# Regulation and Reform of the Queensland Sugar Industry

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**Australian Sugar Milling Council Pty Ltd, 2001 to 2008**

# Contents

## Executive Summary

**Over a 100 year timeframe, the sugar industry in Queensland has been highly regulated by both Commonwealth and State governments. Government regulation originated in 1915 with compulsory acquisition of sugar and controls on raw sugar and sugar cane pricing implemented to regulate returns to growers and millers and encourage further settlement along the coast of Queensland. Initially supported by the regulation of domestic prices for sugar on the Australian market and an embargo on imports of sugar, the industry grew and by the late 1980's became one of the largest raw sugar exporters in the world with about 80% of its production sold into global markets.**

**The initial drive towards restructure and reform came out of a growing awareness by government agencies that government was being called upon to provide assistance to an export orientated industry that was still operating within a domestic support framework. In 1979, the Australian Government called upon the Industry Assistance Commission to undertake a full investigation into every aspect of the sugar industry. That investigation and the raft of investigations that followed questioned whether the highly regulated nature of the industry in Queensland was hindering industry development and responsiveness to the dynamics and complexity of the international trading environment. During this time the industry tended to rely on government intervention and assistance to address its changing circumstances. While Government afforded a wide range of periodic assistance to industry, these measures did not and could not provide comprehensive solutions to sustainability.**

**Even after the consolidation of laws relating to the industry in the Queensland Sugar Industry Act 1991 after the Commonwealth/Queensland Sugar Agreement lapsed, the 1992 Industry Commission final report on its review of the Queensland sugar industry concluded that *"growth and performance are being impeded by one of the most restrictive regulatory regimes of any Australian industry"***

**In June 2002, the report of the Independent Assessment into the Sugar Industry concluded that in the face of a sustained downturn in global sugar prices, *"the industry was largely unprofitable"*. Following the development of a joint industry strategy for stabilisation and sustainability of the industry in July 2002, the Commonwealth Queensland Sugar Industry Reform Program was subsequently announced. Both governments shared a common interest in ensuring the industry's regulatory framework did not impede competitiveness, efficiency and cultural change. To that end they committed to a Memorandum of Understanding acknowledging changes in the industry were fundamentally a responsibility of industry itself and Governments' role was to facilitate change in the industry. Extensive government intervention was seen as undesirable.**

**Previously, under elaborate industry funded structures, growers and millers allegiances were directed to supporting uniform state-wide developed controls and conditions. Yet the profit centre was at the mill or regional level and that was where the focus needed to be – finding solutions for local circumstances. Ultimately there was recognition by industry that regulatory structures were impeding industry progress and profitability, and through a Statement of Intent to the Australian Government and Heads of Agreement with the Queensland Government, the industry leadership committed to supporting and promoting comprehensive reform and restructure.**

**The reforms that occurred in 2004 with the removal of regulated collective bargaining with compulsory arbitration between growers and millers, and the move in 2005 from compulsory acquisition and marketing of raw sugar to voluntary marketing arrangements, were significant. The Sugar Industry Reform Program of assistance also provided up to $444.4 million to assist industry stabilisation and underpin the industry during the reform process and to assist the industry through regional capacity building to take ultimate responsibility for its future.**

**Since 2005, mill areas and regions have negotiated their commercial contractual arrangements without regulatory intervention. Groups of growers can and do collectively negotiate with millers and have been able to take responsibility for and solve issues that arise from time to time. On matters such as cane pricing arrangements, most areas still use a cane price formula which links cane price to sugar price.**

**Although the formula itself has never been specified in any legislation, its continued use has widespread industry support and underpins the current grower price risk management mechanisms that were first introduced in 2008 after sugar marketing was fully deregulated in 2006.**

**The transition away from compulsory acquisition and single desk selling is still ongoing. Post 2006, most millers continued to participate in voluntary marketing arrangements with Queensland Sugar Limited under three year supply agreements. However, marketing deregulation has already facilitated significant innovation in sugar price risk management capability for both millers and growers. This innovation, which recognises millers and growers have a joint exposure to global sugar price, provides Queensland growers with price risk management capability that is unique in the global sugar industry. The recent announcement of a number of milling companies to end their voluntary marketing arrangements with Queensland Sugar Limited and market their own sugar from 2017 represents yet another step towards a more commercially orientated and globally responsive sugar industry.**

**The path from regulation to reform of the sugar industry has been long and arduous. It has resulted from a process of more than 12 rounds of regulatory review by government and industry and been accompanied by more than $595million of assistance. The interdependent relationship between growers and millers is such that the industry should be allowed to continue to develop commercially without any further government intervention.**

# Introduction

This document provides detail on the history behind regulation within the Queensland sector of the Australian sugar industry, and the path toward deregulation. Numerous industry reviews outlined the need for regulatory reform to drive competition, financial sustainability and productivity. Key elements of industry relationships between growers and millers are discussed, including the origin, background and negotiation of the cane price formula and cane supply agreements. Perceived economic power imbalances between millers and growers are also discussed, particularly the capital risk and constraints millers operate under; and the legislative basis for payment to growers for cane and millers for sugar.

The industry has been transformed through the continued focus on commerciality, competition and innovation at local and regional levels; supported by successive State and Federal Governments. Outlined below is the history and detail of the extensive negotiations, developments and reviews that molded the Queensland sector of the Australian sugar industry to what it is today.

# Regulation and Reform of the Queensland Sugar Industry

*Summary: From uniform regulation at a state or industry level, successive reviews and regulatory reforms have moved the sugar industry towards finding local and regional solutions by working together collectively in local negotiation of agreements and removal of compulsory processes. Over $595million in assistance has been made available to support this transition of the industry to a more commercial focus. This culminated in 2006 deregulation reforms to establish a new sugar marketing system.*

## 1 Origins and rationale for Queensland Sugar Industry Regulation

In 1912 there was a Royal Commission into the sugar industry, to inquire into all aspects relating to growing, manufacturing raw and refined sugar, purchasers and customers of sugar, costs, profits, wages and prices and the existing laws of the Commonwealth affecting the sugar industry. Forming an ideological underlay to the areas of inquiry were two assumptions:

- A loyal adherence to the policy of a White Australia and therefore a desire to stop the use of island labour in the sugar industry;
- The national importance, from the point of view of defence, of effecting settlement and cultivation of the tropical and semi-tropical areas of the continent.[1]

As a result of these assumptions, the Commissioners were predisposed to acknowledge the necessity for a degree of government control of the industry. The Commission saw the industry of national importance and suggested that the price of raw sugar and the price of cane should be the concern of the Commonwealth rather than the states. The Inter-State Commission was seen as the appropriate body to determine the raw sugar price. The price of cane should be determined on a wages board system, with elected representatives of millers and growers:

> *The Board … would fix the price for cane on a basis that would allow the miller fair manufacturing profits, proper maintenance, and proper writing off for depreciation*.[2]

The report noted that the dominant sugar refiner at the time, Colonial Sugar Refining Company Ltd (CSR) had no effective competition and fixed raw sugar prices.[3] Millers in turn fixed the price of cane. There was discontent by millers over the prices for raw sugar and there was discontent by growers over cane prices

[1] Shogren, D., The Politics and Administration of the Queensland Sugar Industry to 1930, University of Queensland, 1980, p.162.
[2] Report of the Royal Commission on the Sugar Industry, Commonwealth Parliamentary Papers, 1912, III ,p.1088.
[3] Shogren, D., op cit., p.179.

fixed by millers. This "monopolistic control" was determined not to be predatory but symptomatic of a large scale industry with high efficiency of organisation.[4]

Competition for cane in most areas was impossible owing to the bulk and perishability of the crop and the practical transport problems.

The Commission identified factors that worked against collective bargaining between farmers and millers – growers were less organised than millers, individually growers had less staying power, growers were not infrequently heavily indebted to millers for advances against crops and the agreements went for a term of years.[5] However, the imbalance in negotiating power had not gone to the point that millers were unfairly squeezing growers but the Commission, for reasons outlined above, considered it was time to elevate the sugar industry to a national interest focus.

The recommendations of the Royal Commission were never implemented.

Shogren considered "*the main impetus to government intervention in the industry following the repeal of the excise and bounty legislation by the Commonwealth and the reciprocal legislation by the State to prohibit the employment of coloured labour, was the need to solve the cost-price squeeze problems affecting millers and growers*.[6]

In 1915, the sugar industry in Queensland was facing significant challenges to its viability. Challenges included war time conditions, high material costs, labour shortages, a severe drought and an inability to receive a fair return on cane growing and sugar milling due to refusals by interstate food price control boards to agree to increasing sugar prices. The other states had no real interest in ensuring the viability of the sugar industry because it was predominantly in Queensland.

With the agreement of the Commonwealth, the Queensland Government acquired all raw sugar manufactured at an extra £3 per ton to the prior year's price and on-sold it to the Commonwealth Government.[7] This agreement was necessary to get concerted action in fixing the price of raw sugar, not only for Queensland but in all states in order to protect the interests of the grower, the miller and the consumer. The interests of Queensland had to be considered because the viability of the industry was being threatened by the operation of interstate food price control boards, crop failures and poor returns.

The Queensland Government enacted two pieces of legislation:

1. the *Sugar Acquisition Act 1915* to acquire all raw sugar on its manufacture at a price that was £3 per ton higher than 1914 and then sell it to the Commonwealth at cost; and
2. the *Regulation of Sugar Cane Prices Act 1915* to establish Local Sugar Cane Prices Boards (Local Boards) in each area and an overarching Central Sugar Cane Prices Board (Central Board) to provide a fair distribution of raw sugar returns between growers and millers.

## 2 Overview of regulation and progressive reform

From 1916 the industry grew despite setbacks. By 1923 the industry was producing sufficient sugar for domestic needs and the Commonwealth Government transferred responsibility for the sugar industry to Queensland in accordance with the terms of an agreement between them, known as the *Sugar Agreement*. This agreement was formalised by the Commonwealth in legislation, known as the *Sugar Agreement Act*. During the term of the agreement, the Queensland Government was required to acquire all raw sugar in Queensland; purchase raw sugar from NSW; make arrangements with refiners for refining and distribution at specified prices; and provide at world parity prices sugar used in manufacturing for export in return for an

[4] Report of the Royal Commission on the Sugar Industry., op cit., p. xlvi.
[5] Report of the Royal Commission on the Sugar Industry., op cit., p. 1073.
[6] Shogren, D., opt cit. p. 205.
[7] DJ Murphy, TJ Ryan A Political Biography, University of Queensland Press, 1979, p.114.

import embargo on sugar, golden syrup and treacle. The *Sugar Agreement* was reviewed periodically. The Sugar Board was established to manage the acquisition and marketing of sugar.

Under that protective framework, the Queensland industry progressively increased its sugar production and exposure to the volatile price cycles of the world market.

In the mid 1960's the Queensland industry was producing about 2 million tonnes of sugar, rising to in excess of 3.6 million tonnes of raw sugar in 1989. About 80% of the industry's production in 1989 was exported.

The drive towards restructure and reform came out of a growing awareness by government agencies from 1979 that governments were being called upon to provide assistance to an industry that was still operating within a domestic support framework. It was not only out-of-step with the reality of being an export oriented industry with about 80% of its production sold overseas but may also be constrained by the regulatory rigidity from realising its full potential.

Federal Government agencies in reviews from the 1980's, questioned the relevance of Queensland industry structures/regulatory arrangements, and did not consider there were any special circumstances to warrant specific sugar industry legislation:

- 1979 – Industry Assistance Commission (IAC) said in respect to acquisition, sole seller arrangements, production controls, administered home consumption prices, etc. [8] –
    - the degree of control does raise the question of whether undue rigidity has been created preventing the more efficient development of the industry.
- 1983 - IAC Inquiry into whether short term assistance should be provided said[9] –
    - all industries should be required to absorb some fluctuations in their competitive positions without government assistance;
    - no assistance is warranted where short term fluctuations in revenue were unlikely to cause a great outflow of resources as would occur in an industry where re-entry is uncontrolled;
    - no short term assistance is justified above that which is available under general provisions of RAS (Rural Adjustment Scheme).
- 1983 - IAC Inquiry recommended the termination of the *Sugar Agreement*
    - the Commission does not endorse maintenance of production and marketing controls and an administered domestic price, none of these themselves require a sole seller arrangement;
    - If the advantages of sole seller were significant, such an arrangement should not require legislative backing: commercial considerations alone should be suffice to maintain the arrangement;
    - Advantages of sole seller on export are not clear cut in the absence of direct competition from other selling agents and the Commission does not propose to recommend any changes;
    - It is inappropriate for an export orientated industry to be insulated from underlying longer term world price movements by domestic sales;
    - To insulate a predominantly export orientated industry through an embargo was inconsistent with policies applying in most industries.[10]
- 1986 - Bureau of Agricultural Economics found that regulatory regimes inhibited efficiencies in the off-farm sector and substantial cost savings could be made in transporting and milling cane. Expanding the productive capacity of the industry could be profitable, at least in the off-farm sector of the sugar industry.[11]
- 1989 - Senate Select Committee recommended that the Federal Government proceed with the removal of the embargo; the repeal of the *Sugar Agreement Act* between Queensland and Commonwealth Governments; and the imposition of a specific tariff.

[8] Industry Assistance Commission, The Sugar Industry, 31 March 1979 No. 209, p.75.
[9] Industry Assistance Commission, The Sugar Industry – Interim Report, 13 February 1983 No. 314, pp. 30-33.
[10] Industry Assistance Commission, The Sugar Industry, 11 November 1983 No. 332.
[11] Borrell, B & Wong, G, Efficiency of Transport, Milling and Handling in the Sugar Industry, ABE Project 42309

- 1989 - the *Commonwealth Primary Industries and Energy Legislation Amendment Act 1989* was assented thus repealing the *Sugar Agreement Act 1985* from 1 July. The implications were:
    - The existing refiners ceased to be "tolled" refiners and became commercial operators in a deregulated domestic market;
    - The removal of the embargo allowed refiners and others to import raw or refined sugar at import parity prices;
    - The appointment of CSR Limited as the raw sugar marketer lapsed but The Sugar Board appointed CSR Limited as the sole export-marketing agent of Queensland sugar;
    - The pooling arrangements for domestic and export proceeds needed to be reviewed given the increased exposure to world sugar prices;
    - The NSW sugar industry withdrew from voluntary pooling arrangements with Queensland in order to market its own sugar. Harwood Refinery was built in northern NSW with an eventual capacity to meet over 25% of domestic refined sugar requirements.
- 1991 – Industry Commission issued its report on statutory marketing [12] –
    - the objectives of statutory marketing arrangements are not sound from a community-wide viewpoint if they are based on powers which compel producers to participate, and many features of these arrangements may adversely affect the efficiency of resource use;
    - compulsory powers such as acquisition, production controls and price setting are most likely to have adverse efficiency effects.
- 1992 – Industry Commission Report recommended the staged removal of all production and marketing controls would benefit both the industry and the Queensland and Australian economies[13] –
    - Removal of acquisition, except to satisfy long term contracts up until 1995 season;
    - There is no empirical evidence to suggest that Australian sugar can be exported at a price premium other than into quota protected markets;
    - The removal of the single seller arrangements would not undermine export returns;
    - The lack of competition in the marketing of Australian sugar reduces the discipline on Queensland Sugar Corporation (QSC) to seek the highest market returns and to minimise costs.
    - QSC could remain as a marketer of sugar and continue to perform many of its current functions (e.g. operate a seasonal pool) in competition with other sellers.
- 2000 – National Competition Council found[14] -
    - a failure to maximise efficiency and flexibility at each stage of the sugar production and marketing process limits Australia's ability to compete internationally, undermining its long term prosperity;
    - short-term concerns, if used as an impediment to much needed change, may turn out to be shortsighted if they delay or prevent necessary restructuring, investment and efficiency gains that will improve the sugar industry competitiveness.
- 2000 – Productivity Commission found in a review of single desk selling [15] –
    - most of the potential benefits of single-desk arrangements can be achieved without the compulsion required for single desk, including economies of scale, optimization of price premiums, distribution networks, quality service, etc.;
    - single-desk arrangements can impose potentially large opportunity costs, such as by limiting producers' flexibility to innovate in marketing, product development, supply chain relationships, and the adoption of new technologies.

