

Chapter 6

Contestability, flexibility and transparency

6.1 This chapter considers contestability and efficacy within the red meat industry levy system, flexibility in relation to cattle transaction levy allocations as well as transparency in pricing and trade practices.

MLA Donor Company

6.2 An MLA wholly-owned subsidiary, the MLA Donor Company Limited (MDC) facilitates private investments in R&D innovations across the red meat industry.

6.3 From 1998, the processing sector and live exporters funded their own marketing and R&D through a voluntary contribution, which was directed to MLA as the industry marketing and R&D body. Under the AMLI Act, these two sectoral bodies, along with the MDC, were recognised as 'approved donor bodies' for the purposes of attracting matching Commonwealth funding for R&D. The explanatory memorandum to the legislation noted that declaration of the MDC as an approved donor (from 1 July 1998) would allow it to act as a 'conduit for independent funding of approved industry research and development activities eligible for R&D matching of expenditure'.¹

6.4 The department explained that:

Section 61 of the *Australian Meat and Livestock Industry Act 1997* (the Act) enables the minister to declare donor bodies. Section 66 (1)(b) enables approved donors to have their R&D contributions to MLA matched by the government. Approved donors are the Australian Meat Processor Corporation (AMPC) and LiveCorp, who both receive statutory R&D levies, and the Meat and Livestock Australia (MLA) Donor Company which receives voluntary contributions. The total R&D matchable expenditure by MLA, through its direct R&D levy receipts and contributions through the three donor companies, is subject to the 0.5 percent gross value of production cap.²

6.5 In 2007, an amendment to the AMLI Act gave effect to the processing sector's request to introduce statutory levies on the slaughter of cattle, sheep and goats. As part of legislative changes, levy funds were directed to AMPC as the processors' service body.³ However, the amendment did not affect the existing arrangements for Commonwealth matching funding, as processing sector R&D funds were still directed to MLA as the industry research body.

1 Explanatory Memorandum, *Australian Meat and Live-stock Industry Act 1997*: Declaration of MLA Donor Company Limited As Approved Donor.

2 Department of Agriculture Submission to Productivity Commission inquiry into the Australian Government Rural and Research and Development Corporations Model, August 2010, p. 26, http://www.pc.gov.au/data/assets/pdf_file/0018/100683/sub156.pdf (accessed 10 June 2014).

3 *Agriculture, Fisheries and Forestry Legislation Amendment (2007 Measures No 1) Act 2007*.

6.6 Similarly, in 2004, LiveCorp became a declared marketing and R&D body for the livestock export industry with compulsory levy funds on livestock exports directed to LiveCorp. As with the processing sector, matching Commonwealth funding was provided only where levy funds were directed by LiveCorp to MLA for R&D purposes. The status of MDC as an approved donor remained unchanged and it continued to receive funds from private investors for R&D. Therefore, MLA remained the only industry body eligible to receive dollar for dollar matching Commonwealth funds for research from industry levies and funds received from the three declared approved donors.⁴

6.7 The fact that the legislative landscape has not kept up with industry changes provided scope for private companies to double their R&D return through MDC. AMPC Plant Initiator Projects (PIP) guidelines explain how companies can achieve this:

- AMPC PIP—you can access your funds with AMPC up to 50% of the total project cost and you fund the rest of the project cost.
- MLA PIP—you can access your AMPC funds and then apply through the MLA Donor Company, which can match your funds dollar for dollar. This means that you may only pay as little as 25% of the total cost of your research.⁵

6.8 In June 2011, newspapers reported that JBS-Swift Australia Chief Executive, Mr Iain Mars, disclosed that the company had received \$2.4 million in funding, primarily for R&D. Mr Mars, an MLA director from 2009 to 2012, explained that JBS-Swift contributed \$844,000 over the same period, primarily through MDC.⁶

6.9 In its 2011–12 annual report, MLA noted that since 1999, MDC had approved more than 514 contracts worth \$205.7 million. During 2011–12, MDC attracted a total investment of \$17.4 million in private and public funds in red meat industry R&D.⁷ In 2010 alone, MLA (through MDC) received \$11 million in donations.⁸

4 Senate Rural and Regional Affairs and Transport Legislation Committee, *Provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No.2) 2004*, September 2004, p.12; Ms Trysh Stone, Department of Agriculture, *Committee Hansard*, 23 June 2014, p. 20; Department of Agriculture, *Submission 28*, p. 15.

