

## **Rural and Regional Affairs and Transport References Committee**

### **Inquiry into the effect of market consolidation on the red meat processing sector Questions on Notice for the Australian Livestock and Property Agents Association**

***REQUESTED 28/8/17.      REPLY FROM ALPA 31/8/17***

#### **Question 1**

In evidence to the Inquiry on 27 August 2015, your CEO repeatedly acknowledged concerns about anti-competitive practices, stating that since the 1970s he had witnessed collusive behaviour at livestock sales.

By contrast, ALPA's submission states behaviour "that may well be seen as collusive" could in fact "simply be coincidental." ALPA's published comments on interim recommendations from the ACCC's Cattle and Beef Market Study are largely critical of measures to achieve transparency and integrity across the industry.

Please advise whether ALPA regards an industry code – whether mandatory or voluntary – as a suitable measure with which to resolve questions of collusion and anti-competitive behaviour once and for all and, should the decision to proceed with such a code be taken, what role (if any) ALPA would envisage for itself in formulating and implementing this.

#### **ALPA Reply Question 1.**

At no stage did I ever say the following,

*"that since the 1970s he had witnessed collusive behaviour at livestock sales."*

The committee might like to point out where this was said in evidence on 27 August 2015.

As far as ALPA is concerned about the following suggestion about an Industry Code and the stated outcome, we believe would be impossible as a suitable measure with which to resolve questions of collusion and anti-competitive behaviour once and for all. Some jurisdictions have this collusion and anti-competitive behaviour in law, as does the ACCC, Competition and Consumer Act (Cth) 2010. People are still making complaints of alleged cases in all markets. ALPA has the Livestock Auction Terms and Conditions that cover Vendors, Agents and Buyers as part of our industry code including, a statement about the Competition and Consumer Act (Cth) 2010.

Below ALPA Code of Conduct.

## **SCHEDULE A**

### **CODE OF CONDUCT FROM ALPA CONSTITUTION 16/10/15.**

This Code of Conduct forms part of the rules of the Association

Members of the Association shall:

1. Pursue the highest standards of honesty and integrity in the practice of the agency profession, whether or not these are established in law or stated in codes.
2. Act always in such a way as to protect a client's interests in any transaction.
3. Respect the equity of all individuals in all transactions.
4. Respect and uphold a client's right to a competitive market.
5. Defend the concept of free enterprise.
6. Defend the right of the individual to reward for work which is based on performance, and the contribution this work makes to the public good.
7. Support worthwhile innovation, research and development in the rural industry sectors in which agents operate.
8. Act always with professional honesty and courtesy towards fellow agents.
9. Accept the authority of the "Australian Livestock and Property Agents Association Limited" in matters of professional ethics.
10. Do nothing, whether covered by this Code of Conduct or not, to discredit the Association, fellow agents or the agency profession.
11. Refrain from anti-competitive behaviour.
12. Accept the authority of the Chief Executive Officer of ALPA and other persons who exercise functions and powers pursuant to delegation from the Board or the Chief Executive Officer.

## Question 2

Please advise ALPA's formal response to recommendation #1 of the Final Report of the ACCC's Cattle and Beef Market Study, which states

"All processors and **other major purchasers of cattle** should make their price grids publicly available in a timely manner."

### ALPA Reply Question 2.

ALPA believes that this would decrease competition. By making the grids publicly available may also result in the disclosure of some commercially sensitive information openly to competitors. Therefore, as one buyer lowered a price another would follow, thereby removing competition from the market.

It is interesting to note that in the fuel industry, petrol retailers openly advertise their prices only to be continuously subjected to inquiries into restricted competition and accusations of price fixing. When such a practice is already heavily scrutinised in one industry, it is senseless that it be recommended to be adopted in another.

If a person wants to sell OTH they should get the grids from the people they intend selling to and compare them for what suits their cattle. Agents can facilitate this process for a fee and are at the forefront to advise clients on the most suitable grid. It is important to acknowledge past performance data and the ability for the cattle offered to meet the market specifications, which may or may not determine their suitability.

A lot of OTH trading is based on space availability and other factors that is not reflected in the grids. However, this is a matter for the processors.

Major cattle purchasers? We assume you mean feedlots? This point needs clarification.

### **Question 3**

Please advise ALPA's formal response to recommendation #2 of the Final Report of the ACCC's Cattle and Beef Market Study, which states

"Buyers, **agents** and producer representative bodies (led by the Cattle Council) should expand their engagement with producers to enhance industry understanding of price grids and their interpretation."

### **ALPA Reply Question 3.**

We do not agree that agents should be mentioned in this recommendation #2.

Agents are fee for service business and will help those who chose to use our services.

When producers sell through an agent, the agent sources the best grid available that suits their client's cattle and a decision is made with the client as to which way to go for their livestock.

ALPA members very much engage with their clients in understanding and interpreting grids, followed by the feedback sheets post slaughter.

This engagement offers real value to the transaction, it is our job as the vendors agent.

Producer representative bodies, such as NSW Farmers, are a membership type organisation and will help those who chose to be members.

The MLA website has an enormous amount of information on how to read grids.

#### **Question 4**

Please advise ALPA's formal response to recommendation #10 of the Final Report of the ACCC's Cattle and Beef Market Study, which states

Carcase feedback should be clear and easy to interpret. To achieve this:

- a. All buyers and **agents** who routinely deliver carcass grading feedback to cattle producers should ensure it is presented in a clear manner.
- b. Buyers and **agents**, who routinely deliver carcass grading feedback, along with producer representative bodies (led by the Cattle Council) should increase their communication and education activities about interpreting grading feedback.

#### **ALPA Reply Question 4.**

As we stated earlier in recommendation #2 Question 3, we do not agree that agents should be mentioned here in recommendation #10.

Agents are fee for service business and will help those who chose to use our services.

10a, Agents only pass on carcass grading feedback as supplied from the buyer if that sale was through an agent and if the cattle were graded.

10b, When producers sell through an agent, ALPA members very much engage with their clients in understanding and interpreting the feedback sheets post slaughter and how the cattle came out compared to the grid and the premiums offered.

This engagement offers real value to the transaction, it is our job as the vendors agent.

Producer representative bodies, such as NSW Farmers, are a membership type organisation and will help those who chose to be members.

The MLA website has an enormous amount of information on reading feedback sheets.

## **Question 5**

Please advise ALPA's formal response to recommendation #11 of the Final Report of the ACCC's Cattle and Beef Market Study, which states

"A mandatory Buyers Register should be publicly available prior to the commencement of all physical livestock auctions."

### **ALPA Reply Question 5.**

ALPA does not agree to this recommendation as it contravenes some existing legislation.

Case in point and acknowledged by the ACCC in their final report, the following from, Queensland's Motor Dealers and Chattel Auctioneers Regulation 2014 which states:

30 Disclosure of bidder identity

(1) A chattel auctioneer must not disclose the identity of a bidder registered by the auctioneer under section 28 to anyone other than an inspector or a court.

Other jurisdictions have similar confidentiality legislative requirements surrounding buyer/bidder registers. The buyer of livestock is announced at the fall of the hammer. This is in the ALPA terms and conditions now. We question what difference or any benefit it makes to competition by having a list of "possible" buyers for public display, besides the fact that the practice is illegal in some jurisdictions.

We are unaware of any other auction type that has a public register. Surely someone's privacy must be respected. Real Estate auctions requiring people by law to register, is always confidential. From ALPA Terms & Conditions Chapter 2, Clause 11. The successful bidder at a livestock auction sale must give to the auctioneer at the fall of the hammer:

- (a) the purchaser's name; or
- (b) the bid card number which identifies the purchaser; or
- (c) the name of the person on whose behalf the successful bid was made; and
- (d) the Property Identification Code (known as the "PIC") of destination.

ALPA is an Association and can only recommend practices to members, in line with jurisdiction based regulation. We would like the ACCC to explain the benefits of this recommendation.

