



Cowell Clarke
COMMERCIAL LAWYERS

Australian Agribusiness Advisers' Guide

THIRD EDITION

*The definitive guide for accountants and other professional
advisers acting for clients in the agribusiness sector*

Peter Slegers, Joshua Pascale, Daniel Marateo and Amy Lancaster



NEW AND UPDATED

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The definitive guide for accountants and
other professional advisers acting for clients in
the agribusiness sector

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Cowell Clarke
2026

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About the authors



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Outside of work, Amy enjoys visiting family-owned wineries and bushwalking.

Contacting the authors

This publication was largely written from the authors' technical knowledge and years of experience in advising on tax, structuring, transactional and succession planning issues for agribusiness. If any reader believes that an important topic or issue is not covered, or that the commentary is incomplete or incorrect, they are invited to contact the authors. The authors are always interested in receiving feedback for further suggestions in later editions of the Agri-Guide and can be contacted at PSlegers@cowellclarke.com.au.

About Cowell Clarke

Cowell Clarke is a leading Australian commercial law firm which provides specialist legal services, advice and support to clients in all sectors of business and industry. Cowell Clarke has a dedicated Agribusiness Industry Group comprising specialist lawyers from its Tax and Revenue, Property, Wills and Estates, Corporate and Commercial and Superannuation Practice Groups.

Our experience and expertise spans across the entire agribusiness sector, including broadacre farming, livestock and food production, fishing and aquaculture, viticulture and wine, timber and forestry, processing, packing and wholesaling and farm machinery. We work closely with other advisers to agribusiness such as external and internal accountants, agribusiness consultants and real estate firms.

Some of the recent agribusiness projects Cowell Clarke has been involved with include:

- Large-scale stock and station sales and acquisitions throughout Australia, including acting for a prominent pastoral family on the sale of Mount Doreen station (Northern Territory) for a sale price of circa \$80 million.
- Advising and acting on a large-scale primary production group restructure of pastoral land with a value of over \$1 billion for cattle stations in New South Wales and South Australia to achieve the desired commercial and succession outcomes in a tax and duty effective manner.
- Acting for ASX-listed Duxton Farms on numerous sales and acquisitions, including Conways Station (Northern Territory), Boorala (South Australia) and carbon farming matters in the Northern Territory.
- Acting with considerable success for agribusiness clients across a range of industries subject to ATO Next 5,000 reviews.
- Advising the pastoral landowner of a proposed \$650 million solar thermal power plant.
- Advising one of Australia's largest landholders, Crown Point Pastoral, on a range of agricultural issues, including carbon farming agreements in the Northern Territory.
- Advising numerous chartered accounting firms on the application of challenging issues under the small business CGT concessions and small business restructure roll-over, as well as the relevant state and territory stamp duty laws in relation to the sale and restructure of numerous agribusiness concerns.

- Successfully obtaining a Supreme Court order to extend the vesting date of a trust in circumstances where the trust deed prohibited amendment with the practical effect of allowing for the continuation of an iconic Australian winery group for future generations.
- Implementing large-scale agribusiness group restructures in a wide range of regional areas throughout Australia, such as the Shire of Esperance, Western Australia, New England and the Southern Tablelands, New South Wales and the Mallee, Victoria.

Cowell Clarke's offices are based in Adelaide and Sydney. However, our lawyers regularly travel to regional areas throughout Australia for client commitments. Of course, we also regularly meet with clients via audio visual technology.

Members of our Agribusiness Industry Group present at our annual Agribusiness Summit — a series of topical webinar presentations for our national accounting firm adviser network. We also tour regional centres, including New England and the Riverina, New South Wales, and Coonawarra and the Eyre Peninsula, South Australia, for our annual CCARS (Cowell Clarke Accountants' Regional Seminars) events. If you would like more information about these events, please contact Cowell Clarke.

Cowell Clarke is a member of Agribusiness Australia, providing access to a national network within the agribusiness sector and connecting us with like-minded people through a variety of events.

Readers of the Agri-Guide should feel welcome to contact Cowell Clarke should they require our assistance or wish to know more about our capabilities, services and client events.



Acknowledgements

The authors would like to thank the various contributors to the Agri-Guide from within Cowell Clarke. In particular, the authors would like to thank Sam Richardson (Director) and Deanna Riebolge (Senior Associate) from the Property Group for their significant contributions to Chapters 13 and 14. Thanks should also go to Emily White (Associate Director) and Fiona Huynh (Senior Associate) from the Wills and Estates Group, Richard Beissel (Director), Leah Cowell (Associate Director) and Alex Dorrington (Lawyer) from the Corporate and Commercial Group, Cassie Burfoot (Director) from the

Employment and Workplace Relations Group and Andrew Bullock (Associate Director) and Peter Leech (Associate Director) from the Dispute Resolution Group.

The authors also wish to especially acknowledge Aidan Eaton (Law Clerk) in the Tax and Revenue Group for his significant involvement in preparing first drafts, research and coordination of this third edition of the Agri-Guide.

Finally, the authors would like to thank our in-house editorial and product design team comprising Georgina Murray, Bianca Buchhorn, Rachel Prout, Linda Blokland, Meegan Prior and Jacqui Ballard.

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Preface

“The thankful receiver bears a plentiful harvest.”

William Blake, 1757-1827

It is often said that Australia is destined to become the great food bowl of Asia and the South Pacific. With its rich agricultural heritage, high quality food standards, clean and green practices and cutting-edge technology, Australia is well positioned to continue to grow and expand its thriving agribusiness sector.

With this in mind, it is critical for those involved in the agribusiness sector to obtain optimal advice and guidance as the sector faces the challenges and opportunities presented by the changing global economy, and the demand for its produce, in the twenty-first century marketplace.

The authors of Australian Agribusiness Advisers' Guide ("**Agri-Guide**") have released this third edition, which continues to offer insight to professional advisers in the agribusiness sector. In addition to updating the content of the second edition for currency, this edition contains a range of new and topical issues of critical relevance to the sector. It includes:

- a new chapter on minimising family farming disputes;
- strategic observations on how the new superannuation earnings tax may impact self-managed superannuation funds that own primary production land;
- the current "state of play" of the *Bendel* decision and its impact on the use of corporate beneficiaries in agribusiness groups;
- a discussion of native title considerations for pastoral and crown leaseholders; and
- the latest practical experience and developments in restructuring agribusiness enterprises.

In addition to these new developments, the Agri-Guide has been updated to reflect changes in the law and practice in areas including optimal business structuring for the agribusiness sector, acquisitions and sales, business succession agreements, navigating the tax maze and addressing the ever-changing issues related to inter-generational succession planning.

The Agri-Guide is a product of the authors' passion and experience in dealing with specialist tax, structuring, transactional and succession planning issues impacting on the various industries comprising the agribusiness sector.

The Agri-Guide is primarily targeted at accountants, financial advisers, agribusiness consultants, commercial lawyers and other professional advisers to the sector. It also has relevance to CFOs and internal management personnel employed by corporate groups connected with the agribusiness sector.

We trust that you will gain value and insight from this new edition of the Agri-Guide.

Peter Slegers
Joshua Pascale
Daniel Marateo
Amy Lancaster

February 2026



The Agri-Guide provides a comprehensive review of the tax, structuring, transactional and succession planning issues for agricultural-based businesses and other primary producers, as well as businesses closely related to primary industries... a significant sector of the Australian economy.



This third edition of the Agri-Guide contains brand-new commentary on a number of topical issues for advisers acting in the agribusiness sector, including:

- the current "state of play" of the Bendel decision and its impact for the use of corporate beneficiaries in agribusiness groups;
- strategic observations on how the new superannuation earnings tax may impact self-managed superannuation funds that own primary production land; and
- an entirely new chapter on minimising the risk of family farm disputes, including the implications of the Owies decision on trust distributions.

This third edition also provides additional strategies for managing transactions, restructuring and succession planning.

Amy Lancaster, Associate in the Tax & Revenue Group of Cowell Clarke, joins our team as a co-author of this "must have" new edition of the Agri-Guide.