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Senate Standing Committees on Rural and Regional Affairs and Transport
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Canberra ACT 2600

February 2014

Submission: - Senate Inquiry into cattle transaction levies and associated governance and grass-fed cattle producer representation

United Stockowners of Australia (USA) represent independent and non-aligned livestock owners and breeders, from a position outside of the prescribed industry and its indentured membership. USA represents livestock breeders of cattle, sheep and goats and is not affiliated with any other organisations.

Thank you for the opportunity to be able to make a submission at this critical juncture in the representation from the livestock industry.

We would welcome the opportunity to discuss/present our submission in Canberra if the Senate committee felt it would be beneficial.

Executive Summary

Preamble Conclusions

- There was never any consultation with grass-fed producers prior to the nationalization of the cattle industry in 1997. Consulting “industry” is not consulting grass-fed producers.
- There was no market failure prior to the introduction of the original cattle transaction levy and the current transaction levy arrangements are inconsistent with the *Levy Principles and Guidelines.*
- There is an abnormal sequence of events creating the “industry,” in that grass-fed producers were added, to their demise, as an afterthought.

- The introduction of the marketing levy of $1.50 per head sold in 2005 did not comply with the *Levy Principles and Guidelines* and has not achieved any benefit for grass-fed cattle producers.

Moving Forward Recommendations

1) Total Deregulation. That is the disbanding of Red Meat Advisory Council (RMAC); repeal the Australian Meat and Livestock Industry Act 1997 and removal of the compulsory cattle transaction levy immediately.

That the Commonwealth immediately legislate a stand-alone 'Anti-Trust' Act mirrored in every respect on the American *'Packers and Stockyard Act'* [[1]]

Or

2) That taxation collection via the cattle transaction levy cease while the grass-fed sector **Producers** are consulted by and with democratic representation as follows:-

- Identify grass fed cattle producers
- Carry out a plebiscite to determine if identified grass fed cattle producers wish to pay a levy; **Yes** or **No**.
- Should grass fed producers vote to pay levies, that a democratic body be formed as formulated here with grass fed producer support. [[2]]

And

3) That a Commissioned Independent Inquiry of Audit be established to audit declarations, administration and allocation of "Voting Entitlements" in Meat & Livestock Australia Limited for the years from 2004 to the present date.

4) That a Commissioned Independent Inquiry of Audit be established to audit Expenditure by Meat & Livestock Australia Limited of Grass-fed Cattle levies is, and has been directly consistent with the Commonwealth Government's "Levies Principles and Guidelines" and relevant Commonwealth Legislation authorising and guiding the expenditure of "Public Monies" for the years from 2004 to the present date.

[1] http://www.gipsa.usda.gov/psp/rights.html

[2] http://unitedstockowners.com.au/usa-proposed-model-grass-fed-cattle-restructure-version-2/

Preamble

In 1997 the then Federal Government intervened in the 'Livestock Industry', and by extension, private businesses that participated in the breeding and raising of grass-fed livestock that had previously never before been contemplated and activated by any Government of or in Australia, and perhaps in any other Western democracy.

In effect, the intervention attempted to force, or socially engineer, a universal scheme that consigned market adversaries to the untested proposition that the formation of 'Strategic Alliances' or vertical integration thru Government intervention could in fact be a profitable undertaking for private grass-fed livestock businesses. This proposition in practice failed.

From that time, the *Bills Digest No. 79 1997-98 - Australian Meat and Live-stock Industry Bill 1997* **[[3]]** refers to this untested proposition in the concluding comments – Dr Geoff Miller (then) Secretary of the Department of Primary Industries and Energy, writing in the foreword to Australian Beef. - *"Above all is the need for industry to develop a shared vision for the future which enables all segments to pull together and take advantage of the opportunities that have been identified. (4)"* (end Dr Miller's quote) – and further in the concluding comments it is expressed – *"It needs to be remembered that the meat marketing scheme now being proposed had its genesis in the 1995 arrangements described above. It is doubtful, however, that anyone in the industry envisaged then the system now being proposed."*- and further – *"One aspect where there is no dispute is that there is not unity within the meat and live-stock industry on these changes. Not only was their division between members of the Steering Committee and Task Force, but the Minister has readily expressed regret that industry has not been able to reach full consensus on the new structures. Further, these proposals have attracted strong criticism from the former Chairman of the AMLC and a number of other industry leaders. These have been widely reported in the rural media."*

What was on the record, at that time, that immediately prior to the introduction of the current structure, which in principle overweighs or heavily biases towards 'Strategic Alliances' or vertical integration, that the policy architects were fully aware of the potential consequences of what can only be described as an even chance of the policy failing through discriminatory economic and social disadvantage together with a greater prospect of market based corruption as detailed in the *Australian Agribusiness Perspectives* **[[4]]** by the University of Melbourne in Paper 12 of 1997/98 - ISSN 1442-6951 – *"STRATEGIC ALLIANCES AND THE RED MEAT INDUSTRY IN AUSTRALIA"* **[[5]]** under the sub-heading of *"The Case Against Strategic Alliances"* which states the concerns thus:

[3] http://www.austlii.edu.au/au/legis/cth/digest/amalib1997417/

[4] http://www.agrifood.info/perspectives/

[5] http://www.agrifood.info/perspectives/1998/Hayes.html

- **Changes in Market Power**

"If the lead firm is large and has relatively little competition from other firms it could exploit its power (and any technical efficiency or scale economies that arose from its scale) to obtain an even larger proportion of total supply. (Alternatively, it might collude with a few other large firms to create an oligopoly). At some point its power might be such that it could effectively control the market and set prices. At the extreme this could lead to a misallocation of resources through reduced pricing efficiency-artificially low livestock prices would lead to a shift out of livestock production even though this was theoretically the most economical use of the land."

- **Effect on Concentration**

"What is not clear is whether industry would be any less concentrated if strategic alliances were in some way prevented from forming. As noted earlier, the level of downstream concentration of the Australian meat industry is not presently a matter for concern, and while strategic alliances could lead to more rapid concentration in downstream processing and marketing, this is unlikely to reach levels which would be of concern to suppliers."

- **Opportunities for price discrimination**

"A common concern is that strategic alliances will transfer market power to the large firms which will use this power to discriminate in their dealings with suppliers operating outside alliances. Such price discrimination would mean that they offer different payments for the same products but from different suppliers. For example, if a buyer is operating in an area where there is no effective competition, they may offer less for supplies than they would offer in another region (with comparable transport costs) where there is more competition. (This example shows that it is very difficult to measure price discrimination in the red meat industry because of the difficulty in ensuring that the price is being offered for an identical bundle of attributes of the product).

There has been consolidation of meat processing plants in Australia in recent times. Concurrently there has been growth in the number and size of feedlots that are close to processing plants and contracts between processors and lot feeders are increasingly common. Such structural changes suggest price discrimination between different markets in different regions may be possible, arising from different degrees of competition possibly existing at different locations. This practice is discriminatory against someone who has little market information on which to make a choice about accepting the price offered. Williams and Bewley (1993) in a study of price integration between Rockhampton, Townsville and Toowoomba saleyards concluded that the strength of price integration between markets was a declining function of distance from the dominant centre. That is, the differential in prices paid in different markets was likely to be greater in markets more remote from the main market. It is a well recognised phenomenon that prime stock markets separated by long distances are linked less directly than markets in close proximity. This is, in part, because the high costs and risks with transporting prime stock over long distances can mean that markets widely separated can have prices which

diverge from one another for some time. Such divergence may be warranted by market conditions and may not be large enough to permit profitable trade between regions.

