

Forecast for changes to the GABSI Plan

By Alex Ramsey, Partner & Brianna Hockey, Lawyer

The Great Artesian Basin Strategic Management Plan (**Plan**) is a strategy between the Queensland, New South Wales, South Australia and Northern Territory Governments to regulate the Great Artesian Basin until 2033. As the largest underground freshwater resource in the world and with approximately 70% of it located in Queensland, the Plan is of critical importance to communities of irrigators, farmers and graziers who rely upon groundwater drawn from the Basin.

The Plan has already achieved significant milestones in Queensland since 2000 including the capping of over 400 bores, installation of 12,500 kilometres of pipes and the introduction of water efficiency measures which save more than 140,000 megalitres of water from evaporation each year.

The latest revisions to the Plan are expected to recommend new water saving measures to regulate groundwater and with the consultation period for submissions now closed, the new Plan will be released early in 2019.

We expect the recommendations will focus on the following issues:

Stock and domestic water

The possibility that volumetric limits will be imposed on stock and domestic water entitlements has been challenged by a number of submitters. The argument against doing so is that arbitrary limits would fail to take into account the purpose for which water is being drawn and the carrying or productive capacity of the land. We do not expect that the usual entitlements to draw stock and domestic water will be changed by the new Plan.



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Continued support for capping and piping

The continuation of funding for landholders to cap and pipe flowing bores will be addressed. In the submission made by AgForce it was noted that the Plan should not impose penalties for non compliance with water efficiency targets, but rather continue to fund the capping and piping program and provide training to landholders to more effectively manage their water entitlements.

Water trading and information sharing

A cross-basin water trading market is possible under the new Plan. In Queensland, the *Water Act 2000* already allows for water allocations to be issued unattached to land and for the trade of water within water regions. The new Plan could establish a way forward for these entitlements to be traded across regions and states.

Also, the Plan will likely address the need for public access to detailed water use information within the Basin. We expect that there will be a recommendation for meters to be installed on some classes of bores and in some regions to address non-compliance issues which have arisen as a political topic in recent years.

While the new Plan will not be binding on the Queensland Government, it will be influential in shaping the policy of water regulation and affect how water is drawn and used from the Basin. We will continue to monitor the progress of the new Plan and its effect on water users.



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Vegetation management changes continue with the review of the accepted development clearing codes

By Hannah Barbour, Associate

Following the introduction of the *Vegetation Management and Other Legislation Amendment Act (Act)* earlier this year, the Department of Natural Resources, Mines and Energy (**DNRME**) is reviewing each of the accepted development clearing codes (**Codes**).

The Code for managing thickened vegetation has been revoked. Proposals for managing thickened vegetation now require development approval under the Planning Act.

A new Code for fodder harvesting came into effect on 8 March 2018. Notifications are now restricted to a single lot with each notification being limited to 500 hectares. While there is no limit on the number of notifications that may be lodged per lot, landowners need to conduct a self-audit for all subsequent notifications to ensure previous fodder harvesting has been compliant with the Code.

There are also changes to the methods for fodder harvesting used in particular regional ecosystems. For example, some regional ecosystems are now limited to selective harvesting only, that is, felling individual fodder trees using a chainsaw or selectively pushing individual fodder trees using a tractor or dozer. When using strip harvesting, the width of each strip cannot exceed 50 metres, an area with a width of at least 1.5 times that of the adjacent strip must be retained and clearing for machinery access between strips must not exceed 15 metres in width.

An interim Code for managing Category C regrowth came into effect on 8 March 2018 with the major change being the removal of agriculture and grazing as a general permissible purpose, with the effect that clearing must fall within the other stated purposes (such as thinning of thickened regrowth vegetation) in order to be permitted under the Code.

Before operating under a Code, a landowner must notify DNRME and clearing cannot commence until DNRME provides written confirmation of the notification.

DNRME is currently seeking feedback on the revised Codes for clearing to improve agricultural efficiency, clearing for infrastructure and clearing for an extractive industry. Landowners wishing to make submissions on how these Codes might be improved have until 5pm on 18 December 2018.



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Faulty trigger - slow progress on changes to the weapons licensing regime

By Alex Ramsey, Partner

Common sense has begun to prevail in light of the 2017 changes to the weapons licensing regime which made it difficult for primary producers to hold Category H firearms licences for handguns.

The changes require primary producers to demonstrate that they have an “occupational requirement” and “genuine need” to hold a firearms licence for handguns. The Weapons Licensing Branch of the Queensland Police Service adopted a very strict test as to whether primary producers had such a requirement or need.

In a recent decision of the Queensland Civil and Administrative Tribunal (**QCAT**), a Quilpie grazier appealed against the refusal of his handgun licence on the basis that he was required to use a handgun to protect his own safety while working in Mulga country. The grazier, who had held a Category H licence for over 20 years, successfully argued that he was required to ride a motorbike through Mulga country and carry a firearm for protection against feral pigs and dogs. In such a working environment, QCAT recognised that a handgun had safety and efficiency features over a long arm rifle which allowed the grazier to better protect himself. After QCAT accepted the grazier’s reasons as to why he had an “occupational requirement” and “genuine need”, it reissued the grazier with a Category H licence.

