



HUNT PARTNERS LAWYERS PTY LTD

Solicitors & Barristers

Level 6, 114 Castlereagh Street, Sydney NSW 2000

Tel: (02) 9235 2966 Fax: (02) 9284 9487

E-mail: huntpartners@bigpond.com

A.C.N. 600 344 983



HUNT BLOG Newsletter

5 August 2015

Use of Levy Funds by Representative Bodies

The Senate Inquiry Report into grass fed cattle levy funded structures and systems handed down last October produced seven interlocking recommendations aimed at enabling the grass fed cattle industry to meet its collective needs for the next decade or two.

The Federal Government Response to the Senate Inquiry seven interlocking recommendations published in Beef Central on 15 July 2015¹ adopted only one of the seven Senate inquiry recommendations in full and ruled out the key recommendation that the proposed new grass fed cattle producer body to replace the cash strapped Cattle Council of Australia (CCA) be given authority to manage all cattle transaction levies.

Minister Joyce's Opinion Piece also published in Beef Central on 15 July 2015 attempts to justify the Government Response decision by suggesting that:

- *the proposed new representative organisation be free to advocate fiercely on behalf of the grass fed sector without fear of retribution from the government or the opposition of the day, and*
- *since levies are collected under the taxation power of the Commonwealth, if a new representative body were to receive the entirety of grass fed cattle levy funds in accord with Recommendation 1 of the Senate Inquiry Report then the new body "would be accountable to the federal government every step of the way, forevermore".²*

Minister Joyce attempts to reinforce the claim that it is inappropriate for a levy funded representative body to engage in advocacy on behalf of its levy payers by citing the example of the MLA being accountable for the expenditure of levy funds which *precludes it from participating in agri-political activities such as opposing the live export ban.*

Fundamental Flaws in Minister Joyce's Argument

Minister Joyce's example of MLA being precluded from engaging in *agri-political activities such as opposing the live export ban* is singularly inappropriate given that it is a matter of record that during the 2011 Indonesian live export ban crisis then Minister Ludwig kept the CEO of the State Farmer Organisation funded Cattle Council waiting for two hours whilst then Minister Ludwig met with Don Heatley (the then Chairman of the levy-funded MLA) to discuss appropriate industry responses to the crisis.

¹<http://www.beefcentral.com/news/full-federal-government-response-to-senate-inquiry/>.

²<http://www.beefcentral.com/news/opinion-piece-strengthening-the-future-of-the-grass-fed-cattle-industry/>.

More pertinently the bridge over the use of levy funds by representative bodies for representative purposes was crossed in 1998 when the current red meat industry structure was put in place and all the red meat industry Peak Councils were allocated a portion of the interest off the RMAC Levy Reserve Fund to finance their representative functions.

It is, of course, no defence to a charge of living off the proceeds of crime to claim that living off the interest earned from the proceeds of crime is okay as long as the defendant has not lived off the actual proceeds of crime. Any lawyer who tried to run such a defence would be laughed out of court.

Levy Funded Rural Advocacy Bodies in Australia

There are also many examples of Australian and foreign rural industry representative bodies that are funded either wholly or in part by levy funds.

For instance Australian Pork Limited is an Australian levy funded rural industry body that carries out representative functions, marketing and R&D all under one roof. Levy funded Australian Pork Limited, unlike its red meat industry counterparts, sets its own policy and is responsible for the delivery of that policy. Thus there is no structural dysfunction between policy setting and service delivery as there is with MLA.

Other Australian examples of levy funded rural representative bodies include Australian Wool Innovations, the Australian Egg Board and the levy funded dairy industry body.

It is common knowledge that the State Farmer Organisation based Peak Councils are no longer able to raise sufficient income from membership fees to fund their activities as a consequence of declining membership. As discussed above this problem was recognised when the current red meat organisational structures were put in place in 1998 hence the decision to allocate the interest earned from the red meat industry RMAC Levy Reserve Fund to the red meat industry Peak Councils.

NSW Farmers Association membership has declined from around 25,000 since the 1990's to just over 5000 in 2013 and the power house of Australia's SFO's, Agforce, now has a membership of little more than 4,500-5000 which has led to a consequent 75% fall in membership fees.