## **Question 6**

Please advise ALPA's formal response to recommendation #12 of the Final Report of the ACCC's Cattle and Beef Market Study, which states

"Saleyards, commission buyers, auctioneers and **agents** should provide MLA with information that enables regular standardised market reports for each reported saleyard."

### **ALPA Reply Question 6.**

ALPA is an Association and does not collect any sales data or information.

We believe that MLA has now very comprehensive standardised daily market reports for each reported saleyard.

For MLA to report on who the buyers were and what proportion of stock they purchased makes no sense at all. This list would be exhaustive to say the least.

It does not give anyone anything more about price trends and marketing their cattle.

A buyer may turn up at a yard one day to fill an order that week and not come back again in the following weeks/months. Certain types of cattle could be at a yard one week and not other weeks. Some cattle may attract new buyers for that week only, such as a dispersal sale, breeders sale and or weaners put into the regular prime sale.

If vendors were to make decisions by this type of reporting, they would be very disappointed that the trend one week did not follow on the next week at those yards.

The cost to collect this information alone would be prohibitive.

We would like the ACCC to explain the benefits of this recommendation.

## **Question 7**

Please advise ALPA's formal response to recommendation #13 of the Final Report of the ACCC's Cattle and Beef Market Study, which states

"Selling **agents** should display the terms of auction in a conspicuous position at all saleyards."

### **ALPA Reply Question 7.**

ALPA policy for members is they must have terms and conditions displayed in a conspicuous position and are announced at all auction sales of any type.

ALPA has national recommended livestock auction terms and conditions (T&C's) for all our members, which are continually updated and reviewed by qualified legal advisers and the ALPA board.

Included is the following update which was incorporated into the February 2017 Version of the ALPA T&C's, based on the ACCC interim report October 2016.

Chapter One, Clause 1 (d)

*Competition and Consumer Act (Cth) 2010.*

*It is unlawful for parties that are, or otherwise would be, in competition with each other to make, or give effect to, a contract, arrangement or understanding that contains a provision relating to*

*(a) price- fixing; or*

*(b) restricting outputs in the production and supply chain; or*

*(c) allocating customers, suppliers or territories; or*

*(d) bid-rigging; or (e) collusive bidding;*

**A copy of our ALPA Livestock Terms & Conditions is attached along with this reply.**



### **Question 8**

Please advise ALPA's formal response to recommendation #14 of the Final Report of the ACCC's Cattle and Beef Market Study, which states

“Legislation should be introduced requiring standardised national licensing of livestock **agents**, professional buyers (applying to commission and salaried buyers) and livestock auctioneers.”

### **ALPA Reply Question 8.**

ALPA supports uniform national licensing for agents of all types including Real Estate.

We have been trying to drive this through the jurisdictions and various Federal Agricultural Minister since 2006.

The National Occupational Licensing Authority (NOLA) under the direction of the Council of Australian Governments (COAG) in May 2012 tried to implement this and it was abandoned in February 2014 as the jurisdictions could not agree.

NSW, ACT, WA, NT and QLD currently require livestock auctioneers to be licensed in those states.

In some other jurisdictions now, anyone can be an auctioneer, without training, any knowledge of laws and trust accounts.

There are some jurisdictions still now, that would like to deregulate some current licenses.

ALPA agrees with a policy framework that comprises of a single national consumer law, consisting of a licensing model based on a national system that includes:

- Cooperative national legislation;
- National governance arrangements for standards and policy issues related to administration and compliance.
- Current licence holders are recognised by the new system and not expected to complete further assessment, and be able to operate across state and territory boundaries.

### **Question 9**

What is the ALPA's response to recommendation #4 of the Senate Rural and Regional Affairs and Transport Reference Committee's *Effect of market consolidation on the red meat processing sector: Interim Report* of 4 May 2016, which states

"The committee recommends the establishment of a registration and training system for **livestock agents**. In addition, the committee recommends that a system of oversight be introduced by the registration body which includes a formal complaints mechanism."

### **ALPA Reply Question 9.**

ALPA supports uniform training, registration and national licensing for agents of all types, including Real Estate. See also our response to **Question 8 above**.

Those jurisdictions that currently have established a registration system for licenced or certificate of registrations for agents, set the education level and as the registration body, oversee the compliance and any disputes mechanism in that jurisdiction.

## **ALPA General Comments**

ALPA is concerned with the transparency argument that has been bandied around about collusion. Where is the proof? Where are the prosecutions? This is damaging our business with rumour.

ALPA would like to demonstrate the size of the saleyard auction industry just for sheep and cattle. It does not include on farm auction sales, nor does it include horses, pigs, goats and other animals at auction. Saleyards sell approximately 3.5 million cattle – at an average of \$1,200 per head and 20 million sheep and lambs – at an average of \$100 per head. This equates in saleyard transactions of over \$6 billion. The number of lots sold per annum is at least two million.

The ACCC, from a six month study found a possible three cases of collusion out of approximately two million sales in one year. This is not even worth reporting as a percentage.

ALPA do not understand why the cattle auction system has been brought into the limelight when there are auctions all around the country for sheep and lambs, goats, pigs, horses, other species, on farm auctions, stud stock, wool, fine art, car, real estate and clearing sales to name a few types of auctions.

The auction system is one of the most transparent pricing mechanisms available. One of the benefits of the saleyards auction system is that buyers and vendors can see the livestock that are being sold, can compare livestock and pay accordingly.

The auction system provides a critical price discovery mechanism for livestock marketing throughout Australia that no other sales process can provide.

Auctions facilitate true price discovery.



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# LIVESTOCK AUCTION TERMS AND CONDITIONS OF SALE

## CHAPTER ONE - PRELIMINARY

1. (a) A vendor is bound by these terms and conditions by offering livestock for sale by auction.
- (b) An agent (which includes an auctioneer) is bound by these terms and conditions by conducting an auction sale.
- (c) A buyer is bound by these terms and conditions by bidding at auction.
- (d) **Competition and Consumer Act (Cth) 2010**  
It is unlawful for parties that are, or otherwise would be, in competition with each other to make, or give effect to, a contract, arrangement or understanding that contains a provision relating to:
  - i. price-fixing; or
  - ii. restricting outputs in the production and supply chain; or
  - iii. allocating customers, suppliers or territories; or
  - iv. bid-rigging; or
  - v. collusive bidding.
 Large fines and other sanctions may be imposed for unlawful conduct.
2. (a) In these terms the expression auctioneer, agent, buyer and vendor respectively includes the servants, contractors and agents of each of them. The auctioneer, agent, buyer and vendor shall be wholly responsible for the acts and omissions of their respective servants, contractors and agents. The term "auctioneer" includes, so far as the law and context permits, the vendor's agent.
- (b) When used in these terms the expressions "companion animals" means all animals originating from the same property on a particular day. Where lots are split and sent to multiple establishments, then all of these animals shall be regarded as companions.
3. The following applies in interpreting these terms and conditions:
  - (a) The following words have the following meanings:  
Fees means all levies, charges, fees, costs and other expenses incurred or relating to these terms and conditions and the sale and purchase of livestock including, without limitation, transaction levies, yard and weigh dues, cartage, advertising and rebates, and whether paid for, or incurred, by the agent;  
Livestock means animals auctioned pursuant to these terms and conditions; and  
Price means the amount at which the lot has been sold to the buyer referred to in clause 7 of these terms and conditions  
(i) plus any Fees and other expenses incurred in relation to the purchase of livestock that are payable by the buyer; and  
(ii) plus any GST added in accordance with clause 12.
  - (b) These terms and conditions are subject to legislation or regulation in the State in which the auction is conducted and in the event of any conflict then the legislation or regulation will prevail. The provisions of these terms and conditions are in addition to, and do not derogate from, the duties and rights of vendors, agents and buyers set out in legislation and regulation in the State in which the auction is conducted.

