

[10] Murday, D., 2015, *Draft public hearing transcript*, p.25.

[11] Commonwealth of Australia, 2015, Rural and Regional Affairs and Transport References Committee report 'Current and future arrangements for the marketing of Australian sugar', June, pp.35-7.

[12] Nolan, D., 2015, *Draft public hearing transcript*, p.38.

[13] Pratt, J., 2015, *Draft public hearing transcript*, p. 43

[14] Refer Rutherford, S., 2015, *Draft public hearing transcript*, p.41; ASMC, *Correspondence,* 9 September 2015

The committee invited the ASMC to comment on the need for Parliament to treat the Bill as an urgent Bill. In correspondence[15] to the committee, the ASMC advised:

> *The ASMC is not aware of any reason the Parliament should give urgent consideration to this Bill. To the contrary, we believe that there should be a thorough and detailed examination of the far reaching ramifications of the Bill for the industry, regional Queensland communities and the economy.*
>
> *There are contractual arrangements in place until at least the end of season 2016 between mills and growers for cane supply, and beyond this in some cases. Clearly this matter needs to be resolved before season 2017, however there is time to ensure we don't make decisions with major unforseen detrimental consequences.*
>
> *All industry participants (mills and growers) wish to resolve the current marketing discussions as quickly as possible.*
>
> *The mills are committed to doing this on a commercial basis, and see an industry agreement as the only viable, lasting solution.*

And:

> *…this sort of legislative intervention and reregulation should not be taken forward without comprehensive analysis, understanding the cost-benefit implications and the normal consideration that regulation of this nature should be subjected to if it was a Government Bill.*

The committee asked the Department of Agriculture and Fisheries (DAF) to advise on five key questions to assist the committee to identify whether there are valid imperatives for treating the Bill as an urgent Bill. The five questions put by the committee, and the department's responses[16], are as follows:

1) Is there any reason that the industry "impasse" regarding marketing must be resolved prior to the end of 2015?

   > *The Department is not aware of any evidence as to why the current industry impasse/dispute must be resolved by the end of 2015.*

2) How far in advance are cane supply agreements (CSAs) for a particular year regularly negotiated/agreed? For example, in the absence of the proposed marketing changes, when would the 2017 CSAs have been expected to be agreed?

   > *It is the Department's understanding that CSAs are "evergreen" in that they normally roll over each year, typically at the end of the season. Based in this information, it is the Department's understanding that the 2017 CSA would have been agreed/finalised around December 2016.*

3) What is the latest date that a CSA may be signed with respect to the 2017 crush season?

   > *Technically speaking, a CSA can be signed the day before a grower decides to harvest. As mentioned in information provided to the Committee previously, a grower cannot supply to the mill unless a CSA has been agreed. However, there are no timeframes prescribed as to when these agreements must be finalised.*

4) What, if any, are the implications and costs for growers arising from a delay or failure to sign a CSA?

   > *The implications of delaying or failing to agree to the terms and conditions of a CSA between the grower and miller would be specific to each individual and their specific*

[15] ASMC, *Correspondence,* 9 September 2015.

[16] DAF, *Correspondence*, 9 September 215.

> *business plan. In general, having no agreed/final CSA may influence a grower's decision as to whether or not to invest in planting for the next season, or to just let certain blocks ratoon.*
>
> *(For your information, sugar is usually a 5-6 year crop. The first year when the crop is harvested is called plant cane, and each subsequent year is referred to as a ratoon. Normally, plant cane forms about 12-15 per cent of a grower's total crop).*

5) Are growers prevented from participating in risk and price management arrangements if they cannot agree a CSA?

> *It is the Department's understanding that forward pricing arrangements were recently removed by Wilmar. The reason for this is largely due to the risk to both the grower and miller of 'locking in' future prices whilst there is no agreed/signed CSA to guarantee supply of cane to be processed into raw sugar for sale. Given the current low price for raw sugar, it is also possible that growers may question the wisdom of utilising forward pricing mechanisms at this time.*

Also relevant to the matter of urgency, milling companies, cane growers and grower collectives participated in an industry roundtable on 9 September 2015 in Canberra to discuss export marketing arrangements for Queensland's raw sugar. The meeting was hosted by Hon. Ian McFarlane MP, Minister for Industry and Science.

The ASMC have informed the committee that mill companies and grower collectives have now agreed to enter into a Federal Government-led mediation process to negotiate agreed future sugar marketing arrangements. The mediation process is expected to commence in September with the goal of making substantial progress by the end of one month from commencement.

This mediation process could resolve the issues that the Bill is seeking to address through legislation.

Conclusions

Despite the desire expressed by growers, mill owners and their representatives for a speedy resolution of their current impasse, the committee could not identify justification that would warrant the Parliament treating the Bill as an urgent Bill. The committee notes in particular the comments provided by the ASMC about the risks of considering the proposed legislation without the benefits of a comprehensive analysis of its implications. In the committee's view, this is the strongest justification for Parliament not giving urgency to its consideration of the Bill and priority over other business.

The committee stage of the Bill has already been truncated by a month. The committee sees no reason to rush the next stage. In fact, the normal three month delay before the commencement of the second reading debate will allow time for DAF to complete the regulatory impact assessment of the Bill, as recommended by the committee, so Parliament can make an informed decision about the Bill's merits.

The announcement of an imminent month-long mediation process by the Federal Government to assist the industry negotiate future marketing arrangements for raw sugar now provides a further compelling reason for the Queensland Parliament not to debate the Bill early.

The committee encourages growers and mill owners to continue to negotiate in good faith and to fully utilise the federal-Government-led mediation process to resolve differences and develop a shared understanding of the future opportunities and challenges ahead.

2. Background to the Sugar Industry and Existing Regulation

The following information provides context and background for the consideration of the Bill. It is based on advice provided by DAF in correspondence to the committee dated 27 August 2015.

2.1 Early developments of the sugar industry

Firstly, it should be noted that the perishable nature of sugar cane and the limited time available between harvest and crush makes sugar cane growers and nearby sugar mills necessarily co-dependant. Disputes between cane growers and sugar mills have long been a characteristic of the industry before, during and following deregulation.

During the early years of regulation, Australia's fledgling sugar industry was able to grow and develop within the context of the competitive environment of the day. Confidence and stability drove investment and allowed the industry to expand until it was one of the largest exporters in the world, well into the 1980s. The regulatory framework included provision for collective bargaining and compulsory arbitration between growers and millers.

The environment into which Australia's sugar is supplied has not remained static. Sugar is a commodity and like most commodities, the ability to compete is largely determined by cost of production. The rise of Brazil as a sugar producer, following deregulation of its industry, greatly altered the competitive environment internationally. A relatively efficient producer, Brazil also benefitted from significant economies of scale. As an example of this, in 2001 Brazil increased the amount of land under cane production by the size of the entire Queensland production area. The influence of Brazil has meant other producers have had to increase productivity and efficiencies throughout their supply chains in order to remain competitive. While worldwide consumption of sugar has increased steadily, production has increased at a much greater rate and has largely been in a state of oversupply since 1999. This is particularly important to the Australian industry as the relatively small domestic market results in over 80 per cent of production being exported.

2.2 Deregulation to improve efficiencies

The changing environment impacted the sustainability of the Queensland sugar industry. Starting in 1979, there have been a significant number of investigations into the Australian sugar industry, driven by concerns the industry was becoming unsustainable. The 1992 review of the Queensland sugar industry[17] noted that growth and performance of the industry were being impeded by what was considered one of the most restrictive regulatory regimes in Australia.

Economic modelling undertaken on behalf of the Queensland Government by the Centre for International Economics in 2002[18] considered the future of the industry if the price stayed low, and there was no significant increase in productivity or efficiency, in the 2002-2007 period. The results suggested catastrophic reductions in industry profits (- 80 per cent) with millers as a group, becoming loss-making enterprises.

In April 2003, the Queensland Government released a statement in relation to the regulatory reform of the sugar industry.[19] The statement concluded that the pathway to a sustainable industry was through productivity improvements and that real reform of the *Sugar Industry Act 1999* (SIA) was needed to remove impediments that were preventing these improvements.

Impediments included a lack of freedom for growers and millers to operate in a commercial environment where new practices and innovation could occur. The Australian sugar industry supply chain comprises of three significant components - cane growing, milling and marketing (refining is a

[17] Industry Commission (1992) *Report No.19: The Australian Sugar Industry*, 6 March. (AGPS: Canberra).

[18] Centre for International Economics (2005) *Unshackling Queensland Sugar*, June. (CIE: Canberra).

[19] Queensland Government (2003) *Sugar the Way Forward: A statement of the Queensland Government's Position of Regulatory Reform of The Sugar Industry*, April.

fourth aspect but is less important to the Queensland situation due to the majority of product being exported in a raw state). In order to fully reform the Queensland industry, it is likely that innovation and efficiency would be required to be undertaken throughout the entire supply chain.

To that end, during the 2004-2005 period, a number of changes were made to the SIA which substantially deregulated the industry. Particularly relevant when considering the intent of the Bill, compulsory vesting of raw sugar with QSL was abolished. The abolition of compulsory vesting deliberately and specifically provided for entities other than QSL to own and market raw sugar.

It is the view of the milling sector that the reforms proposed in the bill are counterproductive and detrimental to the deregulation process of the sugar industry. For example, Mr Nolan noted:

> *Our industry was deregulated just nine years ago. Deregulation cost governments and taxpayers almost $500 million. As an industry, growers and mills agreed to accept that taxpayer money and to transition to deregulation. Our industry is operating as it was always envisaged through deregulation. The milling sector would welcome a discussion on opportunities to emphasise fairness in commercial dealings between growers and mill companies and maximise return for the industry, particularly given the extremely challenging financial circumstances of the current sugar market. Unfortunately, neither this private member's bill nor most of the discussion regarding future marketing arrangements for the Australian sugar industry, and in particular the public debate, has strayed into the territory of economic facts and objective analysis of what are the concerns in relation to the marketing of sugar and how they can be addressed.*[20]

2.3 Government and private investment in the deregulated industry

An industry adjustment package, which was supported by growers and millers, accompanied the regulatory changes. As part of this initiative, the Australian Government contributed $444.4 million over five years, while the Queensland Government invested $85 million over four years. The joint initiative provided for income support, exit grants and funding for regional adjustment.

In the intervening period between deregulation and the tabling of the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015, there has been significant investment in the Queensland sugar industry. In particular, there has been substantial international investment in milling enterprises. For example, Wilmar Sugar Australia Limited (Wilmar) purports to have invested greater than $500 million, over and above the purchase price of milling assets, to enhance productivity or efficiencies. This capital investment is seen to be a positive consequence of deregulation. Investors in mill infrastructure have made representations to DAF to the effect that their investment was due to the deregulation. Similarly, an argument could be advanced, that it would have been difficult for other institutional investors to justify investment in the sugar industry had the pre-deregulation market situation continued.

2.4 The cane price as a basis for calculating grower returns for sugar cane

Growers have always maintained a strong interest in the sale price of raw sugar, as it heavily influences their returns. The Cane Price Formula, which was introduced in 1915, is the mechanism that determines returns from cane for the overwhelming majority of growers. A component of the formula recognises that net proceeds from sugar sales should be shared in the ratio of approximately two-thirds to growers and one-third to the miller (note that net proceeds may be a loss). This was based on the estimated relative contribution of assets by each party at the time the industry was being established. Millers have consistently maintained that a strong interest, or economic interest in the price raw sugar sells for, has no bearing on who has legal title to that raw sugar.

[20] Nolan, D., 2015, *Draft public hearing transcript*, p.37.

2.5 The push for recognition of grower interest

Under current contractual arrangements, mills own raw sugar. Despite deregulation providing a framework for voluntary marketing arrangements, in practice, most raw sugar for export has until recently continued to be supplied to QSL.

The first step toward millers marketing their own raw sugar has been to enter into arrangements to buy a proportion of the raw sugar they derive their profits from, back from QSL. Wilmar in particular, termed this sugar "Miller Economic Interest" (MEI) sugar, which it has defined as raw sugar for which it has nominal price exposure. The defining of MEI has resulted in the consequential development of the phrase "Grower Economic Interest" (GEI) sugar to refer to raw sugar that is not MEI sugar. Wilmar has argued that the concept of GEI sugar, is a product of its arrangement to purchase sugar back from QSL and does not imply any transfer of rights to any party. Conversely, it is understood that some millers subsequently used the term GEI in discussions with grower representatives lending weight, at least, to its validity as a term.

A number of mill owners, led by Wilmar, have now advanced proposals to market all of their raw sugar production. Such proposals are consistent with the operation of a deregulated market and the intent of the regulatory reform.

Concerns have been raised among grower groups regarding the intention for a different entity to market the commodity. Grower groups have strongly indicated a desire to determine which entity markets the sugar that has not been identified by millers as MEI. Millers have suggested that increasing economies of scale (i.e. volume of raw sugar that they market) are important in their business models. Millers have stated that the inability to market the majority of their production would impact negatively on their business model.

The disagreement between growers and millers in this matter is understood to be an important driver that led to the proposal in the Bill to formally recognise GEI sugar and grant growers control over who markets it.

Conclusions

The committee notes the history of work by governments and key stakeholders and the substantial investments made in deregulation and productivity improvements to ensure the industry's future sustainability.

3. Policy objectives, consultation and regulatory impacts

3.1 Policy objectives

The Explanatory Notes tabled with the Bill on 19 May 2015 provided the following statement of the Bill's policy objectives:

> *The Sugar Industry (Real Choice in Marketing) Amendment Act 2015 provides cane growers with the right to have real choice over who sells and prices Grower Economic Interest (GEI) sugar and addresses the imbalance in market power between mill owners and growers.*[21]

The replacement Explanatory Notes tabled by the Member for Dalrymple on 14 July 2015 broadens the objective as follows:[22]

> *The object of the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 is twofold:*
>
> - *To ensure that a grower has real choice in terms of nominating the marketing entity for on-supply sugar in which they have an economic interest.*
> - *To facilitate the fair and final resolution of any commercial disputes that arise between a grower or bargaining representative and a mill owner including by arbitration.*

The stated intent of the Bill is now to provide for arbitration to resolve '*…any commercial disputes that arise between a grower or bargaining representative and a mill owner*'.[23] This would appear to be a significant broadening of the original object of the Bill, and an expansion on existing conditions on commercial negotiations between cane growers, their representatives and mills. Under the proposed changes, only growers and bargaining agents could trigger the arbitration process, not mill owners.

3.2 Consultation on the Bill

Consultation with stakeholders who may be affected by proposed legislation is an important stage of the legislative development process. This consultation can assist with identifying unforeseen impacts of the legislation before it reaches the final draft stage. It can also help to identify potential implementation problems should the legislation be passed.

In his Explanatory Notes for the Bill, the Member for Dalrymple refers to consultation with some stakeholders for the Bill - cane growers (farmers), ACFA and Canegrowers organisations that represent growers. The original Explanatory Notes state that:

> *Extensive consultation and research has been conducted with stakeholders including cane farmers, Australian Cane Farmers Association (ACFA) and CANEGROWERS. CANEGROWERS and ACFA recommend that the Queensland Government introduce pro-competition amendments to the Sugar Industry Act 1999. Industry representative groups have examined early drafts and provided feedback which went into the development of the Bill.*[24]

According to the replacement Explanatory Notes:

[21] Explanatory Notes, May 2015, p.1.

[22] Explanatory Notes, July 2015, p.1.

[23] Explanatory Notes, July 2015, p.1.

[24] Explanatory Notes, May 2015, p. 2.

> *Consultation (and) has been conducted with cane growers and growers' representatives, commonly concerned with the economic interest and welfare of Queenslander cane growers.* [25]

Which growers and their representatives were consulted, how and when it was done or the outcomes of this consultation is not explained. Canegrowers advised the committee that they have been actively engaged in consultation with the Katter's Australia Party throughout the development of the Bill:

> *From a very early stage when the Katter's Australian Party made it plain that it wanted to introduce a private member's bill, we were engaged. Certainly we have had an enormous amount of discussion with that party. When the draft bill was first released, we had significant consultation. The short answer is that we have had an enormous amount of consultation. We have suggested amendments, changes and so forth but we have certainly been engaged in the consultation.*[26]

Notably absent from the groups consulted are mill owners, QSL and government agencies. Mr Nolan, representing the ASMC expressed concern with the lack of consultation with his organisation to date:

> *We were not involved in any of the consultation in respect of the bill. We had no discussions about the bill prior to the bill being tabled. So it is very difficult to start cutting and chopping and changing the sorts of amendments that we might see in order for it to be acceptable. There is no question that all of the mills are very supportive of putting very strong protections, transparency and fairness provisions in place. We believe we can do that on a commercial basis.*[27]

The exclusion of mill owners was deliberate. As noted in the Replacement Explanatory Notes:

> *The position of mill owners as relevant has been ventilated in the Commonwealth Parliament's (June 2015) Senate report by the Rural and Regional Affairs and Transport References Committee, (refer Current and future arrangements for the marketing of Australian sugar). Additionally all parties and the public in general were invited to make submissions on the Bill through the Queensland parliamentary committee system.* [28]

However as the senate inquiry consultation occurred prior to the tabling of the Bill and did not include the Bill or similar proposals within its terms of reference, it should not be considered a replacement to consultation for the purposes of this Bill.

Mill owners, ASMC, QSL, the Australian Manufacturing Workers' Union, the Australian Chamber of Commerce and Industry, and the Australian Industry Group, who weren't consulted prior to the introduction of the Bill, raised significant and fundamental concerns in their submissions to the committee about the viability and likely adverse consequences of the amendments proposed. None have supported the Bill.

There was also no public consultation on the Bill prior to its introduction. The opportunity for the public to make submissions to the committee is mentioned in the Replacement Explanatory Notes, however the committee's work only commenced after the Bill was finalised and introduced.

Despite what is claimed to be extensive consultation conducted with grower stakeholders, there is also evidence suggesting that the actual clauses of the Bill, as drafted, were not considered in detail by growers or their representatives, and that they have different understandings and expectations of

[25] Explanatory Notes, July 2015, p.3

[26] Schembri, P., 2015, *Draft public hearing transcript*, p.26.

[27] Nolan, D., 2015, *Draft public hearing transcript*, p.40.

[28] Explanatory Notes, July 2015, p.4

the precise content of the Bill. For example, at the public hearing, head of Economics at Canegrowers, Mr Males, commented:

> *We have looked at the principles that the bill seeks to achieve. We have not delved into the intricacies of the legislative drafting. We think there are experts in this place who can look at that… Perhaps it could be a little crisper in its presentation, but I will leave that to the legislative drafting experts to come up with the best way of doing that.*[29]

Canegrowers Chairman, Mr Schembri, commented:

> *Again, I am not an expert on this bill line by line …, but I understand this bill actually defines the term 'grower economic interest'. I understand it also prescribes the calculation, how you would arrive at it.*[30]

The committee notes that the Bill does not in fact seek to achieve either of the points noted by Mr Schembri, giving further cause for concern that the Bill may produce unintended or impractical consequences for the industry.

Conclusions

Consultation for the Bill has been unsatisfactory.

There has been inadequate and at best 'selective' targeted consultation with some sugar industry stakeholders, while other stakeholders with substantial, direct interests in the Bill have been deliberately excluded.

There has been no public consultation in relation to the Bill prior to its introduction.

3.3 Regulatory impacts

The proposed amendments to the *Sugar Industry Act 1999* (SIA) have the potential to change how the sugar industry operates, with far-reaching consequences for cane growers, sugar mills, regional communities and businesses in Queensland.

Whether the impacts of mills exiting the QSL marketing arrangements will be positive or negative for the sugar industry remains unknown. It is quite possible that the separate marketing arrangements preferred by some mill owners may be advantageous for growers and the industry at large. This has been identified by Canegrower groups in their submissions.[31]

Regulation is often necessary to protect the community and environment, and is an essential part of running a well-functioning economy and society. Regulation, however, must be used judiciously. It may introduce additional costs for businesses, consumers and government and needs to be well targeted and used in tandem with other non-regulatory approaches. It is important to find an appropriate balance between the benefits and costs of regulations. Central to achieving this aim is using best practice regulation to maximise the efficiency of regulation, as well as eliminating and preventing unnecessary and excessive regulatory impacts, while preserving or strengthening community safeguards.

For government Bills proposing significant regulations, departments must first conduct a regulatory impact assessment that examines the effects of the proposed legislation, as well as alternatives to legislation, and helps to identify that the legislation is needed. This process evaluates the regulatory proposal, or a range of options, against the status quo to determine the impacts, benefits and costs of regulatory intervention. In Queensland, the Regulatory Impact Statement (RIS) system is

[29] Males, W., 2015, *Draft public hearing transcript*, p.30.

[30] Schembri, P., 2015, *Draft public hearing transcript*, p.30.

[31] Refer Submission Nos. 7 and 14.

administered by the Queensland Productivity Commission. This assessment includes consideration of impacts on stakeholders and potential impacts on others including:

- material effects on cash flow, profitability or prices
- required investments to comply
- changes to business practices
- effects on the ongoing profitability and competitiveness of businesses
- impacts on resource allocation, savings and investment
- restrictions on the conduct of business
- reductions in the ability of, or incentive for, businesses to compete
- reductions in consumer choice or access to goods or services
- reductions to productivity through time consuming, duplicative or unnecessary processes and systems, and
- impacts on operational capacity and efficiency.

Private member's Bills which are developed outside of the government are not assessed by departments for their regulatory impacts. As far as the committee is aware, there has been no such regulatory impact assessment of the provisions in the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015. In regard to the absence of an assessment of the Bill's regulatory impact, the member for Dalrymple advised the committee:

> *In response to concerns held by the AEC that if a Government Bill sought to impose similar regulatory changes it would be subjected to a comprehensive assessment of its regulatory impacts, the AEC is respectfully reminded that opposition and crossbench members do not have unfettered access to information nor the resources of the state like those in Government. That said, consultation with industry was undertaken during the development of the Bill.*
>
> *Furthermore the AEC, (i.e. parliamentary committee system), has provided all stakeholders with the opportunity to make submissions about regulatory impacts among other matters. In addition supplementary information including the (June 2015) Senate report has been provided in a genuine effort to reliably inform the AEC and Queensland Parliament. It is emphasised that the Senate report was written after an extensive inquiry by the Commonwealth Parliament's Rural and Regional Affairs and Transport References Committee. The Senate report conveys the view that a response akin to that provided by the Bill is justified and required, (refer Senate report, p. 37).*

Submitters with a clear vested interest did comment in their submissions to the committee on what they perceive to be the positive or negative regulatory impacts of the Bill, however, their assessments may reflect self-interest and cannot be viewed as objective. For example, mill owners represented by the ASMC, anticipated there to be significant adverse regulatory impacts arising from the Bill's proposals:

> *All of the members of the Australian Sugar Milling Council are here because this private member's bill, if enacted, would undermine future investment in the milling sector, it would impair asset value of mill businesses and it would fundamentally alter the structure and the operation of the Australian sugar industry supply chain... This bill, if enacted, would not create any additional value in the Queensland sugar industry. There has been no economic modelling or financial evidence to suggest that it would. This bill would introduce costs and harm our international competitiveness and, at*

> *best, it would see a contraction of the industry over time to the detriment of growers, mills and associated businesses and communities.*[32]

And:

> *One of the challenges here is that when you start talking about legislative solutions you are talking about a one-size-fits-all solution for a very broad and very diverse industry. It is really difficult to capture the full range of commercial potential that exists when you start trying to implement that legislation across-the-board from our perspective. When we deregulated in 2006, a lot of the drivers for that were to allow and enhance regional discussions. It was acknowledged through a range of studies and reviews commissioned by industry and government at that time that one of the impediments to commercial development of the industry was this centralist approach that we took to commercial activities.*[33]

Growers instead argued that the Bill was necessary for the future sustainability of the sector:

> *I would start by responding that what this bill will do is it will enhance grower confidence because it will give them choice in the marketing of their product. It will give them an ability to engage in pre and post contractual dispute resolution where there happens to be deadlocks with their growers. That process in and of itself will instil confidence in the growers and their long-term investment decisions in our industry…Will it add costs? I think that, as that confidence grows and with that confidence the relationship between the growers and their mills matures because the mills see that they are in a more competitive situation and they must make competitive offerings with their growers, that will enhance the maturity of the relationship between the growers and the millers. Earlier in this conversation there was a description of a lack of trust in the relationship between some of the units of our industry and some of the mill owners. In some areas, that trust is very strong and that is good. But in those areas where it is not, this bill and the competitive forces that it will unleash will help that relationship to mature, the confidence to grow and the trust to be there. So rather than add costs, I think it will reduce costs in our industry.*[34]

Conclusions

In the absence of a regulatory impact analysis or other objective analysis, it is difficult to reconcile the conflicting position of growers and millers and to gauge the consequences of the private member's Bill proposing significant legislation – both intended and unintended. This has been a key problem for the committee in its examination of the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015.

There is therefore unknown risk that the Bill, if passed, would have significant adverse impacts on the sugar industry (growers and millers alike), on sugar exports and on communities whose economies are dependent on the sugar industry.

What is also clear to the committee is that there has been little consideration given to what might be alternative solutions or approaches to address the real and/or perceived market and regulatory failures which give rise to the current industry impasse with respect to marketing.

Prior to the Bill being considered by Parliament for the second reading, the committee believes the regulatory impacts, both intended and unintended, and the risks of adverse outcomes for the sugar industry need to be properly identified and quantified in consultation with key stakeholders through

[32] Nolan, D., 2015, *Draft public hearing transcript*, p.37.

[33] Nolan, D., 2015, *Draft public hearing transcript*, p. 40

[34] Males, W., 2015, *Draft public hearing transcript*, p. 32

a regulatory impact assessment. The most appropriate body to conduct that assessment is DAF, with guidance from the independent Queensland Productivity Commission (QPC).

Recommendation 2

The committee recommends that the Minister requests his Department of Agriculture and Fisheries to conduct a regulatory impact assessment of the Bill in conjunction with the Queensland Productivity Commission, and that the Minister tables the department's report on this assessment prior to the Bill being brought on for the second reading debate.

Minister responsible: Minister for Agriculture and Fisheries and Minister for Sport and Racing

4. Evaluation of the Bill's proposed amendments

The Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 proposes significant and far-reaching changes to the operation of the Queensland sugar industry, including to insert:

- new section 33A to provide growers and their representatives the right to trigger a statutory arbitration process to resolve contractual and pre-contractual disagreements about supply contracts. This trigger would not be available to mill owners or other affected parties such as QSL.
- new section 33B specifying mandatory terms that must be included in a supply contract between a grower and mill owner including that which establish growers economic interest (GEI) in the proportion of raw sugar for which they bear a sale price exposure; and allowing growers to nominate their choice of marketing entity for their proportion of GEI sugar, and
- new Chapter 10 and section 298 to set out transitional provisions applying to continuing supply contracts and/or arbitration, initiated before the commencement of the provisions, if the Bill is passed.

