Lawyers | McCullough Robertson

Emerging Issues

Queensland agribusiness sector 2019

Welcome

We are pleased to bring you the 2019 edition of *Emerging Issues* for the Queensland agribusiness sector.

Emerging Issues highlights the legislative and policy developments over the past 12 months which will significantly impact the Queensland agribusiness industry.

We also highlight the increasingly important area of AgTech which will continue to drive innovation and development in the sector over the coming decade.

We are also delighted to introduce our team of industry experts who can advise you on all aspects of your agribusiness operations.

We hope you enjoy this edition.

Peter Williams
Food and Agribusiness Corporate Partner

Publish date: November 2019

Contents

Receive the latest industry news and updates to your inbox

Stay up to date by subscribing to our mailing lists and receive the latest news for the Food and Agribusiness industry in Australia.

Not sure if you have signed up? Visit our website to sign up or update your contact details and preferences.

http://bit.ly/McRsubscribe

Vegetation management

Vegetation management regulations have become one of the most technical and complex regulatory areas faced by the agricultural sector.

The primary legislative instrument regulating vegetation management in Queensland is the *Vegetation Management Act 1999* (Qld) (**VM Act**). However, the VM Act sits within a complex legislative matrix, and operates in conjunction with, among others, the:

- *Water Act 2000* (Qld);
- *Planning Act 2016* (Qld); and
- *Planning Regulation 2017*.

Vegetation management has become a highly partisan issue, in particular in recent years, with both sides of politics holding vastly different views as to how the issue should be regulated. This has resulted in a plethora of legislative amendments and changes in government policy.

By way of example, since its inception, the VM Act has been the subject of 41 amendments, with more than 20 of those amendments being significant changes which required landholders to alter their vegetation and property management plans.

2009 REGULATIONS

In 2009, the Queensland Government fundamentally changed the vegetation management regulatory landscape, through the introduction of the *Vegetation Management and Other Legislation Amendment Act 2009* (Qld) (**VM Act 2009**).

The primary purpose of the VM Act 2009 was to provide a new legislative framework for the protection of important regrowth vegetation. Broadly, it achieved this by bolstering existing controls on clearing of native vegetation, to require regulatory approval (and other notice requirements) for the clearing of 'regulated regrowth vegetation', which includes vegetation:

- identified on the regrowth vegetation map as high-value regrowth vegetation;
- located within 50 metres of a watercourse identified on the vegetation map as a regrowth watercourse in priority reef catchments of the Burdekin, Mackay-Whitsunday and Wet Tropics; or
- contained in a category C area shown on a property map of assessable development.

These amendments were widely criticised by the agricultural industry. The criticism was largely centred around the fact that the legislation adopted a punitive approach rather than providing legislative incentives for landholders to responsibly manage vegetation on their land. It added yet another layer of red tape to an industry which is already subject to an abundance of regulatory compliance obligations.

The imposition of a requirement to obtain development approval to manage vegetation on farming land required farmers to engage lawyers and other professional service providers to manage this process. While expenses of this nature could be viewed as a necessary cost of operating a business, when compliance obligations of agribusiness industry participants are viewed as a whole, it is clear that the agribusiness industry has been particularly impacted by compliance obligations and costs above and beyond that of most other industries.

2013 AMENDMENTS

In 2013, the Queensland Government introduced the *Vegetation Management Framework Amendment Act 2013* (Qld) (**VM Act 2013**). The amendments contained in the VM Act 2013 were viewed by many as landmark changes, which provided rural landholders a degree of flexibility and trust in managing vegetation. The amendments were designed to address criticism that had been levelled at vegetation management regulations that unfairly constrained development and were confusing and complicated to operate under.

The VM Act 2013:

- repealed regrowth regulations on freehold and indigenous lands for clearing high value regrowth;
- broadened the scope of the 'relevant purpose' test;
- created a new head of power under the VM Act to allow for the development of self-assessable vegetation clearing codes;
- streamlined mapping by creating a single 'regulated vegetation management map';
- removed section 60B sentencing guide to allow a Court to apply the *Penalties and Sentencing Act 1992*, providing a more equitable and consistent approach to sentencing;
- removed unfair enforcement and compliance provisions so that standard prosecution principles apply and landholders are not automatically held responsible for clearing on their land without evidence; and
- removed the VM Act's interaction with the *Wild Rivers Act 2005*.

In 2015, the Labor Government campaigned on an election commitment to reinstate the previously repealed vegetation management laws, as well as strengthen the framework in relation to remnant vegetation, 'high value' regrowth vegetation and riparian zones.

2018 AMENDMENTS

Fulfilling its election promise, in 2018, the Labor Government introduced the *Vegetation Management and Other Legislation Amendment Bill 2018* (Qld) (**VM Act 2018**). The VM Act 2018 essentially reinstated the provisions that were repealed by the VM Act 2013, but went further to impose further restrictions on managing remnant vegetation and high value regrowth, reviewing self-assessable codes and shutting down agricultural development by removing high value agricultural provisions.

One area of particular concern to the agricultural industry was the amendment to the classifications of land. In particular, industry concern was centred around the re-classification of Category C and Category R land.