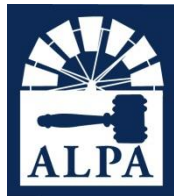
## CHAPTER TWO - STANDARD TERMS OF SALE

4. Subject to any reserve price, and to the right, prior to the fall of the hammer, of the vendor to withdraw any lot without declaring the reserve, the highest bidder shall be the buyer.
5. The auctioneer has the right to bid on behalf of the vendor provided that right is notified prior to the commencement of the sale and is subject to State law.
6. A bid cannot be made or accepted after the fall of the hammer unless, in accordance with clause 8, the auctioneer decides to put the lot up again.
7. Prior to the fall of the hammer the auctioneer shall announce the last bid and receive any further bids. The last price called by the auctioneer at the fall of the hammer shall be the amount at which the lot has been sold.
8. In the event of a disputed bid, the auctioneer is the sole arbitrator of the successful bidder or the auctioneer may decide to put the lot up again. The auctioneer's decision is final.
9. The auctioneer may refuse to accept any bid which, in the auctioneer's opinion, is not in the best interest of the vendor and need not give reasons for doing so.
10. A bidder shall be deemed to be a principal unless, prior to bidding, the bidder has given to the auctioneer a copy of written authority to bid for or on behalf of another person.
11. The successful bidder at a livestock auction sale must give to the auctioneer at the fall of the hammer:
  - (a) the purchaser's name; or
  - (b) the bid card number which identifies the purchaser; or
  - (c) the name of the person on whose behalf the successful bid was made; and
  - (d) the Property Identification Code (known as the "PIC") of destination.
12. The auction shall be conducted on the basis that the bid price shall be exclusive of Goods and Services Tax (GST). GST shall be added after the fall of the hammer for those sales subject to GST.
13. The vendor warrants:
  - (a) That the vendor has (or will have) the right to sell the livestock at the time of delivery; and
  - (b) That the purchaser will obtain title on completion of the purchaser's obligations under this contract including payment.
14. If a buyer does not comply with any of these terms and conditions, which includes the requirements of State law, any livestock knocked down to that buyer may be re-sold by public auction or private contract in whatever lots and manner the auctioneer decides. The re-sale may be with or without notice and shall be at the buyer's risk. The buyer is responsible for all loss and expense arising out of a re-sale and is not entitled to any resulting profit.
15. The buyer of livestock must pay the agent the full amount of the purchase price in immediate funds on receipt of a tax invoice. Payment is required prior to delivery unless some other time for payment is specified in an agreement between the buyer and the auctioneer that was made before the fall of the hammer. If, before delivery, payment has not been made then clauses 20 to 23 apply.
16. No person may bid unless, prior to the commencement of the sale, that person has made arrangements satisfactory to the auctioneer for payment for livestock purchased. If bids in breach of this condition are inadvertently accepted, delivery shall not be given until the purchase money is paid and any law, rule or practice to the contrary is accordingly negated as far as possible.
17. (a) Cattle sold on a liveweight basis that are weighed pre-sale are at the risk and expense of the buyer upon the fall of the hammer.
- (b) Cattle sold on a liveweight basis that are weighed post-sale are at the risk and expense of the buyer immediately after weighing.
- (c) All livestock other than cattle sold on a liveweight basis are at the risk and expense of the buyer upon the fall of the hammer.
18. (a) Subject to this clause the sale is complete on the fall of the hammer.
- (b) The time for rejection is the time commencing at the fall of the hammer and ending at the first of:
  - (i) delivery is taken by a representative of the buyer;
  - (ii) departure of the animal from the purchaser's delivery pen; or
  - (iii) one hour after the last animal is:
    - a. in the case of pre-sale weighing, sold; or
    - b. in the case of post-sale weighing, weighed.
- (c) During the time for rejection the buyer may reject any animal which is lame, blind or diseased where that condition existed prior to the fall of the hammer but could not be reasonably observed when the animal was in the selling pen.
- (d) If the purchaser rejects an animal during the time for rejection then the sale of that animal is cancelled and the animal is returned to the vendor or sold on such terms as any buyer and the agent may agree, after the agent has disclosed the reason for rejection to that buyer.
- (e) This subclause applies only to cattle which are sold in Queensland at auction for slaughter. The agent has responsibility for the prevention of loss or escape (but not death, sickness or injury) of those cattle from the time of the fall of the hammer, for delivery to and from the scales, to the buyer's delivery pen and onto the buyer's nominated transport. This responsibility ends at the earlier of those cattle boarding the buyer's nominated transport or sunset on the day after the sale. This

