SENATE INQUIRY INTO CURRENT AND FUTURE ARRANGEMENTS FOR THE MARKETING OF AUSTRALIAN SUGAR

12 MARCH 2015 IN MACKAY

Kevin Borg

Thank you for the opportunity to provide evidence at the Senate Rural and Regional Affairs and Transport Committee's hearing today in relation to the current and future arrangements for the marketing of Australian sugar.

I am presenting today on three platforms:

1. As a grower in my own right and running a small family business suppling cane to Wilmar Sugar at Sarina
2. As Chairman of the Plane Creek Area Committee that oversees the growers' interests in negotiations with our processor which happens to be Wilmar, and
3. Chairman of Mackay Canegrowers Limited representing some 950 growers in the Mackay Sugar and Plane Creek areas.

Grower platform

I speak here on behalf of my family, who owns and operates a cane farming business that is situated at Westhill, a small community 50 kilometres south of Sarina. We rely on growing sugar cane and supplying it to the Wilmar owned Plane Creek Mill at Sarina.

We as a family business were in favour of the move by the industry to deregulate and to have a more commercially focused future at the time of deregulation. Growers' rights in marketing were not a priority and were probably understated at the time of deregulation. Deregulation happened under duress and to an extent was somewhat done in a hasty fashion.

Growers need to be in a position of equal opportunity when in negotiation with our miller. We do not see a balance in negotiation influences at this time and we like many growers do not have the convenience of supplying another mill as economics do not allow this to happen.

We now find ourselves at the mercy of these monopoly companies and we believe this anti-competitive behaviour is denying us our historical rights to have a say in how our Grower Economic Interest (GEI) is marketed, whilst continuing to erode our negotiating powers through lack of commercial balance and opportunities.

We have had confidence in our industry-owned and controlled marketing body doing our marketing while providing transparency. It has provided the opportunity to take part in the risk and rewards that is provided for through the cane payment system. We as growers take two thirds of the risk in growing the crop and hence should take two thirds of the reward.

In 2010 our business willingly paid back our share of a supply shortfall caused by a near unprecedented weather event because millers were convinced and therefore convinced us that we had an economic interest in that sugar and that we were liable for our share of the shortfall.

Today we find ourselves fighting to maintain that economic interest and Wilmar arguing that growers do not own any sugar.

Mackay Canegrowers Limited
ABN 24 111 817 559
120 Wood Street (PO Box 117)
MACKAY QLD 4740
T: 07 4944 2600 F: 07 4944 2611
E: mackay@canegrowers.com.au

Plane Creek Chairman's Platform

Plane Creek Area Committee represents 240 Wilmar suppliers in Plane Creek. I have been an industry representative now for in excess of 20 years.

In this capacity I have witnessed a slow but sure degradation of grower rights with a steady increase in attempts to erode those same rights since deregulation in 2006.

Wilmar is imposing their own marketing system onto growers in which they promote a Joint Marketing Company (JMC) for the purposes of marketing transparency. The problem being, this is only a token effort at providing transparency as the JMC after taking ownership of the sugar sells directly on to their own trading company Wilmar Trading. This is of great concern as it introduces a range of conflicts of interest, with growers not having any evidence of what occurs beyond the change of hands from JMC to Wilmar Trading.

Through this process we would see premiums for our product that have in the past been achieved by QSL and shared in accordance with the cane price formula – two thirds growers and one third millers - stripped away and the split turned around in the millers' favour.

Wilmar has given notice to their Plane Creek growers of their intention to terminate their Cane Supply Agreement from 2016 on. This displays arrogance in a well-planned schedule of implementation to have only their views dealt with in negotiations.

To date there has been no recognition of growers' attempts in getting consideration of our agenda items of:

- Grower Economic Interest (GEI)
- Grower choice in who markets our two thirds economic interest in the sugar we produce
- A dispute resolution process put in place so that growers have an avenue for rebuttal of such behaviour
- The retention of an industry owned and operated marketing system that provides transparency and will return premiums to the whole industry

The industry in the past has seen commercial companies manage marketing (CSR) only to see that end in conflict and mistrust resulting from lack of transparency.

