

THE 5TH ANNUAL AGRIBUSINESS LAW CONFERENCE

OUR REGULAR TWO DAY CONFERENCE
DELIVERED **ONLINE** IN FOUR PARTS
OVER FOUR HALF DAYS



Part 1: Managing Risks in Agribusiness

Thursday 19 November 2020 [10am to 1.05pm]

Part 2: Investment and Security Issues in Agribusiness

Friday 20 November 2020 [10am to 12.45pm]

Part 3: Competition and Water Issues

Thursday 26 November 2020 [10am to 12.45pm]

Part 4: Welfare and Security Challenges

Friday 27 November 2020 [10am to 12.45pm]



Rabobank

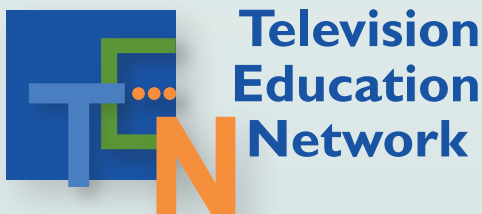
FEEDBACK FROM LAST YEAR'S CONFERENCE:

"Excellent content - very high quality of presenters."

"There's a lot of 'meat on the bones' at this conference. The written materials, in particular, are incredibly useful reference tools for us long after the conference ends, not just for me but others in my firm."

"The content was well prepared and presented and very relevant. Great presenters."

"Excellent event - well organised, good speakers & relevant content. Not too 'legal' - very practical."



Leaders in online CPD for lawyers

PART 1: THURS 19 NOVEMBER 2020

**CHAIR: CAROLYN CHUDLEIGH,
PARTNER, HFW, SYDNEY**

**MORNING THEME: MANAGING RISKS IN
AGRIBUSINESS**

10.00 – 10.05am

Introduction and welcome

10.05 - 10.25am Opening Address

*Speaker: Mr Donald McGauchie AO, Chairman,
Australian Agricultural Company*

10.25 - 11.05am

Session 1: Risky Business: Directors' and Officers' Liability Insurance, the Current State of the Market and Claims Exposures for Agribusiness

In our increasingly litigious world, directors' and officers' liability insurance can be an effective way of protecting your executives and board of directors from risk. However, as the breadth of risk exposure for company directors and officers is becoming more complex, the cover and availability of appropriate D&O insurance seems to be reducing. This session examines the role of D&O insurance and how you can ensure your organisation is adequately protected. It covers:

- Current state of the Australian D&O market, and what it means for terms and premium
- Identifying management exposure to liability in agribusiness
- Who / what are the sources of claims against directors and officers?
- Interaction between D&O insurance and director deeds of indemnity
- Risk mitigation strategies - what can D&O insurance cover?
- Understanding the policy - a spotlight on the following:
 - How broad is the "claim" and "loss" definition?
 - What are the most applicable exclusions?
 - Side C cover insurance
- Lessons from recent cases, including *Hird v Chubb Insurance* and *CGU Insurance v Blakeley*

*Speaker: Jonathan Light, Managing Associate, Allens,
Sydney*

11.05 - 11.15am Questions and Discussion

11.15 - 11.55am

Session 2: Effective Climate Change Governance: What Your Board Needs to Do Now

Climate change is visibly disrupting business, from the physical impacts of extreme weather events to policy and technological changes and consumer pressure. The agriculture sector is particularly affected by climate change, requiring Boards to put in place effective governance arrangements to successfully manage the impacts. This session will look at best practice for Boards, including:

- Current state of climate change as an ongoing global health and economic crisis
- Identifying key climate change risks – ranging from physical impacts to investor pressure, litigation and shareholder activism
- Recent regulatory responses and reforms
- Case studies: climate change and agribusiness risks
- Practical strategies for Boards to manage climate change risks:
 - Directors duties
 - Disclosure obligations - the Corporations Act and ASX governance
 - Reporting obligations
 - Practical actions for directors
- Key takeaways for Boards

*Speakers: Rhys Casey, Partner, and Matthew Austin,
Partner, King & Wood Mallesons, Brisbane*