5 Australian Meat Processor Corporation, AMPC/Member – Plant Initiated Projects, <http://www.ampc.com.au/pdfs/PIP5050.pdf> (accessed 30 June 2014).

6 Stuart Washington, 'A beef about beef: R&D lost in a dust storm', *Sydney Morning Herald*, 27 June 2011, <http://www.smh.com.au/business/a-beef-about-beef-rampd-lost-in-a-dust-storm-20110626-1glm7.html> (accessed 2 June 2014).

7 Meat and Livestock Australia, *Annual Report 2011–12*, p. 41.

8 Stuart Washington, 'A beef about beef: R&D lost in a dust storm', *Sydney Morning Herald*, 27 June 2011.

6.10 Between June 2008 and December 2009, MLA reported that 30 per cent of its R&D projects were MDC projects.⁹ At the time, it was noted that four of the country's largest meat processors including JBS Australia, Nippon, Rockdale and Teys were awarded almost one-third of AMPC's entire budget for R&D from 2003 to 2008 under its PIP scheme. The \$10 million spent by AMPC on the grants made up 25 per cent of total expenditure, while MLA contributed a further 50 per cent, but did not make its expenditure public, citing commercial-in-confidence rules. The recipient of each grant paid the remaining 25 per cent.¹⁰

6.11 In an answer to a question on notice during the 2010–11 Senate supplementary estimates round, MLA noted that no producer levies are invested in MDC contracts. It clarified that while work on contracts is confidential during the application phase, all approved MDC contracts must have an identified industry dissemination, adoption and commercialisation pathway.¹¹ However, as the operations of MDC are integrated in MLA, both MDC and MLA report together in a single MLA annual report. Without a separate MDC annual report, establishing the funding and spending flows in relation to, and between, MLA and MDC is made extremely difficult.

Efficacy of donor companies

6.12 In a submission to the PC review of RDCs in June 2010, AMPC argued that its status as a designated donor company should be maintained. It argued that its status provided an avenue for 'optimum utilisation of Commonwealth R&D investment and for leveraging additional voluntary contributions made by processor companies'.¹²

6.13 However, the 2011 PC report identified a problem with the operation of donor companies. The PC raised specific concerns in relation to matching government payments for research funded by voluntary contributions from individual entities. It argued that government contributions may be inappropriately used to subsidise entity-specific research. For these reasons, the PC recommended that contributions made to RDCs through donor company arrangements, by an individual private entity, should

9 Meat and Livestock Australia, Submission to Productivity Commission Inquiry into Research and Development Corporations, August 2010, http://www.pc.gov.au/data/assets/pdf_file/0015/101049/sub158.pdf (accessed 2 June 2014).

10 Kelly Burke, 'New crisis as meat industry split by demand for inquiry into grants', *Sydney Morning Herald*, 10 June 2011, <http://www.smh.com.au/environment/animals/new-crisis-as-meat-industry-split-by-demand-for-inquiry-into-grants-20110609-1fv7a.html> (accessed 10 June 2014); Amos Aikman and Anthony Klan, 'Meat research payouts not shown in reports', *The Australian*, 27 June 2011, <http://www.theaustralian.com.au/national-affairs/meat-research-payouts-not-shown-in-reports/story-fn59niix-1226082395567> (accessed 10 June 2014).

11 Senate Rural and Regional Affairs and Transport Legislation Committee, Supplementary Budget Estimates 2010, Answer to question on notice, APD/MLA 05, p.5, http://www.aph.gov.au/~media/Estimates/Live/rat_ctte/estimates/sup_1011/daff/mla.ashx (accessed 10 June 2014).

