



Wilmar Sugar Australia
Submission to the Productivity Commission
Regulation of Australian Agriculture Draft Report
18 August 2016

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1. Executive summary

Wilmar Sugar Australia (Wilmar) agrees with the Productivity Commission that Queensland's *Sugar Industry (Real Choice in Marketing) Amendment Act 2015* (the Act) is a constraint on investment in the sugar industry.¹

It is Wilmar's view that while the Act remains in force, the Australian industry will not grow and will not improve its competitiveness in the global raw sugar market. This will be to the financial disadvantage of growers, millers, communities and the economy.

We cite the following examples of the Act's damaging impact on Wilmar's investment in the Australian sugar industry:

Example 1

Wilmar's eight mills produce about 60% of Australia's raw sugar exports at a quality between 97.8pol and 98.9pol.²

VHP (Very High Pol) sugar, at 99.3pol, is more sought after by a number of markets. The investment that would be required for Wilmar to produce VHP sugar would be in the tens of millions of dollars.

Under the Act we see no incentive for Wilmar to make the capital investment to increase Pol and improve the market attractiveness of our product as we would be required to fund 100% of the investment while only receiving the benefit on the sale of approximately one third of the sugar we manufacture.

Example 2

Raw sugar storage facilities at the ports of Townsville and Lucinda are sufficient to store only half the mill production during a crushing season in the Herbert and Burdekin districts.

As a result, stockpiles in the storage sheds have to be reduced during the crush to make room for new production. This means that the determinant of sales becomes storage capacity rather than optimum price.

In December 2015, within days of the Act becoming law, and as a direct result of the uncertainty created by the legislation, Wilmar suspended planning for a new \$75 million, 500,000 tonne sugar storage facility for North Queensland – a project that could have improved revenue prospects for both grower and miller.

¹ Regulation of Australian Agriculture: Productivity Commission Draft Report July 2016, Page 8

² Pol (**Polarization**) is the apparent sucrose content expressed as a mass percent measured by the optical rotation of polarized light passing through a sugar solution.

Example 3

Non-sugar revenue – predominantly from molasses and co-generated electricity - underpins the viability of Wilmar's sugar milling business and loss of this revenue would result in a major impairment of Wilmar's investment and put the ongoing viability of the mill business at risk.

On 5 May 2016, a grower collective lodged a claim with Wilmar for 2/3rds of the profits from all non-raw sugar products produced from cane. This claim is understood to be made in belief that the Act has established in law a precedent for grower economic interest (being equated to ownership) that continues throughout the manufacturing process to the finished raw sugar product. Growers now wish to apply this precedent to capture a 2/3rds share of profits from all sugar and non-sugar products produced from cane.

This claim is made even though: legally, ownership of cane transfers to the mill at the siding; the Cane Price Formula reflects a notional price exposure in the sale of sugar rather than any right of ownership; and Wilmar has invested hundreds of millions of dollars in cogenerated electricity production assets to sustain the sugar milling operation and to produce this additional revenue.

The Act now provides an avenue for grower collectives to attempt to use binding pre-contract arbitration proceedings to have a 2/3rds share of non-sugar profits included in new cane supply agreements. Wilmar is highly unlikely to make further investment in renewable energy production capacity or other non-sugar product diversification opportunities in its Australian mills while the binding pre-contract arbitration provisions under the Act remain in force.

Example 4

The only entity other than Wilmar to express interest in marketing Grower Economic Interest (GEI) sugar for Wilmar's 1,500 growers is the not-for-profit Queensland Sugar Limited (QSL).

Wilmar proposed reasonable commercial terms for an on-supply sales agreement based on conventions in the global sugar market. While conceding that it could trade under Wilmar's terms and conditions if it wished, to date QSL has been unwilling to accept Wilmar's sales terms citing financing costs that it does not wish to incur.³

Grower organisations are pressing Wilmar to agree to terms with QSL more generous than the international industry standard - terms that would limit Wilmar's ability to compete on its merits with QSL and expose Wilmar to unreasonable commercial risk and legal liability.

The Act presents the very real prospect of Wilmar being forced or coerced to carry risk for QSL and its customers, or subsidising a competing marketer (QSL).