Before 8 March 2018 (the date the 2018 Amendments were introduced), clearing of native vegetation for either cropping (high value agricultural) or irrigation (high value irrigated agriculture) could be authorised under the VM Act. Clearing of native vegetation for these purposes is now prohibited – this was enacted by these categories losing their 'relevant purpose' status under the section 22A of the VM Act whilst gaining a specific prohibition under the *Planning Act 2016* (Qld).

Under the pre-amended VM Act, the concept of High Value Regrowth Vegetation (Category C vegetation) only applied to vegetation the subject of an agricultural lease under the *Land Act 1994* (Qld) – where that area has not been cleared since 1989. The 2018 Amendments now apply Category C to vegetation on freehold land, as well as indigenous land that has not been cleared for at least 15 years (since May 2003).

Protection of regrowth vegetation within 50 metres of a watercourse (Category R vegetation) has also been extended to the remaining Great Barrier Reef catchments (Burnett-Mary, Eastern Cape York and Fitzroy). This means that clearing of native vegetation is prohibited within 50 metres of a watercourse in a Great Barrier Reef catchment.

As a result of the introduction of the VM Act 2018, each of the issues described above in respect of the VM Act 2009 returned. Farmers again lost their operational autonomy, ability to deal with the land and are subject to higher operational costs. The confidence which was instilled following the VM Act 2013 were eroded along with any future investment certainty landholders believed they had.

The objectives of vegetation management legislation need to be weighed against the needs of farmers to operate their businesses and utilise their land in a commercially viable manner.

FINAL THOUGHT

The legislative amendments which have been introduced to date fail to strike the necessary balance, and have negatively impacted farmers in a variety of ways, such as through loss of property value and operational profitability. Arguably, instead of imposing stringent compliance obligations, legislative policy should be designed to help foster the development and profitability of these businesses, which are critical to the economy, particularly in North Queensland.

In doing so, farmers would have more capital and incentive to invest in sustainable farming practices. By handicapping the level of capital they are able to invest, farmers are constantly fighting an up hill battle just to stay afloat, let alone materially change their farming practices.

While we have identified above the State legislative framework applicable to clearing vegetation, it should be noted that each local Council also regulates vegetation clearing within its local government area. We strongly recommend that prior to undertaking any vegetation clearing, both the applicable planning scheme and VM Act 2018 are considered, to ensure that the vegetation clearing is being undertaken lawfully.

Author
Stuart Macnaughton
Specialises in Planning and Envrionment

Author
Rachel Jones
Specialises in Planning and Environment

Reef regulations

The Great Barrier Reef is one of Australia's greatest natural treasures. It has been at the heart of the political debate around environmental protection for the last 20 years. Over that time, both the Federal and State Government have introduced a number of plans and other similar measures to protect the reef.

A number of regulatory changes have been introduced to implement government strategy and meet targets prescribed by various reef plans. In the context of the agribusiness industry, environmental policy has principally sought to:

- address diffuse pollution from broad scale land use and halt the decline in water quality entering the Great Barrier Reef;
- create reporting obligations in respect of pollution affecting the Great Barrier Reef; and
- encourage landholders to adopt best management practices through voluntary / incentive schemes, as well as the imposition of financial penalties for non-compliance.

PROPOSED LEGISLATIVE CHANGES

The *Environmental Protection (Great Barrier Reef Protection Measures) Other Legislation Amendment Bill 2019* (Qld) (**EP Amendment Bill**) was passed by the legislative assembly of Queensland on 19 September 2019, with the new laws proposed to come into effect on 1 December 2019.

The broad objective of the EP Amendment Bill is to amend the *Environmetal Protection Act 1994* to strengthen the Great Barrier Reef protection measures to improve the quality of the water entering the Great Barrier Reef. Relevantly, the amendments will:

- set limits for nutrient and sediment loads in each reef catchment to guide regulatory decision making for improved water quality outcomes;
- apply minimum practice standards for agricultural environmentally relevant activities (**ERAs**) targeting nutrient and sediment pollution from key industries in reef regions;
- broaden the Great Barrier Reef catchment area to include Cape York, Fitzroy and Burnett Mary regions;
- require advisers to provide advice about agricultural ERAs that is not false or misleading and keep and produce records upon request;
- establish a framework for recognising industry best management practice;
- introduce measures to address additional nutrient and sediment loads from new cropping and industrial land uses to achieve 'no net decline' in reef water quality from new development; and
- allow a regulation-making power to require data from the agricultural sector and to manage water quality offsets.

A number of submissions that have been made by industry participants highlight concerns in relation to the lack of clarity of the application of some new rules and the potential that the EP Amendment Bill could lead to unintended outcomes.

By way of example, the EP Amendment Bill requires advisers (such as agronomists and fertiliser sellers), when providing tailored advice about agricultural ERAs, to provide advice that is not false or misleading, and keep and produce (upon request) records of the advice provided. An 'adviser' is defined as including any person who provides advice about carrying out an agricultural ERA as a service for reward or in association with another service.

Another key concern for farmers and agribusinesses is the proposed data collection provisions. The Explanatory Memorandum to the EP Amendment Bill states that:

> *'a regulation may require a person involved in the production, manufacture, distribution, supply or use of an agricultural ERA product, fertiliser product or agricultural chemical to keep records or returns.'*

Farmers, sugar millers and fertiliser producers would be captured under the above rules as an entity involved in the production, manufacture, distribution, supply or use of an agricultural ERA product. This far-reaching power may lead to significant legal and administrative costs for industry participants.