In any mill-managed marketing arrangement it will be virtually impossible to provide the transparency that the industry needs to be trusting as there is always a closed book approach to providing private company information on financials.

Our existing marketing arrangements do provide transparency and if this is disputed then QSL is industry owned and we have the powers to change that if need be.

Wilmar's agenda takes us toward only one outcome of implementing their marketing system and, given their way, any negotiation with growers will be only a tidy up around the edges without dealing with growers' real concerns and needs or views.

Wilmar claims that they have achieved higher prices than QSL, however it is our belief that it is doing QSL a disservice by saying that they have not matched Wilmar's achievements in price because they do not have the same risk profile. The risk profile that is presently in place was implemented with input from Wilmar. This is not an "apples with apples" comparison.

There are many growers who achieved much greater prices in their own personal forward pricing than Wilmar, but there again they are not spreading risk to the same extremes as a marketing body.

Wilmar claims that they can do better in price, however our view as growers is that this can only be achieved by taking bigger risk. Growers need to be able to market their own sugar according to their particular risk appetite. This as mentioned can be done in an industry owned model if stakeholders agree.

We are seeing at this moment a real attempt by Wilmar to de-stabilise the growing sector and instil uncertainty to have an upper hand in negotiations. This attempt involves Wilmar serving notice on agreements and encouraging growers to take up a temporary forward pricing agreement to lock in prices for the 2017 season by signing a Temporary Forward Price Agreement.

Our legal advice says that the temporary forward price arrangement is legally uncertain.

(Refer Attachment 1)

Mackay Canegrowers Limited
ABN 24 111 817 559
120 Wood Street (PO Box 117)
MACKAY QLD 4740
T: 07 4944 2600 F: 07 4944 2611
E: mackay@canegrowers.com.au

CANEGROWERS Mackay platform

On the CANEGROWERS Mackay platform I would like to say that we fully support the CANEGROWERS Queensland submission.

While we actively seek an industry-led grower-choice model, Wilmar has made it clear that it will progress its new marketing arrangements regardless of the wishes of its growers.

This issue has ramifications for the growers supplying other milling companies as they are awaiting the outcome of the Wilmar case to take up an open opportunity to do the same to their growers.

Deregulation in 2006 was to implement a system where commercial outcomes were negotiated to see a more robust industry moving forward. However it is becoming more and more evident that this will return us to pre 1915 when legislation was introduced to combat exactly what is happening today.

We have ended up with a situation where growers are at the mercy of monopoly millers and thus taking advantage of the unique geographic structure of the industry, where for economic and infrastructure reasons growers are unable to change who processes their product.

Growers compromised a couple of years ago by letting mills take their one third economic interest out of QSL and doing what they will with it.

Today we find ourselves in a situation where that is again not good enough for Wilmar and now they are attempting to take away all sugar including growers' two thirds to market it through its own marketing company.

We have no doubt in our minds that this is only another process in a planned string of strategic moves to have growers reduced to peasant farmers by slowly stripping away their rights.

First prize for mills is to be able to negotiate a farm gate price where growers have no leverage to say 'no' as it will inevitably end up a process where growers take what is offered because there is nowhere else to go. This is nothing short of a commercial imbalance in negotiating power.

As a result of this, we now believe that a commercially-negotiated outcome on these issues is becoming even more unlikely and therefore government intervention is needed to provide a statutory 'grower choice' regime to give growers a say in who markets the grower economic interest sugar for which they have price exposure under their cane supply agreements.

CANEGROWERS Mackay believes that a move away from an industry-owned body will destroy the value of a body that has served the industry well in the past.

