



QUEENSLAND FARMERS' FEDERATION

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Submission

5 February 2018

Chambers of President Kingham
Land Court of Queensland
Level 8, 363 George Street
BRISBANE QLD 4001

Via email: EA.LandCourtPresident@courts.qld.gov.au

Dear President Kingham

Re: Draft Guidelines for Expert Evidence in the Land Court

The Queensland Farmers' Federation (QFF) is the united voice of intensive agriculture in Queensland. It is a federation that represents the interests of peak state and national agriculture industry organisations, which in turn collectively represent more than 13,000 primary producers across the state. QFF engages in a broad range of economic, social, environmental and regional issues of strategic importance to the productivity, sustainability and growth of the agricultural sector. QFF's mission is to secure a strong and sustainable future for Queensland farmers by representing the common interests of our member organisations:

- CANEGROWERS
- Cotton Australia
- Growcom
- Nursery & Garden Industry Queensland (NGIQ)
- Queensland Chicken Growers Association (QCGA)
- Queensland Dairyfarmers' Organisation (QDO)
- Burdekin River Irrigation Area Irrigators Ltd (BRIA)
- Central Downs Irrigators Ltd (CDIL)
- Bundaberg Regional Irrigators Group (BRIG)
- Flower Association
- Pioneer Valley Water Cooperative Ltd (PV Water)
- Pork Queensland Inc.
- Queensland Chicken Meat Council (QCMC)
- Queensland United Egg Producers (QUEP).

QFF welcomes the opportunity to provide comment on the 'Draft Guidelines for Expert Evidence in the Land Court'. Please note that QFF does not have in-house legal advisors or access to external legal resources, and therefore can only provide the following general comments on the Draft Guidelines. We also note that we did not receive copies of Appendices A, B or C as referred to in the Draft Guidelines with the letter dated 17 November 2017. As such, QFF provides this submission without prejudice to

The united voice of intensive agriculture





any additional submission provided by our members or individual farmers and our submission does not provide any response concerning the Appendices developed as part of the Draft Guideline.

QFF welcomes the development of the Draft Guidelines. We believe that they provide useful assistance to ensure that experts are well prepared, understand their role in assisting the court and are unbiased. QFF recognises that expert evidence is integral to the Court process, providing informed critique on the assessment material of the proponent, using the accepted scientific method of peer review. This guidance is particularly timely, given the growing divide between professional review and opinion. QFF is concerned about the increasing substitution of facts and evidence with opinion, which continues to undermine the training and experience of professionals and experts. It is reassuring that at least in terms of the courts, the role of professional experts is secure and we acknowledge that experts provide a special position as witnesses as no other witness can provide opinion evidence.

QFF also recognises the continuous regulatory amendments to the *Land Court Rules 2000* which have strengthened the processes including those associated with the definition of an 'expert'.

QFF believes that there must be sufficient time allowed in the preparation of the joint report, particularly if this is the key report that will be relied upon by the Court rather than allowing a sequence of reports. The latter approach allows the experts time to consider and examine their opinions. It is essential that the move to the single joint report must therefore not hinder the experts in evaluating the materials and providing considered opinion. Principally, where an expert is acting on a 'pro bono' basis, as they may need to facilitate preparation of the report around other commitments. This must be considered during scheduling.

QFF notes that there are situations where the experts may not be cordial or in agreement. For example, section 3 (last paragraph), and section 7 – if one party considers that the information is insufficient but the other does not, the first expert must be able to contact both parties to seek further information. Otherwise a disagreeable expert may hinder the first expert from meeting the level of work or expert opinion, considered necessary.

With regards to Court Managed Expert Evidence (CMEE), the CMEE conference could be a valuable process for clarifying issues in dispute and setting an agreed agenda. However, landowners for example, may not be able to source experts quickly upon seeking to refer their submission to the Court, particularly if they are having to rely on pro bono or reduced rates. This delay should be considered in setting down the first CMEE conference so as not to prejudice objections.

If you have any queries regarding this submission, please contact Dr Georgina Davis at georgina@qff.org.au

Yours sincerely

Travis Tobin
Chief Executive Officer