No unambiguous conclusion can be drawn from evidence about price differentials between markets and the degree of concentration. As concentration increases the price differentials between markets might become greater if the remaining firms were less efficient than those they replaced, or price differentials might become less if the remaining firms were more efficient than those they replaced."

- **Interference with price discovery**

"The price discovery process relies on maintenance of throughput via the public auction system, and hence any change in marketing arrangements that reduces the volume sold in this manner will interfere with price discovery. Although it can be argued that the volume by-passing the public auction system because of strategic alliances is likely to be small, the product that bypasses the public system will also tend to be the higher value product. This will mean that publicly available information about prices refer to the less valuable product and this could be used to drive down the price paid for all product, including eventually the product that is sold within an alliance. Thus a possibility is that strategic alliances could interfere with the price discovery process, particularly for the higher value cuts."

- **Loss of control to foreign owners**

"Strategic alliances could serve to strengthen the position of foreign operators of meatworks and thus provide additional opportunity for transfer pricing. If foreign-owned meat companies entered into a high proportion of the alliances it would provide them with additional means to influence the prices paid for livestock by all operators. It is possible that Australian-owned meat companies would not be interested in establishing strategic alliances because they were less able to capture the benefits from such alliances than foreign-owned companies. Any subsequent effort by Australian companies to regain control could be effectively thwarted by the foreign-owned companies if they continued to control access to the most profitable overseas markets."

- **Other Consequences**

"Strategic alliances are better suited to larger operations and some suggest that strategic alliances will mean that family farms will be placed under greater threat from 'corporate farms'. An alternative view is that strategic alliances may offer family farms scope to 'act big' even if they are not big and hence improve their longer term prospects. Strategic alliances are but one force among many which inevitably lead to larger farms over time in industrialised economies."

In the absence of any legitimate reasoning, including a full cost benefit analysis and sector wide debate, the Government in manifestly incompetent implementation **[6]** of the

[6] http://www.anao.gov.au/~/media/Uploads/Documents/1997%2098_audit_report_50.pdf

current 'Industry' policy as it directly relates to the grass-fed cattle sector and therefore structure and funding in 1997/98, choose to ignore the established practice of 'do no harm' thru embedding 'Market Adversaries' in a single structure and an ill-conceived levy funding arrangement, including collection, under the pretext that forcing the formation of 'Strategic Alliances' or vertical integration into the collective and prescriptive management of otherwise functions of private corporate or individual business enterprises, which of itself, seems to fall well outside the scope of 'Government'. Consequently the grass-fed cattle producer sector is in crisis and the sector is in urgent need of review leading to policy reform and we hope the Committee will regard our submission as constructive in that regard.

From whom Should Senate Submissions be Received and Considered?

This question arises from the fact that the majority of cattle transaction levies are collected from grass-fed livestock producers whose real identity and actual levy payments are not recordable by the time the levies collection unit receives the collected tax (levy). This levy money, now consolidated revenue, is transferred to recipient organisations, including Meat and Livestock Australia (MLA), Australian Lot Feeders Association (ALPA), etc, and is further distributed in relation to marketing and other functions. Therefore the question arises; should the indentured and prescribed recipients of this consolidated revenue be allowed to make submissions to this Senate enquiry at all? These organisations are recipients of a compulsorily collected tax, and therefore are using the levies paid by others to fund their submissions; while grass fed producers whom "invest" in the levy must fund their own submissions in competition with the multimillion dollar 'levy funded' prescribed and indentured organisations.

A serious question arises as to what weight the Senate Committee should give to submissions from "stakeholders" whom gain financially from the allocation of consolidated revenue, originating from the compulsorily acquired cattle transaction levy; as compared to the weight given to submissions from the levy payers funding the recipient stakeholders.

Receipt, acceptance and consideration of submissions from recipients of the consolidated revenue originating from transaction levies reinforces the current problem, where grass-fed levy payers have a minor input into the red meat industry structure, need for, setting of and use of levies.

Submission – *"Industry structures and systems governing levies on grass-fed cattle"*

- **Terms of reference (a) – "the basis on which levies are collected and used"**

The fundamental basis on which all 'Primary Industries' levies are collected and used are detailed in plain English in the *Australian Government – Department of Agriculture, Fisheries and Forestry – Levies Revenue Service – "Levies Principles and Guidelines"* **[7].**

[7] http://www.daff.gov.au/__data/assets/pdf_file/0003/253353/levy-principles-guidelines.pdf

The twelve (12) *"General Principles Applying to Proposals for New and Amended Primary Industry Levies and Charges"* are designated at **section 2** of that document as follows:

The Government introduced 12 Levy Principles in January 1997. These Principles must be met when an industry or group of levy payers proposes a new levy or an amendment to an existing statutory levy.

The 12 Principles are outlined as follows:

1. *The proposed levy must relate to a function for which there is a market failure.*
2. *A request for a levy must be supported by industry bodies representing, wherever possible, all existing and/or potential levy payers, the relevant levy beneficiaries and other interested parties. The initiator shall demonstrate that all reasonable attempts have been made to inform all relevant parties of the proposal and that they have had the opportunity to comment on the proposed levy. A levy may be initiated by the Government, in the public interest, in consultation with the industries involved.*

3. *The initiator of a levy proposal shall provide an assessment of the extent, the nature and source of any opposition to the levy, and shall provide an analysis of the opposing argument and reasons why the levy should be imposed despite the argument raised against the levy.*

4. *The initiator is responsible to provide, as follows:*

– an estimate of the amount of levy to be raised to fulfil its proposed function

– a clear plan of how the levy will be utilised, including an assessment of how the plan will benefit the levy payers in an equitable manner

– demonstrated acceptance of the plan by levy payers in a manner consistent with Levy Principle 2.

5. *The initiator must be able to demonstrate that there is agreement by a majority on the levy imposition/collection mechanism or that, despite objections, the proposed mechanism is equitable under the circumstances.*

6. *The levy imposition must be equitable between levy payers.*

7. *The imposition of the levy must be related to the inputs, outputs or units of value of production of the industry or some other equitable arrangements linked to the function causing the market failure.*

8. *The levy collection system must be efficient and practical. It must impose the lowest possible 'red tape' impact on business and must satisfy transparency and accountability requirements.*

9. *Unless new structures are proposed, the organisation/s that will manage expenditure of levy monies must be consulted prior to introduction of the levy.*

10. *The body managing expenditure of levy monies must be accountable to levy payers and to the Commonwealth.*

11. *After a specified time period, levies must be reviewed against these Principles in the manner determined by the Government and the industry when the levy was first imposed.*

Amendments to existing levies

12. *The proposed change must be supported by industry bodies or by levy payers or by the Government in the public interest. The initiator of the change must establish the case for change and where an increase is involved, must estimate the additional amount which would be raised. The initiator must indicate how the increase would be spent and must demonstrate the benefit of this expenditure for levy payers.*

The committee will note that the *Levies Principles and Guidelines* were introduced in *January 1997* some eighteen (18) months prior to the commencement of *Part 3 – Industry Marketing and Research Bodies, and Approved Donors* of the *Australian Meat and Livestock Industry Act 1997 and Regulations 1998* and some twenty eight months (28) prior to the commencement of *Schedule 3 – Cattle Transactions Levy* – of the *Primary Industries (Excise) Levies Act 1999* all of which are the **direct** subject of this Senate Committee inquiry as cited.

