

From Farm to Table

Guide to investing in
Australian food & agribusiness

An Introduction to Australian Food & Agribusiness

Food & Agribusiness in Australia

Australia has a large amount of land available for agriculture, compared to other countries. Given strong levels of expected demand for agricultural commodities, there may be further expansion into new areas for agricultural production, including in northern Australia.¹

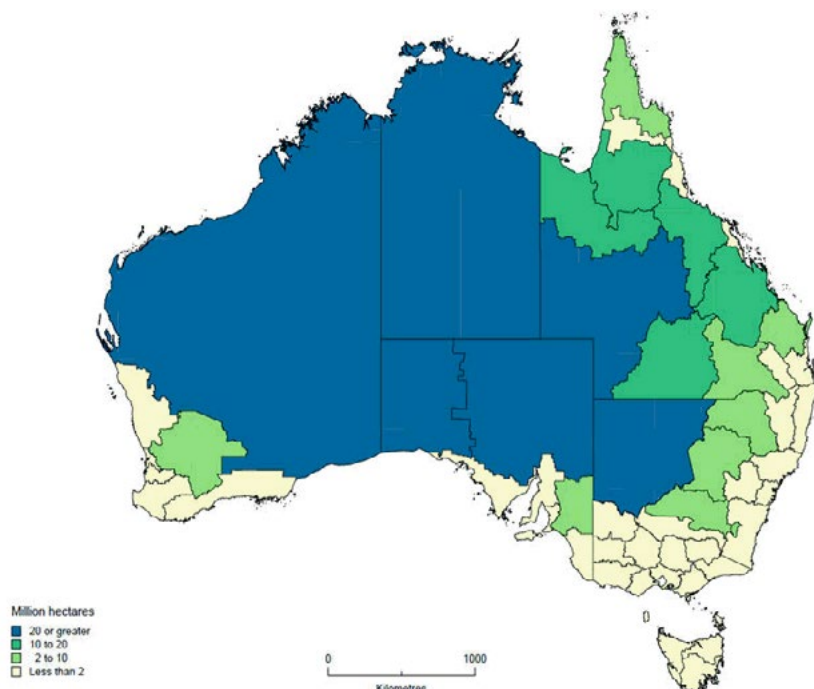
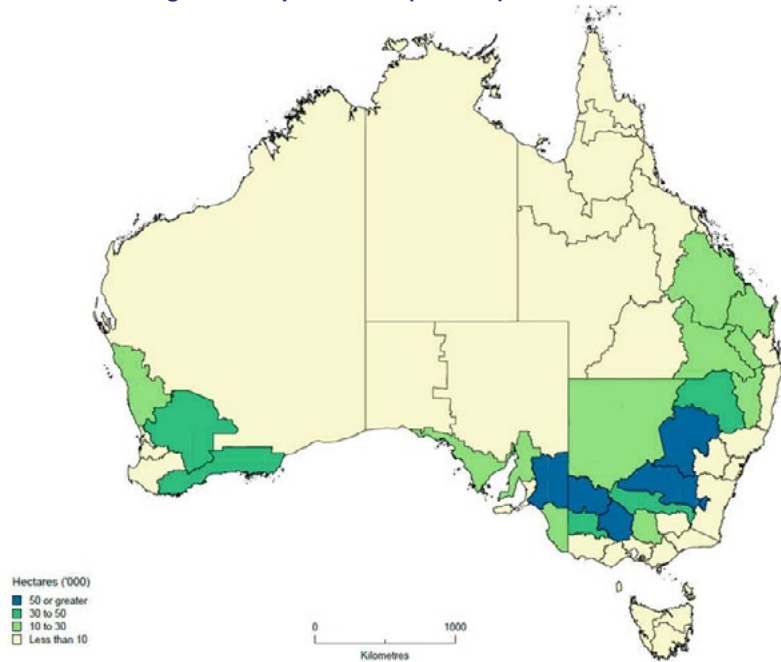
A diverse range of food and fibre products are produced in Australia. However, the majority of production is in beef and dairy cattle farming, grain growing, sheep farming, or a combination of two or more of these activities. These top four commodities are followed by vegetables, fruit and nuts, lamb meat and wool.