Over the four seasons 1994 to 1997, Queensland raw sugar annual production averaged 5 million tonnes and industry returns averaged about $1.78 billion. Over the four seasons 1997 to 2000, the industry's resilience was tested with bouts of bad weather, fungal outbreaks, pests and gyrating world sugar prices. Over that period, Queensland raw sugar annual production averaged 4.72million tonnes but industry average returns of about $1.42 billion, a fall of about 20%, hitting a low point of under $1 billion in 2000.

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[12] Industry Commission, Statutory Marketing Arrangements for Primary Producers, 26 March 1991, No. 10.
[13] Industry Commission, The Australian Sugar Industry, 6 March 1992, Report No.19.
[14] National Competition Council, Securing the Future of Australian Agriculture: Sugar, Community Information Paper, 2000.
[15] Productivity Commission, Single-desk Marketing: Assessing the Economic Argument, staff research paper, 2000.

The Queensland sugar industry was unconvinced by economic rationalists that dismantling regulatory arrangements that had been in place since 1915 was a good thing. This was so despite the losses of administrative guaranteed pricing on the domestic market; the raw sugar import embargo; and NSW breaking away to market their own sugar on the domestic market in competition to Queensland.

A softer approach to formal reviews involving government agencies was used through the establishment of government/industry task forces and working groups. The recommendations out of these reviews supported progressive relaxation of production controls and cane supply bargaining arrangements but held fast on the retention of compulsory acquisition and single desk selling arrangements in Queensland (with the acceptance of the Commonwealth and Queensland Governments).

Outcomes of Task Force Working Party Reviews:

- 1989 - the Queensland Government announced an inquiry into sugar price pooling arrangements under the *Sugar Acquisition Act 1915* to assist the industry adjust to the loss of the administrative domestic market. While maintaining two pools, the new arrangement was to enhance No 1 Pool returns (mill peak sugar) at the expense of No 2 Pool returns (excess sugar), irrespective of the price paid for excess sugar in the marketplace.[16] This was achieved by ensuring No 1 Pool returns would be a constant 12 per cent higher than No 2 Pool. ACCEPTED by Government.
- 1990 – Sugar Industry Working Group (SIWP) was established by the Queensland Government to recommend changes necessary to restructure Queensland's raw sugar industry to make it more responsive to the changing world sugar market. SIWP recommended that compulsory acquisition and single desk selling be vested with the new Queensland Sugar Corporation (QSC). ACCEPTED by Government.
- 1991 – Acting on the recommendation of the SIWP, the *Sugar Industry Act 1991* was enacted which consolidated the laws relating to the Sugar Industry after the *Sugar Agreement Act 1985* lapsed in 1989. Statutory responsibility for production and marketing of sugar was integrated into Qld Sugar Corporation. Despite legislative consolidation, previous legislation regulating relationship between growers and millers and single desk marketing remained, however reviews of regulation continued.
- 1992 – Sugar Industry Task Force –
    - the members of the Task Force held differing views as to whether it is in the best interests for total acquisition of Queensland raw sugar to continue, or whether there should be a partial acquisition (of raw sugar for export) or no acquisition at all. Report not publically released.
- 1993 – In response to the Task Force Report, Governments and industry agreed -
    - compulsory acquisition powers of QSC combined with "single desk" selling arrangements for both the domestic and export markets would continue but would be reviewed as part of the Queensland Government's review of the *Sugar Industry Act* in 1996. ACCEPTED by Government.
- 1996 – Sugar Industry Review Working Party recommended[17] retention of compulsory acquisition and retention of QSC as the single desk seller of Queensland raw sugar for both the export and domestic markets, subject to pricing domestic sales at export price parity. ACCEPTED by Government.
- 1998 – Parliamentary Sugar Industry Task Force supported –
    - continued maintenance of Queensland single desk marketing arrangements;
    - the package of legislation to protect compulsory vesting of Queensland's raw sugar to QSC. ACCEPTED by Government.
- 1999 - the *Sugar Industry Act 1999* was introduced based on the 74 recommendations of the 1996 SIRWP and became effective on 1 January 2000 which:
    - Retained QSC as marketer of Queensland raw sugar; and
    - Retained compulsory acquisition and single desk selling for export and domestic sugar.

[16] Previously No.1 pool comprised the domestic market, long term contracts and reasonably assured markets. No.2 Pool sugar was risk sugar that may or may not be acquired in a season by The Sugar Board.
[17] SIRWP, Sugar – Winning Globally, 29 November 1996, p. 3.

- 2000 - the **Sugar Industry Amendment Act 2000** received assent whereby:
    - QSC's marketing assets transferred to QSL which had been formed as a company limited by guarantee;
    - transfer of QSC's terminal assets to Sugar Terminals Limited which had been recently incorporated as a public company limited by shares;
    - establishment of Sugar Industry Authority to monitor QSL in its performance of functions under the Act; and
    - a review of the sugar vesting scheme was to be commenced no later than December 2006, to be completed no later than 31 December 2007.

Direct assistance measures provided over the period from 1989 to 1998 included:

- 1989 - Tariffs on the importation of sugar from 1 July 1989, initially set at $115 a tonne, reduced down to $55 a tonne from 1 July 1992, and then to zero by 1997;
- 1985 - Pool Price support of $230 per tonne costing about **$19 million**;
- 1986 - a joint Commonwealth/Queensland Adjustment package applied for 3 years to 30 June 1989 with total funding of **$100 million**;
- 1993 – Task Force Report outcome funding of **$40 million** over four years for infrastructure projects associated with the further development of the industry;
- 1998 – Sugar Industry Task Force outcomes included **$3 million** for infrastructure funding for NSW to develop an export focus and **$13.4 million** over four years to boost CCS content in cane, administered by SRDC;
- 2000 - A Federal Sugar Industry Assistance Package of up to **$83 million** for cane growers. To the disappointment of millers, assistance proposals agreed between CANEGROWERS and ASMC for sugar mills were not accepted;
- 2000 - Federal Government approved underwriting a loan of **$3.375 million** to South Johnstone Mill Limited.

Whilst the marketing body transformed progressively from The Sugar Board to Queensland Sugar Corporation and then to Queensland Sugar Limited, its compulsory acquisition and single desk selling authorities remained intact. There was no value adding opportunities for mills to market their own raw sugar to enhance revenues.

Some sugar milling infrastructure in Queensland, on the other hand, became collateral damage as a result of loss of cane production (to alternative crops including banana's, small crops, tree plantations and urban encroachment) and financial pressures due to the volatility of world sugar prices and an inability to take up opportunities to value add: Qunaba (1985), Goondi (1987), North Eton (1988), Cattle Creek (1990), Hambledon (1991) and Moreton (2003). Further mill closures were Fairymead (2005) and Mourilyan (2006), Pleystowe (2006) and Babinda (2011). None of these mills reopened and only one new mill has been constructed in this period, Tablelands.

No sugar mills closed down in the NSW sugar industry.

## 3 Background to 2004 and 2006 Reforms

Over the four seasons 1999 to 2002, Queensland raw sugar annual production averaged 4.57 million tonnes and industry returns averaged about $1.27 billion. Whilst crop expectations for 2002 were good with a return to production above 5 million tonnes expected, world sugar prices were falling again.

Against the background of projected lower sugar returns on top of very ordinary returns in recent prior years, CANEGROWERS on 6 June 2002 called for urgent emergency assistance to avoid a collapse in the sugar industry's productive capacity and to prevent further financial disintegration of regional sugar communities.

On 24 June 2002 the Queensland Premier announced the Sugar Cane Crop Scheme to assist growers to plant and fertilise their 2003 crop.

On 28 June 2002 the report of the Independent Assessment into the Sugar Industry ("Hildebrand Report") was released confirming a*t present the industry is largely unprofitable.* The Hon. Warren Truss, MP, called upon CANEGROWERS and ASMC to develop a joint strategy for stabilisation and sustainability of the sugar industry. The joint strategy was submitted.

In September 2002 The Hon. Warren Truss announced a joint Commonwealth Queensland Sugar Industry Reform Program to provide $150 million**.** The package was subject to a Memorandum of Understanding:

- The governments agreed the industry needs to change both its culture and practices in order to:
  - Improve its efficiency and competitiveness;
  - Retain its global market share; and
  - Become more commercial and innovative.
- The governments recognise:
  - Changes in the industry are fundamentally a responsibility of industry itself;
  - Governments' role is to facilitate change in the industry; and
  - Extensive government intervention would be undesirable.
- There were three areas of the *Sugar Industry Act 1999* which seemed to impede change:
  1) The cane production area system;
  2) Compulsory bargaining system; and
  3) Compulsory acquisition of raw sugar for marketing and selling within the domestic market.

CIE was engaged by the Queensland government to undertake an impact assessment of legislative change in these three areas. CIE concluded that regulation was impeding industry progress and profitability as it created a system that discouraged individuals and progressive groups from implementing change by preventing "adverse effects". Nothing changes because each change may potentially have adverse effects on some. Those adversely affected were able to block the change under the legislation. Further, monopoly acquisition powers prevented competition in the marketing of raw sugar on the export and domestic markets. CIE concluded that the industry would benefit by three changes to the Act:

- Removal of the cane production area system;
- Removal of the statutory bargaining system; and
- Removal of compulsory acquisition of sugar for sale on the domestic market.

Over the ensuring twelve months industry leadership debated the extent to which it was willing to embrace the reforms proposed in the *Sugar Industry and Other Legislation Amendment Bill (No. 2)*. It was introduced into Parliament in early 2003. In April 2003, the Queensland government published *Sugar the Way Forward*, A Statement of the Queensland Government's Position on Regulatory Reform of The Sugar Industry. This report recommended substantial regulatory reform of Queensland sugar industry.

The Australian and Queensland governments waited patiently until the industry could resolve outstanding issues. In the interim the Bill lapsed on 13 January 2004.

## 4 2004 Reforms

Over the four seasons 2000 to 2003, Queensland raw sugar annual production averaged 4.52 million tonnes and industry returns averaged about $1.23 billion, slightly down on the previous four year rolling average but about $0.55 billion less than realised on average from 1994 to 1997. Whilst crop expectations for 2004 were good with a return to production above 5 million tonnes expected, world sugar prices had only marginally come off their lows. The industry resilience continued to be tested.

In January 2004, a further report by CIE, *Cleaning up the Act, more important than ever,* found that if $A200/tonne prices persist to 2006/07 and there is no reform, then the industry would cease to exist in all

regions. This highlighted the urgency of reform.

In February 2004, CANEGROWERS and ASMC made a joint submission to The Hon. John Howard, MP, Prime Minister of Australia on a proposal for a sugar industry rationalisation and restructure adjustment program. The Prime Minister was advised that the industry is committed to supporting and promoting comprehensive reform and restructure and acknowledged the legislative impediments to reform must be removed and the current legislative issue must be resolved.

On 1 March 2004, a Heads of Agreement was made between CANEGROWERS, ASMC and the Queensland Government committing to comprehensive reform of the *Sugar Industry Act.* Refer to **Appendix 1**. The Parties agreed to reform of the *Sugar Industry Act 1999* subject to an 18 month transitional period to phase out of compulsory arbitration; exemption system from vesting for alternative and bagged sugar for export, but not for bulk raw sugar for use in manufacturing; and the establishment of an industry working group to develop voluntary marketing arrangements and work towards a new system prior to the scheduled review in 2006 under National Competition Policy guidelines.

On 18 March 2004 the *Sugar Industry Reform Bill* was introduced into Parliament and on 6 May was passed. The long title stated it was "an Act to amend the *Sugar Industry Act 1999* to implement the commitment by the Sugar Industry and government to comprehensive reform for the long term future of the sugar industry". Key amendments were:

- The Cane Production Area system was removed from 1 January 2005. This removed restrictions on grower transfer between mills.
- The statutory bargaining system was removed from 1 January 2005 giving growers greater choice about how to bargain with millers.
- A phased transition away from compulsory arbitration to voluntary arrangements where the parties had to decide their own dispute resolution process in forming agreements and could only include arbitration by agreement in forming supply contracts. Conduct by groups of growers in collectively negotiating supply agreements continued to be specifically authorised for competition legislation.
- A new Part 2 – enabling applications to be made for exemption from vesting of raw sugar in QSL for exempt uses, for example, alternative products and bagged sugar for export but not bulk raw sugar for export.

On 29 April 2004, The Hon. John Howard, MP, announced the Sugar Industry Reform Program (SIRP). It provided a comprehensive range of measures of up to $444 million. He said that the measures were *based on the understanding that industry is genuinely committed to timely reform in response to national and regional challenges, opportunities and priorities. Industry's unity and leadership has been welcomed in the consultation phase and its continuation will be critical to the industry's successful transition.*

SIRP 2004 comprised two main funding components:

- Welfare component was payment of a Sustainability Grant of up to $125 million help with immediate difficulties and through the transition phase, payable in two instalments:
    - before receiving the first instalment, CANEGROWERS and ASMC were asked to sign up to a Statement of Intent on behalf of the industry committing to achieving real reform and restructuring. Paid in June 2004 following the signing the Statement;
    - before receiving the second instalment, the government required satisfactory progress being achieved with industry reform, including development of regional plans. This instalment was deferred about 9 months until the Minister was satisfied there was satisfactory progress on industry reform and regional plans. It was paid in September 2005
- Reform components delivered over five financial years from 2003–04 to 2007–08 comprised six key funding areas: business planning grants, re-establishment grants, retraining grants, restructuring grants, intergenerational transfer scheme and regional and community grants.

The Minister established and resourced an Industry Oversight Group (IOG), Regional Advisory Groups (RAGs) and Sugar Executive Officers (SEOs). The RAGs and SEOs provided a regional focus overseen by a group

focused on industry-wide change. The SEO role was designed to provide a liaison between the IOG and RAGs and provide executive assistance to the regional groups.

The IOG was tasked with providing direction for reforms by developing a Strategic Vision for the industry. The IOG then worked with the RAGs to develop their regional plans in alignment with the Strategic Vision. The IOG also examined proposals from the RAGs for funding under the Australian Government's Regional and Community Projects (RCP) component of SIRP and made recommendations to the Minister.

On 17 June 2004 the Chairs of CANEGROWERS and ASMC signed the Statement of Intent that the Sugar Industry and the Australian Government recognise that the industry will actively pursue long term economic, social and environmental sustainability by:

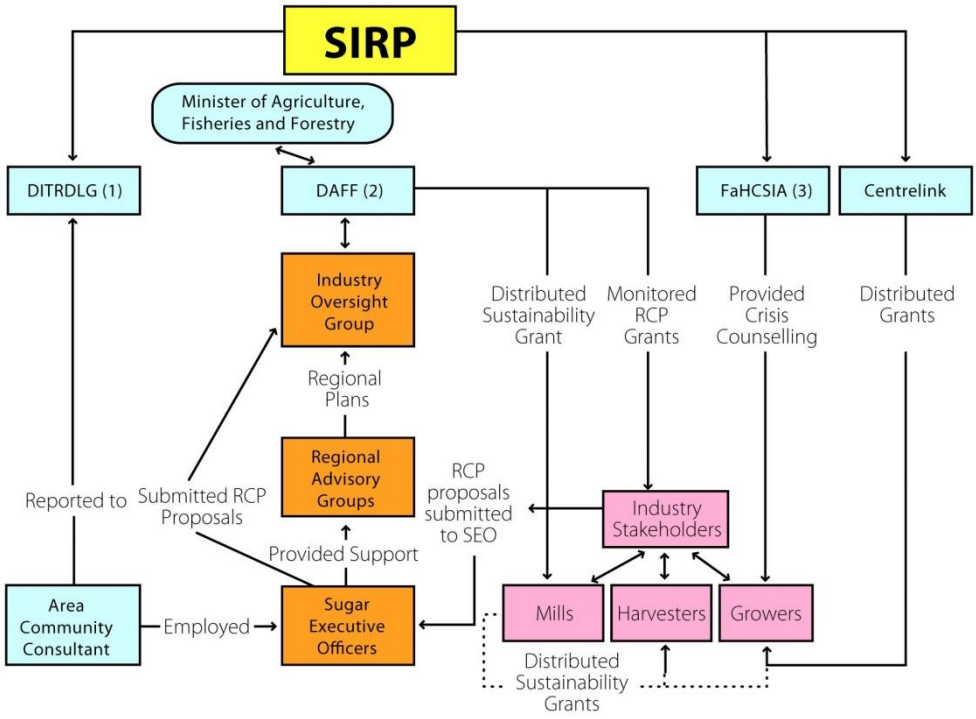
(a) undertaking significant reform across all sectors;
(b) comprehensively rationalising and restructuring its operations;
(c) diversifying its economic base; and
(d) adapting to its new operating environment.