The replacement Explanatory Notes also provide a brief explanation of the Bill's ten clauses which was missing from the original Explanatory Notes, and advise that the Bill is '…consistent with FLPs and does not adversely affect rights and liberties, or impose obligations retrospectively.'

Possible fundamental legislative principles concerning clause 6 of the Bill are discussed in Part 5 of this report.

4.1 Market imbalance

The justification for the Bill is argued in terms of the need to safeguard the interests of growers in how sugar is marketed, the need to address 'market imbalance' in the industry and the need to provide growers with the right to statutory, pre-contract arbitration to resolve disputes with mill owners.

The sugar cane market is a monopsony.[35] Because sugar cane starts to lose its sugar content and value once it is cut, and given the geographical location of mills, growers generally can only supply their cut cane once harvested to a single mill in their local region. Cane growers have claimed this places them at a significant disadvantage when negotiating cane supply agreements with mill owners. Growers believe that these market circumstances create an imbalance of market power, giving mill owners a stronger bargaining position which disadvantages growers.

Mr Schembri attests to this effect:

> *The heart of this issue—and this bill deals with it—is an issue of fairness based around market power in the industry. It is our contention that there is a serious commercial imbalance in negotiating power between growers and millers, an enormous commercial mismatch between growers and millers, which is to the detriment of growers and which we believe is undermining confidence. It is our view that unless a remedy is applied as per this bill this will impact upon the future growth and development of the industry.* [36]

Millers dispute this. They argue that the co-dependent nature of their relationship with growers and mills, the high sensitivity of mill returns to cane supply volumes and the existence of grower collective bargaining ensure that the market power of growers and mill owners is balanced. Bundaberg Sugar Limited, for example, noted in its submission:

[35] A monopsony is a market where there is a single buyer and many suppliers: as opposed to a monopoly where there is a single seller and many buyers.

[36] Schembri, P., 2015, *Draft public hearing transcript*, p.23.

> *What we are seeing, is not an imbalance of market power but rather, growers "negotiating" via government intervention to provide a more advantageous outcome through this negotiation phase. The conflict should simply be considered part of the transitioning phase of deregulation and certainly not a market failure as some would suggest.*[37]

Dr Malcolm Wegener, Honorary Senior Research Fellow, University of Queensland, argued a similar position:

> *Growers and millers have always had a fairly adversarial arrangement, partly I guess brought about by the regulated history of the industry. They are perhaps a bit inclined to see problems where problems do not exist. I tend to agree with you that the interests of the millers and the growers pretty much coincide in trying to get the best price for their sugar and it is a question of selling Australian sugar in competition with Thai sugar or Brazilian sugar which may be the source of some of their concern.*[38]

As noted in other evidence at the committee's hearing for the Bill, mills also face uncertainty and risks due to the nature of the sugar industry:

> *I am not exactly certain the need for this bill, not certain what the market failure is. The key issue for a milling company is that we only have one product that we can crush. We cannot crush multiple products. We cannot crush corn, sorghum or other products like that. We can only process sugar cane. Yet the land that we draw product from is contestable. I closed the Babinda Sugar Mill in 2011 simply because of competing land uses. That competed away around about a million tonnes worth of sugar cane and made that mill unviable. .. We are under pressure to make sure that we have the most attractive crop and profitable crop for our growers otherwise there is no doubt they will vote with their feet and we will be stuck with stranded assets.*[39]

Arguably, what growers refer to as an 'imbalance of market power' is actually an imbalance of bargaining power.[40] The inequality in bargaining power between growers and millers has long been recognised. Protections were included in the Sugar Act in 2006 to offset the potential for bargaining imbalance between growers and mill owners. The Sugar Act requires that cane can only be supplied to mills under a CSA. This requirement provides incentive for growers and mill owners to reach agreement. The Sugar Act also provides for collective bargaining to give growers a more equal balance of power in the negotiation process with mills over the supply of sugar cane.

Submissions to the committee argue that the market imbalance some canegrower representatives describe is more a reflection of the intense lack of trust and compromised goodwill between cane growers and mill owners:

> *In terms of one of the key questions about why does the system work with MSF Sugar and Maryborough and Mulgrave, I think the key is it is about trust and transparency and that is something that cannot be legislated for. Our interests are equally aligned, so we are equally exposed to premiums and price risk as much as the growers are. So we have the same skin in the game as the growers.*[41]

[37] Bundaberg Sugar Ltd, 2015, Submission No. 6, p.2.

[38] Wegener, Dr. M., 2015, *Draft public hearing transcript*, p.10.

[39] Barry, M., 2015, *Draft public hearing transcript*, p.18

[40] Melway Publishing Pty Ltd v Robert Hicks Pty Ltd (2001) 205 CLR 1, p 27.

[41] Heagney, P., 2015, *Draft public hearing transcript*, p. 22

And:

> *It does concern me to see the issues that are being raised at the moment. It worries me if it is just for political gain. To be quite honest with you, we see the cane supply agreements that we have as adequate. So do our growers. We rarely actually negotiate anything to do with the supply agreement; they are so well established. The cane price formula is so well established. It is not a contentious issue. I guess we are a little bit concerned. If it ain't broke, why are we trying to fix it?*[42]

And:

> *With regard to the issue around trust, you cannot legislate for trust and you cannot contract for trust. All you can do is put in place a set of commercial arrangements and try to build as much robustness, transparency, clarity and understanding around those commercial arrangements and then let them operate and build trust over a period. You cannot force that trust to exist. I think the issue of transparency and trust is being confused in some of the discussion we have had around what we are seeking to achieve.*[43]

Government intervention, which could include regulation, could be justified if there is evidence of, or significant potential for, bargaining imbalance, or evidence of a market participant using a market advantage to act unconscionably. As noted in the Queensland Government's Regulatory Impact Statement System Guidelines, '*Dissatisfaction with a market outcome does not, without more evidence, substantiate the existence of market failure that government intervention can remedy'*.[44]

Regulation can have adverse effects and needs to be used carefully. As noted by the Queensland Competition Authority in its submission to the Commonwealth's Competition Policy Review:

> *It is important to recognise that the presence of market failure alone does not justify regulation if the costs of regulation exceed the benefits… A key lesson for the design of legislation and enforcement of regulation is that government solutions to address market failure are not cost-free and may not work as intended (government failure). Therefore, not every market failure justifies a government intervention. In some cases a regulatory response to a market failure may make it more difficult for entrants or existing firms to use new and better technologies to improve market performance.*[45]

If the collective bargaining rights provided to growers in the Sugar Act are not protecting growers as intended, these provisions could be reviewed by DAF as part of its periodic review of the Act. The department advised the committee at its public hearing a ten-yearly review of the Sugar Act is now due.[46]

4.2 The proposal to provide for statutory pre-contract arbitration

The Bill proposes to introduce a new section 33A into the SIA to provide for arbitration for resolving contractual and pre-contractual disputes between growers and their representatives and mill owners.

Statutory arbitration or dispute resolution processes were removed from the Sugar Act as part of the 2006 deregulation. Between 2002 and 2005, successive reviews of the sugar industry concluded that the regulatory system at the time stifled the sugar industry's productivity, created antagonism between growers and mill owners and fostered a resistance to change which hindered productivity

[42] Hatt, R., 2015, *Draft public hearing transcript*, p. 42

[43] Nolan, D., 2015, *Draft public hearing transcript*, p. 42

[44] Queensland Productivity Commission, 2013, p.53.

[45] Queensland Competition Authority, 2014, Submission to Commonwealth's 'Competition Policy Review', August, pp.1-7.

[46] Letts, M., 2015, *Draft public hearing transcript*, p.11.

and diminished returns.[47] Statutory arbitration processes were subsequently removed from the SIA as part of the industry deregulation process.

Canegrowers argue that deregulation has not necessarily produced better outcomes for growers, and suggest there is a need for statutory pre-contract arbitration processes to address market imbalance:

> *When the industry was deregulated in 2006, one of the views at the time was that a lot of frivolous and vexatious issues were tying up all of the arbitration processes in the industry. But in endeavouring to resolve that issue they threw the baby out with the bathwater. What you really need for a mature industry to have a system of dispute resolution and arbitration. Certainly, it is not the experience of every mill area to be in dispute resolution or in the courts every five minutes to resolve issues. So I do not think it will add costs.*[48]

Mill owners in their submissions dispute claims by growers and their representatives of market imbalance. They argue in their submissions that they have experienced similar difficulties in their attempts to decide on terms and reach agreement with growers and their representatives for new CSAs. The ASMC noted that no mill company supports pre-contract arbitration.

> *Pre-contract arbitration does not exist in any other business context in Australia between a supplier and processor or manufacturer. The only instance of pre-contract arbitration in agribusiness in Australia deals specifically with disputes arising in respect of access to essential infrastructure through the Port Terminal Access (Bulk Wheat) Code of Conduct. This would add cost to business and it removes the motivation for businesses to negotiate in good faith to reach commercial agreement for the supply and purchase of goods and services.*[49]

Mr Oliver, an advisor to the ASMC, notes that pre-contract 'final-offer' arbitration increases commercial risk for both growers and millers:

> *That pre-contract access regulation or negotiate-arbitrate regime tends to be applied quite sparingly for the fairly obvious reason that one normally expects that commercial negotiation is going to produce better outcomes than one which is imposed by an arbitrator… The proposition that you would necessarily produce better outcomes through arbitration is not one that you see embraced very often, certainly in business in Australia.*[50]

Some stakeholders hold a view that statutory pre-contract arbitration may incentivise poor conduct by parties to a dispute in the belief that arbitration will provide a resolution in their favour. The committee heard at the public hearing:

> *…No contract, we have a disagreement, it can go to arbitration. It is a challenging kind of concept and it takes the onus of reaching a commercial decision away from the parties involved. Effectively, you have the incentive to negotiate without necessarily thinking that you need to reach a final point, because you know that ultimately you can just throw it to somebody else and get them to make a decision in terms of the question that is at hand. From our perspective, it does not seem to encourage normal commercial good faith negotiation and maximising the efficiency and the benefit of the outcome for both parties.*[51]

[47] Sugar Industry Reform Bill 2004, Explanatory Notes, pp.2-4.

[48] Schembri, P., 2015, *Draft public hearing transcript*, p.33.

[49] Nolan, D., 2015, *Draft public hearing transcript*, pp.37-8.

[50] Oliver, J., 2015, *Draft public hearing transcript*, p. 39.

[51] Nolan, D., 2015, *Draft public hearing transcript*, p.45.

A number of submissions raised the question as to the most appropriate form of arbitration or dispute resolution. One area that growers and mill owners agree is that the Bill's proposal to apply the provisions of the *Commercial Arbitration Act 2013* is not the most suitable mechanism for resolving their disputes. A key concern is that the Bill would allow minor contractual and pre-contractual disputes to result in arbitration which would be costly for both growers and mill owners.[52]

As currently drafted, the arbitration provisions in the Bill are not balanced or fair to all parties, and are inadequately scoped. The committee also notes that subsection (1)(a)-(c) fails to acknowledge the equal role of mill owners as a party to commercial negotiations with growers and their representatives.

4.3 The proposal to recognise grower economic interest and grower choice

The Bill seeks to amend the SIA to allow growers the ability to nominate their preferred entity to market the proportion of raw sugar produced from the cane they supply.

According to the replacement Explanatory Notes for the Bill tabled in July, the need to safeguard growers' choice has been:

> *…enlivened by alternative marketing options for on-supply sugar arising in the Queensland sugar industry.*[53]

The 'alternative marketing options' referred to are the decisions by three of the six mill owners operating in Queensland to give notice of their intentions to exit their current marketing arrangements with QSL and, instead, directly and independently market the raw sugar produced at their mills.

Since deregulation in 2006, marketing through the single desk (Queensland Sugar Limited (QSL)) has been voluntary and determined through commercial negotiation between miller and marketer (Raw Sugar Supply Agreements (RSSAs)). The intent of deregulation was to establish an open competitive market for raw sugar. Accordingly millers may legally exercise their right to market sugar independent of QSL.

In giving notice of their intention to exit the QSL sugar marketing arrangements, mills have not broken any laws or breached their cane supply agreements with growers, or their RSSAs. The move away from a single desk for raw sugar was anticipated in the reforms of the sugar industry as part of deregulation in 2006.

Growers claim they have a direct and explicit interest in the proportion of raw sugar sold for which they have a price exposure. Notionally this price exposure is approximately 2/3rds of the proceeds from the sale of raw sugar produced from the cane they supply, and is calculated based on the cane price formula. Growers believe this 'interest' translates into a right to determine the price and sale of their 2/3rds stake in the raw sugar produced by mills.

The Bill proposes to include a new section 33B in the Act to require that grower choice as a statutory (mandatory) contractual term in CSAs.

To facilitate grower choice, requires that a 'growers' proportion be legally recognised and defined as separate from a 'millers' proportion, also as a contractual term in a CSA. Accordingly new section 33B also requires that a grower's price exposure (termed 'growers economic interest' or GEI sugar) be identified as separate from the miller's economic interest sugar.

Growers are concerned that marketing of sugar by mills outside of QSL may affect their cane payments which are calculated based on the price achieved for sugar, and that they will have no control over the mills' marketing decisions.

[52] Refer Submission Nos. 11, 19 and 21.

[53] Explanatory Notes, July 2015, p.1.

The SIA does not currently recognise or define grower economic interest. Currently CSAs transfer title for sugar cane to millers at the point of delivery of the cane. Millers therefore have property title for manufactured raw sugar until it is transferred to the marketing entity under the RSSA. Based on this fact, Millers enter into agreements with marketing entities to sell and deliver raw sugar to its destination market. Currently most millers have marketing agreements with QSL.

Under current arrangements, growers could, as a matter of commercial negotiation and with the agreement of the miller, nominate a marketer in their CSA for any proportion of the raw sugar produced. There are examples of where this has occurred in some regions.[54]

The ASMC told the committee that no mill company supports the amendments which effectively change ownership rights to the raw sugar:

> *The proposal to change ownership rights of raw sugar by giving growers a new right to dictate physical sale arrangements for the mill's manufactured product would be unprecedented in Australian business. It would profoundly alter the current supply chain commercial arrangements for the Queensland sugar industry and it would lead to greater inefficiency and increased costs, loss of jobs and poorer economic performance by the Queensland sugar industry. These are two threshold issues that mills do not and cannot support. There is no economic evidence to support either of these two issues.*[55]

QSL told the committee it preferred the current arrangement:

> *Back in 2006 there was a single desk for sugar marketing, where the state took ownership of sugar produced at a mill and all sugar had to be sold by QSL. Since that time, it has been a voluntary system. My own view is that competition gives better results for everyone and I think that the system in place since 2006 has been better than the system that was in place prior. But competition has to be allowed to work and the proposal by three mill owners, Wilmar, Cofco and MSF, to take the sugar and market it themselves and not give a choice to their growers about marketer, in our view, does not deliver the competition that was intended back with deregulation in 2006.*[56]

At least some growers appear to be satisfied with current arrangements with mills. The committee heard from Maryborough Canegrowers:

> *We have had three different mill owners in that 10 years and we have managed to get along with them all. I suppose when there is a risk that the growers might leave and do something else, you only take a person down once, don't you? But there is that risk and whether this can be sorted out without a bill, I do not know. We probably could in Maryborough, but I do not know if they can anywhere else. So that is probably an issue.*[57]

Millers also argue that exposure of growers to the sugar price does not translate to title over the raw sugar that is produced by a mill. Mr Oliver, advisor to ASMC, explained at the hearing:

> *The title to the raw sugar and the property in that sugar certainly since 2006 vests in the mill owner that creates it. Again, in one sense that is a pretty uncontroversial and fairly orthodox and common situation—a person who creates property, generally speaking, is the owner of that property. They might enter into a contract to encumber*

[54] Refer Submission No. 11; and Barry, M., 2015, *Draft public hearing transcript*, p.18-19.

[55] Nolan, D., 2015, *Draft public hearing transcript*, p. 38.

[56] Beashel, G., 2015, *Draft public hearing transcript*, p. 13.

[57] Atkinson, J., 2015, *Draft public hearing transcript*, p. 22

> *their title and there might be a statute which changes that situation. In Queensland there was once, but that was repealed and it has restored the fairly common situation that the mill owner creates certain property—raw sugar. Of course, one of the rights inherent in the ownership of property is the right to deal with it and we have seen mill owners exercising that right since 2006. Most of it for at least the bulk of the sugar produced in Queensland has been sold by mill owners to QSL for export under these raw sugar supply agreements. Those are contracts freely entered into by mill owners.*[58]

Millers contest the proposal to allow growers to nominate their choice of marketer on the basis that it represents a form of expropriation of property title. Mr Oliver further explained:

> *When we talk about expropriation, we are talking about the taking of those rights inherent in the ownership of that property from the mill owner and giving it to the canegrower instead. The bill does not in terms say that the title to raw sugar vests in somebody other than the mill owner that produced it, but that is to a very large extent the effect of the bill. By taking away from the mill owner the right to decide how to deal with their property and creating a regime where ultimately the mill owner is then forced—it is described as an agreement with the marketing body, but it is not an agreement the mill owner enters into voluntarily. It is an agreement they are forced to enter into with a marketing body designated by the canegrower to market and sell that sugar, a choice which today the mill owner is entitled to make.*[59]

Canegrowers argue that they have an irrefutable economic interest in the marketing of raw sugar. For example, Mr Schembri stated:

> *In 1915 we were made sugar producers. In 2015 we are still sugar producers. We do not supply a raw material to a factory and cease to have an interest in where the product at the end of that mill ends up being marketed and, ultimately, what destination it arrives at. We have an interest in it.*[60]
>
> *We are not seeking to reregulate the industry. We are not seeking to take it back to the 1950s. Believe me, we are not going in that space. But it seems to me that we want to complete, which this bill does, the proper deregulation of the industry. It seems to me that if you have deregulation it presupposes that there are competitive environments and the players can compete against each other for leverage in terms of economic opportunity. But you cannot have it both ways. If there are competitive forces applying in the industry, you cannot conveniently close your eyes and ignore the fact that some monopolies are alive and well and restricting the competitive forces that should apply within the industry.*[61]

Mr Kirby, Managing Director, SISL Group, similarly attested:

> *Your question discussed whether the mill and the grower are aligned and the answer to that is, no if the mill has any connection with anything beyond the mill gate.*[62]
>
> *I really need to step back and say to you that the purpose behind being able to choose your marketing pathway is exactly that. If I adopt Adam Smith economics,… he said we all earn our living from doing things that benefit us. We all make our own choices. It is impossible to tell you whether it will be $1 or $10 more because that is up to each grower to make their choice. If I make the wrong choice and I get $10 less than I could*

[58] Oliver, J., 2015, *Draft public hearing transcript*, p. 38

[59] Oliver, J., 2015, *Draft public hearing transcript*, p. 38

[60] Schembri, P., 2015, *Draft public hearing transcript*, p. 24

[61] Schembri, P., 2015, *Draft public hearing transcript*, p. 24

[62] Kirby, S., 2015, *Draft public hearing transcript*, p. 27

> *have, poor me, but I made that choice. By not having this bill, you deny growers the opportunity to exercise the economic interest and the economic choices that we all take for granted every day.*[63]

Establishing a legal precedent for GEI sugar and providing a statutory right for growers to nominate their 'choice' of marketer is a complex matter and may cause further structural changes within the sugar industry. This could include shifting the cane payment arrangement to a toll crushing model.[64] Mills have argued this model may not provide the best outcomes.[65] At the hearing Mr Ray Hatt of Bundaberg Sugar Ltd told the committee:

> *I guess that does raise the spectre of toll crushing which I think would be the death knell for the industry. At the moment, growers and millers tend to share risk and reward. At the moment none of us are doing particularly well. We have a very poor sugar price. But if we do not have the product, if we do not own the sugar, we would be, I guess, offering a service to growers to mill their cane to make their sugar so we become a service provider. I mean, that is an extreme, but I think that is where it could go, which means we would become a cost plus operation. We would no longer share the risk and reward and I do not think the industry can bear that.*[66]

Mr Nolan further explained:

> *The issue of toll crushing has been raised from time to time. It is something that some of the mills have looked at and gone into in terms of some analysis and I think some of the mill companies have had discussions with their growers about what toll crushing might or might not involve. We cannot design a toll crushing model that we could see that would be sustainable into the future…. My understanding of the discussions that some of the mills have had with their growers around toll crushing has indicated that some of the canegrower organisations have said that they are not interested in looking at a toll crushing type arrangement. I think the reason for that is that essentially if you move into this arrangement of toll crushing it would not be on the basis of the same cane payment formula that we have currently got in place…*[67]

As the regulatory impacts of the Bill have not been properly assessed, it is impossible to determine the full extent and nature of the consequences of this proposal to recognise grower economic interest and grower choice.

4.4 Advice from the department on the objectives of the Bill

The committee invited the department to comment on whether the objectives of the Bill could have been achieved by other non-regulatory means. The department advised the committee:[68]

> *In relation to objective 1 (to ensure that a grower has real choice in terms of nominating the marketing entity for on-supply sugar in which they have an economic interest), it is noted that growers have never had a choice as to which entity markets raw sugar, either before or after deregulation in 2006. It is understood that a degree of flexibility as to which entity markets raw sugar was offered to growers by Wilmar Sugar Australia Limited, as part of recent negotiations. While this option was not*

[63] Kirby, S., 2015, *Draft public hearing transcript*, p. 31

[64] Under a toll crushing model, mills would charge growers a fee for crushing the cane, and growers would retain the ownership of the sugar produced.

[65] ASMC, *Correspondence*, 2 September 2015.

[66] Hatt, R., 2015, *Draft public hearing transcript*, p.49.

[67] Nolan, D., 2015, *Draft Public Hearing Transcript*, p.49.

[68] DAF, *Correspondence*, 24 August 2015.

taken up by growers and may no longer be on the table, it suggests that there is potential for objective 1 to be realised without regulatory intervention.

In relation to achieving objective 2 (to facilitate the fair and final resolution of any commercial disputes that arise between a grower or bargaining representative and a mill owner, including by arbitration), the department advised:[69]

….there are currently State and Commonwealth laws in place, that are available to the sugar industry to protect the interests of the various parties in the sugar industry.

Chapter 6 of the SIA authorises sugarcane growers to enter into collective contracts with mills. Collective bargaining is not compulsory, with growers able to enter into individual contracts as an alternative. Representative groups such as CANEGROWERS are regularly engaged by growers to negotiate collective contracts. This statutory authorisation for collective bargaining is made under section 51 of the Commonwealth's Competition and Consumer Act 2010 (CCA). This allows for State legislation to authorise exceptions to the CCA's prohibition against anti-competitive conduct, such as collective bargaining.

Further, Chapter 2 - Part 2 of the SIA provides for the arrangements for supply contracts. The purpose of this part is to ensure the supply by growers of cane to a mill and the payment to growers in return are governed by written contracts between growers and mill owners. Within these written agreements is the provision of dispute resolution clauses. Generally, the agreements describe a stepped process that involves mediation between the parties, with scope to move to arbitration if the dispute cannot be resolved through mediation.

The CCA also contains provisions that prohibit anti-competitive conduct, namely:

(a) section 45 which prohibits contracts, arrangements or understandings that have the purpose, effect or likely effect of substantially lessening competition

(b) section 46 which prohibits the misuse of market power.

If a party believes any of these provisions have been contravened, the Australian Competition and Consumer Commission (ACCC) has the authority to investigate. If it is found that either of these provisions has been contravened, the ACCC is able to seek penalties and other courses of action in the Federal Court.

Lastly, Part IIIA of the CCA provides for the creation of an access regime, under which a person can apply for the declaration of services provided by means of essential facilities. If a service is declared, a party seeking access to the service can go to arbitration, if they do not agree on the terms and conditions of access. Similar provisions are provided for in Part 5 of the Queensland Competition Authority Act 1995.

DAF understands that there is currently only one example of pre-contractual arbitration in agribusiness in Australia. It is in relation to grain exporters negotiating access to bulk grain port terminals and is part of the mandatory Port Terminal Access (Bulk Wheat) Code of Conduct.

Pre-contract arbitration under the Bulk Wheat Code of Conduct deals specifically with infrastructure access disputes. Importantly, there is no industry regulation that currently exists that prescribes arbitration in the development of

[69] DAF, *Correspondence*, 24 August 2015.

contracts/agreements between a supplier and processor, manufacturer, merchant or other receiver of goods.

Conclusions

The committee notes the concerns raised during the inquiry that growers believe they face a bargaining imbalance when negotiating cane supply agreements with mill owners by virtue of their monopsony over cane crushing, and that this concern may be more pronounced in particular regions.

The committee notes the requirement in the *Sugar Industry Act 1999* that cane can only be supplied under a written agreement, and the right for growers to enter into collective bargaining with mill owners were included to offset the bargaining imbalance, and advice from DAF that there are existing Commonwealth and Queensland laws available to the Queensland sugar industry that could be used to resolve commercial disputes.

In the event that the existence of a bargaining imbalance is substantiated, the committee notes that the *Sugar Industry Act 1999* is due for a periodic review by the department. In the committee's view, any deficiencies with the collective bargaining and cane supply agreement requirements, and options to strengthen the legislation, should be examined as part of this review. This review would also be an ideal vehicle for all possible remedies to the problems the Bill is seeking to resolve through legislation including:

- whether providing growers with an option to nominate their 'choice' of marketing entity would enhance competition and efficiency in the sugar industry, and
- whether providing a right for growers and their agents to require arbitration for resolving contractual and pre-contractual disputes with mill owners over cane supply contracts should be legislated.

This review would also be able to consider the future viability of QSL should mills exit the current marketing arrangements as they have indicated.

Recommendation 3

The Committee recommends that the Department of Agriculture and Fisheries in its periodic review of the *Sugar Industry Act 1999* consider:

- the efficacy of the collective bargaining provisions
- the need for recognising 'grower choice' in cane supply agreements
- the need for arbitration to be made an option for resolving contractual and pre-contractual disputes between growers and mill owners, and
- the future viability of Queensland Sugar Limited should mills exit current sugar marketing arrangements.

Minister responsible: Minister for Agriculture and Fisheries and Minister for Sport and Racing

5. Amendments proposed by the Member for Burnett

During the final stages of the committee's examination of the Bill, the Member for Burnett proposed that the Bill be amended in line with some proposals from an exposure draft of a Bill [the Sugar Industry (Facilitating Grower Choice) Amendment Bill 2015] developed by the Member for Nanango and released for public comment.[70]

Principally these amendments have a similar effect to the Bill to the extent that they:

- seek to recognise in the *Sugar Industry Act 1999* grower economic interest in a proportion of the total raw sugar manufactured, and
- mandate the inclusion of particular terms in cane supply agreements to allow growers to nominate their 'choice' of marketing entity for the sugar.

The amendments adopt different language and approach, in particular, setting up a number of conditions that need to be triggered before particular terms of supply would be mandated in cane supply agreements, which is intended to give parties the choice to avoid the triggers that are only activated by default.