The supremacy of *general principle 1.* conditions the collection of a 'Levy' in the first instance on…… *"The proposed levy must relate to a function for which there is a market failure."* It is extremely doubtful that the first levy principle had priority, or was even considered by the Government under its own rules at the time that it was announced that the grass-fed cattle sector was to be included in the current structure on many grounds, but primarily, on the grounds that the grass-fed cattle sector was never included either in the 1994 or 1995 *Industry Commission Reports* which……….. *"However, the report primarily dealt with the processing sector and the only change recommended by the IC in relation to the industry's statutory bodies was the establishment of a Meat Industry Review Authority under the AMLIPC to evaluate AMLC and MRC programs." [8]*

It follows that it would now be absurd, some 15 years later, for any person to claim that a **'Market Failure'** in the grass-fed cattle sector had been identified in 1994 and 1995 for which a 'Levy' would, or should be collected; and in the same manner, it would be equally as absurd that a **'Market Failure'** could be identified now, even though a 'Levy' has been collected for 15 years to facilitate an avoidance of a **non-existent**

[8] http://www.austlii.edu.au/au/legis/cth/digest/amalib1997417/

unidentifiable market failure. This is to say, that the representative body representing producers of grass-fed cattle (Cattle Council of Australia) or the Government **could not** identify a **'Market Failure'** that would, or could, affect the producers of grass-fed cattle then, in 1994/95 leading into 1997, on the premise that a 'Levy' should be collected for the purposes of 'Marketing & Research and Development.' A **'Market Failure',** other than a market failure caused by and as a direct result of a Government intervention for which no levy could compensate, cannot be identified at this present time. Indeed the current structure formulated by government is a major influence on cattle markets, to the detriment of grass-fed producers but cannot be considered to be a 'Market Failure', it is in fact a governance failure.

Further, it is arguable that the present expenditure of 'Levy' funds (tax) collected from the grass-fed cattle sector are spent not only on ~~a~~ the 'Commodity,' meat that most producers of grass-fed cattle no longer own, but also are spent inconsistently with the purpose for which the 'Levy' (tax) was imposed at **levy principle** (**1**.) in the first instance.

It also follows that the further $1.50/ head sold increase in Cattle Transaction levy for marketing in 2005 was not the result of a **'Market Failure'**; and also has not resulted in any real price increase for cattle, and did not comply in retrospect with item 12 ***Amendments to existing levies,*** in that no benefit was received by levy payers. The statements at that time, that cattle producers would receive a "trickle down" increase in livestock prices was not a *demonstrable benefit.* Since this levy was increased there has been no return for this increased levy for the grass fed levy payers. Even the Managing Director of MLA, Mr David Palmer is reported to have said: - *"The real price of cattle had not altered much since 1950."* **[[9]]**

Compared to current livestock prices in the United States of America (USA), Australia is at less than half these prices; when they should be comparable in that both are major meat exporters. Live cattle prices currently range from A$4.22 to A$5.05/kg in the USA compared to Australia at A$1.80 to A$2.20/kg. Reference: - Cattle Market Weekly - http://enewspro.penton.com/preview/beef/BEEF-05/20140215_BEEF-05_436/display
and The Land - http://www.theland.com.au/news/agriculture/livestock/sales-reports/breaking-news-ballarat-sale-a-beauty/2688916.aspx

The stagnation of the price of cattle, the increasing input costs, the impact of government policies has made many grazing properties unprofitable to the extent that the ABARE report **[[10]]** stated this as far back as 2009; - *"Time series data on farm profitability for Australia and South Australia from ABARE's farm surveys, shows a minority of businesses consistently profitable and a majority not. The paper finds evidence of prevalent and persistent negative farm profit in both available long-run data (1990-2007) and more recent data (2006-09). Trends in several structural change elements, productivity, farm size and age of operators, are also examined to aid the interpretation of farm economic performance in agri-food. The paper concludes with several*

[9] http://www.stockandland.com.au/news/agriculture/cattle/beef/cattle-price-crisis-prompts-bindaree-forum/1729906.aspx?storypage=0

[10] http://www.agrifood.info/connections/2009/Lagura_Ronan.html

contemporary examples of public policy distorting the structure and performance of the farm sector and spoiling the usefulness of profitability as an indicator of sectoral performance."

Profitability has declined further since this report. In effect "market failure" for grass-fed producers has resulted from the current government "industry" structure, government policy and regulation, government interference and government social engineering. The use of levies for marketing and R&D cannot counteract the governments impact on grass-fed producer profitability, and hence the marketing levy component is ineffectual. The only "industry" segments prospering from the application of levies, for the "collective" are the processing and retailing segments. The competitiveness of Australian meat in the market place is the direct result of decreased grass-fed producer incomes and profitability, nothing else.

- **Terms of reference (b) –"The opportunities levy payers have to influence the quantum and investment of levies"**

There is little doubt at the time of the "construction" of the 1997 red meat industry structure and the associated transaction levy introduction that there was insufficient grass fed cattle producer consultation. Many livestock producers were unaware of what was about to be introduced by government.

Since 1997 consultation has decreased as a direct result of the industry structure, and the declining membership of State Farm Organisations (SFOs) that support and fund the prescribed peak bodies like and including Cattle Council Australia (CCA)

Quoted from our letter to the Honourable Tony Burke MP December 2007.
"Since September 2006 we have been communicating with Federal Agent Ian Bridle, Australian Federal Police (AFP), Adelaide, in relation to a number of matters relating to the Australian red meat industry including Meat and Livestock Australia Ltd (MLA). The AFP have had their solicitors look at the information supplied to them and have recommended we contact a number of other government agencies and officials in relation the function of the corporate entities involved (MLA etc) and the conclusion that the red meat industry is not complying with corporations law.

Current expenditure of Consolidated Revenue funds by MLA is of the order of $155 million dollars per annum. A large proportion of these funds originate from compulsory taxes on livestock producers (called transaction levies).

The organisations comprising the red meat industry are either funded directly from Consolidated Revenue (e.g. MLA Ltd); or are funded from Net Industry Reserves that are on 'Loan' from the Consolidated Revenue account. The Net Industry Reserves, originating from transaction levies, are nothing more than a "Slush Fund" setup by the legislators to independently cash up, as contrasted against their traditional funding flows, unrepresentative bodies that have a support base of less than 10% of Primary Producers. Net Industry Reserves are nevertheless considered taxes by ANAO and should be therefore treated as such. All the 'Industry' organisations (Industry Bodies) have been 'Prescribed' as Commonwealth Public Officials at sections 59, 69(8) and 74 of

the AMLI Act 1997 and at section 4 of the AMLI regulation, as required by the Australian Constitution at section 67 and are therefore Commonwealth Public Officials as defined in the Dictionary of the Commonwealth Criminal Code Act 1995 .

In addition, the structure and operational machinery of the "Red Meat Industry", which was formed by the Commonwealth Government in 1997 is a tightly controlled one predominantly and constitutionally because of the fact that the majority of the expenditure is Commonwealth Consolidated Revenue Funds. In practical terms, Commonwealth Policy relating to the Regulation of the "Industry" is formulated by Federal Cabinet; the Minister for Agriculture Fisheries and Forestry then directs that Red Meat Advisory Council, who are "Prescribed Industry Bodies", referred to earlier, to implement Government Policy in the form of a strategic plan called the Meat Industry Strategic Plan (MISP).

The MISP is the final instrument that the Minister sets in place as a plan to expend Treasury funds from Consolidated Revenue and subject to an appropriation bill. It is also the responsibility of the Red Meat Advisory Council (RMAC) to oversee the operations of MLA Limited and ensure that the funding is expended in accordance with the MISP. Under the supporting documentation, Memorandum of Understanding (MOU) relating to the Red Meat Industry the Red Meat Advisory Council has the unlimited power to direct MLA Limited with regard to its operations, because the Commonwealth Government has appointed the Red Meat Advisory Council as custodians of the MISP and is therefore duty bound to be responsible for the expenditure of the Consolidated Revenue Funds.

