sparke HELMORE LAWYERS

Sparking Success in Agribusiness

Contents

About Sparke Helmore

Sowing the seed

The agriculture sector has been one of the backbones of the Australian economy for over 150 years. Sparke Helmore was founded 140 years ago in the Hunter Valley with strong connections to agribusinesses throughout regional Australia.

We have since built an established agriculture sector group, who work as one team servicing the needs of clients active in this sector, helping to achieve the best business results across all phases of the agribusiness lifecycle.

Our team has the knowledge and experience in this sector to protect and advance the interest of primary producers, regulators, operators, manufacturers, and industry groups. The services we provide include advising on the legal aspects of commercial operations, export and import controls and planning and regulatory issues of agricultural businesses as well as intergenerational transition advice and dispute resolution and code of conduct advisory and dispute resolution.

With extensive experience across all agribusiness industries including beef, dairy, sugar, cotton, wheat, apple, chicken and strawberry industries, our team is well placed to advise on:

- Acquisitions and disposals
- Land Act dealings
- Water Act matters
- Business structuring and management
- Foreign Investment Review Board (FIRB)
- Taxation
- Corporate governance
- Risk and liability management
- Property and leasing, including agistment and share farming agreements
- Land titling
- Intergenerational business transition and dispute resolution
- Construction and Infrastructure projects
- Intellectual property and technology
- Employment and Work, Health and Safety
- Commercial litigation and arbitration

The team also work closely with our specialist mining & energy resources and water sector teams.

Our collaboration with Queensland Farmers' Federation

We work in collaboration with Queensland Farmers' Federation (QFF) as a Corporate Partner. This is an important step in assisting to build a strong future for Queensland agriculture.

SUCCESSFULLY TRANSITIONING A FAMILY BUSINESS BETWEEN GENERATIONS

Author: Partner Kylie Wilson

At Sparke Helmore, we have many primary producer clients in their fourth and fifth generations of long-held family businesses. It is our experience in acting for these families that communication, planning, and structuring are essential elements of a successful transition.

One of the most common questions we receive about longer-term planning for families who want to work through transitioning a business is – where do we start?

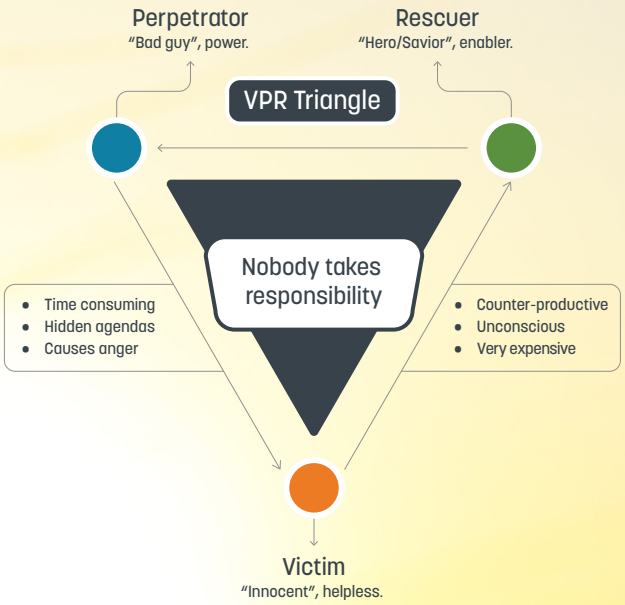
Set out below are some of the main issues that need to be considered in rural intergenerational business transition planning. It is not exhaustive but is intended to highlight essential issues that need to be considered to ensure the process can progress toward a successful outcome.

Communication

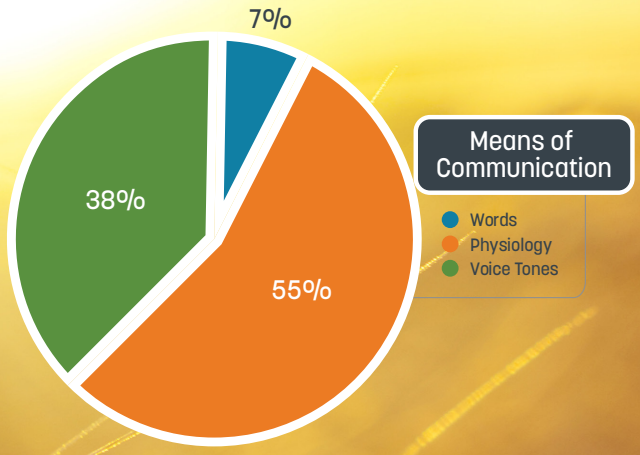
One of the main issues that can lead to disputes within family business is the lack of appropriate communication within the family. Communication in any family can be difficult, and it requires an understanding by each family member of the needs of every other family member. Being prepared to discuss sometimes contentious topics in an open and non-judgemental way is key to managing expectations and progressing the business so it can remain viable for the next generation. It is essential to avoid potential miscommunications by considering—and where they exist, dismantling—communication triangles within the family and the business.