The ease by which the ERA conditions can be amended is also a concern for industry. A last minute concession made by the Queensland Government will ensure that the standards, once introduced, will not be amended for the first five years but this will not take away from the prohibitive nature of the regulations which will effectively prevent further development and will likely reduce productivity of existing operations.

Much of the detail as to how the changes will be implemented is not yet finalised, with minimum practice agricultural standards for beef and sugar still in draft.

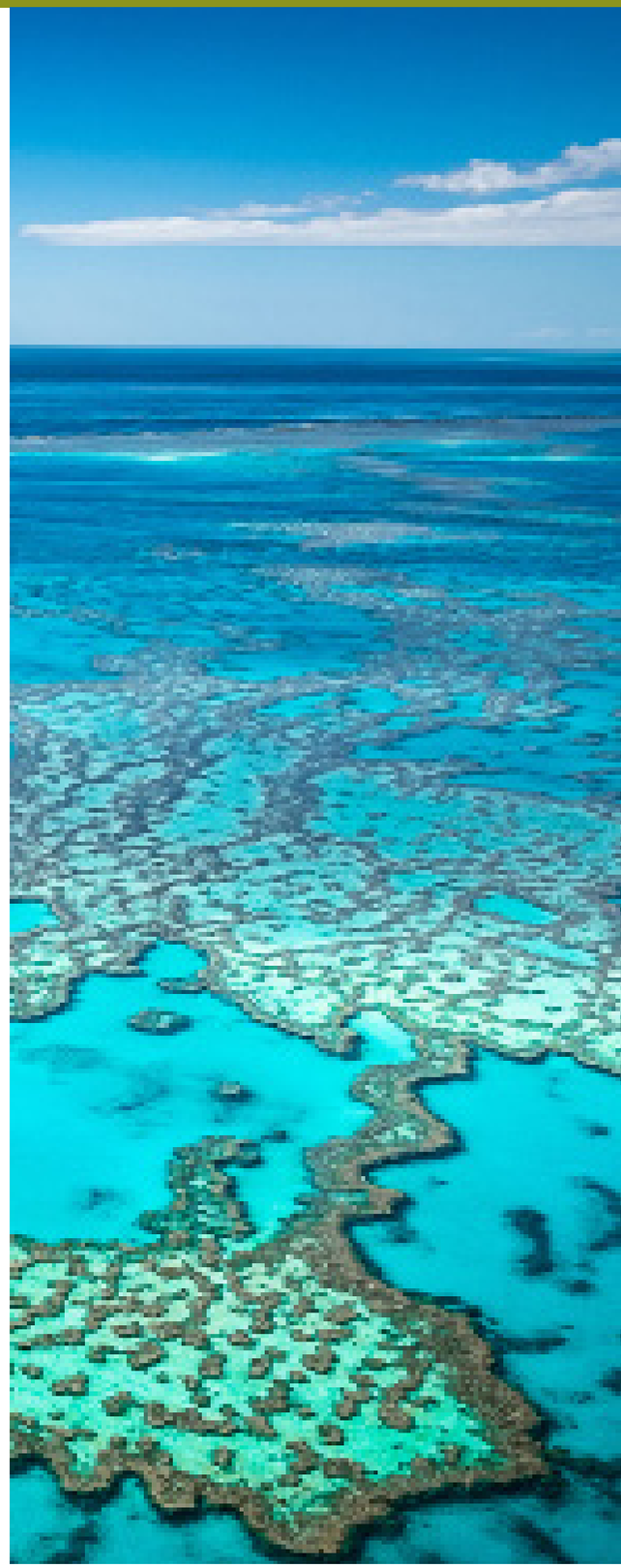
Farmers will be required to incur significant capital expenditure to alter their farming practices in light of the proposed regulatory changes. This significant expenditure will impact the profitability of many farming operations as the increased expenditure is unlikely to be offset by cost savings resulting from productivity enhancements and reduced input costs.

FINAL THOUGHT

Queensland farmers are rightly concerned by the introduction of yet another complex regulatory regime which will impact on their business. Industry bodies will need to take steps to educate industry participants to ensure they are ready to meet the requirements of this new reef regulatory regime.

Author
Stuart Macnaughton
Specialises in Planning and Envrionment

Author
Rachel Jones
Specialises in Planning and Environment



Land tax

PRIMARY PRODUCTION EXEMPTION

In Queensland, land that is used solely for a business of primary production is generally exempt from land tax under section 53 of the *Land Tax Act 2010* (Qld) (**Land Tax Act**).

However, that exemption is limited to:

- an individual, other than a trustee or absentee;
- a trustee of a trust, if all the beneficiaries satisfy the class of persons listed in section 53; or
- a 'relevant proprietary company'.

A 'relevant proprietary company' excludes a company in which an interest is held, either directly or indirectly, by a foreign company or a public company. This means that many primary producers do not get the benefit of this exemption and are liable to pay land tax on the unimproved value of their Queensland landholdings at a rate of up to 2.75% [1] per annum.

