

Agricultural Competitiveness White Paper Submission - IP398
Property Rights Australia
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Submission Agricultural Competitiveness
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Property Rights Australia Submission to Agricultural Competitiveness Issues Paper

Property Rights Australia was formed in 2003 to protect property rights of member enterprises and to assist landowners who had been unfairly prosecuted for vegetation management offences and to ensure that the State conducted itself as a model litigant. Since then our areas of interest have broadened as need dictated.

Terms of Reference

1. Ensuring food security in Australia and globally

- What opportunities exist to expand agricultural production in Australia and how can we take advantage of them?
- How can farm businesses, food manufacturers and the retail sector be more responsive to domestic and global food demand and better integrate into domestic and global supply chains?
- Do farmers have access to timely, relevant and accurate information to fully inform production decisions to meet domestic and global food demands?
- What opportunities exist for exporting Australian agricultural technology, marketing skills and expertise to improve global food security outcomes?

2. Farmer decisions for improving farm gate returns

- What are the drivers and constraints to farmers adopting alternative business structures, innovations or practices that will assist them in improving farm-gate returns?
- What tools, skills and advice do farmers need to effectively adapt and respond to the risks they face?
- What alternative actions or measures by governments, farmers or others would result in improved financial performance at the farm gate?
- What approaches could be used to encourage improved drought preparedness?
- During drought, what measures are most effective in supporting long term resilience?
- How can new farmers be attracted to agriculture and how can they succeed?

3. Enhancing access to finance

- How do we better attract private capital into farm investment?
- What examples are there of innovative financing models that could be used across the industry?
- What would encourage uptake of new financing models?
- What alternative business structures could be developed for farming that also retain ownership with farm families?
- How can foreign investment best contribute to the financing and productivity growth of Australian agriculture?

4. Increasing the competitiveness of the agricultural sector and its value chains

- How might existing laws and regulations be changed to address any market power imbalances in the agricultural supply chain, without limiting prospects for global-scale firms developing in Australia?
- How can the agriculture sector improve its competitiveness relative to other sectors in the economy?
- Which examples of overseas approaches to improving agricultural competitiveness have relevance for Australia?

5. Enhancing agriculture's contribution to regional communities

- What impact does the growth of populations in regional centres and the decline in more rural or remote townships have on farming businesses and the agriculture sector?
- How can the agriculture sector best contribute to growth in jobs and boost investment in regional communities, including indigenous communities?
- What community and policy responses are needed in rural and regional communities to adapt and change to new pressures and opportunities in the agriculture sector?
- How do we attract the next generation of farmers?

6. Improving the competitiveness of inputs to the supply chain

- How can land, water and other farm inputs be more effectively deployed to better drive agriculture sector productivity, while maintaining or enhancing the natural resource base?
- What skills including specialised skills and training, will be required in the future and how can these be delivered and uptake encouraged?
- How can we attract workers to agriculture – particularly in remote areas?
- How can we promote career pathways for the agriculture sector, including models to enable younger farm workers to gain broader industry experience?
- How can rural industries and governments better identify, prioritise and fund research, development and extension?
- What irrigation, transport, storage and distribution infrastructure are required to support the food and fibre production systems of the future and how should this be funded?

7. Reducing ineffective regulations

- How well do regulations affecting the industry meet their policy objectives?
- What opportunities are there to reduce ineffective or inefficient regulation?
- Which regulations are disproportionate to the risks they are supposed to address?
- How do we coordinate across governments to reduce regulations whose costs exceed their benefits?

8. Enhancing agricultural exports

- How can industries and government respond to the key challenges and opportunities to increase or enhance exports?
- How can the government take best advantage of multilateral and bilateral trade negotiations (including through the World Trade Organization and through free trade agreements (FTAs)) to advance the interests of the sector?
- How can engagement between industry and government on market access priorities for Australian agricultural products be improved, including to inform negotiations on FTAs?
- What changes could be made to biosecurity arrangements, both in Australia and in other countries, that would enhance global trade in agricultural products?
- How do we provide the appropriate biosecurity controls at minimum cost?

9. Assessing the effectiveness of incentives for investment and job creation

- How well is the current set of government programmes and incentives directed at the agriculture sector meeting their objectives, in terms of both effectiveness and efficiency?
- Are government visa arrangements and programmes like relocation assistance, the Seasonal Worker Programme and Harvest Labour Services effective at channelling workers into the agriculture sector and what other approaches should be considered?
- What have other countries done to inspire agricultural investment?
- What has Australia done in the past that has had best effect?

Introduction

Property Rights Australia acknowledges the decline in terms of trade for agricultural producers and the work done by others on that aspect of the paper. We believe that the playing field is anything but level and we cannot compete with the Powerhouse of the United States and other countries with whom we must compete and which have much lower costs of production and processing compared to Australia. In spite of Australia having historically low interest rates they are still much higher than our competing countries such as the US.

We will not however be covering that aspect in further detail.

We also acknowledge the part played by research, development and innovation in increasing productivity. We will also present some reasons why some intelligent and capable and farmers who have been leaders in their industry are unable to introduce such measures.

Terms of Reference

What are the drivers and constraints to farmers adopting alternative business structures, innovations or practices that will assist them in improving farm-gate returns?

What alternative actions or measures by governments, farmers or others would result in improved financial performance at the farm gate?

Constraints on Production-Environmental Laws

The effects of environmental laws on the agricultural sector cannot be overestimated. Estimates of cost to the agricultural community are very high. The NFF claimed costs in the order of \$8-9 billion but that was based on the value of Carbon sequestration, not foregone production.