Family and business communication

Don't do this:



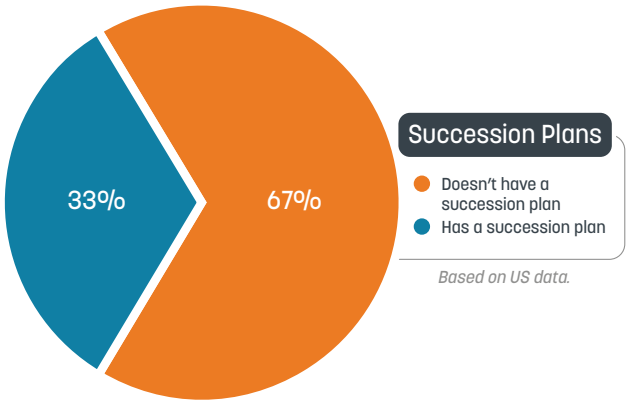
Think about this:



Thinking about the communication patterns that can trigger problems can assist in moving towards more successful conversations. If that seems like an impossible challenge, consider engaging an independent facilitator to assist with family meetings and to help move past difficult communication roadblocks.

The plan

What is frequently not given appropriate consideration is that planning the transition of any business, including a family business, involves a real and achievable plan being put in place. Succession plans should be part of the business plan. The following graphic is based on data relating to family business in the United States but we note the statistics are slightly worse in Australia.



Business planning is an essential ingredient to running a viable agricultural enterprise. A transition plan is something that should be included in the overall business plan at the outset although it will need to be evolutionary in the sense that it could be carried out over time. It will need to be flexible enough to adjust with changing needs and circumstances of the business and the family.

Assets and income

Ideally, long before a transition of the business commences, an understanding of the importance of both business and non-business assets and income needs to be considered. The asset pool needs to be sufficient to secure retirement of the parents whilst also enabling a viable business opportunity for the next generation.

Parents must be able to retire comfortably. To know what that will mean from a financial perspective, parents need to identify how they want to live and what they want to do in retirement to enable that cost to be ascertained potentially with the assistance of financial advice. If off farm assets (investment property, shares, superannuation for example) are insufficient, the earlier that this is identified, the easier it will be to build retirement assets away from the business. If that is not achievable, the next generation needs to have their own financial advice to determine if, once the cost of retirement is funded, the business is still viable.

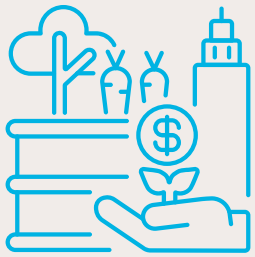
Identifying the asset pool, the long-term plans for business viability and sustainability, and the needs of the incumbent generation in retirement at an early stage, and reviewing these consistently, will help provide a much smoother path for the transition of a family business.

Fairness

Trying to be fair to all members of the family is obviously a part of good business transition planning but is often fraught with difficulty where there a few or no assets away from the farm.

Different people have different interpretations of fairness, especially at different life stages. If the holder of the assets, usually parents or an entity controlled by parents, intends to share the assets among all the next generation, it is important to obtain proper advice about the viability of the business for more than one family. This is particularly important before a specific child invests their entire future and their family's future in the business. Early retirement planning is crucial for this reason. With sufficient assets outside of the business, capital in retirement may be enough to leave an inheritance to children outside of the business that will help them financially without compromising business viability. It is also important not to simply compare asset value when considering inter-generational farming enterprises.

A child on farm may technically receive assets of higher value, but their cash flow may be low, and they will have to work very hard to generate that cash flow. If the assets are intended to pass on to a future generation, they will never have access to the value of the assets in question. Children off farm with a more liquid inheritance won't have to work for their returns and will have a much higher rate of return. They will also have more flexibility about what to use their capital for, even if it is much lower in value.



