

Lexcray Pty. Ltd.

ABN. 48 010 613 751

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

Submission

“The industry structures and systems governing the collection and disbursement of marketing and research and development levies pertaining to the sale of grass-fed cattle set out in subsections 6(1)(a), 6(1)(b), 6(2)(a) and 6(2)(b) of Schedule 3 (Cattle transactions) of the Primary Industries (Excise) Levies Act 1999.”

Executive Summary

Our family welcome the opportunity seeking our opinion on the Commonwealth regulated structure over the Grass-fed Cattle production sector in Australia.

Primarily we believe that full deregulation is necessary in the Grass-fed Sector similar to the grains and wheat industry.

The current Structure is a very Socialist in its application; it has failed to deliver even an average economic outcome for those of us that it is supposed to support.

We in the Grass-fed sector are receiving less than half the gross income that producers are receiving in similar cattle production economies world wide; MLA Limited has admitted that our cattle prices are at 1950's levels and unwilling or unable to change that fact.

The failure is not a market failure but a system failure in that the Regulation and control enforced by the system dominated by the Feedlot/Processor Sector is destroying our business. The structure is being controlled and enforced by Commonwealth appointed Agri-political entities masquerading as our allies.

“Nothing breeds anarchy and social disorder as quickly as the sense of injustice which is apt to be generated by the unlawful invasion of a person's rights and the free exercise of those rights, particularly when the invader is a government official.” [¹]

¹ **Lord Edmund-Davies in *Morris v. Beardmore*, at p 461.**

Recommendations

- **In light of the complete failure nationally of “industry” - That a Plebiscite be initiated by the Commonwealth to determine Grass-fed Producer support for the current levy/structure, in itself.**
- **In the unlikely event that the Plebiscite decides to continue down the Regulatory path, then, and only then should restructure discussions begin.**
- **In absolutely no circumstance should any Agri-political groups (producer owned or otherwise) be allowed to expend manage or direct public funds; they will inherently mismanage and corrupt any administration.**
- **If the Plebiscite votes for an end of the Levy/Structure, then deregulation must occur immediately.**
- **Failing the establishment of a plebiscite, then a system of Exemption must be established by the Commonwealth to allow Grass-fed producers the freedom to apply and receive certification of exemption of the requirement of paying the levy.**
- **We would question whether the Commonwealth has the Authority to proceed to the re-Regulation of the Grass-fed sector, in the wake of this inquiry, unless they secure a vote (or provide an exemption) from the Grass-fed Producers seeing that there is no industry consensus and has not been since 1997.**

Introduction

1. My name is Rod Dunbar, I am Managing Director of this company; it is a family owned cattle specific breeding, growing and fattening enterprise based at Nutwood Downs, Daly Waters, in the Northern Territory.
2. We operate as a Group consisting of “Lexcray Pty Ltd”, the principal corporation, and a subsidiary corporation, “Australian Livestock and Land Pty Ltd”; a family Partnership (started by my mother [deceased] and father in about 1948); my wife Rayna Dunbar, my daughter Rebecca and my two sons William and Cameron.
3. We are seven Levy paying entities or the purposes of “***subsections 6(1) (a), 6(1) (b), 6(2) (a) and 6(2) (b) of Schedule 3 (Cattle transactions) of the Primary Industries (Excise) Levies Act 1999.***” (the Levy).
4. My family has owned and operated cattle enterprises successfully for several generations; firstly in Queensland from 1894 until 1984 and since 22nd April 1984 our family businesses have been based at Nutwood.
5. At, or prior to the enactment of the *Australian Meat and Livestock Industry Act 1997 (AMLI Act)* there was absolutely no communications between the Commonwealth its Agents, Agencies, Prescribed Bodies, Intermediaries (the Commonwealth) and our business entities. There was absolutely no prior consultation and/or informed consent between our family or our business entities and the Commonwealth regarding