These values include:

- The provision of transparency in marketing
- A relationship with customers that has been built by being a reliable supplier
- An industry sugar quality system that provides us the ability to blend different qualities of sugar to comply with customer requirements
- The ability to attract premiums from the market
- Industry ownership of port assets and infrastructure that have been controlled by the industry and any profits returned to industry
- A supply risk profile that is managed on an industry wide basis where district shortfalls can be managed by a wider risk profile.

In a miller marketing system we could see the choke point assets, such as Port infrastructure, taken over by these monopoly millers and turned into another profit making centre for them. Growers will have no choice as to which entity markets grower economic interest sugar produced from cane they supply, and growers may not be able to obtain fair and reasonable terms for the cane they supply, including their grower economic interest sugar.

Choice for Growers is pro-competitive and pro an active market, it is the Australian way and if foreign owners of sugar mills seek to avoid this, then the State and Federal Governments should stand by growers, their families and the regional communities in which they live.

I want to make it clear that this is not a call to return back to pre-2006 and have full regulation of the industry. We believe that this oversight at deregulation can be rectified relatively simply at either a State or Federal level through amendments to the Queensland Sugar Industry Act 1999, or via a mandatory industry code under the Federal Competition and Consumer Act 2010.

We have no recourse to a commercial dispute resolution process; one that addresses the imbalance in negotiating power between millers and growers if Agreement cannot be reached that enables negotiation of a fair contract.

Wilmar argues that its announcement on 3 April 2014 that it would exit the Queensland Sugar Limited (QSL), a 50/50 grower and miller owned voluntary marketing system, and directly undertake the sale and marketing of its own sugar from the 2017 season onwards is entirely consistent with the principles of the 2006 deregulation of sugar marketing.

(Refer Attachment 2)

In our opinion this statement is a misrepresentation of what occurred in 2006, and contrary to the agreed industry/government position, and is certainly not a correct reflection of what the principles were surrounding the 2006 deregulation. These principles centre on the Memorandum of Understanding between the Government and Industry groups which states:

"*It is recognised that, in moving to a new marketing system, the key to success is for all parties to work towards delivering greater flexibility and enhanced outcomes whilst continuing the benefits and synergies of presenting a coordinated face to Queensland's bulk raw sugar customers."*

Legislative action is necessary to protect the rights of growers and break the current impasse.

(Attachment 1)

2017 Forward pricing arrangements.

Wilmar will be conducting a series of pricing sessions with growers. It is likely that part of these discussions will consider the Temporary Fixed Forward Pricing (TFFPA) arrangements proposed by Wilmar for the 2017 season. Whilst it is always an individual grower's choice to participate in forward pricing, CANEGROWERS urges growers to be cautious about the proposed 2017 arrangements for the following reasons:

1. Wilmar has terminated its RSSA agreement with QSL from the end of the 2016 season and any pricing activities will be determined and controlled by Wilmar and not QSL.
2. Any forward pricing done for the 2017 season will involve considerable uncertainty. Such pricing will have to involve the determination of a sharing of premiums and costs, but this has not yet been determined. The previous shared pool arrangements operated by QSL will not apply to Wilmar pricing in 2017 and Wilmar will seek to have its own arrangements imposed under its new proposed marketing arrangements.
3. Growers supplying any cane in 2017 season, whether forward pricing or not, must have a cane supply agreement signed by the grower and Wilmar before supplying any cane. The terms of a 2017 cane supply agreement are as yet unknown.
4. The wording of the proposed 2017 TFFPA arrangements is vague and unclear and may potentially be legally uncertain.
5. The outcome of the Senate Inquiry into sugar marketing and associated State Government action is yet to be determined.

Attachment 2

1. Page 2 – "*Wilmar's announcement on 3 April 2014 that it would exit the QSL voluntary marketing system and directly undertake the sale and marketing of its own sugar from the 2017 season onwards is entirely consistent with the principles of the 2006 deregulation of sugar marketing".*

This statement is a misrepresentation of what occurred in 2006, and contrary to the agreed industry/government position, and is certainly not a correct reflection of what the principles were surrounding the 2006 deregulation. This is best demonstrated by simply looking at the relevant documents at the time. See for example the following sources:

A. MOU between QLD Government, CANEGROWERS and ASMC dated 13/10/05, signed by the Premier and the Chairmen of CANEGROWERS and ASMC. Relevant parts are as follows:

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.