- subclause does not apply if the agent makes an announcement to that effect prior to sale.
19. (a) Subject to the right of rejection in Clause 18, all conditions and warranties expressed or implied by law are hereby excluded from the sale to the extent that the law allows. All lots are open for inspection prior to the commencement of the sale and are sold with all faults, if any. No compensation shall be given for any faults, imperfections, errors of description, number in or of lots sold or otherwise.
  - (b) Any claim or objection arising out of an error or misdescription in the provision of relevant information in terms of legislation or regulation concerning the National Livestock Identification Scheme (NLIS) must be made by 5:00pm on the seventh day after the fall of the hammer. No objection, requisition or claim against the vendor or agent in respect of such error or misdescription can be made after that time.
  - (c) Any statements made by the vendor or the auctioneer whether in writing or orally to the effect that any female has been pregnancy tested or scanned positive shall mean and require only that a certificate in writing shall be supplied to the buyer signed by a qualified veterinary surgeon or certified scanner certifying that the said female has been tested or scanned on the date specified in the certificate and that in the opinion of the surgeon or scanner was pregnant on that date.
  - (d) For slaughter cattle, the agent undertakes to make every reasonable effort to ensure that any NLIS cattle device number is transferred from the saleyard PIC to the purchaser's PIC on the NLIS database no later than midnight on the day of the sale.
  - (e) For other slaughter livestock the agent undertakes to make every reasonable effort to ensure that the NLIS information is transferred from the saleyard PIC to the purchaser's PIC on the NLIS database no later than midnight on the day of the sale.
  - (f) Where livestock have a food safety or market eligibility status derived from the National Vendor Declaration (NVD) and/or the NLIS/ERP database, the agent will inform the buyers by pre-sale catalogue and/or announce the status prior to the offering of those lots.
  20. If delivery is made to, or possession obtained by, the buyer or its representative before full payment of the Price, then until full payment is received, the buyer:
    - (a) does not acquire title to the livestock;
    - (b) holds the livestock as bailee only for the vendor;
    - (c) must act in a fiduciary capacity in its relationship with the vendor;
    - (d) must store the stock separately or so that they are readily distinguishable from other livestock owned by the buyer;
    - (e) is responsible for the safety and well being of the livestock;
    - (f) may make a bona fide sale for market value of any or all of the livestock. As between the buyer and the subsequent buyer, the sale shall be made by the buyer in its own name and not as agent for the vendor; however as between the vendor and buyer, the sale shall be made as bailee and agent for the vendor; and
    - (g) must keep and account for the proceeds of any subsequent sale separately from its other money and hold those proceeds, together with the benefits of any rights against subsequent buyers, on trust for the vendor.
  21. The purchaser agrees that:
    - (a) Clause 20 creates a registrable security interest under the Personal Property Securities Act (Cth) 2009 (PPSA);
    - (b) the Purchaser acknowledges the rights of the Seller (and/or the Agent if Clause 25 applies) to register a financing statement under the PPSA with respect to the security interest created by this clause;
    - (c) the Livestock are collateral for the purposes of the PPSA;
    - (d) to the extent permitted, the Purchaser waives any right the Purchaser has under the PPSA to receive notices; and
    - (e) the date upon which the security interest created by this clause comes into force is the first date on which livestock are delivered pursuant to this contract
  22. The buyer may not make any claim against the vendor for actions by the vendor or its agent under clauses 20 or 21 and indemnifies the vendor and its agent against any loss, damage, costs, expenses, penalties, fines or claims suffered by the vendor, the agent or any person or entity arising from the vendor exercising its rights under clauses 20 or 21.
  23. Clause 23 applies whenever the agent pays the vendor before being paid by the buyer, which the agent is not bound to do. The agent is then the del credere agent of the vendor at law.
  - 23.2. The vendor hereby gives notice to the buyer of the assignments referred to in clause 23.3.
  - 23.3. When this clause applies, in addition to any rights of the agent that arise by operation of the law, the parties agree that, subject to clause 23.5 the agent is subrogated to all rights of the vendor under these terms and conditions against the buyer.
  - 23.4. The vendor acknowledges that the agent may take enforcement, repossession or other action to recover any livestock for which the buyer has not paid in full, or the Price of such livestock, owing by the buyer under these terms and conditions:
    - (a) when this clause does not apply, as agent of the vendor (including by reselling the livestock); and
    - (b) when this clause applies, on the agent's own behalf exercising the rights of the vendor by subrogation or assignment under these terms and conditions (whether in the vendor's name or not) and, where title to the livestock has not passed to the agent, by selling the livestock as agent of the vendor without the agent having to account to the vendor for the proceeds of sale.
  - 23.5. The agent may at any time, assign, transfer, securitise or otherwise dispose of all or any of its rights under these terms and conditions and any debts created pursuant to it (including, without limitation, the rights assigned to it under clause 23.3).
  - 23.6. The vendor hereby irrevocably appoints the agent as the vendor's attorney to:
    - (a) do at any time and in any manner as the agent thinks fit all acts necessary or desirable to perfect or improve the rights and interests afforded, or intended to be afforded, to the agent under these terms and conditions; and
    - (b) appoint one or more sub-attorneys to do anything that the agent may do as the vendor's attorney.
  - 23.7. These terms and conditions do not render the agent liable to the buyer as vendor nor entitle the buyer to set off against the agent any right the buyer may have against the vendor or otherwise.
  - 23.8. The buyer acknowledges that the provisions of this clause 23 are intended solely for the benefit of the agent (and its assigns) and the vendor. The liabilities and obligations of the buyer will not be in any way affected:
    - (a) by this clause 23, other than as it expressly provides; or
    - (b) by the failure of the agent or the vendor or either of them to comply with the terms of this clause 23.
  - 23.9. The buyer must pay all amounts payable to the vendor or the agent under these terms and conditions without any deduction, withholding, set off or counterclaim whatsoever, whether the benefit of a deduction, withholding, set off or counterclaim is alleged to exist in favour of the buyer as against the vendor or the agent in any capacity whatsoever or any other person including an assignor of the vendor's or the buyer's interests under these terms and conditions.
  24. (a) The agent agrees that he is liable to pay to the vendor the Price, less such commission as is agreed between the vendor and the agent, and in the absence of any agreement such amount as is reasonable, and less the Fees that are payable by the vendor that were incurred by the agent on behalf of the vendor in relation to the sale of the livestock.
  - (b) In the event that the buyer pays the Price or part of it direct to the vendor then the agent has no liability to the vendor for the amount of such payment. Further, if the agent pays the vendor any amount which the buyer also pays to the vendor, then the agent has no liability to the vendor, then the vendor must repay the agent that amount and the agent may debit that amount to an account held in the name of the vendor by the agent.
  - (c) Regardless of whether or not a sale has occurred the agent may, but is not under obligation so to do, instead of deducting payments owed to it by the vendor, debit the amount of the commission and fees to an account held in the name of the vendor by the agent.
  25. (a) The auctioneer has been retained by the vendor as auctioneer for the purpose of selling the livestock comprised in the lots. The terms of

- engagement between the auctioneer and the vendor do not extend to the provision of advice by the auctioneer to the vendor in relation to the safety or otherwise of the sale ring, the saleyards and the surrounding environments.
- (b) The vendor, the agent and the buyer agree to comply with their several duties under the Australian Animal Welfare Standards and Guidelines for the Land Transport of Livestock and further to consign, manage, receive, transport and handle livestock in accordance with any other or additional requirements of animal welfare legislation specific to the jurisdiction in which livestock are consigned, managed, received, transported and handled in the course of the auction process.
- ## CHAPTER THREE - VENDOR WARRANTY FOR CORRECT PRESENTATION AND DECLARATION
26. This chapter applies only in the case of livestock and their companion animals sold at auction for slaughter when the buyer is the slaughterer and the livestock are transported direct from the sale yard to the meatworks at which they are slaughtered. This chapter does not apply if the buyer is a trader who subsequently resells the livestock to a slaughterer. A slaughterer is any person who pays the AMPC Processor levy.
  27. The warranty of a vendor is that livestock and their companion animals offered for sale at auction:
    - (a) pass government and other regulatory authority requirements and inspections at the time of slaughter;
    - (b) are of merchantable quality;
    - (c) carry an NLIS device in accordance with State law;
    - (d) in the case where a representation has been made in the pre-sale catalogue that the livestock have particular characteristics or are fit for a particular purpose or market, and such representations are based on information in any document, the livestock will have those characteristics or will be fit for the particular purpose or market; and
    - (e) all information in any document provided by the vendor is true, complete and correct in all material respects.
  28. In the event of a breach by the vendor of the vendor's warranty and provided such breach is notified by the buyer to the agent by 5:00pm on the 7<sup>th</sup> day after the fall of the hammer then the buyer is not liable for the portion of the Price of such of the vendor's livestock to which the breach applies.
  29. However if the breach by the vendor is such that the livestock are not rejected outright but are instead downgraded then the buyer will pay the value of the livestock at their next highest and best use.
  30. In the case of a breach by the vendor of the vendor's warranty then the vendor will also be liable to the buyer for any further losses which the buyer might establish but the buyer will take all reasonable steps in co-operation with the agent and vendor to mitigate both the effect of the breach and the amount of any loss.
  31. Where a sentinel animal of a lot tests positive for chemical residue, or foreign material contamination and provision of test is certified and notified as required by these vendor warranty terms, then:
    - (a) the buyer will be entitled to delay payment for the price of all livestock in that lot only; or
    - (b) the vendor has the option, at the vendor's cost, of collecting the companion animals, if allowed by law; or of having the livestock slaughtered in which event the risk of further condemnations will be that of the vendor. Where product integrity is potentially jeopardised, the Processor has the right to refuse slaughter and send the livestock back to the consigning property at the vendor's cost.
  32. The auctioneer is liable to the buyer in respect of any breach of the vendor's warranty arising out of:
    - (a) any error by the auctioneer, of transcription of information from the NVD completed by the vendor to the pre-sale catalogue or the buyers post-sale summary;
    - (b) any failure by the auctioneer to notify the buyer, prior to bidding, of any breach by the vendor of the warranty of the vendor if the buyer establishes that the agent knew of such breach prior to the sale; and
    - (c) any failure by the auctioneer to announce prior to bidding, or disclose in the pre-sale catalogue, that the vendor has failed to provide a NVD that is complete in all material aspects.
- ## CHAPTER FOUR - OWNERS RISK FOR CONDITION OF CATTLE
33. This chapter applies only in the case of cattle and their companion animals sold at auction for slaughter when the buyer is the slaughterer and the cattle are transported direct from the sale yard to the meatworks at which they are slaughtered. This chapter does not apply if the buyer is a trader who subsequently resells cattle to a slaughterer. A slaughterer is any person who pays the AMPC Processor levy.
  34. Owners risk reflects the producer's responsibility to provide slaughter cattle for sale that are fit for human consumption. Cattle are fit for human consumption if they are not condemned as unfit by government. Owners risk applies if the condemnation is due to a condition in the animal which the buyer establishes, by the relevant government certificate, existed prior to the fall of the hammer.
  35. A buyer with the benefit of owners risk protection is not liable to pay the Price of that animal to the vendor. The buyer remains nevertheless liable for all costs incurred after the fall of the hammer in transport, slaughter, testing and disposal of the animal.
  36. Owners risk protection is available to the buyer of cattle to which this chapter applies if all of the following are satisfied:
    - (a) a certificate is issued by government which states the relevant NLIS RFID tag number and PIC, the date of the certificate, the reason for condemnation and that the reason for condemnation existed prior to the fall of the hammer;
    - (b) the certificate is received by the selling agent either in its original form or by fax or electronic communication in the form of data, text or imaging by 5:00pm on the 7<sup>th</sup> day after the fall of the hammer; and
    - (c) if the condemnation is due to chemical residue the certificate follows testing in a government approved laboratory which establishes maximum residue limits in excess of the Australian limit.
  37. Owners risk does not apply, and the buyer must pay for the cattle, if the reason for condemnation is any of bruising, fever, partial condemnation or emaciation.
- ## CHAPTER FIVE - NOTICES REQUIRED BY LEGISLATION
- NSW Property, Stock and Business Agents Act 2002 Warnings**
- Penalties for collusive practices. It is an offence against the Property, Stock and Business Agents Act 2002 for a person to do any of the following as a result of a collusive practice: to induce or attempt to induce another person by a collusive practice to do any of the following:
- (i) to abstain from bidding; or
  - (ii) to bid to a limited extent only; or
  - (iii) to do any other act that might prevent free and open competition.
- Severe penalties may be imposed on persons convicted of collusive practices.
- The auctioneer has the right to make one bid on behalf of the vendor if the auctioneer clearly and precisely announces that fact prior to the sale.
- Tasmania Legislation.** An auctioneer conducting a public auction must not appear to acknowledge the making of a bid if no bid was made. A person must not participate in collusive practices by way of making or receiving an unlawful promise to abstain from bidding, or to bid except to a limited extent or do any other thing which may prevent free and open competition.
- WA Auction Sales Act 1973 s31 NOTICE.**
- It is an offence to:
- (i) induce or attempt to induce another person to abstain from bidding by means of a promise, expressed or implied, that the other person will have the right to elect to take over as buyer or to toss or draw lots to establish who is to become the owner;
  - (ii) abstain or agree to abstain from bidding as a result of such a promise;
  - (iii) knowingly enter or permit or cause to be entered in the auctioneer's record any name other than that of the actual successful bidder;
  - (iv) enter in the auctioneer's record the name of the buyer other than that of the actual successful bidder; or
  - (v) in the case of successful bidder supply wrong information as to the name of the buyer to the auctioneer or to any person, firm or corporation on whose behalf the sale is conducted.
- The vendor, or any person on behalf of the vendor, or the auctioneer have the right to make no more than three bids.