The substantive amendments related to grower's economic interest and grower choice of marketing entity are as follows:

Clause 6 (Insertion of new sections 33A and 33B) – replacing lines 9 to 33 with:

(a) and (b) – to allow a grower and mill owner to agree that payment for the supply of cane can be on some basis other than a 'related sugar pricing term' and provide for the 'related sugar pricing term' which links the cane price to the sale price, only by default.

(c) - to provide that it is only if the contract includes the 'related sugar pricing term' that the contract is required to include terms allocating sale price exposure for the on-supply sugar; (c)(i) provides that sale price exposure is first allocated to the mill owner and, as previously explained, the clause allows for the possibility that the mill owner could accept the sale price exposure for 100 per cent of the on-supply sugar; and (c)(ii) provides that it is only if the parties agree that the mill owner is not going to accept the sale price exposure for all the on-supply sugar, a further term of the contract is required to allocate the sale price exposure for the remaining on-supply sugar to the grower.

(d) – to provide it is only if the parties have agreed to allocate sale price exposure to the grower under the contract, that it is also required to include a term for the grower to nominate a marketing entity to sell the 'grower economic interest sugar', however in the first instance this would allow the grower and miller to agree on the marketing entity and it is only by default that the marketing entity is the entity nominated by the grower.

(e) – to provide that, where the grower has nominate a marketing entity, the supply contract must include terms requiring the mill owner to deliver the grower economic interest sugar for sale as directed by the entity within a stated reasonable period and at a stated reasonable cost.

The Member for Burnett also proposed that the Bill be amended to remove the right for growers and their representatives to refer to arbitration pre-contractual disputes with mill owners, and that the Bill be treated as an Urgent Bill with consideration by Parliament by 15 December 2015.

Conclusions

The committee has considered the suggested amendments against the same criteria with which it has assessed the Bill. The issue at hand is whether there is sufficient evidence to suggest a systemic regulatory issue or to substantiate the claim of market or bargaining imbalance that would justify such a substantive regulatory change. As acknowledged elsewhere in this report, stakeholders have

[70] Information about the exposure draft Bill is available from the Member for Nanango's website

provided significant and conflicting accounts of the possible impacts – intended and unintended – which may result from the implementation of the proposed Bill, and which the committee have been unable to reconcile in the absence of thorough consultation and a regulatory impact assessment. It is not clear to the committee that Mr Bennett's suggested amendments have been subject to any detailed consultation with industry stakeholders, that the regulatory impacts have been considered in detail nor that the amendments have any greater support from industry than those proposed in the Bill.

Further, the committee is concerned that there are significant risks that the amendments would not significantly lessen the Bill's interference with millers' property rights in relation to raw sugar, nor the interference with the rights of individuals to conduct business. This issue is discussed in Part 6 in relation to FLPs.

6. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following issues to the attention of the House in relation to **Clause 6** of the Bill which proposes the addition of new sections 33A and 33B to the *Sugar Industry Act 1999.*

- **Right and liberties of individuals - Section 4(2)(a) *Legislative Standards Act 1992***
- **Does the Bill have sufficient regard to the rights and liberties of individuals?**

The committee brings to the attention of the House the potential for the provisions in clause 6 of the Bill to interfere with the right of individuals to conduct business, including business at the negotiating pre-contractual stage.

6.1 Proposed new Section 33A - Arbitration of disputed terms of intended supply contract

Proposed section 33A introduces arbitration as the method to resolve disputed terms of an intended supply contract between a sugar cane grower and mill owner. The section would apply if: a grower is negotiating or attempting to negotiate a supply contract (an intended supply contract) with a mill owner; the grower has given the mill owner the specified notice (ten days); and, at the end of the negotiation period, the grower and mill owner still dispute a proposed term in the intended supply contract.

The Bill would provide that, in these instances, the grower and mill owner are taken to have agreed to refer the matter to arbitration. Essentially section 33A instructs contracting parties (growers, their representatives and mill owners) to refer a matter to arbitration if certain circumstances exist (specified at subsections (1)-(7)).

Legislation should not, without sufficient justification, unduly restrict ordinary activities. The OQPC notebook states that the regulation of business, although prolific, is an intervention in a right to conduct business in the way in which the persons involved consider appropriate.[71]

In relation to arbitration, the Bill has similarities to the Farm Debt Mediation Bill 2003 and the Building and Construction Industry Payments Bill 2004. In both of these earlier Bills, a method of dispute resolution was imposed or potentially imposed on the parties to a contract.

The goal of the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 and these earlier Bills is not dissimilar in that the legislation appears to be imposing contractual terms with the aim of rectifying a perceived or actual imbalance of power. The key difference is that, in the current Bill, the legislated terms apply to the negotiating phase of a contract whereas the provisions in the earlier Bills only operated once a contract was in existence.

6.2 Proposed new Section 33B - Terms of supply contract about sale of on-supply sugar

Proposed section 33B details the terms of a supply contract for the sale of on-supply sugar. The section would apply to a supply contract for sugar cane between a grower and a mill owner (unless the grower is a related body corporate of the mill owner). Subsection (2)(a)-(e) sets out the specific terms that must be included in the supply contract.

Section 33B instructs contracting parties on what must be included in their supply contract, and these terms are highly pertinent to the financial payments and returns of each party. Whilst not onerous,

[71] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 118.

these terms are nonetheless significant to the commercial arrangement and therefore may interfere with the fundamental legislative principle of an individual's right to conduct business.

The committee notes that imposing/reintroducing statutory contractual terms and obligation may be justified in the circumstance if there is evidence of market failure or significant market or bargaining imbalance. A careful analysis of the regulatory costs and benefits would be necessary to demonstrate justification in this instance. In the absence of such analysis and justification, statutory pre-contract arbitration may represent a substantial interference with usual negotiating freedoms. As noted previously in the report, there has been no regulatory impact assessment for this Bill on which the justification for interfering with the rights of individuals could be based.

The committee invited the Member for Dalrymple and the department to provide advice on the following points to assist the committee to determine whether the interference by clause 6 with individuals' rights is justifiable:

- whether there is evidence of market failure or significant market imbalance between growers and mills in relation to the supply of sugar cane that would justify the imposition of statutory contractual terms and conditions as is proposed in clause 6 of the Bill
- the viability of the arbitration process proposed in the Bill
- whether the interference by the provisions in clause 6 with an individual's right to conduct business and the breach of FLPs is justified.

The following sections provide the comments provided by the Member for Dalrymple[72] and the department[73], and the committee's conclusions.

- **Whether there is evidence of market failure of significant market imbalance between growers and mills in relation to the supply of sugar cane that would justify the imposition of statutory contractual terms and conditions as is proposed in clause 6 of the Bill**

The Member for Dalrymple advised the committee:

> *In general it is held that the Bill is sufficiently justified. This assertion is able to be validated by referring to the (June 2015) Senate report titled Current and future arrangements for the marketing of Australian sugar, (Attachment 1). It is respectfully recommended that the AEC consider the entire Senate report in detail. It forms the basis of the overall response to the issues that have been identified by the AEC.*

DAF advised the committee:

> *Since deregulation, the supply of sugarcane and the payment for that cane, has continued to be managed through Cane Supply Agreements as stipulated under the Sugar Industry Act (1999) (SIA). The formula that dictates the payment for cane has not changed.*
>
> *There is no evidence that DAF is aware of, that would indicate market failure in the dealings between growers and mills under the current deregulated regime. Similarly, DAF is not aware of any evidence that a market imbalance, if any in fact exists, is any greater than the situation prior to deregulation in 2006.*

- **The viability of the arbitration process proposed in the Bill**

The Member for Dalrymple advised the committee:

[72] Knuth, S. *Correspondence*, 20 August 2015.

[73] DAF, *Correspondence*, 24 August 2015.

In response to concerns about Clause 6 of the Bill and in particular proposed new section 33A of the Sugar Industry Act 1999 (Qld) introducing 'Arbitration of disputed terms of intended supply contract', the AEC is referred to the below extract taken from page 32 of the Senate report:

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

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

It is evident this situation occurs at the pre-contractual stage of negotiations. Accordingly it is asserted that the proposed 'Arbitration of disputed terms of intended supply contract' is both the most effective as well as time sensitive approach for resolving an impasse, recognising the present dynamics of the Queensland sugar industry and that cane is a perishable crop.

The Senate report supports the view that there is a legitimate need for an affordable dispute resolution process to address inequities in bargaining power, (refer Senate report, p. 37). To this end and as relevant to the Bill, the Explanatory Notes cite that the object of the Commercial Arbitration Act 2013 (Qld) is to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals, without unnecessary delay or expense, (emphasis added).

The above information explains and justifies why it is necessary to impose pre-contractual arbitration in relation to the negotiation of a supply contract. Post-contractual arbitration is simply not compatible, distinguishing the Bill from the earlier Bills identified by the AEC, (i.e. Farm Debt Mediation Bill 2003 and Building and Construction Industry Payments Bill 2004).

DAF advised the committee:

It has been a consistent view of DAF that the relationship between growers and mills is a commercial matter. As such, terms, conditions and issues associated with the supply of sugar cane should be resolved commercially on a negotiated basis. DAF is not in a position to comment on the viability of the proposed arbitration and submit that it is a matter for Parliament to consider.

- **Whether the interference by the provisions in clause 6 with an individual's right to conduct business and the breach of FLPs is justified**

The Member for Dalrymple advised the committee:

In response to concerns about proposed new section 33A of the Sugar Industry Act 1999 (Qld) introducing 'Terms of supply contact about sale of on-supply sugar', it is held that imposing statutory contractual terms and obligations is sufficiently justified, recognising the potential for inequities and market imbalance as explained in the Senate report.

In response to concerns about the Explanatory Notes tabled with the Bill on 19 May 2015 and the revised Explanatory Notes tabled on 14 July 2015, the Bill does not explicitly nor implicitly propose provision for arbitration other than in circumstances

provided for by Clause 6. To be clear Clause 6 of the Bill proposes to insert a new section 33A into the Sugar Industry Act 1999 (Qld) introducing 'Arbitration of disputed terms of intended supply contract'. As explained this situation occurs at the pre-contractual stage of negotiations. The Explanatory Notes tabled on 14 July 2015 apply to this situation.

In continuing the Acts Interpretation Act 1954 (Qld), s 14B 'Use of extrinsic material in interpretation', explains when consideration may be given to extrinsic material including Explanatory Notes. This applies when, among other things, a provision is ambiguous or obscure. The Bill is unambiguous at Clause 6. It plainly and only proposes provision for the 'Arbitration of disputed terms of intended supply contract'. Clause 6 of the Bill provides context, purpose and the intent as relevant to present-day statutory interpretation. On this basis it is respectfully submitted that the Explanatory Notes are consistent with the original objects of the Bill.

In response to concerns that only growers and bargaining agents could trigger the arbitration process, the AEC is again referred to the Senate report. It is highlighted that growers are typically commercially reliant on local mill owners to process their cane into on-supply sugar. The risk of growers being unduly influenced and exploited is heightened when an entity owns multiple mills of logistical importance to growers. Accordingly the Bill takes into account the intrinsic relationship between growers and mill owners and safeguards growers in two ways:

- *Firstly it enables a grower or bargaining representative to properly negotiate a supply contract with a mill owner, irrespective of the growers' preferred marketing entity for on-supply sugar in which they have a legitimate economic interest.*
- *Secondly it enables a grower to nominate the marketing entity of their independent choice, or collective choice with other growers as applicable, without undue influence in relation to attaining a fair supply contract with a mill owner.*

This is consistent with deregulation and competition policy objectives.

DAF advised the committee:

DAF is of the view that justification of any breach of Fundamental Legislative Principles in relation to this matter is a policy issue on which Parliament should decide.

Conclusions

The committee notes that the report by the SSCRRAT, identified by the Member for Dalrymple, is not evidence of market failure or significant market imbalance between growers and mills in relation to the supply of sugar cane. Indeed, as noted, earlier in this report, the senate committee concluded that '*…any move towards re-regulation of the industry would not be in the best interests of the industry – particularly over the longer term*.'[74] The committee further notes the department's advice that it is not aware of evidence that would indicate market failure in the dealings between growers and mills under the current deregulated regime.

In regard to the viability of the arbitration process proposed in the Bill, the committee has duly considered the findings of the senate committee's report and comments from that report that were noted by the Member for Dalrymple in his advice on the arbitration process. It should be noted that the senate committee's report in June 2015 makes no mention of the Members' Bill tabled in May

[74] Commonwealth of Australia, 2015, Rural and Regional Affairs and Transport References Committee report 'Current and future arrangements for the marketing of Australian sugar', June, p.35.

2015, nor of the Bill's unique arbitration proposal that excludes mill owners as key parties to agreements, from the right to trigger the arbitration process. The senate committee's report should not be read as an endorsement of the Bill.

All parties to a CSA, including mill owners and growers bargaining collectively, have the power to successfully negotiate, or not to do so, as with parties to any commercial agreement. Despite concerns raised by Canegrowers groups in their submissions, the committee is led to believe that many growers and mill owners are negotiating and resolving their terms of their CSAs successfully. The committee also notes the long-held position of DAF that commercial terms and differences need to be resolved commercially on a negotiated basis.

The committee acknowledges the risks for growers due to the economic pressures of investing in growing a perishable crop and who may only have one mill to sell to. The committee also notes the similar risks for mills who need to cover substantial fixed costs dependent on the cane throughput and volumes that can only be procured from growers within a limited regional area. Clearly there is a strong mutual imperative for all parties in these CSAs to negotiate effectively to protect the future of their industry.

For these reasons the committee is unconvinced that the interference by the provisions in clause 6 of the Bill with the rights of individuals to conduct business, and the associated breach of FLPs, is justified.

7. Other issues

7.1 Improving the private member's Bill process

The committee's consideration of the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 has highlighted weaknesses in the private members' Bill process. It is one of a number of private member's Bills introduced during the 54th and 55th Parliaments that have proposed significant changes to legislation. In this instance, the Bill seeks to amend the legislation governing the operation of the State's largest agricultural export industry, the sugar industry. The amendments proposed have the potential to change how the sugar industry operates, with far-reaching consequences for the future of the industry as well as regional communities and businesses who are dependent on it.

Unfortunately, in the absence of any objective regulatory impact assessment during the Bill's development and only limited consultation with industry stakeholders by the Member for Dalrymple, the Bill was introduced without its likely impacts being understood. Had it been a government Bill, the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 would have been subjected to a rigorous assessment of its regulatory impacts before it was finalised and introduced into Parliament. In response to the committee's questions about regulatory impacts of the Bill, the Member for Dalrymple advised in his correspondence dated 20 August 2015 that:

> *….. opposition and crossbench members do not have unfettered access to information nor the resources of the state like those in Government.*

While members receive confidential advice and assistance from the Office of the Parliamentary Council with the drafting of their private member's Bills, they receive no expert advice or assistance in relation to assessing the regulatory impacts of their proposals.

In Queensland, the RIS system is administered by the independent Queensland Productivity Commission (QPC) which was established by the Honourable the Treasurer in April 2015. The QPC will provide independent advice on complex economic and regulatory issues, and propose policy reforms, with the objective of driving economic growth, lifting productivity, and improving living standards across Queensland. A wide level of open and transparent public consultation will underpin these functions. The commission is presently operating as a government entity under the *Public Service Act 2008*, but will be converted to a separate legal entity as a statutory body under its own legislation.

The QPC's RIS process includes an examination of the effects of the proposed legislation, as well as alternatives to legislation, and helps to identify that the legislation is indeed needed and justified. This process evaluates the regulatory proposal, or a range of options, against the status quo to determine the impacts, benefits and costs of regulatory intervention. In the committee's view, the Member for Dalrymple's private member's Bill, and the committee's examination of it, would have benefitted greatly from a rigorous and systematic assessment of its regulatory impacts in line with the QPC RIS system prior to the Bill being introduced.

Given the increasing numbers of private members' Bills before the House that propose significant legislation, the committee suggests that it would be timely for members to be able to access confidential advice from the QPC on regulatory impacts in relation to their private member's Bills.

Recommendation 4

That the Treasurer consider whether arrangements should be provided for members to access confidential advice on regulatory impacts from the Queensland Productivity Commission in relation to the development of their private members' Bills.

Minister responsible: Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships

Appendix A – List of Submissions

1	Canegrowers Cairns Region Ltd
2	Tablelands Canegrowers Ltd
3	Herbert River District Cane Growers Organisation Limited
4	Mackay Canegrowers Limited
5	Australian Manufacturing Workers' Union
6	Bundaberg Sugar Ltd
7	Canegrowers and Australian Cane Farmers Association (ACFA)
8	SISL Cane Farm Trust
9	Bondrogers Farming Pty Ltd
10	Rocky Point District Cane Growers Organisation Limited
11	MSF Sugar Limited
12	Tully Sugar Limited
13	Innisfail District Cane Growers Organisation Limited
14	Tully Cane Growers Ltd
15	Australian Sugar Milling Council
16	ISIS Central Sugar Co. Ltd.
17	Australian Chamber of Commerce and Industry
18	Canegrowers Burdekin Limited
19	Wilmar Sugar Australia Limited
20	Canegrowers ISIS
21	Burdekin District Cane Growers Limited
22	Canegrowers Proserpine
23	Queensland Sugar Limited
24	Australian Industry Group
25	Dr John Keniry AM

Appendix B - Summary of the submissions

Clause/issue	Sub No. and Submitter	Key Points
General comments	**Sub. 11 MSF Sugar**	MSF is of the view that much of the current 'sugar marketing regulation debate' lacks an objective focus and substantive examination. This an untenable situation in that it is undermining the international standing of the Australian Sugar Industry and its individual participants, and proposals of regulation at Federal and State Government levels appear to be designed to calm the perpetuators of unsubstantiated rhetoric.
General comments	**Sub. 12 Tully Sugar Ltd**	TSL notes that they have been working with its growers to better understand their needs/concerns and to negotiate the new CSA to commence in 2017. However TSL not that "the prospect, real or perceived, of a legislated outcome is neither helpful nor beneficial to the negotiating process intended to deliver a fair and commercial outcome between the Mill and its growers.
General comments	**Sub. 16 ASMC**	ASMC contend that the KAP announcement after the Bill was introduced incorrectly stated the millers were breaking away from industry pricing structures; and that 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.
General comments	**Sub. 21 Burdekin District Cane Growers Ltd**	Yet, BDCG recognises Wilmar Sugar's global footprint in the trade of raw sugar, its likely market intelligence, commercial sophistication and is keen to develop a commercial relationship that includes Wilmar Sugar offering growers marketing services. They are concerned however to ensure that there is genuine choice/competition, and not Wilmar operating with a monopoly power.
General comments	**Sub. 8 SISL Cane Farm Trust**	SISL note that there has been a concerted effort by some of the raw sugar mill owners to present the sugar cane growers objections to proposed changes to the current arrangements (these arrangements being the way the supply chain operates from cane grower to raw sugar buyer) as somehow "re-regulation" or a desire for a "single desk". SISL argues that this is not true. In SISL's view that it is in fact the raw sugar mills – specifically, Wilmar in the Burdekin (and COFCO and Mitr Pohl in their respective regions) - in their attempt to gain total control of the export marketing of raw sugar that represent an effort to create a "single desk" in each grower region, and thus a de-facto re-regulation of the industry. They argue that "If the mills are successful in their attempt to exert their monopoly power over the cane growers, Australia will have effectively re-regulated its sugar industry by monopolising miller control of the raw sugar".

Clause/issue	Sub No. and Submitter	Key Points
General comments - Competition in marketing services	**Sub. 20 Canegrowers Isis**	Isis Canegrowers supports opening the market up to greater competition for marketing services. The emergence of a new marketer into the industry could have a positive impact for growers provided each marketer retains sufficient tonnage to compete efficiently. For this to occur it is important that growers are able to execute choice in marketing services, which should include continued access to QSL plus at least one other marketer to achieve competition and best possible returns
General comments - Deregulation	**Sub. 2 Tablelands Canegrowers Ltd**	CG Tablelands notes that when the sugar industry deregulated in 2006 all parties agreed that Queensland Sugar Limited (QSL) would remain the preferred marketer of sugar under voluntary marketing arrangements. This ensured that growers' interest in the marketing of sugar continued as joint-owners of QSL." (Sub 2, p.1)
General comments - Deregulation	**Sub. 3 Herbert River District Cane Growers Organisation Limited**	Canegrowers Herbert River growers very strongly support the marketing arrangements currently in place and covered by contractual arrangements up to and including 2016 season. (Sub 3, p.1) "Growers condemn Wilmar's unilateral decision to withdraw from QSL and thus deny growers of their rights. Growers want a genuine commercial relationship that provides transparency and a real say in the marketing of their (Grower Economic Interest) sugar. Growers must be able to sell their sugar through QSL." (Sub 3, p.1) The subsequent sale of sugar milling businesses to parties who have different designs on marketing has highlighted that there were some inherent shortcomings in the deregulation that flowed from that 2005 memorandum of understanding that fully surfaced in the approach so clearly demonstrated by Wilmar disenfranchising the growers from the industry's preferred marketer with no access to dispute resolution in dealing with a resolute mill owner. (Sub 3, p.2)
General comments – Deregulation	**Sub. 13 Canegrowers Innisfail**	Canegrowers Innisfail contend that when deregulation was accepted by all of the sugar industry in 2005, it was on the basis that the industry owned marketing company, QSL, would remain as the preferred marketer of raw sugar for export produced in Queensland. The sugar industry agreed to the significant reforms of the industry and the situation now confronting the industry was neither foreseen nor envisaged. Accordingly they argue that there now needs to be a correction to recognise the changes that have taken place.
General comments – Deregulation	**Sub. 19 Wilmar Sugar Australia**	WSA note that the Queensland sugar industry was de-regulated in 2006 at great cost to Queensland and Federal Governments; and contend that the Bill disregards the Queensland Government's $33 million commitment and the Federal Government's $444 million, which was provided to the sugar industry to assist with de-regulation in the early 2000's. WSA further argue that the bill completely disregards the intent of de-regulation of the raw sugar marketing in 2006 with the express intention that sugar millers would be able to determine how to market the product they make.
General comments – Deregulation	**Sub. 19 Wilmar Sugar Australia**	WSA brings to the committee attention that following deregulation of raw sugar marketing in 2006, some mills (Maryborough, Mossman and Mulgrave) elected at that time to independently market their own sugar and left the QSL.

Clause/issue	Sub No. and Submitter	Key Points
General comments – Deregulation	**Sub. 3 Herbert River District Cane Growers Organisation Limited**	CGHR note: "At the point of deregulation there was in the memorandum of understanding with the Queensland Government clear support all round for QSL as the preferred marketer of export sugar."(Sub 3, p.2)
General comments – Deregulation	**Sub. 4 Mackay Canegrowers Limited**	'Wilmar argues that its announcement on 3 April 2014 to exit Queensland Sugar Limited (a 50/50 grower and miller owned voluntary marketing system), and directly undertake the sale and marketing of its own sugar from the 2017 season onwards, is entirely consistent with the principles of the 2006 deregulation of sugar marketing." In our opinion, this statement is a misrepresentation of what occurred in 2006 and is contrary to the agreed industry/Peter Beattie government position, and is certainly not a correct reflection of what the principles were surrounding the 2006 deregulation. These principles centre around the Memorandum of Understanding between the Government and industry groups at the time, as set out below: *It is recognised that, in moving to a new marketing system, the key to success is for all parties to work towards delivering greater flexibility and enhanced outcomes whilst continuing the benefits and synergies of presenting a coordinated face to Queensland's bulk raw sugar customers."* (sub 4, p.2)
General comments – Deregulation	**Sub. 7 Canegrowers and ACGA**	CG/ACGA contend that the deregulation of the industry that occurred in 2006 was only implemented by the Queensland Government when agreement was reached with the industry (ASMC on behalf of all mills and CANEGROWERS were party to the agreement) that QSL would continue to be the preferred marketer of sugar under voluntary marketing arrangements. This understanding was clearly outlined in a Memorandum of Understanding between the parties and signed by Premier Beattie before the deregulation commenced. This is documented in the Explanatory Notes to the 2006 implementing legislation. This agreed structure ensured that growers' interest in the marketing of sugar continued as joint-owners of and through their interaction with QSL. CG/ACGA believe that the unilateral decision taken by some mills to withdraw from QSL, the agreed preferred marketer, overturns a central pillar of the agreement to deregulate the industry; as it breaks growers' historic nexus with the market, replacing it with structures in which growers have no say or ability to influence.
General comments – Deregulation	**Sub. 7 Canegrowers and ACGA**	CG/ACGA provide an extract from the Sugar Industry Amendment Bill 2005 – Explanatory Notes as tabled in the Parliament of Queensland as evidence of the prior agreement reached between the government and industry to maintain QSL as the preferred marketer: *"The MOU recognises that while the State Government intends to pursue its policy to remove regulatory encumbrances from the sugar industry, it is committed to support an orderly transition from legislative to contractually-based marketing arrangements for bulk sugar export sales.* *It is recognised that, in moving to a new marketing system, the key to success is for all parties to work towards delivering greater flexibility and enhanced outcomes whilst continuing the benefits and synergies of presenting*

Clause/issue	Sub No. and Submitter	Key Points
		a coordinated face to Queensland's bulk raw sugar customers. The peak industry bodies have committed to working with Queensland Sugar Limited to assist it to remain the preferred marketer." CG/ACGA argue that in view of the commitments, it is clear that the 2006 deregulation was not based on a principle that millers were thereby free to independently market and sell the raw sugar produced in their factories. The process and associated agreements make it clear that all parties envisaged and agreed a partnership between growers and millers in the marketing of sugar.
General comments – Deregulation	**Sub. 7 Canegrowers and ACGA**	CG/ACGA note that in 2004 the Queensland Government decided it would deregulate the industry and a bill was introduced to amend the *Sugar Industry Act 1999* "to remove statutory vesting and to provide transitional arrangements to facilitate the orderly marketing of the Queensland sugar crop." They contend that the changes were introduced on the understanding that under the contractually-based marketing arrangements, the price of cane would continue to be linked to the price of sugar. Through this mechanism, cane growers and mill owners continued to share in the risk and rewards from bulk raw sugar export sales.
General comments - Mandatory code of conduct	**Sub. 1 Canegrowers Cairns**	CG Cairns feels that a mandatory Code of Conduct is required to ensure that the pro-competitive, transparent balance within the marketing of sugar can be achieved and maintained in the future. The submission discusses what the mandatory code of conduct should address. (Sub 1, p.1)
General comments – Market impacts	**Sub. 11 MSF Sugar**	MSF Sugar Limited (MSF Sugar) is viewed by some in the sugar industry as a non-conformist as it has taken advantage of the opportunities of the 2006 deregulation of raw sugar marketing to market raw sugar outside of the traditional single desk marketer (QSL) since that time. MSF further note that Raw sugar produced at the Mulgrave and Maryborough Mills has been successfully directly marketed to raw sugar buyers in Asia since 2006. MSF Sugar physical marketing activities have successfully co-existed with the operations of QSL, with shared access to Bulk Sugar Terminals at Cairns and Bundaberg Ports, accessing ships to transport the raw sugar to market and negotiating raw sugar sales to the large raw sugar refiners in Asia. They also note that during this time they have continued to allow growers to directly price their cane by pricing on the international raw sugar market (ICE11 futures market). They have also provided through a RSSA with QSL a mechanism for growers to choose a QSL marketing option for the determination of cane price. As testimony to the better financial outcomes and benefits to growers, MSF noted that in In 2013 and 2014, growers who supplied sugar cane to Mulgrave and Maryborough Mills had the option to either have their cane priced through the MSF Sugar or the QSL marketing systems. More than 90% of independent growers who supply these mills elected to stay with the MSF Sugar marketing system of which they have been a part of since 2006.
General comments – Market impacts	**Sub. 11 MSF Sugar**	MSF argue that the costs of the current impasse and speculation about re-regulation are ongoing and accumulating. Any costs to the Queensland sugar industry and its participants have not arisen out of deregulation, but from the ongoing uncertainty about potential for re-regulation.