Revenue issues

It's important for businesses to consider revenue implications during the succession process. The transaction process can be complex, and an incorrect plan put in place to progress a family transaction could result in a significant liability for taxation or duty. On the other hand, a correct plan can ensure a successful and legitimate transaction without the same revenue liability. In this respect, seeking taxation advice well in advance of a transition is vital, as is being very careful when considering a transition of management of the business to the next generation without a transfer of capital assets. If effective retirement has occurred well before the transition of assets to the next generation, capital gains tax and duty concessions may no longer be accessible.

These are just the basic starting issues to consider. A proper transition plan takes time to develop and evolve, and requires the assistance of a team of advisers for successful completion.

A FAIR GO: FIRB AND THE 'OPEN AND TRANSPARENT' SALE OF AGRICULTURE LAND TO FOREIGN INVESTORS

Author: Partner Aston Joppich

Australia's agribusiness continues to be an industry of interest for foreign investment. Latest figures show that 13% of Australia's agricultural land is wholly or partly owned by foreign persons or entities. This percentage is likely to increase off the back of foreign investment in the mining of Australia's rare earth mineral deposits like lithium and copper, and the acquisition of land in rural and regional areas for renewable energy projects like solar and wind. This presents a timely opportunity to remind Australian farmers of their obligations should they chose to sell their land or business to a foreign investor.

The *Foreign Acquisitions and Takeovers Act 1975* (Cth) (or **FATA**) regulates the investment of foreign persons and entities in Australian businesses, land and other assets. Broadly speaking, foreign entities are required to obtain prior approval from the Treasurer before proceeding with certain transactions that could affect Australia's national interest. This includes buying agricultural land where the value of the purchase meets or exceeds specific monetary values.

Is the land 'agricultural land'?

Agricultural land is broadly defined as land that can be used for primary production business and includes activities like plant cultivation, cropping, animal breeding for sale (for meat or breeding stock), as well as dairy production.

Importantly, a property still qualifies as 'agricultural land' even if it is not being currently used for, but could be reasonably used for, a primary production business. This means that foreign investors seeking to acquire (and Australian farmers looking to sell) agricultural land for the purposes of mining or a renewal energy project will likely still be caught by FATA.

Mixed or multiple uses of agricultural land can also give rise to competing applications of the FATA regime. For example, a homestead located on agricultural land may also be classed as 'residential land' for the purposes of FATA in some circumstances where the homestead is being leased to a third party, separate to the agriculture business being carried on the land. This may reduce the monetary threshold (discussed below) to nil and result in higher application fees for foreign investors.

The *Foreign Acquisitions and Takeovers Fees Imposition Amendment Act 2024* (Cth), which commenced on 9 April 2024, tripled the FIRB application fees for acquisitions of established dwellings. While this primarily targets residential property purchases, it is directly relevant where agricultural land contains a homestead classified as 'residential land' under FATA — the applicable fees for the residential component will be significantly higher, creating additional cost exposure for foreign investors.

The monetary threshold test

If the total value of the foreign investor's holdings of Australian agricultural land exceeds the prescribed monetary threshold, then the foreign investor must obtain approval from the Treasurer. The threshold varies depending on the country of origin of the foreign investor. Typically, countries that are party to free trade agreements with Australia will have a prescribed monetary threshold of $15 million. It is important to note that when making its assessment, the Foreign Investment Review Board (**FIRB**) will include the value of the Australian agriculture holdings of the entire corporate 'family' of the foreign investor (i.e., all of the subsidiary and holding companies), as well as any holdings of its directors.

Is the purchase 'open and transparent'?

In addition to the general requirements set out above, a foreign investor must also demonstrate to FIRB that there was an equal opportunity for Australian investors to purchase the agriculture land in question. Generally, approval will not be granted for an acquisition of agricultural land where that land was not offered for sale through an 'open and transparent' sale process.

Whether an open and transparent sale process has occurred will be assessed by FIRB on a case-by-case basis having regard to whether:

a. public marketing/advertising was undertaken for the sale of the property, using channels that Australian bidders could reasonably access (e.g. advertised on a widely used real estate listing website or large regional/national newspaper)