We say that the structure therefore prohibits us, as livestock producers, from exercising any of the normal rights, as enjoyed by other independent people and businesses; as one could imagine a shareholder or member of a Corporation under the Corporations Act 2001 would normally be able to exercise. It should be pointed out at this point that it is a requirement of the Australian Constitution that only Civil Servants (Commonwealth Public Officials) or agents thereof are authorised to expend Consolidated Revenue. That being part of the Rule of Law, it would therefore be illegal for us and other producer members of MLA Limited to exercise normal voting rights that altered the operation of MLA Limited not authorised by the MISP and the structure placed on and above MLA Limited by the executive Government of the Commonwealth of Australia. If one could imagine recipients of unemployment benefits for example, having some sort of authority by majority vote to set their own agenda, level of funding and expenditure!"

"To summarise our letter, we have concluded that MLA Ltd cannot operate under the Corporations Act 2001 in view that the registered voters (voting transaction levy payers) and non-voting transaction levy payers cannot exercise any control over MLA. The points that require your individual attention are:-

1) *Is the Deed of Agreement between the Minister and MLA Ltd a valid document?*
2) *The AGM and general voting registers of MLA Ltd are corruptible by any individual members of MLA.*
3) *There is no record of who paid transaction levies and hence the voting registers can never be checked.*

4) *The Peak councils have ultimate power of veto over any operational changes or policies pertaining to MLA Ltd plus they have custodial and contractual rights through the MOU to direct policy, policy direction, enforcement and budgetary requirements for MLA therefore producers cannot exercise any control over MLA Ltd.*
5) *Under the Corporations Act 2001 there is no provision for compulsorily acquired financial contributions.*
6) *The MOU has not been registered with ASIC, but it forms part of the Articles.*
7) *The Deed of Agreement which is the crucial operational document for the allocation of Commonwealth Consolidated Revenue Funds between the Commonwealth and MLA Limited is not registered with the ASIC, and it should form part of the Articles.*
8) *The MOU was not complied with in relation to the proposal to increase producer transaction levies e.g. Beef Ballot 2005. This resulted in a transaction levy increase of $1.50 per head without reference to an Annual General Meeting as is legally required.*
9) *The MOU is unenforceable and not legally binding and is only a document of intent and is not prescribed in any law.*
10) *The Commonwealth is negligent in its constitutional responsibilities in the registration of a private equity corporation without an administrating Commonwealth Authority or the Commonwealth registering a controlling or substantial interest.*
11) *We, as an individual "shareholders" have no legal right under the Australian Constitution to direct the expenditure of Consolidated Revenue monies.*
12) *We, as ordinary citizens cannot be members and exercise membership rights in a public service corporation.*

- **Terms of reference (c) – "Industry governance arrangements, consultation and reporting frameworks."**

We consider industry governance, since the introduction of the AMLI Act 1997, to date has been inadequate with a "hands off" approach that only encourages nepotism, cronyism and corruption.

We, before the formation of USA, were concerned from 2004 onwards that MLA voting registers were corruptible, and hence the expenditure of consolidated revenue could be misappropriated as a result. We notified the Australian Federal Police (AFP), Adelaide sending a massive amount of data to them over an extended period. Amongst this data, and based on our calculations, it was evident to us that livestock production reports, and MLA voting entitlements, did not match for a number of MLA members claiming substantial voting entitlements.

Subsequently we wrote to the Australian Securities and Investment Commission (ASIC) in relation to Meat and Livestock Australia (MLA) Ltd expressing our concerns in relation to levy payers having any influence over this corporation.

Financial Reporting

As already stated previously, *"It should be pointed out at this point that it is a requirement of the Australian Constitution that only Civil Servants (Commonwealth Public Officials) or agents thereof are authorised to expend Consolidated Revenue."* Therefore details of financial expenditure relating to MLA is mostly unreported, inaccessible and cannot be accepted by the MLA "shareholders" at AGM's, because no legal right exists.

Research and Development

We do not consider many of the R & D projects funded historically to be beneficial industry R&D. Many just reinvent the wheel, repeating R&D that has already been published or "reproving" published R&D or practices already in use. We believe tendency is to use R&D funding as a tool to "encourage" voting blocks; including the invalid voters that exist in the voting registers, to continue to support the current "industry" status quo (pork barrelling), rather than conduct R&D that would benefit the whole of the Australian cattle industry. Examples of beneficial R&D might include vaccine development for diseases that could decimate the Australian livestock industries. Industry governance appears to lack the ability to select, control and adequately report on R&D projects.

While we have insufficient space to include many examples, we highlight the following two projects:-

1) **Expected growth results from Hormone Growth Remontants (HGPs) at the Hayfield PDS.** [[11]]
   From the report quote;-"*Hayfield targets heavier live export markets (e.g. Egypt) as well as selling feeder steers and so hold lighter steers over another wet,"* - while at the same time Egypt restricts importation of cattle that have used HGP's quote;- *"Australian cattle rejected in Egypt for having the devices still attached to them ."*[[12]]

   In addition cattle losing their HGP tags during this specific trial were reallocated to the group that had never had HGP's implanted. Trish Cowley DPI&F NT stated; - *"I made a decision to re-code animals based on their HGP status because I wanted to include as much data as possible. Animals that lost a HGP were re-coded as Controls. Hence the decrease in sample size in the HGP groups, and increase in Control group. This possibly advantaged the Control group by including animals which might have had a short term response to a HGP. It is generally understood that HGPs are lost either within the first*

[11] http://www.nt.gov.au/d/Content/File/p/NL/KRR/310_12_krr.pdf

[12] http://www.abc.net.au/site-archive/rural/nt/content/201208/s3565156.htm

24hours due to poor placement, or within a fortnight due to infection and abscess, so I believe that any effect of HGP would have been minimal."

While in this case it may not have made a significant difference, cattle that lost their HGP's cannot be later coded as part of a control group. The absence of adequate scientific protocols and methodology, results in the validity for the whole HGP project being questionable in all other respects.

In addition HGP activity in relation to cattle weight gains has already been exhaustively studied and many northern producers had doubts about cost benefits and had ceased to use HGP's. We consider that this project should have not been funded, and if it were funded, much more oversight and governance is required to ensure R&D funds were not wasted.

2) **Protecting vulnerable land from high wallaby densities**

Agile wallabies in northern Australia are reported to be at densities 1000 times greater than their natural density and are protected by law. Management, control and use of animal populations in plague proportions, with or without external aid, is a function that should rest solely with the landowner or leaseholder whose livelihood and business's are directly affected by the plague; based on assessments by these land owners or leaseholders. Broad based legislation and regulation cannot account for variable and changing population densities, and is too slow to react to change.

A research project which relates to control of species in plague proportions, probably as a result of man's interference in the first place (protection by law, cessation of aboriginal hunting, control of wild dogs etc), is not expenditure that should be funded as part of a cattle industry research and development project.

We consider it unlikely that many R&D projects result in cost benefits for the majority of livestock producers, especially when in many cases the benefits have been reported as "triple bottom line", but without accurate cost benefit analyses for, and in relation to the R&D projects undertaken.

We see the AMLI Act 1997 –Section 66 as perpetuating the MLA "goal" of ever increasing production, and not improved profitability, as a serious livestock production problem. Over stocking and inefficient improvements to productivity are a very high risk here, at the risk of declining livestock producer profitability. Quotation:-*" Note: This ensures that the sum of the amounts that are retained by the industry research body in relation to the financial year does not exceed 0.5% of the amount of the gross value of production of the industry for the financial year as determined by the Secretary.* **[13]**

[13] http://www.austlii.edu.au/au/legis/cth/consol_act/amalia1997407/s66.html

Consultation

There is no valid grass-fed cattle producer consultation, because the "industry" makes the decisions for us; besides how can consultation be carried out when grass-fed producers are unidentified entities in the "structure" unless they choose to "participate". Many now refuse to "participate" because the "industry" including prescribed peak bodies are non consultative and well beyond grass-fed producer control and accountability.

