

**Farm Business Debt Mediation Bill
2016 and Rural and Regional
Adjustment (Development
Assistance) Amendment Bill 2016**

Report No. 34, 55th Parliament

Finance and Administration Committee

November 2016

Finance and Administration Committee

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Abbreviations

ABA	Australian Bankers' Association
ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
ANZ	Australian and New Zealand Banking Group Limited
APRA	Australian Prudential Regulatory Association
AgMin Forum	Agriculture Ministers Forum
AGSOC	Agriculture Senior Officials Committee
Committee	Finance and Administration Committee
The Department	Department of Agriculture and Fisheries
FLP	Fundamental Legislative Principles
FLRS	Farm and Rural Legal Service (provided by Legal Aid Queensland)
Government Bill	Farm Business Debt Mediation Bill 2016
LAQ	Legal Aid Queensland
NGIA	Nursery and Garden Industry Association
QCAT	Queensland Civil and Administrative Tribunal
QFF	Queensland Farmers' Federation
QFFS	Queensland Farm Finance Strategy
QLS	Queensland Law Society
QRAA	Queensland Rural Adjustment Authority
QRIDA	Queensland Rural and Industry Development Authority (as proposed under the Government Bill)
Private Member's Bill	Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016
RFCS	Rural Financial Counselling Service
RIDB	Rural Industries and Development Bank (as proposed under the Private Member's Bill)
Taskforce	Rural Debt and Drought Taskforce

Chair's foreword

The Queensland Government supports and appreciates our farming sector. The Farm Debt Mediation Bill, if passed with the amendments recommended by the Committee, will provide further support for our farmers and rural producers. The Farm Debt Mediation scheme proposed under the Bill will level the playing field between banks and farmers who face debt and financial difficulties.

It became clear from submitters and witnesses who appeared before the Committee during this inquiry that debt is a real issue for farmers, particularly in rural areas.

In attempting to be as balanced as one can in these circumstances, the live cattle ban did contribute to the difficulties our farmers face. There are other costing issues, not the least the cost of fertilizers, pest control, water, electricity, stock feed, and replacing stock after an extended drought. Land degradation, from over-farming, and low production yields, whilst not part of this report, are all things that need to be considered, when trying to assist farmers. These are only some of the cost factors that impact on farm operations.

The sale of properties to large corporations, and the amalgamation of farms is also of concern and impacting on populations in rural communities. An example was where there would normally be 15 farmers and their families living on individual farms in a community and these farms are now managed from the city with one resident manager. This impacts whole rural communities.

Tragically, farmers who face such difficulties can lose not just a businesses, but their family home too. We were unable to source accurate information on the suicide rate amongst farmers facing financial difficulties in our rural areas. However, we heard several times during this inquiry that suicide remains a problem in rural areas.

The committee was unable to ascertain the actual level of rural debt in Queensland. National data exists and is discussed in the report but there is no reliable data available on Queensland's rural debt level. The QRAA used to undertake biennial rural debt surveys but these ceased in 2011. Unfortunately, these rural surveys have not been undertaken in another format and it appears that this may be due to a lack of co-operation, between the banks.

I consider the holding of a Royal Commission into the banks would be a good start to ascertain exactly what the banks are doing to assist the farming industry.

While it is correct that State Governments need to lift its load, this is another example of the Commonwealth Government being missing in action on this issue. The banking industry perhaps through APRA needs to establish better ways of lending to farmers. Any action to assist farmers, particularly financial assistance and lending, needs to acknowledge the cyclical nature of farming. Our extreme weather conditions, particularly drought and flooding, have massive implications on farming crops and grazing, as does the price the farmer is able to achieve for their produce.

The Committee's report contains 22 recommendations that we believe will strengthen and improve the Government Bill.

While the Committee understands the calls for a rural bank, there was no demonstrated need for one that cannot be addressed by other, more suitable means. The expanded functions of the proposed Queensland Rural and Industries Development Authority (QRIDA) to replace QRAA will go some way to address the concerns raised by many submitters. We therefore recommend that the Private Members Bill not be passed.

I thank my fellow committee members for their considered, dedicated and bipartisan approach to this inquiry. I also extend the Committee's thanks to the parliamentary staff for their assistance and to all submitters and witnesses who gave their time, experience and knowledge during this inquiry.

I commend the Committee's Report to the House.

A handwritten signature in black ink, appearing to read 'Peter Russo', with a long horizontal stroke extending to the right.

Peter Russo MP

Chair

Recommendations

Recommendation 1 **12**

The Committee recommends that the Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016 not be passed.

Recommendation 2 **12**

The Committee recommends that the Farm Business Debt Mediation Bill 2016 be passed.

Recommendation 3 **17**

The Committee recommends that the Minister work to establish the rural debt level in Queensland and work with all Australian agriculture ministers to progress a single national approach to data collection that can be broken down to identify the rural debt levels in each jurisdiction.

Recommendation 4 **23**

The Committee recommends that the Minister amend the Government Bill to provide for a review of the legislation after 5 years.

Recommendation 5 **27**

The Committee recommends that the Minister provide additional funding of the Legal Aid Queensland Farm and Rural Legal Service to employ a further senior lawyer and provide financial assistance to farmers with outlays related to their participation in the mediation scheme.

Recommendation 6 **28**

The Committee recommends the Minister review the Government Bill to ensure that provisions appropriate for regulation are removed from the Government Bill.

Recommendation 7 **29**

The Committee recommends that clause 6 be amended to provide for electronic meetings where both parties agree.

Recommendation 8 **32**

The Committee recommends that the definition of farm mortgage be amended to include farm machinery.

Recommendation 9 **33**

The Committee recommends that the definition in the Government Bill (Farm Debt Mediation Bill 2016) of 'default' be amended to provide that a mortgagee must offer mediation to a farmer under the scheme where the mortgagee seeks to commence enforcement action when the loan to value ratio is altered

Recommendation 10 **35**

The Committee recommends that the Government Bill be amended to ensure that mediation entered into without default does not amount to a ground for an exemption certificate for mortgagees to commence enforcement action without mediation where the earlier mediation occurred within 3 years of the default.

Recommendation 11 **37**

The Committee recommends that clause 14(3) be amended to provide the date by which the farmer must ask for mediation must be no less than **20 business days** after the day the notice is served on the farmer.

Recommendation 12 **38**

The Committee recommends that clause 25 be amended to provide that the mediation must be reasonably convenient for the farmer.

Recommendation 13 **40**

The Committee recommends that clause 26 be amended to provide that the mediator be required to draft or supervise the drafting of the heads of agreement.

Recommendation 14 **40**

The Committee recommends that the heads of agreement should be drafted in simple English to ensure they are clear and easily understood by the parties.

Recommendation 15 **40**

The Committee recommends that the Bill be strengthened to provide that the heads of agreement entered into during a mediation is binding on the parties.

Recommendation 16 **41**

The Committee recommends that clause 39 of the Government Bill be amended to provide that the costs for the mediation includes costs incurred in relation to the mediation.

Recommendation 17 **43**

The Committee recommends that clause 38(1) of the Government Bill be amended to extend its application to a document that was created for the purpose of being given to a party under clauses 21 or 22

Recommendation 18 **43**

The Committee recommends that clause 38(2) of the Government Bill be amended to provide an exception where the proceeding relates to threat of future violence, concealing ongoing criminal activity, or abuse of a child or vulnerable party.

Recommendation 19 **44**

The Committee recommends that, at an appropriate time after the passing of the Government Bill, the internal and external appeals process be reviewed to ensure they are efficient and effective.

Recommendation 20 **45**

The Committee recommends that the Minister inform the House how the Government Bill will ensure that farmers are clearly informed, prior to any mediation taking place, of:

- a) what acting in good faith means under the legislation
- b) examples of how a farmer can act in good faith for the purposes of the legislation
- c) examples of not acting in good faith for the purposes of the legislation, and
- d) possible consequences of not acting in good faith for the purposes of the legislation.

Recommendation 21 **48**

The Committee recommends the Minister consult relevant stakeholders on a possible amendment to require third parties to be required to provide relevant documents and information that is necessary for the mediation under the Government Bill.

Recommendation 22 **48**

The Committee recommends that clause 24 of the Government Bill be amended to provide that parties to mediation are entitled to 'one or more' advisors.

1. Introduction

1.1 Role of the Committee

The Finance and Administration Committee (the Committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility include:

- Premier, Cabinet and the Arts
- Treasury, Aboriginal and Torres Strait Islander Partnerships and Sport, and
- Employment, Industrial Relations, Racing and Multicultural Affairs.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

1.2 The referrals and the policy objectives of the Bills

Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016

On 26 May 2016, Mr Robbie Katter MP, Member for Mount Isa, introduced the Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016 (Private Member's Bill). The Bill was initially referred to the Agriculture and Environment Committee before the House referred it to the Committee for detailed consideration, in accordance with Standing Order 136.²

As set out in the explanatory notes, the main objective of the Private Member's Bill is to amend the *Rural and Regional Adjustment Act 1994* to include a capacity to raise money to provide financial assistance that will foster development of a more stable, productive and sustainable rural and regional sector in Queensland. The Private Member's Bill also proposes to change the name of the Queensland Rural Adjustment Authority (QRAA) to the Rural and Industries Development Bank (RIDB).³

Farm Business Debt Mediation Bill 2016

On 30 August 2016, the Minister for Agriculture and Fisheries, Hon Leanne Donaldson MP, introduced the Farm Business Debt Mediation Bill 2016 (the Government Bill). The Bill was initially referred to the Agriculture and Environment Committee before the House referred it to the Finance and Administration Committee for detailed consideration, in accordance with Standing Order 136.⁴

The explanatory notes state that the policy objectives of the Government Bill are to:

- establish a new Farm Business Debt Mediation Act which will provide a process for the efficient and equitable resolution of farm business debt matters between mortgagees and farmers
- replace QRAA with the Queensland Rural and Industry Development Authority (QRIDA) and expand its functions

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 131.