At the Rockhampton Public Hearing for the Senate Inquiry into *Native vegetation laws, greenhouse gas abatement and climate change measures* on Friday, 9 April 2010, Senator Joyce gave an estimate of costs,

Senator JOYCE—*I might just assist Mr Cotter there, because it is handy to address the question. The number that was discussed was \$200 billion, and when we consider that the Labor Party was already heading, between the state governments, towards half a trillion dollars in debt, I was trying to work out exactly where we would be borrowing the money from for it. So you would probably have to change the legislation.*¹

The legislation has left many farm businesses financially and mentally devastated. Financially and emotionally distressed farmers who have little confidence in the predictability and profitability of their enterprise are unlikely to be researching innovative approaches. There are many pressures on farmers that are not strictly related to the decisions that they make for their enterprise.

At the Senate Inquiry into *Native vegetation laws, greenhouse gas abatement and climate change measures* hearing in Perth on 20th April, 2010 the observation was made,

Senator POLLEY—*I think it is fairly clear from the evidence we have had before us that there is what I would, in good grace, call an unforeseen impact of this legislation. I am not one of those politicians who control the climate or the rain or anything, but I do not think that people would have necessarily legislated to bring this sort of hardship.*²

It is not too much to say that some industries have lost their sense of self worth and confidence. The hardship is unresolved and ongoing. I wish to put on record that on 17th April, 2014, ten years after the Productivity Commission put on record that a very small percentage of the community was bearing the cost of community expectation with respect to vegetation management and four years after a Senate Inquiry acknowledged the same the hardship is, if anything even deeper. It is worse in some states than others.

Queensland was most affected in terms of hectares and there has been a great human cost. Recent sensible amendments have corrected many of the worst injustices, particularly those to do with the vandalism of our legal system but a few more changes need to be made.

¹http://www.pc.gov.au/_data/assets/pdf_file/0005/49235/native-vegetation.pdf

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²http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/12908/toc_pdf/7564-2.pdf;fileType=application/pdf#search=%22Native%20Vegetation%20Laws,%20Greenhouse%20Gas%20Abatement%20and%20Climate%20Change%22

However the human cost has been excessive in Western Australia where the laws still are unclear, uninterpretable, inaccurate, not based on science and are policed by an unregulated Department where there is no access to independent appeal. Decisions are made with no explanations or reasons given. Even being charged and found innocent does not stop the Department offering threats. Many of the processes are circular in nature or impossible to carry out. There appears to have been no regulatory impact assessment statements on social and economic impacts of various pieces of environmental legislation.

If property is acquired by government for public infrastructure all states have various Acts which govern the fair acquisition of land and the compensation paid which takes into consideration the involuntary nature of the acquisition, loss arising and disturbance. If the productivity of a piece of land is acquired for environmental or other services the same should apply.

Farmers whose productivity and land values are blighted do not have any such automatic entitlement. This situation needs to be rectified in full. The various governments of Australia owe the rural community billions of dollars. This has been taken from the individual farming and grazing families of Australia and no number of community projects will make up for it.

The 2004 Productivity Commission Report told us

As a consequence, the State of WA has been able to employ land-use planning, environmental and water and rivers laws that 'take' landholders' private rights to achieve perceived community benefits, without compensating them for their loss. Further, many of the resource management, and competition policy initiatives flowing from State/Federal agreements are interpreted by the States in a manner that seriously diminishes or removes private property rights.³ Submission 91

The Senate Inquiry heard from Craig Underwood that,

Probably the worst weeping sore in the side of successive Western Australian governments has been the case of Brian Burns at Jerramungup. That man has 6,000 acres down there, and I think he is allowed to use two acres for extractive industries for the local government. He has been to the Ombudsman and all over the place.⁴

The 2004 Productivity Commission Report of the Inquiry into Impacts of *Native Vegetation and Biodiversity Regulation*⁵ dealt with this occurrence at length and made recommendations that that portion of the rural community that bore the burden of the wider community expectations should be compensated. This was a constant theme of the commission report. Also reported was that the aims of the legislation had not been clearly defined so it was not clear whether those objectives had been achieved. Some measures, the Commission concluded were counter-productive. That report has been gathering dust as has the Senate Inquiry and both should be revisited.

Many of the intemperate economic "dry" arguments from various sources outside, and with scant knowledge of, the agricultural community about poor management, excess debt and failure to prepare for risk such as drought fail to recognise that they are actually legacy effects from this uncompensated environmental legislation.

³http://www.pc.gov.au/data/assets/pdf_file/0005/49235/native-vegetation.pdf

⁴http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/12908/toc_pdf/7564-2.pdf;fileType=application/pdf#search=%22Native%20Vegetation%20Laws,%20Greenhouse%20Gas%20Abatement%20and%20Climate%20Change%22 p34

⁵http://www.pc.gov.au/data/assets/pdf_file/0005/49235/native-vegetation.pdf

The enormity of environmental regulation cannot be overstated. Some properties have been bankrupted. Many have incurred extra debt acquiring an already developed property as their home property was stopped by regulation from further development.

A whole doctoral thesis could be written on the injustices of the enforcement of laws around environmental legislation. These range from ingrained legal rights which were removed in the writing of the legislation⁶ to the poor, often illegal, policing of the laws by officers with too much power and too few restraints. In some states just trying to get clarification of what is and is not permissible seems to be very difficult which puts an inordinate amount of power in the hands of public servants. Some jurisdictions seem to have had an undeclared moratorium on tree clearing so that landowners continued to go to the expense of hiring consultants and applying for permits not knowing that they would be automatically knocked back. Appeal processes are often inadequate or non-existent. The imposition of “civil penalties” or constraints, many of which are very high value without any appeals process is particularly iniquitous.