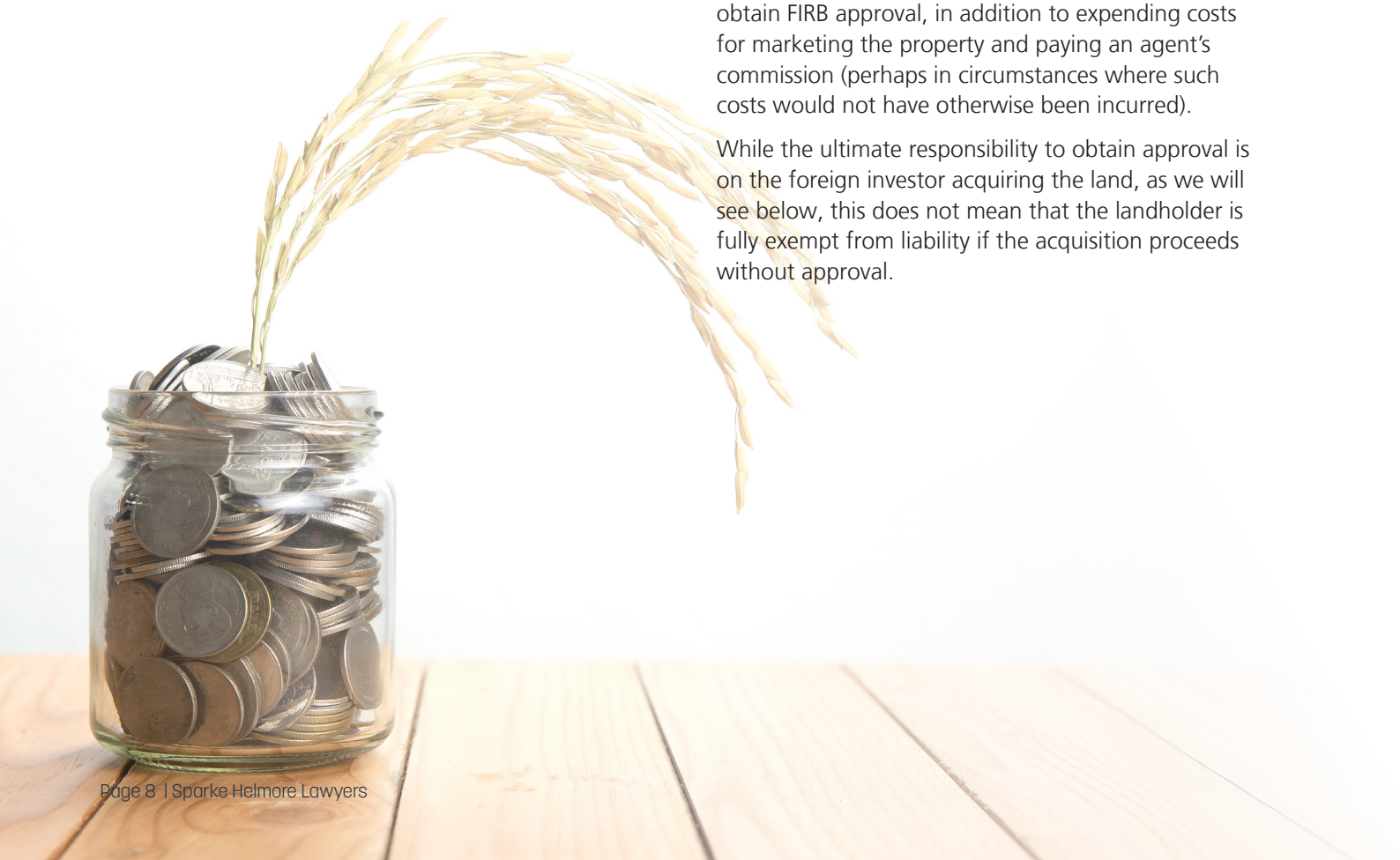
b. the property was marketed/advertised for at least 30 days within the six months immediately prior to the agreement date, and

c. there was equal opportunity for bids or offers to be made for the property while still available for sale.

These requirements must be met before the parties enter into a contract of sale or agreement for the transfer of the land. Failure to advertise will result in non-approval and forfeiture of FIRB application fees.

These requirements essentially shift the onus on to farmers and landholders to shoulder some of the compliance requirements for a prospective buyer to obtain FIRB approval, in addition to expending costs for marketing the property and paying an agent's commission (perhaps in circumstances where such costs would not have otherwise been incurred).

While the ultimate responsibility to obtain approval is on the foreign investor acquiring the land, as we will see below, this does not mean that the landholder is fully exempt from liability if the acquisition proceeds without approval.



Risks of non-compliance

Failure to obtain the approval of the Treasurer prior to acquiring a property in consideration of FATA may result in legal action begin taken against the foreign entity. Penalties can range from fines through to a forced disposal of the property, as well as criminal prosecution for individuals involved. Third parties (including sellers) who knowingly assist a foreign investor to breach the rules will also be subject to civil penalties and criminal prosecution (including potential imprisonment).

