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Hunt Blog Newsletter

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Grass Fed Cattle Industry On The Cusp of Historic Reform

Federal Agriculture Minister Joyce met with representatives of the AMPG, CCP, ABA and CCA in Canberra on Tuesday 17 February 2015 to receive a unified grass fed cattle industry position on a proposal to form a new levy funded grass fed cattle producer representative corporation (“Newco”).

Minister for Agriculture Barnaby Joyce described the unified grass fed cattle representative restructure proposal as an historic and essential contribution to the implementation of the structural reforms recommended by the recent Senate Committee Inquiry into grass fed cattle levy funded structures and systems.

Newco Board Structure

The new grass fed cattle levy funded corporation will have seven directors directly elected by all of Australia’s grass fed cattle transaction levy payers through a twostep voting system that recognise the interests of both large and small producers.

In the first voting round, fifteen candidates, who will be eligible to be elected as directors of the grass fed Newco board, will be elected by grass fed transaction levy payers from 15 regions across Australia.

In the second voting round, seven of those fifteen regional candidates will be elected to the board of Newco by cattle transaction levy payers on the basis of an Australia wide ballot.

The eight regional candidates that are not elected to the board of Newco will continue to act as an advisory council to the Newco board on policy issues until such time as they are replaced at a subsequent regional election.

The elected seven member board of Newco will have the power to appoint two special qualification directors with skills and experience in scientific research, financial management, or other relevant areas of expertise.

The board of Newco will also have the power and the funds to employ additional staff with any relevant expertise needed to help the board deliver the agreed collective services for the grass fed cattle producer industry.

Outstanding Restructure issues

Final recommendations on the details of the Newco constitution voting system for the election of the Newco board and whether the new grass fed cattle industry corporation will receive all or just some of the grass fed cattle transaction levies, and other important cattle industry issues are still to be made by the joint industry working group that met in Brisbane on 9 February.

The Brisbane working group will consult with the broader grass fed cattle producer industry and the Department of Agriculture on these issues, and will also consult with the other sectors of the red meat industry that will be affected by the reforms to grass fed cattle levy funded structures and systems before reporting back to the Minister for Agriculture.

The Future of MLA

MLA will continue to exist and operate under its current board structure following the grass fed cattle levy funded organisational restructure. There will be no throwing the baby out with the bathwater, as Mick Keogh from the Australian Farm Institute suggests in his recent opinion piece in Beef Central, or as western Victorian farmer and NLIS Ltd Chairman John Wyld (a former MLA director and president of the Cattle Council of Australia when the MLA was incorporated in 1998), suggested on ABC rural radio last week.

Grass fed cattle producers will continue to fund R&D. It is hoped, however, that future research will focus more directly on improving the bottom line profitability of all Australian cattle producers than it has in the past.

As the Beef Central 17 February article by James Nason on the restructure plan that was presented to Minister Joyce on Tuesday states, it is common ground that if Newco is to receive the entire cattle transaction levy amount in the future, as many think it should, then the MOU between the MLA and the new body will be amended to ensure that MLA has sufficient funds to continue with its core projects.

Alternatively, if the majority of the grass fed transaction levy continues to flow to MLA, the MOU would be amended to ensure that those funds could only be spent with the direct authority of the new company.

Consequently MLA will be able to continue to operate under its current skills based board structure.

Grass fed cattle producers are, however, united in their determination that in future, one way or another, their grass fed representative body with a board directly elected by levy payers will determine how grass fed transaction levies are spent, rather than allowing the boffins to tell the levy paying producers how their money should be invested.

The AMPG

The AMPG, the red meat industry think tank of leading beef industry figures that was established following the cattle producer rallies in Armidale and Rockhampton in 2010, has a well-publicised position on the shape of the much needed reforms to the current red meat industry structures.

The AMPG think tank identified a number of fundamental flaws in the current cattle industry structures, which included:

- the dysfunctional divide between Peak Council. Policy setting and MLA policy delivery
- the CCA's to obtain adequate funding to carry out its charter under the MOU as a consequence of falling SFO membership
- government and industry confusion under the current organisational structures about who speaks for the cattle industry
- the disenfranchisement of grass fed cattle levy payers under the current levy funded structures and systems which leaves them little or no opportunity to influence the quantum and investment of their levies.