³ QSL Marketing Choice Update 27 July 2016: 'However, I do think it's important to address recent inaccurate comments in the media that suggest QSL cannot obtain funding or make payments to growers under the FOB (Free On Board) OSA model publicly mooted by Wilmar. QSL has sound banking relationships that underpin our access to substantial funding and hedging lines, and so we have a number of funding options available to us. However, the FOB title transfer arrangement publicly promoted by Wilmar is a significant change to the Queensland sugar industry's traditional arrangements and would increase costs for growers who choose QSL as their marketer. As a member-owned not-for-profit, we're focused on minimising costs for growers and believe FOB and the duplication of existing grower pricing and payment systems would bring unnecessary costs for the Queensland farming families we serv.'. Greg Beashel, CEO and MD

Wilmar supports Draft Report Recommendation 11.2 that *Sugar Industry (Real Choice in Marketing) Amendment Act 2015* should be repealed.

While Recommendation 11.2 is appropriate, there appears little immediate prospect of its repeal. While the minority Queensland Government opposed this legislation in the Parliament and has promised to repeal it at the first opportunity, the Liberal National Party (LNP) Opposition supported the Act.

We suggest that, in addition to recommending State action on repeal, the Commission also consider the Federal Government's responsibilities and powers under the *Competition and Consumer Act 2010* (CCA).

We submit that it would be prudent for the Commonwealth to take all action necessary to confirm that authorisation⁴ is appropriate given the implications for national competition policy of a federal government endorsing state legislature enactment of anti-competitive legislation against the express recommendation of the state's own productivity commission. The Draft Report acknowledges the 1995 agreement between the Commonwealth and States that legislation restricting competition shall only be enacted where a public interest test confirms that the:

- benefits of the restriction to the community as a whole outweigh the costs; and
- objectives of the legislation or government policy can only be achieved by restricting competition.⁵

The Sugar Industry (Real Choice in Marketing) Amendment Bill failed this test when examined by the Queensland Productivity Commission (QPC) in November 2015⁶. The ensuing Act has not been subjected to any public interest test, despite imposing the same anti-competitive outcomes as the maligned Bill.

Therefore, we submit that the process set down by inter-government agreement to ensure consistent and uniform national competition policy has not been followed, and until it is followed, the Act represents a dangerous precedent for national competition policy.

We urge the Commission to recommend that the Federal Treasurer refer the Act to the National Competition Council (NCC) for advice as to whether anti-competitive provisions satisfy the public interest test. Should the NCC find that the public interest is not served, the Treasurer should consider regulating under s 51(1C) (f) of the CCA to exclude those provisions from authorisation. Such action would be consistent with principles agreed by the Commonwealth and States, would be supported by the Queensland Government and would assure the integrity of the CCA.

⁴ The Competition and Consumer Act allows an exemption or 'authorisation' by the Australian Competition and Consumer Commission where the public benefit from the arrangement outweighs the public detriment, including from any lessening of competition. This means that the businesses is covered by the authorisation are protected from legal action over the arrangements. States may claim Authorisation where certain conditions are satisfied.

⁵ Page 412

⁶ Queensland Productivity Commission, Decision RIS, Summary of Impacts and Preferred Option (p83): <http://www.qpc.qld.gov.au/files/uploads/2015/11/Sugar-RIS-FINAL.pdf>

2. About Wilmar International

Wilmar International Limited is Asia's leading agribusiness group. It was founded in 1991 and is headquartered in Singapore. Wilmar is ranked among the largest listed companies by market capitalisation on the Singapore Exchange.

Wilmar's business activities include oil palm cultivation, oilseed crushing, edible oils refining, sugar milling and refining, manufacturing of consumer products, specialty fats, oleochemicals, biodiesel and fertilisers as well as flour and rice milling. It has over 500 manufacturing plants globally and an extensive distribution network covering China, India, Indonesia and some 50 other countries.

3. Wilmar's investment in Australia

Wilmar International was encouraged to invest in the Australian sugar industry because it was a deregulated industry in a low sovereign risk jurisdiction with scope for further expansion and growth.

Wilmar has invested more than \$A2billion in the Australian sugar industry since 2010. This includes investments in eight Queensland mills, refineries in Queensland and Victoria, a bioethanol distillery in Queensland, and related businesses operating in Australia and New Zealand.

Wilmar's Australian operations directly contribute almost \$A1.5billion annually to the Australian economy, directly employ about 2,000 people, and manufacture almost 60% of Australia's raw sugar exports.

Wilmar's Australian investment at a glance

- 2010.....purchased Sucrogen from CSR (\$A1.75billion)
- 2011.....purchased Proserpine mill out of voluntary administration under grower ownership (\$A120million)
- 2015.....joint purchase of Goodman Fielder with First Pacific of Hong Kong (\$A1.4billion)
- 2010-16...capital expenditure on Australian businesses (\$A530million)

Wilmar's investment in Australia was impaired when the Queensland *Sugar Industry (Real Choice in Marketing) Amendment Act 2015*:

- stripped Wilmar of ownership rights in the majority of the sugar that it manufactures;
- deprived Wilmar of the opportunity to optimise returns from its investment; and
- imposed commercial burden on Wilmar (and other millers) that are not imposed on any other industry sector in Australia.