Clause/issue	Sub No. and Submitter	Key Points
		This ongoing uncertainty has undermined and continues to erode confidence. Naively, much of the 'marketing regulation' has been aired publicly in the media and has been noted internationally by customers, investors and competitors alike. It is difficult to quantify the ongoing costs of this uncertainty, but it is important to note the ongoing reputational damage it continues to do. From an international perspective, one potential cost is the rerating of Australia and/or Queensland in terms of sovereign risk. This and ongoing reputational damage cannot be underestimated.
General comments – Market impacts	**Sub. 12 Tully Sugar Ltd**	TSL argue that growers already enjoy significant choice in managing their exposure to net sugar price and therefore the price of the cane they produce and sell to the mill. TSL believe that in maintaining their fundamental right to access pricing independent of TSL and the application of this price within the cane price formula, that growers are not exposed to any greater risk under the proposed miller marketing arrangements. TSL therefore believe that its decision to exit the RSSA with QSL should not result in a detrimental trend on the cane price paid to growers going forward.
General comments – Market impacts	**Sub. 13 Canegrowers Innisfail**	Growers need to receive as much as that can be obtained for the sugarcane they produce. Whilst sugar that is marketed is directly related to the world sugar price on the ICE #11 Contract, all the other additional add-on value is vitally important for growers to receive a share of. The continuation of the investment made annually by growers into future sugarcane crops is under threat. This will have a negative impact in the communities across Queensland that the sugar industry supports.
General comments – Market impacts	**Sub. 13 Canegrowers Innisfail**	Canegrowers Innisfail are concerned that there will be additional costs incurred to handle sugar through the Mourilyan Bulk Sugar Terminal. The storage shed will need to be shared with Tully Sugar (COFCO) and MSF Sugar, with the separation of the sugar from the two milling companies causing a loss of 30% of the total storage capacity. Further, sugar must be shipped out at least three times during the crushing season as it does not have the capacity to store larger quantities that would allow more strategic shipping program. QSL is able to manage this by arranging shipping out of Mourilyan Bulk Sugar Terminal Mourilyan Bulk Sugar Terminal instead of other Bulk Sugar Terminals as part of their marketing program. That is, QSL has the ability to ship sugar out of any Bulk Sugar Terminal for shipment to any of their customers. They are also concerned that that MSF Sugar will not share any premiums obtained through logistic operations. The growers currently receive a share of all premiums obtained by QSL under the Shared Pool. The loss of the "transparency" in the values, premiums and costs savings is of concern.
General comments – Market impacts	**Sub. 18 Cangrowers Burdekin Ltd**	CBL believe that if not addressed/prevented, the decision by Wilmar to exit the QSL marketing arrangements effectively "strips Burdekin cane farmers of their rights to utilise Queensland Sugar Ltd (QSL)".
General comments – Market impacts	**Sub. 18 Cangrowers Burdekin Ltd**	CBL note that WSTrading is a privately owned, for profit, Singaporean based company that is a separate legal entity to Wilmar Sugar Australia; whilst QSL is a "successful Australian, not for profit, industry owned marketing company.

Clause/issue	Sub No. and Submitter	Key Points
		As Wilmar Sugar Australia and Wilmar Sugar Trading are separate legal entities, this separation may have a negative impact on the company that has responsibility to operate the mills and on the workers employed by that company.
General comments – Market impacts	**Sub. 19 Wilmar Sugar Australia**	WSA argue that they have sought to resolve the concerns of growers through consultation/commercial negotiation on its draft cane supply agreement proposal. In it WSA proposes market protections and transparency mechanisms which exceed current obligations under regulated industry codes of conduct. WSA encourage the Committee and the Member for Dalrymple to undertake an independent review of WSA's draft cane supply agreement proposal.
General comments – Market impacts	**Sub. 19 Wilmar Sugar Australia**	WSA argue there are significant and ill-considered consequences for the overall structure of the sugar industry arising from the proposals in the Bill. The Bill is in effect proposing to entirely restructure ownership rights in the Queensland raw sugar supply chain, in relation to perceived concerns about transparency and equity in relation to growers' exposure to the 1% of the net sugar price that they cannot independently manage. Forcibly removing a miller's ability to market and sell the product it makes, in relation to perceived, but unfounded concerns about 1% of the net sugar price, is an extreme proposal which would have significant financial impact on WSA's business, risking the future viability of our mills and the employment of 2,000 people in Queensland.
General comments – Market impacts	**Sub. 20 Canegrowers Isis**	The withdrawal of some mills from the QSL marketing model threatens the future profitability of the Isis sugarcane growers by potentially reducing the tonnage available to and therefore marketing power of QSL. Isis growers already face significant production challenges due to low rain fall and high reliance on high cost irrigation (compared to other grower regions) and therefore they place significant value on the stability and consistency achieved through the single desk model.
General comments – Market impacts	**Sub. 22 Canegrowers Proserpine**	Are concerned that in the absence of an independent competitive marketer (where Wilmar/millers market the sugar) the price for sugarcane will be determined by the mill owner based solely on what provides a reasonable return for their milling business.
General comments – Market impacts	**Sub. 24 Australian Industry Group**	As the bill proposes to effectively transfer property rights over about two thirds of the raw sugar produced by mills to growers who supply cane, It would adversely impact on investments that have been made over recent years on the basis of the deregulated approach to sugar marketing. As a consequence it would adversely impact on Australia's reputation as a fair place to do business and it would detract from our ability to attract foreign, and indeed, domestic investment. This would prove particularly damaging at a time when the country is seeking to lift investment in non-mining sectors as part of the important task of rebalancing the Australian economy.
General comments – Market impacts	**Sub. 8 SISL Cane Farm Trust**	SISL note that much has been made of the potential negative effect on investment in the sugar sector if either a Federal or State based solution is imposed on the industry. It is SISL's view that in fact the risk to investment lies in *not* implementing a pro-competitive solution.

Clause/issue	Sub No. and Submitter	Key Points
		They note that they themselves, being a funds management business specialising in agribusiness investment and with a significant investment pool in sugar cane farms, does not intend to invest any further in the sector until there is certainty that growers property rights will be protected. In fact, if the raw sugar mills succeed in enforcing their monopoly power it is likely that SISL will seek to divest its interests in sugar cane farms and deploy this capital in other agricultural pursuits where there is free and fair access to the global market. Further they contend that it is difficult to imagine any new entrant (whether domestic or foreign) looking favourably at an investment in sugar cane farms where the revenue stream is effectively a "farm gate" price that can be dictated or manipulated by the activities of a monopoly buyer. This is considered a major issue due to the aging ownership profile of sugar growers, the inevitable outcome of which is a need for third party capital investment to (a) liberate the retirement savings of many cane farmers, and (b) ensure the future productive use of the land for sugar cane or other crops. "If third party capital is not available in the volume necessary to maintain and improve the value in cane farms then, not only are the existing farmers likely to suffer reduced asset values and incomes, but the mills will be able to acquire these farms at prices well below their fair value under the current system. Such an outcome represents a massive expropriation of wealth from a cohort of hard working Australians." Sub 8, pg. 4)
General comments – Market impacts	**Sub. 8 SISL Cane Farm Trust**	With respect to risks to investment, SISL note that the capital invested in the sugar sector is disproportionately held by cane farmers who have more than $12bn of capital at risk, whilst Wilmar (for example) has only invested around $2bn which sum includes a variety of refining and other assets not related to milling. Thus, for a small proportion of the total invested capital value of the Australian sugar industry, the mills are seeking to use their "bottleneck" to force an unequal bargain on the major investors in the industry - Australian cane growers.
General comments - Mills proposal	**Sub. 21 Burdekin District Cane Growers Ltd**	BDCG claim that under Wilmar's proposed marketing arrangements, it will become the sole determinant of the net sugar price paid to growers. This is on the basis that it will influence both the premiums added to and the costs deducted from, the gross sugar price.
General comments - Mills proposal	**Sub. 7 Canegrowers and ACGA**	CG/ACGA highlight in their submission concerns with respect to the mill marketing proposals. They note that To-date, only Wilmar Sugar has put forward a model for how it plans to market sugar for the 2017 season and beyond; and that "reflecting their disregard for the interests of growers and demonstrating their use of monopoly power, MSF Sugar and Tully Sugar have not revealed their marketing model and have not engaged with growers in the development of their marketing model". With respect to the Wilmar proposal, principal amongst the concerns of CG/ACGA is its apparent lack of transparency and the risk of intra-company transfer pricing to which it exposes growers. *"Wilmar Sugar's documents make it clear that Wilmar Sugar Trading's (WST) activities will not be open to grower scrutiny, nor will its trading books be subject to grower audit. Even if WST's trading operations were open to grower audit, that audit would only examine the actual transactions made. It would not reveal an*

Clause/issue	Sub No. and Submitter	Key Points
		arbitrage or other futures market related transactions that WST has engaged in and made on the basis of its knowledge of its own dealings with the Queensland component of its trading portfolio. *Wilmar Sugar's model enables the Wilmar Group to capture market rewards while sharing the associated risk with growers. With QSL selling sugar, growers share in 100% of the profits generated from QSL's trading activities. Wilmar Sugar's documentation makes it clear that the JMC will share in only 50% of the trading profits Wilmar Sugar Trading generates on its trading activities associated with sugar produced in Queensland. This dilutes the returns growers will receive from trading profits."* (Sub 7, Att 1, pg13) Comparing the existing and proposed approach, CG/ACGA contend: • Under QSL's marketing structure, all trading profits are paid into the Shared Pool and distributed to growers on the basis of cane payment arrangements. Growers are entitled to and receive approximately two-thirds of the trading profits. • Under Wilmar Sugar's model, Wilmar Sugar Trading retains 50% of the trading profits and pays the remaining 50% to the Joint Marketing Company. The JMC then distributes the profits on the basis of cane payment arrangements. This means growers are entitled to and receive approximately one-third (50% of two-thirds) of the trading profits. *"Wilmar's model heavily skews the returns to Wilmar. The Wilmar Group receives two-thirds of the trading profits while growers receive one-third. This means Wilmar will need to generate twice the trading profits that QSL generates for growers to achieve a better return from the Wilmar's proposed marketing approach."* (Sub 7, Att 1, pg14)
General comments – Mills proposal	**Sub 11. MSF Sugar**	MSF note that subsequent to Wilmar giving notice to cease their RSSA with QSL in April 2014, this significantly changed the QSL financial model as Wilmar provides more than 50% of the raw sugar supply to QSL. MSF Sugar spoke to QSL about the need to explain in detail future arrangements without Wilmar but QSL was unable to give any guarantees. As a result MSF Sugar gave notice to discontinue the RSSA in late June 2014. The RSSA with MSF Sugar will terminate in June 2017.
General comments – Mills proposal	**Sub. 12 Tully Sugar Ltd**	TSL has historically participated in the QSL marketing arrangements. However following the notice by Wilmar and MSF Sugar to withdraw from the RSSA with QSL, TSL equally announced that it would not extend its RSSA with QSL beyond 2017. TSL noted that this decision was based on an assessment of the impact of the withdrawal of the other raw sugar suppliers, the largest contributes to the QSL export marketing system, and determined that the loss of these major suppliers would compromise the QSL offering. "the withdrawal of Wilmar and MSF means that QSL loses more than seventy per cent of its critical export mass and its competitive marketing advantage. This presents unacceptable risk to TSL's business and its growers."
General comments – Mills proposal	**Sub. 18 Cangrowers Burdekin Ltd**	CBL represents approx. 33% of the Burdekin cane farmers who supply to the regions four mills, owned by Wilmar sugar. Following Wilmar's notice to exit the QSL marketing arrangement, CBL's noted that their

Clause/issue	Sub No. and Submitter	Key Points
		members voted unanimously to oppose Wilmar's marketing proposal as "it takes away the growers rights utilise QSL marketing company.
General comments – Mills proposal	**Sub. 18 Cangrowers Burdekin Ltd**	CBL notes in its submission that Wilmar first made contact with CBL in April 2012 expressing interest in changing the existing marketing arrangements, which were then formally notified in 2014. CBL further notes that Wilmar's decision to take control of the marketing of all raw sugar without grower agreement has created a lot of concern, uncertainty and anger amongst its grower members.
General comments – Mills proposal	**Sub. 18 Cangrowers Burdekin Ltd**	CBL stated however that although they would prefer that the marketing of all Australian sugar was undertaken by QSL (as it was prior to Wilmar International becoming part of the Australian industry) "we are not opposing Wilmar's marketing proposal and we are NOT looking to take anything away from Wilmar. What we are opposing is that Wilmar is taking away growers rights to utilise and choose QSL. We do not see this as an unreasonable request given that the price growers are paid for their cane is around 2/3rds of the price received for the sugar. Growers wear the greatest risk and therefore it is only fair and reasonable that Growers Economic Interest (GEI) be recognised and that Growers have the right to say who markets the raw sugar that impacts the price they are paid for their GEI."
General comment – Mills proposal	**Sub.25 Dr John Keniry AM**	(Wilmar is now proposing a process whereby they will sell the raw sugar to another Wilmar company, based in Singapore. That Singapore-based company will then sell that Australian-sourced sugar, along with all of the other sugar that Wilmar sells and trades. There will be no transparency between the price paid to the Wilmar Australia company for the Australian-sourced sugar that it sells to third parties." (Sub 25, p.2)
General comments - Trade obligations	**Sub. 19 Wilmar Sugar Australia**	MSA contend that government re-regulation and particularly the expropriation of a processed product, as proposed in the *Sugar Industry Amendment Bill 2015* would set a disturbing precedent for future investment in Australian agriculture and other processing and manufacturing sectors. Measures that could seriously interfere with WSA's use of its mills or expropriate its property, may invoke the commitments under Article 11 of Chapter 8 of the Singapore-Australia Free Trade Agreement (SAFTA). The terms of this agreement outline a series of commitments Australia has made to promote and protect foreign investment, including commitments to guard against the expropriation of Singaporean-owned property in Australia except on a non-discriminatory basis, for a public purpose, in accordance with due process of law, and with prompt, adequate and effective compensation. The measures included in the Bill are not concerned with the interests of the public as a whole, but rather with the regulation of the supply chain in a specific industry, creating economic benefits for one group of private interests at the expense of another. Minter Ellison examined the potential implications of the Bill under the SAFTA, and the advice states: *A law enacted by the Queensland Parliament is a 'measure' that is subject to Chapter 8 of the Treaty, just as much as a law enacted by the authority of the Australian Parliament.* Article 11.2 of SAFTA requires that:

Clause/issue	Sub No. and Submitter	Key Points
		(a) expropriation shall be accompanied by the payment of prompt, adequate and effective compensation; (b) compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge; and (c) compensation shall carry an appropriate interest. As such, re-regulation of the Queensland sugar industry affecting the ownership rights of millers over their manufactured product, could result in a need for effective and adequate compensation under the terms of SAFTA.
General comments - Trade obligations	**Sub. 7 Canegrowers and ACGA**	CG/ACGA contend that the Bill is consistent with Australia's international obligations. As a non-discriminatory amendment to the *Sugar Industry Act 1999*, the Bill does not interfere with Australia's international obligations under the WTO, or any bilateral or regional trade agreement Australia has entered or is currently negotiating. With specific reference to the Singapore-Australia Free Trade Agreement (FTA), the legal firm Maddocks provided advice that the proposed Mandatory Code of Conduct does not directly or indirectly expropriate property rights and would be consistent with Australia's international obligations. The same conclusion applies to the non-discriminatory *Sugar Industry (Real Choice in Marketing) Amendment Bill 2015.*
General comments – Trade obligations	**Sub. 17 ACCI**	Following Queensland's deregulation of the sugar industry in 2006, three international agribusiness firms have purchased raw sugar manufacturing assets in Queensland (Mitr Pohl, Cofco and Wilmar International). It is widely accepted that deregulation and subsequent foreign investment in Queensland's sugar industry came at a time when the industry was on the precipice of failure and unviability. It is also widely accepted that the investment by these companies has significantly improved the efficiency and reliability of Queensland's aging sugar mill infrastructure, which has benefited both the investors themselves and Queensland cane farmers. These companies purchased and upgraded these sugar mills, with collective investment in excess of $3 billion, for the specific purpose of manufacturing and selling raw sugar and growing Australia's sugar industry. Queensland needs to ensure it maintains its reputation as a responsible and reliable place to do business. This proposed 'shifting of the regulatory goal posts' following de-regulation would present a significant sovereign risk to Queensland's reputation as a place to invest and do business. It would likely have significant impacts on future investment in Queensland agriculture sectors; sectors which will play a vital role in Queensland's future economic prosperity.
General comments – Trade obligations	**Sub. 24 Australian Industry Group**	AiGroup are concerned that if enacted the draft Bill is likely to breach the terms of various free trade agreements and Section 51(xxxi) of the Constitution.
Market failure - Existing legislative framework	**Sub. 10 Canegrowers RP**	CGRP argue that the current regulations or lack thereof as they pertain to the negotiation process fails growers dismally during the formulation of the Cane Supply and Processing Agreement ("CSPA"). In the years prior to deregulation of the Sugar Industry, our growers had the opportunity to access mediation in the event of an impasse during the contract negotiation process, which could then be referred on to an arbitrator for a

Clause/issue	Sub No. and Submitter	Key Points
		determination. However, as a result of deregulation, the option of arbitration was removed due to changes made to the Queensland Sugar Industry Act. Clearly this change was made without consideration of the damaging effects on growers operating alongside a monopoly Miller.
Market failure - Existing legislative framework	**Sub. 10 Canegrowers RP**	Since deregulation in 2006 Rocky point mill has been marketing outside of QSL, and CGRP claim that the experience of the growers under this arrangement has been a negative one: Rocky Point growers have had no transparency of sugar marketing activities undertaken by the Miller and it is irrefutable that this has been to the growers' financial detriment. We have no doubt that the move by millers to exit QSL will result in wide-spread exploitation of growers, unless legislative change intervenes to restore growers' rights.
Market failure - Existing legislative framework	**Sub. 11 MSF Sugar**	MSF argue that adequate protections continue to exist under the auspices of the *Sugar Industry Act 1999* (current), in that: a. Cane producers continue to be paid on the same basis now as they were prior to deregulation and continue to be able to negotiate collectively; b. The cane price formula that determines cane price is unchanged; c. There is a very close symbiotic relationship between cane growers and millers. Each party relies on the other for its survival; and d. Growers have demonstrable alternatives for land use.
Market failure - Existing legislative framework	**Sub. 14 Canegrowers Tully**	CGT are of the view that the Sugar Industry Act 1999 does not adequately protect the interests of growers. They argue it was evident in their recent negotiations for a collective CSA that there is an imbalance in market power between growers and the mill citing the fact that "in the end growers needed to supply the cane they had grown to recoup the large amounts of money invested in the crop and signed an Individual contract".
Market failure - Existing legislative framework	**Sub. 16 ASMC**	The ASMC note that their 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.
Market failure - Existing legislative framework	**Sub. 16 ASMC**	ASMC are of the view that 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.

Clause/issue	Sub No. and Submitter	Key Points
		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. ASMC argue that 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.
Market failure - Existing legislative framework	**Sub. 19 Wilmar Sugar Australia**	WSA note the existence of a robust national framework for protection against anti-competitive market behaviour. In addition to the Sugar Industry Act, commercial dealings of sugar industry participants are subject to other state and commonwealth regulation which provide adequate countervailing forces to ensure appropriate conduct of the parties. In particular, the *Competition and Consumer Act 2010* (CCA) (Cth) prohibits anticompetitive conduct, and prohibits unfair business practices. In addition, the Australian Competition and Consumer Commission (ACCC) has significant powers to enforce the CCA. The *Queensland Competition Authority Act 1995* (Qld) includes similar provisions to those of the CCA, giving added regulatory oversight to ensure open access to bulk sugar terminals.
Market failure - Existing legislative framework	**Sub. 2 Tablelands Canegrowers Ltd**	CG Tablelands believe that with the move away from QSL, cane supply agreements are no longer sufficient to protect the interests of growers and their payment terms and marketing arrangements. The decision by MSF, Wilmar and COFCO to exit QSL has resulted in: reduced tonnage through QSL which impacts on QSL's credit rating and borrowing facilities; QSL is now in competition with mills in the same markets for premium quality Australian sugar, resulting in erosion in premiums paid to growers and millers; loss of transparency in ensuring that growers receive the correct price for their sugar; risk that growers will not receive cane payments (QSL currently funds the advances payment system to growers; threats of control of and access to sugar terminals in they do not remain in the hands of QSL; may threaten the ability of QSL to manage sugar quality issues through blending. (Sub 2, pp.2-3)
Market failure - Existing legislative framework	**Sub. 21 Burdekin District Cane Growers Ltd**	It is BDCG's opinion that the market failure and/or misuse of market power is such that the provisions of the *Competition and Consumer Act* 2010 (Cth) do not adequately respond to protect growers' interests and level the imbalance in bargaining power between growers and Wilmar Sugar. Wilmar Sugar's unwillingness to reconsider offering growers a choice of marketer means that the market failure will not be corrected without

Clause/issue	Sub No. and Submitter	Key Points
		Government intervention. Further the provisions of the current *Sugar Industry Act* 1999 fails to respond or protect the growers' interests.
Market failure - Existing legislative framework	**Sub. 21 Burdekin District Cane Growers Ltd**	The current Act does not adequately protect growers in the situation of market imbalance. There is no statutory dispute resolution process to assist growers and millers resolve commercial disputes arising during/prior to finalising a CSA; the Act does not prescribe growers a choice of marketer and does not promote competition for marketing services.
Market imbalance	**Sub. 1 Canegrowers Cairns**	CG Cairns notes that due to geographical location, Cairns region growers can only supply the Maryborough Sugar Factories (MSF) owned by Mitr Phol, which has recently announced their intention to withdraw from Queensland Sugar Limited (QSL) removing any opportunity for grower choice. Withdrawal from QSL could lead to a loss of necessary transparency regarding risks, costs and premiums to the benefit of the milling company. (Sub 1, p.1)
Market imbalance	**Sub. 10 Canegrowers RP**	CGRP argue that there is a clear imbalance of power within the industry that needs addressing. During CSPA contract negotiations there is currently no mechanism for dealing with an impasse, and the economic pressure placed on a grower who has invested in growing a perishable crop which only has one market (a monopoly Miller), puts them at a disadvantage in what should be commercial negotiations.
Market imbalance	**Sub. 11 MSF Sugar**	MSF does not believe there is a market imbalance, instead arguing there is a very close symbiotic relationship between cane growers and millers. Each party relies on the other for its survival. Further, as growers, unlike millers, have alternative uses for their asset (land use), sugar mill owners are exposed to more risk than individual sugar cane growers. MSF point to examples where sugar mills were forced to close because growers collectively stopped providing enough sugar cane to operate a sugar mill economically. The most recent example was when MSF Sugar closed Babinda mill in 2012 because of inadequate cane supply and rationalised cane supply in the region by transferring this cane to the adjacent Mulgrave and South Johnstone Mills.
Market imbalance	**Sub. 14 Canegrowers Tully**	CGT state in their submission that the sugar marketing system ultimately determines the sugar price used in the cane price formula, and in Tully this is currently managed by industry owners not-for-profit company QSL. However Tully sugar, was acquired by Chinese state ownerd company COFCO in 2011, and has since given notice of its withdrawal from QSL marketing arrangement from the end of the 2016 season. They have also advised growers that after this all sugar produced at Tully mill will be marketed througha system determined by Tully Sugar. CGT are of the view that if Tully Sugar insist that the marketing arrangement of their choice is a condition of a CSA for 2017 and beyond, growers will have no choice to accept the contract or not supply cane – a demonstration of the market power of the mills over growers.
Market imbalance	**Sub. 16 ASMC**	It is the view of ASMC 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.

Clause/issue	Sub No. and Submitter	Key Points
Market imbalance	**Sub. 16 ASMC**	ASMC are critical of the 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. ASMC note that 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."* ASMC argue that 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.
Market imbalance	**Sub. 16 ASMC**	ASMC argue that 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.
Market imbalance	**Sub. 16 ASMC**	ASMC contend that 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. Accordingly there is no market failure or lack of transparency or lack of clear information in the contractual relationship in the sugarcane supply chain.
Market imbalance	**Sub. 16 ASMC**	ASMC contend that 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."*

Clause/issue	Sub No. and Submitter	Key Points
Market imbalance	**Sub. 16 ICSM**	ICSM reinforced that there is an economic driving force that naturally limits the extent of any market imbalances between grower producers and milling companies which negates the need for regulatory intervention. Both parties are dependent upon each other for their financial prosperity and it is this co-dependency that ensures milling companies are incentivised to ensure that cane supply to their mill is maximised. This requires grower producers to be financially sustainable from sugarcane returns and for grower producers to elect to produce sugarcane rather than competing alternatives. In the supply area for ICSM's mill, grower producers have many alternative options including numerous vegetable and tree crops. In addition, grower producers may elect to supply sugarcane to a competing sugar milling company and there is intense competition for sugarcane supply. ICSM, on the other hand, has no flexibility as the equipment employed is specialised for the application of sugar cane processing and the large capital investment involved becomes uneconomic as the volume of throughput diminishes and therefore ICSM, and other milling companies, are incentivised to ensure grower producers are financially sustainable from sugarcane returns.
Market imbalance	**Sub. 16 ICSM**	The competition and consumer laws provide appropriate protection for market participants and the authorisation of collective bargaining for grower producers to negotiate cane supply agreements under the Sugar Industry Act 1999 provides adequate protection for grower producers in such negotiations. There is no market failure requiring redress by further regulation.
Market imbalance	**Sub. 18 Cangrowers Burdekin Ltd**	CBL note, as an example of Wilmar's market behaviour that, separately, since 2010 growers utilising the CBL CSA have been in a $10m legal dispute with WSAustralia relating to a shortfall. CBL's claim that their experience in this matter, which is set to go to trial before the Supreme Court on 30th November, 2015, has made them very wary of Wilmar's claims that their marketing proposal will provide growers with full transparency. They also argue that Wilmar's view that in 2010 growers were liable for the shortfall in sugar proves that growers have a right to some ownership/ management of the raw product.
Market imbalance	**Sub. 19 Wilmar Sugar Australia**	WSA argue that there is no evidence of market power or anti-competitive behaviour prevailing in the Queensland sugar industry. Despite emotive language, there is no economic or commercial incentive for a sugar miller to reduce cane growers' returns. In fact, in WSA's case a 5% reduction in cane volume results in a more than 20% reduction in earnings before interest and tax (EBIT). WSA has a clear incentive to increase the throughput of cane in its mills, and the best way to do this is to increase returns for growers.
Market imbalance	**Sub. 19 Wilmar Sugar Australia**	WSA notes that they are not seeking to change how growers are paid for cane. The 100 year old Cane Price Formula, which links the price paid for cane to the price achieved for raw sugar, is guaranteed to stay under WSA's raw sugar marketing proposal. As a result of the Cane Price Formula, cane growers do not receive a farm gate price like in other agriculture sectors.