The concept that an all encompassing red meat industry structure can make decisions on behalf of all private enterprises whether they are cattle production, lot feeding, live export, or processing is flawed from the point of view that the individual segments and business's have specific needs to maximise profitability. Hence decisions taken and imposed by the Red Meat Advisory Council (RMAC) or other prescribed non democratic and non representative bodies (like CCA), are often to the detriment of the grass-fed cattle producer; whether this is increased costs from some marketing scheme (NLIS or LPA), or reduced cattle prices from market and political manipulation by others in the "industry." This comment even applies within the livestock production segment as well, where there is a difference between northern and southern Australian cattle production, decisions made by the prescribed and indentured industry and government (especially when located in Southern Australia) affect livestock producers in these areas differently as a result of market, climatic and location differences.

The idea of a big, 'good for all government prescribed government structure' is simply not workable, and stifles investment and differentiation that would make each segment more technologically advanced, more competitive and more profitable if free market forces were allowed to drive investment, innovation and market development.

Examples of "consultation" problems relating to grass-fed producers include the following;-

i) For years the "industry," including MLA, resisted the comparison of grass fed beef to grain fed beef from a nutrition point of view to avoid the highlighting of the beneficial differences of purely grass-fed beef compared to grain fed beef.

ii) The formation of the **Unlikely Alliance** with the goal of shutting down live export which was the major northern Australian cattle market. The resultant loss of the only other major cattle market guaranteed low feed stock prices to processors to the detriment of the live export marketers and grass-fed producers. The increased stocking rates and then the following northern Australian drought exacerbated the negative impact on the livestock producer.

iii) The "industry" restrictions on the building of new abattoirs that would provide competition in the market.

The grass-fed producer sells and profits from livestock sales; and yet the marketing structure, funded by grass fed livestock transaction levies, primarily funds the marketing of meat by vertically integrated businesses and retailers. It must be highlighted again that the introduction of the additional marketing levy in 2005, which was a $1.50 per head (transacted) increase on top of the already existing $3.50 per head (transacted), which

achieved no prior "trickle down" in its own right, has achieved absolutely no "trickle down" increases to livestock producers and their bottom line.

The idea that a levy funding marketing at the publically listed retail level will increase prices at the bottom is flawed because those at the top in the chain retain the profit from the marketing dollar provided by the livestock producer and which profits ultimately find their way into shareholders pockets in the form of dividends. The individual "industry" segments must provide their own marketing funds, apply them to the schemes they believe beneficial and have control of them, to ensure there is a return on the investment.

In addition to the Commonwealth's cost imposition placed upon the grass-fed Cattle sector of the $5.00 per head (RMAC) "marketing" schemes (transaction levy), the following "marketing schemes" that have no trickle down or premium financial benefit to the producers of grass-fed Cattle need to be included in the overall cost structure that maintains the current policy.

(Electronic) National Livestock Identification Scheme (eNLIS) is an RMAC contrived scheme with the NLIS trademark owned by *Meat and Livestock Australia Limited* and where in the **furtherance of an agreement** in Perth - October 2003 - **(resolution No 46)** **[[14]]** between the Commonwealth and the State Governments that the State Governments are to **regulate by force of law** that the producers in each State are forced to purchase eNLIS cattle tags fasten them to the ears of cattle **before the cattle can be either moved off their properties or sold.** A majority of grass-fed cattle producers did not want eNLIS and consultation was a farce to the point that Cattle Council of Australia had to employ a media and public relations firm, *"Pegasus Communication"*, to dig itself out of the huge hole it had dug for itself and sell what is the most ill-conceived and expensive *"White Elephant"* to its Government *"Prescribed"* constituency, the producer of grass-fed Cattle.

We can only assume that the reasoning behind the State Governments regulating eNLIS (a National Scheme) and not the Commonwealth, under its own powers, is that the Commonwealth would have been subject to *Section 51(xxxi) of the Constitution* and therefore the States were to regulate this scheme including **'Terms of Use'** **[[15]]** which, for all intents and purposes, is just another **'Excise' impose by State Governments** and undoubtedly could reasonably be subject to *Section 90 of the Constitution* **[[16]]** in the absence of 'Just Terms'.

Without the costs of labour, equipment and the loss of property rights the producer assumed cost of the eNLIS tags alone (in NSW) is $3.85 (gst incl) per tag/head merely for the right or privilege to either move or sell/trade one's Cattle, a cost like the

[14] http://www.mincos.gov.au/communiques/Documents/pimc/pimc_res_04.pdf

[15] http://www.nlis.mla.com.au/NLISDocuments/NLIS%20Terms%20of%20Use%20(Edition%201.16)%20140612.pdf

[16] http://www.austlii.edu.au/au/cases/cth/HCA/1997/34.html - (Ha v State of New South Wales & ORS DEFENDANTS)

transaction levy that is unrecoverable by the producer yet has been reported as having upstream beneficiaries.

In addition to this the South Australian Government has recently allowed an increase in the cattle eNLIS tag levy to fund the self appointed group LiveStock Producers SA, a group previously under the banner of the *South Australian Farmers Federation (SAFF)* which has completely collapsed into history due to farmers leaving the organisation in droves. This is a clear breach of *Section 90 of the Australian Constitution*. The *SA State Government* has modified regulation to allow for the funding of national bodies including CCA. **Refer; -** ***South Australian Primary Industry Funding Schemes (Cattle Industry Fund) Regulation 2000 Section 7 Application of Fund (1) (da) (v) amended 1st October 2013.***

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This obnoxious **eNLIS SA State levy** adds a further $1.10 to every NLIS tag purchased, is compulsorily taken, **but can be refundable on request annually.** Cattle producers cannot continue to have additional costs (levies/taxes) imposed on them without democratic representation and beneficial returns for their expenses. Funding supposed "representative/advocacy" bodies with levies, like *LiveStock Producers SA* and *CCA* is abhorrent and will lead to further agricultural production segment discontent.

Another "National" Cattle transaction trading scheme which further adds to Cattle producers unrecoverable cost of production in maintaining the "Industry" structure is **Livestock Production Assurance** (LPA). **LPA** is trademarked owned by *Aust-Meat Limited*, a 50% owned subsidiary of *Meat and Livestock Australia Limited.*

LPA is a RMAC (Industry) enterprise that is supposedly **'Voluntary' in adoption,** yet, it is extremely doubtful whether any grass-fed Cattle in Australia can be traded by Cattle producers without the individual producers agreeing to a **'Third Party Contract'** that is **best described as a trade restricting 'Covenant'** placed upon producers of grass-fed Cattle as controlled by the **LPA – 'Business Rules and Standards'** [17] and the unelected, monopolistic and oligarchy **LPA committee** who pay little or no regard to the *Statutes* regulating issues of ***'Privacy'*** in the commercial use of ***'Identifiers'*** or in the prescribed use of ***'Farm and Veterinary Chemicals'*** by producers and further, the **LPA committee** has the sheer arrogance to give itself the power to remove Cattle producers ability to trade if, in the committee's opinion, the Cattle producer has brought the **"Industry"** into disrepute thru unspecified means.