This imposition of land tax represents a disproportionately significant impost on primary production businesses as compared to other types of business, because the taxable value of the landholdings of a primary production business typically constitutes a large proportion of the total asset value of the business.

In addition, the fact that other entities are generally exempt from land tax on primary production land means the imposition of land tax on landholders who are not exempt creates a competitive disadvantage for those entities.

Certain ownership structures provide some relief from the worst of these implications, but professional tax advice should be sought before implementing any restructure.

NEW FOREIGN COMPANY / TRUST LAND TAX SURCHARGE

From 30 June 2019 a new foreign land tax surcharge of 2% (**Surcharge**) applies to foreign companies and foreign trusts that own Queensland landholdings with a taxable value of more than $350,000. The Surcharge is charged in addition to the general land tax rates for companies and trusts, which have also increased from 30 June 2019.
A company or unit trust will be 'foreign' if foreign persons hold an interest of 50% or more.

There is a wide concern that the introduction of the Surcharge will have a broad and presumably unintended detrimental affect on agricultural businesses in Queensland, which currently make a significant contribution to the Queensland and broader Australian economy.

It is also clear that without some relief from the Surcharge, Queensland will cease to be an attractive destination for foreign investment, particularly in the agricultural sector.

There are current examples of foreign primary producers with a significant presence in Queensland whose land tax liability will double as a result of these measures. To make matters worse, the Surcharge was first announced on 19 June 2019, and was then implemented with effect from 30 June 2019, giving no opportunity to plan for the changes.

The Office of State Revenue (**OSR**) is currently considering possible exemptions to the Surcharge (which are likely to be applied by way of ex gratia relief) and is delaying the issue of certain 2019 land tax assessments until that process is completed.

McCullough Robertson, together with a number of industry bodies and advocacy groups have been liaising with the Queensland Government on how such exemptions might be appropriately extended to foreign landholders in Queensland's agricultural sector.

In the 2019/20 Queensland Budget speech (**Budget Speech**), the land tax changes (and particularly the extension of the Surcharge to foreign companies and trusts) were described as follows:

> *We will also bring the land tax absentee surcharge adjustment in line with NSW and Victoria. This will see an increase in the surcharge from 1.5% to 2%, along with a widening of the definition to include foreign companies and trusts.*

On the assumption that the changes were in fact aimed at achieving some consistency with the land tax regimes in New South Wales and Victoria, some of the possible approaches that have been put forward are:

Restriction of the Surcharge to residential land consistent with the approach in the *Land Tax Act 1956* (NSW) (NSW Act)

If the purpose of the changes to the land tax rules was to achieve some consistency with New South Wales (as stated in the Budget Speech), the Surcharge should be restricted to foreign owned residential land. This would be consistent with the surcharge land tax provisions found in section 5A of the NSW Act.

Relief for substantial contribution to the economy consistent with the exemption regime in the *Land Tax Act 2005* (Vic)

Alternatively, in Victoria the surcharge land tax is applied more broadly (i.e. not restricted to residential land) but there is a broad range of circumstances where an exemption from the surcharge is available for land owners who are foreign but make a substantial contribution to the Australian economy.

Expansion of existing primary production exemption under Land Tax Act

A third option is that the existing primary production exemption from land tax under section 53 of the Land Tax Act could be expanded such that the availability of the exemption is not dependent on the ownership of the land, rather it should be available to all land that satisfies the test of being used for a business of primary production.

Until such guidelines are issued, all foreign landowners in Queensland should assume that the additional 2% land tax surcharge will be applied.

FINAL THOUGHT

The introduction of the Surcharge is already having a significant adverse impact on foreign investment in agriculture in Queensland. We have a number of clients who have been forced to look in other parts of Australia for agricultural assets given the prohibitive ongoing costs of changes to land tax rules. We will continue to liaise with the Queensland Government to implement an appropriate exemption to the foreign land tax surcharge to ensure Queensland remains an attractive proposition for foreign investment.

FOOTNOTE:

[1] This top marginal rate applies to all landholdings over $10 million.

Author
Duncan Bedford
Specialises in Taxation and Foreign Investment

Author
Frances Becker
Specialises in Taxation

Foreign investment regulation

The agricultural industry is heavily reliant on foreign investment. To ensure that the agricultural industry remains viable and that jobs in rural communities are protected, it is critical that the industry is attractive to foreign investors.

Given the importance of foreign investment, it is critical that Australia's regulatory framework operates to attract foreign investment, and removes as many barriers to entry as reasonably possible. Regulation of foreign investment by the Foreign Investment Review Board (**FIRB)** obviously plays a critical role in this regard.

REGULATION OF FOREIGN INVESTMENT

The Foreign Takeovers Act was introduced in 1975, and amended in 1989 to extend to acquisitions of certain land and business assets, at which point it was renamed the *Foreign Acquisitions and Takeovers Act* (**FATA**). From 1989 to 2015 there were no material legislative amendments made, and updates to the regulation of foreign investment in Australia were predominantly made through changes to FIRB policy.

This lack of activity meant that Australia's regulation of foreign investment arguably lagged behind that of other western countries. The failure to legislate new amendments led to over reliance on policy measures, which ultimately resulted in a complex and out of date regulatory framework.

These issues were addressed as part of sweeping legislative changes which were introduced in 2015 (**2015 Amendments**).