Clause/issue	Sub No. and Submitter	Key Points
Market imbalance	**Sub. 19 Wilmar Sugar Australia**	WSA argue that a further reason there is not the claimed market power of a mill rest in the ability of growers to make pricing/risk management choices (affecting 99% of the net sugar price), independent of the miller. Cane growers have an economic exposure to the 'net sugar price' achieved for raw sugar as the price of cane is linked to the sugar price via the Cane Price Formula. The physical marketing of sugar, net of costs, represents about 1% of the 'net sugar price' used in the Cane Price Formula to determine the price paid for cane. The remaining 99% of the 'net sugar price' is determined through the individual pricing and pooling options chosen by the cane grower. This includes the ability under WSA's proposed arrangements for growers to forward price cane by using Queensland Sugar Limited (QSL) as a pricing manager (for 99% of the net sugar price).
Market imbalance	**Sub. 19 Wilmar Sugar Australia**	WSA also argue that collective bargaining is the mechanism to "balance" market power. Under the *Sugar Industry Act 1999* cane growers are authorised to collectively bargain with millers, and are required to have a cane supply agreement in place. Developed over 100 years of negotiation and collective bargaining, these agreements are comprehensive, detailed contractual guarantees for growers over the pricing and payment of their product.
Market imbalance	**Sub. 19 Wilmar Sugar Australia**	WSA contends that the co-dependent nature of the relationship between growers and mills, the high sensitivity of mill returns to cane supply volumes and the existence of grower collective bargaining, are all factors which ensure an appropriate balance of market power between millers and growers.
Market imbalance	**Sub. 19 Wilmar Sugar Australia**	The perceived economic power of mills has historically been promoted by some industry participants as a justification for the retention of regulation in the sugar industry. The issue has been extensively canvassed, including by the Industry Commission in 1992 in its review of the Australian sugar industry which found that in fact it was possible that growers rather than millers possessed the greater market power. It noted: *... In the past there may have been some potential for mills to exploit market power. However, growers have now formed strong organisations to negotiate on a collective basis. In some regions, growers have purchased their local mill. Growers also have far greater access to information to allow them to assess whether terms offered by a mill are reasonable. The development of trade practices legislation also provides some protection for growers against the misuse of market power by mills. While the Act limits collusive agreements to reduce competition between suppliers, an exemption may be provided if 50 or more parties are involved. These developments, coupled with millers' dependence on growers to supply sufficient cane to allow the mill to operate at satisfactory levels of capacity, raise the possibility that it is growers rather than millers who possess the greater market power. (Industry Commission, The Australian Sugar Industry, 6 March 1992, Report No. 19, p.42)*
Market imbalance	**Sub. 19 Wilmar Sugar Australia**	WSA dispute that cane growers price takers like diary, cattle, horticulture, wool, pork and other farmers. Mills do not pay cane growers a farm gate price for cane. Cane growers are their own price makers (subject to prices in the global sugar market). The price of cane is based on the sugar price and cane growers have the ability to

Clause/issue	Sub No. and Submitter	Key Points
		forward price a portion of their own crop up to three years in advance. The Cane Price Formula is completely transparent and provides pricing protection for growers.
Market imbalance	**Sub. 19 Wilmar Sugar Australia**	WSA also note that a mill has little value without a cane supply, whereas the capital value of cane farm would be substantially retained, reflecting the value of its alternate use for other crops or purposes or the value of water rights. The sensitivity of mill viability to cane supply and the significant capital losses associated with the closure of a mill are such as to strongly motivate mill owners to ensure that growers remain profitable and therefore continue to be incentivised to grow cane and supply a mill.
Market imbalance	**Sub. 2 Tablelands Canegrowers Ltd**	CG Tablelands argues that the movement of cane, on mass from the Mitr Phol owned tablelands Mill to Mackay Sugar owned Mossman Mill was a direct result of failed negotiations with the foreign owned miller over the growers' right to have their economic interest sugar marketed through Queensland Sugar Limited. It was not acceptable to the Tablelands growers that their miller should dictate that they would also be the marketer when there is already an industry owned, transparent marketing body in place which is the envy of sugar industry players throughout the whole world."(Sub 2, p.1)
Market imbalance	**Sub. 2 Tablelands Canegrowers Ltd**	CG Tablelands argues that Wilmar purchased Sucrogen with the full knowledge of the existing marketing arrangements (as per the agreement reached in the MOU at the time of deregulation) and gave undertakings to the Foreign Investment Review Board and growers that they would honour those arrangements. It did not take long for Wilmar to renege on their undertaking, by forcing QSL into a position where they allowed the mills to take their economic interest outside of QSL to market. Instead of stopping there, Wilmar MSF Sugar and COFCO have now gone one step further by giving notice to QSL and forcibly removing growers from their preferred marketing body QSL. These mills are now exercising their cane processing monopoly powers and are denying growers the right to choose who they wish to market and sell their 'Grower Economic Interest Sugar." (Sub 2, pp.1-2)
Market imbalance	**Sub. 21 Burdekin District Cane Growers Ltd**	BDCG firmly believe there is significant inequality in bargaining power between miller and growers; and claim this is a fundamental yet inevitable flaw arising from deregulation. They claim wilmar sugar is misusing its monopolistic market power to force change to the current marketing system without first negotiating with growers to achieve an acceptable outcome to both parties.
Market imbalance	**Sub. 21 Burdekin District Cane Growers Ltd**	BDCG also claim that wilmar's prior conduct does not demonstrate good faith to the growers that their future actions will be in the best interests of growers. Growers have legitimate concerns regarding the manner in which Wilmar sugar may choose to act, particularly when Wilmar becomes the sole determinant of net sugar price.
Market imbalance	**Sub. 21 Burdekin District Cane Growers Ltd**	Other criticisms made of Wilmar and its market power include: that Wilmar will have a conflict of interest in relation to the sale of its MEI sugar and that sugar sold that reflects the price paid to growers (GEI); and they are critical of the proposed model to provide "transparency" to growers through a grower representative group

Clause/issue	Sub No. and Submitter	Key Points
Market imbalance	**Sub. 22 Canegrowers Proserpine**	Canegrowers Proserpine has formed the view that the only way to address the current imbalance in market power between mill owners and growers is to provide some level of grower choice in sugar marketing. They note that to date Willmar has been reluctant to consider any such arrangements and therefore view regulatory amendments as the only available mechanism for achieving this outcome.
Market imbalance	**Sub. 24 Australian Industry Group**	AiGroup note the concerns about the imbalance of market power between the sugar mills and sugar growers. In this context we have taken considerable comfort to the independent assessment of commercial arrangements in sugar marketing undertaken by former ACCC Chair Graeme Samuel and former ACCC Commissioner Jo Dimasi pointing to the safeguards against the misuse of market power in Australian Competition and Consumer Law and in the nature of the well-established pricing arrangements between sugar mills and cane growers. (*Graeme Samuel and Jo Dimasi, An Assessment of Australian Sugar Marketing Commercial Arrangements, Commissioned by the Australian Sugar Milling Council, 2015.)*
Market imbalance	**Sub. 3 Herbert River District Cane Growers Organisation Limited**	CGHR believes that a more competitive market for the sale of sugar would flow from Growers Choice, leaving mills such as Wilmar no worse off than they have ever been and potentially they may market more sugar if they are able to compete (with) QSL in a market where real choice is available. (Sub 3, p.2)
Market imbalance	**Sub. 4 Mackay Canegrowers Limited**	"Wilmar, COFCO and Maryborough Sugar factory (Mitr Phol, Thailand) have, since early 2014, continued to avoid the pro-competitive, pro free market issue of grower choice of the entities which may market the 'Grower Economic Interest' sugar, which would still allow all millers to market all the sugar they are able to secure in a competitive market scenario. They have continued to avoid: the ability for growers to choose between them and other entities as the provider of marketing services for ';Grower Economic Interest' (GEI) sugar; and the ability of a pre, as well as post, contract dispute resolution process incorporating Queensland's *Commercial Arbitration Act 2013*." (Sub 4, p.1) "Wilmar appears to be stating that it will only contract and deal with growers on the basis that it has that said right (to independently market and sell the sugar it derives from the cane supplied by growers)" (Sub 4, p.2)
Market imbalance	**Sub. 6 Bundaberg Sugar Ltd**	"BSL does not believe there is an imbalance in market power favouring mill owners over growers."(Sub 6, p.2) As noted by the Senate Committee, there is a legal framework which underpins the negotiation of CSAs. It is also acknowledged that the framework includes provisions in relation to: access to collective bargaining; provisions for unconscionable conduct; and Misuse of market power (Senate report p.36). (Sub 6, p.3) "The conflict being experienced in the industry at the present time is essentially confined to one miller and their growers. It is not an industry wide issue. As such, any solution needs to be a regional specific solution." (Sub 6, p.1) "If a miller did have monopoly power over growers, one would expect a deterioration in the growers' conditions within the CSAs over time. There is no evidence of this occurring." "On the contrary is arguable that in areas

Clause/issue	Sub No. and Submitter	Key Points
		where there is the ability for mills to compete for cane (which is the case in most areas other than some Wilmar based areas) growers in fact have more negotiating power than mills."(Sub 6, p.4)
Market imbalance	**Sub. 7 Canegrowers and ACGA**	CG/ACGA contend that Mills, claiming complete mill choice in marketing, are denying growers' choice in how growers' economic interest (GEI) sugar is sold. *"Exercising their monopoly power in cane processing, mills are refusing to negotiate around the provision of marketing services. By coupling sugar production and marketing activities in this way, mills are engaging in anticompetitive behaviour. They are denying growers' rights and preventing them from exploring competitive offers and being able to engage the sales and marketing services of others"*. (Sub 7, pg. 2)
Market imbalance	**Sub. 7 Canegrowers and ACGA**	CG/ACGA contend that a strong case for government intervention to address the clear imbalance in market power within the industry is also outlined in the opinion prepared by former High Court Judge The Hon Ian Callinan AC. Mr Callinan's advice concludes with the statement: *"17. The answer to the question I am asked, therefore, is that the Queensland legislature does have power to restore or to enable Queensland canegrowers to protect their economic interests in the sugar extracted from the sugar cane supplied by them to millers, including by giving growers a choice as to the entity which prices and markets their economic interest sugar."*
Market imbalance	**Sub. 7 Canegrowers and ACGA**	CG/ACGA argue that the unilateral decision taken by some mills to terminate the industry agreed voluntary marketing arrangements that has reinstated the imbalance in market power between mills and growers, in favour of mills and it enabled mills to make marketing decisions that affected growers without reference to those growers.
Market imbalance	**Sub. 7 Canegrowers and ACGA**	CG/ACGA contend there is a clear imbalance in economic strength favouring the milling sector, primarily because there is no feasible alternative market for cane. *"In each of the sugarcane producing regions the local cane growing community must deal commercially with a raw sugar miller. In most regions, a single company owns all of the mills; there is no feasible alternative market for cane; and there are few if any worthwhile alternatives to sugarcane production. Although the Act currently makes provision for some limited collective bargaining for growers, it has proven to be ineffective in circumstances where there has been a monopoly miller and no process to resolve deadlocks in negotiations"*. (Sub 7, pg. 5)
Market imbalance	**Sub. 7 Canegrowers and ACGA**	CG/ACGA point to conclusions made in a report prepared by Deloitte Access Economics which concludes that there is a market imbalance which clearly favours sugar mills to the detriment of cane growers is highlighted. This report recommends "a form of light-handed regulation could be introduced by adopting a federal mandatory code of conduct for the sugar marketing arrangements under the Commonwealth *Competition and Consumer Act 2010* (CCA) and /or through the enactment of equivalent regulatory structures by amending the Queensland *Sugar Industry Act 1999*."

Clause/issue	Sub No. and Submitter	Key Points
Market imbalance	**Sub. 7 Canegrowers and ACGA**	CG/ACGA contend that the actions of Wilmar and the other mills in 2014 "exploited the relatively weak provisions of the *Competition and Consumer Act 2010* (CCA) which prohibit a corporation with a substantial degree of power in a market from taking advantage of that power to eliminate or substantially damage a competitor (in this case QSL, the marketer of grower economic interest sugar) and prevent market entry or deterring or preventing a person from engaging in competitive conduct (in this case denying growers the ability to determine who markets their share of the sugar produced). Wilmar Sugar issued a public statement indicating its intention to exit the current sugar marketing arrangements from the end of the 2016 season. Shortly after, two other milling groups, MSF Sugar (owned by Thailand's Mitr Phol Group) and Tully Sugar (owned by China's COFCO) also announced their intention to exit current marketing structures from the end of the 2016 season. CG/ACGA argue that by denying growers real choice in how their share of sugar production is marketed, this misuse of market power is designed to undermine the stability and integrity of the industry's marketing structures and alter the way in which risks and rewards are shared across the industry in favour of the mill. These anti-competitive actions will have ramifications across the whole industry, affecting all milling companies and their supplying growers.
Market imbalance	**Sub. 8 SISL Cane Farm Trust**	SISL suggests that the Bill would be further improved were it to also include a "no-worse-off test" that ensures that the economic formula in use today is the fail-safe formula to be used in the absence of any agreement by a grower to change it. SISL contend that mills are able to exert monopoly power and therefore the simplest and least intrusive way of protecting the growers is to include a provision in the Bill such that in the absence of agreement by the grower to a change in the cane price formula – and thus the economic sharing of raw sugar proceeds – the formula shall be as contained in the Cane Supply Agreement for 2014. In other words a provision to ensure that the economic basis of a grower's contract cannot be changed to leave them "worse off" without their express consent.
Market imbalance	**Sub. 9 Bondrogers Farming Pty Ltd**	The lack of "real Choice in Marketing" is the central issue in recent dealings with Wilmar." (Sub 2, p.1) "The majority of growers are tied to supplying their closest mill because sugarcane is perishable and starts to dry up as soon as the cane is harvested. Other areas are simply too far away, leaving the vast majority of growers unable to negotiate a better competitive position with a neighbouring miller." (Sub 2, p.1)
Support for the Bill - Alternative solution	**Sub. 21 Burdekin District Cane Growers Ltd**	BDCG proposes an alternative draft sugar code of conduct regulatory approach. Their proposed draft regulation prescribes only the following: (a). That a supply contract must provide for milling services and the ability to choose marketing services; (b). A mediation and commercial arbitration mechanism to assist both growers and millers negotiate a supply contract; and (c). The mechanism to facilitate a choice of marketer.

Clause/issue	Sub No. and Submitter	Key Points
		They claim that the proposed regulation does not seek to re-regulate the whole of the commercial relationship between growers and millers; it seeks to offer a commonly utilised tool – arbitration mechanism – to resolve deadlock in negotiating terms and conditions of a CSA and provides for competition for marketing services.
Support for the Bill - Alternative solution	**Sub. 6 Bundaberg Sugar Ltd**	BSL request that, should government legislate, exemptions be made for those mill areas where the reasons for the legislation are not relevant ie for millers that provide transparent sugar pricing outcomes for growers and/or where millers are in competition for cane supply from neighbouring millers. (sub 6, p.6) BSL consider that "…if a miller supplies sugar to QSL or a similar independent entity for marketing, a miller is considered to have provided transparent sugar pricing mechanisms for growers under the Sugar Industry Act. 9Similarly if a mill owner's factory is within a competitive cane transport distance of another mill owner's factory, then these4 mill areas should be exempt from the legislation."(Sub 6, p.6) If the government legislates and exemptions are not appropriate, BSL recommend that each miller be required to supply a percentage of their export sugar to QSL or similar independent entity – the basis of the "growers choice" model previously agreed by all millers which guaranteed a minimum volume of one million tonnes to QSL. (Sub 6, p.6)
Support for the Bill - Alternative solutions	**Sub. 19 Wilmar Sugar Australia**	It is WSA's submission that it would be more beneficial to the industry for the Queensland Government to focus on ensuring that in negotiating new pricing and marketing arrangements with growers, mills maintained the basis of the existing cane payment formula; retained and enhanced existing grower pricing, pooling and payment options; and offered growers commercial and contractual fairness provisions, and transparency measures, to ensure marketing premium revenues are delivered without dilution to growers.
Support for the Bill - Alternative solutions	**Sub. 19 Wilmar Sugar Australia**	WSA does not believe that the Bill is needed as WSA has guaranteed that growers will continue to receive the full economic benefit from Australian sugar sales under a comprehensively documented suite of grower transparency and protection measures.
Support for the Bill - Alternative solutions	**Sub. 21 Burdekin District Cane Growers Ltd**	BDCG recommends an alternative approach to that proposed in the bill. In their "draft regulation" a framework for the content/ negotiation of a cane supply contract is proposed which provides for: a) Sugar milling services to be provided by the miller under a cane supply agreement (where Sugar milling services are defined as the crushing of sugar cane and production of raw sugar being a service (within the meaning of Part IIIA of the Competition and Consumer Act 2010) provided by means of a sugar mill); and b) The ability for the grower to nominate any entity to provide marketing services As such growers are permitted to choose any marketer, including Wilmar Sugar, QSL or another third party. Whilst the miller "must" enter into a cane supply agreement with a cane producer if the cane producer has applied to the miller to negotiate a CSA. BDCG argue that the draft *Regulation* thereby fosters competition for marketing services for growers.

Clause/issue	Sub No. and Submitter	Key Points
		Growers' choice of marketer is facilitated by the manner in which "Marketing Services" have been defined [i.e. it means pricing, sale of sugar, logistics through a port terminal facility an payment to the grower for the grower's sugar] and the requirement that the miller must permit, in the supply contract, the grower to access Marketing Services from a third party entity other than the miller [refer to Part 4 of the proposed *Regulation*]. To ensure all growers are treated fairly, the *Regulation* also stipulates that a miller cannot discriminate, in relation to the provision of milling services, between the grower who utilises the miller for the provision of marketing services and the grower who chooses a third party marketer [refer to Part 4 of the proposed *Regulation*].
Support for the Bill - Alternative solutions	**Sub. 23 Queensland Sugar Ltd**	QSL supports the inclusion of additional protections that impose an obligation on mill owners and growers to negotiate in good faith (new s38); an obligation for mill owners to provide information regarding marketing services (new s39); a prohibition on mill owners discriminating again growers choosing alternative marketing entities (new s.41); and an obligation on millers to negotiate when requested to ensure that all growers may access milling services (new s.41).
Support for the Bill - Does NOT support	**Sub. 11 MSF Sugar**	MSF does not support the need for the Bill and are concerned for the adverse impacts which may arise if the Bill is passed. MSF Sugar implores the Committee to rigorously examine the detail of the proposed regulation within an economic, financial and legal framework.
Support for the Bill - Does NOT support	**Sub. 12 Tully Sugar Ltd**	TSL is deeply concerned that the possible introduction of the private members bill in support of the so called "grower choice' marketing model and statutory pre-contract arbitration. They argue that these changes in policy are being considered without due regard to the material adverse financial impacts on the company and its investment in Tully sugar.
Support for the Bill - Does NOT support	**Sub. 12 Tully Sugar Ltd**	TSL argue that there has been no market failure event described or defined in the sugar industry that would require the introduction of the private members bill.
Support for the Bill - Does NOT support	**Sub. 12 Tully Sugar Ltd**	TSL argue that the decision by some millers to market their own sugar will create greater competition amongst providers for a range of services; and that the existing commonwealth competition and consumer laws are sufficient to regulate the industry and there is no need to make a special case for the Australian sugar industry. TSL also argue that the proposed changes to raw sugar marketing in the Tully sugar industry will allow growers to take greater control over the management of the price they receive for their product. In particular, as Tully sugar will no longer solely rely upon QSL to develop the required price risk management tools, the capacity now exists for growers to access a wider range of pricing services for the growers in the Tully region.
Support for the Bill - Does NOT support	**Sub. 16 ASMC**	ASMC argue that 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.

Clause/issue	Sub No. and Submitter	Key Points
Support for the Bill - Does NOT support	**Sub. 16 ASMC**	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. 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
Support for the Bill - Does NOT support	**Sub. 16 ASMC**	ASMC 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.
Support for the Bill - Does NOT support	**Sub. 16 ASMC**	The ASMC does not support a return to a less innovative and less productive sugar industry, through compulsory pre-contractual arbitration. 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.
Support for the Bill - Does NOT support	**Sub. 16 ICSM**	ICSM supports the detailed submission to the Agriculture and Environment Committee from the Australian Sugar Milling Council (ASMC) and does not support any additional regulatory burden and its associated costs to our business.
Support for the Bill - Does NOT support	**Sub. 17 ACCI**	ACCI urges the Committee to oppose the draft legislation in its entirety.
Support for the Bill - Does NOT support	**Sub. 19 Wilmar Sugar Australia**	WSA does not support the Bill or any proposal to re-regulate the sugar industry. Their alternative proposal is commercial negotiation that delivers a fair and balanced supply chain and appropriate farmer protections. WSA raise concern that, while government re-regulation and particularly the promise of providing growers with ownership rights over a mill's manufactured product are being promoted; commercial negotiations have been, and will continue to be, stymied. Accordingly the timing of the bill has been damaging to the "in good faith" negotiation process between WSA and its growers.
Support for the Bill - Does NOT support	**Sub. 21 Burdekin District Cane Growers Ltd**	The private members bill whilst admirable in its intent and desire to improve the bargaining position for growers, contains ambiguity which should it be passed will likely be subject to judicial challenge. BDCG does not support the bill proceeding in its current form/without amendments.
Support for the Bill - Does NOT support	**Sub. 6 Bundaberg Sugar Ltd**	BSL does not support the bill, arguing that there has not been any demonstration of a need for re-regulation of the industry. "It is incredulous to think that legislation is being considered when there is no clear understanding of the issues nor the consequences likely from the proposed legislation. Optimum outcomes will only be achieved by commercial negotiation." (Sub 6, p.1)

Clause/issue	Sub No. and Submitter	Key Points
		"The objective of the Bill …has only materialised in response to grower's contention of the lack of transparency over the marketing premium in the options being presented by Wilmar. It is this issue which to a large extent has driver the current conflict. The net marketing premium typically represents only l% of the final sugar price and is vastly outweighed by the impact of variation in ICE1l movement and CCS variability. BSL believes there are other mechanisms available to provide this transparency however these will not progress until government removes itself from the process."(Sub 6, p.5)
Support for the Bill - Does NOT support	**Sub. 6 Bundaberg Sugar Ltd**	BSL is opposed to the Bill on the grounds it would have unintended adverse consequences for its sugar milling business and have significant detrimental financial impacts on the business. (Sub 6, p.6)BSL is opposed to any form of increased regulation.(Sub 6, p.5) BSL note that the Bill goes much further than ensuring transparency of the net marketing premium in certain mill areas, and would: have unintended adverse consequences on the company, change the nature of its sugar milling business and that 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. (Sub 6, p.6)
Support for the Bill - Partial support.	**Sub. 23 Queensland Sugar Ltd**	QSL advocates for fair, transparent and competitive outcomes in the sugar market, and notes that it is not necessary to change current title arrangements to achieve this outcome. A grower Choice system can be implemented under the terms of the current Sugar Industry Act 1999 via a commercial arrangement between the grower and miller parties. However this requires that both parties negotiate in good faith to secure mutually acceptable commercial arrangements.
Support for the Bill - Partial support.	**Sub. 23 Queensland Sugar Ltd**	However in circumstances where a commercial arrangement cannot be agreed, the existing regulatory framework does not enable growers to choose an entity to market the quantity of raw sugar to which they have price exposure – which is the quantity which has come to be known generally as Grower Economic Interest (GEI) sugar.
Support for the Bill - Partial support.	**Sub. 23 Queensland Sugar Ltd**	QSL believe that the actions of the marketer significantly influence the returns secured for raw sugar sold on the international market, and as such they support in principle that growers and millers should have a choice regarding who provides that service on their behalf.
Support for the Bill - Partial support.	**Sub. 23 Queensland Sugar Ltd**	Partial support. QSL supports the introduction of grower choice in raw sugar marketing but believe this can be implemented without changes to existing title arrangements. Accordingly, en enduring industry-negotiated commercial outcome acceptable to all parties is QSL's preferred solution to the current impasse.
Support for the Bill - Partial support.	**Sub. 23 Queensland Sugar Ltd**	The failure of the Queensland sugar industry to resolve the continuing marketing impasse has created widespread uncertainty for all parties: - Growers are reluctant to expand production or invest - Growers ability to manage price risk by forward pricing has been compromised as they have not yet negotiated contracts for 2017 and 2018 (where their current CSA with millers expire at end of 2016-17).