# ALPA

# Comments

Request for comments:

Cattle and beef market study interim report  
October 2016.

25/11/16

Email: [marketstudy@accg.gov.au](mailto:marketstudy@accg.gov.au)



[www.alpa.net.au](http://www.alpa.net.au)

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**ALPA membership is a signature of professionalism in the industry**

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ALPA is a proud member of



## Australian Livestock & Property Agents Association (ALPA)

**ALPA** is the national peak industry body for livestock and property agents.

**ALPA** represents more than 1,200 agency businesses across Australia. Collectively this group plays an important role in livestock, wool, merchandise and rural property sales and marketing.

**ALPA** members handle in excess of 97% of rural agency business Australia wide.

**ALPA** is one of the largest national organisations of small rural business men and women, relied on to protect the interests of agents and producers nationally.

**ALPA** membership includes Elders, Landmark, Ruralco and private livestock agencies across Australia.

**ALPA** appreciates the opportunity to provide these comments to the ACCC.

This **ALPA** submission consists of:

1. General Introduction
2. ALPA Comments on the Interim report recommendations
3. ALPA General Comments

## 1. General Introduction

Cattle and beef markets – a market study by the ACCC issues paper

The ACCC invited the views of interested parties by way of written submissions, telephone conversations, and attendance at public forums.

The ACCC had released the issues paper on 7<sup>th</sup> April 2016 to assist interested parties in making submissions to the ACCC's cattle and beef market study.

The paper contained:

- information about how to make submissions and key dates for the market study
- details about what will be covered in the market study, and
- issues on which we are seeking comment.

### The Cattle and Beef Market Study

The ACCC had chosen to conduct a market study of the cattle and beef sector which will be carried out by the Agriculture Unit. This market study is in response to a number of issues raised by stakeholders in this industry in 2015.

The purpose of the ACCC's market study is to:

- examine competition and transparency in the supply chain, and
- consider whether there are impediments to competition and efficiency at various stages of the supply chain in cattle and beef markets.

**ALPA** forwarded a submission for the market study.

### The Cattle and Beef Market Study – interim report

The interim report was released in 31 October 2016 and invited comment to the 14 Recommendations.

## 2. ALPA comments on interim report recommendations

### Transparency in cattle markets

#### **Recommendation 1: Availability of price grids**

*All processors and major cattle purchasers should routinely make price grids publicly available in a timely manner to increase market transparency.*

**ALPA** believes that this would decrease competition. By making the grids publicly available may also result in the disclosure of some commercially sensitive information openly to competitors. Therefore, as one buyer lowered a price another would follow, thereby removing competition from the market.

It is interesting to note that in the fuel industry, petrol retailers openly advertise their prices only to be continuously subjected to inquiries into restricted competition and accusations of price fixing. When such a practice is already heavily scrutinised in one industry, it is senseless that it be recommended to be adopted in another.

If a person wants to sell OTH they should get the grids from the people they intend selling to and compare them for what suits their cattle. Agents can facilitate this process and are at the forefront to advise clients on the most suitable grid. It is important to acknowledge past performance data and the ability for the cattle offered to meet the market specifications, which may or may not determine their suitability. A lot of OTH trading is based on space availability and other factors that is not reflected in the grids. However, this is a matter for the processors.

Major cattle purchasers? We assume you mean feedlots? This point needs clarification.

#### **Recommendation 2: Price grids**

*a. All buyers should consider whether their price grids can be improved to make it easier for the industry to understand and compare grids.*

*b. Buyers, agents and producer representative bodies (led by the Cattle Council) should improve their engagement with producers to enhance industry understanding of price grids and their interpretation.*

**ALPA** will leave **2a.** for the processors comment.

However, if you know how to read grids they are easy to understand and compare.

We do not agree that agents should be mentioned in **2b.** When producers sell through an agent, the agent sources the best grid available that suits their client's cattle and a decision is made with the client as to which way to go. ALPA members very much engage with their clients in understanding and interpreting grids, followed by the feedback sheets post slaughter. This engagement offers real value to the transaction.

#### **Recommendation 3: Improvements to existing market reporting**

*The ACCC encourages Meat and Livestock Australia (MLA) to make changes to the way existing cattle sale prices are collected and published to improve transparency and usability, including specifically:*

*a. standardising cattle types for reporting across channels*

*b. publishing time series data of saleyard prices in a format which allows for easy interpretation (prices are currently only reported weekly in .pdf files, making comparison through time difficult)*

*c. producing a co-products index for comparison with cattle prices, and*



*d. improvements to the domestic retail beef price series.*

**ALPA** believes cattle types are standardised.

**ALPA** questions the assertion that prices are only reported weekly. The data is reported as soon as practicable on conclusion of the sale (generally the afternoon of). Sales are generally weekly, hence weekly reporting! Agents disseminate this information to their clients as soon as possible. Market reports are also reported on local ABC radio stations and in various rural publications.

**ALPA** believes that MLA does a great job on reporting on markets. Reports are daily on the radio from major centres and the way they are reported is consistent in all publications. The value of these market reports was evidenced recently when the ABC radio cut livestock market reports from its broadcast and was subjected to a major public backlash and subsequently reinstated the market reports.