12 Australian Meat Processor Corporation, Submission to Productivity Commission Review of Rural Research and Development Organisations, June 2010, p. 52, http://www.pc.gov.au/data/assets/pdf_file/0008/99422/sub111.pdf (accessed 10 June 2014).

not be eligible for any matching government contribution.¹³ Furthermore, the PC recommended that matching government contributions should be precluded from projects that are subject to commercial-in-confidence provisions which prevent disclosure of research output for any longer than necessary to apply for agreed intellectual property protection.¹⁴

6.14 The PC also highlighted that the absence of robust data on funding and spending flows within the overall R&D framework made it difficult to establish exactly how much money was being spent on rural R&D, with whom it was being spent, and which parties were ultimately providing the funding. The report noted the particular challenge of unravelling the 'money-go-round' which results from the heavy emphasis on leveraging and collaborative research effort.¹⁵

6.15 Similar concerns were raised regarding funding and spending flows in relation to MDC. Efforts by the committee to establish details about MDC revealed a convoluted web of funding, relationships and vested interests. The fact that producers and their representatives had limited knowledge of how MDC operated, including its funding arrangements, clearly illustrated the current level of transparency and openness in relation to the company, and its relatively protected status within the red meat industry structure.

Allocation of the cattle transaction levy components

6.16 The proportional distribution of the \$5 CTL across marketing (73 per cent), R&D (18 per cent), NRS's food safety activities (6 per cent) and AHA's animal health programs (3 per cent) was not raised as a particular problem in evidence to the committee. In fact many witnesses expressed satisfaction with the distribution.¹⁶ However, concerns were raised regarding the inflexibility of the system to provide for reallocation of the levy components. At present, any change to the amount of each levy stream such as AHA or MLA marketing, requires the Minister to change the Primary Industries (Customs) Charges Regulations 2000.¹⁷

6.17 ARCBA explained that since the 1997–98 reforms, the allocation to animal health has remained at 42 cents of which the:

- NRS component has increased from 12 cents to 29 cents;

13 Productivity Commission, *Rural Research and Development Corporations*, Recommendation 7.1, June 2011, p. xl.

14 Productivity Commission, *Rural Research and Development Corporations*, June 2011, Recommendation 10.3, p. 274.

15 Productivity Commission, *Rural Research and Development Corporations*, June 2011 p.xxxiii, http://www.pc.gov.au/data/assets/pdf_file/0003/110010/13-rural-research-chapter10.pdf (accessed 2 June 2014).

16 Mr Geoff Pearson, Meat Council Representative, Western Australian Farmers Federation, *Committee Hansard*, 6 May 2014, p. 1.

17 NSW Farmers' Association, *Submission 168*, p. 6.

- Cattle Disease Contingency Fund (CDCF) component declined from 17 cents in 2002 to 7 cents in 2005–06 and has been zero from 1 January 2007; and
- AHA component has remained constant at 13 cents.¹⁸

6.18 CDCF was established in February 2002 by CCA, ALFA and AHA to support animal health related activities of benefit to the cattle industry in Australia. The CDCF Fund was established to fund emergency responses in the event of major disease (endemic or exotic) incidents and pro-active disease-related programs.

6.19 In October 2006, the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry agreed in principle to a request from ALFA and CCA that the CDCF cap be increased from \$15 million to \$20 million. This increase coincided with the transfer of residual funds from the former National Cattle Disease Eradication Account to CDCF. While the Parliamentary Secretary also agreed to a measure of flexibility, the increase was not to exceed the cap by more than 10 per cent. The balance of funds held by CDCF has to be maintained at all times within this cap.¹⁹