It is arguable that a Federal Government investment in the Queensland sugar industry has also been impaired by the Act. The Commonwealth committed \$444 million as part of a taxpayer funded transition package to assist the sugar industry move to a deregulated structure more than a decade ago. Gains made as a result of that investment have been eroded by the re-regulation of the industry.

4.1 The legislative path to re-regulation

On 19 May, 2015 Katter's Australian Party (KAP) tabled a Private Member's Bill in the Queensland Parliament.⁷ The Sugar Industry (Real Choice in Marketing) Amendment Bill (the Bill) sought to amend the *Sugar Industry Act 1999* (SIA) by introducing two key provisions:

1. **Grower Choice** (where cane growers were to be given the right to direct where the owner of a sugar mill would sell a proportion of its manufactured product); and
2. **Regulated pre-contract arbitration** (re-introducing widely condemned practices removed by agreement between mills, growers and governments as part of 2004 sugar industry reforms).

The Bill was drafted without milling sector consultation.

As it was a Private Member's Bill, the Queensland Parliament did not require KAP's legislation to be submitted to a Regulatory Impact Assessment prior to tabling. This was a requirement for Bills introduced by the Government. However, the Parliament did refer the Bill to its Agriculture and Environment Committee. That committee found 'significant and unresolved matters' regarding the Bill, including:

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

The Committee recommended that the Queensland Productivity Commission (QPC) assess regulatory impact prior to the second reading debate.⁸ The QPC released its Regulatory Impact Statement (RIS) on 26 November 2015.⁹ It concluded that:

- There was no evidence to support a case for market failure in the Queensland sugar industry.
- There was no evidence of abuse of market power.
- Benefits of additional regulation did not outweigh the costs, and the legislation:
 - would interfere with the property rights of millers;
 - could reduce overall returns to the sugar industry;
 - would add extra costs to the industry, particularly as a result of pre-contract arbitration;
 - authorised anti-competitive behaviour, and if the Australian government did not accept that there was a net benefit from the authorisation of this behaviour (which the QPC did not identify), parties may be exposed to action by the ACCC.

⁷ Private Member's Bill tabled by Shane Knuth MP https://www.legislation.qld.gov.au/Bills/55PDF/2015/SugarRealChoiceAmB15_P.pdf

⁸ Report No. 6, Agriculture and Environment Committee September 2015:
<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2015/5515T915.pdf>

⁹ Queensland Productivity Commission, Decision RIS, Summary of Impacts and Preferred Option (p83):
<http://www.qpc.qld.gov.au/files/uploads/2015/11/Sugar-RIS-FINAL.pdf>

Despite a lack of evidence that legislation was required, strong reservations expressed by a parliamentary committee and the QPC, KAP (with support from the Liberal National Party and two Independents) pushed the Bill through Parliament on 2 December 2015.

The Queensland Premier and Treasurer wrote immediately to the Federal Treasurer asking for action to be taken to override the State law under s 51(1C) (f) of the CCA. The Treasurer was urged to act in accordance with National Competition Policy agreements between the Commonwealth and States, and in particular the 1995 guiding principle that legislation should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
- (b) the objectives of the legislation can only be achieved by restricting competition.¹⁰

This principle had only recently been re-affirmed during the 2015 Harper Review.¹¹

Not only had the Sugar Industry (Real Choice in Marketing) Amendment Bill failed the public interest test when examined by the QPC in November 2015¹², the Act has yet to be subjected to the test.

When the Commonwealth and the States agreed to national competition principles in 1995, they signed a Conduct Code Agreement.¹³ This set out the process to be followed by governments in the event that legislation purporting to authorise anti-competitive activities was enacted. The Agreement reserved the right for the Commonwealth to validate authorisation by reference to the National Competition Council (NCC).

To date, the Treasurer has not exercised his discretion to refer the legislation to the NCC, even though a number of Federal Departments (including Treasury) have expressed concerns to Ministers about the negative implications for national interest. Other departments that have raised concerns include the Department of Agriculture (now the Department of Agriculture and Water Resources), the Department of Industry, Innovation and Science, and the Department of Foreign Affairs and Trade (DFAT).