MLA market reports on their website are very comprehensive and updated daily. [www.mla.com.au/prices-markets/Market-reports-prices/cattle-reports/national/](http://www.mla.com.au/prices-markets/Market-reports-prices/cattle-reports/national/) Similar comprehensive information is also readily available via the free MLA app.

If producers took the time to access this information they would be very well informed on a great number of issues, trends, reports, prices, forecasts and much more.

#### **Recommendation 4: Additional market reporting**

*The ACCC encourages MLA, ALPA and ALMA to work together to expand data collection and reporting of prices, including specifically:*

- a. direct (paddock) sales prices*
- b. actual prices paid for OTH sales*
- c. saleyard prices for additional saleyards of regional market importance which are not currently reported, and*
- d. actual prices paid for cattle sold to the live export market.*

**ALPA** is an Association and does not collect any sales data or information.

- a. We would not see our members reporting to MLA on what business they have conducted in a private paddock sale.*
- b. The actual price paid over the hook would be as per the grid that has already been reported on.*
- c. This is a matter for MLA and who will fund this extra work.*
- d. We believe this is reported on now.*

ALMA would only ever have information from saleyard auctions.

We would like the ACCC to explain the benefits of this recommendation.

#### **Recommendation 5: Mandatory reporting of non-saleyard transactions and prices**

*The ACCC considers the arguments for and against mandatory reporting of all non-saleyard cattle sales are finely balanced, and does not recommend its implementation at this time.*

*If market participants do not take steps to improve market reporting in line with recommendations 3 and 4, the arguments in favour of mandatory reporting will become more compelling over time.*

**ALPA** is an Association and does not collect any sales data.

If this type of mandatory reporting was to be introduced, it would be an overwhelming disaster and bureaucratic red tape nonsense. We question what further benefit is going to be supplied to industry through implementation of this recommendation that does not exist already.

Who would hold the information?

Who would report on the reports?

Who would police that it is being done?

Who would be responsible for reporting and what species and numbers?

We would like the ACCC to explain the benefits of this recommendation.

## Over the hooks transactions and grading

### **Recommendation 6: Objective carcass grading**

*The industry, led by the processing sector, should allocate a high priority to the adoption of technology to enable objective carcass grading to be introduced as soon as possible. This will, of necessity, include the development of appropriate auditing and verification systems that instil confidence in the integrity of such systems.*

**ALPA** believes as technology evolves so will grading systems, but we would argue that they must be the same grading systems. This form of system could be unmanageable as the vendor, buyer and livestock agents have no formal method of establishing the yield or value before slaughter. Does this recommendation mean that if this were to be introduced processors would need to pay for all aspects of the animal? Meat, bone, offal, hide, blood etc...

### **Recommendation 7: Dispute resolution for OTH sales**

*Processors and buyers should review, and in many cases improve, their internal processes for responding to inquiries and complaints about OTH sales.*

*Cattle processors should develop a uniform and independent complaints and dispute resolution process, with AUS-MEAT filling the role of an independent and binding arbitrator.*

**ALPA** do not have a problem with anyone reviewing internal processes.

However, the second part of the recommendation is difficult. If a dispute is not settled internally and AUS-MEAT are to arbitrate, there will be costs involved to have an independent arbitrator.

### **Recommendation 8: Auditing of carcass grading**

*The industry should implement a more robust auditing system for carcass grading, with AUS-MEAT implementing random and unannounced audits in addition to the current audit regime. The result of these audits should be made publicly available on a regular and timely basis.*

**ALPA** do not have a problem with this recommendation. There are concerns with the funding provisions for the additional audits.

### **Recommendation 9: Carcass feedback and producer education**

*a. All buyers and agents should consider whether carcass grading feedback can be improved.*

*b. Buyers, agents, and producer representative bodies (led by the Cattle Council) should increase their communication and education surrounding the current grading and feedback system to ensure that producers better understand cattle market trends and why some cattle attract a premium compared to others.*

**ALPA** agrees with **a.** of recommendation **9.**

As we stated earlier in recommendation **2b**, we do not agree that agents should be mentioned here in **9b**. When producers sell through an agent, the agent finds the best grid available that suits their client's cattle and a decision is made with the client as to which way to go. ALPA members very much engage with their clients in understanding and interpreting grids, followed by the feedback sheets post slaughter and how the cattle came out compared to the grid and the premiums. This engagement offers real value to the transaction.

## Conduct in cattle markets

### **Recommendation 10: Saleyard buyer register**

*The ACCC encourages the introduction of a mandatory Buyers Register to be publicly available prior to the commencement of all physical livestock auctions. This register should include details of commission buyers and livestock agents intending to bid at the sale and the principals that those commission buyers will be acting for.*

*ALPA should work with its members to have this requirement incorporated into auction terms and conditions at saleyards.*

**ALPA** do not agree to this recommendation as it contravenes existing legislation. Case in point from Queensland's *Motor Dealers and Chattel Auctioneers Regulation 2014* which states:

#### *30 Disclosure of bidder identity*

- (1) A chattel auctioneer must not disclose the identity of a bidder registered by the auctioneer under section 28 to anyone other than an inspector or a court.*

Other jurisdictions have similar confidentiality legislative requirements surrounding buyer/bidder registers.

The buyer of livestock is announced at the fall of the hammer. This is in the terms and conditions now. We question what difference or any benefit it makes to competition by having a list of "possible" buyers for public display, besides the fact that the practice is illegal.

We are unaware of any other auction type that has a public register. Surely someone's privacy must be respected. Real Estate auctions requiring people to register is always confidential.

For the auctioneer, the bidder is deemed as the buyer irrespective of who they are bidding for at the time and the liability of the debt sits with that bidder until directed otherwise and the payment is received.

**ALPA** is an Association and can only recommend practices to members, in line with state based regulation.

We would like the ACCC to explain the benefits of this recommendation.

### **Recommendation 11: Terms of sales at auctions**

*Selling agents should display the terms of auction in a conspicuous position at all saleyards. This should include a notice about the penalties for collusive practices under the CCA, in addition to any notices required by state and territory legislation. The ACCC notes that many saleyards and agents are already demonstrating industry leadership by doing this.*

**ALPA** policy for members is they must have terms and conditions displayed in a conspicuous position and are announced at all auction sales of any type.

**ALPA** has national recommended livestock auction terms and conditions for all our members, which are continually updated and reviewed by qualified legal adviser and the ALPA board including the following update which will be incorporated into the upcoming 2017 Version:

#### Competition and Consumer Act (Cth) 2010

It is unlawful for parties that are, or otherwise would be, in competition with each other to make, or give effect to, a contract, arrangement or understanding that contains a provision relating to

- (a) price- fixing; or
- (b) restricting outputs in the production and supply chain; or
- (c) allocating customers, suppliers or territories; or
- (d) bid-rigging; or
- (e) collusive bidding;

#### **Recommendation 12: Reporting of saleyard buyers**

*The ACCC encourages ALPA to provide information to MLA to enable the introduction of regular standardised market reports for each reported saleyard which include information about the identity of buyers, and the proportion of stock purchased by each buyer. This report should include the identity of the purchasing principal, as well as the identity of the successful bidder.*

**ALPA** is an Association and does not collect any sales data or information.

We believe that MLA has now very comprehensive standardised market reports. For MLA to report on who the buyers were and what proportion of stock they purchased makes no sense at all. This list would be exhaustive to say the least. As an example, one agency network processes 240-250,000 individual cattle lots annually. The process is unachievable and commercially non-viable.

It does not give anyone anything more about price trends and marketing their cattle. The cost to collect this information alone would be prohibitive.

We would like the ACCC to explain the benefits of this recommendation.

#### **Recommendation 13: Livestock agent licensing**

*Legislation should be introduced requiring standardised national licensing of livestock agents and professional buyers (applying to commission and salaried buyers), in order to raise the levels of CCA compliance and general professionalism within the industry.*

**ALPA** supports uniform national licensing for agents of all types including Real Estate. The National Occupational Licensing Authority (NOLA) under the direction of the Council of Australian Governments (COAG) tried to implement this a number of years ago and it was abandoned as the states could not agree.