11.55 - 12.05pm Questions and Discussion

12.05-12.15pm

Short break

PART 1: THURS 19 NOVEMBER 2020

12.15 - 12.55pm

Session 3: Safety First: Meeting the WHS Challenges in the Agricultural Sector

Farming, agriculture and associated activities have the highest workplace risks in Australia. With the duty to keep workers safe extending to the highest levels of the organisation, are you meeting your obligations? This session will provide an update on WHS responsibilities and recent regulatory and case law developments, including:

- Duty of care from the boardroom down - what are the WHS obligations of directors and officers?
- Risk management and identification - doing the due diligence: safety inspections, inventory control and audits
- Safety and emergency planning and staff training in a remote environment - are you prepared?
- The Code of Practice for Safe Use and Storage of Chemicals in agriculture - coverage and compliance
- Meeting the safety challenges of COVID-19 in the agribusiness sector
- Government regulatory focus on quad bikes - the ACCC review
- Case update: The Monsanto case and developments in Australia - what are they key lessons from the US experience?

Speaker: Nicolas Beech, Special Counsel, King & Wood Mallesons, Perth

12.55 - 1.05pm Questions and Discussion

PART 2: FRI 20 NOVEMBER 2020

**CHAIR: CAROLYN CHUDLEIGH,
PARTNER, HFW, SYDNEY**

**THEME: INVESTMENT AND SECURITY ISSUES
IN AGRIBUSINESS**

10.00 - 10.05am

Introduction and welcome

10.05 - 10.45am

Session 4: A Focus on Foreign Investment: The View from the Regulator

The FIRB is the first port of call for approval of foreign investment in an agricultural business or land. In this session a representative from the FIRB will provide information and guidance on current issues and developments in foreign investment, including:

- Objectives of the foreign investment review framework
- The new foreign investment reform package – what will it mean for agriculture?
- The “Australian opportunity” test
- Priorities and future focus

Speaker: Kirsten Embery, Manager Foreign Investment Division, Department of Treasury, Canberra

10.45 - 10.55am Questions and Discussion

10.55 - 11.35am

Session 5: Doing Business in China: The Challenges for Agribusiness

As China steadily moves away from being a developing country and into an economic powerhouse, the way Australian agribusiness deals with China needs to evolve. In the context of escalating trade wars and a global pandemic, how should agribusiness best navigate export contracts with China? This session covers:

- Trade wars between US and China - what will it mean for Australian agribusiness?
- Tensions in the Australia and China relationship -what does this mean for agribusiness?
- What impact will COVID have on Australian agribusiness exports?
- Rules or relationships?
- How to mitigate risk with agri export to China?
- Is there a new model?

Speaker: Susan O'Rourke, Chair & Managing Director, Four Winds Legal, Sydney

11.35 - 11.45am Questions and Discussion

11.45 - 11.55am

Short break

11.55 - 12.35pm

Session 6: Securing Your Interest: The PPSA in the Agribusiness Sector

An understanding of the impact of the PPSA on the acquisition, holding and transfer of personal property is essential for those operating in the agricultural industry sector. This session provides practical advice on navigating the registration requirements and avoiding unwanted consequences, including:

- Determining which agricultural assets can be used as security
- The relationship between security interests in crops and interests in land
- Crops and livestock as personal property
- Registration requirements and the consequences of invalid registration, failure to check a register and failure to renew
- Retention of title clauses in sale and purchase contracts
- Priority of security interests and competing claims
- The impact of the proposed MAC Protocol on the PPSA regime

Speaker: Shah Rusiti, Partner, Teece Hodgson & Ward, Sydney

12.35 - 12.45pm Questions and Discussion

PART 3: THURS 26 NOVEMBER

**CHAIR: BRIAN HEALEY, PARTNER,
K&L GATES, BRISBANE**

THEME: COMPETITION AND WATER ISSUES

10.00 - 10.05am

Introduction and welcome

10.05 - 10.45am

Session 7: Key ACCC Priorities and Developments in Agricultural Markets

In this interview-style session, Mick Keogh and Sar Katdare will cover the following topics:

- Trends in global and Australian markets in light of COVID-19
- Key areas of focus for the ACCC in 2021
- Recent and current market studies and inquiries
 - Overview of recent and current market studies and inquiries
 - Completed studies – are recommendations working? (e.g. Cattle and Beef Market Study, Wine Grape market study, Murray-Darling water)
 - Codes of Conduct (Dairy Code – case study) Agricultural machinery after sales market (ACL issues)
 - Perishable Goods Inquiry
- Mergers – recent cases and future predictions
 - Elders/AIRR; Nutrien/Ruralco; Mitolo/Thomas Foods; ANZ Terminals/GrainCorp; Saputo Dairy/Lion
 - Further consolidation?
- Which digital issues have reared their ugly head?
 - Cartels, concerted practices, misuse of market power via technology?
 - Data and privacy issues?
 - CBH Paddock Planner App – case study
- The future
 - A general prohibition on unfair conduct
 - Export exemptions
 - Interaction between infrastructure and agricultural (bulk grain ports monitoring and access to storage, rail, port, terminals)

An Interview with Mick Keogh, Deputy Chair and Agriculture Commissioner, ACCC and Sar Katdare, Partner, Johnson Winter & Slattery

10.45 - 10.55am Questions and Discussion

10.55 - 11.35am

Session 8: Are Your Contract Terms Unfair? Spotlight on Farmgate Supply Arrangements

The recent announcement from the Federal Government that it is strengthening the unfair contract terms laws protecting small business follows increased ACCC focus and enforcement and concern that the regime does not sufficiently penalise law breakers. This session will examine the impact of legislative requirements and proposed changes on agribusiness and provide guidance on ensuring standard form contracts comply, including:

- Overview of the initial UCT regime: when will a standard form contract be “unfair”?
- Issues leading to the proposed amendments
- Widening the catchment - what is a “small business” and to what value contracts does the regime apply?
- Increased sanctions - what will this mean for businesses that breach the Act
- Options for the ACCC in compliance and enforcement: case studies including agreements with the dairy industry and the Mitolo Group Pty Ltd proceedings
- The Horticulture Code's mandatory requirements concerning agreements - how do they affect you?
- Revisiting and reviewing your standard form contract - what you need to look for
- Future ACCC compliance and enforcement policy

Speaker: Mihkel Wilding, Special Counsel, Clayton Utz, Sydney

11.35 - 11.45am Questions and Discussion

11.45 - 11.55am

Short break

PART 3: THURS 26 NOVEMBER

11.55 - 12.35pm

Session 9: A Deep Dive into Australia's Water Crisis

Years of drought in parts of the country, together with lack of control and water mismanagement, have resulted in a patchwork of legislative reform to safeguard and better plan for and manage Australia's water supply. This session will explore the complex regulatory regime and its impact on the agricultural sector, including:

- The road to review and regulation: how did we get to the current situation
- Issues in water management:
 - Securing and protecting the source
 - Environmental protection
 - Planning and system management
- The National Water Initiative, federal regulation and responsibilities
- Balancing the needs of agribusiness with environmental flow and the need for town water
- The role of catchment authorities
- Has water regulation achieved the desired result? Government policy and future focus
- Case study: The Murray-Darling Basin crisis

Speaker: Professor Lee Godden, Director Centre - Resources, Energy & Environmental Law, Melbourne Law School, Melbourne

12.35 - 12.45pm Questions and Discussion

PART 4: FRI 27 NOVEMBER 2020

**CHAIR: BRIAN HEALEY, PARTNER,
K&L GATES, BRISBANE**

**THEME: WELFARE AND SECURITY
CHALLENGES**

10.00 - 10.05am

Introduction and Welcome

10.05 - 10.45am

Session 10: Agribusiness Activism: How has Covid 19 and the Live Trade to Indonesia Judgement Changed the Playing Field

Animal activism, in its many forms, is a continuing threat to the agricultural sector through damage to property, business disruption, biosecurity, reputational and economic injury. This session looks at the current environment, available strategies for managing the threats and consequences of increasing activism, including:

- Assessing risks and being prepared - the practical and legal implications of proactive strategies including:
 - Where is the sector today
 - What has the Live Trade to Indonesia judgement taught the sector and the Commonwealth
 - Being proactive – how to protect your farm and brand
 - Threats to biosecurity - available action
 - Countering attacks with a communications strategy
- The use of privacy law to combat information and image disclosure - the Aussie Farms case
- The current Commonwealth government's position and initiatives for industry protection

