

## **Brief for King Wood Mallesons 15 March 2022**

King Wood Mallesons are briefed to draft a constitution for a new corporation to be called Cattle Australia Limited (Cattle Australia) which will replace the Cattle Council of Australia (CCA) to become the advocacy Peak Industry Council representing Australia's grass-fed cattle producer transaction levy payers.

### **Background**

The grass-fed cattle production sector of the Australian red meat industry's decision to replace the current State Farming Organisation based grass-fed cattle producer Peak Industry Council has been made in the context of significant changes in the profile structures of many of the sectors of the red meat industry and a significant decline in State Farm Organisation membership since 1998 when the current red meat industry organisational structures were established.

These significant financial and composition red meat industry changes led to a decade long debate and review of the role and composition of the grass-fed cattle producers Peak Industry Council by numerous Senate Committee, ACCC and Productivity Commission enquiries which almost universally recommended a restructure of the grass-fed cattle producers Peak Industry Council.

[The Senate Inquiry into grass fed cattle levy funded structures and systems in 2013](#)

[The Senate Inquiry report into the effect of market consolidation \(September 2017\)](#)

[The ACCC's Cattle and Beef Market Study Final report \(March 2017\)](#)

[The ACCC's Cattle and Beef Market Study – Update report \(May 2018\)](#)

This brief to draft a constitution for a new corporation to be called Cattle Australia is the outcome of that decade of deliberation.

### **Current Red Meat Industry Organisational Structure**

An outline of the current red meat industry structure is set out in the Australian Department of Agriculture Water and the Environment (DAWE) link below:

[Red meat livestock industry structure - DAWE](#)

Australia's grass-fed cattle producers are by far the largest levy contributor to the Australian red meat industries prescribed Research & Development corporation Meat & Livestock Australia Ltd (MLA) contributing approximately \$60m in grass-fed cattle transaction levies to MLA each year which represents almost 60% of the total levies received by MLA each year.

Details regarding Australia's Cattle and Livestock transaction levy can be found on the DAWE link below:

[Cattle and livestock transactions levy - DAWE](#)

Grass-fed cattle producers represent approximately 85 % of MLA's 48,000 plus membership and evidence was produced to the 2013 /2014 RAAT Senate Inquiry into Industry structures and systems governing levies on grass-fed cattle that only one third of levy payers secure membership of MLA a link to Chapter 4 of the Final Report of the Senate Inquiry and the Senate Inquiry can be found immediately below:

[Chapter 4 – Parliament of Australia \(aph.gov.au\)](#)

[Industry structures and systems governing levies on grass-fed cattle – Parliament of Australia \(aph.gov.au\)](#)

### **Australia's Grass -Fed Cattle Producer Industry Profile**

In not precisely specific but broadly indicative terms, Australia's complex and diverse grass-fed cattle producer industry can be described in accord with the brief summary set out in the following paragraphs.

Australia's grass-fed cattle producer industry comprises approximately 26 million + beef and dairy cattle spread across diverse regions across Australia with varying and differing business models.

There are approximately 1.4 million dairy cattle in Australia and around 25 million beef cattle. Over 1 million head of cattle are exported live to overseas buyers every year and around 8 million head of cattle are slaughtered each year with over 70 % percent of Australia's beef production being exported. Australia's beef cattle industry generates approximately \$18 billion each year and the live export portion of that is around \$1.6 billion. Australia's dairy industry contributes around about an additional \$4.4 billion to Australia's annual GDP.