6.20 However, concerns were raised during the inquiry that the reserves held by the CDCF were rapidly declining below the required \$20 million (plus or minus 10 per cent) because the number of programs it supports exceeds the interest earned.²⁰ ARCBA noted that the NRS is consuming the bulk of the 23 cents (while running annual deficits) and the CDCF has fallen below the government-directed minimum of \$18 million while the AHA is using up all of its reserves. A situation it described as a 'crisis'.²¹

6.21 A number of submitters, including CCA, ALFA and AHA, suggested that there should be greater flexibility in relation to the levy allocations to address these challenges. AHA noted that:

We believe that enabling such flexibility in the application of levies would be valued by all our industry Members, as well as our government Members. This approach provides the necessary agility to redirect and thereby enhance investments to meet the changing landscape of animal health and biosecurity management and the dynamic nature of livestock production.²²

6.22 The department acknowledged that the legislation pertaining to levy allocation was inflexible.²³ Recognising that it should be easier to adjust the allocation of the \$5 levy, as opposed to adjusting of the total quantum of the levy, CCA argued

18 Australian Registered Cattle Breeders Association, *Submission 10*, p. [2]; NSW Farmers' Association, *Submission 168*, p. 6.

19 Animal Health Australia, *Submission 115*, p. 10.

20 NSW Farmers' Association, *Submission 168*, p. 6.

21 Under a government directive, the CDCF is required to be maintained at \$20 million plus or minus 10 per cent, except in the event of a major disease event.

22 Animal Health Australia, *Submission 115*, p. 12.

23 Mr Matthew Koval, Department of Agriculture, *Committee Hansard*, 23 June 2014, p. 14.

that the industry should have the flexibility to adjust the allocations. It noted that there was some urgency for greater flexibility as AHA's levy funds will be exhausted by the end of 2015. CCA argued that this will leave the Bovine Johne's disease program, national arbovirus monitoring program and other programs without funding.²⁴

6.23 Moreover, under the current arrangements, the consultation process to adjust the allocations is both costly and lengthy, requiring an investment of up to two years and more than \$350,000.²⁵ CCA explained that having the capacity to adjust levy rates using an appropriate, but less onerous, process would allow the industry to be responsive to its changing needs.²⁶

6.24 ALFA, ARCBA and AHA also supported greater flexibility to provide for easier adjustment of the grass- and grain-fed levy allocation between AHA, NRS and MLA. They argued that such flexibility would better reflect the dynamic nature of livestock production by enabling the reprioritisation of the funds in response to the needs of industry.²⁷

6.25 However, there were varying views as to how the allocation division should be decided. ARCBA advocated that CCA should have the ability to change the allocation as priorities change. However, it qualified its support for CCA management of the allocations, noting that if CCA were to be a beneficiary of a portion of the levy, it would have a serious conflict of interest in handling the process of levy component reallocation.²⁸

6.26 ABA and Mr John Andison raised concerns that CCA should not determine the levy allocations, as it is not representative of the grass-fed cattle levy paying producers of Australia.²⁹ ABA held the view that the inability of the sector to manage the levy allocations was symptomatic of a system whereby the levies paid by the grass-fed cattle sector are not actually controlled or managed by the sector. It advocated for wider structural reform to empower the sector to do so.³⁰

24 Mr Jed Matz, Cattle Council of Australia, *Committee Hansard*, 7 March 2014, p. 41.

25 Cattle Council of Australia, *Supplementary Submission 142*, p. [3].

26 Cattle Council of Australia, *Supplementary Submission 142*, p. [3].

27 Australian Lot Feeders' Association, *Submission 6*, p. [2]; Mr Malcolm Foster, Australian Registered Cattle Breeders' Association, *Committee Hansard*, 7 March 2014, p. 46; Animal Health Australia, *Submission 115*, p 12; Cattle Council of Australia, *Submission 142*, p. 4.

28 Australian Registered Cattle Breeders Association, *Submission 10*, p. [2].

29 Mr John Andison, *Submission 1*, p. [1]; David Byard and Linda Hewitt, 'ABA's "Beef – The Future" Forum', Australian Beef Association, 14 July 2013, <http://austbeef.com.au/2013/07/14/abas-beef-the-future-forum/> (accessed 23 January 2014).