The 2015 Amendments introduced a number of measures that could be viewed as a disincentive for inbound foreign investment into Australia. For example:

- the approval threshold for foreign investment by a private foreign investor in agricultural land (whether by acquiring interests in the land or in a share or unit in an agricultural land corporation or trust), decreased to $15 million (cumulative)[2]; and
- the threshold for investment in an agribusinesses is now $58 million.

The amendments to these thresholds significantly increased the number of transactions involving agricultural land or business assets that require FIRB approval.

Lower approval thresholds result in increased cost and complexity for foreign investment as a broad range of acquisitions of agricultural land, or in agribusinesses, will be subject to FIRB approval.

Further, due to more applications being processed, there are often delays in the approval of foreign investment applications which can be detrimental to Australian farmers as significant transactions, which will provide much needed capital, can be delayed.

Penalties for non-compliance

The penalties that could be imposed for non-compliance by foreign investors with foreign investment regulations were strengthened with the introduction of civil penalties and increases to existing criminal penalties.

Following the 2015 Amendments, breaches by foreign investors will be subject to significant fines and in the most serious cases, possible jail sentences.

Application fees

Fees have been introduced which apply to all foreign investment applications, including in the following key areas:

- $36,200 for applications relating to exemption certificates;
- up to $105,200 to seek FIRB approval for specific transactions;
- up to $10,400 for variations to applications and exemption certificates; and
- $10,400 for internal reorganisations.

The introduction of fees further increased the already substantial costs associated with engaging advisors to guide a foreign investor through the approval application process. Prior to 2015, there were no fees for applications and administration of applications was funded through consolidated Government revenue.

FIRB application fees are payable for any application or notice given relating to foreign investment in agricultural land or agribusinesses. The application fee must be paid before an application will be processed, subject to the Treasurer's statutory power to waive and remit fees.

There is broad concern that the fees incorporate the costs of administrative activities that are unrelated to the processing of the applications for foreign investment. Activities such as data collection, monitoring, compliance and enforcement activities (which are currently covered by the fees) provide benefits to the Australian Government rather than the foreign investor. These fees are more consistent with a tax on foreign investment than a means of full cost recovery (which is the stated intention of the fees).

Introduction of agricultural land register

The Register of Foreign Ownership of Water or *Agricultural Land Act 2015* (Cth) (**RFOWAL Act**) was originally introduced at the same time as the 2015 Amendments to require all foreign ownership of Australian agricultural land to be registered on a central register (regardless of whether the acquisition of that land required FIRB approval). This was later extended to cover foreign ownership of water rights which are now also required to be registered. The registers are administered by the Australian Taxation Office.

Broadly, the RFOWAL Act requires foreign persons to register information about their existing holdings of agricultural land and water rights, and continue to update the register to reflect subsequent acquisitions and disposals, or changes in foreign ownership, providing greater transparency in relation to the level of foreign ownership of agricultural land and water.

The introduction of the agricultural land and water register has further increased administration and compliance requirements for foreign investors, particularly given the extremely broad definition given to agricultural land.

ADVERTISING REQUIREMENTS

Following the 2015 Amendments, foreign investment regulation has been tweaked by a number of policy measures which are set out in the form of Guidance Notes released by FIRB. These Guidance Notes are not legislated and are therefore not binding on foreign investors. However, they provide an indication of how FIRB will interpret the law in particular circumstances.

Most notably for the agricultural industry, Guidance Note 17 introduced the 'Australian opportunity – an open and transparent sale process' requirement. This 'advertising requirement' provides that FIRB approval will not be granted for acquisitions of interests in agricultural land (with limited

exceptions) in circumstances where the relevant agricultural property has not been offered for sale publicly and marketed widely for a minimum of 30 days. The intent of the policy is to provide an opportunity for Australian individuals and entities to bid for the assets.

Guidance as to what exactly 'marketed widely' means is given in the Guidance Note. An open and transparent sale process means advertising on real estate listing sites or large regional and national newspapers. Various exemptions are provided in this process, including where an Australian entity is retaining a 50% or greater interest, internal reorganisations and where the acquiring entity is an ASX listed company.

This policy causes obvious issues and the apparent policy benefit is more about perception than reality.

Firstly, by the time FIRB approval is usually sought, parties have spent time and resources negotiating the sale and necessary documentation. This of course is a critical concern for large acquisitions. To get to the signing stage of a transaction and then require the seller to market the property widely and publicly creates not just a time delay but a real completion risk.

Secondly, and most strangely, what do you advertise? Acquiring an interest in an agricultural land corporation (such as a cane farming entity) will be deemed to be the acquisition of an interest in land. As such, if a party was seeking to sell 100% of its shares in a cane farming entity which owns only agricultural land, does that party need to advertise the underlying land (which is not what it is seeking to sell) or the shares? If it is the shares that must be advertised, what forums can this be achieved on.

Thirdly, what happens if a better offer comes along? The completion risk noted above is the proposed purchaser's to assume but a seller needs to, and should, consider the potential to extract more value from a sale if an Australian or indeed another foreign purchaser is alerted to a business opportunity through this advertising requirement. In such circumstances, consideration must be given to the inclusion of a first right of refusal in favour of the proposed purchaser within any sale agreement. Additionally, FIRB will usually require a copy of any sale agreement when considering an application. The inclusion of wording relating to the exclusivity of the sale would be considered in contravention of FIRB's policy and contrary to Australia's National Interest.