In Queensland under the Vegetation Management Act departmental staff can still order a restoration notice which attaches to a title deed. They can be expensive or impossible to implement. All that is required is the suspicion of a crime having been committed There is no right of appeal.

Many people who challenged environmental charges were found by the Court to be innocent but these sorts of challenges were not without cost. It often took up to six or seven years in Court, many hundreds of thousands of dollars, stress, clinical depression and suicidal tendencies. These circumstances are ongoing. Some attempts have been made to rectify the situation but they are insufficient. Lack of access to appeals to an appropriate authority is always a running sore.

Craig Underwood told the Senate Inquiry,

*You wonder why farmers cringe or threaten agency people when they come anywhere near their land and demand access to it. It is because they well know that they will enter a five-year or longer legislative risk area and probably come out of it very badly and probably lose a rather large percentage of their life savings in defending their accusations—only to be found not guilty and yet still have a vegetation conservation list on the whole property, not just the area in question.*⁷

Mr. Underwood continued,

*Consider what a criminal conviction is. I know of a 72-year-old farmer in the eastern wheat belt who was prosecuted for clearing rock poison from his bush because it was killing his breeding ewes. It was regrowth. It just happened to be on a property that he bought that was over 10 years old. This man has been prosecuted and found guilty and now has a criminal conviction. If he wants to fly to the US or UK or anywhere in the world, he will not get entry unless he has a sponsor, because they do not like criminals around the world these days.*⁸

In many states cases are brought to court which had no chance of success and could have been easily resolved in the early stages but have gone on and cost farmers hundreds of thousands of dollars each. One such case is that of Peter Swift⁹ who repeatedly told the Department and provided photographs in an attempt to prove that any clearing on his property occurred before he bought the place. With expert evidence in Court he was found “not guilty” in late 2013.

⁶<http://www.samuelgriffith.org.au/papers/html/volume17/v17chap2.html> http://www.pc.gov.au/data/assets/pdf_file/0005/49235/native-vegetation.pdf Constitutional Vandalism under Green Cover

⁷ http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/12908/toc_pdf/7564-2.pdf;fileType=application/pdf#search=%22Native%20Vegetation%20Laws,%20Greenhouse%20Gas%20Abatement%20and%20Climate%20Change%22 p37

⁸ Ibid. P38

Mr. Swift has been financially and emotionally devastated by this Court Case which could have been easily resolved with some routine checking by a Department whose goal seems to be to put as many people as possible out of business.

Various Inquiries including by the Productivity Commission 2004 and a Senate Inquiry April, 2010 have analysed the effects. ABARE has done a study, various State Governments and legal academics have done studies or critiques, many Magistrates have criticised the legislation in court. All detailed the very predictable effects of the legislation but there were also a great many unintended consequences, many of which have not been corrected in ten years or more.

The Productivity Commission Report, *Impacts of Native Vegetation and Biodiversity Regulation*,¹⁰ made a number of findings and recommendations, one of which has been that a very small percentage of the population should not be expected to bear the full cost of community environmental expectations. This was a constant theme of the commission report. Also reported was that the aims of the legislation had not been clearly defined so it was not clear whether those objectives had been achieved. Some measures, the Commission concluded were counter-productive. Among a range of effects of the legislation the Productivity Commission detailed some remarks to effects on productivity”

Finding 3.2

In most jurisdictions, there has been limited assessment of the likely economic and social costs of native vegetation and biodiversity regulatory regimes, while the benefits of the regimes appear to be taken as self-evident.¹¹

FINDING 6.1

Native vegetation and biodiversity regulations have adversely affected the returns of many landholders by imposing a range of restrictions on farm practices, including:

☐☐limiting the opportunities to expand or reconfigure the area of productive land;

☐☐restricting the ability to maintain the amount of productive land on a property;

☐☐inhibiting the introduction of new technologies;

☐☐restricting or preventing changes in land use; and

☐☐inhibiting a range of normal farm practices such as thinning vegetation, rotating (fallowing) parts of the property, clearing around fencelines and managing pest animals and weeds.¹²

FINDING 6.2

Native vegetation and biodiversity regulations have reduced the values of properties on which the income-earning potential has fallen because permission to clear native vegetation has been refused, or because there is uncertainty about the future ability to clear.

FINDING 6.3

All else equal, reductions in property income-earning potential, and consequent declines in owner equity, mean that landholders restricted from clearing areas of native vegetation on their properties are less able to obtain finance or face higher interest rates

⁹ IN THE MANJIMUP MAGISTRATES COURT, SITTINGS COMMENCING 6 December 2012, BEFORE MAGISTRATE HAMILTON, PROSECUTION NOTICE MJ 92/12, DEPARTMENT ENVIRONMENT AND CONSERVATION-v-PETER ROBERT SWIFT

http://www.propertyrightsaustralia.org/documents/1397690029_microsoft_word_-_swift_final_2_2_.pdf

¹⁰ http://www.pc.gov.au/data/assets/pdf_file/0005/49235/native-vegetation.pdf

¹¹ http://www.pc.gov.au/data/assets/pdf_file/0005/49235/native-vegetation.pdf p48

¹² Ibid. P 52

FINDING 6.4

Those landholders most severely affected by the regulations have often suffered serious personal stress in the face of the resultant marginal viability, or even loss, of their property.¹³

FINDING 6.7

Government measures to mitigate negative impacts of the regulations on landholders have been limited and have not been available to all affected landholders. Any payments typically cover only a small portion of the negative impacts of the regulations.¹⁴

FINDING 9.8

Achievement of environmental goals may be undermined if landholders regard regulations as imposing an unfair burden on them and governments neither compensate for regulatory takings, nor assume responsibility for effective management of protected remnants on private land.¹⁵

International Environmental Organisations

The government will lose control of sovereignty of environmental laws if ENGO's have entry to sustainability programs. Primary producers who wish to stay free of ENGO influence need the government to state confidently and often that it has faith in existing law.