Treasury and DFAT officers were questioned about their analysis of the Act during Senate Estimates hearings in 2016.¹⁴ A key point was DFAT's advice on whether the Act breached the Singapore Australia Free Trade Agreement (SAFTA). DFAT confirmed that if the Act expropriated Wilmar's property, it constituted a trigger for complaint under SAFTA.¹⁵

¹⁰ Competition Principles Agreement, 11 April 1995 5.(1) <https://www.coag.gov.au/node/52>

¹¹ Competition Policy Review 2015 (Harper Review) recommendation 8 (page 9):
http://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/Government%20response%20to%20the%20Competition%20Policy%20Review/Downloads/PDF/Govt_response_CPR.ashx

¹² Queensland Productivity Commission, Decision RIS, Summary of Impacts and Preferred Option (p83):
<http://www.qpc.qld.gov.au/files/uploads/2015/11/Sugar-RIS-FINAL.pdf>

¹³ Conduct Code Agreement: <http://ncc.ncc.gov.au/docs/Conduct%20Code%20Agreement%20amended.pdf>

¹⁴ Senate Foreign Affairs, Defence and Trade Legislation Committee (DFAT) 6 May 2016 :
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2F44f420d0-dc4a-458a-b401-ad02d938a599%2F0009%22>

Senate Economics Legislation Committee (Treasury) 6 May 2016 :
http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/b70c2618-6c93-4663-9c4a-26d392a8b0a4/toc_pdf/Economics%20Legislation%20Committee_2016_05_06_4415_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/b70c2618-6c93-4663-9c4a-26d392a8b0a4/0000%22

¹⁵ Mr Justin Brown (DFAT) to Senate Foreign Affairs, Defence and Trade Legislation Committee 11 February 2016

A DFAT officer told the Senate Foreign Affairs, Defence and Trade Legislation Committee on 25 February, 2016, that he was aware that there had been discussions within Treasury about: "...the issue of referral".¹⁶

We submit that as the Federal Treasurer to date has not referred the Act for review by the NCC as provided in the process agreed between the Commonwealth and states, the Act remains untested for compliance with national competition principles.

Failure to submit this Act to a public benefit test establishes a precedent that threatens consistent and uniform national competition policy. The consequences could be significant if the federal government is seen to endorse the enactment of anti-competitive legislation without regard to the public benefit, disregarding the conventions agreed with the states more than a decade ago.

We urge the Commission to recommend that the Treasurer refer the Act to the NCC as soon as possible, for advice as to whether its anti-competitive provisions are in the public interest, and therefore if authorisation is appropriate. Should the NCC find that the public interest is not served, we suggest that the Treasurer should use the existing powers to regulate under s 51(1C) (f) of the CCA to exclude the relevant anti-competitive provisions of the Act from authorisation.

We submit that such action would be consistent with the principles adopted by the Commonwealth and the states, and assure the integrity of the CCA authorisation process.

4.2 Wilmar's response to legislation

Despite the Act fundamentally changing the relationship between grower and miller and depriving both of opportunity to increase income, Wilmar has responded in a reasonable and commercially responsible manner, using best endeavours to comply, while managing commercial risk appropriately and prudently.

Wilmar was challenged to produce a set of agreements that reflected several legal and commercial relationships between growers, millers, marketers, and storage and handling providers - allowing these relationships to function in their own right, but also together as an effective and competitive supply chain for a complex industry operating in a volatile global commodity market.

Wilmar's mills in Sarina, Proserpine, Burdekin and Herbert regions are supplied with cane by about 1,500 growers under individual or collective agreements. It took six months of intensive drafting to develop a suite of agreements that complied with the legislation by providing 'grower choice', and yet was robust enough to accommodate all possible scenarios associated with the requirement to sell manufactured product at the direction of 1,500 growers to potentially numerous entities. This process resulted in Wilmar drafting more than 40 separate agreements and 60 schedules, at significant cost.

Wilmar is currently negotiating with growers and their representatives on 2017-19 Cane Supply Agreements that reflect the Act.

¹⁶ Mr Justin Brown (DFAT) to Senate Foreign Affairs, Defence and Trade Legislation Committee on 25 February, 2016: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2F997e222b-9e49-4a48-ae14-fc0acb482859%2F0002%22>

In keeping with the legislation's aim of creating a competitive marketing environment for Grower Economic Interest (GEI) Sugar, Wilmar's GEI marketing entity also developed a comprehensive, competitive offer for growers to consider.

Wilmar demonstrated commitment to fair dealing by offering to sell its sugar to all GEI Marketers, including the Wilmar GEI Marketer, on the same terms and at a price set by the global market (the prompt ICE#11 price) on the day of sale. Sales would be Free on Board (FOB) with title transferred upon payment in full.

