



# QUEENSLAND FARMERS' FEDERATION

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## Submission

31 May 2020

Ms Emily Barlow  
Agricultural Machinery Project  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

By email: [agriculturalmachinery@accc.gov.au](mailto:agriculturalmachinery@accc.gov.au)

Dear Ms Barlow

### Re: Agricultural Machinery: After-sales Markets Discussion Paper

The Queensland Farmers' Federation (QFF) is the united voice of intensive, semi-intensive and irrigated 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 farmers 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)
- Australian Cane Farmers Association (ACFA)
- Pork Queensland Inc.
- Queensland United Egg Producers (QUEP)
- Queensland Chicken Meat Council (QCMC)
- Bundaberg Regional Irrigators Group (BRIG)
- Burdekin River Irrigation Area Irrigators Ltd (BRIA)
- Central Downs Irrigators Ltd (CDIL)
- Fairbairn Irrigation Network Ltd
- Mallowa Irrigation Ltd
- Pioneer Valley Water Cooperative Ltd (PV Water)
- Theodore Water Pty Ltd.

QFF welcomes the opportunity to provide comment to the Agricultural Machinery: After-sales Markets Discussion Paper. We provide this submission without prejudice to any additional submission from our members or individual farmers.

*The united voice of intensive, semi-intensive and irrigated agriculture*



### ***Background***

QFF welcomes the Australian Competition & Consumer Commission (ACCC) interest and discussion paper dealing with concerns about questionable practices across Australia's agricultural machinery sector. QFF understands that the issues raised in the discussion paper include the following:

- Access to independent agricultural machinery repairs is limited. Manufacturers are in effect permitted to charge monopoly prices because warranties are voided when independent mechanics are used. This reduces competition and is harmful to independent businesses and consumers.
- Farmers may have difficulty accessing parts and services in the event of a problem with machinery.
- Agreements between dealers and manufacturers can have the effect of preventing fair competition in the provision of repairs and the sale of machinery parts by limiting access to prescribed providers.
- Data ownership and management may raise privacy and competition issues. The development of agricultural technology means that machinery relies on sophisticated computer systems, which collect complex data that is essential to the successful operation of the machine, and the business. Farmers are at risk of exposing the business to unnecessary costs and loss through lack of the ability to access or transfer data to other machines.

QFF understands from its members that individual farmers have been reticent about providing specific machinery examples to them. Reasons for this ranged from apathy that the ACCC is powerless to effect meaningful change on the significant international machinery providers which dominate the Australian machinery market through to concern about individual reprisal.

Whilst QFF notes that any company doing business in Australia must comply with the Competition and Consumer Act provisions, these provisions also fail to clearly delineate the issues related to individual farm Intellectual Property (IP). There are also the concerns relating to fact that agricultural machinery is often outside Australia Consumer Law guarantees because its value is above the \$40,000 threshold for consumer goods.

### ***Data Ownership and IP***

QFF is aware that many farmers are unable to back-up their historical data and take it with them as they move to a different brand of farm machinery. Frequently, the data stays with the old manufacturer and can result in farmers being forced to stay with the one brand or lose several years of valuable data. The ACCC has identified that this may lead to competitor brands being frozen out, as farmers will not want to change manufacturers and lose their data.

Agricultural data is valuable, particularly in terms of due diligence (for example, evidence to support historical compliance with Reef Regulations) but also at point of sale should the farm be sold, with new owners seeking all data relating to applications to soil and productivity yields.

Many producers will own copyright in the datasets that they create, while many third parties will own copyright in the aggregated datasets. While Australian copyright law provides ownership rights to both producers and third parties in different situations, in practice, with digital agriculture, it is the contracts that are entered into between producers and third parties, such as advisers and agri-businesses, that will govern the ownership of their data, rather than copyright law.

QFF is aware that many producers, their advisers, and agri-businesses are unaware that mere payment for data services does not result in a transfer of data ownership, unless there is a contract that deals with data ownership.

QFF is also aware that a number of ag-technology providers encrypt their digital farming software. This restricts the ability of producers to access software that would inform them of the diagnostic and repair information of their farm machinery. This, in turn, prohibits producers from attempting to repair or modify their machinery.