Takeaways

While Australian farmers and the Australian agribusiness sector are not the main focus of FATA, it is important that landholders are nonetheless aware of the FIRB requirements when it comes to selling agricultural land to foreign investors.

The key takeaways are:

- The broad definition of 'agriculture land', plus FIRB's broad powers to assess the aggregate land holdings of a foreign investor's entire corporate structure, plus the relatively low monetary threshold (compared to the values of most medium to large agricultural holding) means that FIRB approval will often be necessary when selling agricultural land to a foreign investor.
- Properties that have multiple uses or businesses carried out on their land (for example, renting out a homestead for additional income) may be caught by other FATA land 'categories'.
- The requirement for an 'open and transparent' 30-day sales campaign shifts the onus on farmers and landholders to 'do the leg work' before parties can enter into a contract. This can be particularly burdensome when you consider the marketing costs and agent's commission that would be payable as a result.
- Serious civil and criminal penalties apply to sellers who knowingly assist foreign investors to circumvent or breach FATA.

STRUCTURING: ACHIEVING THE RIGHT OUTCOME

Author: Partner Kylie Wilson

Buyers of rural properties need to be careful that they obtain appropriate advice from their accountant or solicitor before determining in what name or names an acquisition will be made.

These decisions are crucial in possibly minimising personal liability, to take advantage of different tax treatments, to minimise capital gains tax liabilities upon a disposal and to take early steps in succession planning.

In a traditional rural family situation, the options would normally be an acquisition in the name of individuals, by a company, by a trust or perhaps by a superannuation fund.

An acquisition by one or more individuals (the most common form of ownership) suffers the immediate issue of liabilities arising from the ownership of the land being liabilities of the individual owners. On the other hand, it preserves to the owners (assuming they do not acquire as joint tenants where the death of one owner means that that interest automatically transfers to the survivor(s)) their right to transfer their interest in accordance with their Will. Caution must be taken in transferring valuable property under the terms of a Will if there is a risk of a family provision application under Part 4 of the *Succession Act 1981* (Qld).

A disposal of an asset by individuals will normally entitle the individuals to a part or full reduction in capital gains tax liabilities if there is access to the 50% general discount, the small business rollover and retirement exemptions.

Formation of a partnership to own assets (possibly including individuals, companies, or trusts) may provide flexibility for income tax liabilities—although partners will earn income in accordance with their interest in the partnership and other than in the instance of companies—will attract like benefits as for individuals in respect of capital gains tax.

Ownership of assets by a discretionary trust (a common form of ownership) provides flexibility for income tax purposes including in respect of distributions to young adults in their tertiary education phase in circumstances where they are earning little or no other income. It is important however to note that any such distributions need to be received and used by those beneficiaries given Australian Taxation Office's recent focus on s 100A of the *Income Tax Assessment Act 1936* (Cth).

Ownership of assets by a company provides for quite a different mix of advantages and disadvantages. The most advantageous characteristic of a company is the lower rate of tax, but the disposal of land owned by a company will not involve access to the same GST concessions on disposal as apply for individuals or trusts.

Buyers in structuring should also be mindful of possible consequences of green energy and carbon farming projects for example, as land tax exemptions in certain states apply to the extent that land is used for primary production.

Other structuring issues include adequate documentation between participants, for example a relevant form of partnership agreement, shareholders agreement for companies and ensuring that control of trusts is maintained through the applicable deed of trust.

2026–27 Federal Budget: significant structural and tax reforms.

The Federal Budget 2026–27 (delivered 12 May 2026) announced the most significant reforms to Australia's capital gains tax (CGT) and discretionary trust tax regimes since the introduction of the 50% CGT discount in 1999.

While not yet enacted into law — and as such subject to further consultation and potential amendment before passage — these proposals are of fundamental importance to rural and agribusiness succession planning, structuring and asset disposals, and must be considered now given their potentially significant impact on decisions being made today.

The key proposed changes are as follows:

CGT reform (from 1 July 2027):

The existing 50% CGT discount for individuals, trusts and partnerships will be replaced with:

a. CPI-based cost-base indexation, so that only real capital gains above inflation are taxable; and

b. a minimum 30% tax on any remaining net capital gains.

These changes will apply to all CGT asset categories including agricultural land, business assets and — importantly — pre-CGT assets (those acquired before 20 September 1985) for gains accruing from 1 July 2027.