Additionally, it seems that *Aust-Meat Limited* and the **LPA committee** has forgotten its manners as well as its authority. The **LPA 'Business Rules and Standards'** provide for the **LPA committee** through *Aust-Meat Limited* to employ or to contract 'Auditors' to step outside of their authority under the *Export Control Act 1982* and audit Cattle

[17] https://www.ausmeat.com.au/audits-accreditation/livestock-production-assurance/lpa-rules-and-standards.aspx

producers properties rather than confining their activities and authorisation to the auditing of premises that are **'Registered Establishments'**, of which by far and away the vast majority of producers of grass-fed Cattle properties **are definitely not 'Registered Establishments'.** It is in fact **'Export'** meatworks and **'Live Exporters' that own premises capable of being 'Registered Establishments' under the *Export Control Act*.**

In Summary the imposed "Industry" maintenance costs imposed on grass-fed cattle producers for no perceivable grass-fed producer benefit can be summarised as follows;-

		$
1)	**Appropriation of Property Rights – Incalculable – Immense beyond belief.**	
2)	Cattle Transaction Levy	5.00
3)	eNLIS Tag	3.85
4)	Installation/Equipment costs eNLIS tag	15.00
5)	State imposed costs (South Australia)	1.10
6)	LPA paperwork	0.10
7)	LPA Auditing	0.50
	Total	**$25.55/head**

These schemes, if they are to provide enhanced beef prices in specialised meat markets must be based on a commercial basis whereby the livestock producer is paid a premium for compliance, and therefore can make a commercial decision about involvement in the scheme. To continue to introduce such schemes while there is no commercial benefit to grass-fed livestock producers, and inadequate and flawed consultation, is fraught with the real possibility that the adoption and scheme data is totally flawed. See the independent review on the massive inaccuracies within the cattle eNLIS data base here.[[18]]

- **Terms of reference (d) – "Recommendations to maximise the ability of grass-fed cattle producers to respond to challenges and capture opportunities in marketing and research and development."**

The current industry structure which was put in place in 1997 is totally counterproductive in allowing grass fed cattle producers to respond to challenges and opportunities that are available in the grass fed segment.

One important issue the current structure cannot accommodate is the conflict between the emerging live export trade and the traditional domestic/export processing sector. It is a matter of record that the processors even at peak industry body level had meetings about the threat of live export to processors as early as 2006, which probably culminated in the extreme overreaction by the Minister in 2011 when the export of live cattle was banned to Indonesia.

[18] http://austbeef.com.au/2013/02/27/%ef%bb%bfaba-report-into-the-efficacy-of-nlis/

The resultant destruction of the cattle market that followed that event was an economic disaster for the grass-fed sector, however RMAC remained silent whilst the processors enjoyed, as they had planned, increased profit generated by extremely low grass-fed cattle prices.

That is a system failure, a very destructive systemic failure, where the RMAC structure crushed one sector to the economic benefit of another sector.

We recommend complete deregulation; that is the disbanding of Red Meat Advisory Council (RMAC); repeal the Australian Meat and Livestock Industry Act 1997 and removal of the compulsory cattle transaction levy immediately as the best possible outcome to allow the grass-fed sector to capture and maximize a profitable economic future.

Marketing of domestic beef should be the domain of the processors or Coles and Woolworths or the like; processors themselves should market their own product at their cost worldwide; grass-fed producers should not pay those costs as they do now for no economic benefit whatsoever for themselves.

Any requirement for *real* research and development will arise as we progress; there is an enormous amount to data that is simply stored in various Government departments nationally that needs to be re-produced into a usable format that is still unused. Profitability will drive R&D in the private sector, but profitability has to come first.

We also recommend that there be enacted by the Commonwealth as a matter of urgency strong *"Anti-Trust"* Laws to protect the Grass-fed sector that is a mirror image of the United States of America *'Packers and Stockyard Act'* [[19]]. Such protections are an absolute necessity to protect Grass-fed producers from cattle market manipulation and distortion that is evident here and which is one of the principal causes of extremely low prices for cattle in comparison to other comparable economic societies worldwide.

Rebuttal and Comment on the - "Department of Agriculture Submission 28"

We thank the Department for their input and attempt to explain the "workings" of the "industry"; however we are quite amazed that the Department has submitted a submission to the Senate committee about itself, quite an extraordinary circumstance; quite a gaping conflict of interest by the Department.

This highlights the lack of perception within the public service of conducting a business on commercial terms; it also highlights a major problem within this structure which is that the emphasis is not on free commercial business activities but rather on a mixture of government control, regulation and enforcement by an unauthorized entity ("industry") which is in fact a Government instrumentality.

[19] http://www.gipsa.usda.gov/psp/rights.html

"Industry" is unauthorized in this sense; we as private citizens as private entities have not authorized "industry" to act or sign for us on our behalf; "industry" has no registered interest over our cattle (or other livestock) or our Real Property (land); and we have no Contracts with "industry" to act for us in any way.

That being said, the Commonwealth in its submission has set out in detail how they see the prescribed regulated structure operating. They admit, *they* have authorized and appointed by statute, Canberra based *political* organizations to manage our *private commercial businesses* without our informed consent or Contract, using an unregistered interest, which was enacted in 1997 using a plenary power under the Constitution. That exercise of power, declared to be in the national interest, is an Acquisition of Property (s51xxxi). There is even a transfer of Commonwealth Statutory Powers to the *political* organizations in the MOU.

Damages flowing from the mismanagement of the enacted "industry" since 1997 by the statutorily appointed *political* organizations, the Prescribed Bodies, who are legally appointed ***Commonwealth Government Officials*** [[20]] at the ultimate control of the Minister, are considerable. The resultant outcome of the Acquisition is that the grass-fed sector has been unable to perform in economic terms using the accepted economic business decisions that should be available to the individual grass-fed business entities in any correctly functioning democracy. For example; grass-fed cattle prices are on average only 33% of equivalent cattle production countries.

Political decisions that have manifested themselves as Regulations flowing from the transfer of statutory Commonwealth power to the political organizations are of a kind that the Commonwealth does not have the constitutional power to enact itself in the first instance. The Commonwealth has pursued a policy in this structure of Contractual Regulation which is labelled "voluntary" but is "pulled through" and is in reality compulsory using third party contracts, and in one significant case using State powers through ***COAG*** [[21]] ***to regulate*** where again the Commonwealth is deliberately avoiding s51xxxi.

When we refer to ***private commercial business*** we mean this;

"Private Enterprise, in essence, is the right of the individual, alone or with others, to engage in work of his own choosing or to set up in business to own, to use and to risk.

The reward for success is profit or achievement in a chosen field, the penalty for failure is the loss of what has been ventured.

Nothing can surpass the system of rewards and penalties in providing the incentive upon which economic progress is built.

[20] http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html - (Criminal Code Act 1995 – "the Schedule"- Chapter 7 – "the Proper Administration of Government")

[21] http://www.mincos.gov.au/communiques/Documents/pimc/pimc_res_04.pdf

The desire to create something new . . . the hope of contributing to the betterment of others, these are incentives for individual conduct which Private Enterprise encourages and on which it depends.

Just as individual capacities can be developed by education, so can capital goods be created and increased by saving, investment and advancements in industrial knowledge and techniques." – (source unknown)

The direct opposite has been outlined in the Government Departmental Submission.

There are three basic entities mentioned in the submission; the levy payers; the "industry" and the Department (Commonwealth Government). The fact is there are only two entities, the Commonwealth and the Levy Payers; **"industry"** in reality is Government controlled by the Minister through the *AMLI Act (and the MOU)* and the funding Deed of Agreements).