² Queensland Parliament, Record of Proceedings, 26 May 2016, pp 2149, 2154

³ Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016, explanatory notes, p. 1

⁴ Queensland Parliament, Record of Proceedings, 30 August 2016, pp 3124, 3127

- provide more appropriately for use of viruses as biological control agents
- provide for third party biosecurity accreditation systems as an alternative to government accreditation of certifiers or government certification for animals, animal products, plants, plant products or other biosecurity risk items, and
- enable lawful growers of cannabis in Queensland to supply seed to be used for cultivation of medicinal cannabis under a Commonwealth licensing system.⁵

On 31 August 2016, the Committee resolved to consider the Private Member's Bill and the Government Bill together.

The Committee was required to report to the Legislative Assembly on both Bills by 28 November 2016.

1.3 Consultation on the Bills

Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016

The Private Member's Bill is designed to provide a solution to findings from the Rural Debt and Drought Taskforce (the Taskforce) report, and the consultation from the Taskforce hearings has informed the Bill. The Taskforce met in 13 regional towns, and in Brisbane, to hear from interested organisations and individuals. The Taskforce report advises that it received 109 written submissions, and 400 attendees presented at hearings.⁶ The explanatory notes state that (given the work of the Taskforce) extensive consultation occurred prior to the development of the Private Member's Bill.⁷

Farm Business Debt Mediation Bill 2016

The explanatory notes state that the Department of Agriculture and Fisheries (the Department) undertook targeted consultation on aspects of a working draft of the Government Bill. The Queensland Farmers Federation (QFF), AgForce, Canegrowers, Australian Banking Association (ABA), Suncorp Bank, Rabobank Australia, Australia and New Zealand Banking Group Limited (ANZ), Bank of Queensland, Commonwealth Bank, National Australia Bank, QRAA and Westpac Banking Corporation, were all consulted on aspects of the Government Bill relating to farm debt mediation.⁸

During its consideration of the amendments to the *Biological Control Act 1987*, members of the Agriculture Senior Officials Committee (AGSOC) concluded that biological control legislation should be consistent across jurisdictions.⁹

The Nursery and Garden Industry Association (NGIA), the Australian Banana Growers' Council, QFF and Growcom were all consulted about the introduction of third party accreditation models, directly relevant to the amendments to the *Biosecurity Act 2014*.¹⁰

Regional public roundtables and public consultation forums identified issues of seed supply and sourcing seed for cannabis cultivation for medical and scientific purposes. These issues were subsequently raised with the Commonwealth's Office of Drug Control and Queensland Health respectively. This constituted the consultation regarding the amendments to the *Drugs Misuse Act 1986*.¹¹

⁵ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 1

⁶ Chairman's Report, Rural Debt and Drought Taskforce, *Addressing debt and drought problems in rural Queensland*, April 2016

⁷ Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016, explanatory notes, p. 2

⁸ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 12

⁹ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 12

¹⁰ Farm Business Debt Mediation Bill 2016, explanatory notes, pp 12-13

¹¹ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 13

1.4 Inquiry process

The Committee announced the inquiry on its website and invited submissions from interested parties. The Committee also wrote to stakeholders and to subscribers to inform them of the Inquiry and to call for submissions.

The Committee received a total of 37 submissions. A list of submitters is provided at **Appendix A**.

Copies of material published in relation to the inquiry, including written advice, transcripts of the Committee's public briefing and public hearings, and all published submissions, are available on the Committee's website.¹²

Public briefings

On 31 August 2016, the Committee sought assistance in its consideration of the Government Bill from the Department. On 7 September 2016, the Department provided the Committee with a written briefing.

On 14 September 2016, officials from the Department and representatives from the Queensland Treasury participated in a public briefing for the Government Bill. Mr Rob Katter MP, Member for Mt Isa, briefed the Committee on the Private Member's Bill. On 9 November 2016, Department staff briefed the Committee on aspects of the evidence received during the inquiry.

Public hearings

The Committee held regional public hearings across Queensland by videoconference over three days, from 4 to 6 October 2016. The locations of the hearings were Cloncurry, Longreach, Mackay, Emerald, St George, Burdekin, Bundaberg, Hughenden and Roma.

The Committee also held three public hearings in Brisbane; two on 4 October and one on 2 November 2016. A list of all public hearing witnesses is at **Appendix B**.

1.5 Outcome of Committee deliberations

Standing Order 132(1)(a), requires that the Committee examine the Bills and determine whether to recommend that the Bills be passed.

Recommendation 1

The Committee recommends that the Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016 not be passed.

Recommendation 2

The Committee recommends that the Farm Business Debt Mediation Bill 2016 be passed.

¹² See: www.parliament.qld.gov.au/FAC

2. Background

As at June 2015, agriculture businesses accounted for around 8.5 per cent of all businesses operating in Australia and employs 287,500 people, with around 70 per cent of those full time employees.¹³

Agriculture contributed \$30 billion or 2 per cent of Australia's gross domestic product (GDP) in 2015. This contribution of the agriculture sector fluctuates due to climate variability such as drought, bush fires and floods.¹⁴

2.1 Issues facing rural Queensland

In October 2015, the Queensland Government assessed ways of addressing rural issues facing Queensland farm businesses.¹⁵ The Taskforce was subsequently established by a resolution of the Legislative Assembly in November 2015, in order to identify and investigate ongoing debt issues faced by Queensland famers and primary producers. The chair of the Taskforce was Mr Rob Katter MP, Member for Mt Isa.¹⁶

The Taskforce published its report *Addressing debt and drought problems in rural Queensland* and made 14 recommendations to the Government, with the aim of stabilising and then strengthening primary industries.¹⁷ A list of the Taskforce recommendations is at **Appendix C**.

The Committee notes the impact of variable climate conditions, particularly drought on Queensland's farmers and primary producers. The Taskforce reported that by 2015, drought had impacted upon 85 per cent of the State. The drought impacted on the ability to grow feed for animals, leading to some farmers to de-stock while others resorted to hand-feeding to maintain valuable breeder herds.¹⁸ This was also reflected in submissions to the Committee.¹⁹

The Taskforce found that the 2011 live cattle ban also placed an enormous strain on cattle farmers as the value of stock fell and importers sought livestock. Combined with the impacts of the drought, this added significant financial pressure to already present financial troubles.²⁰

The Australian Bankers' Association (ABA) noted that it was conscious of the situation facing farmers and primary producers, particularly those in the North West and South West Queensland. A combination of factors have led to situations that a number of farmers and primary producers are facing, which includes one of the worst droughts on record and a fluctuation of land values over the past decade. Lower farm gate prices combined with a high Australian dollar have hurt the export

¹³ Australian Bankers' Association, *Agriculture in Australia: activity and financing, Economic Report*, September 2016, pp 10, 12

¹⁴ Australian Bankers' Association, *Agriculture in Australia: activity and financing, Economic Report*, September 2016, p. 12

¹⁵ Departmental briefing, Farm Business Debt Mediation Bill 2016 and Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016, p. 1

¹⁶ Queensland Parliament, Record of Proceedings, 10 November 2015, p. 2737

¹⁷ Chairman's Report, Rural Debt and Drought Taskforce, *Addressing debt and drought problems in rural Queensland*, April 2016, pp ix - xi

¹⁸ Chairman's Report, Rural Debt and Drought Taskforce, *Addressing debt and drought problems in rural Queensland*, April 2016, p. viii; Mr Paul Faigl, Submission No. 10, p. 1, Confidential Submission No. 6.

¹⁹ Mount Flagstone, Submission No. 2, p. 1; Confidential Submission No. 6, p. 1; Mr Charles Burke, Public Hearing Transcript, 2 November 2016, p. 16

²⁰ Chairman's Report, Rural Debt and Drought Taskforce, *Addressing debt and drought problems in rural Queensland*, April 2016, p. viii

sector. These problems have contributed to a significant income problem for these farmers, primary producers and those regional communities where they are located.²¹

Witnesses told the Committee that it is difficult for farmers to take advantage of the current high prices for cattle and to restock their farms.²² Farmers in the grazing industry are also faced with increased input costs, which impact on their profitability.²³

*Currently the financial pressures on grazing enterprises such as ours are enormous. There has been, over the past twenty odd years, an enormous upward shift in the costs of production whilst returns have remained stagnant. This situation has led to a drain in the resources available to the grazier to do anything but survive. No money exists to employ staff, to undertake landcare works, to spell country. There is not an ounce of fat left in these operations with borrowings even required to cover operating expenses never mind purchasing capital equipment or undertaking improvements.*²⁴

The Committee heard that a lack of finance available to farmers and primary producers has had flow-on-effects to regional and rural communities with foreclosures and a lack of spending in rural towns.²⁵ Mr Katter notes that his Private Member's Bill:

*...is probably more about helping people in towns than on farms... Everyone has forgotten the people in the towns in this argument. There is no cash going into towns because everything is locked up in rural debt.*²⁶

The Committee understands the social and emotional issues resulting from financial distress. A number of submitters indicated the importance of the family farm and how dire circumstances had led to financial stress for these producers, some of which resulted in suicide.²⁷ The Committee has no data on the rates of farmer suicide in Queensland but understands the impact such a tragedy can have on communities. Mr Bob Katter MP spoke of friends he lost to suicide due to debt and the personal impacts on individuals and on our rural communities.²⁸

The Committee also heard of the impacts of amalgamations of farms on rural communities whereby family run or local run farms were being sold to large corporations or amalgamated. Where a number of people would be employed in the smaller businesses, the employment was reduced to one farm manager following amalgamation.²⁹ This is yet another reason why our younger generations in farming families struggle to get a foot hold as the next generation of Queensland's farmers. While this is outside the scope of the Bill, the Committee considers such information important to paint a picture of some of the issues facing our rural communities.