Assets held before 12 May 2026 (Budget night) will receive transitional treatment, with gains accruing to that date retaining the benefit of the existing 50% discount or pre-CGT exemption. For agricultural landholders with long-held properties, understanding asset values as at 1 July 2027 will be critical.

Discretionary trust minimum tax (from 1 July 2028):

A 30% minimum tax will apply to income distributed from discretionary trusts. The Government has confirmed that primary production income will be exempt from this minimum tax. Fixed trusts, widely-held trusts, complying superannuation funds, deceased estates and charitable trusts are also excluded.

A three-year rollover window (from 1 July 2027) will provide relief for businesses and families that wish to restructure out of a discretionary trust. For agribusiness families operating through discretionary trust structures, this rollover window presents an important planning opportunity and should be considered carefully with tax advice before it closes.

Small business CGT concessions preserved:

The four small business CGT concessions in Division 152 of the *Income Tax Assessment Act 1997* (Cth), being the 15-year exemption, the 50% active asset reduction, the retirement exemption and the small business rollover, are unchanged and remain available to eligible agribusiness owners on the sale of qualifying business assets. Given the significance of these concessions to succession and exit planning, confirming eligibility at an early stage remains essential. Given the scale of these proposed changes, we strongly encourage agribusiness clients to seek specialist tax and structuring advice as a matter of priority.

UNDERSTANDING WATER RIGHTS

Author: Partner Kylie Wilson

Water rights in Queensland have grown substantially in relevance, particularly in their importance in assessing the attractiveness and viability of a proposed property purchase.

In general, such right centre on two types of rights – Water Allocations and Water Licences.

Water Allocations are a right to take water from an available source. The right does not attach to the land and is transferrable as a separate item to land or on its own. Importantly such a right may be subdivided, amalgamated and mortgaged. It may be a right that involves a seasonal right to take such water.

Water Allocations are either supplemented (that is the water is supplied by another party, usually from dams in schemes operated by parties such as Sunwater) or un-supplemented, where there is no storage or distribution facility but where there is access to take from, for example, a river.

Care should be taken in a transaction involving a sale of land and associated Water Allocation that the contract of sale includes the Water Allocation to ensure that this independently held asset is also transferred to the buyer. This in practice would involve dealing with the manager of the facility in the case of a supplemented allocation and obtaining a dealing certificate from the Department in relation to an un-supplemented allocation.

On the other hand, Water Licences transfer with the land, although it would normally be prudent to include the Water Licences in the identification of the property being sold. The licence is in respect of only the land in relation to which it is attached and relates to overland flow, surface water and underground water (although, in some locations, the right to take underground water may not require such a licence).

Contractually there may also be implications if the Water Licence attaches to several lots of land but the transaction only involves a lesser number of those lots, which may require a change to the licence to ensure that it applies to some or all of the lots to be transferred.

FARMING SAFELY: MITIGATING YOUR BIGGEST RISK

Author: Partner Jackson Inglis

Agriculture plays an important role in Australian industry. The scale and nature of operations in the agriculture sector means high risk activities are undertaken on a day-to-day basis. This makes compliance with work health and safety (**WHS**) duties fundamental to the management of any agriculture-based workplace. In the 5-year period from 2017 – 2021, there were 163 worker deaths in agriculture alone, representing 18% of all worker fatalities across Australia in that period. Seventy-three per cent of these deaths involved a vehicle, including tractors, quad bikes, or all-terrain vehicles.

In each state and territory, WHS legislation imposes a wide range of general duties on persons conducting a business or undertaking (**PCBU**). These include a primary duty to ensure the health and safety of your workers while they are performing work for the PCBU, and to ensure that the PCBU's operation does not put the health and safety of other persons at risk.

There is also a specific duty imposed on PCBUs with management and control of plant at the workplace to take reasonably practicable steps to ensure that the plant being used is without risks to the health and safety of any person. In the agriculture industry, the duties go even further, with express obligations to ensure tractors are fitted with an appropriate rollover protective structure and to monitor the use of quad bikes in the workplace.

The *Work Health and Safety (Quad Bikes) Amendment Regulation 2024*, which commenced on 21 March 2024, has significantly strengthened the specific obligations on PCBUs in relation to quad bike safety in the workplace. The Regulation now mandates that all riders and passengers wear a securely fitted and fastened helmet when operating a quad bike, introduces age restrictions prohibiting children from operating adult-sized quad bikes, and restricts the carriage of passengers to vehicles specifically designed for that purpose. These requirements apply to all workplaces, including farms and agricultural operations, and penalties apply for non-compliance.