Speaker: Andrew Gill, Partner, MinterEllison, Canberra

10.45 - 10.55am Questions and Discussion

10.55 - 11.35am

Session 11: "Four Legs Good, Two Legs Bad": Animal Welfare Responsibility

The law concerning welfare of livestock in Australia has been criticised for both lacking uniformity and relying on voluntary codes. This session will explore the current law in Australia and its deficiencies, together with other means of managing animal welfare in an increasing environment of animal activism, including:

- An overview of state and territory legislation and its application to industry
- Commonwealth responsibility: trade and international agreements concerning livestock welfare
- Model Codes and industry guidelines for animals used in food production - what are they and why aren't they legally binding?
- The call for national animal welfare standards: The Australian Productivity Report 2017 - has there been any progress?
- The effect of growing animal and consumer activism on policy and practice
- Recognition of "animal sentience" in a legal context

Speaker: Dr Jed Goodfellow, Senior Policy Officer, RSPCA Australia, Deakin, ACT

11.35 - 11.45am Questions and Discussion

11.45 - 11.55am

Short break

11.55 - 12.35pm

Session 12: The Battle Against Food Fraud: Earning Back Consumer Trust

Consumers are placing less trust in the food chain amid scandals of substitution, contamination and misleading claims of origin and content. This session will examine the regulatory controls on food providence and security and recent developments in the industry to win back consumer trust, including:

- Understanding the food security risks in agribusiness
- Ensuring integrity and purity of the product when it hits the shelves:
 - What should be in your supply contracts and distribution agreements?
 - Ensuring security and purity down the distribution line
- Rebuilding trust: options for achieving farm to fork traceability and transparency - certification schemes, serialisation and blockchain
- Case study: the nomenclature of alternative plant based proteins

Speaker: Scott Bouvier, Partner, King & Wood Malletsons, Sydney

12.35 - 12.45pm Questions and Discussion

12.45pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference materials and recordings of each of the sessions provided after the conference.

Conference Materials

Access to the conference materials (papers and Powerpoints) will be available online to all delegates in the lead-up to the conference (as the materials become available), during the conference and for 30 days after the conference. The materials will be available in .pdf format for easy download to your local computer or portable device.

Lawyers - CPD Units/Points

Lawyers (except WA): 7 CPD units (substantive law)

WA Lawyers: 6 CPD points (substantive law)

CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

Online Conference Delivery

The conference will be delivered online. Delegates will receive a link to login and attend each of the 4 parts of this online conference.

This online conference will be delivered in a style similar to a live conference. There are Chairs for each part to introduce speakers and facilitate question time and the online portal allows delegates to pose questions to the speakers via the chat facility.

Cancellation Policy

Cancellations must be received in writing at least 10 days prior to the Conference for a 85% refund. Substitute delegates accepted at any time.

If a registration was purchased as part of a group discount the cancellation of that registration may affect the discount level for other members of the group. The amount of the refund will be adjusted to recoup any adjustment required to the overall registration fees for that group.

Conference Terms

Program subject to change without notice. The information and views presented in the conference are not necessarily those of TEN and participants rely on these at their own risk. TEN is not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. TEN's maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the conference as a result of strikes, public health emergencies, natural disasters, and other Acts of God.

REGISTRATION FORM TAX INVOICE*

Registration is simple; complete the form below and fax or post your registration to us or register online.

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Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for the **5th Annual Agribusiness Law Conference** – a 2-day online conference to be delivered over 4 half day mornings on 19th, 20th, 26th & 27th November 2020 [conf code: MALNOV20]

[] **Early Bird Registration** – for registrations made on or before 31 October 2020 – **\$1650** (\$1500 + \$150 GST)

[] **Full Price Registration** – **\$1870** (\$1700 + \$170 GST)

The papers from this conference will be available in electronic form approximately 1 week after the conference has been held. You can pre-order the papers now online via our website at www.tved.net.au. The papers are **\$198** (\$180 + \$18 GST) [Code: PMALNOV20].

Multiple registration discount? Discounts are available for multiple registrations: The more you send, the greater the discount. You can access the discount by registering using the “multiple registrations” option online, or contact our Conference Manager, Jenna Pickrell, to organise your registrations. jenna@tved.net.au or phone (03) 8601 7729.

- 3 registrations – 5% discount for each delegate
- If you register 4 people at the same time you are entitled to a 10% discount for each delegate
- If you register 5 people or more people at the same time you are entitled to a 15% discount for each delegate.

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