30 David Byard and Linda Hewitt, 'ABA's "Beef – The Future" Forum', Australian Beef Association, 14 July 2013, <http://austbeef.com.au/2013/07/14/abas-beef-the-future-forum/> (accessed 23 January 2014).

Transparency in pricing and trade practices

6.27 Considerable evidence to the committee highlighted producers' concerns that they receive a disproportionately small margin of the end retail dollar for a beast. The inquiry brought to the fore the lack of information that producers have regarding profits and margins along the beef supply chain. Low producer returns, coupled with a concentration of retail and processor control, have encouraged debate on whether greater transparency in cattle pricing and processor profit margins is now required.

6.28 The point was made to the committee that when a product is sold by a producer, the producer sector does not know what the product's price will be when it is purchased by a retailer or overseas market.³¹ Mrs Bloomfield also noted that market reporting was a major issue. She explained that when live export markets are quoted, they are based on 10 per cent Landmark animal sales, rather than an average based on what all exporters are receiving. She made the point that as more producers are selling directly to processors (rather than selling cattle through sale yards) processors don't necessarily report, making it extremely difficult for producers to compare grid prices.³²

6.29 Ms Joanne Rea, Chair of Property Rights Australia argued that in a price-taking market, the need for easily accessible market information was fundamental.³³ She suggested that the Australian market seems to have an extremely free market position which restructuring could not fix as:

This free market dry idea leads to price manipulation, fire sales of assets and no-one seems to want to legislate to stop it. If you want another dry position, all cattle processors have to do to make themselves viable is to screw the prices down. They have no incentive to become more efficient. All the efficiencies have been made at the producer end and the processors have no incentive at all to become more efficient in any other areas, because their biggest cost is the cost of stock and they can easily manipulate it.³⁴

6.30 The committee was informed by AMPC that there is no official data on the margins or differences between what a primary producer receives for the sale of a beast to a processor, compared to sales at the processing and retail stages. AMPC Chairman, Mr Stephen Kelly noted that it was difficult to establish selling prices because processors are both export and domestic oriented.³⁵

6.31 The development of a transparent pricing and trade practices system was raised as one possible method to counter industry trends towards concentration and

31 Mr J. Ashley McKay, *Committee Hansard*, 21 May 2014, p. 63.

32 Mrs Jo-Anne Bloomfield, *Committee Hansard*, 7 May 2014, p. 19.

33 Ms Joanne Rea, *Submission 138*, p. 3.

34 Ms Joanne Rea, Property Rights Australia, *Committee Hansard*, 21 May 2014, p. 9.

35 Mr Stephen Kelly, Australian Meat Processor Corporation, *Committee Hansard*, 7 March 2014, p. 14.

consolidation of the retail and processing sectors.³⁶ Legislation akin to the US *Packers and Stockyards Act 1921* and *Livestock Mandatory Price Reporting Act 1999* was highlighted as one such way forward.³⁷

6.32 According to the United States Government, the purpose of the Packers and Stockyard Act is to 'assure fair competition and fair trade practices, to safeguard farmers and ranchers...to protect consumers...and to protect members of the livestock, meat and poultry industries from unfair, deceptive, unjustly discriminatory and monopolistic practices'.³⁸

6.33 Likewise, the United States' Livestock Mandatory Price Reporting Act establishes a program of information regarding the marketing of cattle and other livestock products that:

- 1) provides information that can be readily understood by producers, packers, and other market participants, including information with respect to the pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products;
- 2) improves the price and supply reporting services of the Department of Agriculture; and
- 3) encourages competition in the marketplace for livestock and livestock products.³⁹

6.34 Ms Rea recommended the introduction of legislation along the lines of the US framework. She noted that the US legislation was designed to provide for transparency of information, thereby stopping price manipulation and ensuring that producers are paid fairly and on time.⁴⁰