Finally, and an issue most relevant to smaller scale sales, the desire for some sellers to keep a proposed transaction confidential. A seller from a small community may not wish their neighbours to know they are selling, for fear of assumptions being made about the motivation (e.g. financial reasons) or due to potential ill will arising in the community if the sale is to a larger corporate entity, future competitor or established business.

FINAL THOUGHT

Agricultural industry participants rely heavily on foreign investment to provide the necessary capital required to continue to grow their operations and compete in the hyper-competitive global market.

Investment is important not only for the agricultural industry participants, but for Queensland and Australia more broadly. For example, in order for farmers to meet their duty to the environment and comply with their obligations under the EP Act, they are required to undertake large scale projects to put in place the necessary infrastructure to maintain sustainable farming practices. Foreign investment allows farmers to put this infrastructure in place, which ultimately benefits the environment.

It is important for the government to protect Australia's national interest through the application of the foreign investment rules, but it must do so in a way that is balanced, and aimed at encouraging foreign investment rather than at pandering to populist and xenophobic sentiment.

FOOTNOTE:

[2] Calculated by adding the consideration to the value of agricultural land the acquirer (and its associates) already holds.

Author
Duncan Bedford
Specialises in Taxation and Foreign Investment

Author
Peter Williams
Specialises in Corporate Transactions

Work health and safety - quad bikes

Workplace health and safety continues to be an important issue for agribusinesses. The nature of food and agribusiness operations requires the use of a range of heavy machinery and contact with large animals. One of the most common pieces of machinery used on farms is the quad bike.

In February the Australian Competition and Consumer Commission (**ACCC**) issued a report which recommended that the Commonwelath Government mandate operator protection devices (**OPDs**) be fitted on all new quad bikes sold in Australia.

On 10 October 2019, Minister for Housing and Assistant Treasurer Michael Sukkar announced that the Commonwelath Government was implementing the ACCC's recommendations around OPDs and made the *Consumer Goods (Quad Bikes) Safety Standard 2019*.

WHAT IS THE ISSUE?

According to the ACCC there have been at least 128 fatalities during 2011–18 involving quad bikes. It is estimated that six people present to an emergency department each day, of which two are admitted to hospital with serious injuries arising from quad bike accidents. Around 15 per cent of deaths from quad bikes involve children.

Since 2011, on average 16 people a year are killed in a quad bike accident. The ACCC estimates these fatalities and injuries cost the Australian economy at least $200 million per year. This does not include intangible costs associated with fatalities and injuries, including but not limited to, the pain and suffering of family, friends and Australian communities.

The new standard will see improved safety information available to consumers, reduce the frequency of rollovers and provide increased protection to operators in the event of a rollover to reduce the risk of serious crush injuries and deaths.

MANDATORY STANDARD

The *Consumer Goods (Quad Bikes) Safety Standard 2019* came into effect on 11 October 2019.

The purpose of the standard is to prevent or reduce the risk of fatality or injury associated with the use of quad bikes.

WHAT ARE THE CHANGES?

Within 12 months, all new quad bikes will be required to:

- have a warning label alerting riders to the risk of roll over;
- meet US or European standards (performance of components like brakes, suspension, throttle and clutch); and
- test for stability and display the result on a hang tag attached to the bike at point of sale.

Within 24 months, all new general use model (utility) quad bikes will be required to:

- be fitted with, or have integrated into the design an operator protection device (**rollbar**); and
- meet minimum stability requirements.

The ACCC will also work alongside Standards Australia as industry develops their own specifications for the safety of rollbars.

DOES IT APPLY TO SECOND HAND QUAD BIKES?

No. The safety standard does not apply to second-hand quad bikes other than those imported into Australia.

The purpose is to allow the existing quad bike fleet to gradually upgrade to quad bikes that meet the safety standard over time.

However, the exclusion does not extend to second-hand quad bikes that have been imported into Australia after the commencement of the safety standard on 11 October 2019.

The purpose of excluding imported second-hand quad bikes is to ensure suppliers do not import these vehicles to avoid

the requirements to meet the safety standard.

RELATED WHS OBLIGATIONS

Under the *Work Health and Safety Act 2011* (Qld), persons conducting a business or undertaking (**PCBUs**) are required to eliminate risks to health and safety so far as reasonably practicable. If the risks cannot be eliminated then they must be minimised so far as is reasonably practicable.

The risks posed by quad bikes require PCBUs to manage the use of the machines in their operations.

Workplace Health and Safety Queensland (**WHSQ**) have published extensive materials on quad bike safety. WHSQ's Ride Ready campaign has provided a range of materials, guidelines and checklists to help agricultural industry PCBUs to manage the risks arising from quad bikes so far as reasonably practicable.