WWF through its Global Roundtable for Sustainable Beef (GRSB), part of their Market Transformation Initiative with the support of Cattle Council of Australia (CCA), is making a push into the Australian beef industry.

Very little research of the way this organisation operates globally and operates in concert with other environmental organisations has been done by the supporters of the scheme.

The clearest analysis of the birth of these schemes and how they seek to influence consumer preference is outlined in *Naked extortion? Environmental NGOs imposing [in] voluntary regulations on consumers and business.*¹⁶

All of the arguments from claims that it will be voluntary, our largest customer wants it and consumers want it are Trojan horses. The biggest Trojan horse of all is that if we need to prove sustainability we have no choice but to go with GRSB as if there is no other way. This is clearly not the case.

JB Swift, one of the members of GRSB has its own demons to slay as do many of the other businesses involved.

Do we surrender sovereignty as in the Brazilian situation where Greenpeace (yes Greenpeace not the Brazilian Government) is auditing who is a "legal" farmers and may sell to JB Swift? How do farmers caught in this "legal" or "illegal" judgment by Greenpeace appeal their situation? Greenpeace are playing their part of "bad cop" driving these suppliers to the "more moderate" WWF. Never doubt that they work in concert.¹⁷ Is this the situation that we want to see here?¹⁸

¹³ http://www.pc.gov.au/data/assets/pdf_file/0005/49235/native-vegetation.pdf

pps 51-52

¹⁴ Ibid. P53

¹⁵ Ibid. P57

¹⁶ <http://www.ipa.org.au/sectors/food-environment/publication/1918/naked-extortion-environmental-ngos-imposing-involuntary-regulations-on-consumers-and-business>

¹⁷ <http://nofrackingconsensus.com/2013/12/02/independent-greenpeace-never-mind/>

¹⁸ <http://www.meatingplace.com/Industry/News/Details/49289>

Now that the principles and Criteria for sustainability have been released by the GRSB one wonders how well thought out support for the approach has been. To take just one example, one of the requirements is that " *Deforestation from cattle expansion is minimised and eventually eliminated throughout all phases of the production system.*"

My question is, how is this to be determined? Does GRSB, WWF or Greenpeace get access to satellite imagery? Do any of the aforementioned organisations get copies of any application to clear either for livestock or to grow crops that may eventually feed livestock? Do they gain the power to determine the areas of regrowth that you may have cleared under category X on a PMAV for example? The Government using satellites to determine whether we should be charged with an environmental offence was bad enough but we will acknowledge their right to do it according to law. Non-government organisations using such information for their own purposes is unacceptable.

It is not just a matter of ticking boxes and signing up. The GRSB program provides for continuous improvement which will mean it is an ever changing set of circumstances. This is a multi headed beast which will become uncontrollable. In spite of claims to the contrary, WWF is firmly in control of the GRSB. If they gain the position of being the driver of a beef sustainability program it will also see an increase in their influence elsewhere. There will be more influence over government to introduce laws at their behest. We have already experienced the disastrous consequences of WWF inspired laws and they have been disastrous.

If anyone thinks that WWF is not in control of GRSB and other sustainability programs in its stable, that it doesn't intend to add others such as water, that is about democracy and free choice or that it thinks farmers are anything more than peasants should watch [this short video](#).

<https://www.youtube.com/watch?v=55QhU5tJPIg>

or this slightly longer one

<https://www.youtube.com/watch?v=XwbpRnuXYN8>

Already in the press gained by the GRSB we have seen a suggestion that it could be a vehicle for extension, a not inconceivable position considering the vacuum left by the gutting of the State Departments of Agriculture whose very useful tasks of research, development and extension have been replaced by environmental policing.

Already NGO's have our productive grasses on their list of undesirable plants. This includes sorghum. They recognise native plants as the only desirable plants.

Property Rights Australia finds it distressing that global companies such as McDonalds, JB Swift and Cargill who rely on the security of their company property rights in order to function effectively as a business wants to turn us and our businesses over to organisations who have no regard whatsoever of private property rights and indeed, democratic rights.

Recommendation

Property Rights Australia recommends that the Government as a first world sovereign government, takes charge of our ability to show sustainability and certify it if necessary under Australian laws both present and future. Any regulation must be applied according to science and not at the simple behest of unrepresentative green organisations. Note that many existing regulations are not applied on a fair or scientific basis.

Mining

Mining has proven to be a more severe constraint on production than anyone could have predicted. RIRDC has predicted in its paper *Principles for Negotiating Appropriate Co-existence Arrangements for Agricultural Landholders*¹⁹

Negotiation will take significant time. Previous experience has shown that negotiations for a single property can take up to 500 hours, with over 100 hours directly interacting with the new land use proponent in the first 6 months.

6. Comprehensive documentation is required throughout the negotiation process, including proposals and personnel change and information that may be provided by the new land use proponent e.g. in one situation six sites on a property that were initially discussed ended up being 42.

Five hundred hours for a single negotiation is a significant time impost for a single negotiation. It is rumoured that some landowners are dealing with up to 13 companies and I certainly know some who are dealing with up to 9 between coal, CSG and various infrastructure companies. Companies are not averse to wasting landowner time with an apparent aim of frustrating them so that they will sign whatever is put in front of them because they are sick of neglecting their businesses and just want it over. Companies are not inclined to want to pay for this time.

A range of on farm inefficiencies caused by resources companies are also a recurring feature. These include but are not limited to gates left open, fences cut, livestock injured or killed, crops damaged, weeds spread, unauthorised use of on farm water facilities, chemical contamination and garbage which can end up inside or around livestock. Chemical and biosecurity issues are becoming more and more significant.