The business models of Australia's grass-fed cattle producer industry range from:

- hobby farmers with herds of 50 or less and mixed farm grazing, and crop growing-business - models in the southern bottom of Australia with small average herds of around 300 head, to
- large scale breeding business models in Western NSW & Northern & Western QLD the Northern Territory and northern Western Australia and South Australia where grass-fed cattle producers run thousands and tens and hundreds of thousands of cattle,
- live export business models mainly situated at the top end of Australia
- organic farming models mainly situated in central and south-eastern Australia

- European breed bos-aurus beef and dairy cattle in the tick free south-eastern regions at the southern-bottom of Australia
- predominately tick resistant bos-indicus South-east Asia and India bred cattle and bos-indicus X bos-aurus cross cattle in the top two thirds of Queensland, Northern Territory and the top end Of Western Australia,
- specialised breeding business models with calves destined for sale at weaning in the drier western and internal areas of Australia, with
- breeding and finishing enterprises in wetter regions where the calves are carried beyond weaning and finished for sale by slaughter,
- specialised growing and backgrounding enterprises that acquire weaners or yearlings to grow out to weights required by specialised finishers or feedlotter,
- specialised pasture finishing enterprises that purchase store cattle for slaughter for the domestic and export beef industry.

Over the past 20 years the average size of Australian beef farms has increased by 1,000 hectares to **13,317ha** and during the last 35 years the average herd size per producer has risen from around 90 head to 279 head.

Indicative details of the June 2019 distribution of Australia's cattle numbers in 55 Meat & Livestock Australia (MLA) Australian Natural Resource Management Regions can be viewed on the link below:

[Cattle numbers map-as at June 2019.pdf \(mla.com.au\)](https://www.mla.com.au/cattle-numbers-map-as-at-june-2019.pdf)

A detailed Australian Department of Agriculture Review of the Structure and Dynamics of the Australian Beef Cattle Industry with specific reference to the difference business models herd structure and turn off patterns of 12 ABARE cattle production regions in 2006 can be found on the link below:

[Beef Dynamics Report \(awe.gov.au\)](https://www.awe.gov.au/beef-dynamics-report)

We are attempting to obtain similar herd size and production business models details together with Property Identification Certificate (PIC) numbers and holdings for the 15 MLA RAC regions set out in the first attachment from MLA and we will forward that as soon as it is available.

Over 70% of Australia's beef production is exported each year including a significant amount of grass-fed cattle lean mince to the United States of America to enable the American beef industry meet US Health requirement to offset the fat content of the US feed lot fattened cattle hamburger mince.

### **Proposed Grass-Fed Cattle Producer Peak Industry Council Restructure**

As stated above there have been significant changes in the financial and operative structure of the red meat industry since 1998 when the current red-meat industry organisational

structure was put in place with the growth of a global economy, an increase in Federal Government legislative responsibility with fewer and larger grass-fed cattle producers.

Again, as stated above, over the last decade or more numerous Senate Committee, ACCC and Productivity Commission enquiries have considered representation and funding issues confronting the current grass-fed cattle producer Peak Industry Council, Cattle Council of Australia (CCA) arising from the falling State Farming Organization membership.

Following that decade of debate and review with numerous Senate Committee, ACCC and Productivity Commission enquiries and recommendations - the Australian grass-fed cattle industry has now reached agreement to replace the current State Farming Organisation based grass-fed cattle producer Peak Industry Council with a grass-fed cattle producer transaction levy payer owned Peak Industry Council company limited by guarantee called Cattle Australia Limited comprising:

- a constitutionally entrenched Policy Advisory Council with 15 councilors elected through 15 regional electorates and a total of 8 councilors appointed by each of the 8 State Farming Organizations, and
- a board with 7 elected directors elected through a two- register voting system with the power to appoint 2 additional special skills qualified directors.

The 15 elected Policy Advisory Councilors will be elected on a one vote per Property Identification Certificate (PIC) basis through the 15 MLA RAC electorate regions set out in the attached MLA RAC map.

The two register voting structure models for the election of 7 elected Cattle Australia directors will comprise:

- Register A with a voting entitlement based on a one vote per PIC, and
- Register B with voting entitlement based on the amount of levies paid, and
- the candidate who obtains the most votes in each register being the first elected Cattle Australia director, with
- the next most 3 popular Cattle Australia director candidates in each of Registers A & B constituting the other 6 elected Cattle Australia director positions.

The Cattle Australia constitution should also provide a provision that If the MLA grass-fed cattle producer transaction levy payer register is not completed or made available to Cattle Australia by 1 July 2022 then entitlement for a grass-fed cattle producer transaction levy payer member of Cattle Australia to have a greater Register B voting entitlement than one - would be dependent of that member furnishing Cattle Australia with evidence of the amount of grass-fed cattle producer transaction levies they had paid in the last financial year.