Following the decision of QCAT, the Weapons Licensing Branch is reportedly considering the policy which determines whether a Category H licence should be reissued to primary producers though there is no public record of this policy being changed just yet.

This result demonstrates that QCAT is willing to recognise a primary producer’s “occupational requirement” and “genuine need” to hold a Category H licence and highlights the importance of ensuring adequate information is provided to the Weapons Licensing Branch when reapplying for Category H licences.



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Do you have a private level crossing on a rail corridor on your property?

By Peter Kenny, Partner

Queensland Rail is currently conducting audits of private level crossings.

Queensland Rail says it wants to achieve compliance with relevant Australian and Queensland Rail Standards and its obligations under the *Rail Safety National Law (Queensland)* (**Act**) to identify and assess risks to safety that arise from these crossings.

If Queensland Rail discovers the existence of a private road crossing, it will ask the landowner to enter into a “Crossing Licence and Interface Agreement for the Management of Road/Rail Interface Risks” (**Agreement**). Despite the longwinded title of this document, Queensland Rail is particularly keen to lock affected property owners into this type of contractual arrangement in order to avoid any assertion that it has not complied with its obligations under the Act and arguably be exposed to a fine of \$500,000 per non-compliance.

Landowners approached by Queensland Rail to enter into one of these Agreements are under no obligation to do so. Having said that, if a landowner chooses not to enter into the Agreement, Queensland Rail may (and probably will) deny access to the railway corridor as it does not form part of the landowner’s adjoining title.

Landowners should not unwittingly accept the terms of what Queensland Rail describes as its “standard” agreement without first obtaining advice.

Thynne + Macartney’s agribusiness lawyers can assist you with your negotiations with Queensland Rail to improve the utility of the Agreement particularly in relation to livestock movements along the railway corridor and the size of vehicles using the private level crossings.



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PPS - use in agribusiness succession planning

By Peter Mills, Special Counsel

Recently we published an article entitled “PPS Act – better finance for agribusiness”. This article examines how the *Personal Property Securities Act (PPS)* can be a useful tool for succession planning.

One of the principle purposes of the PPS is to enable financial assistance to be secured against assets other than land. It also gives special rights to those who provide assistance to others acquiring assets or growing crops or livestock. This can include providers of vendor finance, labour, machinery or feed. These special rights require suitable documents to be created and registrations to be lodged.

Example 1: Mary owns a mixed farming and grazing property called “Pimzee Station”.

- Mary’s son Paul would like to buy “Pimzee Station” and associated livestock and equipment. Paul however cannot raise the necessary finance from banks.
- By suitable documents and arrangements under the PPS, Paul can obtain finance from a specialist herd and crop financier to pay Mary, provide working capital to develop the herd and produce crops on “Pimzee Station” and use the equipment owned by Mary. The specialist financier and Mary register their PPS rights over the crops, cattle and equipment, which offers them protection in the event of Paul becoming bankrupt or facing a property settlement with his spouse. At this stage, Paul does not buy “Pimzee Station” but leases it.
- Over the next few years, Paul sells and replaces cattle and their progeny, and crops, while not having to meet regular bank payments for any mortgage over the land. Paul now has enough progeny and cash equity to obtain a bank loan to buy “Pimzee Station” from Mary.
- This process would work equally well where Paul has started to build his own cattle herd with a view to building enough equity to purchase the property from Mary one day. By properly documenting and registering an agistment arrangement, Paul is protected in case Mary falls upon tough financial times - Paul’s interest in his cattle is protected from being captured by Mary’s financiers’ securities.

Example 2: Mike’s company (**MS**) runs a quarter horse bloodstock business called All Pap Stud on part of his cattle property.

- The land on which All Pap Stud operates is owned by Mike personally.
- Mike wishes to sell All Pap Stud and move solely into cattle. His children are too young to run All Pap Stud. They have sufficient space for a suitable buyer to continue to operate All Pap Stud where it is.
- A long term employee Catherine is the only suitable prospective buyer, however she cannot pay cash or obtain a bank loan due to an unfavourable property settlement she went through a few years ago.
- By suitable documents and arrangements under the PPS, MS can provide 7 year “vendor finance” to Catherine. This includes MS retaining ownership of MS’s horses (and having priority over progeny and the proceeds from service arrangements or the sale of horses) until paid in full. MS registers suitable security interests against Catherine, the livestock, progeny, equipment and semen to secure the purchase price.
- Knowing from experience that Catherine is a good operator helps to reduce the risk that the livestock and any progeny might deteriorate in value before MS is paid in full. Suitable arrangements and registrations ensure that cash flow of the business is able to be monitored by MS.

These are just some of the examples of how PPS can be used in succession planning. PPS’s flexibility means that no matter what type of business or situation, an effective solution can normally be found. Thynne + Macartney can assist you to use the PPS to help with your business succession planning.



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Will the Land Restoration Fund prove the need for smarter vegetation laws?

By Ari McCamley, Partner

One of the criticisms of the current *Vegetation Management Act* framework is that it is focussed on the retention of trees rather than the achievement of broader environmental outcomes, let alone a balance between environmental outcomes and agricultural productivity.