The Australian Sugar Milling Council:

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.

CANEGROWERS:

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

B. Sugar Industry Amendment Bill 2005 – Explanatory Notes as tabled in Parliament

"The MOU recognises that while the State Government intends to pursue its policy to remove regulatory encumbrances from the sugar industry, it is committed to support an orderly transition from legislative to contractually-based marketing arrangements for bulk sugar export sales.
It is recognised that, in moving to a new marketing system, the key to success is for all parties to work towards delivering greater flexibility and enhanced outcomes whilst continuing the benefits and synergies of presenting a coordinated face to Queensland's bulk raw sugar customers. The peak industry bodies have committed to working with Queensland Sugar Limited to assist it to remain the preferred marketer."

In view of the commitments given by industry, including ASMC for itself and each of its milling company members, and the State Government policy objectives, and the entering into the voluntary marketing arrangements between QSL and most millers in 2005 before the deregulation provisions commenced, it is obvious that deregulation in 2006 was never based on a principle that millers were thereby free to independently market and sell their own sugar production.

2. Page 2 – "*Wilmar's proposal is permitted under the Sugar Industry Act 1999. The announcement was made in full compliance with the company's legal and contractual obligations to growers and QSL."*

Wilmar in this statement and elsewhere in its submission and supplementary submission relies on the April 2014 announcement that it would exit the QSL voluntary marketing system. One of the important provisions of the cane supply contract between most growers and Wilmar is/was that Wilmar ' **will consult with the Growers' Representative prior to .. giving notice of non-extension of the RSSA'.** No such consultation whatsoever took place prior to Wilmar's announcement in April 2014 that it was exiting QSL . Wilmar acted in complete disregard to the provisions of the cane supply agreement when it made its April announcement.

3. Page 6 – Wilmar makes much of the assertion that ' *the sugar is unequivocally owned by the miller'.*

Whilst I agree essentially with that assertion, that is only the case at some point in the relevant chain of events. At the important time when the sugar is marketed, priced and sold the sugar is not owned by the miller, but by QSL the industry owned not-for-profit sugar marketing company. The CANEGROWERS' proposal does not claim ownership for growers of the sugar that is manufactured by the mill. It simply contemplates that given the growers' share with the miller in the net proceeds from the sale of the sugar that the growers have some say in how the relevant portion of the sugar that relates to the growers' share of the proceeds of the sale of sugar is determined.

4. Page 10 – Wilmar claims a '*right to independently market and sell its own sugar*' and is only prepared to participate in discussions that are based on such a right.

That 'right' does not currently exist and would only exist if the terms of any future cane supply/sugar supply contracts give that right. The fact that Wilmar is in effect stating that future supply agreements with growers must be based on that right, is a clear example of a monopoly miller dictating important supply contract arrangements. Whilst the miller owns the factory, the ownership and or control of what that factory manufactures is a matter for relevant supply agreements to determine. Despite what Wilmar says on page 7, others examples do exist where the manufacturer does not have absolute discretion over how it sells the product it manufactures. For example, toll crushing arrangements apply in various industries, including sugar. In the cotton industry, the grower has options and choice as to whether to simply sell the cotton to the processor who deals with it as it sees fit, or deliver cotton to the processor who retains the seed and the growers sells the lint, or the grower delivers cotton to the processor and the grower pays a processing fee and the grower retains ownership of both the seed and the lint which the grower can sell as the grower sees fit. These arrangements are provided for in relevant supply contracts. Wilmar however seems to be stating that it will only contract and deal with growers on the basis that it has the ' *right to independently market and sell its own sugar'.* In the face of such an attitude, and given the unique nature of the industry and the market failures identified in the CANEGROWERS/ACFA and QSL submissions, some form of government intervention is justified.