It is important to be aware that WHS duties are risk-based. This means an incident does not have to occur for a PCBU, and/or an "officer" of the PCBU, to be charged with a breach of duty under the applicable WHS legislation. Charges against PCBUs can arise from the conduct of audits by WHS regulators, or the identification of breaches when Inspectors are in the workplace investigating an unrelated incident. This means that PCBUs must be proactive in ensuring they have a robust WHS management system in place. As the old saying goes, prevention is always better than the cure.

As regulators are also prosecuting individuals for breaches of WHS legislation in increasing numbers, it is essential that all participants in the agriculture industry, from farm hands to Chief Executive Officers, understand and comply with their personal WHS duties.

The *Work Health and Safety and Other Legislation Amendment Act 2024* (Qld) (WHSOLA Act) was passed by Queensland Parliament on 21 March 2024, implementing significant reforms arising from both the 2022 Review of Queensland's Work Health and Safety Act 2011 and the national 2018 Boland Review of model WHS laws.

Key changes relevant to agricultural businesses include:

- a prohibition on persons from entering into, providing or taking the benefit of any insurance or indemnity arrangement that covers fines or penalties arising from breaches of the WHS Act (commenced 28 March 2024);
- a strengthened health and safety representative (HSR) framework, giving HSRs expanded rights to access WHS information and assistance; and
- enhanced worker consultation obligations on PCBUs. Agricultural operators should review their existing insurance arrangements to ensure compliance with the new prohibition on WHS penalty indemnities.

PLOWING AHEAD: ENSURING YOUR AGREEMENTS ARE RIGHT FOR A GREENER FUTURE IN AGRICULTURE

Authors: Partners Kylie Wilson and Heather Beckingsale

Carbon, wind and solar have been active in Queensland over recent years. Unlike mining and gas, the nature of the agreements entered into between landowners and third parties in these areas are not legislated, beyond some specific requirements related to carbon.

Therefore, before any documents are signed, it is important that advice is obtained about any agreements as the impact on the business can be significant if the relevant landowner is not fully informed about their obligations under any such agreements.

Carbon

Carbon Project Agreements generally provide a permanence obligation of 25 years or 100 years being the set period of time required to maintain the carbon stored or sequestered for a project. Audits every five years of these projects can lead to the issue of Australian Carbon Credit Units (**ACCUs**).

ACCUs are established under the *Carbon Credits (Carbon Farming Initiative) Act 2011* and the *Carbon Credits (Carbon Farming Initiative) Rule 2015*. This legislation is administered by the Minister for Climate Change and Energy, the Department of Climate Change, Energy, the Environment and Water and the Clean Energy Regulator (**the Regulator**).

Carbon Service Providers (**CSPs**) are usually companies who engage with the Regulator and the landowner and generally draft carbon project agreements. As such, the agreements will generally be drafted to favour the CSP's position. There are multiple factors landholders need to be conscious of, and obtain advice about, before entering into a Carbon Project Agreement.

Some of these include:

- Who is the project proponent? – Most agreements will have the CSP as the project proponent. However, landholders can choose to be the project proponent and appoint a CSP to act as their agents in dealing with the Regulator. There can be significant advantages to this as the project proponent receives the ACCUs in their name. The landholder in most agreements will have the responsibility to remediate the land in a way that will generate the ACCUs in any event.
- Managing the land – Most agreements will require the landowner to put in place land management practices that are likely to lead to ACCUs being generated. This might not always align with other income generated from the land. This can lead to conflict between the landowner and the CSP as most agreements will not allow land management strategies to be changed without the consent of the CSP.
- Sale of land and succession – Not all CSP agreements deal with this issue in a manner that is commercial for the landholder. Often agreements will prohibit a sale or transfer without the incoming transferee accepting a novation of the agreement. Landholders need to be conscious of this before making long term decisions about ownership of the land, particularly given the agreements themselves have very lengthy terms.
- Income from ACCUs – There are multiple issues to consider for primary producers in this respect. It is important that appropriate taxation advice is obtained before contracts are entered into.