²¹ Ms Diane Tate, Executive Director, Retail Policy, Australian Bankers' Association, Public Hearing Transcript, 2 November 2016, p. 6

²² Mr Robbie Katter, Public Hearing Transcript, 4 October 2016, p. 7; Confidential Submission No. 6, p. 1

²³ Mount Flagstone, Submission No. 2, p. 1, Mount Bucknell, Submission No. 22, p. 1

²⁴ P.Bucknell & F. O'Callaghan, Mount Flagstone, submission No. 22

²⁵ Mr John Paul Green, Public Hearing Transcript, 4 October 2016, p. 11, Mr Robbie Katter, public hearing transcript, 4 October 2016, p. 7, Mr Brett McDonald, Submission No. 8, p. 3

²⁶ Mr R Katter MP, public briefing transcript, 14 September 2016, p 1

²⁷ Mr Bruce Currie, Submission No. 17, p. 1, Mount Flagstone, Submission No. 2, p. 1, Mr Christopher Cameron, Submission No. 5, p. 1, Confidential Submission No. 6, p. 1, Ms Carol Mackee, Submission No. 20, p. 1; Mr William Burrell, Submission No. 15, p. 1

²⁸ Mr B Katter MP, public hearing transcript, 2 November 2016, pp 3-4

²⁹ See for example, public hearing transcript, 5 October 2016, p. 16

2.2 2016-17 budget measures

As part of the 2016-17 Queensland Budget, the Government announced a \$77.9 million Rural Assistance and Drought Package, which allocates funds targeted at rural communities significantly affected by debt and drought. The \$36 million Rural Assistance Package component is focused on reducing financial stress and improving financial performance within the rural and regional community.³⁰

2.3 Queensland Regional Adjustment Authority

The *Rural and Regional Adjustment Act 1994* (the Act) established QRAA to administer assistance schemes which support the rural and regional sector in Queensland.³¹

Both Bills considered by the Committee propose amendments to the Act. A comparison of how each Bill would amend the Act is included at **Appendix D**.

The CEO of QRAA, Mr Cameron MacMillan, spoke of the role of QRAA at the Committee's public hearing:

QRAA is a specialist administrator of government financial assistance programs. We have been proudly delivering government funded loans and grants to Queenslanders in good times and in bad for over 21 years. Our priority is to deliver assistance that helps improve the productivity and sustainability of rural and regional Queensland. We also stand ready to support Queensland producers, not-for-profit organisations and business owners to recover following major natural disaster events. QRAA continually invests in our business to ensure that we remain responsive to the emerging needs and policy priorities of the government. Our flagship scheme is the Primary Industry Productivity Enhancement Scheme, which everyone knows as PIPES. This is funded by the Queensland government. QRAA can lend up to \$100 million per year under this scheme. In early October 2016 the maximum loan limits were increased. These changes mean that QRAA can help even more producers in 2016-17.

Under PIPES, budding farmers can make their farming dreams reality with first start loans of up to \$2 million. This is up from \$650,000. This is an important investment in our agricultural future as it assists farming families with their succession planning and helps build our next generation of Queensland farmers. Using PIPES, producers looking to innovate, invest and expand can also secure a sustainability loan of up to \$1.3 million—this is again up from \$650,000—to help their farm businesses thrive.³²

2.4 Rural debt in Queensland

The Committee has heard on multiple occasions from submitters and witnesses, from various background and with differing views, that there is simply a lack of available data on the level of rural debt in Queensland.³³ Similarly, the Taskforce found it difficult to analyse whether there is a rural debt

³⁰ Departmental briefing, Farm Business Debt Mediation Bill 2016 and Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016, p. 2

³¹ *Rural and Regional Adjustment Act 1994*

³² Mr Cameron MacMillan, QRAA, Public Hearing Transcript, 2 November 2016, p. 10

³³ Ms Diane Tate, Public Hearing Transcript, 2 November 2016, p. 7; Mr Peter Perkins, Public Hearing Transcript, 2 November 2016, p. 17; Mr Cameron MacMillan, Public Hearing Transcript, 2 November 2016, p. 13; Mr Charles Burke, Public Hearing Transcript, 2 November 2016, p. 15

crisis in Queensland due to due to a lack of empirical data on level of debt, servicing of debt and profitability.³⁴

Between 1994 and 2011, QRAA undertook biennial rural debt surveys. The last one undertaken by QRAA was in 2011. The 2011 QRAA survey results showed:

- total debt increased \$2.67 billion (19 per cent) to \$16.97 billion on the previous survey conducted December 2009
- average debt per borrower increased by \$152,000 to just over \$1 million per borrower.
- five industries accounted for more than 80 per cent of total recorded rural debt, these being beef (54 per cent of total debt), cotton (7.6 per cent), grain/grazing (6.8 per cent), grain (6.5 per cent) and sugar (5.7 per cent)
- the level of rural debt for the beef industry had increased by \$1.3 billion (17 per cent) from the previous two years to a total of \$9.18 billion; and
- the survey found that 86 per cent of the total debt was classified as "A" (borrowers who are considered viable under most or all circumstances) or "B+" (potentially viable long-term but are experiencing debt servicing difficulties) rated debt.³⁵

QRAA has had difficulty in commissioning a debt survey since 2011 due to the reluctance of commercial lenders to participate in the survey, both for the 2013 and 2015 survey.³⁶ QRAA indicated that this was because the banks would prefer to have a national survey.³⁷ However, the Committee also heard that the methodology of the QRAA debt survey required banks to manually declassify lending data which could have resulted in inaccuracies in the data.³⁸ QRAA indicated that the Department is currently working with banks to put a rural debt survey together.³⁹

The ABA noted that in terms of future data provision, the banking industry understands that accurate and detailed lending data will assist governments to better target policies and assistance measures for farmers and rural communities. The ABA is working with banks and the Federal government to establish a single national data collection model to be undertaken by the Australian Prudential Regulation Authority (APRA). The proposed system will use standardised industry measures to ensure accuracy of the data and overcome methodology challenges with the QRAA Queensland Rural Debt Survey. APRA will then provide the data to the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) to supplement its data collection process.⁴⁰

The proposed model would include total lending by State, loan amount, agriculture activity (ANZSIC classification e.g. grazing, beef farming, etc.) and a measure of debt stress (more than 90-day in arrears).

Importantly, the national collection will include non-bank lenders and creditor providers, and use industry standard measures to ensure accuracy of the data.

³⁴ Chairman's Report, Rural Debt and Drought Taskforce, *Addressing debt and drought problems in rural Queensland*, April 2016, p. 5

³⁵ QRAA, see: <http://www.qraa.qld.gov.au/about-qraa/publications/rural-debt-survey>

³⁶ Mr Tony O'Dea, QRAA, Public Hearing Transcript, 2 November 2016, p. 13

³⁷ Correspondence from the Australian Bankers' Association, dated 8 November 2016, p. 1

³⁸ Ms Diane Tate, Australian Bankers' Association, Letter to Chair dated 8 November, p. 1

³⁹ Mr Cameron McMillian, QRAA, Public Hearing Transcript, 2 November 2016, p. 13

⁴⁰ Correspondence from the Australian Bankers' Association, dated 8 November 2016, p. 1

*All ABA member banks who lend to the agricultural sector have agreed to participate in the national collection.*⁴¹

Rural debt as at June 2015 was \$65 billion, with Queensland, Victoria and New South Wales comprising 71 per cent of that lending.⁴² Suncorp advised that Queensland represents around 28 per cent of the national market based on the 2011 QRAA survey.⁴³

Figure 35: Agriculture – loan outstandings (% distbn)



Source: Neil Clark Associates

Source: Australian Bankers Association, *Agriculture in Australia: activity and financing, Economic Report, September 2016*, p. 19

The ABA indicated that it did not have access to data that indicated what percentage of lending amounts could be in financial distress.⁴⁴

Committee comment

The Committee considers the national approach to collating rural lending data is important to capture a view of Queensland's rural sector. The Committee considers that the Minister should raise this matter with interstate ministers to ensure an appropriate level of data is captured in a consistent manner. This data must be able to identify the lending in individual states.

Recommendation 3

The Committee recommends that the Minister work to establish the rural debt level in Queensland and work with all Australian agriculture ministers to progress a single national approach to data collection that can be broken down to identify the rural debt levels in each jurisdiction.

⁴¹ Correspondence from the Australian Bankers' Association, dated 8 November 2016, p. 1

⁴² Australian Bankers' Association, *Agriculture in Australia: activity and financing, Economic Report, September 2016*, p. 18

⁴³ Suncorp Bank, Submission No. 33 (see submission to Taskforce, December 2015 p. 5)

⁴⁴ Ms Diane Tate, Executive Director, Retail Policy, Australian Bankers' Association, Public Hearing Transcript, 2 November 2016, p. 7

3. Examination of the Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016

The Private Member's Bill would facilitate recommendation 1 of the Taskforce report that "*the Government of Queensland establishes a Rural and Industries Development Bank*".⁴⁵

Clause 6 of the Private Member's Bill would amend the *Rural and Regional Adjustment Act 1994* (the Act) to change the name of QRAA to the rural and Industries Development Bank (RIDB).⁴⁶

The explanatory notes state:

*The new Rural and Industries Development Bank is intended to be able to offer suitably tailored rural loans to business along the supply chain, industry development, a commercial lending facility including recapitalising for restocking and replanting.*⁴⁷

Clause 7 of the Private Member's Bill would amend section 8 of the Act to redefine the Authority's functions. The RIDB would continue to deliver approved assistance schemes, ensuring that the schemes are properly and fairly administered but with an expanded function to give financial assistance, including loans, to approved applicants. The explanatory notes state that the proposed Board of the proposed RIDB would be allowed significant autonomy in crafting regulations for assistance based on industry needs.⁴⁸

Clause 8 of the Bill would provide for the Bank to be able to enter into financial arrangements and do anything else necessary to perform its functions. Clause 4 of the Private Member's Bill defines 'Financial assistance' as including:

- borrowing or raising money
- lending money
- investing money
- restructuring a debt, and
- restructuring the business of a primary producer, or a small business.

The ability of the RIDB to borrow and lend money, restructure debt, and consider funding for infrastructure projects related to agriculture production, aims to help achieve the policy objectives of the Private Member's Bill. The explanatory notes state:

*The reason for the need to restructure debt is that many industry participants have found themselves operating within circumstances where debt restructure is required as a result of exceptional seasonal conditions, flawed government policy and a deflation of capital values with subsequent tightening of available capital to provide industry needs.*⁴⁹

3.1 A rural bank for Queensland?

Mr Katter MP noted in his introductory speech his desire to create structural change to reinvigorate the community, to create some hope and stabilise the decline in rural towns.⁵⁰

⁴⁵ Chairman's Report, Rural Debt and Drought Taskforce, Addressing debt and drought problems in rural Queensland, April 2016, p. ix

⁴⁶ Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016, explanatory notes, p. 1

⁴⁷ Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016, explanatory notes, p. 1

⁴⁸ Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016, explanatory notes, p. 1

⁴⁹ Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016, explanatory notes, p. 1

⁵⁰ Mr Katter, Queensland Parliament, Record of Proceedings, 26 May 2016, p. 2149

Everything at the moment is frozen. The banks have a problem, these businesses have a problem, the businesses in the town have a problem and employment in the town is a problem because at the moment this industry is frozen. It has been seized by the rural debt burden. If we can address that, it will go a long way to reinvigorating towns and providing employment and enabling agriculture...⁵¹

Some submitters supported a rural bank,⁵² while others did not. QFF, AgForce, Suncorp, and the ABA were amongst the submitters that do not support the re-establishment of a rural bank.⁵³

The main reasons outlined in submissions for and against a rural bank are outlined below.