It has been a commercially responsible approach to a challenging new operating environment. However, this has come at significant cost to Wilmar, and imposes burden on Wilmar, growers and their collectives.

5. Impact on investor confidence

The Act has created uncertainty for investors in the Queensland sugar industry.

The impact has been profound and immediate. Within a week of the Act becoming law, media reported an announcement by a foreign-owned milling company that it had put future capital investment 'on hold'.¹⁷

It is Wilmar's view that while the Act remains in force, more such decisions will be forced by investor uncertainty and new risks introduced under the Act and this will be to the financial disadvantage of growers, millers and the economy.

Wilmar has also put a hold on future investment because of the Act:

Example 1

Pol is the major index by which the market grades raw sugar. Wilmar's eight mills produce about 60% of Australia's raw sugar exports at JA (97.8pol) and Brand 1 (98.9pol) grade.¹⁸

The world's largest sugar producer – Brazil – manufactures VHP (Very High Pol) sugar at 99.3pol. VHP is more desired by many markets than lesser pol sugar.

For Wilmar to produce VHP, an investment in the tens of millions of dollars would be required.

The Act divides a mill owner's sugar production from cane supplied by each grower into separate 'Grower Economic Interest' and 'Miller Economic Interest' portions. However, the two portions are not manufactured separately. As a result, a mill owner would be required to make 100% of the investment to produce a higher quality sugar while only being able to receive the benefits from the sale of approximately one third of the sugar - approximately two thirds of the benefit from this investment will be automatically shared with growers.

In addition, under the Act, Wilmar may be required to sell its manufactured raw sugar to companies it competes with in the international market, on the direction of growers. This effectively means Wilmar could invest heavily in improvements only to be forced to share such improvements with its competitors.

We see little incentive while the Act is in force for Wilmar to make the capital investment necessary to produce higher Pol sugar and improve the market attractiveness of our product.

Example 2

Raw sugar storage facilities at the ports of Townsville and Lucinda are sufficient to store only half the production during a crushing season in the Herbert and Burdekin districts. As a result, stockpiles in the storage sheds have to be reduced during the crush to make room for new production. This means that the determinant of sales can be storage capacity rather than optimum price.

¹⁷ ABC Rural News 10 December 2015 <http://www.abc.net.au/news/2015-12-11/sugar-investment-shelved-by-millers-spooked-by-uncertainty/7020902>

¹⁸ Pol (Polarization) is the apparent sucrose content expressed as a mass percent measured by the optical rotation of polarized light passing through a sugar solution.

On 24 December 2015 - three weeks after the Act became law - Wilmar Sugar Australia suspended planning for a new \$A75million, 500,000 tonne storage facility for raw sugar produced in the Burdekin and Herbert districts. The facility was to be available for the 2018 season and would have improved the ability of marketers to achieve optimum prices.

A proposal was in hand from a leading international design and construction firm, and potential sites in Townsville and the Burdekin were being assessed. However, with the passing of the Act, it was decided that there was too much uncertainty around key business case assumptions to proceed.

As a courtesy, Wilmar informed the Queensland Government and the Federal Government of the decision on a confidential basis. However, because it remained uncertain whether the Federal Government would intervene immediately to overrule the Queensland legislation, no public statement was issued.

We have included with this submission a copy of the draft media release prepared on 24 December 2015, but not issued. Also attached are indicative illustrations of the storage facility that was under consideration.

Planning remains suspended indefinitely.

Example 3

Non-sugar revenue underpins the viability of Wilmar's raw sugar milling business. A loss of this revenue would put the ongoing viability of the mill business at risk.

In November 2015, days before the Bill was read for the second time in the Queensland Parliament, Canegrowers Chairman Paul Schembri and CEO Dan Galligan attended a meeting of the World Association of Beet and Cane Growers (WABCG) in London.

On their return, Australian Canegrower magazine reported on 7 December 2015 that: *'An international meeting of 33 sugarcane and beet farmer organisations has resolved to encourage negotiations towards payment mechanisms which give growers a share of the value of the whole crop'.*

The magazine continued: *'The WABCG says because of strong development of cogeneration and new uses of bagasse, the balance of the value sharing between grower and miller has shifted to the detriment of the grower'.*

On 5 May 2016, a collective representing growers supplying Wilmar mills lodged a claim for 66% of profits obtained by Wilmar from bagasse products, molasses and any new non-raw sugar products. It seems that the collective is arguing that grower economic interest creates entitlement to a 2/3rds share of profits from the sale of all products derived from cane during or in association with the manufacturing of raw sugar.