To put it quite simply **the Act;**

- establishes a Commonwealth Legal Interest in all domestic Livestock nationwide;
- it then places that Commonwealth "interest" into the "industry";
- the "industry" is a Commonwealth Government entity established in the Act;
- the Peak Councils are 'Prescribed" into the Government in the Act;
- they are then referred to as "prescribed industry bodies";
- they are appointed as Civil Servants in the Regulations;
- the Act combines the "prescribed industry bodies" into RMAC;
- RMAC is charged with the responsibility of managing the "industry" for the Commonwealth within the Act;
- RMAC is not free to manage independently, they are controlled by the Federal Minister, as described in the Act;
- RMAC must manage in accordance with MISP which is Policy of the Government of the day;
- RMAC must be managed in this way because they are operating on Tax funds from the Consolidated Revenue Fund and the Constitution requires that expenditure is incorporated in an annual Money Bill and spent only under the supervision of a Minister.

The Levy Payer is the "producer"; it is a statutory term **prescribed in section 3 of the Act;**

- under the Act the owner of the "livestock" loses that common law right of owner because of the legal interest established by the "prescription" and is relegated to the statutory term in the Act of "producer"; a type of dual ownership or tenant in common;

- "producer" signifies a former common law livestock owner who has had their Property in Livestock indentured to the "industry" and therefore to the Commonwealth through the Act, establishing a legal interest in the livestock,

which form part of the Land, and of acquiring a non possessory interest in the property in livestock;

- "producer" has only a functionary role in the "industry" in that they produce for the "industry";

- individual "producer" membership of farm organisations, at the State and Territory level that are subsidiaries or affiliates of the "prescribed industry bodies" ; including membership of Meat and Livestock Australia Limited; have the legal effect because of the prescription, of gifting the "interest" in your livestock contained in section 3 of the Act to the Commonwealth;

- There is no legal way that RMAC or the "industry" can be influenced by a "producer" or "producers"; moreover "producers" must be in compliance with the Regulation formulated by RMAC; they are clearly subordinate to RMAC which is a Commonwealth entity; and given that RMAC is the actual appointee in the Act managing the interest established by the "prescription" which results in a tenant in common relationship between the Commonwealth and the "producer", producers will always be subordinate.

This clearly establishes a Restrictive Covenant over our and all property in cattle nationwide; it is an Unregistered Interest over our Equitable Interests.

On page 4 of the Departments submission ...***"the organisations that receive this levy money are legally accountable to levy payers"***.... - Sorry, this statement is patently wrong, the levy payers control absolutely nothing; the Commonwealth cannot even identify the levy payer entities; the Commonwealth controls the "industry" through RMAC and that entity is not a representative organization of any levy payer producer group. It suits the Commonwealth just to deal with the Prescribed Bodies; it's easier to govern like that, undemocratically.

The Commonwealth through its submission has completely ignored the will of the people; the fact is that the structure that the Commonwealth is so desperately clinging to in its submission has failed, it has failed on every single point since its inception in 1997; its most prominent failure is in economic terms; extremely low farm incomes, unsustainable profitability and massive increases in the cost of production.

The will of the people, the levy payer, has been to desert the indentured "industry" by the thousand; the SFO's now merely represent a fraction of the grass-fed production sector; between 80% and 90% of levy payers are outside the officially indorsed "industry" as described by the Commonwealth in their Submission.

......"The Australian Government helps primary industries overcome this through the use of the Commonwealth taxing powers to facilitate marketing and research and development services for rural industries."..... The fact is the Commonwealth never consulted the people, the levy payer prior to the enactment of the 1997 AMLI Act and the formulation of "industry"; they just declared it in the 'national interest". The application of the Commonwealth's "taxing powers" has no support in the grass-fed sector; sure

RMAC supports it but they are a Commonwealth entity, at best representing 10% of grass-fed levy payers nationally.

……"By working collectively to identify the opportunities and threats Australia's primary industries have been able to compete internationally."

We really like the Commonwealth's choice of words here … ***"collective(ly)***"…. The structure is a fine example of a **Socialist system structure** no doubt.

This is the Collective;

- MLA is not a 'Privately Owned Producer Company' at all. It is an ***"Exempt Public Authority"*** [[22]] registered as a Public Company Limited by Guarantee.
- MLA is 'Funded' by a compulsory 'Tax' on livestock producers.
- MLA is compulsorily funded by levy payers as shareholders; corporations cannot be compulsorily funded; that breaches the Corporations Act 2001
- Therefore MLA has three types of Shareholders; Compulsory shareholders; Compulsory Voting shareholders; Peak Council Shareholders.
- MLA 'Funds' are streamed through the Commonwealth's 'Consolidated Revenue Account' therefore becomes taxpayer funding.
- MLA is 'Established' under the 'Australian Meat & Livestock Act 1997' therefore is incorporated by 'Statute' and is the direct responsibility of the Commonwealth's enabling Act & Government.
- MLA is a 'Disallowable Instrument' and subject to a 'Disallowance Motion' as per the Acts Interpretation Act 1901 & the Legislative Instruments Act 2003.
- MLA and its corporate responsibilities are at the direct discretion of the 'Executive Government'; a Minister of State; and gains its power by statute.
- The 'Peak Industry Councils' are 'Prescribed' & appointed by the Governor General under the 'Australian Meat & Livestock Regulation 1998' section 4 as Civil Servants.
- By definition the 'Peak Industry Councils' under the Acts Interpretation 1901 are 'Commonwealth Public Officials'.
- The 'Peak Industry Councils' are also 'Funded' through 'Net Industry Reserves' via 'Consolidated Revenue'.
- The Peak Industry Councils as signatories to the MOU have had 'Commonwealth Statutory Powers' transferred to them under the MOU.
- The 'Deed of Agreement' signed between MLA & the Commonwealth Government is a legal and binding contract enabling MLA to 'Spend' compulsory taxes.

In addition - "***industries have been able to compete internationally"***;

Competing internationally has not in any way manifested itself to equate to profitability in the grass-fed sector so therefore is our profitability and financial stability irrelevant;

[22] http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s57a.html
(see note following at 'References')

the emphasis has to be in increased profit for our sector and not a regulatory fanaticism about productivity; we are producing a primary product livestock (not meat) simply to supply an international market at a production loss.

….."The incentive and capacity for individual small businesses to invest in marketing and research and development is low, resulting in market failure"…..

Contrary to the Commonwealth's submission, ***economic market failure*** [[23]] is being induced by this structure.

Whilst there may be limited capacity to fund the activities mentioned at this point in time by grass-fed entities, it is only because the Commonwealth intervened in 1997 and nationalized the cattle industry and placed it in an economic monopoly called RMAC. The resultant fact which flowed from that Commonwealth action is non-profitability of the grass-fed Sector.

There is constant propaganda from "industry" that any increased income in a business engaged in grass–fed cattle can only be derived from Productivity gains by the already economically embattled grass-fed producers. Apparently there is a view in the Commonwealth and RMAC that cattle prices must be kept at below cost of production levels to provide a *social benefit* in the form of cheap retail meat supplies to the urban population.

That social cost being borne by the grass-fed sector is not flowing to the urban consumer at all, in fact the urban Australian consumer is paying a higher retail price for meat than in most comparable economic societies worldwide, and the grass-fed producer is receiving 60% less than comparable economic societies worldwide.

The market failure problem lies in the manufacturing sector; the problem manifests itself in several ways; there are inefficiencies that exist in all manufacturing in Australia that are well known and documented; however the principal problem is that the cattle market which has not been free at least since 1997 is completely controlled through the monopolistic RMAC Structure by the Processor sector which is supported and enforced by the Commonwealth, and their Submission 28 supports that argument.

The Processor sector controls, formulates and enforces almost all the Regulation that "industry" currently enforces on the grass-fed sector and the irony is that the grass-fed sector pays for that privilege through the $5 cattle levy that the Commonwealth has stated and argued in its submission is an absolute necessity to prevent a perceived market failure!!!