Arguments for a rural bank	Arguments against a rural bank
Level of farm debt and access to finance	No systemic lending failure
Need for financial products tailored to agribusiness	Competitive lending market
Support regional and rural communities	Lack of operational detail in the Bill
Improve long term viability of farms	Farm debt at similar levels to other sectors
	Impact on commercial lending

Lenders understating agriculture

As noted above, one reason raised for a rural bank is the need for financiers that are experienced in agribusiness and understand the cyclical nature of the industry and who would be able to offer products that are tailored to agribusiness needs.⁵⁴ The Committee heard that banks currently fail to offer sufficient products that are tailored to the variabilities of the sector.⁵⁵

As we heard through the rural debt taskforce, the APRA guidelines apply to the rural lenders, make it, in some cases, impossible for them to back and carry what would otherwise be industry leading participants. There are producers out there that are great contributors to our economy and are no way a burden – they are paying their interest- but they do not fit the lending criteria under APRA, which banks have to operate under to be fair to shareholders. The banks themselves will admit that that their products cannot carry people over, say, a three year period of drought or live-

⁵¹ Mr Katter, Queensland Parliament, Record of Proceedings, 26 May 2016, p. 2150

⁵² Mount Flagstone, Submission No. 2, p. 1; Confidential Submission No. 3, p. 1; Mr Ross Bensted, Submission No. 4, p. 5; Mr Christopher Cameron, Submission No. 5, p. 1; Confidential Submission No. 6, p. 1; Mr Brett McDonald, Submission No. 8, p. 3; Mr Paul Faigl, Submission No. 10, p. 1; Mr Edward Wade, Submission No. 11; p. 1, Australian Cane Farmers Association, Submission No. 12, p. 2; Mr William Burrell, Submission No. 15, p. 1; Mr Bruce Currie, Submission No. 17, p. 3; Banana Shire Council, Submission No. 18; Mr Charlie Phillott, Submission No. 19, p. 1; Ms Carol Mackee, Submission No. 20, p. 1; Mr Michael Bruderlin, Submission No. 21, p. 1

⁵³ AgForce, Submission No. 13, p. 3; Suncorp, Submission No. 14, p. 1, Australian Bankers' Association, Submission No. 15, p. 1, Mr Peter Perkins, Public Hearing Transcript, 2 November 2016, p. 18

⁵⁴ Confidential Submission No. 3, p. 1; Ms Sally Witherspoon, Submission No. 7, p. 1; Mr Bruce Currie, Submission No. 17, p. 1

⁵⁵ Mount Flagstone, Submission No. 2, p. 1; Mr Ross Bensted, Submission No. 4, p. 1; Mr Christopher Cameron, Submission No. 5, p. 1; Ms Sally Witherspoon, Submission No. 7, p. 1

*export ban. They cannot accommodate these people. Otherwise they are good viable prospects.*⁵⁶

Australian Canefarmers noted:

*The variables which form the risk profile of agricultural businesses do not always align with the risk appetite of financial institutions.*⁵⁷

However, the ABA notes that banks do understand that cash flows for farms are much more variable and uncertain than for most other businesses, a reflection of the sector's seasonality, climate variability and commodity fluctuation. It states that *[a]round 93 per cent of agriculture businesses which seek debt finance are successful in obtaining the required funding. This is a higher success rate than any other business sector other than health.*⁵⁸ Further, only 15.5 per cent of businesses in agriculture, forestry and fishing (nationally) cite a lack of access to funds as a barrier to their business activity and performance. This is lower than the average for industries overall (16.5 per cent), mining (26.1 per cent) and accommodation and food (26.0 per cent).⁵⁹

Supporting unviable businesses

A concern with the establishment of a State rural bank is that its capital may be used to support 'unviable' farmers. AgForce indicated in its submission that there are many responsible operators of previously strong businesses who have prepared for climate risk and who, given appropriate short term assistance, will be able to overcome current financial pressures. These producers need help. A return to profitability by them, can help support local communities. In dealing with non-performing debt, access to affordable and industry relevant financing is important from private and public sources.⁶⁰

Although industry participants are in financial stress, the explanatory notes state that currently, there is *'no market for producers and others who fall outside tight financial guidelines but who can still present a case for a viable future.'*⁶¹

Suncorp does not support measures that may help some farmers in the short term, but would be detrimental impact on the sector as a whole. The provisions in the Bill would see financial support given to farmers struggling with repayments requiring significant taxpayer investment of capital and creation of a bureaucracy.⁶²

Suncorp provided evidence of its work with farmers on an individual basis to support them through challenging conditions.⁶³

⁵⁶ Mr Katter, Queensland Parliament, Record of Proceedings, 26 May 2016, p. 2151

⁵⁷ Australian Cane Farmers, Submission No. 12, p. 1

⁵⁸ Australian Bankers' Association, Agriculture in Australia: activity and financing, Economic Report, September 2016, p. 24

⁵⁹ Australian Bankers' Association, Agriculture in Australia: activity and financing, Economic Report, September 2016, p. 22

⁶⁰ AgForce, Submission No. 13, p. 5

⁶¹ Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016, explanatory notes, p. 2

⁶² Suncorp, Submission No. 14, p. 1

⁶³ Suncorp, Submission No. 14, p. 1

Lack of detail in the Private Member's Bill

While the Committee has heard some support for the establishment of a rural bank, there was general consensus that the Private Member's Bill lacks sufficient detail.⁶⁴

AgForce notes that:

*There is a lack of detail in the Bill and in the 2-page Explanatory Notes, about how the RIDB would be structured and practically operate which makes it difficult to assess the proposal with confidence.*⁶⁵

Agforce outlined seven areas for clarification that need to be addressed. these areas related to the regulatory arrangements of a RIDB with direct lending capacity, how commercial lenders would view a RIDB, eligibility criteria of lending products, refinancing of distressed loans, the cost to government of a RIDB, and how a potential privatisation of a commercial RIDB would be managed longer term.⁶⁶

The Department noted that currently QRAA provides loans (discussed above at 2.3) and can borrow funds, e.g. from the Commonwealth to administer the Commonwealth concessional loans schemes. However, the many regulatory and legal arrangements that apply to a bank would limit how prescriptive the Queensland Government could be with respect to its operation and on the basis upon which it could lend.⁶⁷

*Banking is regulated by the Commonwealth, so the State has no capacity to override these requirements. The regulatory environment has changed significantly since the Global Financial Crisis and a State-owned bank today would be subject to significantly more controls and restrictions than was the case when the State owned Queensland Industry Development Corporation.*⁶⁸

Mr Katter MP responded to the issues around the national regulation of banking institutions. He said *that the best way we can address that is through providing a lending mechanism that is not restricted by either, in the commercial area, the APRA rules or the very limiting restrictions that are in the drought concessional loans or those other concessional loans that are available through the government at the moment.*⁶⁹

Committee comment

Both the Private Member's Bill and the explanatory notes lack detail on how the RIDB would operate and how it would work within the national regulatory framework.

The Committee thanks the Member for Mt Isa for his attendance at a number of the Committee's public hearings and briefings.

However, the Committee is not satisfied that there is a need for a rural bank to be re-established in Queensland. Importantly, the Committee has concerns around the regulation of such an entity that have not been allayed during this inquiry. It is for these reasons that the Committee does not support the passage of the Private Member's Bill. Further, the Committee is also considering the Farm Debt Mediation Bill 2016. The proposed changes to QRAA to enact a new QRIDA and the recent increases

⁶⁴ Mr Graham Paterson, Submission No. 1, p. 1; AgForce, Submission No. 13, p. 2; Australian Bankers' Association, Submission No. 16, p. 1

⁶⁵ AgForce, Submission No. 13, p. 2

⁶⁶ AgForce, Submission No. 13, pp 3-5

⁶⁷ Departmental written briefing, Farm Business Debt Mediation Bill 2016 and Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016, Information 2, p.2

⁶⁸ Departmental written briefing, Farm Business Debt Mediation Bill 2016 and Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016, Information 2, p.2

⁶⁹ Mr Robbie Katter, Public Hearing Transcript, 4 October 2016, p. 7

to the schemes administered by the proposed Authority if that bill is passed will negate the need for a state rural bank.

4. Rural and Regional Adjustment (Development Assistance) Amendment Bill 2016 – consideration of fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’.

The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles (FLPs) to the Private Member’s Bill and has found potential FLP issues in relation to clause 4.

Section 4(3)(k) of the *Legislative Standards Act 1992* requires legislation be unambiguous and drafted in a sufficiently clear and precise way. Plain English is recognised as the best approach to the use of language in legislation, with the objective to produce a law that is both easily understood and legally effective to achieve desired policy objectives.⁷⁰

The Committee notes that section 4(2) changes the name of the QRAA to the RIDB yet the RIDB is still referred to as the ‘authority’. This may cause confusion, particularly as clause 4(1) of the Bill allows the RIDB to lend money and restructure debt in keeping with the functions of a bank.

Committee comment

The Committee considers that clause 4(2) of the Private Member’s bill is not drafted in a sufficiently clear and precise way.

Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Private Member’s Bill. They contain some of the information required by Part 4, however they do not include a simple explanation of the purpose and intended operation of each clause of the Bill as required by section 23(h) of the *Legislative Standards Act 1992*. This Committee notes that this information would be helpful in understanding the Private Member’s Bill’s aims, in particular the expected operations of the RIDB.

⁷⁰ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, pp 87-88.