6.35 United Stockowners Australia also recommended the introduction of strong 'anti-trust' laws akin to the Packers and Stockyard Act. It argued that such legislation was necessary to protect grass-fed cattle producers from cattle market manipulation and distortion which had contributed to extremely low prices for cattle.⁴¹

6.36 Mr John Carter argued that under the Packers and Stockyards Act, every sale made in the US by a producer to a processor must be disclosed to the Department of Agriculture, so there is complete transparency. Mr Carter further noted that the act also provides that the producer is paid on the day of sale, in contrast to practices in

36 United Stockowners Australia, *Submission 179*, p. 2; Ms Joanne Rea, Property Rights Australia, *Committee Hansard*, 21 May 2014, p. 9; Mr J. Ashley McKay, *Committee Hansard*, 21 May 2014, p. 63.

37 Mr John Carter, *Committee Hansard*, 7 March 2014, p. 71.

38 United States Department of Agriculture, Packers and Stockyards Program, <http://www.gipsa.usda.gov/psp.html> (accessed 15 July 2014).

39 Section 211. Purpose, *Livestock Mandatory Price Reporting Act 1999*.

40 Ms Joanne Rea, Property Rights Australia, *Committee Hansard*, 21 May 2014, p. 9.

41 United Stockowners Australia, *Submission 179*, p. 19;

Australia. He argued that the introduction of equivalent legislation in Australia would make a substantial difference to producers because it would provide transparency to the cattle market and thereby 'immediately highlight where the money is going'.⁴²

6.37 Mr McKay explained that while a mandatory pricing system introduced in Australia would not guarantee a better price for producers, it would bring needed transparency to the system.⁴³

6.38 Mr Rob Moore drafted a primary production pricing bill based on the US legislation. Mr Moore's bill seeks to increase farm-gate prices through the establishment of a transparent and improved competitive tension for livestock.⁴⁴

6.39 During a recent Senate Estimates hearing, Dr Peter Barnard, MLA's General Manager, Trade and Economic Services, informed the Legislation Committee of the benefits and costs associated with transparent price reporting:

The benefits are regular and transparent price reporting. Certainly, in the United States, processors have to report on a daily basis – or sometimes more often than a daily basis – prices both for livestock and for beef. So it adds to the market's knowledge on price discovery. On the other side of the ledger, of course, it adds to red tape. It adds to costs. I think the price reporting mechanisms in the United States run into the tens of millions of dollars. MLA currently seeks information on prices on a voluntary basis. So we do report livestock prices. We do report meat prices. But we ring up processors and ask them to voluntarily supply that information. We do that for about \$2 million a year – a fraction of the cost of the US mandatory price reporting and other price reporting activities. I think it is a matter of weighing up that increased transparency against the additional costs and the additional red tape involved.⁴⁵

6.40 Considerable evidence to the committee highlighted the lack of transparency in relation to cattle pricing and the need for a level market playing field. In light of factors including the diversity of product coming out of the farm gate, increasing focus on export markets, consolidation of the processing sector and the extent to which there is genuine competition at stockyards, there is little scope for producers to establish a clear line of sight along the supply chain. For a producer, the beef pricing system is opaque.

6.41 The view was put to the committee that same day payment to producers and a legislative mechanism to require disclosure of the farm-to-wholesale as well as wholesale-to-retail prices, could only bolster competitiveness in the livestock market. Supporters of price transparency argued that a system which establishes the true price of the cattle market by requiring transparency in market reporting, underpinned by the

42 Mr John Carter, *Committee Hansard*, 7 March 2014, p. 71.

43 Mr J. Ashley McKay, *Committee Hansard*, 21 May 2014, p. 63.

44 Mr Rob Moore, *Submission 32*; Mr Rob Moore, *Committee Hansard*, 21 May 2014, p. 47.

45 Dr Peter Barnard, MLA, *Estimates Hansard*, 28 May 2014, p. 115.

prospect of investigation into anti-competitive behaviour, has the potential to shift cattle producers from their current position as price-takers.