It is also proposed that the Cattle Australia constitution makes provision for it to provide member services to members in order to raise funds for Cattle Australia's operations and facilitate engagement between Cattle Australia and its a grass-fed cattle producer transaction levy payer members.

## **Rationale Underpinning the Proposed Grass-Fed Cattle Producer Peak Industry Council Structure**

The proposed grass-fed cattle producer transaction levy payer Peak Industry Council structure is being put in place in order to address the complexity of Australia's grass-fed cattle producer industry profile across the various regions of Australia outlined above and obtain the highest degree of grass-fed cattle producer transaction levy payer engagement with Cattle Australia as possible - Cattle Australia will have a management structure comprising a total of 32 people:

- with 18.5 of them (15 Policy Advisory Councilors & 3.5 Cattle Australia directors) being elected on a one PIC one vote basis ,
- 10 of them being skills qualified people appointed by SFO's and elected board members, and
- 3.5 of them being elected by large levy payers who are providing the majority of levy funding for the grass-fed cattle sector of the red meat industry .

It is important to note that even though the 15 Policy Advisory Councilors are being elected on the basis of one vote per PIC because only one councilor will be elected from each of the 15 regional electorates. The geographic distribution of those 15 electorates will effectively ensure that the large grass-fed cattle producer levy payers will effectively be able to elect at least half of those 15 Policy Advisory Councilors .

It follows from the above that the proposed structure of Cattle Australia will address issues regarding Cattle Australia representation of and engagement with the differing business grass-fed cattle producer models and large and small cattle producers as well as ensuring an appropriate mix of skill qualified managers and recognising the importance of the existing State Farm Organisation structures to grass-fed cattle producers.

In other words, the Cattle Australia management personnel will be comprised of a mixture of democratically elected people and skills qualified appointees representing small and large grass-fed cattle producers, the interests of various regional grass-fed cattle production business models whilst recognising the continuing importance of interaction with State Farming Organizations on non-red meat industry issues.

The primary fundamental aim underpinning the composition of Cattle Australia is to encourage the greatest amount of engagement and interaction between Cattle Australia and its constituent grass-fed cattle transaction levy paying members as possible.

### **Precedent Drafting Documents**

The current Cattle Producers Australia Limited (CPA) and Australian Meat Processor Corporation (AMPC) constitutions on the links below provide useful precedent material to assist with the task of drafting the Cattle Australia constitution:

CPA Background and Constitution link:

<https://cattleproducers.com.au/about/our-company-structure/>

AMPC Constitution link:

[AMPC Constitution \(final\).pdf](#)

### **CPA**

CPA was incorporated in 2018

- primarily on the basis of an agreement that had been reached between an Implementation Committee formed from grass-fed cattle producer representative bodies including CCA following the 2014 findings and recommendations of the RAAT Senate Inquiry into Industry Structures and Systems Governing Levies on Grass-Fed Cattle, but
- after CCA withdrew from the Implementation Committee over concerns about inadequate funding arrangements for the proposed new grass-fed cattle produces Peak Industry Council.

Links to the Chapter 5 findings and list of recommendations of that RAAT Senate Inquiry into Industry Structures and Systems Governing Levies on Grass-Fed Cattle are set out below:

[Chapter 5 – Parliament of Australia \(aph.gov.au\)](#)

[List of recommendations – Parliament of Australia \(aph.gov.au\)](#)

As you can see CPA constitution differs from the proposed Cattle Australia constitution in the following significant respects:

1. the 7 elected directors of CPA were to be elected from the 15 elected regional Policy Advisory Councillors on the basis of a national electorate and two register voting system rather than being elected from candidates other than elected Policy Advisory Councillors
2. the 15 regional Policy Advisory Council regions were based on ABARE maps and not on an MLA RAC map.
3. the CPA constitution did not provide for the appointment of an additional 8 appointees to the Policy Advisory Council by the State Farmer organisations.