A copy of the Statement of Intent is set out in **Appendix 2.**

On 9 February 2006, the IOG submitted its Industry Vision to the Minister:

> *A commercially vibrant, sustainable and self-reliant raw sugar and sugar cane derived products industry, through:*
> - *committed cane growers and millers being responsive to international and domestic market forces; and*
> - *operating in an open, deregulated industry environment, within Australia's corporate governance framework.*

Key participants and relationships in the delivery of SIRP[18] -




**(1)** Department of Infrastructure, Transport, Regional Development and Local Government.
**(2)** Department of Agriculture, Fisheries and Forestry.
**(3)** Department of Families, Housing, Community Services and Indigenous Affairs.

[18] ABARES, Report on the impacts of the Sugar Industry Reform Program (SIRP): 2004 to 2008, November 2010, p.36.

SIRP 2004 was completed in 2008 with almost $335 million of the $444.4 available provided for a range of measures including[19] -

- Regional and Community Projects - $56.4 million;
- Sustainability Grants - $133.44 million;
- Income Support (including business planning for income support recipients) - $17.4 million;
- Business Planning (growers and harvesters) - $5.49 million;
- Business Planning (mills) - $0.71 million;
- Re-establishment Grants (growers and harvesters) - $83 million;
- Grower Restructuring Grants - $25.94 million;
- Retraining Grants - $0.09 million;
- Crisis Counseling - $3.68 million;
- Intergenerational Transfer - $0.70 million; and
- Administration - $18.87 million.

During the SIRP 2004 period, the Queensland Government distributed $33 million for structural reform via three funding initiatives (Queensland DPI&F 2004):

- The Sugar Industry Change Management Program ($13 million) provided six Sugar Resource Officers to work with industry at the regional level to identify and manage opportunities for change.
- The Sugar Industry Innovation Fund ($10 million) provided funding for innovative management systems and technologies.
- The Farm Consolidation Loan Scheme ($10 million) offered concessional interest rates to growers and provided flexible repayment options.

## 5 2006 Reforms

The *Sugar Industry Amendment Act 2000* required a review to start no later than 1 December 2006 of the effectiveness of and need for the continuation, alteration or abolition of the vesting scheme. Rather than proceed with that review, the Heads of Agreement on reform dated 1 March 2004 between CANEGROWERS, ASMC and the Queensland Government included the establishment of a working group to work towards developing new voluntary marketing arrangements prior to December 2006. The Working Group comprised senior representatives from CANEGROWERS and ASMC and state government (as observers) with assistance from the Chief Executive of QSL.

On 16 May 2005 the Working Group Report was submitted to the Premier. It recommended a commercially, non-legislatively based marketing structure for the sugar industry:

- QSL be used as the basis for a contractually based sugar marketing company;
- To ensure maximum participation and transformation, the initial contractual arrangements include obligations on the marketer to meet defined milestones by due times. A failure to meet a milestone could enable the supplier to opt out;
- Sections of the *Sugar Industry Act 1999* covering vesting in and marketing of sugar by QSL operate only for the 2005/06 season;
- There should be sufficient grower and miller representation on the Board to ensure transparency and independent directors to bring experience and diversity of skills and perspectives;
- Rules relating to participation, entry and exit be determined by the marketer in consultation and incorporated into contracts;
- The initial contract arrangement be finalised by 31 December 2005 and apply for 3 years. Beyond that initial term, a rolling two-year period could be appropriate;
- The marketer focus on marketing bulk raw sugar for export under contracts;
- Initially treasury, risk management and pooling functions would be similar to current arrangements but

[19] Ibid, pp 20-21.

the marketer is expected to develop in the transition to standard business practice and more innovative arrangements.

The Queensland Government engaged CIE to evaluate the costs and benefits of the recommendations in the Working Group's Report. Key findings were[20]

(a) A proposal to free up Queensland sugar marketing is overwhelmingly in the public interest;
(b) Marketing based on compulsory vesting is holding the industry back;
(c) The industry clearly needs a new marketing system;
(d) Adopting the Working Group's proposal would go a long way in this regard;
(e) Some transition features of the proposal could defer benefits;
(f) Some implementation issues also need to be resolved;
(g) Removing statutory marketing interventions would impact in various ways;
(h) Adopting the proposed change would open the industry to an exciting future.

On 13 October 2005 the Queensland Government, CANEGROWERS and ASMC entered into a Memorandum of Understanding committing to ongoing reform and to actively and positively support the new marketing system. Refer to **Appendix 3**.

On 28 November 2005 the *Sugar Industry Amendment Act 2005* was passed. From 1 January 2006, chapters covering vesting and marketing; exemption from vesting; the 2006 NCP review; and matters relating to the functions and operations of QSL were omitted. The negotiating, making or varying of or giving effect to pooled export contracts and pooled domestic contracts between QSL and millers were authorised for competition legislation.

A full timeline of reviews and regulatory reforms from 1983 onwards is outlined in **Appendix 4.**

[20] CIE, Unshackling Queensland Sugar, June 2005.

# Origin and History of the Cane Price Formula

*Summary: The cane price formula has a long history, having been developed in the early 1900's. It was developed to reflect the costs of production and manufacture for each party, but incentivised each to improve performance; through sweeter cane for a grower or improved efficiency for a miller. Importantly the first time the cane price formula was included in any agreement was 1965, and has never been included in legislation. The formula remains relevant today as it is still in use for most Queensland mills.*

## 1 Origins and construction of the original cane price formula

The cane price formula is still in widespread use today, expressed as -

Pc = Ps .009*(CCS-4) + C

Where:

Pc = price of cane ($/tonne of cane)
Ps = price of sugar ($/tonne of sugar)
CCS = commercial cane sugar (a measure of the percent recoverable sugar)
C = constant

The origins of the formula were based on certain assumptions about sugar content in cane and sugar milling extraction efficiency and the relative miller/grower capital investment and cost of production in the early 1900's. However neither the cane price formula itself nor any relative revenue sharing between millers and growers has ever been legislated.

The principles underlying the formula were:

- Each party should recover their reasonable costs of production and manufacture;
- After allowing the reasonable cost of production and manufacture and incentives, the residual balance was to be divided in the ratio of the value of assets employed in production and manufacture;
- The standard sugar content of cane for the grower is 12 CCS;
- The standard raw sugar extraction efficiency for the mill owner is 90 coefficient of work (COW);
- The grower should receive the full benefit of increased CCS above 12 at 90 COW;
- The miller should receive the full benefit of increased COW above 90;
- A constant (C) which reflected adjustments to the formula which were historically deemed necessary to generate cane price scales in accordance with the policy objectives of the Central Board.

Some relevant comments about the cane price formula origins:

(i) The standards of efficiency of 12 CCS and 90 COW were based upon 5 year averages at the time.

(ii) At 12 CCS and 90 COW, it was assumed that costs and assets were in the ratio of 2:1 between growers and millers. Before the 1912 Royal Commission there was evidence presented by J.R. Paddle that it had been computed roughly that growers' assets were worth £4.5 million and millers assets £2.5 million.[21] In parliamentary debates of 1913 and 1915 these figures were quoted but there was more attention/to the message that the ratio was approximately two to one.[22]

(iii) The constant is a summation of adjustments between 1925 and 1949 by the Central Board made to bring the formula into line with decided principles based upon the financial returns in its possession. The Central Board wanted growers and millers to share in the surplus (profit), after taking account of the revenue at 12 CCS and 90 COW and giving the value of improvements above 12 CCS at 90 COW to the grower and improvements in mill efficiency above 90 COW. This sharing was based upon their respective investments in the businesses. The distribution of sugar returns was based upon assessing five-year

[21] Report of the Royal Commission on Sugar Industry, op cit.
[22] Sugar The Way Forward, A Statement of the Queensland Government's Position on Regulatory Reform of the Sugar Industry, Queensland Government April 2003, p.25.

averages of data to moderate fluctuations and then comparing the outcome of applying the principles to the cane price formula to ascertain whether the constant in the formula needed adjustment.

The cane price formula provided for one tonne of cane –

To growers –

- The value of 8 units of CCS at 90 COW based on the selling price of raw sugar;
- The value of CCS above 12 units at 90 COW based on the selling price of raw sugar;
- Plus a constant to reflect profit adjustments to bring the formula into line with Central Board assessments of revenue sharing based upon their principles as established.

To millers –

- The value of 4 units of CCS at 90 COW based on the selling price of raw sugar;
- The value of CCS above 90 COW based on the selling price of raw sugar.

Accordingly, at precisely a cane sugar content of 12 CCS and milling efficiency of 90 COW, the cane payment formula provides a share in sugar revenue to growers and millers in the ratio of 2:1 which was the same as the assumed ratio of costs and invested capital at that time.

### 1.1 Background to the cane price formula

Prior to 1915 the price of cane was determined in the large part by direct negotiations between refiners and millers, and in turn between millers and growers. Refiners were found to have controlled both the raw sugar prices and refined sugar prices.[23] There was a great variety of systems for cane payment, for example – a flat rate per ton of cane; a sliding scale where growers were paid for the Pure Obtainable Cane Sugar from the cane (POCS which later became known as CCS); or different payment arrangements based upon the supply of difference sugar cane varieties and other conditions.

The *Regulation of Sugar Cane Prices Act 1915* established a series of local cane prices boards (local boards) to regulate the price of cane between growers and millers, in the form of awards. The local boards were overseen by the Central Board which also operated as a venue for appeals. In the parliamentary debate which accompanied the introduction of the Bill for the Regulation of Sugar Cane Prices the Queensland Secretary of Agriculture referred to a desirable division of proceeds between grower and miller, being two-thirds to one third, but this was not implemented in the legislation at this time, nor later[24]. The fact that the division of sugar proceeds has never been regulated is not well understood in the sugar industry.

The cane price formula was never specified in the *Regulation of Sugar Cane Prices Act 1915*. It evolved and was refined over time as the Central Board developed the principles for the distribution of sugar returns between growers and millers. Those principles were reflected in cane payment scales set out in awards, known as price scales. Price scales paid growers a price for their cane based upon a sliding scale for CCS and sugar prices. In the early years of industry regulation the Central Board developed a set of principles with the guidance of the Supreme Court that provided a fair distribution of proceeds between growers and millers. The prices determined by the price scales delivered the same cane prices as calculated by the cane price formula.

It was not until 1965 that the cane price formula was inserted into an award (Plane Creek award by consent of the Local Board). The formula was then adopted in other mill area awards and replaced the Central Board price scales. The formula remained in awards because the awards could be arbitrated by the Local Board and reviewed on appeal to the Central Board. Accordingly, the only way the cane price could be altered to some other basis was if a Local Board, or the Central Board, on appeal, agreed to the change.

[23] Report of the Royal Commission on Sugar Industry, op cit.
[24] Sugar the Way Forward,, op cit., p.25.

The legislation, however, required that in framing an award, base price or base prices for sugar cane shall be associated with the selling price of raw sugar. This concept continued under the new legislation, the *Sugar Industry Act* 1991:

> *The base price or base prices for sugarcane specified in the award are to be associated with an estimated selling price of sugar stated in the award.*[25]

On 18 November 1999 *the Sugar Industry Act 1999* received Assent, replacing the *Sugar Industry Act 1991* and the *Sugar Milling Rationalisation Act 1991.* The new legislation incorporated the recommendations of the SIRWP, including providing for greater flexibility in cane payment arrangements by allowing a negotiating team for a collective agreement to agree on some other basis for payment for cane other than linking it to the selling price of sugar. The new Act reflected this:

> *A collective agreement must include payment arrangements linking the price of cane to the selling price of sugar, unless the negotiating team decides otherwise.*[26]

The *Sugar Industry Reform Act 2004* comprehensively removed provisions in the Sugar Industry Act 1999 covering those matters that were to be either included, or deemed to be included, in supply agreements as these matters were now subject to commercial agreements. The deleted sections were:

- Content of supply agreements
- Cane required to be accepted by a mill
- Delivery and acceptance of cane
- Emergency and disaster
- General considerations in negotiating a collective agreement

As a consequence section 50(2) provided that a *collective agreement must include payment arrangements linking the price of cane to the selling price of sugar, unless the negotiating team decides otherwise* was removed.

The rationale for removal of the requirement for linking the cane price with sugar price was to provide, without constraint, for a range of commercially negotiated outcomes to determine the most appropriate basis for the price of cane. For example to facilitate the price for cane being determined on an alternative basis to accommodate the potential manufacture of products such as ethanol or bioplastics.

## 2 Early development of principles for distribution of sugar proceeds

There was no evidence how the Central Board decided its price determinations in 1916. In the first cane price decisions made in 1916 there was little evidence to suggest that the cost of production of growers was an important consideration. Under the Act, the legislation provided that the Local Boards and the Central Board, in making an award to fix sugar cane prices, was to take into consideration a number of factors, including the estimated commercial cane sugar (CCS) of the sugar cane, the crushing capacity and sugar extraction efficiency of the mill concerned (referred to at that time as "co-efficient of work") and the selling price of sugar, raw and refined.

In 1916 the decision of the Central Board in respect to Hambledon mill award had the effect of allowing millers all costs including depreciation and a reserve profit based on 8 per cent of the estimated capital value of mill assets, together with "the surplus arising from any extra efficiency attained over and above a standard of 90 co-efficient of work".[27] The Central Board did not take into account the costs of cane growing because the evidence "was unsatisfactory and of no assistance to the Board".

[25] Section 122(3), *Sugar Industry Act 1991.*
[26] Section 50(2), *Sugar Industry Act 1999*.
[27] Qld. Govt. Gazette, 23 June 1916.

In 1916 CSR challenged the validity of the new awards in the Supreme Court of Queensland on the basis that the Central Board did not take into account the cost of production of growing cane when setting the prices for cane in awards. In its ruling the Supreme Court found that:

> *The object of making these provisions, we think, is to enable the Board to ascertain what it costs the miller, what it costs the cane grower, and the gross price that will be received for the products of the joint efforts of the mill owner and the cane grower, and then apportion the profits arising over and above such costs as the Board seems fit and proper, these profits being the balance between the joint cost and the price realized for raw or refined sugar, as the case may be.*[28]

In the subsequent seasons, the Central Board adopted the method of apportionment described in the Supreme Court decision. In time this led to the full development of principles upon which the cane price formula is based.

In 1917 the Central Board adopted the CSR measure of cane quality and mill efficiency –

(i) Pure Obtainable Cane Sugar formula (POCS) which later became known as CCS formula;
(ii) Co-efficient of work (COW) which measures milling efficiency in extracting CCS.

The average CCS from 1914 to 1917 was 12.25 and the average COW was 89.4. The Board adopted 12 CCS and 90 COW as the datum points for the distribution of proceeds. The Board attempted to calculate the costs to manufacture sugar from one ton of cane and the costs to the grower of growing one ton of cane. Because of deficiencies in growers' cost information a ratio of growers' costs being twice millers' costs was assumed. While the Board had available the value of millers' assets it was very difficult to obtain the value of growers' assets so the Board assumed a ratio of growers' assets being twice millers' assets.

In 1920 the price of sugar under the 1920 *Sugar Agreement* was raised from £21 per ton to £30 6s. 8p. per ton with a condition that the increase was to be distributed in the ratio of 57% to the grower and 43% to the miller. As both the growers and millers had been party to the new 3 year agreement, the Central Board decided to allocate the increase in accordance with that agreement. By the time the Agreement had ended conditions were much different. World sugar prices had fallen and the Commonwealth handed responsibility for the industry to Queensland in 1923. Under the 1923 agreement the price was reduced to £27 per ton. In determining cane prices in 1923 the Board allocated the reduction in sugar price in the same proportions as the agreement of 1920 required.[29]

In 1924 the Board reverted back to the principles applied before the 1920 *Sugar Agreement*. A cost ratio of 2:1 was adopted making the price scale itself equivalent to the formula Pc = Ps .009*(CCS-4) at the adopted 12 CCS and 90 COW.

### 2.1 Adjustments to the sugar price scales

Over time, the Central Board considered it appropriate to modify the price scales from that determined by their application of the underlying cane price formula by the inclusion of an adjustment amount. From 1925 to 1949, the total of all adjustments to the price scales was an increase of $0.328 per tonne.

