

## **Farm Business Debt Mediation Bill 2017**

### **Explanatory Notes for Amendments to be moved by the Member for Burdekin, Dale Last MP**

#### **Short title**

The short title of the Bill is the Farm Business Debt Mediation Bill 2017 (the Bill).

#### **Policy objectives and the reasons for them**

The Opposition agrees with the intent of the Bill, which in reality is following a nationally-agreed approach to farm debt mediation and largely follows mediation mechanisms already in place in New South Wales and Victoria.

However, amendments are needed to improve the operations of the mechanism for mediation and moreover make operations of the new Queensland Rural Industry Development Authority (QRIDA) much more effective in specifically helping farmers deal with farm debt restructuring.

#### **Key objectives of the Opposition's amendments are to ensure:**

The Minister, the Department responsible for primary industries and the Queensland Rural Adjustment Authority (QRAA), to be renamed Queensland Rural Industry Development Authority (QRIDA), have powers to compel banks and other rural lenders to provide up-to-date data on rural lending to allow QRIDA to publish a bi-annual *Rural Debt Survey* previously published by QRAA up till 2011 after which banks declined to provide data. And also compel Minister to release the survey within three months of finalisation by QRIDA.

The provisions to compel banks/lenders to provide information based on section 26 of Gasfields Commission Act.

While there may well be movement at Federal level for farm debt data to be collected from lenders at a national level and for state/territory data to be made available. However, we need to ensure that Queensland does have information on farm debt available when needed. Hopefully, all banks and other rural lenders will provide the information regularly as they did in the past and provisions to compel them are not needed.

States/Territories have agreed on plans for a national scheme for farm debt mediation based on existing New South Wales scheme. Therefore it makes sense to align the Queensland legislation with the scheme operating in New South Wales.

We agree with the amendment to expand the definition of farm mortgage to include machinery as per New South Wales.

We seek to amend the Bill to redress potential conflict of interest of having QRIDA run mediation process and accredit mediators while also being rural lender. Concerns were raised by farm stakeholder group, Queensland Farmers' Federation of the need to have another body other than QRIDA appoint the mediator. The amendment will

have the chief executive of the Department responsible for primary industries (currently DAF) responsible for appointing mediators.

We are amending the purpose of the Act to provide a framework for 'good faith mediation' as per the Queensland Law Society's submission to strengthen the intent and expand definition of advisor as per Queensland Law Society's and AgForce's submission to the review conducted by the Finance and Administration Committee to include legal, accounting or other advisor, and allow parties to have more than one advisor present.

We are amending section 11 so parties who have undertaken mediation before under the act aren't prohibited from mediation again as per Queensland Law Society's and AgForce's submissions.

We are amending the Bill to establish the Farm Debt Reconstruction Office (FDRO) – in QRIDA headed by manager with three to four expert agricultural staff – to undertake assessments of farms/farm businesses under stress, personally consult with owners and accountants/financial advisors/lenders on overall personal situation and way forward for long-term farm business viability. If this is not possible, advise on exit strategy preserving as much capital as possible.

The professional officers, could for example, undertake negotiations with lenders on behalf of farmers to agree to lower loan amounts in restructured debt packages.

### **Achievement of policy objectives**

The policy objectives are achieved by amending the Bill to:

- Ensure debt mediation can be undertaken in a fair and timely manner;
- Ensure the Minister/Department/QRIDA is able to compel banks/rural lenders to provide data on lending regularly and in sufficient detail to allow publishing of a bi-annual Farm Debt Survey – that can be used for policy and program setting to deal with industry and location 'hot spots' and more broadly for industry development; and
- Establish within QRIDA a Farm Debt Reconstruction Office to deal specifically with farms and farm businesses with distressed loans and help negotiation re-financing for longer-term sustainable production. However, if needed to also assist with exiting.

### **Alternative ways of achieving policy objectives**

There are no other viable alternatives that would achieve the policy objectives other than amending the Bill.

### **Estimated cost for government implementation**

There are no cost impacts of these amendments.

The costs to establish the Farm Debt Reconstruction Office (FDRB) – in QRIDA – could be met through the \$500,000 allocation announced (2016) by the government to establish the Office of Rural Affairs, with a commissioner of rural affairs.

Nothing appears to have happened with this, since the announcement, so would seem funds would still be available. If not, staff re-allocation would achieve outcome.

**Consistency with fundamental legislative principles**

The amendments are consistent with the fundamental legislative principles.

**Consultation**

The LNP has developed these amendments from extensive direct stakeholder and community engagement and feedback – particularly with key stakeholder groups including the Queensland Farmers Federation and AgForce and with advice from the Queensland Law Society.

**Consistency with legislation of other jurisdictions**

Amendments to mediation are in-line with other states and national direction.

**Notes on provisions**

Amendments to be made during consideration in detail:

**Amendment 1 amends Clause 3 (Purpose)**

This amends the purpose of the Bill state in clause 3 to include a reference to mediation being made in good faith. This was a recommendation from the Queensland Law Society and is also included in clauses 7 and 33.

**Amendment 2 amends Clause 7**

This is a consequential amendment to Amendment 1.

**Amendments 3 and 4 amend Clause 11 (Application of Act)**

This is needed to ensure that farmers and mortgagees who have previously entered into mediation are not precluded from using this new mediation service for the same debt.

**Amendments 5, 6 and 7 amend Clause 18 (Nominating mediator)**

This is needed to ensure the functions relating to mediators under the Bill to be fully independent of the QRIDA and other lenders.