With recent advice that livestock producers are liable for chemical contamination which they did not cause and may have been unaware of brings this to a new level of seriousness.

With all these external activities calling on producer's time it is almost impossible to carry out routine management to the usual standard much less be researching and introducing innovative production techniques.

The concurrent stressors on farming families are making it almost impossible for some to carry on. One which rankles and has been unacknowledged by Cattle Council is the live export ban to Indonesia. A search of their media releases and public statements yields not one mention of it. I would like to know what their agenda is in not mentioning it as a contributor to the low cattle prices through 2013 along with drought. Perhaps they think that simple is good. Simplistic is even better.

There is also a barrier to committing to capital expenditure on a property which has a mining tenement over it when one has no idea of timeframes and when or if a property will be mined. It also makes a property virtually unsalable during this timeframe.

Another significant influence on production and productivity is the amount of good quality agricultural land in the ownership of mineral or petroleum companies that is under utilised to its productive capacity with weeds & pests allowed to flourish and continually cross into the land of neighbouring farmers then to become a direct cost upon them.

¹⁹<http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&sqi=2&ved=0CD0QFjAC&url=http%3A%2F%2Fwww.mla.com.au%2Ffiles%2Fabb141e1-cd9a-4065-a770-a19d00e075b3%2FPrinciples-for-negotiating-appropriate-co-existence-arrangements-for-ag-landholders-April-2013.pdf&ei=qmZHU5z5EInXkgWXoYC4Dw&usg=AFQjCNHBvKRMn1CfTXGU4k-Hd8m4dvwXIA&sig2=L6dNW-MdX3D5I5R79Dvrsg&bvm=bv.64542518,d.dGI>

There is a lot of land that has been purchased for mining or petroleum leases but the project has not gone ahead such in the case of the Xstrata Wandoan coal mine. Coal seam gas companies have purchased properties and even though they may lease out some of these areas the land is not used to its former potential as any farm production is just a secondary use.

See Attachment A for a case study

Competition Policy

Terms of Reference

4. Increasing the competitiveness of the agricultural sector and its value chains

- *How might existing laws and regulations be changed to address any market power imbalances in the agricultural supply chain, without limiting prospects for global-scale firms developing in Australia?*
- *How can the agriculture sector improve its competitiveness relative to other sectors in the economy?*
- *Which examples of overseas approaches to improving agricultural competitiveness have relevance for Australia?*

Competition Policy as practised by successive governments since the Hilmer Report has been disastrous for agriculture. Our area of most expertise would be the beef industry but the dairy industry has also seen many go out of business and processors shut down or taken over..

I am sure that at some distant time in the past there were economists who recognised that a price taking market (more sellers than buyers) would eventually implode.

The ever increasing drive for more productivity and lower prices behind the farm gate inevitably has an end point beyond which there are no significant gains to be made and industry rundown at all levels occurs.

Fashionable Market Theory has made government blind to this occurrence in spite of a plethora of evidence. It has long been obvious that farm debt has been rising exponentially; Debt against value of production is becoming more and more unfavourable. Farmers have been subsidising poor farm gate prices with increased debt, off farm asset sales, poor standard of living and foregone superannuation provisions. There is dependence on off farm income.

Many of the industry paradigms which are still being promulgated have proven to be wrong in the long term. Bigger is not necessarily better or more efficient. Our largest listed agricultural company AACo. has made more losses than profits.

Farming and grazing properties on the market are not readily finding buyers, particularly in Northern Australia with many not selling in over a year.

One of the most confusing claims was that profit is not dependent on price. There comes a point when that is just not tenable. The claim is made that 20% of beef producers are profitable in spite of low prices. These measures are however before interest and tax and is based on a rolling group. This is not a realistic picture of the reality of the beef industry. Debt is the norm.

Twenty percent profit pre EBITA does not make an industry. Nor does dependence on off-farm income or assets. Those should be for the benefit of the owners of the business, not to allow the livestock portion of the supply chain to be squeezed to insolvency for the benefit of multinational companies who have tax minimisation avenues open to them.

It is obvious that even though 'The Industry' may be doing well it does not necessarily mean that is passed on behind the farm gate.

Consolidation of processing works and supermarkets has continued unabated with acquisitions and their affect on competition adjudged only locally without any account taken of the overall market power that is being amassed and in some cases misused. This is evident in all the takeovers of meat processing works and supermarket takeovers that have been investigated by the ACCC.

The acquisition of Rockdale feedlot and abattoirs in Yanco is a typical example²⁰

Mergers have unilateral effects when they remove or weaken competitive constraints in such a way that the merged entity's unilateral market power is increased.

*That is, as a result of the merger the merged entity finds it profitable to raise prices (or in the case of the market for the acquisition of feeder cattle, reduce the price it pays), reduce output or otherwise exercise market power it has gained, and can do so without any change in the nature of other market participants conduct.*²¹

The ACCC obviously does know that the dominance of a market gives a firm a great deal of market power but seems to rarely reject a merger on that basis and gives weight only to local markets.

The ACCC evaluation of the Yanco/ Swift feedlot and processing facility eventually gave weight only to local competitive factors and although it recognises the possibility of misuse of market power it does not appear to have advised against any mergers of processors of agricultural product on these grounds.

The Yanco/Swift report considered the local competition sufficient and recommended in favour of merger,

Competition from other abattoirs

76. Post acquisition, the merged entity will own two large export accredited cold bone abattoirs in the relevant market, giving it the highest fat cattle slaughter capacity in that region. It was found that the merger parties were active in the acquisition of fat cattle for both export (heavier beasts) and domestic uses (lighter beasts).