5. Examination of the Farm Business Debt Mediation Bill 2016 – Farm Debt Mediation

As noted above, the explanatory notes state that the policy objectives of the Government Bill are to:

- establish a new Farm Business Debt Mediation Act which will provide a process for the efficient and equitable resolution of farm business debt matters between mortgagees and farmers
- replace QRAA with the QRIDA and expand its functions
- provide more appropriately for use of viruses as biological control agents
- provide for third party biosecurity accreditation systems as an alternative to government accreditation of certifiers or government certification for animals, animal products, plants, plant products or other biosecurity risk items, and
- enable lawful growers of cannabis in Queensland to supply seed to be used for cultivation of medicinal cannabis under a Commonwealth licensing system.⁷¹

Most submitters that commented on the Government Bill were supportive of its intent and suggested amendments to improve the legislation, discussed below.

Committee comment

The Committee supports the Government Bill and has recommended it be passed subject to the proposed amendments in this report. The Committee also considers that the legislation should be reviewed after a reasonable timeframe to ensure its operational effectiveness and efficiency.

Recommendation 4

The Committee recommends that the Minister amend the Government Bill to provide for a review of the legislation after 5 years.

5.1 Consistency with other jurisdictions

The Government Bill is based on the New South Wales *Farm Debt Mediation Act 1994*.⁷² A comparison of the Government Bill and other jurisdictions is at **Appendix E**.

The Queensland Bill differs from the New South Wales legislation as follows:

- some notice timeframes are shorter
- farmers and mortgagees have an opportunity to show cause why they have not participated in mediation before either an exemption notice or enforcement action suspension certificate notice is issued
- the authority will also look at a farmers particular circumstances in determining whether they have refused to mediate, and
- the NSW Act specifically states that it does not apply if a farmer has previously mediated and defaulted under the agreement.

A number of submitters and witnesses advised that while the Government Bill is based on and similar to the New South Wales Act, the Government Bill is much more prescriptive than the New South Wales legislation.⁷³

The Department advised in its written response to submissions that the Federal Government is working with state and territory governments, National Farmers' Federation and the ABA to establish

⁷¹ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 1

⁷² Queensland Parliament, Record of Proceedings, 31 August 2016, p. 3125

⁷³ National Australia Bank Agribusiness, Submission No. 36, p. 1; Suncorp, Submission No. 33, p. 5; Queensland Farmers' Federation, Submission No. 29, p. 3; Queensland Law Society, Submission No. 31, p. 2

guidelines for a nationally consistent approach to farm debt mediation. The Committee understands that the New South Wales legislation will be the basis for any national approach and it is therefore it is expected the Queensland legislation will be consistent with a national approach as it is largely based on the *Farm Debt Mediation Act 1994* (NSW). However, the Committee heard that reaching an outcome on the national guidelines may be some way off.⁷⁴

Committee comment

The Committee notes the Department's advice that the New South Wales legislation is the basis for the national discussion but heard evidence, discussed below, that there are areas for improvement on the current Bill and the New South Wales model.

The Committee therefore considers that Queensland should lead the way with best practice legislation which can inform and drive a national approach.

5.2 The proposed Queensland Rural and Industry Development Authority (QRIDA)

The Rural Assistance Package announced by the Government recognises that the agricultural sector is vulnerable to external factors such as climate, market changes and access to rural credit. These factors impact on the viability of industries within the sector. Approximately \$36 million of the Rural Assistance Package is targeted at reducing financial stress in rural areas and improving financial sustainability to the rural sector.⁷⁵

A key component of the Rural Assistance Package is the replacement of QRAA with the QRIDA and expanding its functions.⁷⁶ Division 5 of Part 9 of the Government Bill would amend the *Rural and Regional Adjustment Act 1994* to replace QRAA with the Queensland Rural Industry Development Authority (QRIDA).⁷⁷

Under the Bill, the functions and services provided by QRIDA would be greater than those provided by its predecessor. QRIDA would have additional responsibilities related to:

- carrying out research, developing policies and providing advice to the Minister about the financial performance and sustainability of the rural and regional sector in Queensland (Division 5, clause 127). QRIDA would be required to partner with commercial lenders and financial advisers in the performance of its functions e.g. proactively promoting joint lending options and negotiating security rankings or priorities⁷⁸, and
- the administration of some aspects of the new farm debt mediation process including the accreditation of mediators, decision making regarding applications for enforcement action suspension certificates and exemption certificates, and the review of decisions (Parts 4, 5 and 6).

The Bill would allow QRIDA to be more flexible and improve its efficiency by providing assistance to communities in rural and regional Queensland, where government agencies, want to use QRIDA's services. For example, future assistance could include grants to community service providers, sporting, cultural and other organisations, subject to an appropriate scheme being prescribed by regulation.⁷⁹

The Department advised that QRAA currently administers schemes and the Government Bill would extend that. For example, renewal of farming communities will be assisted under the Rural Assistance Package by doubling the upper limit of first start loans offered by the new authority to \$2 million and

⁷⁴ Mr George Fox, Public Hearing Transcript, 2 November 2016, p. 22

⁷⁵ Department of Agriculture and Fisheries, written briefing, 7 September 2016, p. 1

⁷⁶ Department of Agriculture and Fisheries, written briefing, 7 September 2016, p. 1

⁷⁷ Farm Business Debt Mediation Bill 20016, Part 9, division 5

⁷⁸ Department of Agriculture and Fisheries, written briefing, 7 September 2016, p. 10

⁷⁹ Department of Agriculture and Fisheries, written briefing, 7 September 2016, p. 2

a re-examination of eligibility requirements. The changes will enable young farmers entering farming to access more capital at lower interest rates. In response to questions from the Committee regarding concerns around the eligibility requirement meaning farmers cannot access the current QRAA funds, the Department advised that each scheme administered by QRAA has its own funding. The eligibility criteria to access QRIDA funds will be set out in regulation.⁸⁰

The Government Bill also clarifies the authority's powers to lend money and allow the Board to appoint an acting chief executive officer.⁸¹

Most submitters who commented on the proposed changes to QRAA in the Government Bill were supportive of the scheme.⁸²

5.3 Early intervention

The introduction of a compulsory farm debt mediation process was seen as a positive step by many submitters and witnesses,⁸³ although a number of submitters noted that the Government Bill concentrates on the end result rather than early intervention to find solutions available to the farmer.⁸⁴ Concerns were also raised regarding the prescriptive nature of the proposed farm debt mediation scheme compared to the current Queensland Farm Finance Strategy (QFFS), which could make transition from voluntary scheme more difficult.⁸⁵

Resolution by negotiation

Resolution through negotiation is the preferred option under the current, voluntary QFFS.⁸⁶ Evidence was provided that farmers often avoid mediation due to mortgagees accepting proposals prepared by Rural Financial counsellors.⁸⁷ Forty-nine per cent of cases assisted by Rural Financial Counsellors in 2015 and 2016 (to date) were addressed and achieved agreement without formal farm debt mediation.⁸⁸ Resolving the problem by negotiation can also lead to an agreement between farmers and mortgagees without expense, physical travel, and the emotional distress of formal farm debt mediation.⁸⁹

The RFCS North Queensland indicated that it would be desirable that these agreements had the same conditions, with respect to the costs of preparation, and future monitoring costs of the agreement be recognised under the Act and applied to Negotiated Agreements between the issue of an enforcement notices and mediation occurring.⁹⁰

The Department advised that the Government Bill does not prevent the early intervention or resolution of farm debt issues outside the scheme. The Government Bill would require the mortgagee to provide an enforcement action notice to the farmer, notifying the farmer of the mortgagee's

⁸⁰ Department of Agriculture and Fisheries, Public Briefing, 14 September 2016, pp 2-6

⁸¹ Department of Agriculture and Fisheries, written briefing, 7 September 2016, p. 3

⁸² Suncorp, Submission No. 4, p. 2; Australian Bankers' Association, Submission No. 16, p. 2

⁸³ Mr Robbie Katter, Hansard Transcript, 4 October 2016, p 8; Resolution Institute, Submission No. 26, p. 1; Mr Peter O'Regan, Public Hearing Transcript, 4 October 2016, p. 2

⁸⁴ Rural Financial Counselling Service, Southern Queensland, Submission No. 37, p. 4

⁸⁵ Queensland Farmers' Federation, Submission No. 25, p. 4; Legal Aid Queensland, Submission No. 29, p. 3

⁸⁶ Queensland Farm Finance Strategy, 1 February 2008, p. 7

⁸⁷ Rural Financial Counselling Service, Southern Queensland, Submission No. 37, p. 4

⁸⁸ Rural Financial Counselling Service, Southern Queensland, Submission No. 37, p. 5

⁸⁹ Rural Financial Counselling Service, Southern Queensland, Submission No. 37, p. 4

⁹⁰ Rural Financial Counselling Service North Queensland, Submission No. 30, p. 4

intention to commence enforcement action and providing the farmer with the option of mediation in the first instance.⁹¹

5.4 Resourcing of mediators and advisors

Rural Financial Counselling Service

The Rural Financial Counselling Service (RFCS) is a free and confidential service that is delivered through two service providers in Queensland based in Longreach and Roma. The RFCS is a Commonwealth funded program however, the Queensland Government is providing grant assistance to the service providers in 2016-17. There are around 18 RFCS positions in Queensland.

Some witnesses suggested that there were too few rural financial counsellors. However, in March 2016, the Federal Department of Agriculture and Water Resources (DAWR) announced a funding increase of \$5.9 million over the next two years to fund around 17 additional full-time rural financial counsellors nationally.⁹²

A 2014 Federal review of the Rural Financial counselling Service found that nationally, there was excess capacity in the Service in some areas.⁹³ It also found that ‘mission creep’ had occurred over the time and resulted in less demand for services in some areas with counsellors providing more in-depth, time consuming services which are less related to financial hardship.