The unified position on the establishment of a new levy funded grass fed cattle producer representative organisation that was presented to Minister Joyce in Canberra on Tuesday, 17 February 2015 is completely

consistent with AMPG's well publicised position. It is however, common ground between the grass fed cattle producer stakeholders who presented a unified position on the structure of Newco to the Minister, that the Minister, and a number of other steering matters will have to be considered, agreed and implemented if those key flaws in the current structures outlined above are to be resolved.

The AMPG Position on the Outstanding Restructure Issues

Newco

The AMPG proposes that the new grass fed cattle producer corporation should be a freshly incorporated body with a new constitution without any prior history of operation or involvement in the beef industry.

Counter proposals to amend the constitution of the existing Cattle Council of Australia to give effect to the agreed Newco structure seem to be fundamentally flawed.

The due diligence involved in satisfying the Department of Agriculture and Federal Government of the suitability of the Cattle Council of Australia with a revamped constitution and share structure becoming a recipient of CTL levies under a Funding Agreement with the Commonwealth would be daunting.

The Commonwealth would need to be satisfied that there were no potential workers' compensation, contractual, defamation or negligence claims against the CCA or any challengers from state farmer organisations to the proposed constitutional changes.

There seems to be little point from a functional perspective in not simply incorporating a new body with its own constitution which would overcome all of these due diligence problems.

Given that the CCA now represents at best less than 20% of Australia's cattle producers through its SFO membership, and it is common ground by all the grass fed cattle industry representative groups that Newco will be wholly owned by levy paying members and not based on SFO membership, there also appears to be little to be gained from a functional perspective in trying to transmogrify the SFO owned 20th century CCA structure into the levy payer owned Newco which is being established to meet the collective needs of the grass fed cattle industry in the 21st century.

To do so would be nothing more than a transparent and seemingly pointless attempt to dress up the transition from the old representative structure to the new in clothes of continuity.

Funding

The AMPG supports Recommendation 1 of the Senate Inquiry Report that the new producer owned body should receive and disperse **all** the research and development and marketing components of the cattle transaction levy funds.

The AMPG also supports the Senate Inquiry Report recommendation that the producer owned body should be authorised to receive matching government R&D funds.

One of the key flaws in the current structure is the conflict that the MLA board has between the provisions of the MOU requiring them to consult with and receive instructions from the Peak Councils regarding the expenditure of levy money, and their obligations to their members under corporations' law.

The inability of the Cattle Council to properly direct and control the investment and expenditure of the grass fed cattle transaction levy under the current structure has been a key Cattle Council frustration over the last decade.

As the AMPG pointed out to the grass fed cattle producer meeting in Brisbane on 9 February 2015, this control and direction issue could be overcome either by:

- Newco receiving and dispersing the R&D and marketing cattle transaction levy funds in accord with Senate Inquiry Recommendation 1 and amending the MOU to ensure that MLA receives sufficient funding for its core programs, or

- amending the Funding Agreement between the Commonwealth and the MLA as well as the MOU to ensure that the grass fed cattle transaction levy is deposited into a separate account within MLA and only drawn upon with the written authority of the CEO of the grass fed cattle producer corporation, Newco.

Contestability

Under the second funding option, the MOU would also need to make it clear that the new grass fed cattle producer company had the power to make the authorisation of expenditure of cattle transaction levies conditional upon that expenditure being put out to other service providers on a contestable basis.

Otherwise under this second funding alternative, MLA would effectively retain monopoly control over the expenditure of the grass fed cattle producer's levy, and we all know that monopolies lead to higher costs and charges than those that apply in a competitive market.

Whilst some of the services provided by MLA are currently let out to third-party providers on a contestable basis, at 30 June 2014 MLA workforce numbers comprised 269 people who by definition were providing services to the red meat industry on a non-contestable basis.