Whilst no explanation was given for the last increase of $0.05 in 1949, the Chairman of the Central Board in 1948 believed that the adjustments made up until then were just and equitable to both parties and emphasized in his opinion that the just distribution of sugar returns and the economic stability of the industry were the chief functions of the Board. He went on to add that "*I am aware that increased or decreased profit can be shown for either grower or miller, provided suitable bases for calculation are adopted, but 'like for like must be compared with like'. When this is done the fact emerge, and a true computation of results is secured*."[30]

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[28] QSC, The Distribution of Proceeds of Vested Sugar, Vol. 1, July 1993, at p.28.
[29] Qd. Govt. Gazette, 30.07.1923.
[30] Qld. Govt. Gazette, 16.08.1948

Despite numerous changes in the Central Board membership, the Central Board was unwilling to alter the incentives that had been built into the formula because the formula was being used state-wide and did not address the particular circumstances at a local level. Growers and millers had made investment decisions based upon that formula, and in the interests of stability and potential impacts of any change, the Board was unwilling to make any departures.

Over the years 1950 to 1966 there were seven different Chairmen of the Central Board and in each of those years cane price arguments were initiated and dismissed:

1950 W. Forgan-Smith decided the existing profit levels to both growers and millers do not justify any change in the price level;
1951 W. Forgan-Smith decided profits to both parties being adequate, no change is justified;
1952 W. Forgan-Smith decided that the evidence does not warrant any alteration in the price of cane;
1953 TM Barry decided claims for increases and decreases have not been established;
1954 AM Taylor concluded from the figures that no change in the price of cane is warranted;
1955 AJ Mansfield decided after considering matters relevant there should be not be any change in the price of cane;
1956 AJ Mansfield held that after considering all matters relevant the price should remain unaltered;
1957 WG Mack held that the price should not be changed until a definite disparity again occurs and persists. Continued attempts to adjust the pendulum are not in the best interests of the industry;
1958 KR Townley held evidence presented and available to the Board does not warrant a change in price
1959 KR Townley considered any comparatively sudden and significant change must impact upon the economy of both parties and it should not be made without adequate warning and only after the fullest possible investigation and argument;
1960 KR Townley held that based upon the figures and all relevant circumstances not satisfied that there should not be any change;
1961 KR Townley considered it was not an opportune time to make a reduction and in the interests of stability in the present situation no alteration should be made;
1962 KR Townley held that the Board's figures failed to convince that there had been any significant departure from the asset ratio of 2:1 or that the price should be adjusted;
1963 KR Townley considered that based upon the facts both parties were not receiving an inadequate return and dismissed the appeals;
1964 KR Townley held that based upon the Board's figures, the inclination towards stability, and the industry being in midst of an expansion programme, there should be no alteration in price;
1965 KR Townley considered it was still an inappropriate time and for the sake of preserving stability he was extremely reluctant to make any change which might interfere with the economy of growers and millers;
1966 KR Townley held that based upon the figures and effect of any alteration upon the economy of parties there should be no alteration.

In 1953 millers sought to adjust upwards the CCS datum point from 12 to 13.5 and a COW of 96.5. These adjusted base datum points were slightly lower than five year averages with a view to providing incentive for both growers and millers to improve their efficiencies. The Chairman, TM Barry dismissed the proposal after taking into account a number of considerations including in fixing a state-wide price in our opinion it would be inadvisable to employ a new state-wide price scale which tends to adversely affect the growers in any one part of the state.[31]

## 3 History of Centralised Cane Price Formula Negotiation

In 1965 the cane price formula was inserted in the Plane Creek Local Board Award by consent and subsequently made its way into other awards.

[31] Qld. Gov. Gazette, 7.9.1953.

In 1973 the growers initiated an appeal to the Central Board by seeking an increase in the price of cane in awards but the Central Board declined to alter the cane price, despite calculating that a small reduction of $0.05 in the constant was warranted. Mr JA Douglas said:

> *In my view when such a small change is noted, the Board's discretion should not be exercised to alter the price of cane accordingly.*

In subsequent years the industry bodies continued to make agreements not to initiate cane price appeals until 1985.

In 1980 Mr. Justice R.H. Matthews, Chairman of the Central Board, gave an address to the 1980 Conference of the Australian Society of Sugar Cane Technologists entitled "An attempt to understand why the price of sugar cane has all but ceased to be regulated by The Regulation of Sugar Cane Prices Acts 1915-1966". He attempted to discover and explain why the Central Board had ceased to regulate the price of cane. He suggested, inter alia, that it was due to acceptance of a uniform price for cane across the state:

> *A necessary corollary to uniform prices throughout the state is that the Board gives no consideration to "the estimated quantity of sugar cane to be treated at the mill concerned" (section 57(a) of the Acts); or to "the crushing capacity of the mill" (section 57(d);*

In 1983 the Industry Commission considered "the formula represents a "fall back" position should millers and growers be unable to agree upon alternative pricing arrangements. Whilst the IC did not propose to recommend any changes for up-to-peak cane where growers are directed as to which mill to supply, it suggested the formula may be inappropriate in a less regulated environment for over peak cane because growers and millers should be unconstrained in their negotiations if the gains in flexibility are to be fully realised.[32]

The Sugar Industry Working Party (SIWP) in 1985 had a number of concerns with the formula including it was steering the industry to pursue technical efficiency at the expense of overall economic efficiency for the whole industry and it was too rigid to take account of local circumstances. SIWP recommended:

- *the existing formula-based approach, administered by the Central Sugar Cane Prices Board, for determining revenue sharing between growers and millers be terminated...;*
- growers and millers should negotiate an appropriate pricing mechanism to reflect local conditions, variations between seasons and the benefits from restructuring...;
- any disputes arising from these negotiations should be settled under civil arbitration.

In 1985, CANEGROWERS initiated a cane price appeal but withdrew on the first day of the hearings after making a brief statement. The Chairman, RH Matthews gave leave to withdraw the application and said that the industry would not lose from the decision taken:

> *I think the time was such that as to suggest that more industry co-operation in the difficulties that are current will bring results rather than a proceeding such as was contemplated here.* [33]

This was the last time CANEGROWERS would move to initiate a cane price appeal to the Central Board.

The systems of collection of grower financial information by the Central Board was found to be wanting. In December 1987 a Green Paper on amending *The Regulation of Sugar Cane Prices Act* was issued by the then Minister for Primary Industries, Hon. N.J. Harper, MLA. In respect to the continued collection of cost of production information the Green Paper advised:

> *It is considered by various industry sources that the annual returns by growers and millers required under section 108 of the Act, are no longer relevant.*

[32] IAC, The Sugar Industry, 11 November 1983.
[33] Qld. Gov., Court Reporting Transcript, 1985.

> *Because of the expense in preparing the returns, it is proposed that the requirement to provide annual returns to the Board be deleted and replaced with a provision empowering the Central Board to require returns as and when needed.*

This proposal was supported by ASMC and CANEGROWERS in their joint submission dated 23 December 1987, provided the word "returns" above was replaced with "relevant information" as it was inappropriate to continue with the "returns" in their present format. The amending Act gave the Central Board discretion to require "a return of information" but it never exercised that discretion. This marked the end of uniform pricing oversight by the Central Board.

The SIWP in their Report in 1990 recognised that State-wide cane pricing affected growers and millers differently in various regions and considered that the best course of action lay in direct negotiations between growers and millers in individual areas or regions and that the existing formula should be regarded as a bottom line in cases where no agreement can be reached.[34]

CANEGROWERS would not support the recommendations and called upon the State Government to redress growers declining share of proceeds. Following intense lobbying, the Government decided to refer the matter to the newly established Queensland Sugar Corporation (QSC) to report to the Minister on the most appropriate allocation of sugar monies, and thereafter as considered necessary by QSC. Following strong objections from ASMC, the Government decided to modify its approach and place a duty on the Corporation to:

- *Review the history of the development of the rules and procedures relating to the calculation and distribution to mill owners and cane growers of moneys due to them from out of the proceeds of the sale of sugar vested in the Crown, before, and the Corporation after, the commencement of this Act; and*
- *To assess the current rules and procedures and investigate alternative rules and procedures for consideration.*

During an Industry Commission (IC) inquiry into the Sugar Industry in 1991, ABARE submitted that more flexible cane pricing arrangements should be available, as present controls over prices paid for cane have reduced industry efficiency in other ways, including restrictions on season length.[35] ABARE went on to state "merely changing the pricing arrangements will do little to encourage growers to expand production if land or delivery constraints are still in place."[36]

A number of CANEGROWERS regions and areas made submissions to the IC Inquiry about cane pricing. The main theme was that originally the formula was designed to deliver 2/3rds to the growers and 1/3rd to the millers but over the years the growers' share was declining so there now needs to be a revaluation of the cane price formula. ACFA said that any idea that the formula should rigidly divide the gross sugar revenue in the ratio of 2:1 is simply wrong and was without historical basis or foundation.

In its report, the IC considered the major factor reducing efficiency of the industry was the regulatory control applying to the production and marketing of raw sugar. The Commission noted:

> *Concepts of equity and fairness are a strong theme running through the collective decision making process in the sugar industry. In a large part this stems from the democratic basis of grower representation on the various boards and organisations governing aspects of the industry. Collective decision making with compulsive compliance backed by legislation, (which has replaced the individual economic choices that operate in most other markets), shows up in things such as: the pro-rata allocations of increases in assignment (a defined land area upon which cane could be grown) to existing growers; allocating assignment to new growers in areas which are broadly comparable in size to small holdings already existing in the industry (even if these small areas are uneconomic); a strong defence of the uniform price paid to growers irrespective of distance from the mill; and harvesting schedules are designed to give each grower similar access to the mill. Regulation of*

[34] Fitzpatrick, E.N., Watson, D.C. and Soper F.J., Report of the Sugar Industry Working Party, 5 June 1990, at page 70.

[35] ABARE, The Australian Sugar Industry in the 1990's, August 1991, Submission 91.5, at page 25.

[36] Ibid, at p.42

> *production, prices and marketing, which insulates much of the industry from competitive pressures among growers, among millers, and between growers and millers, facilitates such outcomes.*[37]

The IC considered changes to the established arrangements must be made in the face of some resistance for the belief that one price is "fair" is deeply entrenched in the industry.[38] The IC considered only a system in which growers and millers could freely negotiate prices would provide efficient incentives for both cane growing and milling expansion.[39] In the transitional arrangements, it was proposed to retain the existing cane price formula, but apply it to cane from assignments issued prior to the 1993 season and allow the price paid for cane grown on new assignment to be subject to negotiation between growers and mills.[40]

On 7 September 1992 QSC advised ASMC of the appointment of the Boston Consulting Group (BCG) as its consultant to assist in undertaking the review of the distribution of proceeds of vested sugar.

CANEGROWERS released a publication in 1992, “Sugar: Structured to Win”. The publication sought to show that their share of proceeds has been declining by reference to the constant (which was last adjusted by the Central Board in 1949) which had not been adjusted to take account of changes in sugar prices nor money value (CPI). Also it was claimed that the incentive for an improvement in CCS had peaked and CCS was now in decline whereas mills technical efficiency had improved substantially. The concerns about incentives for efficiency were partly addressed through QSC’s co-operative formula approach of recognising joint effort that could produce mutual gain, which could be shared.

CANEGROWERS sought to influence the outcome of the QSC review by proposing a new state-wide cane pricing arrangement, called "The CANEGROWERS Formula". CANEGROWERS proposal was unanimously rejected by ASMC as it would in the medium term divide proceeds in the ratio of 2:1.

ASMC’s preferred approach was for millers to continue to negotiate cane price and conditions of supply on a commercial basis at the local level using the existing cane price formula as a basis of negotiation. This approach was consistent with recommendations of past inquiries. The cane growing and milling sectors are closely interdependent and are both price takers and the challenge facing the industry is how to improve the economic performance to cope with low world prices. ASMC was of the view that millers have rationalised, restructured and improved their crushing capacity and reduced season length but there remained considerable scope for cane growers to restructure, particularly in the area of harvesting losses, harvesting organisation, transport and season length.

On 14 July 1993 QSC submitted its report on the distribution of proceeds of vested sugar. QSC found that the current rules and procedures for the distribution of sugar proceeds had served the industry well. It provided incentives for growers to grow cane in the most productive regions and maximise the level of recoverable sugar in the cane and incentives for millers to maximise their recovery of sugar. However, the system did not provide incentives for millers and growers to pursue co-operative gains and therefore optimise system efficiency. QSC proposed a modification to the formula to provide incentives to reward co-operation between growers and millers in the pursuit of improving system efficiencies for mutual benefit. The approach was called the co-operative formula:

Pc = Ps .009*(CCS-4) + C + MG

Where:
Pc = price of cane
Ps = price of sugar
CCS = commercial cane sugar
C = constant
MG= a sharing of mutual gain by co-operative effort

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37 Industry Commission, The Australian Sugar Industry, Report No. 19, 6 March 1992, at page 40
38 Ibid, at page 57
39 Ibid, at page 58
40 Ibid, at page 63

CANEGROWERS proposed the following formula during the investigation by QSC but this formula was not accepted by QSC on the basis that:

- It was unclear how participants are able to reap the full benefit of their improvements;
- Nor is the proposed distribution acceptable to both parties.

CANEGROWERS formula was as follows:

$$P_C = COW_{5,5} * P_S * (CCS - CCS_{5,5}/3)$$

Where:

$COW_{5,5}$ = State-wide COW based upon a five year average, lagged by five years;
$CCS_{5,5}$ = State-wide CCS based upon a five year average, lagged by five years.

Following the QSC Report, CANEGROWERS proposed the following formula:

$$P_C = .009 * P_S * (CCS - CCS_{BASE} * (1 - R_1))$$

Where:

$CCS_{BASE}$ = 12
$R_1$ = The present division at 90 COW and 12 CCS (2/3rds), plus a percentage factor representing the incorporation of A (the constant), B (the Market and Non Market Adjustments), C (Price Enhancement) and D (Local Adjustment) at 90 COW and 12 CCS.

In a letter dated 20 August 1993 to the industry bodies, the Minister stated:

> *The relative shares of millers and cane growers in the net proceeds obtained from the sale of raw sugar is primarily a matter for the industry to resolve. However, in respect to the proposals made in the QSC's report, I wish to make the following points:*
>
> - *The Sugar Industry will continue to experience a "cost-price squeeze". The industry has met this challenge by becoming more efficient and I congratulate you on your efforts. However, further efficiency gains will be needed. It is desirable that the sugar revenue sharing system rewards such efforts.*
> - *In many cases mills and canegrowers need to work together to achieve efficiency gains. Considerable advances have been made with respect to this matter over the last few years. It is important that the sugar revenue sharing system supports and strengthens this co-operative approach.*
> - *Local issues can have a significant impact on the economies of cane growing and milling. It is desirable that provision is made for significant local input into the sugar revenue sharing system*

During 1993 CANEGROWERS and ASMC met on a number of occasions to consider the QSC report. Although growers and millers recognised they were mutually dependent upon each other for their long-term viability, there was a fundamental difference in approach which prevented resolution of this issue:

- ASMC sought to progress QSC's preferred option in the report and conduct cane price negotiations on a local level;
- CANEGROWERS wanted the distribution of returns determined initially on a state-wide basis to deliver an increase to all growers and then thereafter, relevant issues impacting on price and conditions should then be determined locally.

As an incentive, CANEGROWERS proposed that once uniform adjustment to state-wide pricing had been resolved then it would improve co-operation in addressing other industry issues such as restructuring the industry regulatory and marketing arrangements to maximise industry competitiveness post-1996. However, the deadlock continued as ASMC would not accept an adjustment to state-wide pricing in the absence of any tangible benefits.

In opening the Annual General Meeting of ASMC, Minister Ed Casey, MLA, Minister for Primary Industries, said:

> *"While I as much as anybody want to see this issue (sugar monies) sorted out, both sides must understand that the days of Governments telling industry how to run their affairs and making decisions for them on contentious issues are over.*
>
> *The major focus of the Goss Government has been to cut out Government interference and regulation and help rural industries determine their own futures."*

In May 1994, CANEGROWERS initiated appeals to the Sugar Industry Tribunal but did not seek the insertion of their new pricing formula that would deliver growers 2/3rds of the proceeds. Instead, they sought to retain the present state wide formula but absorb the constant of $0.328 plus a further amount into the formula. , plus make an adjustment of 85 cents per tonne of cane increased to a sugar price of $300 a tonne. In effect, this would deliver an increase of about $1.00 per tonne cane at a sugar price of $300. Millers lodged counter notices seeking a reduction in the price of cane.