Whilst Minister Joyce has suggested that the new representative body for the cattle industry should seek to create a funding base by providing membership services, he has also acknowledged that it will take some years for such a body to raise enough funds from membership payments to allow it to adequately fulfil its funding requirements.

How the proposed new grass fed cattle representative body could be established without an initial source of funds seems unclear.

The fall in SFO membership has left the CCA cash strapped, and reduced to offering to sell corporate Cattle Council membership seats for \$20,000 to try and raise sufficient funds to carry out its obligations under the current organisational structure

Overseas Levy Funded Rural Advocacy Bodies

The State Farmer Organisation based Australian Farm Institute report, exploring the Opportunities to Improve the Effectiveness of Australian Farmers' Advocacy Groups was released in March 2014 and conducted a comparative analysis of agricultural advocacy groups in Australia, Canada, New Zealand and France.

The March 2014 Australian Farm Institute report concluded that Australian rural advocacy groups were the least organised and effective of the international rural representative bodies considered.

In reaching this conclusion Australian Farm Institute study compared Australian rural advocacy groups to a number of foreign rural representative bodies which utilised levy funds in order to operate their advocacy activities.

Page 23 of the March 2014 Australian Farm Institute report makes the following comments with respect to New Zealand rural representative bodies:

“Several levy funded ‘industry good organisations’, including Beef + Lamb NZ, DairyNZ and Horticulture NZ have a strong role in policy development, advocacy and information provision, services and commercial deals. These commodity organisations can be compared to the Australian research and development corporations (RDC's) as the funding structure and mission are similar. However, in New Zealand these organisations are entitled to conduct advocacy activities, the latter being understood as a technical contribution to policy preparation and evaluation”

Pages 30 to 39 of the March 2014 Australian Farm Institute report refers to the French local agricultural chamber based representative system who receive

- 45% of their funding from land based taxes,
- 24% from the provisions of services,
- 25% from public partnerships, and
- 6% from others.

Page 32 of the March 2014 Australian Farm Institute Report notes in relation to the French chamber based representative system that:

“Every six years, each land owner who pays the land-based tax votes to elect the council of the local agricultural chamber. Farmer advocacy groups present candidates for these elections and run active campaigns.”

The Canadian farmers advocacy landscape is described on Pages 40 to 45 of the March 2014 Australian Farm Institute report noting in particular on page 41 that:

“The institutional context for advocacy groups is diverse between commodities and provinces in Canada. In Quebec, the Union des Producteurs Agricola’s (UPA) is entitled to raise a compulsory levy from every farmer to undertake advocacy... Other provinces have provincial farmers organisations more or less integrated with other commodity groups is entitled to raise a compulsory levy from every farmer to undertake advocacy. With commodity groups the levy is in the form of a check-off at the time of sale or delivery. However, even in those provinces that have ‘stable funding’ based on a levy system farmers have the opportunity to request a refund from their provincial government, making it in essence a voluntary levy”

“The two main advocacy bodies, in terms of budget and influence are the Grain Growers of Canada and the Canadian Cattlemen’s Association.”

The Grain Growers of Canada are funded through “different levies by grains and provinces”; whilst the Canadian Cattlemen’s Association is funded by “different levies by provinces” and about 80% of the Canadian Cattlemen’s Association comes from levy funded provincial member groups.

Australian Farm Institute CEO Mick Keogh’s Contradictory Statement

Australian Farm Institute CEO Mick Keogh’s comments in his 17 July Beef Central Opinion Piece³ that:

“It’s time for Australian farmer organisations to find ways to deliver more tangible and direct benefits to members as part of their membership offer without being distracted by the lure of compulsory levy funds as an easy solution to declining membership support “

appear to be completely inconsistent with comparative examples outlined in the Australian Farm Institute Report into - Opportunities to Improve the Effectiveness of Australian Farmers’ Advocacy Groups – A Comparative Approach – that Mick Keogh signed off on as CEO in March 2014.

Public Funding of Australian Political Parties

The Australian Government is directly accountable to Australian taxpayers and voters and in recent years Australian political party membership has been declining in similar proportions to the decline in State Farmer Organisation membership.