The Commonwealth is apparently satisfied with the fact the majority of Australian processors who are foreign owned have a *"transfer pricing"* policy which distorts the true income of their Australian operations; moreover the Commonwealth has

[23] http://en.wikipedia.org/wiki/Market_failure

embraced them as through the appointment of AMIC as prescribed Commonwealth government officials.

What we really have here is a classic **Government failure** (or **non-market failure**) [[24]] whereby a market failure occurs when government intervention causes a more inefficient allocation of goods and resources than would occur without that intervention.

Social engineering is a school of political science whereby governments and/or private groups influence the acceptance or rejection of individual behaviour on a large scale. They influence, through the passage of law or creation of incentives/disincentives, human activities, in an efforts to create, in their eyes a better, or perhaps more acceptable society.

In this instance the Commonwealth has applied social engineering through this structure in a planned and methodical way; it has placed severe limits on human behaviour and the in turn on the income and profitability levels of the grass-fed cattle sector; it is a major constraint on free will and the economic future of the entire grass-fed sector.

Submission Conclusion

The recommendations Senators will have to make at the end of this inquiry will have to address these important issues;

- The widespread discontent throughout the grass-fed sector
- Discontent regarding the way the "industry" was formulated prescribed and regulated in the first instance in 1997
- Analyse the real reason that grass-fed producers have deserted the SFO groups in droves
- Absolute disgust regarding the management of the "industry" since 1997
- Alarm at the fiscal mismanagement of "industry" Taxation (levy) by RMAC since 1997
- The complete inability of any type of managerial input by grass-fed producers into the management and direction of "industry" since its inception
- Absolute disconnection by at least 90% of grass-fed entities nationwide primarily because of collapsing farm incomes; together with numerous "industry" induced skyrocketing cost of production and "compliance" costs
- The complete disregard of grass-fed producers desire not to be engaged in any discussions with fundamentalist animal rights groups and environmentalist groups by RMAC and CCA
- The reality that the processors actually control the entire grass-fed sector.
- The conflict of interest within RMAC regarding the reported conspiracy where by government ministers, a key union, and key processor executives, met several times over months (the Unlikely Alliance) to destroy the live export trade

[24] http://en.wikipedia.org/wiki/Government_failure

- The hardship and loss of income that the Unlikely Alliance and the resultant live export ban and the introduction of ESCAS caused in the north.
- The more than 100% difference between live weight steer prices between the USA and Australia, when both countries are major meat exporters.

We refer to a media statement by the Minister Joyce in the online Cattle and Red Meat journal - ***Beef-Central*** [[25]]; if the Minister and the Federal Government genuinely desire peace and harmony within the grass-fed sector then there will need to be major reforms.

It is our opinion that the basis of peace and harmony that the Minister desires is the preservation of each individual's common law right to property and the right to conduct our business according to Law (rather than a public policy regulation) and the right to freely exercise those rights according to Law. The fact is the current structure is delivering the direct opposite and it is being carried out by a Commonwealth Government official (RMAC). That is the reason for the turmoil within the grass-fed sector.

It is not the job of government to create jobs and public servants do not create wealth, the private people do. Massive public service empires only destroy the economy because they prevent ordinary people from using their own initiative and equity by their never ending regulation and interference, especially in consideration of the fact that most of their ideas and policy are not reality, and usually based on very limited, or no experience or knowledge of how the real world of private equity, initiative and free enterprise works.

Nothing short of complete deregulation of the grass-fed sector will stem the slide into social disorder.

Unless radical changes are made to the day to day lives of the grass-fed producers the discontent will continue and it will accelerate and develop.

UNITED STOCKOWNERS OF AUSTRALIA

[25] http://www.beefcentral.com/p/news/article/4098

- **References**

http://unitedstockowners.com.au/

1. http://unitedstockowners.com.au/usa-proposed-model-grass-fed-cattle-restructure-version-2/
2. http://www.gipsa.usda.gov/psp/rights.html
3. http://www.austlii.edu.au/au/legis/cth/digest/amalib1997417/
4. http://www.agrifood.info/perspectives/
5. http://www.agrifood.info/perspectives/1998/Hayes.html
6. http://www.anao.gov.au/~/media/Uploads/Documents/1997%2098_audit_report_50.pdf
7. http://www.daff.gov.au/__data/assets/pdf_file/0003/253353/levy-principles-guidelines.pdf
8. http://www.austlii.edu.au/au/legis/cth/digest/amalib1997417/
9. http://www.stockandland.com.au/news/agriculture/cattle/beef/cattle-price-crisis-prompts-bindaree-forum/1729906.aspx?storypage=0
10. http://www.agrifood.info/connections/2009/Lagura_Ronan.html
11. http://www.nt.gov.au/d/Content/File/p/NL/KRR/310_12_krr.pdf
12. http://www.abc.net.au/site-archive/rural/nt/content/201208/s3565156.htm
13. http://www.austlii.edu.au/au/legis/cth/consol_act/amalia1997407/s66.html
14. http://www.mincos.gov.au/communiques/Documents/pimc/pimc_res_04.pdf
15. http://www.nlis.mla.com.au/NLISDocuments/NLIS%20Terms%20of%20Use%20(Edition%201.16)%20140612.pdf
16. http://www.austlii.edu.au/au/cases/cth/HCA/1997/34.html - (Ha v State of New South Wales & ORS DEFENDANTS)
17. https://www.ausmeat.com.au/audits-accreditation/livestock-production-assurance/lpa-rules-and-standards.aspx
18. http://austbeef.com.au/2013/02/27/%ef%bb%bfaba-report-into-the-efficacy-of-nlis/

19. http://www.gipsa.usda.gov/psp/rights.html

20. http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html (Criminal Code Act 1995 – "The Schedule" – Chapter 7 – "The Proper Administration of Government")

21. http://www.mincos.gov.au/communiques/Documents/pimc/pimc_res_04.pdf

22. http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s57a.html
(See note (a) directly below)

23. http://en.wikipedia.org/wiki/Market_failure

24. http://en.wikipedia.org/wiki/Government_failure

25. http://www.beefcentral.com/p/news/article/4098

- **Note (a) – An 'exempt public authority' Statutorily follows thus: (links are active)**

Corporations Act 2001 - Section 9 - Dictionary

" exempt public authority " means a body corporate that is incorporated within Australia or an external Territory and is:

(a) a public authority; or

(b) **an instrumentality or agency of the Crown in right of the Commonwealth, in right of a State or in right of a Territory.**

Australian Meat & Live-stock Industry Act 1997 - Section 4 - Crown to be Bound

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to be prosecuted for an offence.

(Statutory (tax) Funding) - Primary Industries (Excise) Levies Act 1999 - Section 5 - Act to bind Crown

This Act binds the Crown in right of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

Corporations Act 2001 - Section 64A - Entities

Except in Chapter 2E, a reference to an entity:

(a) is a reference to a natural person, a body corporate **(other than an exempt public authority**), a partnership or a trust; and

(b) includes, in the case of a trust, a reference to the trustee of the trust.

Corporations Act 2001 - Section 57A - Meaning of Corporation

(1) Subject to this section, in this Act, corporation includes:

(a) a company; and

(b) any body corporate (whether incorporated in this jurisdiction or elsewhere); and

(c) an unincorporated body that under the law of its place of origin, may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose.

(2) Neither of the following is a corporation :

(a) an exempt public authority ;

(b) a corporation sole.

(3) To avoid doubt, an Aboriginal and Torres Strait Islander corporation is taken to be a corporation for the purposes of this Act.