NSW, ACT, WA, NT and QLD already requires auctioneers to be licensed in those states.

#### **Recommendation 14: Implementation of recommendations**

*The ACCC encourages the Agriculture Ministers meeting (AGMIN) to consider the above recommendations, particularly with a view to monitoring their implementation. This will be especially important to ensure that recommendations are progressed, given the diverse industry interests. Ministers may wish to consider alternative approaches if progress is not made.*

**ALPA** will leave this to the jurisdictions.

### 3. ALPA General Comments

**ALPA** is strongly of the view that if explored, a number of issues in these recommendations are already being done. We strongly urge the ACCC to investigate the MLA website mainly market reports, you and others may be surprised. [www.mla.com.au/prices-markets/Market-reports-prices/cattle-reports/national/](http://www.mla.com.au/prices-markets/Market-reports-prices/cattle-reports/national/)

#### **Agents and buyers**

**ALPA** would like to provide clarification again regarding the use of the terms agents and buyers. The terms agents and buyers and subsequently their respective roles, duties and responsibilities are mutually exclusive. They are not one and the same. In this document it refers to commission buyers, agent buyers, buyer's agent, which clearly highlights the confusion that abounds.

**ALPA** represents the interests of livestock and property agents. Livestock agents act in the interests of their vendor clients by marketing and selling their livestock to maximise the returns for their vendor clients. The agent has a fiduciary duty to their vendor clients. At times they will buy livestock for their clients for no fee or reward.

On the other side of the ledger there are buyers. Buyers can be commission buyers, salaried processor buyers and independent buyers, that is, any other individual who wants to buy livestock.

In this document it refers to commission buyers, agent buyers, buyer's agent, clearly highlighting the confusion that abounds.

#### **Transparency**

**ALPA** is also concerned with the transparency argument that has been bandied around about collusion. Where is the proof?

**ALPA** would like to demonstrate the size of the saleyard auction industry just for sheep and cattle. It does not include on farm auction sales, nor does it include horses, pigs, goats and other animals at auction.

Saleyards sell approximately 3.5 million cattle – at an average of \$1,200 per head and 20 million sheep and lambs – at an average of \$100 per head.

This equates in saleyard transactions of over \$6 billion.

The number of lots sold per annum is at least two million.

The ACCC, from a six month study found a possible three cases of collusion out of approximately two million sales in one year. This is not even worth reporting as a percentage.

**ALPA** do not understand why the cattle auction system has been brought into the limelight when there are auctions all around the country for sheep and lambs, goats, pigs, horses, other species, on farm auctions, stud stock, wool, fine art, car, real estate and clearing sales to name a few types of auctions.

The auction system is one of the most transparent pricing mechanisms available. One of the benefits of the saleyards auction system is that buyers and vendors can see the livestock that are being sold, can compare livestock and pay accordingly.

The auction system provides a critical price discovery mechanism for livestock marketing throughout Australia that no other sales process can provide.

Auctions facilitate true price discovery.

## Points of clarification

**ALPA** raise concerns with the validity of information and premise which is supplied under the following page numbers and sections. The foundation of the interim report's fourteen recommendations is based on the expanded understanding within this document. It seems much of the information used to arrive at these conclusions is assumptive, uninformed and gleaned from insufficient sources without suitable counterpoint or investigation which will seriously diminish the ability of the ACCC to form well founded, commercially sensible recommendations for the Cattle and Beef industry.

**ALPA** believe a lot of these recommendations, the way they read have come from complaints by people who are ignorant to OTH selling, price grids and marketing livestock in general. There are some people who also believe that their cattle are worth more than they achieve at auction. There are also those who do not use any due diligence in buying or selling.

Page	Details	Comments
2	<i>Paddock sales: Cattle are inspected on the vendor's property by the buyer and are sold straight out of the paddock. Price is generally negotiated on a dollars per head (\$/hd) or cents per kilogram liveweight (c/kg) basis.</i>	This definition is incorrect and misleading. Paddock sales (and OTH) are often negotiated on behalf of the producer by their agent and often to a price advantage to the producer.
	<i>Saleyard: A physical auction market where buyers and sellers trade livestock. There are separate sales for store and prime cattle.</i>	Not all physical auction markets are separated for store and prime cattle.
	<i>Store cattle: Cattle suitable for breeding or finishing, but bot [sic] for slaughtering.</i>	This definition is incorrect and misleading. Store cattle is an industry term, but does not exclude these cattle from slaughter – especially cows.
3	<i>The high cattle turn-off is also said to have resulted in abattoirs operating at or near full capacity and producers reported delays consigning cattle for slaughter. Some producers reported especially difficult trading conditions and relationships with processors during this time and alleged behaviours by processors ranging from apathy toward negotiating with producers, to frequent and arbitrary discounting of carcase prices.</i>	These were extenuating circumstances with unprecedented drought conditions on the back of the Indonesian live export trade suspension. Record slaughter numbers saw processor capacity absorbed. Pricing is based on supply and the ability to process in a timely manner. It is the basics of supply/demand in operation. Downward pressure is placed on price to slow supply. Conversely in favourable seasons, prices are elevated to draw numbers into the system.
4	<i>Competition for the acquisition of prime cattle typically takes place</i>	To state that competition is all but limited to a 400km radius is

Page	Details	Comments
	<i>within a 400km radius of a point of sale</i>	dangerous, assumptive and misleading. Distance does not control the Australian livestock industry, but demand. To suggest as such, effectively dismisses the major contribution of the northern beef industry. The best positive pricing pressure results from non localised processor/exporter/feedlot/agency orders entering a market, whether saleyard, OTH or private treaty.
8	<i>80 per cent of cattle acquired for processing travelled less than 400km to reach an abattoir after purchase.</i>	We question this statistic – where does this information come from?
	<i>Producers do not consider live exporters to be a close substitute to these processors.</i>	Live export impact on pricing in this area would suggest the assumption is incorrect. Live export units directly impact available supply and price at any given time considering the forward contracting and stock accumulation process required to create continuity of supply for shipping.
	<i>Barriers to entry and expansion into processing in most regions of Australia are high...These conditions can reduce the incentive for new entry and dampen competition among incumbents.</i>	We question the assumption of this statement. More processors have actively entered the market in the past three years than have left.
9	<i>Time series of saleyard data is only available upon request. Saleyard price data is reported weekly in .pdf files, making comparison through time difficult.</i>	Please note our comments to Recommendation 3.
	<i>There are information asymmetries between producers...and buyers</i>	This highlights the reason for and importance of stock and station agencies.
	<i>Cattle prices are inconsistently reported between sales channels, particularly with respect to cattle types and geography. It is difficult for producers to compare historical prices between channels on a like-for-like basis.</i>	We question the correctness of this statement as historical trending graphs and basis adjustment are clear and accessible to those within industry from MLA.