*77. However, market enquiries indicated that the combination of other large export accredited cold bone abattoirs and non-export accredited domestic facilities within Victoria and southern/central NSW would continue to provide an effective competitive constraint on the merged entity post-acquisition.*²²

With a handful of processors having more than 50% of the market it is obvious to all of us that they can set prices paid for livestock. It is a moot question when or how much of the benefits of the Japan free trade agreement will be passed on to producers.

The ACCC's failure to take into account the cumulative effects of market power on an industry has cost farmers greatly. If legislation is required for total market power to be a major consideration in the deliberations of the ACCC the ACC Act should be amended immediately.

In the Teys/Cargill merger the ACCC made similar deliberations and came to similar conclusions. The ACCC also found that there was excess processing capacity. This sits uncomfortably with a livestock sector which has not for many years had at least some weeks where the price grids are marked "for those with space only." For 2014 one needs to have space booked to June. If this has eased it is only as the result of rain.

PRA would like to see a specialist desk within the ACCC staffed by people who have a better than average knowledge of price taking markets and feature some of the best aspects and locally relevant sections of the Packers and Stockyard Act and enforced with the attitude of Grain Inspection, Packers and Stockyards Administration (GIPSA) whose mission statement is

*"To protect fair trade practices, financial integrity, and competitive markets for livestock, meats, and poultry."*²³

²⁰<http://registers.accc.gov.au/content/item.phtml?itemId=952455&nodeId=b4e6bc5147d59fcc498341cd5dcd5e3b&fn=Swift%20Australia%20Pty%20Ltd%20-%20proposed%20acquisition%20of%20Rockdale%20Beef%20Pty%20Ltd-%2019%20October%202010%20-%20Beef%20processing.PDF>

²¹ Ibid. p10

²² Ibid. P13

²³ http://www.gipsa.usda.gov/Lawsandregs/PS_act.pdf

In the US investigations into anti competitive behaviour are often investigated with the assistance of the FBI which is in stark contrast to here where the ACCC seems to have no strong investigatory powers and relies on complaints from those within the industry. This situation needs to change
The US also has a much greater requirement for disclosure which is enforced by law. Using up to date information there are easily available and timely cutout values and livestock/wholesale and wholesale/retail price spreads.

ACCC and dairy

Property Rights Australia is disgusted that after the devastation caused to the dairy industry both at the processing level and the farmgate level, Coles has been able to get away with [a court enforceable undertaking](#) and no fine for deceptive and misleading conduct which should be in the tens of millions of dollars to reflect the damage done to the industry.

The dairy industry asked the ACCC for help in managing the Coles \$1/litre milk problem and came away with nothing. That situation needs to change. Manipulation of any of our primary industries, often followed by a fire sale of assets is unacceptable and requires immediate action.

There seems to be a structural problem whereby our industries can be severely weakened by the intemperate actions of government, large NGO's or dominant companies and portions are then up for sale at prices which do not reflect the underlying strength of the industry and with no apparent economic weakness in 'the industry' such as lack of demand which would usually signal a sunset industry. Government action is needed to get rid of these anomalies and it will require stronger legislation and dedicated investigatory powers.

The ACC Act needs a major overhaul so that penalties are substantial and related to the damage that is often caused by the actions of monopoly/ duopsony companies.

Secondary Boycott and Third Line Forcing Provisions

The ACC Act has long held exemptions from the secondary boycott and third line forcing provisions of the Act for environmental groups. The secondary boycott exemptions of the Act are what allowed such devastation of the Tasmanian forest industry with bankruptcies, loss of contracts, loss of jobs and much more. The most public of these was the demise of Gunns and the loss of a contract for timber veneer at the velodrome at the London Olympics as a result of the actions of environmental groups.

If this provision is not repealed there will be other vulnerable primary industries which are manipulated and weakened in similar fashion.

Recommendations

Property Rights Australia recommends an overhaul of the ACC Act.

We recommend the creation of a dedicated rural desk on a full time basis with personnel who understand the implications of a price taking market and whose job it is to protect those who are subject to such a market. This would include investigating and instituting those aspects of the US Packers and Stockyard Act which may be relevant to Australia, the publishing of the retail cutout values and the farm to wholesale and wholesale to retail price spreads on a basis regular enough to be useful.

PRA recommends the repeal of exemptions for environmental groups against secondary boycott and third line forcing provisions of the ACC Act. Many of those affected by those provisions are corporations but many are small businesses and individuals who do not have the resources to fight the misinformation spread by the well funded and well resourced environmental groups. Even when the affected bodies are corporations it can impact on individuals who lose their jobs. The Tasmanian forest industry is a typical example of the damage these laws can do.

Term of Reference

What alternative actions or measures by governments, farmers or others would result in improved financial performance at the farm gate?

Most farmers take part in a program of continuous improvement when time seasons and finances allow. Interference from external factors such as having to deal with resources or infrastructure companies severely impacts this iterative process.

However, on farm investments and innovations need to have a commercial percentage of return and many do not.

Mostly, price and therefore profitability is easily manipulated and this is a matter for government to address. Sovereign risk has become a feature of the Australian landscape and is not acceptable in a first world country. The most obvious example of this is the live cattle export ban to Indonesia.

Of equal significance is the impact of environmental law on individual farmers. This is even more insidious in States where the regulations are not transparent, there is no access to a proper appeals process and where policing is done in a vindictive manner rather than a search for justice.

Term of Reference

What approaches could be used to encourage improved drought preparedness?

Term of Reference

How do we attract the next generation of farmers

Farm profitability would be the best measure for both of these terms of reference. The reason this drought has been felt so keenly is because there have been lengthy periods of no or low profitability.

Schemes where there is dollar for dollar farmer and government funding has only exacerbated the debt situation.