Australia is a net exporter of food, as it has:

- A current population of just over 25 million;² and
- Current production capacity sufficient to feed approximately 60 million people.³

The estimated value of Australia's farm exports was A\$49 billion in 2017-18.⁴ More than A\$32 billion of these agricultural exports were to Asia, with China being the single largest export destination (A\$11.8 billion).⁵ By contrast, Australia imported only A\$17.7 billion in agricultural products over the same period.⁶

Land used for agricultural production (2016-17)



1 Australian Government, *Agricultural Competitiveness Issues Paper* (2014), 2.

2 Australian Bureau of Statistics, *Population clock* (22 January 2019) <www.abs.gov.au/AUSSTATS/abs@.nsf/Web+Pages/Population+Clock?opendocument&ref=HPKI>.

3 Australian Government, Department of Foreign Affairs and Trade, *Feeding the Future: A Joint Australia-China*.

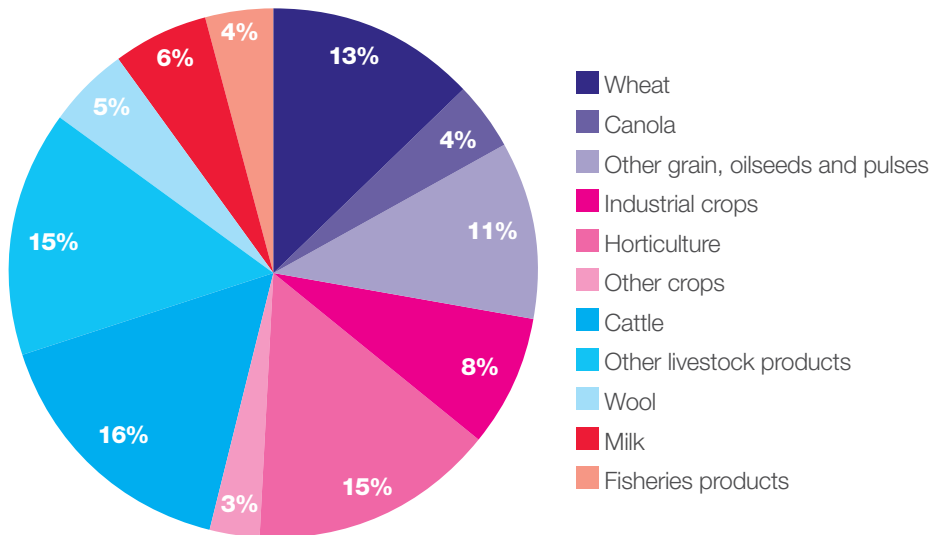
4 ABARES, *Agricultural commodity statistics 2018* (2018).

5 ABARES, *Agricultural commodity statistics 2017* (2017), 27.

6 ABARES, *Agricultural commodity statistics 2017* (2017), 28.

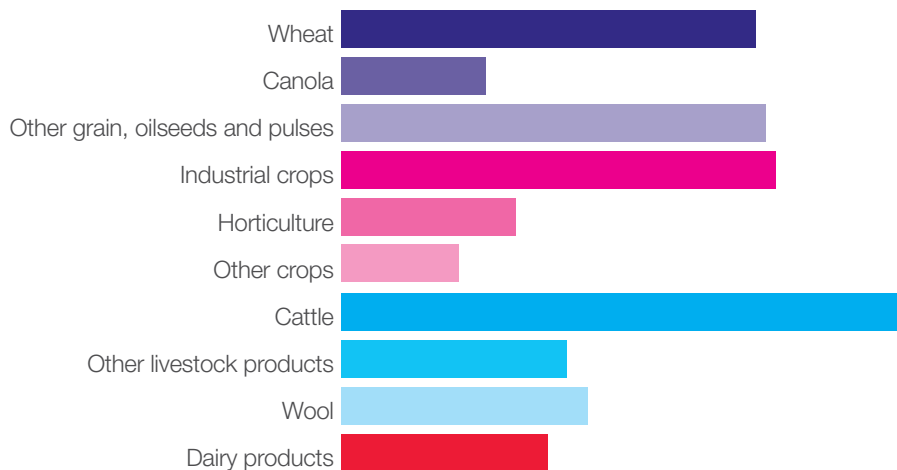
Australian Bureau of Statistics, 4627.0 Land Management and Farming in Australia, 2015-16 (23 August 2017)

Share of gross value of Australia's agricultural production, by industry (2016-17)



ABARES, Agricultural Commodities December Quarter 2017 (2017), 92-93.

Composition of Australia's agricultural exports (A\$ billion) (2016-17)



ABARES, Agricultural commodity statistics 2017 (2017), 26.

Australian food & agribusiness policy and reform

Over the last 30 years, Australia has deregulated its food & agribusiness sector with the aim of improving productivity.⁷ As a result, the sector is strongly market-oriented and subject to competition in the domestic and international markets. For example:

- the Organisation for Economic Co-operation and Development (**OECD**) found that the Australian agricultural sector receives no market price support, with domestic and international prices at near parity;⁸ and
- the average most favoured nation tariff protection for imported agriculture products is only 0.3%, with limited tariff protection and tariff-rate quotas for sensitive Australian agriculture products (mostly dairy products).⁹

The productivity of Australia's food & agribusiness sector has also been boosted by parallel reforms in the wider economy, such as reducing import tariffs on farm inputs, increasing labour market flexibility, introducing water trading, market-based approaches to natural resource management, as well as improving the efficiency of infrastructure services through competition reform.¹⁰

7 Emily Gray, Max Oss-Emer and Yu Sheng, *Australian agricultural productivity growth* (Australian Bureau of Agricultural and Resource Economics and Sciences, Research Report 14.2, February 2014), 27.

8 OECD, *Agricultural Policy Monitoring and Evaluation* (2014), 78.

9 World Trade Organisation, *Australia - Tariffs and imports: Summary and duty ranges* (2018) <<http://stat.wto.org/TariffProfile/WSDBTariffPFView.aspx?Language=E&Country=AU>>.

10 Emily Gray, Max Oss-Emer and Yu Sheng, *Australian agricultural productivity growth* (Australian Bureau of Agricultural and Resource Economics and Sciences, Research Report 14.2, February 2014), 2.

Why Australian food & agribusiness?

Investing in Australian food & agribusiness provides strategic benefits and opportunities for investors.

Australia has strong productivity in the sector especially in relation to beef, sheep, dairy and cotton.¹¹ With demand for food and other agricultural products expected to grow substantially in the medium-term, Australia is ideally placed to capitalise on these trends due to its:

- close proximity to growth markets in Asia;
- robust biosecurity system;
- record of innovation and reputation for producing high-quality and safe food and other agricultural products; and
- skilled workforce.

The Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) has forecast that world food demand, particularly driven by Asia, is expected to increase by over 75% in the period from 2007 to 2050. China is expected to account for 40% of that demand. Over this period, ABARES has also projected that world food prices will rise by 11.5%. This follows from a 10.8% increase in world food prices between 2007 and 2012.

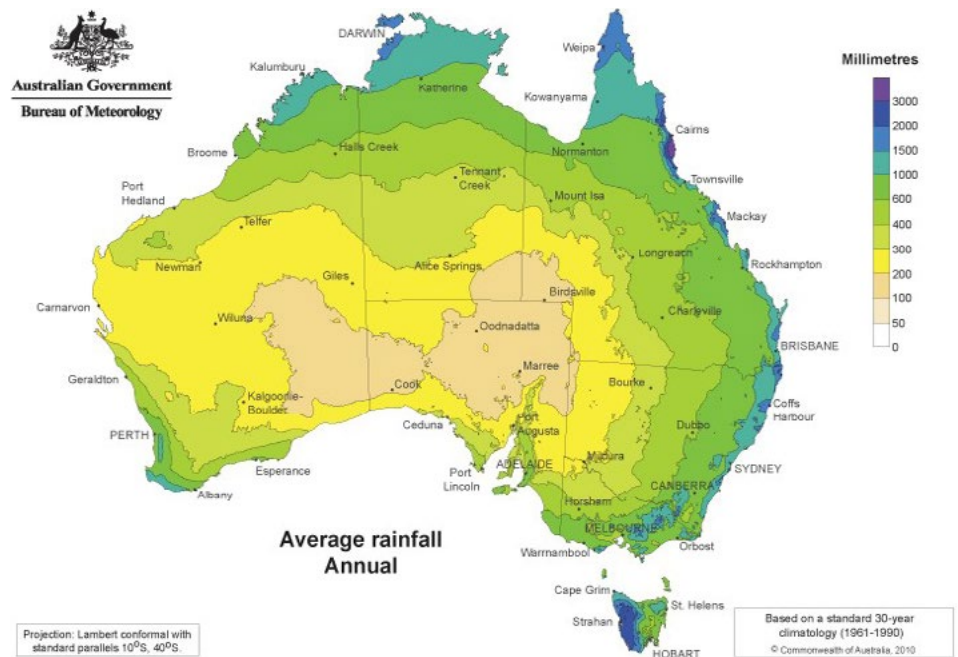
There is therefore a need for greater investment in, and development of, Australian food & agribusiness to further build capacity and to improve technology to better manage land assets and increase yields.

The sector also provides investors with an investment that acts as a hedge against inflation, has low correlations to traditional asset classes and is less impacted by economic slowdowns.

In this environment, opportunities abound for investors, producers, processors and marketers.

¹¹ Emily Gray, Max Oss-Emer and Yu Sheng, *Australian agricultural productivity growth* (Australian Bureau of Agricultural and Resource Economics and Sciences, Research Report 14.2, February 2014), 14. Australian irrigated lint yields are now the highest of any major cotton producing country in the world, being about three times the world average (Cotton Australia).

Average annual rainfall in Australia (1961-1990)



Australian Government, Bureau of Meteorology, Average annual, seasonal and monthly rainfall (16 January 2017) <www.bom.gov.au/jsp/ncc/climate_averages/rainfall/index.jsp>

Before making investments, investors should be aware of the legal and non-legal risks affecting the Australian food & agribusiness sector. The sources of risk are diverse and include climate-related events and weather conditions, animal diseases, changes in agricultural commodity prices and fertilizer and other input prices, changes in macroeconomic conditions and changes in policy and regulatory risks.

The type and size of the risk and its potential impacts are obviously different for different industries. However, all parts of the food & agribusiness sector can benefit from understanding ways and means of managing the risks. For example, most activities in Australian agriculture have at least some climate-related risk component. The variability of Australian weather and climate is one of the most difficult risks to manage. Depending on the region, this can mean drought, floods or frosting. Geographic diversification, local know-how on managing weather patterns and irrigation management are prudent methods of managing climate risks.

Industry and client recognition

Over the past decade, we have been awarded over 100 international legal and business awards, and hold more than 50 firm and 225 partner tier 1 legal rankings.

From Milan to Sydney, we are able to practice English, Australian, Chinese, European and Hong Kong law and have the people, resources and relationships you need. Our clients have unprecedented access to local knowledge and experience in the jurisdictions that matter to you.

“It is the breadth and depth of their ‘quality’ and ability to work as a team that makes them formidable and in turn command a deserving premium to their competitors.”

“Fantastic client care, excellent risk assessment and management. I would recommend them to anyone.”

Chambers & Partners 2018



We lead the pack in client service and overall quality:



Awards & Rankings

Asia-Pacific Law Firm of the Year

Chambers & Partners (2018)

33 Tier 1 rankings across practice areas

Asia Pacific Legal 500 (2018)

Best Professional Services Firm (revenue over \$200m)

AFR Client Choice Awards (2018, 2017, 2016)

Our Australian Food & Agribusiness experience

With the leading food and agribusiness practice in Australia, we have a successful track record advising leading Australian and international agribusinesses on some of the sector's most challenging transactions, and on a range of legal, regulatory and operational issues.

We can provide investors in Australian food and agribusiness with an in-depth understanding of the key issues and considerations that should be taken into account when structuring and making an investment, conducting due diligence and providing support on a range of operational matters.

Structuring and making an investment

Australian agribusiness acquisitions can be structured in a variety of ways, such as through the acquisition of interests in rural land, sale and lease-back arrangements, acquisitions of businesses or specific assets or resource entitlements (including water entitlements), or through the acquisition of securities or interests in investment structures, including stapled structures or joint ventures. It is important that investors understand the investment structures available, the relationship between the investment structure and operational management, Australia's foreign investment regulations and relevant tax considerations.

We offer investors broad sector knowledge, deep relationships with regulators, well-balanced legal capability and commerciality, and integrated practices. This enables us to:

- identify the critical issues and provide commercially astute recommendations;
- help navigate the key regulatory concerns and sensitivities;
- design optimal structures to suit the investment mandate;
- execute acquisitions, including cross border elements; and
- leverage our relationships to assist with managing stakeholders and local community interests.

Due Diligence

It is important for investors in Australian food and agribusiness to be aware of the typical issues that could arise during due diligence. Key areas of focus relate to ownership structures, suitability of property (freehold and leasehold), compliance with Australia's planning and environment laws, material contracts, operational and regulatory licences, intellectual property and technology protections, employees and superannuation arrangements, and tax and stamp duty. Key issues often arise in connection with the use of rural land, water rights, access to supporting infrastructure, intellectual property and technology and research and development.

Having a sophisticated understanding of these issues assists investors with:

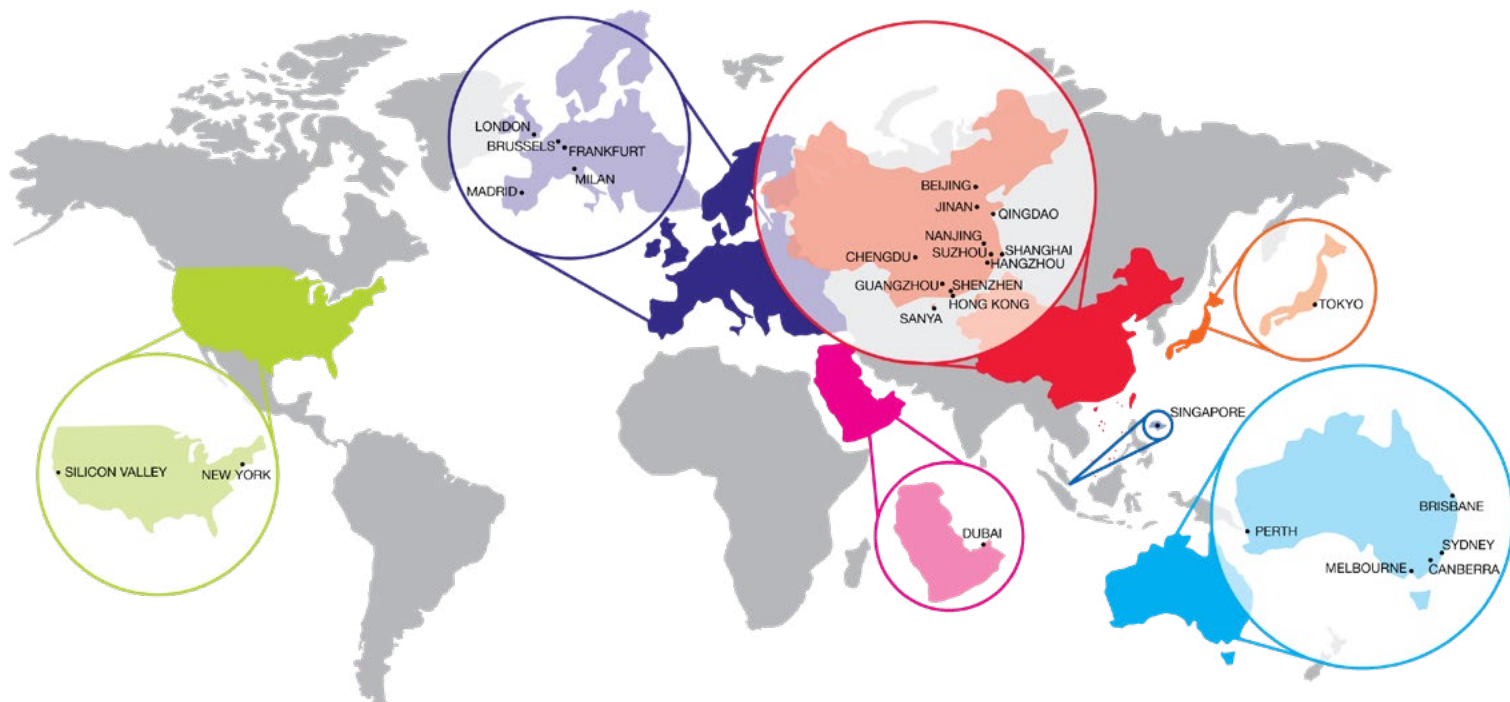
- selecting the optimal investment structure and key implementation approvals;
- identifying valuation issues;
- identifying key risks and how they can be appropriately addressed (contractually, structurally or otherwise); and
- the management of integration issues.

Operational Matters

There are many operational matters that investors need to be aware of in relation to food production and processing, product liability and marketing, international trade, export and import controls, tax, workplace relations and safety, and foreign exchange, interest rates and commodity price hedging.

Our vast experience in this area has enabled us to advise on a number of different operational matters, such as:

- distribution agreements both nationally and internationally;
- agreements in relation to e-commerce, including the establishment of e-commerce platforms, marketing services and logistics;
- trade mark protection;
- export of live cattle and lobsters from Australia;
- transfer pricing, withholding tax, customs and excise obligations;
- advertising and labelling compliance;
- food safety and product recalls;
- franchise arrangements;
- industrial deaths and workplace safety;
- employment and contracting issues;
- trade finance solutions specifically tailored for China's market place;
- trade financing structures for China;
- transfer of irrigation rights along with the transfer of agricultural land;
- environmental compliance risk management issues for food processing and production operations;
- application of native title on leasehold properties;
- State and Federal environment, planning and related approvals for agribusiness projects; and
- contaminated land issues arising from the unauthorised dumping of waste materials generated by industrial processing.



The King & Wood Mallesons difference

Food & agribusiness in Australia is a highly regulated, technology intensive and commercially-driven sector, subject to significant change. Participants and investors in this sector therefore need legal advisers with deep sector expertise and experience.

From acquisitions to commercial transactions, from seeking funding to food security issues, from tackling environmental challenges to embracing new technology, our clients can rely on King & Wood Mallesons for commercially effective and innovative solutions, tailored to their strategic priorities and approach to doing business.

Our reputation in the food & agribusiness sector is built on a successful track record of advising leading Australian and global businesses in relation to their investments and operations in Australia and the Asian region, and advising on some of the sector's largest and/or most challenging transactions, and legal and regulatory issues.

As a full service law firm, we have experience across all aspects of the food & agribusiness sector including mergers & acquisitions (including private equity and joint ventures), commercial agreements, investment structures, foreign investment approval, property ownership issues, project development, infrastructure access, finance and commodities trading, intellectual property, competition and tax.

The insights, sector knowledge and experience of our team, coupled with the strength of our relationships with regulators and other stakeholders, means that we can provide the best support across all aspects of the sector.

Acknowledgments

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Recognised as one of the world's most innovative law firms, King & Wood Mallesons offers a different perspective to commercial thinking and the client experience. With access to a global platform, a team of over 2,000 lawyers in more than 27 locations around the world works with clients to help them understand local challenges, navigate through regional complexity, and find commercial solutions that deliver a competitive advantage for our clients.

As a leading international law firm headquartered in Asia, we help clients to open doors and unlock opportunities as they look to Asian markets to unleash their full potential. Combining an unrivalled depth of expertise and breadth of relationships in our core markets, we are connecting Asia to the world, and the world to Asia.

We take a partnership approach in working with clients, focusing not just what they want, but how they want it. Always pushing the boundaries of what can be achieved, we are reshaping the legal market and challenging our clients to think differently about what a law firm can be.

Contacts



Meredith Paynter
Food & Agribusiness Sector
Leader, Partner
T +61 2 9296 2277
M +61 418 698 126
meredith.paynter@au.kwm.com



Scott Bouvier
Partner
T +61 2 9296 2472
M +61 407 894 528
scott.bouvier@au.kwm.com



Matthew Austin
Partner
T +61 7 3244 8108
M +61 422 374 832
matthew.austin@au.kwm.com



Rhys Casey
Partner
T +61 7 3244 8062
M +61 421 603 690
rhys.casey@au.kwm.com



Andrew Deszcz
Partner
T +61 3 9643 4484
M +61 448 299 614
andrew.deszcz@au.kwm.com



Heath Lewis
Partner
T +61 8 9269 7163
M +61 423 844 021
heath.lewis@au.kwm.com



Intan Eow
Partner
T +61 2 9296 2177
M +61 439 447 364
intan.eow@au.kwm.com



Simon Cooke
Partner
T +61 3 9643 4380
M +61 438 328 942
simon.cooke@au.kwm.com



Katie Lewis
Senior Associate
T +61 2 9296 2109
M +61 401 242 145
katie.lewis@au.kwm.com



Mark Vanderneut
Senior Associate
T +61 2 9296 2318
M +61 400 939 451
mark.vanderneut@au.kwm.com

Media enquiries

Charlotte Geddes
Head of Corporate Affairs
T +61 2 9296 3348
charlotte.geddes@au.kwm.com

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