Page	Details	Comments
	<i>Pricing grids can be complex, which can limit their usefulness as a decision-making tool for producers.</i>	This statement is incorrect and misleading.
	<i>Some producers have difficulty accessing price grids which limits their ability to make informed decisions about selling cattle.</i>	All producers can access grids / specifications however this can be dependent on the suitability of cattle that are offered or past performance data. Agency involvement can assist in removing these barriers.
10	<i>Processors submitted to the ACCC that a vast majority (approximately 90 per cent) of cattle sent to abattoirs for slaughter are acquired directly from the producer, rather than through saleyards.</i>	We question the accuracy of this statistic as it does not align with the ABARES statistical information provided in Figures 1.5 and 1.6
23	<i>Over the hooks (OTH): livestock are delivered by producers directly to processors, with change of ownership occurring when carcasses are weighed shortly after slaughter and trimming.</i>	It also needs to be noted that agents are often involved in this sale channel.
24	<i>Small farms are more likely to use auctions because they are generally located close to saleyards, (minimising freight costs) and produce and trade a relatively small number of multiple cattle types for store and prime markets.</i>	This statement is simplistic and assumptive. Proximity to a specific saleyard does not mean it is best suited to the type of cattle being sold. For instance, a producer may opt to sell feeder steers through a saleyard in a feedlot area rather than their local saleyards which may attract backgrounders.
25	<i>a lack of infrastructure and distance reduces the ability of some producers, particularly in more remote areas, to access markets more commonly used in southern Australia, including saleyards and online sale.</i>	Producers in remote areas actively participate in all sales channels, to suggest otherwise is incorrect.
	<i>the use of price grids allows processors to send signals to the market about desired cattle characteristics to meet customer needs.</i>	This statement goes to the crux of the price transparency debate. The pricing signals are available and it is up to all participants within the supply chain to understand these signals.
26	<i>Although the number of operators has reduced, the ACCC understands that overall capacity</i>	Investigation of new players over the last three years should be noted with a significant appearance of small to



Page	Details	Comments
	<i>has increased as processors have sought to improve efficiency through scale.</i>	mid range operators activating mothballed facilities.
41	<i>these instances are small relative to overall prime cattle acquisition volumes indicating that competition from distant buyers is relatively inconsistent and weaker than local buyers in the region.</i>	The underlying effect on price is missed in this conclusion. It only takes one smaller operator to create market tension creating a better price. North vs south seasonality follows historical trends and market shift in both areas being linked at various times of year or season with an expected lag time. Producers, agency, processors, feedlots and exporters have a clear understanding of this dynamic.
	<i>Box 3.1: central Australia, northern Queensland and northern Western Australia</i>	This is also applicable to King, Flinders and Kangaroo Islands as well as remote South Australia. Property values are proportionate to the extra costs and time involved in production and consignment. These considerations are a factor of initial property purchase negotiations. Proximity of processing or saleyards cannot be used as a trigger for diminished competition when the producer had all of this information prior to consideration of operation.
42	<i>The ACCC understands that cattle at the heaviest end of the scale are most likely to be limited for sale to a processor with export capability.</i>	This is a conscious informed decision made by the producer. Supply and demand dictate end result. Forward contracts and various auction methods are available for producers to mitigate spot market risk but they are not obliged to use. How does lack of use of available options become the responsibility of agency, processor, feedlot or exporter?
43	<i>A producer would also need to be confident that changes in market conditions, especially prices, were likely to be sustained rather than short term fluctuations. Accordingly, producers require clear price signals so that they can judge whether altering their production systems is likely to be profitable.</i>	Wouldn't we all! This is a very simplistic outlook and is unachievable. There are unlimited factors that at any point in time can influence prices. The obvious being currency fluctuations, weather events, industrial action etc.

<b>Page</b>	<b>Details</b>	<b>Comments</b>
45	<i>Producers' limited flexibility for altering cattle production in the short run could result in producers having fewer selling options and potentially lower prices.</i>	Traditional spot marketing or short term contracting are an issue that agency has been trying to change with producers for many years. Longer term production turnoff contracts would allow them to become price setters who concentrate on animal productivity not price takers impacted by short term seasonal conditions.
55	<i>MLA does not publish the results of each pen but groups cattle with similar attributes together (e.g. Yearling Heifer, 330-400kg, for slaughter, muscle score C, fat score 3), reporting low, high and weighted average prices on a liveweight cents per kilogram basis for each group.</i>	Most do not attend sales so individual pen information has no relevance to the market trend and is irrelevant to transparency of pricing.
56	<i>Issues relating to the reporting of saleyard prices</i>	Agents provide market information to saleyard clients at request and often as part of the sale process to select best option. Most agents have relationships that relate directly to market and specification of cattle to be sold with producers. It seems this assumption is made from the few that consider their cattle sold are better than they may have been without attending comparative sales prior to sale.
	<i>Issues relating to the reporting of over the hooks prices</i>	Grids are proprietary information of the principal. They are used as indicative pricing only and agency / producers can negotiate outside of the grid. The flexibility is determined by supply and demand.
	<i>Reporting of paddock sales and forward contracts is not robust</i>	To single out just two end users is damaging to the true understanding of how paddock sales and forward contracts operate.
57	<i>The lack of reporting on direct sales prices reduces transparency</i>	Third party privacy determines reporting on these sales may not be viable. It also does not consider variance within livestock from one property to the next.

Page	Details	Comments
	<i>Saleyard and over the hooks prices are not easily comparable</i>	There are many methods of comparison starting with MLA and then there are agency note books that have conversion tables as well as simple software programs to give true and accurate comparisons. This paragraph is unfounded and further evidence is required.
58	<i>The ACCC is aware of concerns that producers can have difficulty accessing price grids in a timely way.</i>	Is there a quantifiable number of producers who have raised these concerns and the number of saleable cattle these producers offer to find relevance to this document?
	<i>The ACCC understands that price grids are made available to prospective cattle suppliers through a number of different channels, including...</i>	The report also needs to note that price grids are also available through stock agents.
	<i>The ability of producers to make appropriate production and investment decisions is significantly affected by the availability of accurate and timely pricing information</i>	The information is available, participants just need to be proactive in sourcing it. Agents can facilitate this process and are at the forefront to advise clients with these decisions.
59	<i>The ACCC has received feedback during this market study that producers may not have the appropriate skills to accurately assess the grade their cattle will likely achieve when processed</i>	For producers that have raised this issue has the inquiry questioned if they have ever sought assistance in understanding the information that is readily available?
	<i>Feedback from industry suggests that assessing live cattle for carcass grade is difficult, requiring significant skill and regular benchmarking for accuracy.</i>	We agree, hence the value of engaging a reputable stock and station agent who can improve returns through relationship building and providing marketing and animal production advice.
72	<i>occasionally used by larger producers to dispose of cattle unsuitable for sale direct to processors' works</i>	This statement is a poorly formed assumption that does not take into consideration specialty sales that provide opportunity for large vendors to offer cattle to the widest audience.
	<i>6.2 Saleyard processes lead to competition risks</i>	6.2 does not draw attention to auction sales being the most effective method of setting price for any form of item or animal. It also

Page	Details	Comments
		does not address the fact that an individual is under no compulsion to bid if they do not desire AND the vendor has the right to apply a reserve or no sale any lot at the fall of the auctioneer's hammer if the vendor does not believe the price achieved is fair or meets their needs.
78	<i>Example of impact of a common buyer's agent</i>	We would appreciate clarification of this example as we believe it is incorrect and is misleading.
79	<i>The ACCC notes the concerns raised in some submissions that livestock agents do not properly act in the interests of their vendor clients</i>	This would form a short term view of retaining business and the vendor would look for a different service provider. Agents actively defend their client base because the sale commission creates income for their business. Reputation is quickly damaged in communities if an agent is seen to be acting in self interest.
80	<i>6.3.4 Licensing requirements for livestock agents are inconsistent across states and territories, and between sellers and buyers</i>	Please see our comments on Recommendation 13. Currently NSW, ACT, WA, NT and QLD require auctioneers to be licensed.
	<i>Requirements for professional livestock buyers (including commission buyers, professional buyers and livestock agents) also vary between states. Licensing requirements in NSW and the ACT apply to agents acting for buyers as well as sellers, and therefore a strict reading of both forms of regulation implies that commission buyers require a livestock agent's licence. Buyers are not, however, required to be licensed in other states</i>	We believe that this statement is incorrect as livestock buyers do not have to be licensed.
83	<i>The ACCC's consultation demonstrates a clear lack of trust that livestock agents and professional buyers will act legally and ethically.</i>	This is directly insulting to the greater agency community and based on inadequate and poorly formed information from a limited number of sources. Unless supported by evidence it should be removed as part of this document.

**ALPA** welcomes the opportunity to discuss and expand on these comments further as well as consideration of other species in the auction system. **[END]**