The DAWR RFCS grant programme guidelines detail the 2016-2019 funding for the RFCS. The funding allocation for each of the 12 predefined regions is based on farm numbers, low cash income farms and debt profiles. (Queensland North and Queensland South are two of the 12 areas). The funding detailed in the report for Queensland is provided below:⁹⁴

Geographical Region	2015–16 (part year)	2016–17	2017–18	2018–19
Northern Queensland	\$276,485.00	\$1,030,257.80	\$1,047,849.00	\$1,065,641.50
Southern Queensland	\$483,466.50	\$1,804,751.30	\$1,835,560.10	\$1,866,722.00

Legal Aid Queensland Farm and Rural Legal Service

Legal Aid Queensland’s Farm and Rural Legal Service (FRLS) was established in the mid 1990’s to provide advice and assistance to rural producers and businesses who have severe debt related problems or are in dispute with lenders or otherwise face business related financial hardship. The FRLS service is free of charge and there is no income or asset test applied.

The FRLS is serviced by Denis McMahon, a Senior Lawyer with Legal Aid Queensland. A number of submitters noted the valuable work of Mr McMahon in providing legal advice to farmers in financial distress. Mr McMahon advised that in 2012-13 there were 38 mediations; in 2013-14 there were 43;

⁹¹ Department of Agriculture and Fisheries, response to submissions, p. 31

⁹² Department of Agriculture and Water Resources, see: http://www.agriculture.gov.au/ag-farm-food/drought/assistance/farm-finance/counsellors_funding

⁹³ National Rural Advisory Council, *Report on the Review of the Rural Financial Counselling Service program*, Department of Agriculture, available at: <http://www.agriculture.gov.au/ag-farm-food/drought/nrac/review-rfcs/review-rfcs>

⁹⁴ Australian Government, Department of Agriculture, Rural Financial Counselling Service Programme 2016 to 2019 Grant programme guidelines, September 2015, p. 4, available at: <http://www.agriculture.gov.au/SiteCollectionDocuments/ag-food/drought/rfcs/rfcs-2016-to-2019-grant-guidelines.pdf>

in 2014-15 there were 58. Between 1 July 2015 and 4 October 2016, there were only 9 mediations.⁹⁵ While this would suggest that there is currently a downturn in the need for mediation, variable conditions, outside the control of farmers, mean that there is likely to be an increased need for this service into the future.

The Committee heard that currently in Queensland, mediation may need to be delayed due to the availability of Mr McMahon.⁹⁶ Mr McMahon stated that he has been the only lawyer providing this service since around 2005; previously there were 2 lawyers.⁹⁷

Mr McMahon noted the drop in mediations but suggested that at least one more lawyer is required to service this area of need.⁹⁸

Committee comment

The Committee notes the good work undertaken by Mr McMahon and recommends that if the Government Bill is passed that the Minister ensure sufficient funding be provided to Legal Aid Queensland for an additional senior lawyer within the FRLS.

Additionally, the Committee notes that farmers' participation in a mandatory scheme will come at some financial cost. Mediation under the Government Bill comes at a time of severe financial and emotional stress for the farmer and their family. There are significant consequences for the farmer if they fail to mediate satisfactorily (see e.g. cls 49, 49, 53); the mortgagee can apply and may be granted an exemption certificate exempting them from the obligation to mediate. This means that enforcement action can commence.

In order to mediate satisfactorily, the Bill would require the farmer to (take reasonable steps to) provide certain documents and to participate in the meetings for the mediation. This all costs money and in a time of such financial distress, the farmers may struggle to be able to engage in the mediation process. Accordingly, the Committee considers that the recommended funding to Legal Aid Queensland also provide for assistance to farmers with outlays related to their participation in this legislated mediation process.

Recommendation 5

The Committee recommends that the Minister provide additional funding of the Legal Aid Queensland Farm and Rural Legal Service to employ a further senior lawyer and provide financial assistance to farmers with outlays related to their participation in the mediation scheme.

5.5 Operational details in the Bill

The QFFS currently provides a framework for farm debt mediation between farmers and banks. It is a voluntary set of protocols created by the QFF and the ABA in 1996 and reviewed in 2008.

The Committee heard that the QFFS is less prescriptive than the Government Bill and allows flexibility in, for example, alternative means of resolving the issue, including early intervention.⁹⁹

The Committee heard that the workability of the Government Bill would be enhanced if the Bill reflected the broad policy intent and principles of the legislation, with the machinery being in regulations (thereby being more easily amendable to amendment, as circumstances change and

⁹⁵ Mr Denis McMahon, Legal Aid Queensland, Public Hearing Transcript, 4 October 2016, p 20

⁹⁶ Mr George Fox, Public Hearing Transcript, 2 November 2016, p 25

⁹⁷ Mr Denis McMahon, Public Hearing Transcript, 4 October 2016, p. 20

⁹⁸ Mr Denis McMahon, Public Hearing Transcript, 4 October 2016, p. 23

⁹⁹ Legal Aid Queensland, Submission No. 29, p. 2

experience is gained).¹⁰⁰ Some submitters however, consider that some of the matters proposed to be prescribed by regulation (e.g. additional documents that may be required and when mediation is satisfactory) should be included in the Government Bill.

The Committee notes that s 4(4)(a) of the *Legislative Standards Act 1992* provides that a Bill should allow the delegation of legislative power only in appropriate cases. The Department advised that the greater the level of potential interference with individual rights and liberties the greater will be the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.¹⁰¹ It went on:

*Many of the requirements in the Bill are critical to the obligation to mediate and represent significant imposts on the parties so it is proper that they are specified in the Bill.*¹⁰²

The Department however, accepted that some material in the Government Bill could properly be prescribed in regulation e.g. the detail about the process of nominating a mediator could be prescribed in the regulation.¹⁰³

Recommendation 6

The Committee recommends the Minister review the Government Bill to ensure that provisions appropriate for regulation are removed from the Government Bill.

5.6 Possible conflict of QRIDA

The QFF submitted that there is a potential conflict of interest due to QRIDA remaining a lender, in addition to being able to accredit mediators and decide applications for an enforcement action suspension certificate or exemption certificate. QFF also raised these concerns during the consultation period with DAF.¹⁰⁴

The Department advised in its written response to the submissions that the proposed new QRIDA will implement a governance framework which will maintain information barriers between its lending and farm business debt mediation functions. Specifically a separated service delivery will be created with the establishment of a Farm Business Debt Mediation Unit to implement the requirements of the Act. The unit will be physically located in a separate part of the QRIDA office distant from the lending team. All system and information access and record keeping relating to the unit's functions under the Act will be secured and controlled via individual user approval and authentication processes. Further, responsibility for internal reviews related to farm business debt mediation, including accreditation, will be delegated to the General Manager, Corporate Strategy and Operations within QRIDA as the chief executive officer will be involved in the lending and internal appeal process.¹⁰⁵

Committee comment

The Committee is satisfied with the Department's advice on this issue.

¹⁰⁰ Mr George Fox, Public Hearing Transcript, 2 November 2016, p. 25

¹⁰¹ Department of Agriculture and Fisheries, written briefing, dated 8 November 2016, p.12

¹⁰² Department of Agriculture and Fisheries, written briefing, dated 8 November 2016, p. 12

¹⁰³ Department of Agriculture and Fisheries, written briefing, dated 8 November 2016, p. 9

¹⁰⁴ Queensland Farmers' Federation, Submission No. 25, p. 3

¹⁰⁵ Department of Agriculture and Fisheries, response to submissions, pp.2-3

5.7 Definitions

Clause 6

Clause 6 of the Government Bill defines mediation for a farm business debt as one or more meetings conducted by a mediator to facilitate discussion between the farmer and the mortgagee. The Resolution Institute considers that this definition could be amended to provide for mediation by electronic means.¹⁰⁶

The Department acknowledged that the current drafting suggests the meetings must be in person. The department further advised that the intention is to facilitate as convenient a mediation process as possible, DAF agrees that there would be benefits of amending clause 6 to include that mediation meetings can be conducted using electronic means. The amended provision could be modelled on section 203G (Conduct of meetings) of the *Penalties and Sentences Act 1992*. The mediation guidelines made by the Authority could provide guidance on whether both parties must agree to mediation by electronic means before this is arranged.

Committee comment

The committee notes the Department's agreement that this is a sensible amendment. The Committee considers that the electronic meetings must be practical and that the farmer must have sufficient access to the services required for electronic meetings.

Recommendation 7

The Committee recommends that clause 6 be amended to provide for electronic meetings where both parties agree.

Clauses 5 and 8

Clause 5 of the Government Bill defines 'farm business debt':

Meaning of farm business debt

A farm business debt is an amount owed by a farmer that—

(a) was borrowed for the purpose of conducting a farming business; and

(b) is secured by a farm mortgage.

Clause 8 of the Government Bill details references in the Bill. Clauses 8(a) and (b) provide:

(a) a reference to the farm mortgage is a reference to the farm mortgage that secures the farm business debt; and

(b) a reference to the farm business debt is a reference to the farm business debt that is secured by the farm mortgage;

The dictionary at schedule 1 of the Government Bill defines a farm mortgage as a mortgage of a farm property.

The explanatory notes state that the Act would relate to farmers who owe farm business debts to mortgages in relation to farm mortgages that have the farmer's property as security. Mortgages secured by things other than farm land are not relevant to the provisions in the Act.¹⁰⁷

¹⁰⁶ Resolution Institute, Submission No. 26

¹⁰⁷ Explanatory Memorandum, Farm Business Debt Mediation Bill 2016, p. 15; Legal Aid Queensland, Submission No. 29, p. 11

Concerns were raised that livestock mortgages and crop liens would be excluded from mediation.¹⁰⁸ This is an issue in Queensland due to the size of the beef industry compared to other states. Evidence was provided that over the next few years we would see an increase in livestock mortgages as value of livestock increases after the drought. The issue of stock mortgages may become an issue to a farmer if they are forced to sell stock at an inopportune time.¹⁰⁹

While the Government Bill is based on the New South Wales legislation, it differs in that the New South Wales Act provides for mortgages over farm machinery but specifically excludes stock mortgage, crop or wool lien.¹¹⁰ The New South Wales legislation defines farm mortgage as:

farm mortgage includes any interest in, or power over, any farm property securing obligations of the farmer whether as a debtor or guarantor, including any interest in, or power arising from, a hire purchase agreement relating to farm machinery, but does not include:

(a) any stock mortgage or any crop or wool lien, or

(b) the interest of the lessor of any farm machinery that is leased.¹¹¹

Several stakeholders told the Committee that farm debt is not isolated to a mortgage over real property – farm debt covers the costs of running the business too. The Committee heard that the farm property mortgage debt levels are inflated and are disproportionate to the business opportunities and returns available from the farm. Lending practices have allowed large mortgages over property for farming businesses where the returns are around 2 per cent and the loan interest is around 5-6 per cent. This not an attractive investment for many young people who would otherwise want to either start a farming business or take over the family farm business.¹¹²

For a successful farm to operate, many farmers need credit for e.g. farm machinery, re-stocking produce or crops. The costs to farm business of stock can be around \$1500 per cow and calf. When re-stocking a farm it is easy to see how large such debts can accrue. The Committee heard that under some stock mortgages, farmers can be forced, under the stock mortgage contracts, to sell their stock at an inopportune time with low returns.¹¹³ Farm machinery can incur large loans and is necessary to most farming businesses.