In 1939, when Australia’s total population was 6.9m, the ALP had around 370,000 members which represented about 5.4% of Australia’s total population.⁴ By 1973 however, when Australia’s population had reached 13.4m, ALP membership had fallen to about 56,000 or less than half a percent of Australia’s total population.⁵ Current ALP

³<http://www.beefcentral.com/news/opinion/government-grassfed-response-provides-important-clarity-afi/>.

⁴ Dean Jaensch, ‘Party Structures and Processes’ in Ian Marsh (ed), *Political Parties in Transition?* (Federation Press, 2006).

⁵Ibid.

membership is approximately 40 000, representing around 0.17% of the current population.⁶ In 1954, 62% of workers were members of ALP affiliated unions but by 2005 only 17% of Australian workers were members of Unions.⁷

Similarly Liberal party membership which was around 220,000 in the early 1950's or about 2.15% of the then 10,2 Australian population had declined to just over 100,000 or about 0.7% of Australia's 15m population by 1983. Currently the Liberal Party's total membership is about 50000 which represents approximately 0.22% of Australia's current population.

Consequently, by the early 1970's it had become apparent that traditional political party funding mechanisms through membership fees and private donations were inadequate to properly fund ever increasingly expensive political campaigns in the TV era and there was a very real concern that politics would become the preserve of the enormously rich as it has in America.

In this context, the NSW Wran Labor Government introduced public election funding for political parties in the late 1970's and the Hawke Labor Government introduced Federal political party public election funding in 1984.

Under the current Federal Election Funding provisions political parties or candidates who obtain at least 4% of the national vote can obtain taxation revenue from Consolidated Revenue to reimburse them for their election campaign expenses.

Following the 2013 Federal election the Liberal Party were entitled to recover \$23.88m of taxation funds from Consolidated Revenue to reimburse them for their election campaign expenditure, whilst the Labor party were entitled to recover \$20.77m, the Greens \$5.5m and the National Party \$3.1m.⁸

The Specious Argument Against Using Levy Funds for Rural Advocacy

As outlined above:

- the current red meat industry representative bodies fund their activities from interest from the RMAC levy capital Reserve Fund and from levy "service fees" distributed by MLA, and
- there are a host of examples in Australia and overseas of rural representative groups funding their advocacy from levy funds.

Indeed the most successful representative advocacy bodies in Australia and overseas all fund part of their operations from levy funds. It is also common ground that levy funds can be used by levy funded corporations for policy development purposes.

The Department of Agriculture, Fisheries and Forestry Levy Principles and Guidelines specifically states that "*organisations receiving levy money are accountable to levy payers and the Australian Government*". The Australian Government is, of course directly accountable to Australian taxpayers and voters. It seems illogical and incongruous in these circumstances to argue that political party campaigns should be funded from Consolidated Revenue but levy payers representative bodies should not be funded from the levies imposed on them by the Government.

It follows from the examples outlined above that the claim that rural representative bodies should not be able to apply levy funds for advocacy is specious and logically unsustainable.

If:

- Australian political parties are allowed to overcome the financial effect of falling membership and fund their political campaigns from Consolidated Revenue,
- the current red meat Peak Councils can utilise interest earned from levy reserve funds and levy "service fees" for policy development and advocacy, and
- other Australian and overseas rural representative bodies can receive and utilise levy funds to fund policy development, advocacy and service delivery,

then there is no logical impediment to the proposed new grass fed cattle representative body also receiving and utilising cattle transaction levy funds for policy development advocacy and service delivery.

⁶<http://www.crikey.com.au/2013/07/18/the-partys-over-which-clubs-have-the-most-members/>.

⁷ Dean Jaensch, 'Party Structures and Processes' in Ian Marsh (ed), *Political Parties in Transition?* (Federation Press, 2006).

⁸<http://www.aec.gov.au/media/media-releases/2013/11-27.htm>.

The only logical restrictions that need to be placed on levy expenditure for rural representative advocacy is to preclude the funding of political parties and political candidates and perhaps to prohibit the use of levies to fund litigation against the Government.

Further material on the RRAT Senate References Committee Inquiry into Industry Structures and Systems Governing Levies on Grass Fed Cattle submissions, hearings and report can be found at www.HuntBlog.com.au and on www.cattlelevysenateinquiryinformation.com.