The Minister then intervened and made it clear to both sides that unless they withdrew their application he would legislate to exclude the Tribunal from hearing the applications. In June the applications were withdrawn.

The Minister then mediated a Productivity Cane Payment Package between the parties. This marked an important move away from a centralised regulatory approach towards increased co-operation by requiring industry leaders to identify state, district and local issues and areas where joint action could improve productivity and improve industry efficiencies. Under the package:

- the constant in the formula was to be increased by 25 cents per tonne;
- in return, growers and millers at local levels would indentify and achieve productivity and cost savings of mutual benefit of at least 50 cents per tonne over 1994 and 1995 seasons; and
- the industry would develop a framework for mill area negotiations for cane pricing for 1996 season and thereafter.

This was the last time a uniform adjustment across the state had been made to the cane price formula. In announcing the package, the Minister said:

> *This agreement is a milestone, as it lays the foundation for the industry to move forward co-operatively and to gain in competitiveness….It has moved away from a centralised regulatory approach, to a new basis for millers and growers to work together, in a more commercial way in their own area.*

Since then the focus has been on progressive deregulation of the industry, with an increased local area focus on improving productivity, and cost reductions under commercial arrangements.

## 4 Cane Price Negotiations in a Deregulating Industry

*The Sugar Industry Amendment Act 1996* received Assent on 30 July 1996. One purpose was to facilitate the implementation of recommendations arising out of the 1994 Productivity/Cane Payment Package, including:

- Negotiation teams to replace Local Boards to form awards (supply agreements);
- If a dispute exists about a matter to be included, the negotiating team must refer the matter to mediation. If after mediation the matter is not resolved then it is referred to arbitration;
- In making an award for a mill, a negotiating team must consider ways the mill owner and the assignment holders can jointly—
  (a) improve productivity; or
  (b) reduce costs;
- QSC can make guidelines about the selection of mediators and arbitrators and anything else about resolving disputes.

In October 1995 the Commonwealth and Queensland Governments established a Sugar Industry Review Working Party (SIRWP) to develop a balanced package of recommendations which will *facilitate the sustainable development of an internationally competitive, export-orientated industry, which benefits both the industry's participants and the wider community*.

SIRWP submitted its report on 29 November 1996. SIRWP concluded that the *Queensland Sugar Industry Act 1991* restricts competition in a variety of ways and in respect to the Local Area Negotiation Process (LANP); it recommended the revised objective should be to enhance net income of the mill and its cane growers, whilst taking full account of local circumstances and conditions. It also recommended the crushing of cane by mills on a "fee for service" basis for cane growers should be an option under a cane supply and processing agreement.

On 18 November the *Sugar Industry Act 1999* received Assent. The Act delivered an improved framework by providing for increased responsibility of industry to manage its affairs at a local level, for example, in framing a supply contract:

- The negotiating team's objective is to enhance the profit of the mill owner and the growers;[41]
- The negotiating team must consider ways in which growers and the mill owner may jointly improve profitability;[42]
- the negotiating team can agree on the dispute resolution process to be applied[43] but if there is no agreement on the process then the process provided under a regulation must be followed;[44]
- a collective agreement must include payment arrangements linking the price of cane to the selling price of sugar, unless the negotiating team decides otherwise.[45]

On 1 March 2004 a Heads of Agreement between CANEGROWERS, ASMC and the Queensland Government on comprehensive reform of the Sugar Industry Act was signed, providing a pathway to securing Federal and Queensland Government commitment to progressing real regulatory reform to ensure the long-term future of the industry.

On 6 May 2004 the Sugar Industry Reform Act received Assent. The Amending Act provided a transitional arrangement for negotiating cane supply agreements:

- From 1 July 2004 to 31 December 2004 – compulsory arbitration to continue in forming collective supply agreements;
- From 1 January 2005 to 31 December 2005 – compulsory arbitration could not be used to resolve disputes about 'the cane price formula', to distribute between a mill owner and growers the payments for sugar vested in QSL[46] but if the Sugar Industry Commissioner was satisfied that a dispute about other terms of the supply contract could not be resolved by mediation, then the matter could be referred to arbitration with the exception that it could not be used to resolve disputes about the cane price formula;[47]
- From 1 January 2006 – if the Sugar Industry Commissioner was satisfied that a dispute about other terms of the supply contract could not be resolved by mediation, then the matter could be referred to arbitration only if the parties agree.

The *Sugar Industry Reform Act 2004* also removed references to cane payment arrangements, as these were now to be negotiated at a local level on a commercial basis.

[41] Section 55(1), *Sugar Industry Act 1999*.
[42] Section 55(3), *Sugar Industry Act 1999*.
[43] Section 218(3), *Sugar Industry Act 1999*.
[44] Section 219(6), *Sugar Industry Act 1999*.
[45] Section 50(2), *Sugar Industry Act 1999*.
[46] Section 15(a), *Sugar Industry Reform Act 2004.*
[47] Section 16, *Sugar Industry Reform Act 2004.*

# Negotiation of Cane Supply Agreements

*Summary: There is no longer any specific sugar legislation that seeks to impose a compulsory process for the negotiation of cane supply contracts between growers and millers. Negotiations are now undertaken by commercial agreement between the parties at a local or regional level, taking into account local circumstances.*

*To counteract a perceived imbalance in market power between millers and growers, specific authorisations for competition legislation exist under the Sugar Industry Act 1999[48] for grower collective bargaining in the following regions – Northern, Herbert River and Burdekin, Central and Southern.[49] It is noted that CANEGROWERS would like to secure a single authorisation to collectively bargain across the state.[50]*

## 1 The early years post-regulation

Under the *Regulation of Sugar Cane Prices Act 1915*, the function of Local Boards was to make awards between growers and the miller. Membership of Local Boards comprised two representatives of mill supplier committees, two representatives of millers and an independent Chairman; typically a Stipendiary Magistrate or court official. The Central Board comprised five members – a person experienced in cane growing; a person experienced in sugar milling; a person experienced in sugar chemistry; a person experienced in accountancy; and a Chairman who was typically a judge of the Supreme Court.

If the grower and miller representatives on a Local Board could not agree on a term to be included in an award, then the Chairman would decide. A right of appeal existed for the Central Board to then review the matter. From establishment, Local Boards progressed towards uniformity in terms and conditions set out in awards, aided by the Central Board. It was not uncommon that where the Central Board amended an award clause for one award in a year, there was a push in the subsequent year for all other Local Boards to adopt that Central Board clause. Local Boards were loath to depart from Central Board decisions.

The rigidity of this process amounted, in a de facto sense, to quasi-legislated determinations. There was little scope or incentive under uniform state-wide clause conditions for growers and millers at a local level to investigate ways of improving local area efficiencies. The system encouraged co-ordinated action from a state organisational level. Standardised clauses formulated in Counsels' Chambers in Brisbane were sent out to mill areas with directives to seek their insertion into awards as part of “annual logs of claims” for improved conditions. This type of action was particularly strong during the sixties and seventies with lasting legacies flowing through into future awards. Unfortunately, the process enabled growers and millers at the local mill area level to abdicate responsibility for making decisions in the best interest of their local mill areas or regions.

At that time the industry was more stable and perhaps more prosperous as its exposure to world market prices was underpinned to varying degrees by the administered domestic market. "Equity" had paramount force over "efficiency". The industry developed a sectorial attitude to an extent that inhibited local negotiations. Participants could not be seen to "break ranks" and formulate innovative awards suited to local needs for fear of crossing over drawn "battle lines of defence". To overstep the mark might bring about the demise of existing uniform clauses or result in a new state-wide push for uniformity.

[48] Section 237, *Sugar Industry Act 1999*.
[49] Sugar Industry Regulation 2010.
[50] CANEGROWERS, Review of National Competition Policy, 20 June 2014

## 2 A Transition

In the eighties the level of standardisation of clauses across the industry was all but complete as was the thousands of pages of transcripts and judgments by the Central Board. Consideration of local circumstances in framing awards had all but disappeared. Even the Chairman of the Central Board, Mr. Justice R.H. Matthews, in an address to the 1980 Conference of the Australian Society of Sugar Cane Technologists entitled "An attempt to understand why the price of sugar cane has all but ceased to be regulated by The Regulation of Sugar Cane Prices Acts 1915-1966 noted *a necessary corollary to uniform prices throughout the state is that the Board gives no consideration to "the estimated quantity of sugar cane to be treated at the mill concerned" (section 57(a) of the Acts); or to "the crushing capacity of the mill" (section 57(d);*

A severe downturn caused by a collapse in world sugar prices in 1982 put the industry and its regulatory structures under the spotlight by the Commonwealth Government. The IAC Inquiry into the Sugar Industry in 1983, recommended significant changes in the regulatory structure of the industry. In response, the industry organisations set up an internal review to investigate the industry's regulatory structure. One issue raised in the review was whether the industry needed to retain a statutory body to arbitrate between growers and millers. Arguments in favour included easy access to a body to enable disputes to be dealt with quickly. However, this advantage was also seen as a disadvantage. Easy access tended to make for much quicker decisions to litigate rather than negotiate and was the cause of more formal disputation than might otherwise have been the case.

The subsequent establishment of SIWP in 1990 by the Commonwealth Government, the Queensland Government and the sugar industry overtook the work of the review program. This Working Party recommended the repeal of *The Regulation of Sugar Cane Prices Act* and did not propose the establishment of a body to replace the quasi-judicial functions of the Central Board. The Report recommended the establishment of Local Boards with jurisdiction to prepare a draft award including all basic conditions associated with the delivery of cane to mills, for referral to growers and millers. Where growers and millers could not reach agreement, the Working Party recommended that outstanding disputes be referred for resolution under provisions of the *Arbitration Act 1973*.[51] These recommendations were never adopted.

The termination of the *Sugar Agreement* in 1989 brought to an end the setting of an administrative domestic price for sugar and the removal of the embargo on imports. This led to the establishment in 1990 of SIWP by the Queensland Government to recommend changes necessary to restructure Queensland's raw sugar industry to make it more responsive to the world sugar market.

In 1991 the *Sugar Industry Act* repealed the *Regulation of Sugar Cane Prices Act* and the *Sugar Acquisition Act.* The new Act consolidated much of the legislation relating to the sugar industry. A major aim of the new legislation was to facilitate industry control over its own affairs:

- Local Boards continued to make awards but with an objective to enhance the benefits flowing from the production and milling of sugarcane to the assignment holders and millers within its jurisdiction and to the Queensland economy generally; and
- The Central Board was replaced with a Sugar Industry Tribunal.

There were only three members on the Tribunal. One person drawn from the legal profession to be appointed as Chairman; one well versed in matters relating to the sugar industry but had no pecuniary interest in production, manufacturing or marketing; and one with special qualifications considered relevant and appropriate for the Tribunal's functions. The Chairman was given power to convene preliminary hearings with powers including the ability to strike out applications. The Tribunal was required to act independently, impartially and fairly. The whole thrust of these changes were towards local responsibility and away from centralised decision-making. The thousands of pages of transcripts and decisions by the Central Board were now less useful in seeking to maintain the status quo.

[51] The Proprietary Sugar Millers' Association Pty Ltd, 1985 Annual Report , at p.7.

In 1992 the Commonwealth sent terms of reference to the IC to review, inter alia, the production, institutional, regulatory or other arrangements that would raise overall economic efficiency. The IC could see no special features in the sugar industry that would justify continuation of restrictions on competition and considered a voluntary collective bargaining system would be sufficient. The recommendations were never accepted.

## 3 Final Offer Arbitration

In July 1996 the *Sugar Industry Amendment Act* was amended to facilitate the implementation of recommendations of the Local Area Negotiation and Dispute Resolution Report and the 1994 Productivity/Cane Payment Package:

- Local Boards were replaced with Negotiation Teams (two grower and two miller representatives and no chairman)
- negotiating teams were required to use a three stage process involving negotiation, mediation and arbitration in determining provisions to be included in an award.
- If the Negotiating Team could not agree on a mediator or arbitrator then QSC was to appoint the person.

The arbitration process was Final Offer Arbitration. Under Final Offer, each party must submit a final offer to resolve the dispute to the arbitrator and then the arbitrator is bound to accept one of the two final offers. The intention of the process was to make it so unattractive that the parties would either avoid it by resolving the issues or submit reasonable offers to the arbitrator.

These changes represented a further significant progression away from arbitration and centralised determinations. There was neither a central appeal body to review determinations made at a local level nor was there a third party at a local level to break possible deadlocks between growers and millers. Past centralised precedents and determinations were no longer applicable. The process was designed to promote solutions negotiated by grower and miller representatives. If agreement could not be reached then the matter in dispute could not proceed to arbitration without firstly going to mediation and they had to select and pay for the mediator and arbitrator themselves.

In May 1997 the *Primary Industries Legislation Amendment Act 1997* amended the *Sugar Industry Act 1991* to clarify the review process for arbitrated decisions in awards could be subject to judicial review.

## 4 Replacement of Awards with Cane Supply and Processing Agreements

In November 1999 the *Sugar Industry Act 1999* replaced the Sugar *Industry Act 1991* and the *Sugar Milling Rationalisation Act 1991.* The new legislation incorporated the recommendations of the SIRWP. It included an improved framework for increased responsibility of industry to manage its affairs at a local level:

- The concept of an “award” was replaced with a “cane supply and processing agreement”.
- A Negotiation Team was given flexibility to develop its own dispute resolution process in forming agreements or dealing with disputes arising under the agreement. If there is no agreement then the process set out in a regulation must be followed. *The Sugar Industry Regulation 1999* provided for a default dispute resolution process of moving to mediation and then to arbitration using Final Offer Arbitration.
- In negotiating a collective agreement, the Negotiating Team’s objective was to enhance the profit of the miller and the growers supplying cane to the mill.
- There was greater freedom for millers to enter into individual agreements with growers provided it did not have significant adverse effects on collective agreements. Having a different pricing arrangement in an individual agreement was specifically mentioned as not having a significant enough adverse effect to prevent the agreement being blocked.

## 5 Sugar Industry Reform and the Abolition of Compulsory Arbitration

During the period from 1999 to 2001, industry returns steadily declined as a result of low world sugar prices and reduced crops in Queensland caused by bad weather, diseases and pests. For example, total returns to the industry in 2000 were about half the returns realised in 1997. The industry was once again placed under the microscope by Governments to identify causes and remedies for the industry's decline. In February 2002 Hon. Warren Truss MP, announced an Independent Assessment of the Sugar Industry.

The Independent Report of the Sugar Industry released in June 2002 summarised the problem facing the industry:

> *It is a matter of where first loyalties lie. Cooperation and trust cannot flourish without acceptance of a shared goal. A key is the commitment and unambiguous first loyalty to the mill area of each of the farmer negotiating group and the mill representatives.*[52]

The Report noted:

> *that the freedom offered in the Act for individual MSC's to be creative by negotiating terms different from other MSC's terms has to date been dampened by a lifetime habit of seeking collective CANEGROWERS approval. The Assessment sees nothing in the CANEGROWERS constitution to this effect, with the possible exception of Clause 2.8 above. The Assessment did however receive submissions from many parties that a "default to CANEGROWERS-collective" situation applied.*
>
> *It would be concerning if there were timidity in MSC's in considering or adopting new ways for mill area improvement in such difficult times. If timidity were result of peer pressure through wider-than-mill-area first loyalties, or moral suasion of other mill areas, the concern would be even greater, and either of these might well be the fact of the matter. Old habits sometimes die hard. The Assessment was pleased with CANEGROWERS assurance that MSC's have freedo*m to operate *independently.* [53]

In September 2002 Hon. Warren Truss MP, announced a Sugar Industry Reform Program to provide up to $150 million ($120 million Federal and $30 million Queensland) in assistance over the next four years. The Program was subject to a Memorandum of Understanding (MoU) with the State Government. Both governments shared a common interest in ensuring the industry's regulatory framework did not impede competitiveness, efficiency and cultural change. To that end they committed to a Memorandum of Understanding acknowledging changes in the industry were fundamentally a responsibility of industry itself and Governments' role was to facilitate change in the industry. Extensive government intervention was seen as undesirable.