Some stakeholders sought an extension of the definition of ‘farm mortgage’ to cover stock and machinery.¹¹⁴ Legal Aid Queensland stated:

It is common for a mortgagee to take security over all the farmer’s assets including the farm lands, machinery, livestock and produce to secure the farm business debt. These forms of security are not subject to the CRFA and are separate contracts to those entered into under the CRFA.

¹⁰⁸ Mr Peter O’Regan, Public Hearing Transcript, 4 October 2016, p. 2; Legal Aid Queensland, Submission No. 29, p. 11

¹⁰⁹ Mr Peter O’Regan, Public Hearing Transcript, 4 October 2016, p. 2

¹¹⁰ See *Farm Debt Mediation Act 1994* (NSW), cl 4 (definitions)

¹¹¹ *Farm Debt Mediation Act 1994* (NSW), cl 4 (definitions)

¹¹² Mr Edward Wade, Public Hearing Transcript, 5 October 2016, p. 20; Mr Peter O’Regan, Public Hearing Transcript, 4 October 2016, p. 4; Mount Flagstone, Submission No. 2, p. 2; Mr Christopher Cameron, Submission No. 5, p. 1; Confidential Submission No. 6, p. 1; Mr Brett McDonald, Submission No. 8, p. 3; Mr Bruce Currie, Submission No. 17; Ms Carol Mackee, Submission No. 20, p. 1; Mr Ben Rees, Submission No. 27, p. 3

¹¹³ Mr Peter O’Regan, Public Hearing Transcript, 4 October 2016, p. 2

¹¹⁴ Rural Financial Counselling Service North Queensland, Submission No. 30, p. 1; Legal Aid Queensland, Submission No. 29, p. 3; Mr Peter O’Regan, Public Hearing Transcript, 4 October 2016, p. 2

*The definition of “farm property” contained in the Dictionary in Schedule 1 to the Bill does not include farm machinery used by a farmer in connection with a farming business and yet secured to the mortgagee. Machinery held under a general security or company mortgage/charge is not proposed to be considered at mediation. This is despite farm machinery forming part of the security mix for the farm business debt, resulting in not all secured assets being considered in mediations under the new legislation and this will impact on the effectiveness of the process.*¹¹⁵

The Department noted that the New South Wales and Victorian legislation definitions of ‘farm mortgage’ include farm machinery but exclude stock.¹¹⁶ It advised that the terms ‘farm property livestock’ and ‘crops’ terms are not defined in the Government Bill and would have their normal meaning. It considers the Government Bill adequately encompasses all relevant farming businesses. The Government Bill only applies where there is a mortgage over farm land (which includes certain water rights) but that does not preclude livestock, crops and machinery which form part of the security for a loan being discussed during mediation and, where appropriate, addressed in a heads of agreement.¹¹⁷

The explanatory notes state that the *Credit (Rural Finance) Act 1996* applies to the enforcement of mortgages over farm equipment so farm equipment has not been included in the definition of farm property.¹¹⁸

The purpose of the *Credit (Rural Finance) Act 1996* is to provide protection to farmers against the enforcement of mortgages over equipment they use to carry out their farming businesses. A mortgagee must give at least 30 days’ notice before exercising a right to take possession of, or sell, farm equipment. Additionally, a court may make an order allowing a farmer to keep possession of equipment, for up to 1 year, if the equipment is used to carry out the farmer’s farming business and the court considers, among other things, that the farmer has a reasonable prospect of being able to remedy any default.¹¹⁹

The LAQ disputes that the *Credit (Rural Finance) Act 1996* applies to all farm machinery because that Act defines a farmer as an **individual** whose sole or principal business is a farming business.¹²⁰ The *Acts Interpretation Act 1954* defines individual to mean a natural person”; “person” is defined but a “natural person” is not defined. LAQ submits that the usual meaning of a ‘natural person’ would not mean or include a corporation.¹²¹

LAQ submits that the definition of farmer in the CRFA excludes farming enterprises conducted by a trust or company and therefore farm machinery secured by a company or trust will be excluded under the CRFA and the Bill. Farm machinery secured under a general security is also excluded under both the CRFA and the Bill.

Many farmers are not protected by the CRFA due to the trading structures adopted by farmers. The definition of the term “the business of farming” or “farming business” has changed over that time and it is submitted that the definition is now too narrow to

¹¹⁵ Legal Aid Queensland, Submission No. 29, pp 10-11

¹¹⁶ See *Farm Debt Mediation Act 1994* (NSW), cl 4 (definitions), and *Farm Debt Mediation Act 2011* (Vic).

¹¹⁷ Department of Agriculture and Fisheries, response to submissions, p. 16

¹¹⁸ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 13

¹¹⁹ *Credit (Rural Finance) Act 1996*, s. 4

¹²⁰ *Credit (Rural Finance) Act 1996*, Schedule

¹²¹ Legal Aid Queensland, Submission No. 29, pp 10-11

*accurately reflect the reality of modern day farming enterprises and accounting practices.*¹²²

The Department advised that expanding the definition of ‘farmer’ to broaden the application of the *Credit (Rural Finance) Act 1996* to corporations and other entities may have a range of unintended consequences in the marketplace. The proposal is outside the scope of the Government Bill.¹²³

Committee comment

When a farmer is in a situation where mediation will be offered under the Government Bill, it is clear that they will also have debts relating to the running of the farm business, not just the mortgage over the property. It is also clear that those other debts will likely be substantial. The process of mediation will be a stressful time for the farmer. As such, the Committee considers that the more that can be achieved to resolve debt issues in the one mediation the better, within reason.

We note the explanatory notes provide that machinery loans are covered by the *Credit (Rural Finance) Act 1996* however, the evidence before the Committee suggests that some farmers will be excluded from that Act and therefore from the protections that apply under that Act. The Department’s response that it is outside the scope of the Bill does not provide any support or protections for farmers.

Accordingly, the Committee considers that the Government Bill should be amended, in accordance with the New South Wales and Victorian legislation, to include farm machinery in the definition of ‘farm mortgage’.

Recommendation 8

The Committee recommends that the definition of farm mortgage be amended to include farm machinery.

Definition of default

Default is defined in the Schedule of the Government Bill:

default, under a farm mortgage, means a failure to perform an obligation that, under the terms of the mortgage, is a ground for enforcement action.

The New South Wales Act defines default as:

default, in relation to a farm mortgage, means failure to perform an obligation that, under the terms of the mortgage, is a ground for enforcement action.

Note. Examples of default on the part of a farmer include failure to pay the principal, interest or other money the payment of which is secured by a farm mortgage; failure to keep the property subject to the farm mortgage insured; and failure to submit financial statements required by the creditor.¹²⁴

A number of submitters and witnesses advised that creditors will sometimes commence enforcement action where there is no default, or no failure to perform an obligation (e.g. repay the capital and interest) under the terms of the mortgage, on the part of the farmer with respect to the payments of the loans. These enforcement actions occur because the loan to value ratio of the property the subject of the mortgage has changed (i.e. where the value of the property has changed from when the loan was negotiated and agreed).

Submitters were understandably upset that a farmer who is meeting their repayment and other obligations under the loan agreement can have a request for mediation made by their bank and

¹²² Legal Aid Queensland, Submission No. 29, pp 10-11

¹²³ Department of Agriculture and Fisheries, response to submissions, p. 16

¹²⁴ *Farm Debt Mediation Act 1994* (NSW), s. 4

enforcement action commenced if they do not mediate. This could result in them losing not only their businesses but their home too. Some submitters consider that the Government Bill would allow that to continue by providing that the creditor can request mediation regardless of whether the farmer is in default or not.¹²⁵ The Committee also heard that this practice is rare today.

The Department noted that the intent of the Government Bill is broadly to require a mortgagee to offer mediation and, at the request of the farmer, to participate in mediation in good faith, in all those circumstances in which the mortgagee might be entitled to take enforcement action. To achieve this the definition of 'default' in the Government Bill needs to be as broad as the triggers for enforcement action are in mortgages.

The Department accepts that the current definition only relates to a failure to perform an obligation under the terms of the contract and supports amendment of the definition of 'default' to ensure it includes all circumstances that, under the terms of the mortgage, are grounds for enforcement action. Otherwise some farmers might miss out on the opportunity to request mediation before enforcement action is taken by the mortgagee.¹²⁶

Committee comment

The Committee notes that the definition of default would benefit from an amendment to provide that a mortgagee must offer mediation to a farmer under the scheme where the loan to value ratio is altered. This will ensure that the mortgagee cannot claim that the Act (if passed) does not apply in that situation.