This is despite:

- legal ownership of cane transferring to the miller at delivery;
- the Cane Price Formula being a mechanism in the measurement of a notional price exposure in the sale of sugar rather than any right of ownership; and
- Wilmar investing hundreds of millions of dollars in generating this additional revenue to sustain the sugar milling operation.

Wilmar has invested heavily to develop renewable electricity generation production and is now Australia's largest producer of renewable electricity from biomass (bagasse) producing 197 megawatts to power its mills and also contribute 123 megawatts to the grid – enough electricity to power 60,000 homes.

The Act now provides an avenue for grower collectives to attempt using binding pre-contract arbitration to have a 2/3rds share of non-sugar profits included in new cane supply agreements. Wilmar is highly unlikely to make further investment in renewable energy production capacity or other non-sugar product diversification opportunities in its Australian mills while the binding pre-contract arbitration provisions under the Act remain in force.

Example 4

The only entity other than Wilmar to express interest in marketing Grower Economic Interest (GEI) sugar for Wilmar's 1,500 growers is the not-for-profit Queensland Sugar Limited (QSL).

The Act provides for mill owners to negotiate on-supply sales agreements with marketing entities. Wilmar has proposed reasonable commercial terms based on conventions in the global sugar market where 50 million tonnes of raw sugar is sold annually free on board (FOB) at the global market price (the ICE No. 11 raw sugar futures price) with title transferring when payment is made against shipping documents.

However, despite conceding that it could trade under Wilmar's terms and conditions if it wished, QSL remains unwilling to accept Wilmar's sales terms citing unspecified additional costs that it does not wish to incur.

QSL demands that Wilmar sell free in store (FIS), relinquish storage and quality control (despite exposure to sugar quality risk remaining with Wilmar while sugar remains in a comingled stockpile) and provide Wilmar systems, services and knowledge to support QSL's business operations at Wilmar's risk and for zero return.

Grower organisations are directing criticism through media and political patrons in an effort to pressure Wilmar into agreeing terms with QSL that are more generous than the global industry standard, that are prejudicial to Wilmar's ability to compete on its merits with QSL, and expose Wilmar to unreasonable commercial risk and legal liability.

The Act creates the very real prospect of Wilmar being forced or coerced to carry risk for QSL and its customers, or subsidising a competing marketer (QSL).

6. Industry prospects

It is Wilmar's opinion that the Australian sugar industry will not grow while the Act remains in force. It is a disincentive for investment, a deterrent to innovation and a competition policy travesty.

In April 2004, the Australian government announced the Sugar Industry Reform Program (SIRP) 2004 (with funding of \$A444.4m) in response to a 'crisis in Australia's sugar industry'.

The sugar industry and the Federal Government agreed that the industry would 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.

In addition to the SIRP 2004, the Queensland Government also contributed assistance up to \$A33m.

By 2005 it was apparent that the reform and restructuring promised in exchange for a \$500m investment by taxpayers was not occurring. A senior group of industry leaders including representatives of millers and growers was asked by the Federal Government to develop a strategic plan. The group reported in February 2006 that the obstacle to reform as, "...the historic response of the industry...to oppose deregulation"¹⁹

The Sugar Industry Oversight Group told the Federal Government in a unanimous report co-signed by Mr Alf Cristaudo (then Chairman of Canegrowers):²⁰

'...preservation of practices and delay in adoption of innovative approaches has impeded the industry's drive for international competitiveness. Some industry participants find it difficult to move away from past cultures. The industry requires a cultural shift to develop flexibility to respond to market forces and become self-reliant...

...Most of Australia's sugar industry has been legislated and regulated for almost 100 years, and this statutory regime is being dismantled relatively quickly. Many industry participants find it difficult to recognise the benefits of deregulation. As the Chairman of the Productivity Commission, Gary Banks, observed in 2005:

Structural reforms have long been recognised as economically desirable by most economists, but have faced strong political obstacles in all countries. This reflects the fact that many of the policies or regulations that have efficiency costs also have pronounced distributional effects. Reform (by definition) is intended to benefit the wider community. But in doing so it typically threatens the privileges or perceived entitlements of a minority, the members of which individually have more at stake – and thus more incentive to be politically active – than the often diffuse beneficiaries.

*Deregulation of the industry has removed the requirement for the representative organisations to obtain industry-specific legislative amendments to alter commercial activity through political patronage; nevertheless, traditional attitudes are difficult to change. Services provided by the representative organisations are likely to assume greater importance than lobbying in the future. The representative organisations will presumably be reviewing their appropriateness, efficiency and effectiveness in a market-responsive environment.*²¹

Appendix A: Wilmar draft media release dated 24 December 2015.