Clause/issue	Sub No. and Submitter	Key Points
		- Millers are also affected with exiting mills facing potential supply reductions from unhappy growers; - All millers concerned that government intervention could undermine investment and have implications for their businesses. It is in the best interests of the entire industry that a resolution to this matter be secured as a matter of high priority.
Support for the Bill - Partial support.	**Sub. 23 Queensland Sugar Ltd**	QSL believe that the implementation of Grower choice in raw sugar marketing as the next step in the market deregulation process. True competition in sugar marketing through the introduction of grower choice system where farmers are able to choose who markets their GEI sugar, millers would be encouraged to attract economic interest volumes from growers by providing competitive marketing services. This would allow markets to appropriately value along the supply chain, mitigate risk, encourage innovation and deliver the fairest outcome for all.
Support for the Bill - Support	**Sub. 10 Canegrowers RP**	The experiences of Rocky Point growers with respect to its dealings with its single monopoly mill, provide many arguments for, and welcome the amendments to the Sugar Industry Act, including the reintroduction of a method of arbitration for the pre and post contract negotiation process.
Support for the Bill - Support	**Sub. 10 Canegrowers RP**	CGRP are fully supportive of Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 as a means of re-instating some measure of equity in the grower-miller relationship. Without this change, monopolistic millers will continue to avoid their responsibilities as good corporate citizens, and growers will continue to have their hands tied in relation to who sells and prices their GEI sugar and final outcomes of CSPA negotiations.
Support for the Bill - Support	**Sub. 10 Canegrowers RP**	CGRP do not believe there is any other method other than by legislative amendment to the sugar industry act to achieve an outcome that will force Millers to treat growers in a fair and equitable manner. This is partly demonstrated by discussions as follows during the 2015 CSPA negotiating process. A major discussion point during the 2015 CSPA negotiations was the inclusion of a clause in the CSPA to acknowledge and accept recommendations from the Federal Government's Senate Inquiry, which we believed could be in the form of a "Code of Conduct" for sugar industry participants. The Mill response was: "*a Code of Conduct means nothing and there is no need to make reference to this in our CSPA, but if legislation changes, we will all have to comply*". If we extrapolate the view of WH Heck & Sons as representative of all Mill owners, then a Sugar Industry Code of Conduct will need the force of legislation behind it, particularly in the areas of the mill supply negotiation process, transparency and arbitration.
Support for the Bill - Support	**Sub. 13 Canegrowers Innisfail**	CANEGROWERS Innisfail supports the proposed Sugar Industry (Real Choice in Marketing) Amendment Bill 2015. Fundamentally the Bill corrects the unintended consequence that has arisen as a result of the deregulation of the sugar industry in 2006 and the subsequent changes to milling company ownership.
Support for the Bill - Support	**Sub. 13 Canegrowers Innisfail**	Canegrowers Innisfail supports the joint submission submitted by CANEGROWERS and the Australian Cane Farmers Association (ACFA).

Clause/issue	Sub No. and Submitter	Key Points
Support for the Bill - Support	**Sub. 14 Canegrowers Tully**	CG Tully supports the introduction of grower chopice and pre-contract arbitration, consistent with the joint submission made by Canegrowers Queensland and ACFA.
Support for the Bill - Support	**Sub. 18 Cangrowers Burdekin Ltd**	CBL supports the joint submission of Canegrowers Queensland and ACFA. They further note that their support for the bill remains regardless of whether any subsequent commercial resolution is reached with Wilmar. "As we know from Wilmar's behaviour in this marketing dispute and the CBL growers Supreme Court legal case that even if something is agreed today – Wilmar will never be satisfied until they have everything – they will be back to take more before the ink is dry. To grow this industry, whether for the production of raw sugar or to supply cane for the Government's exciting biofuels mandate requires growers to have confidence. If an international company is allowed to strip Australian growers of their 100 year old rights this will also strip growers of their confidence."
Support for the Bill - Support	**Sub. 2 Tablelands Canegrowers Ltd**	CG Tablelands contends that with Wilmar Sugar, COFCO and MSF Sugars withdrawal from QSL and the subsequent lack of interest from any of these parties to coming to the table to resolve the impasse, it is evident that Government intervention (in the form of the Bill) is required if the sugar industry is to survive and prosper. (Sub 2, p.3)
Support for the Bill - Support	**Sub. 20 Canegrowers Isis**	Canegrowers Isis supports the proposed amendment bill in order to provide grower choice, true competition in marketing, transparency of costs and returns and to provide confidence for growers to continue to invest in the industry.
Support for the Bill - Support	**Sub. 20 Canegrowers Isis**	Canegrowers Isis also endorses the joint submission lodged by Canegrowers and Australian Cane Farmers.
Support for the Bill - Support	**Sub. 21 Burdekin District Cane Growers Ltd**	BDCG advocate that the remedy to the market imbalance is to introduce a commercial arbitration or dispute resolution mechanism; and allow for grower choice of marketer.
Support for the Bill - Support	**Sub. 22 Canegrowers Proserpine**	Endorses the support for the amendment bill as expressed in the submissions from Queensland Cane Growers.
Support for the Bill - Support	**Sub. 22 Canegrowers Proserpine**	Broadly, Canegrowers Proserpine supports: • The CSA expressly stating a definition for GEI and MEI sugar; • Mechanisms to ensure CSAs link the price for cane to the selling price for sugar • CSA provide for the calculation of GEI sugar • Assign right to growers and millers to choose marketers for their proportion of sugar; • Provide for commercial dispute resolution system to resolve deadlocks.
Support for the Bill - Support	**Sub. 3 Herbert River District Cane Growers Organisation Limited**	"Canegrowers Herbert River supports the Bill as it provides the necessary pro competition step to complete (the) process of deregulation that was initiated in 2005."(Sub 3, p.3)

Clause/issue	Sub No. and Submitter	Key Points
Support for the Bill - Support	**Sub. 4 Mackay Canegrowers Limited**	"To address the imbalance in market power between mill owners and growers Canegrowers Mackay strongly supports the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015." (Sub 4, p.2)" "…government intervention is needed to provide a statutory 'grower choice' regime to give growers a say in who markets the 'Grower Economic Interest' sugar for which they have price exposure under the cane supply agreements." (sub 4, p.2)
Support for the Bill - Support	**Sub. 7 Canegrowers and ACGA**	CANEGROWERS and the Australian Cane Farmers Association (ACFA) welcome the introduction of the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015, arguing that it marks a significant step forward and as a pro-competition initiative will complete the deregulation of the sugar industry that was commenced by the Queensland Government in 2006. *"The Sugar Industry (Real Choice in Marketing) Amendment Bill 2015, is a form of light handed pro-competition regulation that will ensure both cane growers and mill owners have choice in how the sugar in which they respectively have an economic interest is priced and sold, thus completing the deregulation of the sugar industry that commenced in 2006."* (Sub 7, pg. 2)
Support for the Bill - Support	**Sub. 7 Canegrowers and ACGA**	CG/ACGA believe that the only way to address the imbalance in market power that currently exists between the mills and growers and provide some level of grower choice in sugar marketing is the introduction of some light form of regulation; therefore CG/ACGA support amending the *Sugar Industry Act 1999* to require that cane supply contracts contain provisions to enable growers' choice in how their economic interest sugar is priced and sold to restore commercial balance between growers and the mills they supply.
Support for the Bill - Support	**Sub. 7 Canegrowers and ACGA**	CG/ACGA note that they are not asking for the regulation to prescribe how grower's interest i is formally recognised in a CSA; they believe this remains a matter for commercial negotiation. Rather CG/ACGA ask that "*growers economic interest in the sugar produced from their cane is formally acknowledged and a framework stablished that gives growers choice in how that GEI sugar is priced and sold. This pro-competitive action will provide for real competition in the provision of sugar marketing services*". (Sub 7, pg. 2)
Support for the Bill - Support	**Sub. 7 Canegrowers and ACGA**	CG/ACGA contend that It is important that growers are treated in a non-discriminatory manner in the negotiation of cane supply agreements and that a dispute resolution process is available to growers and their bargaining agents to resolve any deadlocks in the negotiation of these agreements. They believe the *Commercial Arbitration Act 2013* provides a mechanism that could be used for this purpose.
Support for the Bill - Support	**Sub. 7 Canegrowers and ACGA**	CG/ACGA contend that the Queensland Government has the power to make the changes proposed in the Bill. *"The changes, consistent with the principles of National Competition Policy (NCP), are designed to increase competition for sugar produced in Queensland. The Queensland Government has the policy instruments necessary to introduce NCP consistent regulations that recognise GEI sugar and to give growers the right to determine how that sugar is priced and sold".* (Sub 7, pg. 6-7)

Clause/issue	Sub No. and Submitter	Key Points
Support for the Bill - Support	**Sub. 7 Canegrowers and ACGA**	To provide certainty for the forward pricing and marketing of sugar for the 2017 season that will be produced from continuing ratoon crops and to support investment decisions that are currently being made about planting new crops and maintaining existing ratoon crops and maintaining and enhancing milling infrastructure, CANEGROWERS and ACFA ask for your support without delay.
Support for the Bill - Support	**Sub. 8 SISL Cane Farm Trust**	In SISL's view the current sugar marketing arrangements are the bench-mark standard to which the rest of the sugar world aspires to. The attempt by the mills to monopolise the marketing of export raw sugar therefore represents a backward step; the changes proposed by Canegrowers / ACFA represent a step forward and are an extremely positive step for the industry. Opening the provision of marketing services up to a contestable process improves the transparency of the supply chain.
Support for the Bill - Support	**Sub. 8 SISL Cane Farm Trust**	SISL welcomes the introduction of the *Sugar Industry (Real Choice in Marketing) Amendment Bill 2015.* In particular they make the point that the fundamental intention and effect of the Bill is to create a pro-competitive outcome that properly and fully completes the de-regulation process that started in 2006.
Support for the Bill - Support	**Sub. 8 SISL Cane Farm Trust**	SISL argue that the Bill is not "re-regulation". Rather, the Bill sets out the rules for a "level playing field" for all participants in the Australian sugar industry, cane growers and millers alike. The Bill therefore delivers the kind of modern, market based "fair-play" outcome that Australia rightly stands for.
Support for the Bill - Support	**Sub. 8 SISL Cane Farm Trust**	SISL fully supports the detailed submission made by Canegrowers and ACFA in relation to the Bill.
Support for the Bill - Support	**Sub. 8 SISL Cane Farm Trust**	SISL contend that In order to give effect to true de-regulation, each player in the industry must have control over their property rights, the ability to choose how to deal with them and the right to "walk away" from negotiations. Legislating the *Sugar Industry (Real Choice in Marketing) Amendment Bill 2015,* will properly complete the de-regulation of the sugar industry in Queensland and Australia.
Support for the Bill - Support	**Sub. 9 Bondrogers Farming Pty Ltd**	Supports the Amendment Act (the Bill) to have some protection against exertion of monopoly miller power. (Sub 2, p.1) "I wish to be able to choose the marketer of my sugar I wish the government to intervene to protect my rights in this regard I do not trust the miller to share profit fairly if they are not made to do so I do want access to an independent marketer, such as QSL, and Wilmar has not agreed with this I will not have confidence to expand if this longstanding marketing choice is denied. (Sub 2, p.1)
Support for the Bill – Support	**Sub 25 Dr John Keniry AM**	"The Bill is simply attempting to provide growers with an alternative market for the sugar in their cane, and deserves your Committee's full support." (Sub 25, p.2)
Amendment of schedule (Dictionary)	**Sub. 2 Tablelands Canegrowers Ltd**	Tablelands Canegrowers would like to see the term 'grower economic interest (GEI) sugar' clearly defined in the dictionary to avoid any misinterpretation. (Sub 2, p.3)
Amendment of schedule (Dictionary) definitions	**Sub. 23 Queensland Sugar Ltd**	QSL supports the inclusion of definitions in the schedule (Dictionary) for Grower Economic Interest sugar; marketing services; Mill economic Interest sugar; related body Corporate; and Sugar Milling Services.

Clause/issue	Sub No. and Submitter	Key Points
Explanatory notes	**Sub. 6 Bundaberg Sugar Ltd**	BSL note that, according to the explanatory noes to the Bill, the policy objectives are to provide" cane growers with the right to have real choice over who sells and prices Grower Economic Interest (GEI) sugar and addresses the imbalance in market power between mill owners and growers"; and that these are the same two core issues which have already been considered by separate senate and federal government inquiry processes. (Sub 6, p.2)
Explanatory Notes - Achievement of policy objectives	**Sub. 19 Wilmar Sugar Australia**	WSA note that the Explanatory Notes outline several issues in the 'Achievement of Policy Objectives' section, including that the Bill acknowledges a need to 'provide growers with the ability to be proactively involved in the marketing of their own sugar'; and that the Bill is correct in identifying that millers and growers have an economic interest in the price of sugar, however as clearly outlined above, an economic interest is in no way equated to ownership or property rights. Further, the Explanatory Notes outline that there is no legislative or regulatory framework to ensure that millers act in the best interest of cane farmers. Regulation is not required to achieve this outcome, as the return on a millers' investment is highly sensitive to and dependent on cane volumes. If mills were to seek to reduce payments to growers, mill cane supply would decline and mill profitability would also decline. To do so would be completely self-defeating for a mill.
Explanatory Notes - Costs of implementation	**Sub. 19 Wilmar Sugar Australia**	WSA raise concern with the statement in the Explanatory Notes to the Bill that there will be "minimal to no cost to Government" from implementing this draft legislation disregards the $33 million the Queensland Government has already provided to the sugar industry to assist with de-regulation and the flow-on effects of the significant negative financial impacts on the sugar industry and loss of future investment opportunities that would result from loss of investor confidence. In addition, there has been no consideration of the magnitude of potential compensation claims that may be brought against the commonwealth government by foreign owned milling companies under free trade agreements. To date the proposed re-regulation of the sugar industry and proposals such as raw sugar title expropriation have not been supported by any economic or market benefit analysis. The Regulatory Impact Statement System Guidelines published by the Queensland Government describe the required procedure for developing regulation for Queensland Government agencies under the Regulatory Impact Statement (RIS) system. The Guidelines require a thorough analysis and assessment of the wider costs, benefits and other impacts of proposed regulation. WSA estimates there will be a significant opportunity cost for millers and growers should this draft legislation be implemented, in the order of $10 million per year for WSA and $36 million for its growers (based on QSL marketing all "GEI"). While WSA does not consider there is even sufficient prima facie evidence to suggest re-regulation of the sugar industry is required, if the Bill was to be considered further a thorough cost/benefit analysis should be completed.
Explanatory Notes - Rationale/objective	**Sub. 19 Wilmar Sugar Australia**	WSA contend there is no clear objective of what the bill seeks to achieve. The reason cited as rationale for the *Sugar Industry Amendment Bill 2015* as stated in the Explanatory Notes, is 'anti-competitive' actions of mills in

Clause/issue	Sub No. and Submitter	Key Points
		exiting the current voluntary marketing arrangements. Proponents of the Bill and 'grower choice' have not provided any objective argument or evidence to support their claims that the actions of mills in exercising their right to market their own manufactured product in full compliance with existing industry regulation and state and commonwealth laws are 'anti-competitive'. Additionally there are already robust mechanism to oversee and protect again anti-competitive behaviour. The *Competition and Consumer Act 2010* (Cth) prohibits misuse of market power and precludes unconscionable conduct, and is enforced by the ACCC's considerable powers. Legal safeguards against 'anti-competitive' behaviour are in place at a Federal Government level, and as outlined above several agriculture sectors are characterised by several suppliers to one available processor. Collective bargaining was introduced to the sugar industry to address any potential misuse of market power, of which there has been no evidence provided.
Explanatory Notes - Rationale/objective	**Sub. 19 Wilmar Sugar Australia**	WSA note that the Bill appears to have been introduced in response to concerns by some growers and grower representatives about future marketing arrangements proposed by mills that have given notice to exit the QSL voluntary marketing arrangements in 2017, but it is unclear what these specific concerns are. WSA suggest that these concerns are unfounded (as noted elsewhere) and note that MSF Ltd (now owned by foreign Mitr Pohl Sugar Corporation) has been successfully operating a pricing and marketing system outside QSL with its growers for a number of years. The MSF marketing arrangements are similar in concept to WSA's proposal.
Explanatory Notes - Rationale/objective	**Sub. 19 Wilmar Sugar Australia**	WSA argue that the 'Reasons for the Bill' seems to be based on a notion that perceived supply chain power imbalances and lack of a competitive market for cane supply and other undeclared concerns about future marketing arrangements may be rectified by giving growers control over who sells a mills downstream manufactured sugar; and a statutory bargaining regime.
Consultation	**Sub. 16 ASMC**	ASMC note that, 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". However ASMC advise that there has been no consultation or collaboration with the milling sector in the development of this Bill. Further, they believe that 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.
Consultation	**Sub. 17 ACCI**	ACCI conveys its concerns that the draft legislation has been introduced without appropriate consultation with Queensland's business sector or mill companies. Introducing legislation to restructure ownership and controlling interests in manufactured raw sugar, without consulting the very manufacturing companies that actually make Queensland's export raw sugar is erroneous at best.
Consultation	**Sub. 17 ACCI**	ACCI is concerned that the process of drafting, preparing and introducing the proposed Bill has not adhered to three fundamental principles of good policy making:

Clause/issue	Sub No. and Submitter	Key Points
		• Robust regulatory impact analysis and consideration; • Economic and social cost benefit analysis; and • Industry consultation on the draft legislation. The potential for negative social and economic outcomes arising from a legislative proposal absent the fundamental tenants of the due processes of policy making is substantial.
Consultation	**Sub. 19 Wilmar Sugar Australia**	WSA noted that the bill was drafted and tabled without any consultation with the companies that manufacture Queensland's export raw sugar. Legislative restructuring of the sugar industry absent any consultation or regulatory impact assessment process places significant risks on the future viability of our milling business and employees. "It is deeply concerning that a private members bill to re-regulate the Queensland sugar industry has been tabled without any consultation with the companies that make export sugar. At no stage was WSA consulted on the draft Bill or afforded the opportunity to provide input to the preparation of the Bill. The development of legislation without any fundamental public policy development process is very concerning".
Consultation	**Sub. 19 Wilmar Sugar Australia**	WSA also noted what they described as "very unusual circumstances" where the bill was presented and explained to the committee (at the public briefing) with the support of a representative from the Australian Cane Farmers Association; and sought to bring to the committee's attention that ACFA only represent approximately 2% of WSA growers and has no direct involvement in raw sugar manufacturing sector.
Consultation	**Sub. 19 Wilmar Sugar Australia**	WSA were highly critical of some of the assumptions and claims made in support of the proposed amendments including claims of anti-competitive behaviour, regulatory/market failure and suggestions of market power imbalance in the industry which WSA contend are demonstrably incorrect, and could have been outlined to the KAP if consultation had taken place.
Consultation	**Sub. 5 Australian Manufacturing Workers' Union**	The AMWU holds concerns in relation to the Bill that an investigative process has not been undertaken with respect to the impact (or potential impact) the Bill would have on the sugar industry as a whole, its workforce, and the communities reliant upon the industry. (Sub 5, p.1) The AMWU accordingly urges the committee to initiate a comprehensive investigative process to explore and identify the impact the Bill may have on the sugar industry, the industry's workforce and the local communities reliant on the industry. 9Sub 5, p.2)
Consultation	**Sub. 5 Australian Manufacturing Workers' Union**	The AMWU does not believe that the committee is currently in a position to make an informed decision on the Bill. (Sub 5, p.2)
Consultation	**Sub. 5 Australian Manufacturing Workers' Union**	The AMWU holds concerns in relation to the Bill that consultation with all stakeholders has not occurred. (Sub 5, p.1)

Clause/issue	Sub No. and Submitter	Key Points
33A - Pre-contract Arbitration	**Sub 4. Mackay Canegrowers Limited**	"The other important aspect of the Bill is that it provides a pathway for resolution of deadlocks in negotiation of a Cane Supply Agreement which is demonstrably unfair when dealing with an imbalance in bargaining power such as exists with a monopoly mill owner in a region such as the Herbert where both mills are commonly owned and operated and there is no economic access to another sugar mill."(Sub 4, p.3)
33A - Pre-contract arbitration **General**	**Sub. 19 Wilmar Sugar Australia**	WSA does not support the re-introduction of any form of statutory bargaining provisions on the basis that pre-contract arbitration was removed on evidence of inefficiency and industry costs with the agreement of all industry stakeholders. "Compulsory pre-contract arbitration was removed from the sugar industry as part of the 2004 reforms, based on expert economic analysis of the cost of arbitration and the adverse impact it had on the industry Pre-contract arbitration would push the industry back to a framework that was found to impede increased competition, efficiency and innovation; and add significant cost for millers and growers. The risk of the introduction of unintended perverse and adverse industry outcomes would also be significantly increased".
33A - Pre-contract arbitration **General**	**Sub. 19 Wilmar Sugar Australia**	WSA argue that a key flaw of the proposed amendments is that opportunities for arbitration have been left too broad to enable dispute resolution on any matter/detail in a contract. "Under the proposed Bill, where a grower is in the process of negotiating a supply contract, that 'intended' supply contract would be subject to arbitration. Pre-contract arbitration would create a costly and protracted process as there is no limit on the terms to be agreed and no guiding framework as a basis for decisions – in effect a party could request the arbitrator to determine any or all the terms of the proposed agreement on which the parties would then be forced to deal with each other".
33A - Pre-contract arbitration **General**	**Sub. 19 Wilmar Sugar Australia**	WSA contend that the Commercial Arbitration Act was not established for arbitrations of this nature. "The Commercial Arbitration Act is premised on there being an existing agreement in place between the parties and a dispute between the parties as to the interpretation or performance of the agreement. Given the complexity and intricacy of the cane pricing and sugar marketing systems that exist in the Queensland sugar industry; it is likely only people with extensive industry knowledge could be considered appropriate arbitrators. The practical implementation of this model of arbitration would therefore likely require the establishment of a specialist sugar industry commission which would add additional cost and bureaucracy".
33A - Pre-contract arbitration **General**	**Sub. 19 Wilmar Sugar Australia**	WSA bring to the committee's attention numerous reviews of the sugar industry which found that compulsory arbitration provided for under the original SIA was holding the industry back, and for these reasons arbitration measures were removed. For example: • The 2002 Memorandum of Understanding between the Federal and Queensland Governments, 'The Commonwealth and Queensland Working Together for the Sugar Industry and Communities', concluded that the statutory bargaining system and associated compulsory arbitration system "impede increased competitiveness and efficiency, and are detrimental to cultural change and innovation."

Clause/issue	Sub No. and Submitter	Key Points
		• The 2002 report by Clive Hildebrand to the Hon. Warren Truss MP Minister for Agriculture, Fisheries and Forestry Report said, "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."
33A - Pre-contract arbitration **General**	**Sub. 19 Wilmar Sugar Australia**	It is WSA's view that a mature and commercially-focused sugar industry has no need to rely on third parties to determine the commercial basis upon which industry participants deal with each other. Statutory bargaining between millers and growers has provided comprehensive commercial contracts that determine the terms of cane supply and payment. As outlined in their Minter Ellison legal advice: *In a best case scenario, it is reasonable to expect that an arbitration relating to a wide range of terms for inclusion in a supply contract would take several months. It is not inconceivable that such an exercise could take more than a year. The proposition that such an arbitration would necessarily be quick and inexpensive is fanciful.*
33A - Pre-contract Arbitration **Amendments**	**Sub. 21 Burdekin District Cane Growers Ltd**	BDCG propose an alternative arbitration – dispute resolution process. Where growers and millers are unable to negotiate the terms of a supply contract, the *Regulation* provides that either party can seek: (a). Mediation (both parties must consent); and (b). Commercial Arbitration, to determine the terms of the contract. The proposed regulation prescribes the rules for mediation – as a mediator does not have enforcement powers, mediation may only be held by agreement by the grower and the miller The proposed regulation also prescribes the arbitration process - the exchange of "pleadings" or documentation setting out the nature of the dispute; disclosure of documents; provision of information; evidence of witnesses and experts; and the hearing. An overriding principle is the efficient resolution of the dispute and the arbitrator has a duty to orchestrate the conclusion of the whole process within a six month period.
33A - Pre-contract Arbitration **Amendments**	**Sub. 21 Burdekin District Cane Growers Ltd**	It is also BDCG's view that the arbitration framework for the *Regulation* should also endorse many of Mr Walker's SC recommendations set out in the Walker Report on the review of the Land Access Arbitration Framework of the *Mining Act* 1992 (NSW) and the *Petroleum (Onshore) Act* 1991 (NSW), as far as are relevant to the Queensland Sugar Industry.
33A - Pre-contract Arbitration **Amendments**	**Sub. 21 Burdekin District Cane Growers Ltd**	BDCG also argue that as Wilmar Sugar is seeking to unilaterally change the existing system, then it should recompense any resultant costs incurred by growers to ensure that the arbitration process is fair and reasonable, and that the arbitration process produces a commercial relationship that is fair and balanced.
33A - Pre-contract Arbitration Section 33A(5)	**Sub. 21 Burdekin District Cane Growers Ltd**	This section fails to define the "pool" from which the arbitrator can be chosen; that is, what qualifications should the arbitrator hold? The section is otherwise ambiguous. The arbitrator must, not "*may",* determine the dispute.

Clause/issue	Sub No. and Submitter	Key Points
33A – pre-contract arbitration	**Sub 10. Canegrowers RP**	CGRP believe that the reinstatement of a system of mediation and arbitration into supply contracts is essential. As demonstrated in this submission, the removal of this provision in 2006 left us with no legislative or regulative framework to ensure growers a "fair deal". In fact it left us to the mercy of an unscrupulous Miller intent on increasing his share of the profits at the expense of the grower sector.
33A – pre-contract arbitration	**Sub 11. MSF Sugar**	MSF Sugar endorses the view advanced by the Australian Sugar Milling Council in their recent submission to the Federal Sugar Marketing Code of Conduct Taskforce that: "*a move to arbitration would be an uneconomic and retrograde step for the industry*"
33A – Pre-contract Arbitration	**Sub 6. Bundaberg Sugar Ltd**	In relation to clause 33A, BSL note a statement by ASMC that there is only one example of pre-contractual arbitration in agribusiness in Australia currently and it relates to access to port terminal services for exporters of bulk. According to ASMC "There is no Industry Code in Australian agribusiness that prescribes arbitration as a measure to establish contracts between a supplier and processor, manufacturer, merchant or other receiver of goods. There is no case of market failure that would support the introduction of such a heavy handed regulatory intervention in the Australian sugar industry." (Sub 6, pp.5-6) Pre-contract arbitration can force a party to enter a business relationship even though the commercial basis for the relationship may cause failure of a business ie the terms of the arbitration arrangements inadvertently cause a loss making situation for a party- especially the case with complex issues which are not well understood being in dispute such as sugar marketing and pricing. (Sub 6, p.6)
33A – pre-contract arbitration	**Sub. 12 Tully Sugar Ltd**	TSL has concerns regarding the re-introduction of compulsory pre-contract dispute arbitration which was abolished in the 2004 sugar industry reforms with the full support of industry, and the state and federal governments. They believe that re-introduction encourages the parties to avoid the responsibility for genuine negotiation on a sound commercial basis. TSL's concerns include the uncertainty that placing the fate of commercial arrangements in the hands of a third party with no guiding framework would have a high risk of serious, long term adverse consequences for the industry. TSL also indicate that they are unaware of any comparable precedent in the Australian or Queensland business environment that would support the re-introduction of compulsory pre-contract dispute arbitration to the sugar industry.
33A – pre-contract arbitration	**Sub. 13 Canegrowers Innisfail**	Canegrowers Innisfail argue that the need to have a pre-contract arbitration in place is critical to ensure that growers have balanced market power when negotiating supply contracts. Milling companies can simply "stone-wall" negotiations and place pressure on growers to accept the terms and conditions that the miller will demand. Growers have no power. They have already invested in crops which can be forward for 5 years. Once that commitment has been made they are powerless to stand firm on better terms and conditions they seek in Cane Supply Contracts.