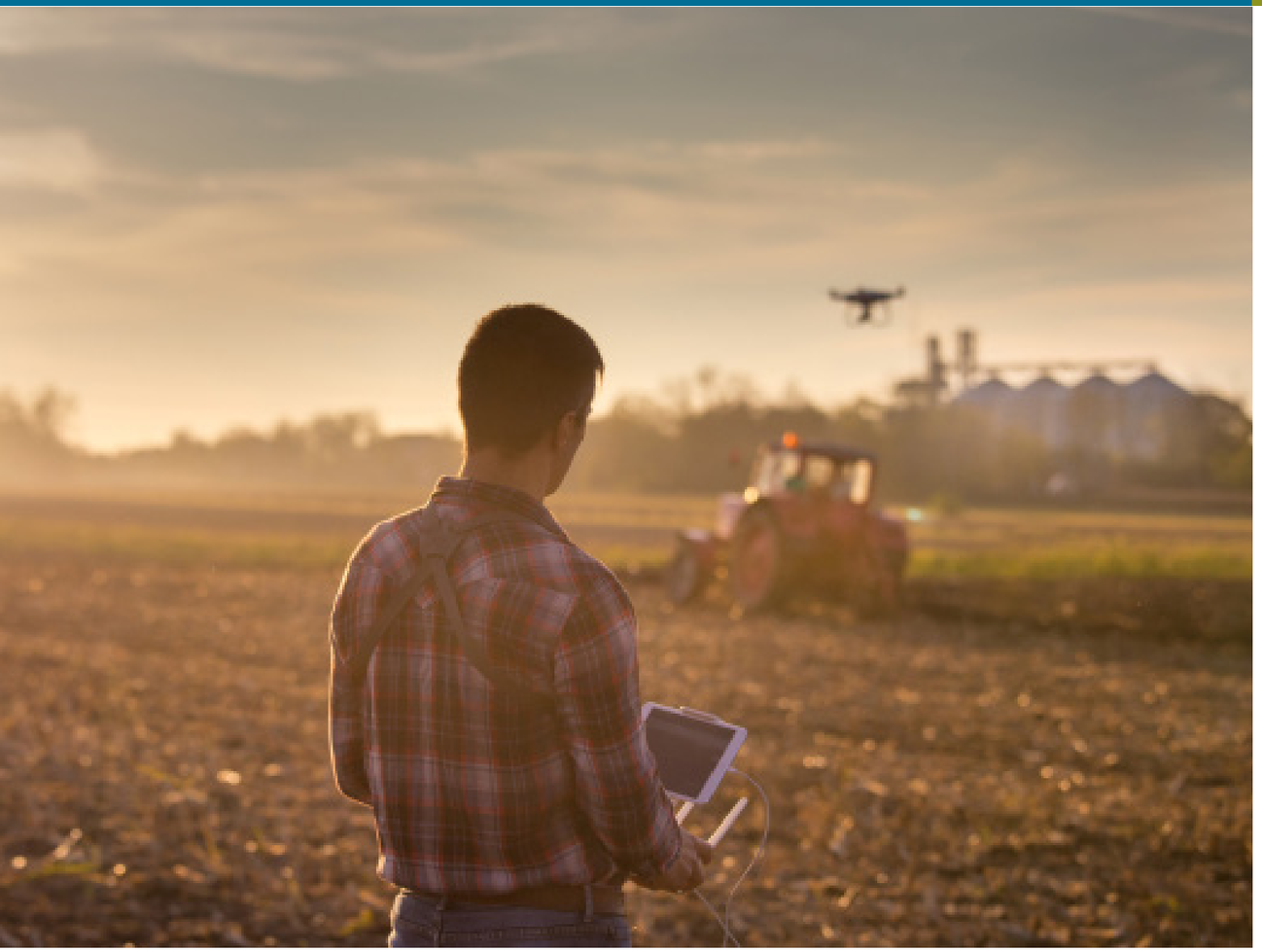
FINAL THOUGHT

The mandating of OPDs for all new quad bikes from 11 October 2021 is intended to reduce the tragic loss of life from quad bike incidents.

Regardless of the regulations around OPDs, agricultural industry PCBUs must continue to manage the risks associated with the use of quad bikes in their operations.

Author
Cameron Dean
Specialises in Work, Health and Safety

Author
Liam Fraser
Specialises in Work, Health and Safety



AgTech

AgTech is the collective term for digitial technologies that provide the agricultural industry with the tools, data and knowledge to make more informed and timely on-farm decisions to improve productivity and sustainability. It is through AgTech that the Australian agircultural sector can address the increasing demand through innovation.

DEMAND FOR AGTECH

The ever increasing food demand projections are well documented. According to the Food and Agriculture Organisation of the United Nations, global food supply will need to increase by 60% by 2050 to meet demands. This presents both a challenge and an opportunity for the agriculture sector in Queensland, with increased efficiency and productivity through technological innovation the key to increasing production.

INVESTMENT IN AGTECH

Australian AgTech investment has been slow to take off from a market size and investment level perspective. In recent years it has been sustained primarily from investment originating from Government initiatives, both at a State and Federal level, and research bodies and higher education. In 2017, 80% of all investments in Australia were less than $1 million, however in the same year Australian Agtech investment also increased by 150%.

At a global level, investment in AgTech has taken off, with growth increasing five-fold from US$309 million in 2013 to US$1.5 billion in 2017. A similar shift in total investment in the sector in Australia has been forecast as Australia is expected to match global trends.