Appendix B: Drawings of proposed Wilmar storage facility; a picture of a sugar storage dome in Hungary using the same technology.

¹⁹ Sugar Industry Oversight Group Strategic Vision, 2006: http://www.agriculture.gov.au/SiteCollectionDocuments/ag-food/crops/sugar/sirp-2004/final_sugar_vision.pdf

²⁰ Ibid page 4

²¹ Ibid page 6

Appendix A

Wilmar Sugar

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24 December 2015

MEDIA STATEMENT

Wilmar Sugar Australia Shelves Plans for \$75m Storage Facility in North Queensland

The nation's largest sugar producer, Wilmar Sugar Australia, has shelved plans for a \$75 million export sugar storage facility in North Queensland.

The 500,000 tonne facility was planned to come into operation during the 2018 season.

Executive General Manager, Strategy and Business Development, Shayne Rutherford, said the decision to not proceed was regrettable, but unavoidable given the uncertainty created by legislation passed earlier this month by the Queensland Parliament to strip sugar millers of ownership rights over their investments.

"The current lack of storage capacity limits opportunities to take full advantage of market conditions in achieving the best possible price for our sugar," Mr Rutherford said.

"It is unfortunate that growers will pay the price for this 'bad' law.

"After receiving a proposal from a leading international design and construction organisation, we were moving ahead with planning for the storage facility and were at the point of deciding between sites in Townsville, the Herbert and the Burdekin," he said.

"However, until we understand the ramifications of this legislation – and we believe that could take some time – we would be unwise to proceed with any new capital investment in Australia".
Mr Rutherford said the Queensland legislation was yet to be examined by federal competition authorities such as the National Competition Council and the ACCC.

"Given the Queensland Productivity Commission found that these legislative changes were unwarranted, damaging and failed a public benefit test, we would expect the Federal Government is going to have little choice but to invalidate key provisions of the amended Act," he said.