- ACCU Scheme reforms – The Australian Government has been progressing significant reforms to the ACCU Scheme following the 2022 Chubb Review and the Climate Change Authority's December 2023 independent review of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.
- The Government published its response to the 2023 Review in August 2024, accepting in principle all 15 recommendations. Key proposed changes include further strengthening the Emissions Reduction Assurance Committee (to be re-established as the "Carbon Abatement Integrity Committee"), removing the option to conditionally register projects on Native Title land without up-front consent, and moving towards a proponent-led approach to method development.
- Landholders considering new or existing carbon projects should obtain up-to-date advice on how these reforms may affect proposed project registrations, method eligibility, and existing contractual arrangements with CSPs.

Wind and Solar

Entering into agreements for wind and solar projects on rural land can provide excellent opportunities for diversification of income for rural business, but care needs to be taken in entering long term contracts that impact the land. Wind and solar projects are commercial agreements, not subject to legislative restrictions in the negotiation process and landholders need to be very conscious that the entity they are negotiating with may not be the entity they are ultimately in a long term commercial relationship with.

From a legal perspective some initial issues to consider before entering into an agreement include the following:

- Who are you negotiating with? Do your due diligence on the company that is approaching you, are they likely to be developing the project or are they just looking for an opportunity to on sell the land access?
- Have you considered the rights of the parties after the initial agreement is entered into? For example, if you have signed an option agreement, were the lease terms attached to it? If not, you may not know on what basis the land is being leased if the option is exercised.
- Have you considered the impact on land use and land management? Do the agreements appropriately deal with those issues?
- Are there appropriate make good and rehabilitation provisions when the project ends?
- Carefully consider any lease terms. Most leases will have lengthy terms and it's important to ensure that the terms are commercial, protect the landholders continued use of the property where appropriate and that the rental being paid is, at the very least, indexed to CPI.
- Who is paying legal, accounting and valuation costs? This can be a problematic issue and should be addressed at the very start of negotiation.
- Consider taxation planning and succession before entering into agreements. There may be the opportunity to appropriately structure for the longer term, but this may be difficult to achieve after initial agreements have been entered into.

The opportunities in this area for landholders are likely to continue to increase. It is important to ensure however that appropriate legal, accounting and financial advice is obtained before entering into agreements.

LAND ACCESS: WHAT YOU NEED TO KNOW

Author: Partner Kylie Wilson

Access to land by resource authority holders and the negotiation of conduct and compensation agreements with landholders in Queensland have been enshrined in legislation that has evolved over time.

Issues in respect of access and compensation for landholders are currently largely covered by the *Mineral and Energy Resources (Common Provisions) Act 2014*, the *Mineral and Energy Resources (Common Provisions) Regulation 2016*, the *Land Access Code 2023* and, for certain agricultural land the *Regional Planning Interests Act 2014*.

Basic issues for landholders to consider when approached by resource companies regarding access to private land include:

- Consider initially if your land falls under provisions of the *Regional Planning Interests Act 2014*. If you enter into an agreement with a resource company this will potentially exempt the resource activity from the requirements under this Act.
- The obligations of the resource company are impacted by whether the proposed activity to be conducted on the land is a preliminary activity or an advanced activity:
  - A resource company must give an entry notice before accessing a landholder's property to conduct preliminary activities.
  - A Conduct and Compensation Agreement, Deferral Agreement or Opt-Out Agreement must be entered into with the landholder before a resource company can access land to conduct advanced activities.

- All resource authority holders are required to comply with the *Land Access Code 2023*. The code includes mandatory conditions such as:
  - induction training of staff and contractors
  - access points, roads and tracks
  - livestock and property
  - weeds and pests
  - camps
  - items brought onto land, and
  - gates, grids and fences.

When negotiating a Conduct and Compensation Agreement it is important to obtain advice to ensure your rights as a private landholder are appropriately documented and that the compensation to be paid appropriately reflects the impact of the activities on your land and business.

If you are a party to a Conduct and Compensation Agreement and you believe the terms have been breached or there has been a material change in circumstance, you should obtain advice about your options as these issues are also dealt with in the relevant legislation.

The *Mineral and Energy Resources and Other Legislation Amendment Act 2024* (Qld) (MEROLA Act) was passed on 12 June 2024 and introduced significant changes to Queensland's resources and land access framework. A key development is the establishment of "Coexistence Queensland" as a new statutory body to replace the former Gasfields Commission Queensland.

Coexistence Queensland has a broader mandate to manage and improve sustainable coexistence between resource activities, agriculture, and other land uses, applying across a wider range of resource types beyond coal seam gas. Landholders dealing with resource companies should be aware of Coexistence Queensland as an additional avenue for information, support, and dispute resolution assistance.

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