There was a suggestion from one submission to the parliamentary committee on the Bill that these functions be given to the Ombudsman. However, the function of the Ombudsman is to oversee the administrative actions of government agencies. The Ombudsman does not engage in any activities itself that are the direct administration of a government scheme or program.

This amendment gives the functions relating to mediators to the Department of Agriculture and Fisheries as the department that is to administer the Farm Debt Mediation Act once it is passed. Accrediting mediators, and suspending and cancelling accreditation, is an appropriate function for a government department. The department operates separately to QRIDA and to any financial institutions, so there is no conflict of interest either real or perceived.

In provisions dealing with accreditation, references to the 'authority' are replaced with the 'chief executive'. Under the *Acts Interpretation Act 1954*, a reference in legislation to the

chief executive is a reference to the Director-General of the department that administers the legislation (that is, the Department of Agriculture and Fisheries).

**Amendments 8, 9 and 10 amend Clause 24 (Farmer entitled to advisor)**

Amendment to allow a farmer to have more than one advisor present at a mediation session.

**Amendments 11 and 12 amend Clause 33 (Summary of mediation)**

As listed above, includes reference to mediation being made in good faith – as recommended by the Queensland Law Society.

**Amendments 13 and 14 amend Clause 34 (Guidelines for conducting mediation)**

Amendment to transfer responsibility for preparing guidelines about conducting mediation (to be used by mediators) and a mediation information package (for use by farmers) from the QRIDA to the Department of Agriculture and Fisheries. This is part of making the functions relating to mediators separate from the authority.

**Amendments 15 and 16 amend Clause 35 (Mediation information package)**

In keeping with the change in responsibility from the authority to the chief executive.

**Amendments 17 to 35 amend Clauses 58 to 76 (applying for accreditation)**

Amendments to clauses 58 to 76 (which are in part 5 of the Bill) relate to the function of accrediting mediators, renewing the accreditation of mediators and suspending or cancelling a mediator's accreditation. These functions have been transferred from the authority to the Department of Agriculture and Fisheries.

**Amendment 36 amends Clause 90 (Approved forms)**

Amends clause 90 below so the Director-General of DAF can approve forms to be used under the Act in relation to accrediting mediators etc. Otherwise, forms for use under the Act can be approved by the authority.

**Amendment 37 amends Clause 124 (Amendment of s 4 (Definitions))**

Remaining amendments relate to the *Rural and Regional Adjustment Act 1994*. In the definitions section, this gives meaning to the terms *farm business debt*, *farmer* and *farming business* in the Farm Business Debt Mediation Bill so it is not necessary to define those terms specifically for the *Rural and Regional Adjustment Act 1994*. Also defines the Rural Debt Survey.

**Amendment 38 amends Clause 127 (Amendment of s 8 (Authority's functions))**

Sets out clearly the functions to be undertaken by the authority, including that the rural debt survey is conducted every two years, a report is prepared and made available by the Minister, and a farm debt restructuring advisory service.

**Amendment 39 amends Clause 129A**

Adds two new parts covering the bi-annual rural debt survey (two-yearly).

**Part 3AA Two-yearly rural debt survey**

**13AA Authority must conduct rural debt survey every 2 years**

Sets out that the rural debt survey must be completed and published every two years and that within six months of the period to which survey relates a report is completed and given to the Minister.

The first rural report must, in general terms report on the rural debt for the period from 1 January 2012 to 31 December 2017. This is the period that no report has been available due to the reluctance of banks and rural lenders to provide data.

**13AB Terms of reference of rural debt survey**

Sets out terms of reference for the rural debt survey. These are needed to ensure the survey is worthwhile in identifying issues and trends.

Sets out that rural debt surveys are to be completed every two years to establish the extent, nature and size of the debt and trends in various industries and to identify debt across local council and postcode area.

Sets out that the survey must also identify where borrowers are considered financially viable in the longer-term and those experiencing difficulties and consult with peak industry bodies and financial lenders to obtain interpretations and trends.

**13AC Power to require information for rural debt survey**

Gives authority to acquire relevant information to allow the rural debt survey to be completed.

**13AD Authority's report about rural debt survey**

Sets out the survey must compare results and make observations about the results.

**13AE Minister must table rural debt survey report**

Compels the Minister to table a report about rural debt within three months after receiving the report from QRIDA.

**Part 3AB**

The amendments relate to the *Rural and Regional Adjustment Act 1994* – to provide meaning given to the terms *farm business debt*, *farmer* and *farming business* in the Farm Business Debt Mediation Bill so it is not necessary to define those terms specifically for the *Rural and Regional Adjustment Act 1994*.

**Part 3AB Farm business debt restructure office and its advisory service**

Sets out the establishment of advisory service within the Farm Debt Reconstruction Office to provide a farmer in financial distress with advice and ways to improve farming business through restructuring, including negotiating with rural lenders on reduction of overall loan amounts and restructuring such loans and repayments to provide for sustainable farm business operation.

If this is not possible, then to advise on ways the business can be ceased to ensure the farmer is left in the best possible financial position.

**13AG Advisory service staff must be appropriately qualified**

Ensures the authority has employees who provide advisory service are qualified.

**Amendment 40 amends Schedule 1 (Dictionary)**

Amendments to the dictionary extend the meaning of farm property (which can be the subject of a farm mortgage) to include farm machinery.

The intention is to make the Queensland Act consistent with the NSW Act which is seen as the likely template to be adopted if and when a national mediation scheme is agreed to by States and Territories. The NSW Act includes farm machinery. To be consistent with the NSW Act, farm property should include farm machinery. For example tractor, seeder, harvester and other machinery.