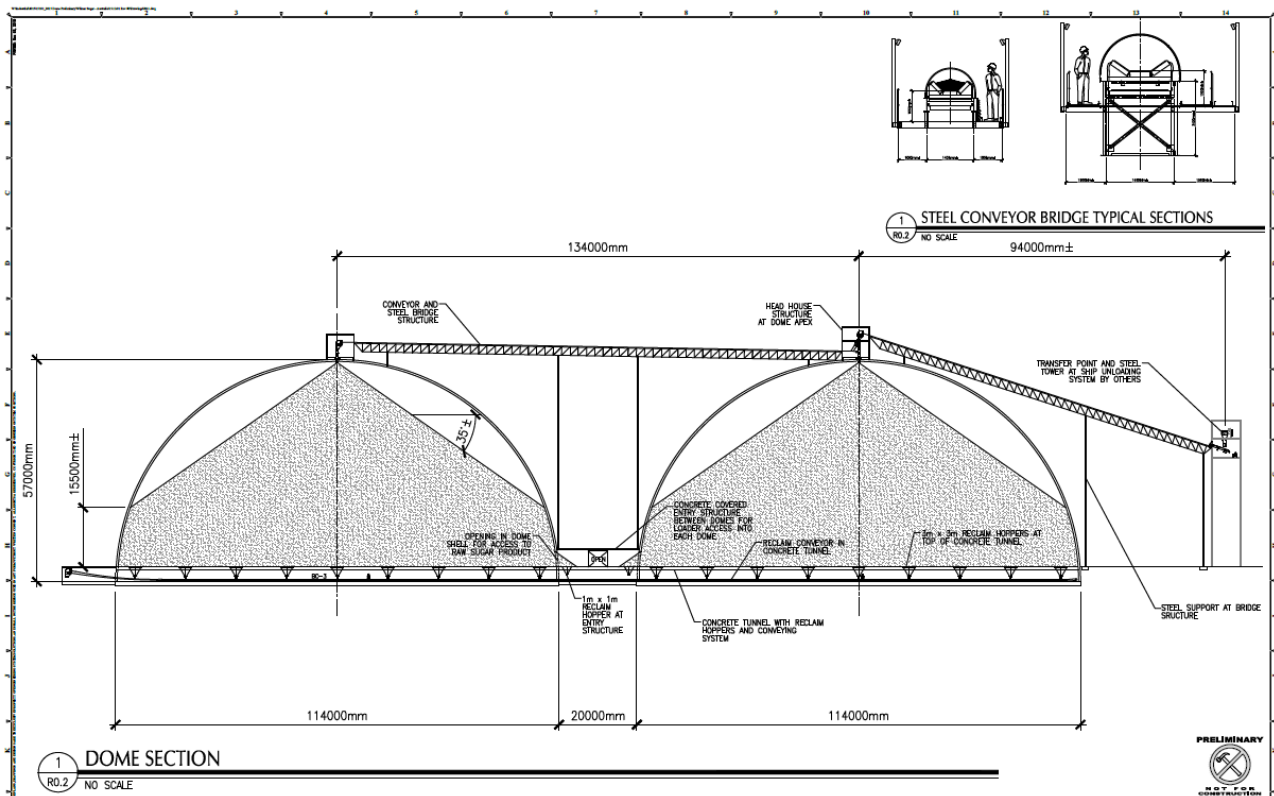
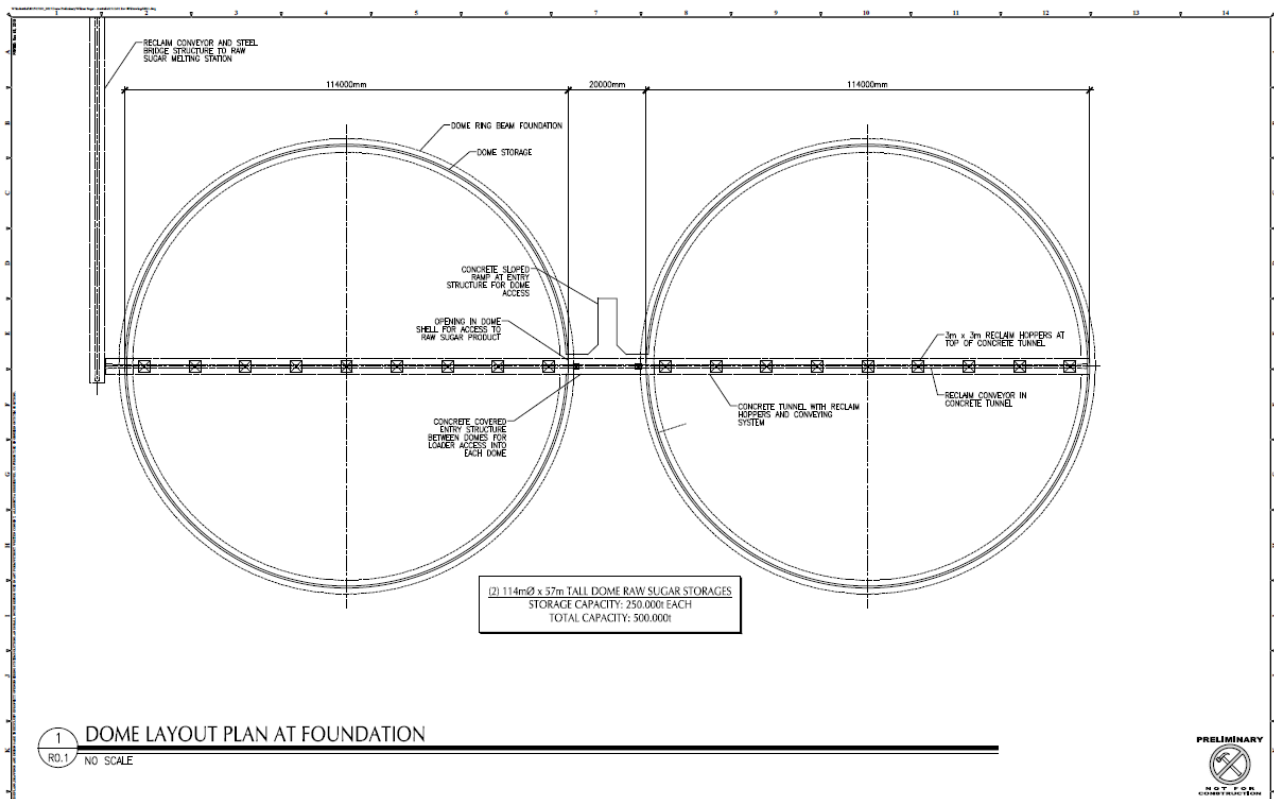
Wilmar Sugar Australia operates eight sugar mills in North Queensland with 1,500 cane suppliers. The company's raw sugar milling business employs 2,000 Australians and contributes \$1.5 billion annually to the national economy.

Wilmar International is one of the world's largest sugar producers and traders. Wilmar has invested over \$3 billion in Australia since 2010 when it purchased CSR's sugar business.

ENDS

ISSUED BY: Wilmar Sugar Australia Limited
CONTACT: Chris Stewart

Appendix B





A 60,000 tonne sugar storage dome in Hungary