The recent cleanout in MLA and the mass sacking of over 10% of MLA staff by new MLA CEO Richard Norton by November last year is clear evidence of the inefficiencies and waste of levy payer funds that has occurred under the levy fund's current management structure and de facto monopoly control over red meat industry levy expenditure during the last decade.

The second funding alternative would also involve setting up complex administrative overseeing arrangements that would be expensive and difficult to implement in practice.

The Power of the Cheque Book

The old adage that he who controls the cheque book calls the tune remains valid.

The AMPG believe that the simplest and administratively cleanest and cheapest solution would be for Newco to receive **all** the grass fed cattle transaction levy in accord with Senate Inquiry Recommendation 1 and commit to providing MLA with the grass fed cattle industry's share of necessary funding to enable MLA to continue providing its core essential joint industry services.

As one prominent AMPG cattle producer member said in his submission to the Senate Inquiry:

“Fundamental to any sensible structure for industry representation is the bringing together of the authority to represent the industry with the means to represent the industry in a way that is accountable to the industry”

Interim Transition Funding Arrangements

If the AMPG proposal that the grass fed cattle corporation, Newco received all the grass fed cattle transaction levies was adopted, there would need to be transitional MLA funding arrangements put in place to allow the MLA to retain key personnel and wind down current programmes until such time as it could become fully contestable with respect to all but its fundamental core joint whole of industry services.

The Newco Voting System

The AMPG proposes that both the initial fifteen regional board candidates and the seven candidates elected to the board of Newco be elected through a two register voting system to ensure that the interests of small and large producers are fairly and equitably recognised.

The Newco Board

Under the two register voting system

- three of the Newco directors would be elected through a register where the voting entitlements were based upon the amount of grass fed transaction levies paid by the levy payer during the year (Register A),
- three of the Newco directors would be elected through a register based upon one vote for every levy payer (Register B), and
- the seventh director would be the director who received the most votes in both registers.

Each levy payer would be entitled to vote in both registers.

This voting system would ensure that the interests of the large producers who pay most of the levies were recognised and it would overcome the problem of the large majority of smaller producers being able to effectively dictate how the levies, the bulk of which are paid by the larger producers, were spent.

Conversely, the smaller producers would be able to ensure that the large producers couldn't control the board of Newco and ignore the interests of the smaller producers because smaller producers have the opportunity to elect three of the seven directors through Register B and the seventh director must be the person who receives the most votes in both registers.

The Fifteen Regional Advisor Candidates

This 2 register voting system can also be adapted to apply to the election of the 15 candidates who would be eligible to stand for election to the board of Newco. Again, the candidates elected in each of the 15 regions would be elected on the basis of two registers along the lines outlined above, with the person who obtains the most votes in both registers being elected as that region's candidate for election to the Newco board.

Interim Transition Board Arrangements

Under the AMPG proposal, the initial board of Newco would be appointed by the Minister of Agriculture from people nominated by the grass fed cattle industry pending the first election of the board in the same way that the initial boards on the MLA, AMPC and Livecorp were appointed in the 1990s.

The Constitution of Newco will also have to contain transition provisions that will come into effect once the initial board has been replaced by the elected board members under the two register voting system outlined above.

These transitional provisions would provide for short board terms for say four of the elected directors and eight of the elected regional delegates or candidates to provide an orderly roll-over of new directors to the board, whilst ensuring some continuity of tenure of directors for good governance purposes.

Levy Payers Right to Review the Amount of the Levy

AMPG also supports the Senate Inquiry Committee proposal set out in paragraph 7.21 at page 82 of the Senate Inquiry Report that:

“Under the new producer-owned body, levy payers would be eligible to register for membership and should be required to vote on the rate of the levy every few years. Levy payer members would also be required to vote on whether to vary the allocations of the CTL levy between AHA, NRS, marketing and R&D, with final agreement on varying the allocations achieved with ministerial support.”

The Senate Inquiry Recommendations

Minister Joyce made it clear at the press conference following the grass fed cattle producer stakeholder presentation of the agreed Newco representative restructure that he was also considering all of the **seven** Senate Inquiry Recommendations and not just the first recommendation for the creation of a new grass fed corporation that would receive all of the grass fed cattle transaction levy.