- what was to be enforced by the AMLI Act during the subsequent 17 years.
6. Minister Anderson in his introduction speech of the *Australian Meat and Livestock Industry Act 1997 (C'wth)* (AMLI Act) in Parliament stated "Regulation of the "beef Industry" as being in the "national interest"."
 7. In s3 of the AMLI Act the legislation appropriates a legal interest in all of the domesticated cattle depastured within Australia and by default, Nutwood Downs.
 8. The "industry" particularized in the Commonwealth legislation is a very complex corporate structure, based on companies and other entities registered under the Corporations Act 2001 and validated within the AMLI Act. Under a **Memorandum of Understanding** there is a transfer of Statutory Commonwealth power; oversight of the execution of these powers and the expenditure of Consolidated Revenue funds by the corporate structure, is vested in a Commonwealth Minister of State.
 9. The structure is such that any person, individual, sole trader, association, or corporation that owns livestock in Australia and that is a current member of any of the Prescribed Industry Bodies; which are incidentally "*Commonwealth Public Officials*" appointed by the Governor in Council at s3 and s7 of the *AMLI Regulations*; is a member of that **prescribed "industry"** and under the provisions of the *Corporations Act 2001* must comply with their corporate policy and regulations.
 10. The two Prescribed Industry Bodies to which I refer are, *Meat and Livestock Australia Limited* (ABN: 39 081 678 346) (MLA Limited) and *Cattle Council of Australia* (ABN: 35 561 267 326) (CCA). Through its Constitution, CCA and the *Northern Territory Cattlemen's Association* (NTCA) are related entities for the purposes of the Corporations Act 2001; any members of either of these bodies or their subsidiaries are members of "industry".
 11. None of our family corporations or private entities are members of that "industry" **voluntarily**. We are not members of CCA through its subsidiary NTCA since 1985. We have not been members of MLA Limited since 2006 when it became evident that they were not acting in our best interests.
 12. We are by the operation of the AMLI Act included in "industry" compulsorily and our rights at common law and in equity have been impinged by the enactment of the Act; clearly a regulatory Taking. [².]
 13. We are forced into Third Party Contracts with MLA Limited both by the Northern Territory Government (NLIS Regulations) and JBS Swift, Mort and Co (feedlots) and other Processors (LPA Regulations, which include political clauses); all of which is enforced by "industry", an Appropriation [³] of our common law Property rights.
 14. The Third Party Contracts are in breach of the *Trade Practices Act 1974* as is compulsory membership of an unrelated entity, which is commonly referred to as compulsory unionism.

² Constitution of the Commonwealth of Australia 1901; s 51(xxxi)

³ Commonwealth Criminal Code; the Schedule; Chapter 7; the Proper Administration of Government; s130; Theft.

15. In applying the **Third Party Contracts** MLA Limited insists on its own version of Privacy which is inconsistent with the *Privacy Act 1988*, elements of which contain the transfer of Property to MLA Limited and *Ausmeat Limited*, both Personal and Intellectual Property [⁴], this is clearly in breach of the *Privacy Act 1988*, but enforced by “industry”. We must comply in order to trade and carry on our businesses.
16. The fact is that if you wish to continue to operate a business and earn an income—from Livestock in Australia, since 1997, you must comply with the Commonwealth and its “industry” even though it is operating using Third Party Contracts repugnant to the Commonwealth’s own Law. There is no right, since the enactment of the AMLI Act, at common law and in equity to operate a private business in livestock production except by being indentured to “industry”.
17. The fact is also that “industry” has failed utterly to provide even a basic standard of income to the stockowners in the Grass-Fed sector. Moreover we have witnessed unprecedented wealth transfer to the secondary sector (Registered Feedlots and Processors) since 1997 which effectively controls the structure and the Grass-Fed sector through the Red Meat Advisory Council (RMAC).
18. What RMAC and “industry” has been doing since 1997 is "social engineering"; manipulating, victimizing, regulating, stealing our property rights, closing our markets, overseeing declining terms of trade. Furthermore by enforcing higher production costs through continued enforcement of compliance financial benefit is awarded the Processors and their feedlot sector, irrelevant to live export.
19. They discriminate against the producer; overseeing 1950’s cattle prices for producers; extremely low farm-gate incomes nationally and spiralling debt levels in the order of \$3000 per head of cattle sold nationally. All, while they receive Government salaries with some organisations receiving Government grants and contracted payments to enforce more and more regulation; This is textbook "social engineering" bought into effect from the relaxed atmosphere of the Canberra Public service offices.

Terms of reference:

(a) – “the basis on which levies are collected and used”

20. The basis of any Commonwealth Primary Production Levy including ***Schedule 3 (Cattle transactions)*** is that it must comply with the Principals contained in ***“Levies Principles and Guidelines”*** ⁵
21. Primarily, there needs to be proof of a “Market Failure”.

⁴ Commonwealth Criminal Code; The Schedule; Chapter 7; The Proper Administration of Government; s130; Theft.

⁵ http://www.daff.gov.au/_data/assets/pdf_file/0003/253353/levy-principles-guidelines.pdf

22. I take **"Market Failure"** to mean a matter other than a matter arising from the incompetence of "industry" or a Commonwealth Regulation or policy where the Commonwealth has power to make Laws for "peace order and good government".
23. The "proposer" needs to command a clear majority of entities membership within the industry (as opposed to "industry") and it needs to be clearly demonstrated by the "proposer" that at least a consensus majority has been reached in support of either a new levy, or amendments to an existing levy.
24. Right from the very beginning in 1997 there has never been any agreement or consensus reached by anything like a majority to introduce the original levy in 1997.
25. Presumably that is the reason Minister Anderson proclaimed the nationalized "industry" in the "national interest".
26. CCA as the proposer has far less membership now than it had in 1997. It is believed, and has been reported in the media for several years now that the Grass-Fed membership of CCA is at 10% (or less) nationally. This fact has gone unchallenged.
27. CCA itself is in serious decline and members of the State Farm Organisations (SFOs) are in similar circumstances, with some SFOs in serious financial difficulties. In South Australia the South Australian Farmers Federation (SAFF), wound up in Bankruptcy through unpopularity.
28. Therefore any proposal by CCA is null and void. Not in compliance with the guidelines.
29. To comply with the Guidelines, a Plebiscite would need to be conducted to ascertain if, in the first instance there is wide spread national support for a Levy in itself; an action which should have been undertaken prior to the enactment of the 1997 legislation.
30. To professionally and legally conduct a Plebiscite, the Commonwealth would need to **identify the individual levy payers**, otherwise voter rorting will occur and the Identification would need to be on a single Levy Paying entity basis.
31. The Plebiscite needs to be conducted on a one vote per registered Levy payer entity basis.
32. If the Plebiscite fails to gain a clear majority of registered Levy payers in favour of continuing to pay the \$5 levy, then the Grass-Fed sector should be totally deregulated (similar to the Wheat Industry). All Grass-Fed levy funding through RMAC and the AMLI Act must cease immediately.
33. If the Commonwealth believes that a Plebiscite is too costly and difficult to execute then simply create a webpage on the Department of Agriculture website where Grass-fed producers can register their entity and apply for a Certificate, using their entity's Australian Business Number (ABN) or Tax File Number (TFN). Exemption from paying the Transaction Levy within the meaning of "***subsections 6(1)(a), 6(1)(b), 6(2)(a) and 6(2)(b) of Schedule 3 (Cattle transactions) of the Primary Industries (Excise) Levies Act 1999.***", can be claimed through this process, and be Certified and issued with a Certificate.
34. Let the Grass-Fed sector producers choose their own destiny.

35. Under no circumstances should CCA be funded by a retained portion of the Levy; CCA must be funded by private membership on terms arranged between CCA and its Membership; non-members of CCA should never be required to contribute to its finances.
36. CCA should be removed as a "Prescribed Body" and denied power to act in representation or sign for the Grass-fed cattle production sector other than represent its private membership only.
37. Under no circumstance should any pre-existing "industry" Programs be continued to be funded from retained Levy or Consolidated Revenue. e.g. NLIS, NVD, LPA. If there is a desire or a marketing requirement to have these programs applied in specific circumstances then private enterprise must fund the programs; that is to say they must be funded by premiums provided by feedlots and/or processors or directly from consumers. They must be transformed from enforced Regulations, to voluntary private entity agreements; the cost of the enforced regulatory burden must be removed from the Grass-fed sector.

(b) - "the opportunities levy payers have to influence the quantum and investment of the levies;"

38. The Levy is a Tax compulsorily collected, MLA Limited is funded by this Tax from Consolidated Revenue; financial contribution and therefore membership (or shareholdings) is compulsory; Voting Membership of MLA Limited is achieved by registering to vote at AGM's, this violates the Corporations Act 2001 which does not allow compulsory membership (share holdings) in corporations, there is no way a Grass-Fed producer can influence anything within "industry" by voting at MLA AGM's.
39. There is virtually no opportunity to influence anything that transpires within "industry" under the current regime; it's a relic of a bygone era and a socialist structure. There are still to this day remnants of the old "Meat Board" from the 1930's (MLA selection committee) within the structure.
40. There is clear evidence and it is a matter of record in the form of at least two MOU documents, where the transfer of funds and other property, personnel staff, and staff superannuation ...etc from the old Australian Meat and Livestock Corporation (AMLC) to Ausmeat Limited. It is like a controlled reincarnation of the "Meat Board"/"ALMC".
41. "industry" itself is RMAC, in reality, completely unrepresentative of the Grass-Fed sector. Clearly with the processor sector dominating RMAC; the Commonwealth statutory power allows RMAC MLA and Ausmeat to navigate and control "industry" in silence and secret behind closed doors within the corridors of power in Canberra, to manipulate the future directions of the serfdom at the primary production Grass-Fed level that *they* have regulated, controlled, shaped and engineered since 1997.
42. **The unidentified Levy Payers** have never had the slightest influence on the quantum of the amount of Levy to be paid, it has always been RMAC MLA and the Minister whom have controlled and manipulated the rate of levy right from the very beginning.

43. There can be no real freedom to decide on any matter associated with “investment” when one is forced by Law to contribute financially to the equity of a “false corporation”, where the false corporation’s right to exist is a Commonwealth Law; created out of a secret Agreement (MOU) between a Commonwealth Minister and ten unelected unauthorized individuals most of whom were at that moment Commonwealth Civil Servants under pre-existing Meat Industry legislation.
44. The Minister has direct and absolute control through the Prescribed Bodies of the “false corporation” at s 69 of the AMLI Act [⁶]
45. RMAC, MLA, CCA, Ausmeat and the Minister for Agriculture function exactly as a Commonwealth Statutory Authority. RMAC, MLA, CCA and Ausmeat are unelected prescribed civil servant groups, enjoying public service salaries and answerable only to the Minister.

(c) - industry governance arrangements, consultation and reporting frameworks;

46. What “industry” governance arrangements, consultation and reporting frameworks? There are none in existence!
47. The reason there are none in existence is **that “industry” cannot identify** the very people they purport to represent. At best the Grass-fed membership of CCA is 10% so the 90% are just there simply as a cash cow.
48. MLA Limited has about 2% as voting members of the Grass-Fed sector.
49. Our seven family Grass-fed levy payer entities never receive any information from CCA or MLA Limited because we are not *voting* members of “industry”; where Levy (Tax) is paid through the current system, there is no requirement for the levy payer to be identified, or the amount of levy paid recorded in the entity’s Australian Business Number (ABN) or Tax File Number (TFN).
50. We in the 90% simply hear about a Regulation or a demand for higher levy funding or the like through the media, the Commonwealth Department, or from the State or Territory Department.
51. The “industry” arrogance is such that they say openly ... “you need to understand “industry” makes the law and even if you don’t like it you must comply” - Chairman; NTCA Katherine Branch; 1993.
52. Such archaic regulatory control which is being applied by the Commonwealth is surely in breach of the International Covenant of Civil and Political Rights (ICCPR).
53. Constitutionally the Commonwealth is charged with a legal responsibility for the “*protection of life and property*”, [⁷] of my family’s property and our private businesses; the opposite is currently occurring.

⁶ S69; **Ministerial directions** ;

(1) The Minister may, in writing, direct a prescribed body to do the things specified in the direction.

(e) any other matter with respect to which the Parliament has power to make laws under the Constitution.

(d) - recommendations to maximize the ability of grass-fed cattle producers to respond to challenges and capture opportunities in marketing and research and development.