Under the MoU, the governments agreed the industry needed to change both its culture and practices. The three areas of the *Sugar Industry Act* which seemed to impede change included the compulsory bargaining system. In its report, *Cleaning up the Act: The Impacts of Changes to the Sugar Industry Act 1999,* CIE concluded that regulation was impeding industry progress and profitability as it created a system that discouraged individuals and progressive groups from implementing change, by preventing "adverse effects". Nothing changes because each change may potentially have adverse effects on some. Those adversely affected were able to block the change under the legislation. The report concluded:

- Given the price outlook for the industry, it is hard to see it surviving if it continues to block productivity gains by its reliance on the adverse effect test within the statutory bargaining system.
- Removal of statutory bargaining is a low risk economic option that may hold the only promise of the industry's survival, but it is a high-risk political option that will attract opposition from less efficient growers.
- Unless the statutory bargaining and adverse effects test are removed, the leadership and management required to implement change and achieve the high rate of productivity growth required, is almost certain to fail.

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[52] Sugar Industry Working Party, Report of the Independent Assessment of the Sugar Industry, 2002, at p.19.
[53] Ibid, at p.24.

CANEGROWERS commissioned The Boston Consulting Group (BCG) to review industry performance. In its January 2003 report, *Review of constraints on industry competitiveness and innovation,* BCG considered that it was not clear that simple deregulation would be sufficient to drive the industry to higher level of performance, as opportunities for enhancement are more affected by three characteristics:

- A misaligned risk/reward position for growers in their relationships with millers makes growers highly resistant to change and encourages them to act collectively;
- Lack of competition within layers of the raw sugar value chain, due to geographic and legislative factors, has constrained innovation and the adoption of better practices;
- Legislation and industry history have both reduced pressure for change and created barriers to change, as well as constraining innovation and the adoption of improved practices.

Despite these verdicts, the industry was deadlocked over whether or not the regulations and in particular, compulsory collective bargaining was an impediment to industry competitiveness.

In January 2004, the Queensland Government released a further report by CIE, *Cleaning up the Act, more important than ever*. The Report found that if $A200/tonne prices persist to 2006/07 and there was no reform, then the industry would cease to exist in all regions and there would be strong regional multiplier effects. This highlighted the urgency of reform. CIE noted that the reforms proposed were hardly radical and would have brought the sugar industry into line with other industries.

In February 2004, CANEGROWERS and ASMC made a joint submission to The Hon. John Howard, MP, on a proposal for a sugar industry rationalisation and restructure adjustment program. The industry leadership bodies advised the Prime Minister the industry was committed to supporting and promoting comprehensive reform and restructure. Within that, was acknowledged the legislative impediments to reform must be removed and the current legislative issue must be resolved.

This led to a Heads of Agreement (HoA) between CANEGROWERS, ASMC and the Queensland Government on comprehensive reform of the *Sugar Industry Act* on 1 March 2004. It provided a pathway to securing Federal and Queensland Government commitment to progressing real regulatory reform and a restructure package of $444.4 million to assist industry stabilisation and restructure. Under the HoA all parties agreed to remove legislative impediments including a transitional approach to the phasing out of sugar industry specific compulsory dispute resolution processes and moving to a commercial basis.

The Explanatory Memorandum to the *Sugar Industry Reform Bill* of 2004 stated that *the main explanation for the industry's failure to take up productivity gains is the 'adverse effects' principle. This principle is embodied in both legislation and culture, but it is perpetuated by the legislative structure. The CIE has identified a risk in that if Government allows this system to continue, this lack of action may contribute to the industry's inability to make essential productivity gains.* [54]

In May 2004, the *Sugar Industry Reform Act 2004* amended the *Sugar Industry Act of 1999* to implement the commitment by the Sugar Industry and government to comprehensive reform. The amendments removed the statutory bargaining system in forming collective supply contracts (previously known as cane supply and processing agreements) through a phased change:

- From 1 July to 31 December 2004 the current system of mediation and arbitration will apply via Regulation. However, unless agreed by the parties, final offer arbitration was replaced by a normal commercial system where the arbiter has the ability to broker an outcome;
- From 1 January to 31 December 2005 a limited form of compulsory arbitration will be available, where the arbiter is able to determine a compromise position. The system will involve initial mediation and will be limited to major issues affecting the growers representing at least 75% of the 2004 cane supply in a mill area. Arbitration was not extended to the division of proceeds between growers and millers. Further, any contract that is arbitrated upon will exist for only one year;
- Parties have access to arbitration by agreement from 1 January 2006.

[54] Sugar industry Reform Bill 2004, at p.3.

A new section authorised the making of collective cane supply contracts under the Act for the purposes of the *Trade Practices Act 1974 (Cth)* where they are made between a group of growers and a mill owner who are within the same region.

From 1 January 2006 growers collectively bargained with millers on supply contracts without recourse to a legislated fall back to compulsory arbitration.

In November 2008, the then Minister for Agriculture, Fisheries and Forestry, The Hon. Tony Burke, MP advised that whilst it was not to be taken that the government would implement any changes, one issue keeps coming up as an impediment to policy development options – how to ensure that growers receive a fair share of any new revenue streams, after giving adequate recognition to investment return and risk. The Australian Sugar Industry Alliance Secretariat advised the Minister that the matter had been given considerable attention by the Board. The Board did not see that there would be any impediments under current arrangements for negotiating modifications to cane payment arrangements, to ensure growers received a fair share of any new revenue streams created through substantial policy changes by government. It was advised that the vast majority of sugar industry participants support the approach that is now in place to negotiate supply contracts, including collective negotiation:

> *This approach has lead to increased flexibility and commercial opportunities that may not have been possible under a regulated dispute resolution process. If there are any failures or concerns with negotiated commercial outcomes, then the concerned party has the option of replacing their negotiating representative.*[55]

[55] ASIA, Letter to The Hon. Tony Burke, MP, dated 13 November 2008.

## Economic Power

*Summary: Mill owners carry significant financial and operational risks, being exposed to grower decisions, not able to transfer plant to other uses and significant risk of capital loss in the event of business failure. Millers are required to pay growers for their cane, and the miller is paid for raw sugar produced. Growers have never had co-ownership of sugar, but rather have exposure to raw sugar prices because the price of cane is linked to the price of sugar.*

The economic power of mills has long been used to justify retention of regulation in the Queensland sugar industry. The IC extensively assessed this issue in 1992:

> *"… 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*[56]*.*

There is no identifiable imbalance of power between growers and millers at the local level that warrants government intervention. Sugar milling is more risky than cane growing. Without a cane supply a sugar mill has little value whereas the capital value of a cane farm would be substantially retained. Since 1985 there have been ten mill closures and only in one mill closure were some of the growers were denied access to another mill. In isolated areas where cane growers could lose access to a mill, the value of those farms is more a function of its future potential for subdivision or other uses rather than for cane growing. The capital losses associated with the closure of a mill are such as to encourage mill owners to ensure that growers continue to want to grow cane and supply a mill. Mill owners need cane growers as much, if not more than cane growers need sugar mills .

Millers face higher risks than growers in all areas:

(a) Millers are at the mercy of growers' production decisions with no offsetting obligation on growers to grow or supply a defined quantity of cane each year;
(b) Millers are "downstream" from growers and face risks related to quality of incoming product, eg, dirt, extraneous matter, foreign objects, disease, milling impediments like ash, etc. and risks by growers electing to stand over cane;
(c) Millers face greater risks of plant obsolescence than growers.
(d) The risk of capital loss in the event of business failure is much higher for millers than for growers. Growers' assets are fully negotiable and have a substantial value in alternative farming use. Millers' assets are specialised and located for alternative business use. Salvage value is low.

Cane growing is less risky than many other agricultural crops:

- Production risks for cane growing are generally less as cane is less vulnerable to pest and diseases and weather conditions than other agricultural crops. Although there is only one cane crop per year, the costs of planting are recovered over four or more years.
- Marketing risks are less for cane growers than many other crops as they have a guaranteed market for their product.
- Financial risks are generally less for cane growing

[56] IC, The Australian Sugar Industry, 6 March1992 Report No.19, p.42

Today, growers can form themselves into strong collective bargaining groups. CANEGROWERS, the peak industry body for Australian growers, provides collective bargaining services with millers on cane supply, processing, payment issues, allowances and bonuses.[57]

Growers now have the ability to enter into collective agreements with durations of more than one year and can better plan their future production tonnages.

Growers have greater alternate choice in farming operations than other growers who may have high exit costs, for example, chicken meat growers whose sheds are capital intensive and have no alternative use. The chicken meat industries in many states have now been deregulated on the basis that collective bargaining authorisations provide a sufficient counter measure to any concerns about regional monopolistic dominance of processors.

## 1 Disputes are resolved locally

The interdependent relationship between growers and millers means that there is a high degree of mutual interest in ensuring any disputes are resolved at a local level. Growers and millers have in recent years faced many challenges to their viability together. Not only has this come from the cyclical nature of world sugar prices but also from MIS schemes where strategic areas of cane lands in coastal areas from Plane Creek to Innisfail were acquired for tree plantations.

Since 1996 we are aware that only one matter went to arbitration in 1997 despite there being many hundreds of negotiations on new supply contracts.

## 2 Ownership and Title

Prior to the introduction of Queensland specific legislation in 1915, Queensland growers sold cane to mill owners under a variety of different terms. Mill owners in turn manufactured raw sugar that was 100% owned by them. Mill owners then sold that raw sugar to refiners for refining. There was a clear transfer of ownership along the value chain. The same situation applied to growers and mill owners in northern NSW.

Some mill owners paid growers a flat rate per ton for their cane whilst others paid different prices depending on the variety of cane supplied, and others paid according to POCS on a sliding scale. One mill Kalamia, even paid 1 shilling more per ton per unit for cane below 12 POCS.

Throughout the history of regulation of the Queensland sugar industry growers have sold sugar cane to millers. Millers have produced sugar from cane. Growers have never had ownership or co-ownership of raw sugar manufactured by millers.

## 3 The Sale of Cane from Growers to Millers

### 3.1 Regulation of Sugar Cane Prices Act 1915

In the early years of regulation in Queensland the Act made it quite clear that growers sold cane to mill owners.

Under section 6 of the *Regulation of Sugar Cane Prices Act of 1915*, a local board's function was:

[57] CANEGROWERS, see http://www.canegrowers.com.au/page/Industry_Centre/About_Us/About_CANEGROWERS/

> *to make an award determining the price or prices to be paid and accepted by the owner or owners of the mill and cane growers, respectively**, for sugar cane sold** and taken delivery of at the mill concerned*.

The use of the word **"sold"** reflects an intention by Parliament that the relationship between growers and millers, albeit now regulated, still reflected normal commercial principles – there is a transfer of ownership in the cane when a miller has taken delivery of and accepted the cane for crushing. At that point the obligation to pay for the cane arises.

Section 6 remained in the Act until the Act was rewritten in 1962.

### 3.2 Regulation of Sugar Cane Prices Act 1962

Whilst subsequent revisions of the *Regulation of Sugar Cane Prices Act 1962* made no reference to cane being sold, it more clearly defined the relationship between growers and millers through matters to be taken into account in making an award and defining the concepts of "delivery" and "acceptance":

- an award shall determine all matters relating to the harvesting and delivery of sugar cane by the grower and the transport, crushing and payment thereof by the miller;
- delivery of sugar cane shall be deemed to have occurred when it is delivered or tendered for delivery, in accordance with an award, to the delivery point specified in an award;
- acceptance shall comprise the handling of the cane from the point of delivery to the mill and its crushing and payment in accordance with the award; but no action is to be taken about the cane until the miller decides it is or is not acceptable in accordance with the provisions contained in an award.

Over the years a considerable amount of Central Board decisions were handed down dealing with the respective responsibilities of the parties. It was at the delivery point where the transfer of responsibility and risk occurred:

- prior to the point of delivery the cane is under the control and risk of the grower and clauses could not be inserted into awards seeking miller control or involvement in the harvesting or delivery of the cane by growers;
- after the cane is delivered in accordance with the award then the cane is under the control and risk of the miller and clauses could not be inserted into awards seeking grower control or involvement in the transporting or crushing operations of the mill.

The Central Board judgments made it very clear that misfortunes lie where they fall. Whilst the cane is under the control of the grower he bears the risks that the cane may not be accepted, but once under the control of the miller then the miller bears the risk for that cane. For example, a contractor fails to transport cane in wagons back to the mill because his truck broke down. If the cane is lost during transportation to the mill then the miller would still have to pay for the cane.

### 3.3 Sale of Goods Act 1896

The terms used in the *Regulation of Sugar Cane Prices Act* were aligned with and in accordance with terms used in the *Sale of Goods Act of 1896*. There was no inconsistency or contradiction between them in both pieces of legislation.

Under the *Sale of Goods Act 1896*:

- Section 20 (1) provides that *when there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intended it to be transferred*. Subsection (2) provides that *for the purpose of ascertaining the intention of the parties regard is to be had to the terms of the contract, the conduct of the parties, and the circumstances of the case;*
- Section 29 provides that *it is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale;*

- Section 30 provides that *unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods;*
- Section 36(1) provides that *when goods are delivered to the buyer, which the buyer has not previously examined, the buyer is not deemed to have accepted them unless and until the buyer has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract;*
- Section 37 provides that *the buyer is deemed to have accepted the goods when the buyer intimates to the seller that the buyer has accepted them, or when the goods have been delivered to the buyer, and the buyer does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, the buyer retains the goods without intimating to the seller that the buyer has rejected them;*
- Section 38 provides that *unless otherwise agreed, when goods are delivered to the buyer and the buyer refuses to accept them, having the right so to do, the buyer is not bound to return them to the seller, but it is sufficient if the buyer intimates to the seller that the buyer refuses to accept them;*
- Section 23 (1) which provides that *unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not;*
- Section 23(2) provides that *when delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.*

### 3.4 The Sugar Industry Act 1999

The *Sugar Industry Act 1999* retained the notion of a transfer of ownership under a supply agreement from growers to mill owners. The purpose of this part covering cane supply and processing agreements was detailed in section 39(1):

> *The objective of this part is to ensure that the supply of cane by growers of the cane to a mill, the cane's crushing and the payment to the growers in return are governed by agreements (each a "cane supply and processing agreement" or "supply agreement") between growers and mill owners.*

The Act continued to provide considerable detail about the relationship and the content of these agreements.

Section 50 provided:

> *(1) A supply agreement must provide for the rights and obligations of any grower and mill owner, in relation to the following, about cane to be supplied to the mill by the grower under the agreement—*
> *(a) harvesting;*
> *(b) delivery to the mill;*
> *(c) transport and handling;*
> *(d) acceptance and crushing by the mill;*
> *(e) payment by the mill owner.*
>
> *(2) A collective agreement must include payment arrangements linking the price of cane to the selling price of sugar, unless the negotiating team decides otherwise.*
>
> *(3) For subsection (2), the selling price of sugar is the selling price declared by the corporation.*

Section 51(1) provided:

> *If a grower delivers cane grown by the grower to a mill in accordance with the relevant supply agreement, the mill owner is contractually obliged to accept the cane for crushing.*

Section 52 provided:

> *(1) Cane is delivered to a mill if it is delivered or tendered for delivery in accordance with the agreement.*

*(2) Acceptance of cane by the mill owner comprises –*
*(i) The handling of the cane from the point of delivery to the mill; and*
*(ii) Its crushing; and*
*(iii) The acceptance of liability for its payment in accordance with the agreement*

It is clear from the structure of the *Sugar Industry Act 1999* that mill owners purchase the cane from growers.

## 4 The Sale of Sugar by Mills

### 4.1 Sugar Industry Act 1999

The *Sugar Industry Act 1999* also recognised that mill owners owned the raw sugar upon manufacture but upon manufacture it becomes the absolute property of QSL[58] and the **mill owner's rights to that sugar** were divested in return for a right to receive payment for that sugar.[59] When sufficient information is available, QSL must calculate the net value of each tonne of sugar and **make payments due to each mill owner.**[60] The **mill owner is to receive payments** under payment schemes by reference to the raw sugar equivalent that each mill owner delivers to QSL.[61]

For marketing purposes, QSL may make arrangements with a **mill owner to produce a particular brand of raw sugar**.[62] QSL also could **specify directions to the mill owner** it considers appropriate about delivery of vested sugar.[63] QSL may also make a standard about how sugar quality is decided and affects amounts payable to a **mill owner**.[64] The Act also provided that a **mill owner** need not deliver to QSL a quantity of sugar manufactured but instead retains it for local consumption or sell to another mill owner to be retained for local consumption.[65]

It is clear from the above that the regulatory framework imposed on mill owners, prior to the *Sugar Industry Reform Act 2004,* did not give growers any ownership rights in raw sugar manufactured by mill owners. There were no provisions in collective agreements that enabled growers to retain some control over the cane once it was delivered to the mill, for example, to reclaim immediate possession, or exercise any control over the raw sugar upon its manufacture. Indeed once the physical property in the cane was destroyed in the manufacturing process it was impossible to return the cane or even refuse to pay for it. As will be shown shortly, the *Sugar Industry Reform Act* did not change that relationship between mill owners and QSL. Mill owners continued to own the bulk raw sugar prior to vesting.