Recommendation 9

The Committee recommends that the definition in the Government Bill (Farm Debt Mediation Bill 2016) of 'default' be amended to provide that a mortgagee must offer mediation to a farmer under the scheme where the mortgagee seeks to commence enforcement action when the loan to value ratio is altered

5.8 Application of the Government Bill where there was previous mediation

A key element of the QFFS is that financial problems encountered by farmers are more able to be advantageously managed and addressed if they are recognised at the earliest possible stage (section 2). The RFCS noted that early recognition provides farmers with 'a wider choice of options and palatable solutions'. RFCS indicated that farmers should be referred to RFCS as soon as practicable to enable farmers' access to assistance which is provided free and at no cost. Mr Rees noted that compulsory mediation deals with end stage players in the rural debt problem, rather than saving them from insolvency.¹²⁷

Some submitters consider that the Government Bill prevents early intervention (i.e. activity outside mediation proposed under the Bill) being commenced by the parties to resolve issues and potentially avoid mediation.¹²⁸

The Department advised that there is nothing in the Government Bill that would preclude negotiations occurring outside the framework provided in the Government Bill and it is not proposed to interfere in these whether or not an enforcement action notice has already been given.¹²⁹

¹²⁵ Mr Peter O'Regan, Public Hearing Transcript, 4 October 2016, pp 3-4

¹²⁶ Department of Agriculture and Fisheries, written briefing 8 November 2016, p. 7

¹²⁷ B Rees, submission no 27, p. 1

¹²⁸ See for example Mr George Fox, Public Hearing Transcript, 2 November 2016

¹²⁹ Department of Agriculture and Fisheries, response to submissions, p. 24

Clause 11 (2) of the Government Bill would provide that the Government Bill does not apply in relation to a farmer if the farmer and the mortgagee have previously taken part in mediation for a farm business debt under the Act. The Department advised that the Government Bill, if passed, would not replace the QFFS. Farmers in financial distress or in dispute with their mortgagee could still opt to use the voluntary QFFS as a means to settle a dispute – clause 11(2) applies this exclusion only where satisfactory mediation has taken place under the Act.¹³⁰

Clauses 48 and 49 of the Government Bill deal with the application and grounds for the mortgagee to receive an exemption certificate which will exempt the mortgagee from the obligation to mediate with the farmer regarding the farm business debt.

Clause 52 provides that QRIDA must approve the application if it is satisfied that the farmer is in default, there is no enforcement action suspension certificate in place and that a ground exists to issue the exemption certificate.

Clause 49(1)(a) provides that a satisfactory mediation for the farm business debt is a ground for QRIDA to issue an exemption certificate. Clause 7 states that a mediation is satisfactory if the farmer and the mortgagee have entered into a heads of agreement, or where the mediation has progressed as far as it reasonably could without the parties entering into a heads of agreement.

This would essentially mean that the Act would not apply to a farmer who defaults on a farm business debt after:

- a) the farmer and the mortgagee previously entered into mediation under the Act (if passed) when the farmer was not in default (i.e. if the parties take pre-emptive or early intervention action to address circumstances of risk that the farmer will default), and
- b) that pre-emptive, non-default based mediation resulted in the farmer and mortgagee entering into a heads of agreement regarding the farm business debt – or progressing the mediation as far as they reasonably could without entering into a heads of agreement.

The mortgagee could seek an exemption certificate to commence enforcement action without offering mediation to the farmer in the circumstance above.

The Department acknowledged this issue in its response to the submissions [emphasis added]:

*It should be noted that while the Bill does not exclude the application of the Act where there has previously been satisfactory mediation but no heads of agreement was entered into, **it does allow the satisfactory mediation as grounds for the grant of an exemption certificate**. This follows the pattern of the Farm Debt Mediation Act 1994 (NSW) which allows an application to be made for an exemption certificate when a farmer goes into default. The application must be granted if the farmer is in default and there has (EVER) been satisfactory mediation under the Act (even where the farmer was not in default at that time and there was no heads of agreement entered into). The (Queensland) Bill has been drafted for consistency with this but DAF has some concerns that it may discourage mediation under the Act where the farmer is not in default because if the mediation is satisfactory it could be the basis for an exemption certificate being granted if the farmer later went into default which would allow enforcement action to be taken without further mediation being offered.*¹³¹

¹³⁰ Department of Agriculture and Fisheries, public briefing transcript, 9 November 2016, p. 9

¹³¹ Department of Agriculture and Fisheries, response to submissions, p. 53

Committee comment

This would seem to be in direct conflict with the intention of the policy to and the Government Bill (as set out in clause 3) to provide an efficient and equitable way for farmers and mortgagees to resolve matters relating to farm business debts.

The exclusion in clause 11(2) appears fair and sufficient with respect to a voluntary mediation under the Government Bill where the farmer is not in default but defaults a short time later. However, the Committee considers the Government Bill could be unfair where the time between the initial mediation and subsequent default on a loan is substantial. The previous mediation could mean that the mortgagee could move to seek an exemption certificate releasing it from any obligation to mediate before commencing enforcement action. This appears to be in direct conflict with the purposes of the Government Bill. Farmers may instead refuse to risk mediation prior to default to address risk factors, instead waiting for the mortgagee to issue an enforcement action notice once the farmer is in default. Accordingly, the Committee considers an amendment is necessary to address this issue.

Recommendation 10

The Committee recommends that the Government Bill be amended to ensure that mediation entered into without default does not amount to a ground for an exemption certificate for mortgagees to commence enforcement action without mediation where the earlier mediation occurred within 3 years of the default.

5.9 Refusing mediation

Refusing mediation

Clause 16 provides the circumstances for agreeing or refusing to enter into mediation when a request has been made by one party.

The Government Bill provides that a mortgagee can provide an enforcement action notice regardless of whether the farmer is in default. A consequence of the farmer refusing to enter mediation is that the mortgagee can apply for an enforcement action notice and can then begin enforcement action without any mediation.¹³²

There are no consequences for the mortgagee where the mortgagee refuses a request from a farmer to mediate where the farmer is not in default. Clause 16(6) provides that, where mediation is requested by a farmer, the mortgagee refuses the mediation by giving a notice refusing the mediation to the farmer. Note 1 to clause 16(6) state:

Notes—

1 If the farmer requesting mediation is not in default under the farm mortgage and the mortgagee refuses the mediation, there are no consequences under this Act.

The ABA considers that the right of the mortgagee not to enter into mediation if the farmer is not in default should be made explicit and included within clause 44(2) of the Bill (which deals with when a mortgagee has failed to mediate), not in a note.

The Department responded that note (1) to clause 16 highlights (to assist the reader) that there are no consequences if the mortgagee refuses to mediate if the farmer is not in default. It would be too difficult to set out the consequences under the Government Bill in each scenario where a mortgagee might refuse to mediate. The lack of consequence where the farmer is not in default is highlighted as that is a significant exception.¹³³

¹³² Farm Business Debt Mediation Bill 2016, clause 16

¹³³ Department of Agriculture and Fisheries, response to submissions, p. 55

Committee comment

The Committee is satisfied with the Department's explanation.

5.10 Timeframes

Requesting mediation

Clause 15 of the Government Bill provides a request for mediation can be made where:

- (a) a mortgagee has given the farmer an enforcement action notice, or*
- (b) where a farmer owes a farm business debt to a mortgagee, whether or not the farmer is in default, or at risk of default, under the farm mortgage.*

Clause 14(2)(e) of the Government Bill notes that an enforcement action notice served on the farmer by the mortgagee must include details on how and the date by which the farmer must ask for mediation. Clause 14(3) provides that the day by which the farmer must ask for mediation must be no less than 15 business days (which equates to 21 days or three weeks).

This means that the farmer has at least 15 business days to request mediation after the day the notice is served on the farmer.

The explanatory notes appear to conflict with the clause and state that the farmer must request mediation no later than 15 days:

*The notice must also advise the farmer of consequences under the Act for not asking for mediation by a day stated in the notice which must be no later than 15 business days after the notice is served on the farmer.*¹³⁴

The clause does not specify a maximum timeframe however, in practice it is unlikely that the mortgagee would wish to expedite the process and is unlikely to extend the process to an unreasonable extent.

The *Acts Interpretation Act 1954* provides that a document can be served on an individual by delivering it to the person personally, or by leaving it at, or sending it by post, telex, facsimile or similar facility.¹³⁵

The mortgagee could seek an exemption certificate to commence enforcement action if the farmer does not respond by the stated date.

Some submitters consider that 15 business days is insufficient time for the farmer to adequately prepare and respond. Submitters have differing views on an appropriate timeframe.

The RFCS Southern Queensland considers an extension to 30 business days (six weeks) would be more reasonable. It considers that a 15 business day timeframe does not allow for delay in receipt through the post or for farmers to effectively assess their options before signing and returning the 'enforcement action notice'. It also submits that the timeframe does not adequately allow time for farmers to consult with their advisors, especially if the enforcement action notice is unexpected.¹³⁶ Farmers need to be aware of their financial position and the option of taking their matter to the financial ombudsman service. Once a farmer requests mediation under the scheme the option to utilise the services of the Financial Ombudsman is waived.¹³⁷

¹³⁴ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 17

¹³⁵ Sections 39 and 39A of the *Acts Interpretation Act 1954* deal with the service of documents required under an Act.

¹³⁶ Rural Financial Counselling Service, Southern Queensland, Submission No. 37, p. 5

¹³⁷ Rural Financial Counselling Service, Southern Queensland, Submission No. 37, p. 6

RFCS Northern Queensland suggests a minimum of 20 business days (i.e. 4 weeks).¹³⁸

Under the QFFS the farmer has 21 days from receipt to offer to mediate to accept the request. Legal Aid Queensland stated that the 21 days is often insufficient time to enable the farmer to obtain legal and financial advice regarding request to mediate, particularly where the farmer is located in an isolated area. LAQ submits 20 business days would be more appropriate.

The Department noted the consistency of clause 14 with the New South Wales Act and noted that clause 53(3) of the Government Bill would require the Authority to take into account particular circumstances of the situation where the farmer failed to mediate under the Act due to a failure to respond within 15 business days to the enforcement action notice or within 20 business days to a further notice from the mortgagee requesting the farmer to attend a mediation meeting.

Committee comment

The Committee considers that the minimum time afforded to a farmer to respond to an enforcement action notice and request mediation in clause 14(3) should be amended to 20 days.

This will allow the farmer to seek legal and financial advice on the situation and have time to understand their position. This extended timeframe will also provide a protection for the farmer where the notice is not received for reasons outside of their control, for example, where rains impact on the postal services in some of our rural areas.

Recommendation 11

The Committee recommends that clause 14(3) be amended to provide the date by which the farmer must ask for mediation must be no less than **20 business days** after the day the notice is served on the farmer.

Provision of documentation

Clauses 21 and 22 deal with the provision of requested documents.

Each party has 30 business days (42 days or six weeks) to provide requested documents unless a longer period is negotiated between the parties in consultation with the mediator. