



McGrathNicol

13 November 2017

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Stephen Palethorpe
Secretary
Select Committee on Lending to Primary Production Customers
PO Box 2600
Canberra ACT 2600

Dear Stephen

McGrathNicol response to questions by the Committee

I refer to the attendance of Jamie Harris, Anthony Connelly, Matthew Caddy and Robert Kirman of McGrathNicol before the Select Committee on Lending to Primary Production Customers (**the Committee**), on 20 October 2017.

During those proceedings the Committee put two particular questions to McGrathNicol, which we took on notice and agreed to provide further detailed responses to the Committee. Our responses now follow to those two questions.

1 – Rural property values in Queensland

At the Committee proceedings on 20 October 2017, Senator Williams asked McGrathNicol whether, in McGrathNicol's experience, values for Queensland grazing properties had increased in 2011 relative to prior years. This was in the context of the period from 2008, when we understand historically high values for grazing properties had been achieved for properties sold at or around that time, followed by a decline in market values for those types of assets in the following years.

Our anecdotal experience is that it was a number of years after 2011 when market values for Queensland grazing properties generally increased relative to the market values for prior years.

In providing this response to the Committee, we highlight the following limitations with our anecdotal experiences.

Qualifications

McGrathNicol is a professional advisory services firm with offices in each of Brisbane, Sydney, Melbourne, Canberra and Perth, in addition to an office in New Zealand. We offer a range of services to clients including:

- Business Advisory;
- Forensic;
- Transaction Services; and
- Restructuring.

Our partners and staff hold a range of professional qualifications and registrations necessary for the professional services that we provide to our clients.

BNE-Admin-OldJobs-SenateCommittee-171110-Questions on Notice Response

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Importantly, our firm, partners and staff do not hold professional qualifications as Certified Practising Valuers or Registered Valuers (**Valuers**), and therefore McGrathNicol does not provide, nor purport to be Valuers of real property.

Our anecdotal experience is limited to circumstances where McGrathNicol has engaged Valuers to provide valuation services for specific assets at certain points in time. These circumstances are generally during formal restructuring or insolvency appointments.

Limited number of engagements

Our experiences are further limited to just those particular matters where McGrathNicol had direct involvement in the Queensland pastoral industry at the times referred to in the Committee's question. Due to that limited exposure, it is difficult to make general observations regarding broad market trends for an industry as diverse as the Queensland pastoral industry.

Other relevant matters

From our general observations, the Queensland pastoral industry appeared to experience a substantial period of change from 2008, including varying macro-economic factors, climatic and seasonal conditions, government policy and regulatory change.

In circumstances where McGrathNicol was directly involved in the marketing and sale of Queensland pastoral properties, the market demand for certain Queensland pastoral properties, and therefore the value a buyer was willing to pay for a property, was also influenced by factors specifically referable to an individual property, including its:

- location;
- condition and extent of capital improvements;
- type of production system; and
- target market for livestock or crop(s) produced by the property.

Furthermore, the particular circumstances of interested parties, including access to and the cost of capital, were also determining factors in those parties' assessment of market value for pastoral properties available in the market.

2 – Regulatory obligations in respect of market value

During McGrathNicol's attendance before the Committee, Senator Brockman requested that McGrathNicol provide comments regarding steps that might be taken to strengthen the regulatory arrangements to achieve market value when a property is sold on behalf of a mortgagee.

Legislation

Section 420A of the *Corporations Act 2001* stipulates *in exercising a power of sale in respect of property of a corporation, a controller must take all reasonable care to sell the property for (a) if, when it is sold, it has a market value – not less than that market value; or (b) otherwise the best price that is reasonably obtainable, having regard to the circumstances existing when the property is sold.*

For real property located in Queensland, section 85(1) of the *Property Law Act (Qld) 1974* stipulates *it is the duty of a mortgagee, including as attorney for the mortgagor, or a receiver acting under a power delegated to the receiver by a mortgagee, in the exercise of a power of sale conferred by the instrument of mortgage or by this or any other Act, to take reasonable care to ensure that the property is sold at the market value.*



Further, section 85(1A) states *if the mortgage is a prescribed mortgage, the duty imposed by subsection (1) includes that a mortgagee or receiver must, unless the mortgagee or receiver has a reasonable excuse, adequately advertise the sale; and obtain reliable evidence of the property's value; and maintain the property, including by undertaking any reasonable repairs; and sell the property by auction, unless it is appropriate to sell it in another way; and do anything else prescribed under a regulation.*

With respect to the provisions of the *Property Law Act (Qld) 1974*, comparable legislative requirements apply to the sale of real property in other state jurisdictions.

The term *market value* is not defined in either the *Corporations Act* or *Property Law Act (Qld)*.

Judicial precedent

Substantive judicial precedent has been established in the various Australian jurisdictions regarding the application of the provisions of the *Corporations Act* and relevant state legislative requirements, regarding the principles, terms, concepts and application of the legislation to the sale of property and the determination of *market value*.

In our view, the legal principles and precedents provide strong direction and guidance for Controllers and mortgagees regarding the process to be undertaken for the sale of any asset, and confirm that an appropriate process will allow an open and informed market to determine the true market value of an asset when it is made available for sale.

We therefore do not see utility in any amendment or enhancement of these well-established legal requirements and the judicial precedents that flow from them.

Conclusion

We thank the Committee for the invitation to appear before the Committee and to participate in the inquiry.

If you have any further queries regarding our responses, please contact me on (07) 3333 9800.

Yours faithfully

Jamie Harris
Managing Partner