QFF believes that primary producers are broadly unaware of the terms of data licences that they are entering. The general lack of discussion of the terms of the data licences at both a broad industry level and at individual points of sale of agricultural technologies contribute to the lack of trust about the management of agricultural data.

QFF considers that it is imperative that the terms of use that govern the aggregation, ownership, storage and dissemination of producers' agricultural data be made more transparent to producers prior to their entry into commercial relationships with third-party advisers and technology service providers. This is particularly the case where standard-form licences are used.

Queensland's primary producers are concerned about third parties gaining unauthorised access to their data or that data may be used by regulators. Their priority is to ensure that their data is kept private, safe and secure. However, QFF notes that not all data is treated equally, and under the Privacy Act a distinction is made between personal and non-personal information.

The current privacy policies used by businesses in digital agriculture tend to deal with personal information only. A consequence of this is that agricultural data, as it is generally not personal information, does not have the protections under Privacy Act. It is therefore vulnerable to unauthorised use unless protection is afforded by contract between the parties.

QFF believes that the absence of clear and consistent data governance within Australia's primary production industries has the potential to expose Queensland's producers to threats to their privacy, security and safety of their agricultural data. This limits the potential benefits that can be derived from digital agriculture.

### ***The Right to Repair***

QFF also would like the ACCC to consider further types of equipment in its ongoing investigations. Many of the issues identified in the discussion paper are not simply contained to tractors and similar, but now extends to irrigation equipment, drones, on-farm renewable energy installations etc.

In the past decade, we have seen a rapid increase in the products that now require a computer program to enable the device to operate. It is as a result of this, that we are now seeing the impact that copyright (and the regime of technological protection measures (TPMs) used by copyright owners to control their digital works) has on daily farming life that was not envisaged even ten years ago, or when the current scheme of TPMs were first proposed. The application of the regime of TPMs to everyday devices, including agricultural machinery, energy control centres and irrigation devices, is of significant concern to Queensland's agricultural sector. As such, it is fit and proper for Queensland's farmers to ask 'Are TPMs operating in our industry in such a way that restricts our rights as consumers to access our goods or products in a way in which we would normally expect to?'

The Right to Repair is embedded in circular economy vision. The move to a circular economy is important because this system better recognises that many of our natural resources (for example, rare earth metals) are finite.

The World Economic Forum has estimated the value of a circular economy in Australia could be up to \$26 billion per year by 2025 and contribute significantly to reducing our emissions. The Queensland Government also recognises the positive opportunities in Queensland for economic development, jobs, emissions reductions, and stronger collaboration in business. The following strategies and programs are examples of the Queensland Government's initiatives that support a circular economy, including the New Waste Management and Resource Recovery Strategy, ecoBiz Program and Circular Economy Lab.

The right to repair debate has gathered impetus overseas, for example, the US Right to Repair movement is advocating a right to repair across multiple manufacturers and devices (not just in relation to the modification of vehicles or machinery). In 2019, California became the 20<sup>th</sup> State in the US to develop a Right to Repair legislation (including Hawaii, Illinois, Iowa, Kansas, Massachusetts, Minnesota,



Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Tennessee, Vermont, Virginia, Washington, and Wyoming). Australia is trailing in its serious consideration of this issue.

While reviews of Australia's copyright law have recommended the adoption of a broader US style 'fair use' defence, it remains to be seen whether Australia will ever adopt a fair use defence and whether a similar right of repair to that in the US would be one such use that could arguably fall within its scope.

QFF notes that in August 2019, the ACT Minister for Consumer Affairs Shane Rattenbury presented a 'right to repair' discussion paper to the Consumer Affairs Forum, which called for the Productivity Commission to conduct an inquiry into the issue. QFF supports a Productivity Commission inquiry. These matters (data rights and the right to repair), require more investigation and it is paramount that this work looks beyond the smaller, electronic personal devices that hold so much of the focus in the Australian context. The need for protections for agri-data sets and a clear right to repair for Queensland farmers is a critical priority.

Yours sincerely

Dr Georgina Davis  
Chief Executive Officer