Clause/issue	Sub No. and Submitter	Key Points
		They note that MSF Sugar has expressed their objection to the arbitration process, saying that they do not agree to a third-party determining commercial decision for their company. The ability to seek arbitration in situations where the parties cannot agree will provide growers with the power to seek redress, if and when necessary. It is recognised that arbitration is the final recourse by the parties. It is recognised that there will have to be genuine negotiations as well as the need to be a mediation process. What the Bill will do is allow a commercial dispute resolution process for a commercial Cane Supply Contract.
33A – pre-contract arbitration	**Sub. 16 ASMC**	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.
33A – pre-contract arbitration	**Sub. 16 ASMC**	ASMC contend that 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. ASMC suggest there was substantial evidence that arbitration prevented supply chain optimisation, while being unnecessary, due to other general dispute resolution mechanisms being available.
33A – pre-contract arbitration	**Sub. 18 Cangrowers Burdekin Ltd**	CBL strongly supports the introduction of an "Arbitration of disputed terms of the intended supply contract" to endeavour to rectify the commercial imbalance and highlights that this arbitration process would cover all sections of the disputed supply contract not just the sections relating to marketing. CBL are of the view that there is as "massive commercial imbalance" in the negotiation process for CSA between the CBL collective and Wilmar sugar. Historically the CSA is rolled forward year by year. This roll over typically happened after any changes to terms and conditions within the CSA were negotiated on an annual basis. CBL negotiates any changes to the terms and conditions of the CBL CSA with Wilmar selected negotiators. To endeavour to obtain the best outcome from the negotiating process CBL invested in our Directors (who are all local cane farmers) complete professional negotiation training. However, as the Committee could imagine, a small, local, not for profit, member owned company, facing a negotiation with a large international that holds a monopolistic position, the commercial imbalance is massive.

Clause/issue	Sub No. and Submitter	Key Points
		The negotiation is made even more difficult as not only do the growers have no option but to contract with WSAustralia to have their cane crushed but once the cane is burnt and harvested there is only a short time frame (around 16 hours) whereby the cane must be crushed before the sugar content of the cane deteriorates.
33A – Pre-contract Arbitration Section 33A(3)	**Sub. 21 Burdekin District Cane Growers Ltd**	This section provides that a dispute regarding the intended supply contract is subject to the *Commercial Arbitration Act* 2013 (Qld), however, the sub-section does not otherwise regulate the arbitration process. It is important, for the reasons referred to below [refer to paragraph 64], that there are guidelines to ensure that the arbitration process is efficient, fair and reasonable. There must be a time limit on the arbitration process to ensure that growers know when to commence negotiations to ensure that negotiations and the arbitration process have concluded so that growers have a supply contract to be able to supply cane to a miller before the commencement of the harvest season (refer to section 31(1) of the Act).
33A – Pre-contract arbitration 33A(1)-(7)	**Sub. 23 Queensland Sugar Ltd**	QSL supports the inclusion of additional protections in the act/bill that: a) ensures terms of a supply agreement and any associated arbitration decisions reflect/consider the traditional cane payment formula; b) imposes an obligation on kill owners to publish specified information in relation to their marketing activities; and c) clarifies that the provisions for the negotiation and arbitration for supply agreements equally apply to those occurring under collective bargaining arrangements conducted by a bargaining agent acting on behalf of growers in a group.
33A – pre-contract arbitration	**Sub. 7 Canegrowers and ACGA**	CG/ACGA suggest a possible enhancement to the Bill. given that in a choice environment some growers may elect to have the mill market a proportion of their GEI sugar and others may elect to have QSL market a portion of their GEI sugar, it would be helpful if the Bill was amended to require mills not to discriminate against growers who elect to market their GEI sugar other than with the miller.
33A – pre-contract arbitration	**Sub. 7 Canegrowers and ACGA**	CG/ACGA argue that the unconscionable conduct provisions of the commonwealth CCA have not been a helpful source of protection to producers in the agricultural sector and government intervention is required to provide transparency in the supply chain. They advocate for amendments that give recognition that certain classes of suppliers, such as sugarcane producers, are predisposed to suffering from a special disadvantage because of their production of sugarcane, a perishable good, and exposure to a regional monopsony (monopoly buyer) of that product. For example, A process that gave the ACCC greater power to regulate anti-competitive behaviour and impose penalties where anti-competitive behaviour has been found would shift the decisions framework from the judicial system to a regulatory system, making it more accessible to small producers facing large multinational adversaries. Until the ACCC has those powers, state government intervention is both warranted and consistent with the central tenets of National Competition Policy.

Clause/issue	Sub No. and Submitter	Key Points
33A – pre-contract arbitration	**Sub. 7 Canegrowers and ACGA**	CG/ACGA note that the Chairman of the Australian Competition and Consumer Commission (ACCC) made several remarks in the 25 February 2015 Public Hearings of the Senate Economics Legislation Committee (Estimates) in relation to Section 46 of the Australian *Competition and Consumer Act 2010* (CCA) in response to questions from the Committee. In those Senate Estimates hearings Senator Dastyari expressed a concern of many small businesses that the current system does not enable them to easily address anticompetitive behaviour of larger businesses. In his response Mr Sims identified deficiencies in the CCA saying in relation to Section 46 in part: "… the provision is a competition provision. It only kicks in if you are misusing your market power to damage one of your competitors. If you are just doing something nasty to someone downstream or upstream, it is not a misuse of market power" (Hansard, p139). In their final report, *Competition Policy Review* (31 March 2015), the Harper Committee also found Section 46 of the CCA is "deficient in its current form". The Committee reports: "It does not usefully distinguish pro-competitive from anti-competitive conduct. Its sole focus on 'purpose' is misdirected as a matter of policy and out of step with international approaches. Section 46 should instead prohibit conduct by firms with substantial market power that has the purpose, effect or likely effect of substantially lessening competition, consistent with other prohibitions in the competition law. It should direct the court to weigh the pro-competitive and anti-competitive impact of the conduct" (Harper Review, p9).
33A – pre-contract arbitration	**Sub. 7 Canegrowers and ACGA**	CG/ACGA note that a problem faced in cane supply contract negotiations is that there is no recourse to a commercial dispute resolution system if agreement cannot be reached. A recent example is that despite a number of signed letters from Tully Sugar and its owner COFCO, Tully Sugar has not agreed to include a dispute resolution process in the terms of the collective cane supply agreement. With the collective agreement unresolved, the only choice growers had if they wished to supply cane for the 2014 season, was to sign an Individual Cane Supply Contract with the mill. CG/ACGA contend this is strong evidence of the mill exercising its regional mill monopoly power and the imbalance in negotiations between growers and mills, even when agreements have previously been entered in good faith.
33A – pre-contract arbitration	**Sub. 8 SISL Cane Farm Trust**	SISL note that In any commercial arm's length negotiation all parties have an alternative to reaching agreement - they can walk away; and argue that Cane growers do not have this option. For underlying biological reasons their cane must be delivered to the mill within 24 hours of harvest. Even if growers were able to extend this time period, transport costs over long distances to an alternative mill are prohibitive (cane is a high-volume-low-value product).

Clause/issue	Sub No. and Submitter	Key Points
		SISL argue therefore that it is imperative that the Queensland State Government implement the *Sugar Industry (Real Choice in Marketing) Amendment Bill 2015* to ensure that in accordance with S. 33A sugar cane growers are not forced into a take-it-or-leave-it contract by the monopoly power of the raw sugar mill.
33A – pre-contract arbitration	**Sub. 8 SISL Cane Farm Trust**	SISL note however, that it is important that the Bill include a provision such that in the absence of an agreement on the economic formula under S. 33B, the economic formula prevailing today in 2014 must be the fall-back. This underlying economic arrangement has served the industry well for 100 years and with this condition in place, the growers and millers both have an incentive to "stay at the table" in order to reach a deal. In the absence of such a minimum, the miller can put a "take-it-or-leave-it" deal on the table in the knowledge that growers have no BATNA.
33A Arbitration	**Sub 2. Tablelands Canegrowers Ltd**	CG Tablelands argues that proposed s33A requires amendment. They note that as currently drafted while allows for arbitration of disputed terms between a grower and miller does not specify the same for a grower's bargaining agent, it is imperative that there is an addition to clause 33A granting grower's bargaining agent the right to arbitrate disputed terms of an intended supply agreement, given the bargaining agent is usually the one negotiating the terms of that agreement on behalf of the grower. (Sub 2, p.3)
33A Arbitration	**Sub 3. Herbert River District Cane Growers Organisation Limited**	CGHR argue: "The other important aspect of the Bill is that it provides a pathway for resolution of deadlocks in negotiation of a Cane Supply Agreement which is demonstrably unfair when dealing with an imbalance in bargaining power such as exists with a monopoly mill owner in a region such as the Herbert where both mills are commonly owned and operated and there is no economic access to another sugar mill."(Sub 3, p.3)
33B - grower choice	**Sub. 18 Cangrowers Burdekin Ltd**	CBL argue that Wilmar does not have the right to take control and to strip growers of their right to utilise QSL.
33B – grower choice	**Sub 11. MSF Sugar**	MSF argue that it is somewhat presumptuous to assume that supply contracts should give rise to 'grower economic interest' without testing the implications of so doing. They note that this GEI terminology does not appear in any cane supply agreement and is a catchphrase or construct invoked throughout the growing side of the sugar industry to infer that growers have legal title to sugar.
33B – grower choice	**Sub 11. MSF Sugar**	MSF contend that the bill gives rise to a potentially complex legal minefield as Grower Equity interest ascribes title to growers fundamentally changing the existing market framework, and as such changes the compensation arrangements (i.e. who provides compensation to millers). Despite the notional splitting of the revenue described above, the risk on the raw sugar is transferred to the mill when title for the cane is transferred to the miller. This occurs when a grower delivers sugar cane to an agreed rail siding or truck pickup point. From this point the miller takes responsibility, assumes all risks and pays all costs for transporting the cane to the mill, the conversion of the sugar cane into raw sugar and the delivery of the raw sugar to the export bulk terminal. The delivery of cane by the grower to the rail siding or trucking point is analogous to an FAS or FOB sale, in international trade, under the International Chamber of Commerce's INCOTERMS below:

Clause/issue	Sub No. and Submitter	Key Points
		"Free Alongside Ship" means that the seller delivers when the goods are placed alongside the vessel (e.g., on a quay or a barge) nominated by the buyer at the named port of shipment. The risk of loss of or damage to the goods passes when the goods are alongside the ship, and the buyer bears all costs from that moment onwards. "Free On Board" means that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards. If title to raw sugar is ascribed to growers, which effectively prescribes sugar mills to toll crushing status, this opens a Pandora's box of retrospective costs to be recouped by sugar mills from growers. If sugar mills had had the opportunity historically to negotiate a toll crushing arrangement, that tolling fee would have been set based on return on investment, and sugar mills have been deprived of that opportunity. Similarly as mills have borne the risks and costs associated with transport utilising their assets, these costs should be recouped retrospectively. If this is the intention of the legislation that sugar mills are to become toll crushers of cane, then the Bill should clearly state that. The Government should then buy the sugar mills and associated assets and free the capital invested by sugar mill owners to pursue business in unregulated industries.
33B – grower choice	**Sub 11. MSF Sugar**	MSF note that Aside from the direct financial costs, there are significant future costs to the sugar industry, Queensland and Australia. The Katter Party, and the Government, have raised the issue of a Queensland ethanol industry and the ascription of grower title to raw sugar is the antithesis to any such proposal. The prospect of future development of other products from sugar cane or a mill's sugar stream are similarly, naively constrained.
33B – grower choice	**Sub 11. MSF Sugar**	MSF argue that there remains a considerable misunderstanding by a significant number of growers about the link between the world sugar price and the price of cane. Many growers do not understand how the numbers are achieved and, as an industry, there is a lack of understanding about what happens to raw sugar once it leaves a mill. It seems that the central tenet to ongoing speculation and proposals for regulation is a widely held misunderstanding of how raw sugar is 'marketed', the distinction between physical sales and futures pricing and where value lies. Further, it is apparent that few growers understand that over the past 5 years, the ICE11 price component made up 99% of the net sugar price and that net physical premiums (physical premiums +/- marketing costs) made up <1%. MSF also argue that few growers understand the principles/sources of the marketing (or C&F) premiums, which is the negotiated premium paid by the bulk raw sugar buyer in Asia and will fluctuate year to year depending on Asian supply and demand. The concern voiced by some sectors of the cane growing community is that the best C&F premium will only be achieved by having a single desk seller of raw sugar. However the change to Australian marketing arrangements will not change the supply/demand situation in Asia. MSF Sugar and its

Clause/issue	Sub No. and Submitter	Key Points
		growers are not in competition when selling raw sugar into the international market as both seeks to achieve the highest possible price. Both the miller and the grower are aligned in a desire to get the highest Psugar. the net premium delivered (physical sales premiums minus marketing, freight, finance, storage & handling costs) range from 1.1% to -1.97% on average across all pricing pools for Maryborough and Mulgrave pools until 2014 when QSL pools and pricing were included for former Bundaberg North mills. Net premium is essentially the "physical' marketing component of raw sugar that is the issue in dispute. The physical sales premium is essentially the freight differential between the delivered costs of Queensland sugar and the next competitive origin. When freight differentials are historically cheap, influenced by low commodity prices and demand and low oil prices, net premium can be negative. Discussion with growers leads MSF Sugar to believe that many, and probably most, growers misunderstand where the vast amount of revenue is derived. This lack of understanding in turn impedes any acceptance of arrangements that may seem new or different.
33B – grower choice 33b(2)(d) and (e)	**Sub 2. Tablelands Canegrowers Ltd**	Tablelands Canegrowers is comfortable that 33B(2)(d) &(e) allows for grower choice through the grower nominating the 'GEI sugar marketing entity', though is concerned the Bill does not go far enough in protecting growers who choose not to market their sugar through their miller. (Sub 2, p.3) Our only other concern is how to ensure the long term sustainability of a grower/industry owned GEI sugar marketing entity. In an ideal world in seems pertinent that growers should nominate a minimum percentage of their GEI to that entity in order for that entity to have surety of a minimum tonnage to enable the best possible lines of credit etc. It is also critical that this entity controls the sugar terminals. (sub 2, p.3)
33B – grower choice	**Sub 6. Bundaberg Sugar Ltd**	BSl note comment by ASMC that: 'To introduce a new concept whereby sugarcane growers have a mandated 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." BSL have graver concerns that this would be the ultimate outcome of the Bill, and does not know of any country in the world where the cane farmer has a say as to where the miller sells its sugar. (sub 6, p.6)_
33B – grower choice	**Sub. 13 Canegrowers Innisfail**	Canegrowers Innisfail contend that the The established method of determining the share of proceeds (in the cane price formula) has clearly identified the economic interest that both millers and growers have. However it contains ambiguity and does not identify clearly the reference to Grower Economic Interest (GEI) sugar that the Bill will establish. There is no need to change the formula to "share" the proceeds, it requires a better definition of the economic interests, which the Bill will do. With the changes in the manner in which way QSL operated since 2006, Raw Sugar Supply Agreements (RSSA's) had to be established between milling companies, as "suppliers", and QSL. The RSSA's were further enhanced by the introduction of Mill Economic Interest (MEI) sugar. As a consequence of the adoption of that definition

Clause/issue	Sub No. and Submitter	Key Points
		it is strongly argued that it also recognised that the remaining sugar was Grower Economic Interest (GEI) sugar, by default, but remaining silent in the RSSA's. Under the voluntary grower pricing options offered in recent years by QSL, MSF Sugar have chosen to refer to the sugar priced under such arrangements as "Grower Cane Pay Sugar" rather than adopting any terminology that identifies "economic interest" but clearly the sugar that individual growers have been able to price is their economic interest sugar.
33B – grower choice	**Sub. 14 Canegrowers Tully**	CGT argue in support of grower choice on the basis that it is imperative that growers who have a major investment in the sugar industry are able to exercise the right to determine marketing arrangements for the GEI sugar as it is the value of this sugar sold that directly determines the value of cane. The current SIA does not require Grower Economic interest (GEI) in sugar to be part of a CSA, and does not provide for dispute resolution process to resolve deadlocks during contract negotiations. As such CGT do not believe that the current legislation supports the principle objective of the Act, which is to facilitate an internationally competitive and sustainable industry.
33B – grower choice	**Sub. 14 Canegrowers Tully**	CGT recognise that there will be benefits to its members from competition associated with the marketing of raw sugar and welcome a situation where growers have the choice to market all or part of the sugar in which they have an economic interest – either through QSL or Tully Sugar limited.
33B – grower choice **Title for sugar**	**Sub. 16 ASMC**	ASMC outline in their submission the commercial arrangements for transfer of title in the supply chain for 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. ASMC contend that 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.
33B – grower choice	**Sub. 16 ASMC**	ASMC argue that 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).
33B – Grower choice **Title for raw sugar**	**Sub. 16 ASMC**	ASMC contend that 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. 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

Clause/issue	Sub No. and Submitter	Key Points
		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.
33B – Grower choice	**Sub. 16 ASMC**	ASMC outline in their submission the market arrangements which in their view have given rise to an inaccurate perception that growers have a right to control the marketing arrangements for raw sugar. 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. ASMC argue that these terms have become confused with the very different concept of ownership of sugar.
33B – grower choice	**Sub. 17 ACCI**	The draft legislation would have the effect of expropriating a significant portion of a manufacturer's processed product and would likely be financially damaging to these companies. This type of legislative transfer of controlling interest in a downstream manufactured product would be unprecedented in Queensland and Australian business. It would also set a concerning precedent for other Queensland-based manufacturing and processing sectors
33B – grower choice	**Sub. 21 Burdekin District Cane Growers Ltd**	BDCG also argue that as it is the marketer's actions that will determine what the grower is paid for the grower's sugar, the grower, and not the miller, must control the commercial relationship with the marketer. The Bill provides that the miller must enter into a contract with the marketer. Under this arrangement, it is the miller that has control, and not the grower, of the commercial arrangements with the marketer, which will ultimately determine what the grower will be paid for the grower's sugar. This is not an acceptable proposition.
33B – Grower choice 33B(2)(a)-(e).	**Sub. 23 Queensland Sugar Ltd**	QSL does not believe it is necessary to change the current title arrangements to give legal recognition to Grower economic interest sugar. Instead they believe that a grower choice system can be implemented under the terms of the current SIA via a commercial arrangement. Accordingly they suggest amendment to cl 6 – new section 33B(2)(a)-(e). QSL request amendments to ensure that cane supply arrangements be based on the traditional cane payment formula and which ensures that the price paid for cane is directly referrable to the market price for raw sugar.

Clause/issue	Sub No. and Submitter	Key Points
		QSL supports, with amendment, a requirement that growers may choose the entity which will market the grower economic interest sugar. QSL also seeks amendments that ensure mill owners may not discriminate against growers who choose to have an entity other than the mill owners market their GEI sugar.
33B – grower choice	**Sub. 8 SISL Cane Farm Trust**	SISL contend that the introduction of a "Grower Choice" model as proposed by Canegrowers / ACFA and reflected at 33B in the Bill will finish the job of properly deregulating the sugar industry, and set the industry on a sound footing for the future. They argue that Grower Choice is not a rejection of millers participating in the export marketing of Australia's sugar as a miller is entitled to bid for each grower's GEI Sugar, but they have to do so on an open and contestable basis. If a grower elects to have a miller (or any other agent) manage the marketing of his GEI Sugar in a given year (or years) that is entirely and properly up to the grower.
33B – grower choice	**Sub. 8 SISL Cane Farm Trust**	SISL believe that Grower choice represents the purest expression of the economic marketplace as imagined by the great philosopher and economist Adam Smith in 1776. Smith explained that the free market economic system relied on each of the many actors making their own individual decisions based on their own interests. "*To deny this opportunity to Australia's sugar cane growers would seem a perverse interpretation of "freemarket" and anathema in Australia's rules based economy."* (Sub 8, pg. 3)
33B - Grower interest	**Sub. 7 Canegrowers and ACGA**	CG/ACGA note that In 1996, the Queensland Sugar Corporation first introduced a mechanism to provide producers the opportunity to manage part of the price risk they faced separately to QSC's management of the physical sales activity; and that this was the first evolution of Producer Pricing which enabled the raw sugar pricing function to be separated from the physical sales activity. In 2000, QSL introduced a Call Pool as its principal producer pricing mechanism. This was replaced in 2005 by a Self-Managed Pricing System (SMPS) providing pricing options for mills. In 2006 the current QSL pricing platform was introduced. This latest development makes price risk management tools available to both growers and mill owners, enabling them to fix prices three to four seasons beyond the current season. These pricing options enables mill owners and canegrowers to manage their exposure to the ICE11 raw sugar price independently from each other and independently from QSL should they choose to do so. The share of the raw sugar price that each party can independently manage (price exposure) is determined according to the cane price formula. Further, the Raw Sugar Supply Agreements (RSSA) that QSL has with each mill acknowledges the price exposure held by their supplying growers, describing the quantity of sugar as Grower Economic Interest (GEI) sugar. In the RSSAs, "*Grower Economic Interest Sugar* means Raw Sugar for which Growers, excluding those Growers who are Related Bodies Corporate of a Supplier, bear the price exposure under the cane supply or other agreements between the Supplier and the Grower".

Clause/issue	Sub No. and Submitter	Key Points
		The same RSSAs define Mill Economic Interest sugar. The term supplier economic interest sugar is used because mills are seen as suppliers of raw sugar to QSL. Supplier Economic Interest sugar is defined by difference. It is the total amount of sugar produced less the quantity of GEI made. In the RSSAs, *"Supplier Economic Interest Sugar* means that part of the Total Raw Sugar for which, pursuant to cane supply or other agreements with Growers, the Supplier or its Related Bodies Corporate have the price exposure. For the avoidance of doubt, this excludes any Raw Sugar for which a Grower (other than a Grower that is a Related Body Corporate of the Supplier) has the pricing exposure to".
33B - Grower interest	**Sub. 7 Canegrowers and ACGA**	CG/ACGA contend that Cane payment structures make it clear that both growers and mill owners have an economic interest in the sugar mills manufacture. The RSSA recognises this interest. It first defines GEI sugar and, using the definition of GEI sugar, defines MEI sugar as the difference between the total quantity of sugar manufactured at a sugar mill and the quantity of GEI sugar produced by that mill.
33B - Grower interest	**Sub. 7 Canegrowers and ACGA**	CG/ACGA contend that Grower Economic Interest (GEI) sugar has been a cornerstone concept of the Australian sugar industry since the price of sugarcane was linked to the price of sugar. In particular the sugar cane payment scale established by the Central Board in 1915 introduced sugar payment scales that distributed the proceeds of sugar sales two-thirds to the growers and one-third to mill owners at base levels of industry efficiency. It was based on their view that the value of assets and the costs of production fell to growers and mill owners on a two to one ratio. The scales were designed to provide incentives to growers to improve the CCS in cane and to mill owners to improve their recovery of sucrose from the cane, and were reflected in the sugar cane payment formula, this formula has remained a pillar of the financial relationship between growers and the mills they supply since its introduction. Further they note that until 1996 the sugar price was determined collectively by QSL (or its predecessors) as an average price per tonne from the net proceeds (gross sales revenues *less* costs of operation) of sale. In those years when there was more than one pool in operation, the pools were established principally on the basis production risk.
33B – grower interest	**Sub 10. Canegrowers RP**	CGRP indicate that the situation in Rocky Point is unique in that they believe an economic interest in sugar has been unofficially recognised already. They have been pricing grower interest in the sugar since 2009 on bank swaps and more recently in 2015 through the Mill directly on the New York number 11, unlike most other mill areas. The challenge has been to obtain official recognition of the grower economic interest in sugar via the CSPA. The changes as written in the Sugar Industry (Real choice in Marketing) Amendment Bill 2015 if adopted in the current form appear to give growers recognition of GEI and has the support of CGRP.
33B – grower interest	**Sub 10. Canegrowers RP**	The growers in Rocky Point, prior to the current abuse of monopoly marketing power by the Miller were already worse off than their peers though-out the industry in so much as they pay most of the transport costs of sugar cane haulage. (In most other areas this is 100% a Mill cost); a cost that once again has become open ended because of a monopoly Miller situation.

Clause/issue	Sub No. and Submitter	Key Points
		As the Miller owns the sugar, under the current Sugar Industry Act, we have no control over who they sell the sugar to or under what conditions. All we can do is negotiate the price or pricing mechanism for our sugar cane. CGRP contend that Grower choice of GEI marketing entity will alleviate the situation as experienced; both Miller and Grower are looking to maximise returns this is a simple commercial reality. Unfortunately, as demonstrated, our Miller saw reducing the grower share as a method of increasing returns. Under Grower Choice by nomination of Marketing Entity for GEI, the abuse of marketing by the Miller will cease and a system of discussion and transparency will result.
33B – Grower interest Cane price formula	**Sub 11. MSF Sugar**	MSF stresses the point that cane producers have always been paid for cane, not sugar; and that the link between cane price and raw sugar price is to ensure that cane producers are incentivised to deliver the best quality cane and thereby financially rewarded for the quality of that cane.
33B – Grower interest Cane price formula	**Sub 11. MSF Sugar**	MSF also highlights that the cane price formula in effect splits the revenue from the sale of raw sugar into the revenue to pay for the cane and the revenue the mill needs to operate the sugar mill and to make a profit for its business. The revenue to pay for the cane has recently started to be called 'grower economic interest sugar'. The grower share of the revenue from the sale of raw sugar is in the region of 60 to 65%, depending on the CCS of the sugar cane supplied. Accordingly it is their view that 'Grower economic interest sugar' is a constructed term that has emerged in the industry in the past three years during negotiations with QSL on a new Raw Sugar Supply Agreement to allow millers to market (within the QSL system) part of the raw sugar produced by a mill. The reality is that this terminology does not appear in any cane agreement and is a catchphrase invoked throughout the growing side of the sugar industry. Further Despite the notional splitting of the revenue described above, the risk on the raw sugar is transferred to the mill when title for the cane is transferred to the miller. This occurs when a grower delivers sugar cane to an agreed rail siding or truck pickup point. From this point the miller takes responsibility for transporting the cane to the mill, the conversion of the sugar cane into raw sugar and the delivery of the raw sugar to the export bulk terminal.
33B – Grower interest 33B(2)(c)	**Sub 2. Tablelands Canegrowers Ltd**	Tablelands Canegrowers is comfortable that 33B(2)(c) allows for 'grower economic interest' (GEI)' sugar to be defined and apportioned in a cane supply agreement. (Sub 2, p.3)
33B – Grower interest	**Sub. 12 Tully Sugar Ltd**	TSL note that 'grower economic interest' is a term that has only been used since the creation of the current RSSA which came into force at the end of 2013. It does not appear in the current CSA that TSL signed with its grower suppliers prior to the start of the 2014 crushing season. It is not a term that has been used historically in the Queensland sugar industry.
33B – Grower interest Cane price formula	**Sub. 13 Canegrowers Innisfail**	Canegrowers Innisfail argue that at the heart of the "cane price formula" is the value of the sugar obtained through the marketing, "Price of Sugar", the remaining components of the formula relate to the "sharing" of the proceeds.