Once there are adequate water and watering points the most effective drought strategy is to have cash at the bank although one must question the wisdom of spending it on factors of production when an industry is not a profitable one.

Term of Reference

How can new farmers be attracted to agriculture and how can they succeed?

If farming were profitable the problem would solve itself. Encouraging anyone into an unprofitable industry is fraud. Serial decisions of government have served to make agriculture unprofitable and we have all but trashed the intergenerational knowledge held by our present farmers.

We do a very bad job of explaining ourselves when we speak of generations on a farm.

Most who are unfamiliar with the industry immediately think "entitlement" and this has been verbalised by the Treasurer.

What is actually meant is that generations have spent every day from babyhood walking outside and observing, the weather, the seasons, the clouds, the soil the animals and all the interactions between them that mean they know when to plant, what to plant and how livestock will do.

If any dry economist sitting behind a desk thinks that the skills are taught in Agricultural College or that they are easily learnt they had better think again.

Terms of Reference

3. Enhancing access to finance

- How do we better attract private capital into farm investment?
- What examples are there of innovative financing models that could be used across the industry?
- What would encourage uptake of new financing models?
- What alternative business structures could be developed for farming that also retain ownership with farm families?
- How can foreign investment best contribute to the financing and productivity growth of Australian agriculture?

As with many of the terms of reference, whether it be attracting personnel or finance, profitability is the answer to the problem. However, foreign investment tends to be at the processing or wholesale level and having them in the market as large and dominant is just destroying primary industry in the face of ineffective anti-trust and anti-monopoly laws. If foreign investment is approved then the investors need to comply with all the conditions of local businesses with no favour or loosening of laws or access to greater resources. Primary producers are increasingly feeling that they are simply the peasants who are meant to turn out production in spite of personal hardship while at the same time providing increasingly demanded environmental services. No studies have ever been done to compare the standard of living of farming families with the wider population.

The Reserve Bank Development Board proposal showed promise and the proposal as presented had some anti-trust powers.

Terms of Reference

7. Reducing ineffective regulations

- How well do regulations affecting the industry meet their policy objectives?
- What opportunities are there to reduce ineffective or inefficient regulation?
- Which regulations are disproportionate to the risks they are supposed to address?
- How do we coordinate across governments to reduce regulations whose costs exceed their benefits?

The vegetation management legislation is not achieving all of its stated objectives because they are not universally based on science.

Regulations which prevent the economic treatment of encroachment of woody vegetation such as the unproductive turkey bush are counterproductive and do not preserve a pristine environment. They also are contrary to the Queensland Land Act which requires lessees to keep their leases free of woody vegetation.

There are a range of other ecosystem types which are encroaching upon or encroached upon as outlined by Dr. Bill Burrows FTSE in his essay *Bushland at risk of continued tree and shrub thickening in Queensland*

Some holdings (e.g. balloted Brigalow blocks) were simply not viable as an agricultural enterprise, unless cleared when first taken up. Many other land types were, and remain, subject to increased "thickening" of the over-storey or sub-canopy tree and shrub cover, or both, over time. Likewise trees are actively encroaching on some native grasslands. Examples of this changing structure and composition of the vegetation include mulga thickening in country east of the Warrego River, gidgee encroachment onto Mitchell grasslands, increased eucalypt cover in the Desert Uplands and Central Highlands/Burdekin Catchment and tea tree invasion of grasslands in Cape York. Even National Parks and reserves abutting grazing land are subject to ongoing tree thickening e.g. the disappearing grassy balds of the Bunya Mountains, acacias invading grasslands on Moorinya N.P. and rainforest invading wet sclerophyll forest in the wet tropics.²⁴

States that regard livestock grazing as illegal clearing are ignoring the fact that it is the deforestation that is regarded as the greatest threat to the environment, not the livestock themselves.

Noble cause corruption is also an unaddressed issue.

From our original case where Ashley and Doris McKay, who had a legal permit to clear to more modern cases there is a pattern of charging people against whom it should have been obvious during preliminary investigations that no case could be made.

There is a list of these people who should never have been charged but they nevertheless typically spent years in court, spent hundreds of thousands of dollars and a great deal of emotional stress. In one case the Magistrate repeatedly asked for the Certified Vegetation Map which pertained to the time when the offence was alleged to have been committed. More than one dozen maps later they had still not produced the correct map. One suspects that that was

²⁴ http://www.propertyrightsaustralia.org/documents/1369869440_bush_clearing_2013_dr_bill_burrows.pdf

Bushland at risk of continued tree and shrub thickening in Queensland, Dr Bill Burrows FTSE, 2013

Pages 1-2

because the vegetation that was cleared was vegetation that it was not illegal to clear (white on the map). Typically maps have often been produced for the purposes of prosecution rather than the correct Certified Vegetation Map pertaining to the relevant timeframe. This often flew under the radar of both defence counsel who were unfamiliar with the legislation and of judges and magistrates who were also often unfamiliar with the legislation.

The number of innocent people who have been fined is unknown.

There is at least one case where departmental witnesses fabricated evidence and perjured themselves.

In WA Peter Swift was charged with illegal clearing. He repeatedly showed photographs to try to show departmental officials that any clearing had occurred before he bought the property. That should have been the end of it but sometimes there is no note taken of logic.

Five years later and several hundred thousand dollars broker he was finally declared innocent in late 2013.

Recommendations

Property Rights Australia recommends that all the anomalies in environmental legislation that simply cause inconvenience and stifle management decisions and not further stated goals be repealed in consultation with affected communities.

We further recommend that anyone who has been prosecuted on charges that should have been resolved in their preliminary investigations have their court costs paid by the relevant governments on an indemnity basis.