The CPA constitution provisions are however relevant to the proposed Cattle Australia constitution with respect to:

1. the national electorate and two register voting system for the election of the 7 elected directors,
2. the right of the 7 elected directors of Cattle Australia to appoint two special qualification directors,
3. a definition of relevant special qualifications,
4. the appointment of an interim board and interim policy Advisory Council,

5. the definition of Grass-fed Cattle, Grass-Fed Cattle Producer and Grass-Fed Cattle Transaction Levy, Eligible (Member)Applicant, Proprietor of a Property. PIC, Region etc
6. provisions with respect to Members rights and Associate Members,
7. detailed provisions with respect to the two Voting Registers and Specific Voting Entitlements for the election of the board,
8. a Schedule of regulations for the election of the Policy Advisory Councillors and the Elected Directors,
9. schedule templates with respect to the 15 Policy Advisory Council Regions and Board and Policy Advisory Council election and resignation,
10. the provision of member services to members in order to raise funds for Cattle Australia's operations and facilitate engagement between Cattle Australia and its a grass-fed cattle producer transaction levypayer members.
11. a number of other usual constitutional machinery provisions.

### **AMPC**

The 16 November 2021 version of AMPC constitution on the link above sets out detailed relevant provisions with respect to the election of 7 directors under a Register A & Register B voting system which have evolved and adjusted from experience over the last 24 years when they were first implemented.

The AMPC Constitution Schedule 1 Regulations for election of Processor Directors sets out a detailed voting process including the issue of voting papers, the nomination of directors standing at the election, voting procedure, formality / informality requirements, Register A & Register B voting entitlements, procedures for counting votes in Register A and Register B. Procedure with respect to tied votes in Register A & Register B and the election of the First Processor Director and procedural rules with respect to retention of Ballot papers and requests for duplicate Ballot material.

Schedule 3 of the AMPC Constitution regarding an Annual Production Return is also relevant as an interim measure in the Cattle Australia constitution in case the MLA grass-fed cattle producer transaction levy payer register is not completed or made available to Cattle Australia by 1 July 2022.

Then each Cattle Australia member would need to furnish Cattle Australia with copies of the sales reports received from agents and abattoirs in the previous financial year specifying the amount of grass-fed cattle producer levies that had been deducted from their sales proceeds in the previous financial year.

### **Brief Instructions**

King Wood Mallesons (KWM) are instructed to draft the Cattle Australia constitution on the following terms and in accord with the provisions of the KWM February 2022 Proposal for the Provision of Legal Services.

1. A constitutionally entrenched Policy Advisory Council with 15 councilors elected through 15 regional electorates based on the attached MLA RAC map. A total of 8 councilors appointed by each of the 8 State Farming Organizations, and
2. A board with 7 elected directors elected through a two-register voting system with the power to appoint 2 additional special skills qualified directors.
3. The 15 elected Policy Advisory Councilors to be elected on a one vote per PIC basis through the 15 MLA RAC electorate regions set out in the attached MLA RAC map.
4. The two register voting structure models for the election of 7 elected Cattle Australia directors to comprise,
  - Register A with a voting entitlement based on a one vote per PIC, and
  - Register B with voting entitlement based on the amount of levies paid, and
  - the candidate who obtains the most votes in each register being the first elected Cattle Australia director, with
  - the next most 3 popular Cattle Australia director candidates in each of Registers A & B constituting the other 6 elected Cattle Australia director positions
5. A provision that if the MLA grass-fed cattle producer transaction levy payer register is not completed or made available to Cattle Australia by 1 July 2022 then entitlement for a grass-fed cattle producer transaction levy payer member of Cattle Australia to have a greater Register B voting entitlement than one would be dependent on that member furnishing Cattle Australia with evidence of the amount of grass-fed cattle producer transaction levies they had paid in the last financial year
6. Provisions for Cattle Australia to provide member services to members in order to raise funds for Cattle Australia's operations and facilitate engagement between Cattle Australia and its a grass-fed cattle producer transaction levy payer members.