Clause/issue	Sub No. and Submitter	Key Points
		Canegrowers Innisfail expresses concern that with the no choice option offered by MSF Sugar, MSF Sugar proposes to have total control over the marketing and subsequently the price of sugar obtained. This will then have a direct impact on the "cane price formula" and the value of cane received by growers
33B – grower interest	**Sub. 13 Canegrowers Innisfail**	Canegrowers Innisfail argue that the provisions of the Bill do not cause expropriation of property rights of sugar away from milling companies. It has been designed with that in mind and milling companies will continue to "hold title".
33B – Grower interest Cane payment formula	**Sub. 16 ASMC**	ASMC outline the pricing formula for cane and raw sugar which they believe demonstrates that marketing has very little influence on the price paid to growers for cane. 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. Pc = 0.009 x Ps x (CCS-4) + $0.608* Where: • Pc = price of cane (what the grower receives) • Ps = price of sugar per tonne IPS (net returns for raw sugar) • CCS = commercial cane sugar (how much sugar is in the cane) This formula recognized the conditions existing at that time when the CCS of cane was 12 and the mills Coefficient of Work (COW) was around 90. (COW is a measure of mill performance compared to the CCS). The formula provided approximately two-thirds of revenue from sale of raw sugar to growers at 12 CCS and 90 COW. 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.
33B – Grower interest Cane payment formula	**Sub. 16 ASMC**	ASMC argue that 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.

Clause/issue	Sub No. and Submitter	Key Points
		There are 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.
33B – Grower interest **Cane price formula**	**Sub. 18 Cangrowers Burdekin Ltd**	CBL argue a view that millers do not possess sole title to the raw sugar manufactured. CBL believe that the only legal reference to raw sugar ownership is contained within the CBL CSA and is as follows: *6.3 Risk and title: Title and risk in the Cane shall pass to Wilmar Sugar immediately upon delivery of the Cane to Wilmar Sugar at the Delivery Point.* *CBL further believe that because* WSAustralia has given notice to terminate the CBL CSA from the end of the 2016 crush, there is no contract in place for 2017 and onwards and on this basis there is also no legal reference to title which exists beyond 2016. They argue that it is therefore presumptuous that Wilmar can be making statements relating to an agreement/ownership arrangement that has not yet been negotiated. CBL feel that this is yet another indication of Wilmar relying on their monopolistic power and again stress our support for a pre-contract Arbitration process. In this regard, CBL present a number of points they believe substantiate their position regarding ownership post- 2016 crush: 1. Wilmar made a decision to buy the mills on the basis that it did not control the marketing of the raw sugar. Nothing has been taken away from Wilmar. 2. Although it is true under the current Cane Supply Agreement, Wilmar does have the title of the sugar but it is only for a blink of time in the process. Wilmar has title for about 24 hours from the time the cane is delivered to the siding to the time the processed raw sugar is delivered to the Townsville Port bulk sugar terminal. Reference clause 6.3 (a) Cane Supply Agreement (CSA).

Clause/issue	Sub No. and Submitter	Key Points
		3. Once the raw sugar is delivered to the bulk terminal the title transfers to QSL. QSL then holds title of the sugar until it is sold which could be up to 12 months or longer. Reference 9.1 of the Raw Sugar Supply Agreement (RSSA). 4. Wilmar gave notice to cancel the RSSA ...thus ceasing the transfer of title to QSL effective from the end of the 2016 crush 5. Wilmar has given notice to cancel the CBL CSA ...thus ceasing the transfer of title to Wilmar effective from the end of the 2016 crush. Accordingly CBL state "We struggle to see how Wilmar can feel aggrieved that their manufactured sugar has been stolen or expropriated?"
33B – grower interest **Title to raw sugar**	**Sub. 18 Cangrowers Burdekin Ltd**	CBL supports the legal recognition of grower economic interest and grower choice over raw sugar marketing. They argue that the price growers are paid for their cane is directly linked to the market value of sugar, and this price is around 2/3rds of the price received for the sugar. As growers therefore wear the greatest risk it is only fair and reasonable that Growers Economic Interest (GEI) be recognised and that Growers have the right to say who markets the raw sugar that impacts the price they are paid for their GEI.
33B – Grower interest **Knowledge of market structure/legal framework**	**Sub. 19 Wilmar Sugar Australia**	WSA stressed the importance of understanding the market structure and legal framework underpinning the sugar industry in Queensland. The fundamentals of the sugar industry supply chain are that cane farmers grow and sell cane to millers who manufacture and sell raw sugar. Both mills and growers are exposed to sugar price. Mills are exposed to sugar price as they own and sell their manufactured raw sugar. Growers have an exposure to sugar price as under the cane price formula, the price of cane is linked to the net sugar price received by mills.
33B – Grower interest **Knowledge of market structure/legal framework**	**Sub. 19 Wilmar Sugar Australia**	WSA put on the record that its decision to leave the QSL arrangement from 2017 is entirely consistent with the principles of the 2006 deregulation of sugar marketing; is permitted under the *Sugar Industry Act 1999*, and is in full compliance with the company's legal and contractual obligations to growers and QSL.
33B – grower interest **Section 33B(2)(a) –**	**Sub. 21 Burdekin District Cane Growers Ltd**	This section is ambiguous, difficult to understand its meaning, and raises several questions. For example, what does *"in a stated way"* mean? How is *"an estimated sale price"* to be calculated? Does an *"indirect reference"* create ambiguity in the supply contract? If the grower nominates a third party marketer (i.e. not the grower's miller), it should be the marketer's responsibility to pay the grower for the grower's sugar, not the miller.
33B – grower interest **Section 33B(2)(b) and (c) –**	**Sub. 21 Burdekin District Cane Growers Ltd**	These sections are ambiguous. What does "*bear the sale price exposure"* mean? Simply labelling this *"grower economic interest sugar"* (refer to section 33B(2)(c)), without otherwise defining the term, does not clarify the matter.
33B – grower interest **Section 33B(2)(d) –**	**Sub. 21 Burdekin District Cane Growers Ltd**	This section allows the miller to control and determine the terms and conditions of the contract with the marketer, without the grower's consent or agreement. Thus, the miller in fact has the power to control the marketing arrangements with the marketer. There is nothing in the section that regulates what the miller can or cannot agree to as far as the provision of marketing services to the grower. Potentially, the miller could enter

Clause/issue	Sub No. and Submitter	Key Points
		into a contract with the marketer on the basis of a commission of 50% of the revenue generated from the sale of the GEI sugar (regardless of whether the grower agrees to this term) and the miller has complied with this section. The grower must control the commercial relationship with the marketer. Further, subsection (d) limits the grower to choosing only one marketing entity. Growers should have the option of choosing more than one marketing entity; for example, a large grower may have sufficient sugar to negotiate favourable commercial terms with Wilmar Sugar marketing some of the grower's sugar, and a third party entity marketing a portion of the grower's sugar.
33B – grower interest **Section 33B(2)(e) –**	**Sub. 21 Burdekin District Cane Growers Ltd**	This section provides that *"if the grower and mill owner cannot agree which entity will be the GEI sugar marketing entity…."*. It should not be a matter of "agreement"; it should be the grower outright having the right to nominate the marketer.
33B – Grower interest	**Sub. 7 Canegrowers and ACGA**	CG/ACGA argue that the price of sugarcane in Queensland has always been linked to the market value of sugar; and this link has given growers a clear economic interest in the sugar produced from their cane.
33B – Grower interest	**Sub. 7 Canegrowers and ACGA**	CG/ACGA contend that although not described as such at the time, the concept of Grower Economic Interest (GEI) sugar was given effect in the original regulations introduced in the early 20th century. Further they suggest that Wilmar no longer contests the fact that growers have an economic interest in the sugar produced. Wilmar has "agreed to a defined term and formula to be included in supply contracts to recognise the principle of grower economic interest ("GEI")" (Wilmar Media Release, 25 June 2015).
33B – Grower interest	**Sub. 7 Canegrowers and ACGA**	CG/ACGA argue that there are a number of existing commercial underpinning which establish a right to grower economic interest. Until 2005 legislative arrangements supported a structure in which growers shared the full spectrum of risks and rewards from the market place. In 2010 the commercial structures that followed deregulation continued this approach. The treatment of marketing losses associated with the 2010 season is one illustration. Another is the way in which the full range of marketing costs, including but not limited to those associated with establishing and operating the bulk sugar terminals and the funding of QSL's raw sugar quality incentive scheme, are shared between growers and mill owners.
33B – Grower interest	**Sub. 7 Canegrowers and ACGA**	CG/ACGA highlight the circumstances that arose in respect to the 2010 season failure and resulting marketing losses as demonstration of the shared nature of risk and reward between growers and millers. With less sugar to deliver than planned, QSL was required to close out its futures contracts by lifting hedges on its own account rather than have the hedges closed out through futures market transactions linked to a physical sales contract. It incurred losses on those futures market transactions. QSL passed these on to mills in the form of non-delivery fees. The mills in turn passed the marketing losses on to growers in the form of a lower cane price through the cane payment arrangements.

Clause/issue	Sub No. and Submitter	Key Points
		Notwithstanding the fact that growers were not consulted individually or collectively by mills when the mills provided QSL with their production forecasts for the season, all growers were required to share in the marketing losses incurred by QSL. This decision re-confirmed the fact that growers and millers shared in the risks and rewards associate with the marketing of sugar produced in Queensland and have a strong economic interest in the sugar produced and marketed. The net price achieved from the sale of sugar is directly linked to the price of sugarcane. "A direct consequence of the industry debate surrounding the apportionment of the marketing losses between growers and millers was formal acknowledgement by the milling sector that growers' economic interest in raw sugar does not stop with the delivery of cane to a sugar mill. That economic interest extends to raw sugar marketing and the returns that are achieved from its sale." (Sub 7, Att 1, pg. 8)
33B – grower interest	**Sub. 8 SISL Cane Farm Trust**	Based on the existing relationship between grower and miller reflected in the price formula and the notional 2:1 economic exposure, SISL contend that it is clear that growers are just as much entitled as the millers are to have a say in how the raw sugar price is determined (and thus how the raw sugar is marketed). Their economic revenue stream is entirely dependent on the net export raw sugar price (which is a combination of many factors). They argue that Grower economic interest is not necessarily title to a specific batch of raw sugar but it is nevertheless patently a "property right". It is a right to deal with a specified tonnage of co-mingled raw sugar - in the same way we all have a right to a specific number of co-mingled dollars in a bank account. Accordingly it is the view of SISL that in order to avoid the expropriation of this property right by the raw sugar millers in their attempt to take over the marketing of all Queensland's raw sugar, it is necessary for the economic interest that growers have in the raw sugar to be formally and permanently recognised. "The legal title to raw sugar, arising under the current cane supply agreement ("CSA"), is not carte-blanche for a mill to expropriate the property rights of every sugar cane grower". (Sub 8, pg. 3)
33B – Growers choice **Title to raw sugar**	**Sub. 19 Wilmar Sugar Australia**	WSA contend that Growers do not have, and have never had, title to manufactured raw sugar. "At no stage in the history of the Queensland sugar industry, have cane growers had title to processed raw sugar. The title to manufactured raw sugar unambiguously lies with the miller who makes it. There is no such thing as a "sugar grower", "sugar farmer" or "grower-owned sugar". Queensland's sugar industry supply chain consists of cane farmers who grow and sell cane and mill companies that manufacture raw sugar. Sugar millers buy sugar cane and then use their sugar mill infrastructure to process and transform the cane into a new product, raw sugar, which is owned by the mill, in much the same way as a flour mill buys wheat grain and makes flour."
33B – Growers choice **Title to raw sugar**	**Sub. 19 Wilmar Sugar Australia**	WSA argue that to provide raw material suppliers (in this instance cane growers) with ownership rights to determine how and where to sell a manufacturer's processed produced (raw sugar) is an expropriation of a property right; and accordingly that this Bill would be an unprecedented interference with manufacturer's

Clause/issue	Sub No. and Submitter	Key Points
		rights, with implications under existing trade agreements and significant impacts on Queensland's international reputation as a place to invest. "There is no demonstrated economic or commercial basis for a cane grower to seek ownership rights over the raw sugar manufactured by millers."
33B – Growers choice **Title to raw sugar**	**Sub. 19 Wilmar Sugar Australia**	"Growers' choice" as provided for in the Bill transfers ownership rights over a mills' manufactured sugar to growers and is an expropriation of property. The title to raw sugar produced at a mill resides with the miller, not because of any agreement with any other person, but by virtue of the fact that the miller, pay the growers for their input (cane), and they created the end product (raw sugar). WSA has received legal advice from law firm Minter Ellison which they argue confirms that the title to raw sugar produced at a mill resides with the miller, by virtue of the fact that they made it. *"When raw sugar is first brought into existence in a sugar mill, the title to the sugar will, absent any agreement to the contrary, reside with the miller that produced it."*
33B – Growers choice **Title to raw sugar**	**Sub. 19 Wilmar Sugar Australia**	WSA notes the significant investment made in its, and other mills, and argues that shifting ownership rights for the raw sugar manufactured by a mill to the cane grower removes a mills primary income stream necessary to maintain a return on investment.
33B – Growers choice **Title to raw sugar**	**Sub. 19 Wilmar Sugar Australia**	WSA contend that grower interest is a "principle" that acknowledges price exposure not an absolute property right, and that this is recognised/translated through the cane price formula. "The introduction of forward pricing for growers in 2008 was underpinned by the recognition and quantification of a grower's exposure to sugar price under the Cane Price Formula. The quantification of a grower's exposure to sugar price (termed "Nominal Sugar Exposure" by WSA and "Grower Economic Interest" in the existing raw sugar supply agreement between mills and QSL) has formed an integral part of the operation of all grower pricing and pooling since 2008. The mathematical formula for Nominal Sugar Exposure and "GEI" are identical. However, it is important to note that a grower's exposure to sugar price or "grower economic interest" in no way implies grower ownership rights in a miller's manufactured raw sugar." WSA notes that in their draft CSA proposal farmers continue to have the choice of forward pricing their "GEI" with WSA, QSL or other suitably qualified third party pricing managers, subject to pricing limits that are used to manage production risk as is current industry practice. WSA is also proposing to increase the limit on forward pricing to a maximum of 70%, which is an increase of 10% on the current level.
33B – Growers choice **Title to raw sugar**	**Sub. 19 Wilmar Sugar Australia**	WSA sought legal advice from Minter Ellison regarding the issue of raw sugar title, and the impact of the measures proposed in the Bill. According to WSA, Minter Ellison's advice confirms that raw sugar is owned by the mills, and enabling growers to determine who physically markets the sugar, is an expropriation: *From 1923 until the deregulation of sugar marketing in 2006, raw sugar was vested automatically in QSL (and its predecessors) following its manufacture by millers. QSL had, by virtue of State legislation regulating the sugar*

Clause/issue	Sub No. and Submitter	Key Points
		industry, a monopoly on the export of raw sugar. However, even prior to marketing deregulation in 2006 it was the mill owner, not the growers, who initially owned the sugar it produced. Vesting was the statutory device by which the mill owner's title was transferred to QSL. But for this legislation, title would have remained with the mill owner, where it resides today. *Accordingly, while cane growers have an exposure, under a CSA, to prices for raw sugar, they have no proprietary interest in any part of the raw sugar itself. Understanding this point is crucial to analysing a proposed law which would give growers 'choice' as to how raw sugar is to be marketed. Such a law would give cane growers the power to determine how a product that is produced and owned by another person (the mill owner) is to be sold to third parties*. The advice goes on to outline that depriving a mill of the rights that it would otherwise enjoy to market the sugar it makes, is an expropriation: *There is, in our opinion, a strong argument that the Bill would, if enacted, be a measure that has an effect equivalent to the expropriation of the 'grower economic interest sugar' produced by WSA, as the Bill would deprive WSA of virtually all of the benefits of the ownership of that property.*
33B – Growers choice **Title to raw sugar**	**Sub. 19 Wilmar Sugar Australia**	Expropriating a manufactured product, by giving a raw material supplier ownership rights over the processed raw sugar, would set an extreme precedent for Australian agriculture. There is no precedent in Australian agriculture for Government to expropriate a downstream processed product and give a supplier property rights over a processed product that has been entirely transformed through a manufacturing process. To do so would be an extreme and unjustified regulatory intervention. It would also represent a significant sovereign risk to Queensland's reputation as a place to invest and do business.
33B – Growers choice **Title to raw sugar**	**Sub. 19 Wilmar Sugar Australia**	An expropriation of WSA's raw sugar property rights under 'grower choice' would be financially damaging for WSA and our growers, risking the future viability of our mills and the employment of our 2,000 employees. 'Grower choice' would have the effect of stripping WSA of its rights to determine the terms of sale and counterparties for more than 60% of its manufactured product. Mills have a direct economic interest in 100% of the sugar that they manufacture and are not financially indifferent as to whether they sell all, or only a portion, of the product that they manufacture. Specifically, WSA conservatively estimates the opportunity cost of implementing a 'grower choice' model to be over $46 million per annum to WSA and its cane grower suppliers, assuming QSL markets 100% of "GEI".
33B – Growers choice **Title to raw sugar**	**Sub. 19 Wilmar Sugar Australia**	WSA highlight that the cane price formula that is used today to pay growers for their product has never been legislated, and the concept that growers have some form of legal entitlement to two-thirds of sugar manufactured by the miller has never had any legislative or legal basis.

Clause/issue	Sub No. and Submitter	Key Points
		The *Sugar Industry Act 1999* did not define a statutory relationship between the payments made by QSL to millers for the sugar, and the payments by a miller to growers who provided the cane. As noted in the Queensland Government 2003 policy statement, Sugar: The Way Forward: *There is a common belief (which could be termed a tradition or custom) in the industry that sugar payments from the marketer should be apportioned two-thirds to growers and one-third to the mill, but this has no legal foundation in the present legislation. Payments from QSL to a mill for sugar and payments from the mill to its grower-suppliers for cane are two different and legally unrelated matters. (p.56)*
33B – Growers choice **Title to raw sugar**	**Sub. 21 Burdekin District Cane Growers Ltd**	The bill fails to redefine the ownership/title transfer arrangements for GEI sugar. Whilst it may be simplistic, the point is that *"you cannot sell what you do not own".* Thus the supply contract must deal with the transfer of title from the grower to the marketer. BDCG's proposed draft *Regulation* defines *"Grower's Sugar"* as the amount of raw sugar produced from the cane supplied under a CSA. Thus a supply contract needs to enable the grower's sugar to be identifiable, as ultimately, title to the sugar must pass from the grower to the marketer, for the marketer to be able to affect the physical sale of the sugar to the final customer. It is a matter of negotiating the terms of the CSA to determine when the grower transfers title to the grower's sugar to the marketer.
Insertion of new ss 33A and 33B	**Sub 10. Canegrowers RP**	CGRP welcomes the proposed amendments (Sugar Industry (Real Choice In Marketing) Amendment Bill 2015) to facilitate an avenue for arbitration during the contract negotiation process and the provision of more equitable outcomes for growers; a long overdue acknowledgement of the best interests of sugar cane growers state-wide. CGRP note that while growers are covered by a CSPA, the contract contains avenues for dispute resolution. However, during the formulation of a new CSPA contract, legislation denies any form of recourse, effectively leaving growers at the mercy of the miller as the sole entity to crush the crop. Growers sugar cane will already have been planted and various input costs incurred, all before the signing off of a CSPA for the harvest the following year. This, in addition to having no other viable milling option, means that growers can only negotiate so far before reaching a stalemate. Often, the impasse lasts until the scheduled crush start date, at which point growers feel pressured into signing the agreement at terms favourable to the Miller.
Insertion of new ss 33A and 33B	**Sub 6. Bundaberg Sugar Ltd**	BSL emphatically objects to the Bill's clauses 33A and 33B which form the core of the proposed legislative change. (Sub 6, p.5)
Insertion of new ch 10 **New s 298 Transitional provisions**	**Sub. 21 Burdekin District Cane Growers Ltd**	As currently drafted, the Bill, if proclaimed this year, could potentially relate to a contract negotiated for the 2016 harvest season. Wilmar Sugar's contract with QSL terminates at the end of the 2016 season. Therefore the proposed Bill should apply only to a supply contract for milling services provided on or after a date in 2017; for example, 15 April 2017.

Appendix C - List of witnesses at the public briefing and public hearing

Witnesses at the public briefing held on 15 July 2015

Mr Shane Knuth MP, Member for Dalrymple

Mr Stephen Ryan, General Manager, Australian Cane Farmers Association

Witnesses at the public hearing held on 31 August 2015

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

Mr Michael Fitzgerald, President, Queensland Law Society

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

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

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

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

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

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

Mr Jeff Atkinson, Chairman, Maryborough Canegrowers

Mr Mike Barry, Chief Executive Officer, MSF Sugar Ltd

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

Mr Trevor Turner, Manager, Maryborough Canegrowers

Mr Dan Galligan, CEO, Canegrowers Queensland

Mr Tom Harney, Chairman, Canegrowers Tully

Mr Steve Kirby, Managing Director, SISL Group

Mr Warren Males, Head Economist, Canegrowers Queensland

Mr Philip Marano, Chairman, Canegrowers Burdekin

Mr Don Murday, Chairman, Australian Cane Farmers Association

Mr Stephen Ryan, General Manager, Australian Cane Farmers Association

Mr Paul Schembri, Chairman, Canegrowers Queensland

Mr Mike Barry, Chief Executive Officer, MSF Sugar

Mr John Gorringe, Chief Executive Officer, Isis Sugar

Mr Ray Hatt, Chief Executive Officer, Bundaberg Sugar

Mr Paul Heagney, General Manager, Marketing, MSF Sugar

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

Mr Justin Oliver, Advisor, Australian Sugar Milling Council

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

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

Mr Nigel Salter, Commercial Manager, Tully Sugar

Mr Nick Waters, Marketing Manager, Mackay Sugar

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

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

Statements of Reservation

Mr Stephen Bennett MP, Member for Burnett

Mr Robbie Katter MP, Member for Mount Isa

Stephen Bennett MP
MEMBER FOR BURNETT
Shop 7, Bargara Beach Plaza, 15-19 See Street, Bargara Qld 4670 PO Box 8371 Bargara Qld 4670
P 4159 1988 E burnett@parliament.qld.gov.au F 4159 2696 StephenBennettMP W stephenbennettmp.com.au

11 September 2015

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

Dear Ms Howard,

RE: Report No. 6, Sugar Industry (Real Choice in Marketing) Amendment Bill 2015.

I wish to notify the committee in accordance with SO214 of our reservations about aspects of Report No.6 of the Agriculture and Environment Committee.

During the final stages of the committee's examination of the Bill, the Member for Burnett proposed that the Bill be amended in line with some proposals from an exposure draft of a Bill [the Sugar Industry (Facilitating Grower Choice) Amendment Bill 2015 (http://debfrecklington.com.au/documents/Exosure%20Draft%20Sugar%20Industry%20(Facilitating%20Grower%20Choice)%20Amendment%20Bill%202015.pdf)] developed by the Member for Nanango and released for public comment.[1]

Principally these amendments have a similar effect to the Bill to the extent that they:

- seek to recognise in the Sugar Industry Act 1999 grower economic interest in a proportion of the total raw sugar manufactured; and
- mandate the inclusion of particular terms in cane supply agreements to allow growers to nominate their 'choice' of marketing entity for the sugar.

The amendments adopt different language and approach, in particular setting up a number of conditions that need to be triggered before particular terms of supply would be mandated in cane supply agreements, which is intended to give parties the choice to avoid the triggers that are only activated by default.

The substantive amendments related to grower's economic interest and grower choice of marketing entity are as follows:

Clause 6 (Insertion of new ss 33A and 33B) - replacing lines 9 to 33 with:

(a) and (b) - to allow a grower and mill owner to agree that payment for the supply of cane can be on some basis other than a 'related sugar pricing term' and provide for the 'related sugar pricing term' which links the cane price to the sale price, only by default.

(c) - to provide that it is only if the contract includes the 'related sugar pricing term' that the contract is required to include terms allocating sale price exposure for the on-supply sugar; (C)(i) provides that sale price exposure is first allocated to the mill owner and, as previously explained, the clause allows

for the possibility that the mill owner could accept the sale price exposure for 100 per cent of the on-supply sugar; and (c)(ii) provides that it is only if the parties agree that the mill owner is not going to accept the sale price exposure for all the on-supply sugar, a further term of the contract is required to allocate the sale price exposure for the remaining on-supply sugar to the grower.

(d) - to provide it is only if the parties have agreed to allocate sale price exposure to the grower under the contract, that it is also required to include a term for the grower to nominate a marketing entity to sell the 'grower economic interest sugar', however in the first instance this would allow the grower and miller to agree on the marketing entity and it is only by default that the marketing entity is the entity nominated by the grower.

(e) - to provide that, where the grower has nominated a marketing entity, the supply contract must include terms requiring the mill owner to deliver the grower economic interest sugar for sale as directed by the entity within a stated reasonable period and at a stated reasonable cost.

The member for Burnett has also proposed that the Bill be amended to remove the right for growers and their representatives to refer to arbitration pre-contractual disputes with mill owners.

In conclusion we note our intention:

- Support the passage of the Bill with amendments

- The amendments be around the 4 articulated principles:
    - Avoids ex appropriation of property rights
    - Maintains reference to Cane supply Agreements where GEI is recognised
    - Does not prescribe pre contractual arbitration but rather a mechanism for dispute resolution
    - Allows grower's choice of who markets their sugar through cane supply agreement

Yours sincerely,

Stephen Bennett MP
Member for Burnett

PO Box 1968
Mount Isa QLD 4825

Mount Isa
74 Camooweal Street
P: 07 4730 1100
Cloncurry:
27 Ramsay Street
P: 07 4710 4100

Rob Katter MP
Member for Mount Isa

14 September 2015

Ms Jennifer Howard MP, Member for Ipswich
Chair Agriculture and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Chair,

Statement of Reservation re Sugar Industry (Real Choice in Marketing) Amendment Bill 2015

Katter's Australian Party (KAP) is absolutely committed to supporting growers in the Queensland sugar industry. To this end on 19 May 2015 the KAP Member for Dalrymple, Mr Shane Knuth MP, introduced the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 (the Bill) into the Queensland Parliament.

In relation to the Agriculture and Environment Committee's recommendations:

- KAP maintains that the Bill should be debated and passed with amendments that provide for real choice in marketing and grower economic interest.
- KAP emphasises that the remaining stages for the passage of the Bill should be completed by 5:00pm on 3 December 2015.

KAP's position is in recognition of the urgency required to ensure certainty and stability for growers during the present period of transition in the Queensland sugar industry.

Yours sincerely,

Rob Katter MP
Member for Mount Isa

Email: mount.isa@parliament.qld.gov.au
Freecall within the electorate: 1800 801 569