That landholders who have been left with uneconomic areas as a result of environmental laws or reserved areas of any kind have their properties paid for under the relevant acquisition of land acts at their unblighted values.

Joanne Rea

Joanne Rea
Chairman
Property Rights Australia Inc

Appendix A

THURSDAY, 19 SEPTEMBER 2013

PRA: Case Study, Changes for expediency

Case study Xstrata Wandoan coal mine lease application; Queensland Coordinator-General, November 2010, reclassification of land types for the advantage of the mining company.

Prepared by Property Rights Australia



Image sourced from Xstrata EIS. The mining lease area covered approximately 30,000 ha with 70 land titles belonging to 42 owners. Each little pink square represents a farming family to be removed, which they nearly all were, for the mine to proceed.

Agricultural land in Queensland has been classified using the simple classification system called Good Quality Agricultural Land (GQAL) of A, B, C and D class soils.

Class A is top cropping country

Class B is land suitable for cropping and grazing

Class C is grazing only; unsuitable for cropping;

and D is unsuitable for agriculture or reserved for environmental purposes.

This land classification system was developed from decades of work by soil scientists who were unimpeded from any other agenda other than good science. GQAL is clearly defined; it has been used as standard in resolving matters in the courts. It has stood the test of time.

Property Rights Australia (PRA) is very concerned where policy, legislation, planning schemes and ministerial decisions have been implemented without giving priority to good soil science.

A very blatant example in recent years is where the Coordinator-General's department in November 2010 reclassified lands in the Xstrata Wandoan coal mine lease application from A & B to C for the advantage of the mining company. This project was subsequently granted conditional environmental approval in March 2011.

It is important to review what occurred at that time not only to be vigilant in ensuring it doesn't happen again but also to facilitate improved outcomes in future policy and legislation. Throughout 2013 the Qld government has been making changes to many planning laws, the latest being the Darling Downs Regional Plan which makes mention of the Xstrata Wandoan coal mine project on page 17.ii

With any mining or petroleum lease application, a resource company is required to produce an environmental impact statement (EIS)iii where a consultancy firm is hired to write a document (best measured in kilograms rather than pages) to shed the best possible light on the project proceeding. The Xstrata Wandoan coal mine addressed quality of soils in the lease application in volume 1, chapter 9.3.6 and land suitability and agricultural lands in chapter 9.3.7.iv

Despite including the pre-existing GQAL mapping as Figure 9-11-V1.3, the EIS provides inconsistent mapping of soil quality in Figure 9-9-V1.3. The EIS states that this second map uses the classification system of Land Suitability Classification for Cropping and Grazing in the Semi-arid Sub-tropics of Queensland (Department of Mines and Energy, 1995). The result is that under GQAL the land was considered to be either, Class A, top cropping country or B, land suitable for cropping and grazing and in the classification system favoured by Xstrata the very same land overnight became either

- Class 3 – suitable land with moderate limitations; land which is moderately suited to a proposed use but which requires significant inputs to ensure sustainable use; or
- Class 4 – marginal land with severe limitations which make it doubtful whether the inputs required to achieve and maintain production outweigh the benefits in the long term.

The accuracy of the information and the methodology used to reach the conclusions in the relevant chapters within the EIS is questionable and was challenged by those with local knowledge. In response to these submissions the Supplementary EIS (SEIS)v spent many pages justifying the obvious anomalies without varying its conclusions.

The most disappointing aspect about Xstrata Wandoan coal mining lease application was not the information paid for by Xstrata and prepared by consultants but the almost unreserved acceptance of this material in the Coordinator-General's evaluation report on the EIS.vi

In Chapter 5.2.1 - Good quality agricultural land, strategic cropping land and rehabilitation, the Coordinator-General makes the following statements

*The EIS outlined that, under Section 2 and Attachment 2 of the associated SPP 1/92 Planning Guidelines: The Identification of Good Quality Agricultural Land (Department of Primary Industries and Department of Housing, Local Government and Planning Queensland 1993), **Class A, B and C agricultural land in the former***

Taroom Shire does comprise GQAL [emphasis added]

The Taroom Shire Planning Scheme classified the MLA areas as GQAL—Classes A, B and C. The land suitability assessment undertaken in the EIS and SEIS, however, concluded that Class 3 and Class 4 land suitability—which approximates to GQAL Agricultural Land Class C—occurred on the MLA areas. Therefore, indications are that the MLA areas are unlikely to be classified as strategic cropping land.

It beggars belief that the Coordinator-General could accept without question the downgrading of this land classification by the party with an economic interest in having it downgraded, without considering the possible cost to Queensland agriculture and the past production history of that land.

PRA strongly believes land classifications must be based on established science and the production history of that land. No benefit to the immediate community or the citizens of Queensland can be identified in altering soil classifications for the expediency of the resource sector, as in the Xstrata

Wandoan coal mine where A and B GQAL was changed to C class. Nor should it be the case where a process could be influenced so as C and D class land could be changed to A and B to stop a resource project.

i <http://www.dsdip.qld.gov.au/resources/policy/plng-guide-identif-ag-land.pdf>

ii <http://www.dsdip.qld.gov.au/resources/plan/darling-downs/draft-darling-downs-regional-plan.pdf>

iii <http://www.dsdip.qld.gov.au/assessments-and-approvals/environmental-impact-statement-eis.html>

iv <http://www.wandoancoal.com.au/EN/PublicationsandMedia/Pages/VolumeOneEIS.aspx>

v <http://www.wandoancoal.com.au/EN/PublicationsandMedia/Pages/VolumeOne.aspx>

vi <http://www.dsdip.qld.gov.au/resources/project/wandoan-coal-project/coordinator-general-report.pdf>