Australian agriculture is expected to grow by $3 billion a year, and become a $100 billion industry by 2030 matching mining and construction. Exports already account for around 80% of Australia's agricultural production and Asia's rapidly growing middle class markets will pay for high-quality Australian food giving siginificant growth potential for exporting, especially in Southeast Asia.

UNCHARTERED WATERS

Meeting the demand growth is challenging for Australian agriculture as it is one of the least digitised sectors of the economy, and has historically been one of Australia's least innovative industries in terms of the adoption of digital technologies.

The disparity between Australian AgTech investment and global trends continues to grow, with global AgTech deals indicating an appetite for later stage investment and larger, more complex commercial deals. This presents a challenge as the magnitude of transactions required to achieve the potential in the Australian agriculture industry must increase significanty.

In 2017 there were no later-stage investments in Australian AgTech while around 25% of global deals financed in the same year were worth more than $10 million, demonstrating a disparity between the clear global appetite for the commercialisation and scaling of AgTech through later-stage investment and the Australian markets focus on lower-value, early-stage investments. Bridging the gap will require a global market perspective, embracing foreign lead investors and being open to more complex and commercial transactions in order for Australian AgTech to achieve the scale necessary to drive change in the sector locally and internationally.

AGTECH MONTH

November is AgTech month in Queensland. There are ten different events scheduled across Queensland during the month of November promoting collaboration, innovation, research and investment in the AgTech sector in Queensland.

This is a great initiative which highlights the breadth of the AgTech industry in Queensland and its march towards emerging as a key pillar of our agricultural industry. Recent examples of AgTech include drone mustering, weather support, remote sensors, RFI tags, GPS, automated remote dosing and supplement systems, food traceability, pump switches, smartphones, and wearables which all sit in addition to Australia agricultures long standing contribution in the area of biotechnology and plant development.

FACILITATING INVESTMENT

It is critical for anyone in the AgTech sector to have a fundamental understanding of the commercialisation process and how to best protect the value they have created.

This starts with protecting the intellectual property associated with the new or innovative technology, through to understanding the right time and type of investment to seek and how to structure the relationship with investors. Getting the basics right will ensure you protect what you've created and retain control over its commercialisation and ultimately your financial return.

If you are considering investing in AgTech then you similarly need to have an understanding of the fundamentals of investing and how it is regulated in Australia. Whether it be choosing the right vehicle through which you make an investment, understanding the tax incentives available to innovatation investors in certain qualifying investments in AgTech, to ultimately structuring your investment to ensure you remain engaged in, and reap the rewards of, the development and commercialisation of what will hopefully be Australian AgTech's next success story.

FINAL THOUGHT

AgTech presents a significant growth opportunity with both global pressures and demand driving unprecedented expansion of the Australian agricultural industry. Our significant technical expertise in intellectual property, tax, structuring and capital raising and our long history of servicing the Australian agriculture industry uniquely positions us to meet the challenges of this challenging and exciting transition. Whether you are an entrepreneur or innovation investor we would be happy to talk to you to understand how we can help you on your AgTech journey.

Author
Peter Williams
Specialises in Corporate Transactions

Author
Jeremy Harrison
Specialises in Corporate Transactions

Legal experts to meet your needs

Brisbane
Sydney
Newcastle
Canberra
Melbourne

Meet the team

Operating for over 93 years, McCullough Robertson is an independent, Australian law firm with a proven track record of providing a range of legal services to the Food and Agribusiness industries. Known for our focus on operational excellence, we leverage our commercial and industry expertise to strategically support our clients from inception, during expansion and into maturity. Our teams work seamlessly together to deliver an unrivalled whole of project service, tailored to your industry.

For further information, please contact one of our team members:

Food and Agribusiness - Leadership Team

Duncan Bedford
Partner
+61 7 3233 8706
dbedford@mccullough.com.au

Peter Williams
Partner
+61 7 3233 8825
pwilliams@mccullough.com.au

Trent Thorne
Special Counsel
+61 7 3233 8544
tthorne@mccullough.com.au

Corporate Advisory and Taxation

Duncan Bedford
Partner
+61 7 3233 8706
dbedford@mccullough.com.au

Peter Williams
Partner
+61 7 3233 8825
pwilliams@mccullough.com.au

Frances Becker
Senior Associate
+ 61 7 3233 8902
fbecker@mccullough.com.au

Jeremy Harrison
Lawyer
+61 7 3233 8613
jharrison@mccullough.com.au

Planning and Environment

Stuart Macnaughton
Partner
+61 7 3233 8869
smacnaughton@mccullough.com.au

Rachel Jones
Senior Associate
+61 7 3233 8776
rjones@mccullough.com.au

Work, Health and Safety

Cameron Dean
Partner
+61 7 3233 8619
cdean@mccullough.com.au

Liam Fraser
Senior Associate
+61 7 3233 8618
lfraser@mccullough.com.au

Visit our website for how we can assist you: www.mccullough.com.au

McCullough Robertson

As a fiercely independent Australian-grown law firm, we deliver more than outcomes. We strive towards a diverse and inclusive environment that supports our values and creates a collaborative and innovative experience for our people, our clients, and our community partners.

www.mccullough.com.au

BRISBANE | SYDNEY | CANBERRA | MELBOURNE | NEWCASTLE