The first three Senate Inquiry report recommendations are set out below.

Cattle Transaction Levy Funded Newco

Senate Inquiry Recommendation 1

7.25 “The committee recommends that a producer-owned body be established by legislation. The body should have the authority to receive and disperse the research and development, as well as marketing component, of the cattle transaction levy funds. The producer-owned body should also be authorised to receive matching, government research and development funds. Reforming the Cattle Council of Australia to achieve these outcomes should be examined as part of this process.”

Automated Transparent Cattle Transaction Levy Collection and Voter Entitlement System

The Senate Inquiry found that the current levy collection on which MLA vote allocations are determined are fundamentally flawed as a consequence of the fact that stock agents and processors act as unpaid CTL levy collectors for the government by deducting the transaction levies from producer cattle sale proceeds and forwarding those levies to the Federal Government as lump sum group payments without being required to dissect the payments report on the amount of levies received from individual levy payers.

Consequently the current MLA voting relies on voluntary self-assessment by levy payers of the amount of levies that they have had deducted from their cattle sale prices, without MLA having any means of cross checking or verifying the voting entitlements claimed.

It was common ground between all of the grass fed cattle industry stakeholders who met in Brisbane on 9 February 2015, that it would be necessary for the Senate Inquiry Recommendation 2 to be implemented to give effect to the unified Newco voting system proposal.

Senate Inquiry Recommendation 2

7.30 “The committee recommends the establishment of a cost-effective, automated cattle transaction levy system. The system should identify levy payers against levies paid. The automated system should provide for more immediate settlement of levy fees paid and the allocation of voting entitlements. It should be subject to regular independent auditing and verification.”

Sixty Day Processor Cattle Transaction Levies

The Cattle Transaction Levy Act 1997 imposes a deemed transaction levy on all cattle purchased by a processor and held for a period of more than 60 days after the day of purchase and before the day of slaughter,

Consequently processors pay this deemed transaction levy on all their 70 day, 90 day and 120 day and longer fed feedlot cattle.

As the Senate Inquiry Committee points out, when the current levy system was implemented in 1998 the current extent of feedlot and backgrounding vertical integration by processors could not have been foreseen.

Consequently eleven of the top seventeen levy payers to MLA in 2010-11 owned an abattoir and Swifts, the world’s biggest meat processor, is the biggest MLA levy payer with the highest voting entitlement at MLA AGMs.

If cattle producers want to ensure that the new grass fed cattle producer corporation is wholly owned by grass fed cattle producers, it will also be necessary to implement Recommendation 3 in order to ensure that all grass fed cattle transaction levies paid by processors on cattle that they have owned for more than 60 days prior to slaughter are paid to the Australian Meat Processor Corporation Ltd (AMPC).

Senate Inquiry Recommendation 3

7.35 “The committee recommends that the Primary Industries (Excise) Levies Act 1999 be amended to ensure that levies paid by processors are recognised as processor (or slaughter) levies and not as producer (or cattle transaction) levies.”

Remaining Four Senate Inquiry Recommendations

The other four Senate Inquiry Recommendations are set out in the **attachment** to this Newsletter

Issues relating these other four important Senate Inquiry recommendations will be discussed in a later HuntBlog Newsletter

Have Your Say

The opportunity to express your support or otherwise for any of the three Senate Inquiry recommendations outlined above and/or the funding and voting systems for the proposed grass fed cattle producer corporation Newco can be found at www.cattlereform.com.au.

Alternatively, if you agree with the AMPG proposals with respect the outstanding grass fed cattle organisational reform issues or wish to make a comment about them, sign a hard copy of the proposal and email (huntpartners@bigpond.com) or fax ((02) 9383 9387) it back to Hunt Partners Lawyers with your thoughts and comments, name and the address of your property or properties.

Any constructive comments from grass fed cattle producers or other cattle industry or red meat industry participants would be very welcome.

Please visit www.huntblog.com.au for further information and commentary on Australian cattle reform issues.