Rather growers sold the cane to a miller and received payment as specified in the collective agreement with the price of that cane linked to the selling price of sugar, unless the negotiating team for the mill had agreed to some other basis. Under collective agreements, growers have no ownership rights over raw sugar that enable them to direct a miller how much raw sugar to produce or how the raw sugar is manufactured, etc. If a miller did not manufacture any sugar from cane delivered, he was still obligated to pay for the cane in accordance with the cane payment formula. This would even be the case if no regulation existed because the contractual arrangements would be governed by the *Sale of Goods Act 1896.* Raw sugar only exists because a mill owner manufactures it from cane purchased from growers.

[58] Section 100(1), *Sugar Industry Act 1999*.
[59] Section 100(2), *Sugar Industry Act 1999*.
[60] Section 101(2), *Sugar Industry Act 1999*.
[61] Section 102(1), *Sugar Industry Act 1999*.
[62] Section 103(1), *Sugar Industry Act 1999*.
[63] Section 104(1), *Sugar Industry Act 1999*.
[64] Section 105(1), *Sugar Industry Act 1999*.
[65] Section 107(1), *Sugar Industry Act 1999*.

### 4.2 The Sale of Goods Act 1896

The *Sale of Goods Act 1896* codifies the old case law on the sale of goods. In addition, there is now a body of case law on the interpretation of this Act and also the general law of contract continues to apply.

For there to be co-ownership of the sugar there must be co-ownership of the cane. Co-ownership of the cane is inconsistent with the *Sale of Goods Act 1896* because the grower cannot retain part ownership of the cane when it is sold to a miller. The concepts in the *Sale of Goods Act 1896* are consistent with the concepts of delivery and acceptance and payment that existed in the *Regulations of Sugar Cane Prices Act* and the *Sugar Industry Act 1991* and *Sugar Industry Act 1999.*

Section 37 of the *Sale of Goods Act 1896* provides that *the buyer is deemed to have accepted the goods when the buyer intimates to the seller that the buyer has accepted them, or when the goods have been delivered to the buyer, and the buyer does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, the buyer retains the goods without intimating to the seller that the buyer has rejected them.*

Importantly, in the context of the *Sale of Goods Act 1896*, if the miller acts inconsistently with any ownership rights by the grower by destroying the physical property of the cane in the manufacturing process, so the grower cannot immediately resume possession of the cane, then no ownership can be retained by the grower as the miller has accepted the cane. There is no requirement upon a mill to actually produce raw sugar out of any cane processed. However, there is a financial disincentive in that the miller must pay for the cane according to missed sample provisions in the supply contract if the cane is not analysed after acceptance.

For a miller, once raw sugar has been produced from the cane, the raw sugar does not constitute "primary produce" but is an "asset" being the trading stock of a miller.

### 4.3 Security over cane payments

On 18 January 2001 South Johnstone Mill Limited went into receivership. On 21 October 2002 CANEGROWERS requested the State Government enact measures to provide security over cane payments in the light of problems experienced at South Johnstone mill. CANEGROWERS sought an amendment to the *Sugar Industry Act* to permit a charge being placed on the proceeds held by QSL and payable to mills in favour of growers, individually, to secure payment to each of them for all monies that are payable or become payable to each grower for cane supplied under a Cane Supply and Processing Agreement.

CANEGROWERS legal counsel advised:

- Growers do not, either individually or collectively, have a right or interest over or in respect of sugar payments which entitle them to payment ahead of secured or unsecured creditors;
- Neither the terms of a Cane Supply Agreement nor the course of dealings between growers and the miller give rise to an equitable charge;
- The circumstances of the relationship is not one in which the law would recognise or imply a trust or hold a resulting trust or constructive trust to have arisen;
- None of the options Counsel considered created an interest that is safely immune from challenge by other creditors.

On 31 October 2002, ASMC advised Government of the strong view of member companies:

- There is no co-ownership of sugar;
- Specific legislation is not warranted to provide security over cane payments in the event of a miller's business failure;
- Whether or not there is justification for legislative intervention across all primary industries to provide security of payments to producers in the event of a processor business failure is a matter for Government.

The Premier responded by advising that it would be ineffective to enact special legislation altering creditor status for growers given that creditor status is already governed by Federal Legislation.

### 4.4 Sugar Industry Reform Act 2004

The *Sugar Industry Reform Act 2004* amended the *Sugar Industry Act 1999* to implement the commitment by the Sugar Industry and government to comprehensive reform for the long term future of the sugar industry. The *Sugar Industry Reform Act 2004* did not confer any co-ownership rights on growers.

The amendments removed much of the detail about Cane Supply and Processing Agreements and in particular the content of those Agreements. Under the amending Act the purpose of supply contracts remains similar to the situation that previously existed. Section 29 provides:

> *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 (each a supply contract) between growers and mill owners.*

Whilst the content of these supply contracts is no longer regulated under the legislation and it is up to the parties to agree on the terms of their contract, the provisions of the *Sale of Goods Act 1896* would continue to apply. Under the current Supply Agreements between growers and millers, growers sell the cane to millers and therefore millers have title to and own the raw sugar so manufactured.

For marketing purposes, the *Sugar Industry Reform Act 2004* did not alter the relationship between millers and QSL with respect to vesting of bulk raw sugar for export:

> Upon manufacture raw sugar becomes the absolute property of QSL[66] and the ***mill owner's rights to that sugar*** were divested in return for a right to receive payment for that sugar.[67] However, the sugar does not become the property of QSL if the authority grants an exemption for the sugar.[68] When sufficient information is available, QSL must calculate the net value of each tonne of sugar and ***make payments due to each mill owner***.[69] The ***mill owner is to receive payments*** under payment schemes by ***reference to the raw sugar equivalent that each mill owner delivers to QSL***.[70]
>
> QSL may make arrangements with ***a mill owner to produce a particular brand*** of raw sugar.[71] QSL may specify directions it considers appropriate about delivery of vested sugar.[72] QSL may also make a standard about how sugar quality is decided and affects ***amounts payable to a mill owner***.[73]

The Act continued to provide that ***a mill owner*** need not deliver to QSL a quantity of sugar manufactured but instead ***retain it for local consumption or sell to another mill owner*** to be retained for local consumption.[74]

Under the *Sugar Industry Reform Act 2004*, a new Part 2 – Exemptions from Vesting in QSL was inserted into the Act. A supplier may make and exemption application to the authority.[75] The application must be accompanied by evidence that the applicant is the supplier of the sugar to be exempted.[76] The Authority must grant an exemption application if satisfied -

*(a) the applicant is the supplier of the sugar to be exempted; and*
*(b) the proposed use of the sugar to be exempted under the application is an exempt use.*[77]

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[66] Section 100(1) *Sugar Industry Act 1999*.
[67] Section 100(2) *Sugar Industry Act 1999*.
[68] Section 10, *Sugar Industry Reform Act 2004.*
[69] Section 101(2) *Sugar Industry Act 1999*.
[70] Section 102(1), *Sugar Industry Act 1999*.
[71] Section 103(1), *Sugar Industry Act 1999*.
[72] Section 104(1) *Sugar Industry Act 1999*.
[73] Section 105(1) *Sugar Industry Act 1999*.
[74] Section 107(1), *Sugar Industry Act 1999*.
[75] Section 107E, *Sugar Industry Reform Act 2004*.
[76] Section 107F(b)(i), *Sugar Industry Reform Act 2004*.
[77] Section 107I(1), *Sugar Industry Reform Act 2004*.

If the authority is not satisfied that the applicant is the supplier of the sugar it must refuse the application.[78] A "supplier", for sugar, means a person who, immediately before the sugar is manufactured, owns the sugar cane from which the sugar is manufactured.[79]

An "exempt use", for sugar, means sugar that is intended to have any of the following uses—

*(a) to be used for the manufacture of an alternative product;*
*Example of an alternative product— ethanol*
*(b) to be exported in bags (but not bulk);*
*(c) a use similar to a use mentioned in paragraphs (a) and (b).*[80]

The exemption process was inserted into the Act to allow suppliers to participate in alternative products (eg ethanol, bio-plastics) and bagged sugar for export, but not for bulk raw sugar for export. It was part of a compromise brokered by the then Prime Minister, The Hon. John Howard, MP and the then Premier of Queensland, The Hon. Peter Beattie, MLA. These amendments were in accordance with a counter offer submitted by CANEGROWERS to allow exemptions for alternate products and in bags for human consumption. It was also in accordance with a subsequent joint submission by CANEGROWERS and ASMC to The Hon. John Howard, MP entitled "Proposal for a Sugar Industry Rationalisation and Structural Adjustment Program" dated 17 February 2004:

> *The long term survival of the sugarcane and raw sugar industries can no longer rely solely on a corrupted, residual international sugar market. Diversification of risk of product and income stream will be critical to producers and communities alike….*
>
> *This program requires cash support programs for the development of new products, systems and structures at both regional and industry levels, along with the commercialisation potential of these options….*
>
> *It is likely that raw sugar will continue to be the industry's core business, but also likely that other products of sugarcane will become increasingly important in the medium term. Options are likely to include ethanol, bio-plastics, fodder and paper pulp. Funding should be made available to provide assistance for regional feasibility studies, change management and reviews of industry business structures.*

As part of the Sugar Industry Restructure Package (SIRP) 2004, the Australian Government made available $75 million over three years for regional and community projects to pursue options for diversification and alternatives such as ethanol, biofuels, co-generation and bio-plastics. Regional and community projects ranged from development of biofuels and furfural to the implementation of high-technology equipment. A total of $56.4 million was provided to 73 projects. [81]

The exemption from vesting provisions under the Sugar Industry Reform Act 2004 were a necessary and important part to the implementation of SIRP grants to enable the industry to embark upon diversification of risk of product and income stream. It supported the development of new products by suppliers (growers and millers) through exemptions but ensured that the manufacture of bulk raw sugar by mill owners for export remained vested for marketing purposes.

### 4.5 A new marketing system progresses

The commitment through Memorandum of Understandings of 1 March 2004 and the retention of section 122 of the Sugar Industry Act 1999[82] provided the impetus for the industry to progress its remaining commitment to developing a voluntary marketing arrangement as soon as possible.

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[78] Section 107I(2), *Sugar Industry Reform Act 2004*.
[79] Section 36(6), *Sugar Industry Reform Act 2004*.
[80] Section 107B, *Sugar Industry Reform Act 2004*.
[81] ABARES, A report on the impacts of the Sugar Industry Reform Program (SIRP): 2004 to 2008, November 2010, at p.v.
[82] Required a review of the effectiveness of, and the need for the continuation, alteration or abolition of, the sugar vesting scheme to commence no later than 1 December 2006

Throughout 2004 the Voluntary Working Group, comprising senior executives from CANEGROWERS, ASMC and Government met to develop the new arrangements in consultation, from time to time, with the Chief Executive of QSL. On 16 May 2005 the Report of the Working Group proposed a new marketing system for the Queensland Sugar Industry for the 2006/2007 season, which was submitted to the Premier of Queensland. On 13 October 2005, a Memorandum of Understanding was executed between the Queensland Government, CANEGROWERS and ASMC to progress the proposal by the Working Group of a new marketing system.

On 28 November 2005 the *Sugar Industry Amendment Act 2005* received Assent and came into operation on 1 January 2006. The Amending Act replaced the compulsory acquisition or "vesting" of raw sugar under the Sugar Industry Act 1999 with new contract-based arrangements, thereby allowing all the provision of the Act dealing with vesting and statutory based marketing arrangements to be repealed. The amendments also authorised QSL, for the purposes of the *Trade Practices Act 1974* (TPA), to negotiate, for three years, commercial export contractual arrangements with millers for collective selling and uniform pool pricing. As a consequence of removal of vesting the Sugar Authority was dissolved.

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

The residual sections of the Sugar Industry Act dealing with arrangements for supply contracts from 1 January 2006 continued unchanged.

## 5 Linking cane price to sugar price

Growers have never had co-ownership of sugar and therefore never had choice in deciding where the mill owners' sugar is marketed. Millers own, and have always owned, the bulk raw sugar they manufacture for export markets. The growers' economic interest in that raw sugar is because the price of cane is linked to the selling price of the sugar via the cane price formula. However, this economic interest does not give rise to title or ownership of the sugar produced by a mill.

As the industry has progressively deregulated the opportunity for millers to manage price risk it was utilised and became more sophisticated. Millers have in turn made these price risk management opportunities available to growers.

Grower price risk management allows growers to manage the exposure of their cane price to sugar price. In essence, grower price risk management is an agreement between growers and millers whereby growers agree to be paid for cane on the basis of a specified or pooled sugar futures (or ICE #11) price outcome. In accepting this obligation, the miller ensures hedging is put in place, (via sugar futures contracts), to ensure that the price the miller is paid for that portion of its sugar production is the same as the price on which the mill has agreed to base the price of cane to the grower.

In practice, grower price risk management is enabled by a miller quantifying a grower's sugar price exposure and facilitating the grower making decisions about how the sugar price risk on this exposure is managed. A grower's 'nominal sugar exposure' (expressed in tonnes of nominal sugar) may be derived from the cane price formula and the tonnes of cane that a grower supplies the mill. As growers, do not produce or own sugar, it is referred to as a grower's *Nominal Sugar Exposure* to indicate that the sugar tonnes are "in name only" and therefore "nominal".

In the case where the cane price formula is expressed as:

Pc = Ps .009*(CCS-4) + C

Where:
Pc = price of cane ($/tonne cane)
Ps = price of sugar ($/tonne sugar)

CCS = commercial cane sugar
C = constant that varies from mill area to mill area

A grower's nominal sugar exposure may be expressed as:

Nominal Sugar Exposure = 0.009*(CCS-4) * Cane Supply Tonnes

Where:
Nominal Sugar Exposure = Sugar exposure in tonnes of nominal sugar
Cane Supply Tonnes = Tonnes of cane supplied by the grower to the mill

Deregulation has also led to QSL agreeing in the 2014 season raw sugar supply agreement between millers and growers (RSSA), to facilitate arrangements whereby the millers may manage the physical sales to end customers of a portion of their sugar production. This is accomplished by QSL selling a portion of the sugar supplied by the miller to QSL back to the miller on a free on board (FOB) basis.

That portion of the sugar supplied by a mill which QSL agrees to sell back to them is defined in the 2014 RSSA as Supplier Economic Interest Sugar. Supplier Economic Interest Sugar is defined as that portion of a mill's total sugar supply to QSL less Grower Economic Interest Sugar. The RSSA defines Grower Economic Interest Sugar as that sugar for which growers bear the price exposure under the cane supply or other agreements between the Supplier (Miller) and the Grower. In other words, Grower Economic Interest Sugar is the total of the Nominal Sugar Exposure for all growers who supplied cane to the mill from which the mill produced raw sugar.

Grower Economic Interest Sugar is therefore merely a contractual construction created in the RSSA to allow for the determination of Supplier Economic Interest Sugar (i.e. that portion of a Miller's sugar supplied to QSL, which QSL would agree to sell back to the miller to enable direct management of physical sales by the miller). It confers no special rights of ownership or control to growers over any portion of a mill's sugar production.

# Appendix 1. Text of the Heads of Agreement dated – 1 March 2004

## Heads of Agreement Reform of the Queensland Sugar Industry

**Statement of Intent**

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

**Legislative Reform**

To pursue the vision outlined in the above statement of intent, the Queensland Government, CANEGROWERS and the Australian Sugar Milling Council agree to reform of the Sugar Industry Act 1999 subject to the following:

1. For an 18 month period commencing 1 July 2004, arbitration shall be based on the principles outlined below.
2. An exemptions system from the domestic single desk for alternative products (eg ethanol, bioplastics) and bagged sugar for export, but not for bulk raw sugar for use in manufacturing. It is recognised that the Ministerial Direction on Export Parity Pricing must be retained to achieve this outcome. This will commence on 1 July 2004.
3. The industry will establish a working group to develop voluntary marketing arrangements as soon as possible. The objective of this working group is to work towards a new system for marketing of raw sugar prior to the requirement for review in 2006.