It is glaringly carbon-centric - aiming to preserve remnant vegetation that stores carbon and protect regrowth that sequesters carbon as it grows. Certain management activities that could have greater overall environmental benefits, for example clearing to restore grass cover and avoid run off, are unlawful.

Further, because the carbon market only pays landholders for abatement above and beyond the status quo, landholders are effectively robbed of the rewards of the involuntary carbon farming they are undertaking on behalf of the State through compliance with the legislation.

It is time for an entirely new legislative framework for vegetation management.

This may become obvious to the Queensland Government as it collects information from projects funded in the pilot phase of its \$500 million Land Restoration Fund.

In March 2018, a project office for the Fund was established within the Department of Environment and Science. The Government's stated objectives for the Fund include "leveraging emerging carbon markets to supply high quality offsets and delivering important environmental, economic and social benefits." Minister Leeanne Enoch indicated these "co-benefits could include establishing new and expanded koala habitats, protection of threatened species, rehabilitating and restoring wetlands and waterways, and helping to drive greater agricultural productivity."

In October, the Government announced the availability of \$5 million in first round funding (just 1% of the total committed to the Fund). It targeted two types of projects: \$1 million for research projects that identify opportunities for future projects and \$4 million for "on ground" projects that demonstrate how environmental, social and economic co-benefits can be achieved alongside carbon abatement.

Reading between the lines, it seems the Fund could deliver top-up payments to landholders for projects that generate saleable carbon credits and ultimately other desirable benefits for the State, for which there is currently no market. Perhaps the hope is for the Fund to generate interest in the development of carbon projects that might currently seem marginal (in the sense that the carbon price may or may not cover the corresponding sacrifice of agricultural production) if those projects promise environmental benefits beyond just carbon abatement. In that scenario, the Government could achieve those benefits with the carbon market funding the bulk of the project and the Fund paying just the top-up required to make the project feasible.

The types of projects of interest to the Government include those preventing soil erosion and run off, enhancing water quality and protecting the Great Barrier Reef, or supporting Traditional Owner land management techniques to reduce fire risk.

Applications for the pilot program funding closed on 23 November, but if the Government delivers on its March announcement, there is another \$495 million to come.

In the meantime, the Government might learn from the pilot projects that its own vegetation management legislation is precluding landholder participation in any number of carbon projects and forfeiting the environmental, economic and social co-benefits that might accompany them.



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Growing weeds - Australia's hemp industry prospers

By Alex Ramsey, Partner

Hemp arrived as seeds with the First Fleet and was grown on the shores of the Sydney Harbour by convicts. Banned across the country in 1937 and since slowly deregulated, the production of industrial cannabis and its versatile by-product, hemp, has steadily increased and progressive farmers are reaping the rewards.

According to Grandview Research, consumer demand for hemp products (which include rope, carpets, woven fabrics, oils for cosmetics, building supplies made from the stalk of the plant and seeds as a “super food” for humans and animals) has increased to form a global market worth over \$4 billion.

Earlier this year, the Queensland Parliament passed changes to the *Drugs Misuse Act 1986* and the *Drugs Misuse Regulation 1987* to make it significantly easier for farmers to cultivate and grow cannabis for use within the hemp industry. These changes bring Queensland's licensing regime for industrial cannabis into line with the rest of Australia. The production and manufacture of medicinal cannabis is still very tightly regulated by the Federal Government, though it is expected that there will be changes made to this regime after the next Federal election in 2019.

Before a crop of industrial cannabis is planted and grown, farmers are required to hold a Grower Licence which permits them to possess certified cannabis seeds, grow cannabis in a certain location, harvest and sell the cannabis crop on the open market and trade in cannabis seeds between other growers. Other licence classes exist for researchers and seed handlers to round out the industry.

Sharefarming with a hemp manufacturer or exporter is a common legal arrangement with the same principles applying to a hemp crop as to any other type of produce. Under a sharefarming arrangement, the farmer should ensure only certified seeds are supplied and planted and that the right type of licence is held to grow the crop.

Thynne + Macartney's agribusiness lawyers have been at the forefront of the development of industries within agribusiness for 125 years and see the growth of the hemp industry as a significant opportunity for farmers into the next decade.



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2019	Roma	Emerald	Longreach	Rockhampton
February	-	-	-	22
March	29	8	14/15	-
May	-	-	-	3
June	-	21	-	-
July	25/26	-	4/5	-
October	-	31	-	25
November	15	-	7/8	-

Appointments can be made by phoning (07) 3231 8716

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ROMA QLD 4455

Longreach
AgForce
33 Duck Street
LONGREACH QLD 4730

Emerald
Western Gateway Motel
Hospital Road
EMERALD QLD 4720

Rockhampton
James Becker & Co
184 Quay Street
ROCKHAMPTON QLD 4700

Thynne + Macartney has one of Australia's leading practices in Agribusiness. Multiple generations of farmers and graziers have drawn on our experience to help them reach robust business agreements promptly - from sales and purchases of rural properties to plans for the future.



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