54. The basis of this question is in itself a symptom of the malaise that permeates farming generally in Australia; a general assumption that we must be “reactive” in contrast to “proactive”, implying we do not possess sufficient intelligence to be proactive. The actions of the perceived elite in “industry” continually portray grass-fed producers as subservient, subhuman creatures that must be subjected to constant supervision, direction, regulation and compliance simply to function.
55. That function is often described by “industry” as **“producing food and fibre for the world”**; there is no economic unit within the structure to monitor income or cost of production for Grass-fed producers, no plan or cost benefit analysis regarding income levels, we are just required to produce. In a telephone conversation with Geoff Teys (re LPA 2004) said laughing ... *“you people will always produce regardless ... that’s all you know, that’s all you’ve ever done”*.
56. Deregulation of the Grass-fed sector is the only solution.
57. We should possess the freedom to operate our private business, to indulge in free trade worldwide, supply and demand, as we do have the ability to negotiate directly with your customer (without “industry”) and to have the resulting Contract executed at the point of sale. Currently the Commonwealth holds a legal interest in all Australian live cattle and meat worldwide [⁸] after contracts are executed, until it is consumed. In the case of cattle the legal interest remains until they die of old age (10 years or more) or are reduced to meat and consumed. This is strictly regulated through the Export Control Act; Export Supply Chain Assurance Scheme (ESCAS); enforced by “industry”; it is simply a Commonwealth induced trade restriction.
58. The Grass-fed sector has been evolving since 1997 in a way that was not foreseen then and has evolved to a stage now that there are two competing industries within the structure; the old processor dominated industry and the emerging live export industry.
59. Registered feedlots are not part of the Grass-fed production sector they are secondary industry an integrated part of the processing industry.
60. Deregulation is necessary to separate these two competing industries; the processor sector wishes to destroy live export because it cannot control it and live export is a threat to the continued operation of the processors. That is because live export is paying a higher price for cattle

⁷ Quick and Garran; page 513; -“These words are copied from the several Acts of the Imperial Parliament providing for the establishment of legislatures in the various Australian colonies, and are perfectly appropriate when used in reference to the establishment of the legislature which is to possess plenary legislative powers, and have unlimited jurisdiction on all questions relating to the protection of life and property, and the enforcement of contractual rights of every kind; but it is very doubtful if they ought to find a place in connection with the definition and delegation of limited legislative powers which do not include matters relating to the daily protection of life and property, or to enforcement of private rights and obligations in general.”

⁸ AMLI Act; s5

- than the processors and the live export market is expanding into traditional processor production territory.
61. The primary consumer of levy funds both in R&D and so called marketing is the processor sector. For that reason alone the industry should be formally recognised as being two separate competing entities.
 62. How much R&D is really needed? We are told we need to keep “investing” in R&D but how many times do we need to rediscover R&D that was established up to 30 years ago. It’s simply a matter of making available what is already archived, into accessible material on the internet; if more is needed in the future, private industry will react and provide (like the wheat industry).
 63. The State and Territory governments receive funding from MLA Limited for R&D which in fact should be coming directly from the Commonwealth; their pleas for a continuation of this structure should be ignored, after all they are not levy payers.
 64. Marketing is contradictory in itself because how can MLA Limited market anything when they have nothing to sell? The processor/feedlot/grain fed sector consumes the lion’s share of marketing funding because of its power in RMAC; the vertically integrated entities are the greatest recipients of marketing funding, whilst the greater Grass-fed sector gets very little and is peripheral R&D at that.
 65. In a deregulated Grass-fed sector the Department of Trade would and should be our principal marketing instrument, like it was in Sir John McEwen’s time.

Conclusion

66. The recommendations Senators will have to make at the end of this Senate inquiry will decide the long term future of the Grass-fed Cattle Production sector.
67. If the Senate recommends a continuation of the current restrictive regulatory structure or an alternative but similar Government enforced structure, then the Grass-fed sector will continue to decline economically in a similar way that it has since 1997.
68. We are very much opposed to the inclusion of any Agri-political groups appointed by statute or otherwise by Government, to positions of trust like they hold within the current structure. This needs to be abolished. Agri-political groups must remain independently funded; they must not be prescribed into Government and must not be placed in positions of Trust of public monies. They are political groups not business groups.
69. The best course of action and the brightest future for the Grass-fed sector lies in complete Deregulation, the repeal of the AMLI Act and the cessation of the compulsory levy system.

That concludes my submission, thank you for your indulgence,

Rod Dunbar (Managing Director)

Date: 25th February, 2014