**Principles of Compulsory Arbitration**

The guiding principles for arbitration in the interim period are:

1. The system should encourage the changes necessary to make the industry viable in the long-term.
2. The system will promote economic outcomes.
3. Recourse to arbitration should be available for the key issues of a cane supply contract.
4. Access to arbitration is available to both growers and millers.
5. Arbitration should be able to be initiated where an issue arises affecting the eligible parties involved in negotiation of a contract. It should not be able to be used by smaller groups to prevent a larger group from moving to a new outcome.
6. The basic division of proceeds must be negotiated in partnership and not arbitrated upon.
7. The interim system must be consistent with the ability under the new Bill for growers to collectively bargain in one or more collectives.

**Legislative Proposal on Arbitration**

To implement an interim arbitration system for 2005 according to the above principles, the following legislative proposal will be adopted.

1. Arbitration is available for one year only, and any contracts that are arbitrated upon last for one year only.

2. Growers could apply for arbitration within an individual mill area where the dispute affected a collective involving at least 75% of production that has been previously supplied in 2004 to the mill involved in the arbitration.
3. Growers would have to sign intents to contract and agree to be bound by the outcomes.
4. Arbitration must not apply to the formula commonly known as the cane price formula.
5. The definition of the "supplier" for the purposes of the Act and matters related to exemptions are specifically excluded from the scope of any arbitration.

The parties agree to arbitration over 18 months as follows:

- **From 1 July 2004 to 31 December 2004**: compulsory arbitration under the current Act will be retained, but final offer will not be available unless agreed by the parties. Final offer will be replaced with compulsory commercial arbitration.
- **From 1 January 2005 to 31 December 2005**: an interim model of arbitration as above is implemented in addition to other changes in the statutory bargaining system as provided in the Queensland Government's Bill.
- **From 1 January 2006**: parties will have access to arbitration by agreement. The Act will continue to provide for dispute resolution for disputes arising out of contracts.

Signed:

JE Pedersen Chairman CANEGROWERS

GE Mitchell AO Chairman AUSTRALIAN SUGAR MILLING COUNCIL

The Honourable Peter Beattie MP Premier of Queensland and Minister for Trade

1 March 2004

# Appendix 2. Statement of Intent

**REFORM OF THE AUSTRALIAN SUGAR INDUSTRY**

**STATEMENT OF INTENT**

The Australian sugar industry and the Australian Government recognise that the industry will actively pursue long term economic, social and environmental sustainability by

- undertaking significant reform across all sectors;
- comprehensively rationalising and restructuring its operations;
- diversifying its economic base; and
- adapting to its new operating environment.

The industry agrees that:

- It will undertake structural change, crucial to the industry's future, based on a strong mill area and regional focus of operations.

- Some industry participants will need to re-establish themselves in the new operating environment and that this in turn will promote the longer-term prospects for the industry as a whole.

- Growers, harvesters and millers will critically examine their businesses and work to improve their commercial viability.

- Rationalisation and restructuring, which will enhance revenue and cost efficiency and facilitate environmental and social sustainability, will be undertaken through a "whole-of-system" regional approach.

- It will support the adoption of regionally-based plans to be developed and implemented through Regional Advisory Groups. These plans will strongly reflect local priorities and help achieve the necessary changes to sustain regional communities.

- Raw sugar continues to be the industry's core business, however there will be a serious exploration of new opportunities for the alternative uses for sugarcane, current sugarcane land and value adding opportunities.

In recognition of the above, the Australian Government will authorise first payment of a Sustainability Grant, which will help industry through a transition phase.

The Australian Government will also put in place a comprehensive range of other assistance measures to assist with and facilitate industry reform – through diversification, re-establishment and restructuring. The Sugar Industry Reform Program 2004 will be in addition to more than $80 million in assistance provided since 2000, as well as ongoing research and development support and assistance provided through other Australian Government programmes. The Australian sugar industry endorses these assistance measures.

The Australian sugar industry recognises that payment of the second instalment of the Sustainability Grant scheduled for January 2005 will occur once the Australian Government is satisfied with progress on industry reform, including development of regional plans.

Industry leadership commits to:

- Ensuring the broader industry takes ownership of and drives the reform process.

- Actively communicate the options available to industry participants.
- Encourage all industry participants to avail themselves of the further opportunities being provided, to work to better position the industry's future and to act upon reform-based decisions.

# Appendix 3. Memorandum of Understanding

**A Memorandum of Understanding**
**between the Queensland Sugar Industry and the Queensland Government**

**Context – a joint commitment to reform**

On 1 March 2004, the Queensland Government, CANEGROWERS and the Australian Sugar Milling Council signed a Heads of Agreement on reform of the sugar industry. All parties agreed:

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

The Heads of Agreement covered a number of reform proposals. One aspect provided that:

*The industry agreed to establish a working group to develop voluntary marketing arrangements as soon as possible. The objective of this working group is to work towards a new marketing system of raw sugar prior to the requirement for statutory review in 2006.*

The working group operated on the premise that, at some future point in time, the compulsory acquisition scheme as authorised under the *Sugar Industry Act 1999* would cease and that it was prudent to consider non legislatively based marketing arrangements in advance of the 2006 review. It was considered that the use of Queensland Sugar Limited (QSL) as a base model would allow utilisation of its considerable commercial experience in marketing sugar, while providing for a smooth transition from regulated to commercial operations. The working group believes that the transformation of QSL into a contractually based, export focused, marketing company of choice for bulk raw sugar suppliers in Queensland would deliver greater flexibility and enhanced outcomes, while enabling the benefits and synergies of presenting a co-ordinated face to our bulk raw sugar customers to continue.

The working group has now delivered its report to the Queensland Government.

A new marketing system for the sugar industry

The working group recommend a **commercially, non legislatively based marketing structure** for the sugar industry be developed and that it be based on the recommendations in the working group report. The key principles include:

- QSL would continue to be the industry's preferred bulk raw sugar export marketing company
- QSL would operate within a commercial environment under contractual arrangements with suppliers
- QSL would adopt a corporate structure appropriate to this commercial environment
- This structure should provide appropriate levels of expertise, including grower and miller representation
- Contracts with QSL would incorporate appropriate drivers to transform to responsive marketing in the initial contractual term of three years and subsequent rolling two year contracts

**A continuing commitment to reform**

The Queensland Sugar Industry and the Queensland Government are committed to ongoing reform to maintain industry competitiveness and retain sugar's position as a vital exporter for Queensland and Australia.

The parties agree to actively and positively support the new marketing system as proposed by the working group. Each party undertakes the following:

**The Queensland Government:**

1. Will prepare amending legislation for introduction into Parliament to remove compulsory vesting and enable the altered arrangements to operate prior to the commencement of the crushing season in 2006.

2. Will only introduce the amending legislation into Parliament when it is satisfied there is sufficient support from suppliers to successfully implement the recommendations of the working group.

3. Will support industry in communicating with customers and stakeholders about the new system.

**The Australian Sugar Milling Council:**

1. Reaffirms its commitment to supporting the removal of legislative impediments to reform and allow the industry to progress towards meeting the challenge of taking responsibility for its own future within a commercial environment

2. Has consulted its member companies regarding the proposal and supports the introduction of the new marketing system in 2006

3. Advises that all members of the Australian Sugar Milling Council remain committed to working with QSL to assist QSL to remain the preferred marketer by suppliers and customers of Queensland produced bulk raw sugar for export

4. Recognises that commitment by suppliers is a matter for negotiation between QSL and individual suppliers

**CANEGROWERS:**

1. Reaffirms its support for increased flexibility with the retention of benefits that exist under the current export marketing arrangements

2. Will communicate with growers regarding how the new marketing system would operate

3. Supports the introduction of the transition to a contractual basis for raw sugar marketing from 2006, provided there is sufficient support from suppliers to successfully implement the recommendations of the working group

Signed on this Thursday the 13th of October 2005 by

Mr Alf Cristaudo, CANEGROWERS
Mr Ian McMaster, Acting Chairman, Australian Sugar Milling Council
The Honourable Peter Beattie MP, Premier and Treasurer

## Appendix 4. Timeline of reviews, regulation and reform from 1983 onwards

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| Nov1983 | IAC Inquiry recommended the termination of the Sugar Agreement. It concluded it was inappropriate for an export-orientated industry to be insulated from underlying longer term world price movements by domestic sales. To insulate a predominantly export orientated industry through an embargo was inconsistent with policies applying in most industries. |
| May 1989 | *Sugar Acquisition Act* amended to strengthen marketing powers of The Sugar Board to operate effectively on both domestic and overseas markets, ahead to the expiration of the *Sugar Agreement Act*. |
| June 1989 | *Commonwealth Customs Tariff Amendment Act (No.3) 1989* was enacted to put in place ad valorem tariffs on imported raw and refined sugar. |
| June 1989 | *Commonwealth Primary Industries and Energy Legislation Amendment Act 1989* repealed the *Sugar Agreement Act 1985* from 1 July. |
| May 1990 | Sugar Industry Working Party (SIWP) established to restructure the Queensland sugar industry giving rise to the *Sugar Industry Act 1991*. |
| June 1990 | Report of SIWP recommended to Queensland government a consolidation of legislation and bodies. Queensland Sugar Corporation established to replace The Sugar Board and the Sugar Industry Tribunal established to replace the Central Board |
| March 1991 | Industry Commission (IC) issues its report into Statutory Marketing Arrangements, findings include that objectives of statutory marketing not sound from community-wide viewpoint. |
| May 1991 | *Sugar Industry Act 1991* enacted which repealed *Sugar Acquisition Act 1915* and *Regulation of Sugar Cane Prices Act 1962-1986*, implemented recommendations of the SIRWP and consolidated the laws relating to the sugar industry. |
| Oct 1991 | Industry Commission review of Queensland sugar industry preliminary report including recommendation of removal of compulsory acquisition of sugar. |
| March 1992 | Industry Commission final report on review of Queensland sugar industry released including statement 'growth and performance are being impeded by one of the most restrictive regulatory regimes of any Australian industry.' |
| July 1992 | Hon. Simon Crean MP Minister for DAFF established the Sugar Industry Task Force to identify impediments to sustainable growth and investment. |
| Dec 1992 | Industry Commission report to Australian Government. The main finding of the report is that the regulatory controls applying to the production and marketing of raw sugar in Queensland are the major factor reducing efficiency of the Australian sugar industry. |
| Dec 1992 | Sugar Industry Task Force submits report to Minister for DAFF, with differing views across the Task Force leading to shortage of recommendations. |
| Feb 1993 | Federal and Queensland Governments agree to package of measures including transfer of ownership of bulk terminals, $40m funding for infrastructure projects, acquisition powers of QSC combined with 'single desk' selling. |
| March 1994 | *Sugar Industry Amendment Act 1994* implemented changes to pool price differential between No.1 and No.2 Pools paid to millers, phasing from 10% in 1993 season to 6% in 1995 and 1996 seasons. |
| June 1994 | The Hon. Ed Casey Minister for Primary Industries brokered Productivity/Cane Payment package establishing series of Working Parties to report on regulatory aspects of the industry. |
| Sept 1994 | *Sugar Industry Amendment Act* (No.2) to confirm power of the QSC, when granting an assignment, to impose a condition limiting the ability of an assignment holder to transfer their assignment. |
| Oct 1995 | Queensland and Federal Governments agree to major review by SIWP, develop package of recommendations to facilitate sustainable development of industry. |
| Dec 1995 | ASMC and CANEGROWERS engage the Boston Consulting Group to assess regulatory arrangements and structures. |
| July 1996 | Boston Consulting Group reports to SIWP, one conclusion being compulsory acquisition was prima facie anti-competitive. |

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| July 1996 | *Sugar Industry Amendment Act* to implement a new three-phased dispute resolution arrangement of negotiation, mediation and arbitration. |
| Nov 1996 | SIWP report submitted to Minister for Primary Industries concluding the *Queensland Sugar Industry Act 1991* restricts competition, providing 74 recommendations for industry reform. |
| May 1997 | *Primary Industries Legislation Amendment Act 1997* amended the *Sugar Industry Act 1991* to clarify the review process for arbitrated decisions in awards could be subject to judicial review. |
| March 1998 | State Government appoints mediator to facilitate consensus on new cane supply and processing arrangements, report outlines that industry should review final offer arbitration as ultimate dispute resolution process. |
| May 1998 | State Government agrees to transfer bulk sugar terminals to industry and establishes Sugar Industry Task Force to develop dispute resolution processes. |
| March 1999 | Sugar Industry Development Advisory Council gives in principle support for industry owned marketing company to be operational from 1 Jan 2000. |
| Nov 1999 | *Sugar Industry Act 1999* enacted, repealing the *Sugar Industry Act 1991* and the *Sugar Milling Rationalisation Act 1991*, incorporating SIRWP recommendations. |
| Dec 1999 | Queensland Sugar Limited registered as a company limited by guarantee following 18 months of consultation by industry bodies. |
| June 2000 | *Sugar Industry Amendment Act 2000* transferred QSC marketing assets and liabilities to the producer-owned Queensland Sugar Limited (QSL). Insertion of a section requiring a review of the sugar vesting scheme to be commenced no later than 1 December 2006 and completed no later than 31 December 2007. |
| July 2000 | Productivity Commission report released *Single-desk marketing: Assessing the Economic Arguments* findings included that most potential benefits of single-desk marketing can be achieved without compulsion required for single-desk. |
| Sept 2000 | Federal Government announces Federal Sugar Assistance Package of up to $83million for cane growers. |
| Feb 2002 | Hon Warren Truss MP announces Independent Assessment of the sugar industry to identify opportunities for long-term sustainability. |
| June 2002 | Queensland Government announces Sugar Cane Crop Scheme to assist growers to plant and fertilise the 2003 crop. |
| June 2002 | Independent Assessment of sugar industry report released including finding that 'industry leadership is often focused on sectoral representation at state level, while profit centre is at regional level.' |
| Sept 2002 | *Memorandum of Understanding* between Australian and Queensland Governments committing to a shared a common interest in ensuring the industry's regulatory framework did not impede competitiveness, efficiency and cultural change. The cane production area system; compulsory bargaining system; and compulsory acquisition of raw sugar for marketing and selling within the domestic market seem to impede change. $150million assistance provided over four years. |
| Dec 2002 | State Government commissions the CIE to undertake regulatory impact analysis of Sugar Industry legislation, concluding regulation was impeding industry progress and profitability. |
| April 2003 | Queensland Government publishes 'Sugar the Way Forward' which recommended removal of cane production area system, allowing growers choice to bargain with millers as individuals or collectively, scope for exemption from compulsory acquisition of sugar. |
| Aug 2003 | *Sugar Industry and Other Legislation Amendment Act 2003* received assent, focused on establishment of industry owned research body. |
| March 2004 | *Heads of Agreement* on reform of the Queensland Sugar Industry between CANEGROWERS, ASMC and the Queensland Government on comprehensive reform of the *Sugar Industry Act*, particularly development of voluntary marketing arrangements. Reform and restructure package of $444.4million. |
| May 2004 | *Sugar Industry Reform Act 2005* received assent, amending the *Sugar Industry Act 1999* to lessen the regulatory environment on the Queensland sugar industry by removing the statutory cane production area system and the statutory bargaining system. |
| June 2004 | *Statement of Intent* signed by the Chairs of CANEGROWERS and ASMC to achieving real regulatory reform by the industry actively pursuing long term economic, social and |

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| | environmental sustainability. |
| May 2005 | Report of the Industry Working Group established to review voluntary marketing arrangements releases its report, including recommendations which had the effect of removing compulsory acquisition of raw sugar by QSL. |
| Oct 2005 | *Memorandum of Understanding* between the Queensland Government, CANEGROWERS and ASMC to progress the implementation of voluntary new marketing system |
| Nov 2005 | *Sugar Industry Amendment Act 2005* repealed vesting powers of QSL (from 1 January 2006) and deregulated the marketing of Queensland's raw sugar exports. To ensure a smooth transition to the new sugar marketing arrangements, the amendment provided authorisation for QSL, for competition legislation , to negotiate, for 3 years, commercial export contractual arrangements with millers for collective selling and uniform pool pricing. |
| Jan 2006 | Industry moves to deregulated marketing arrangements, with QSL entering into voluntary agreements with majority of Queensland sugar mills to market their export sugar. |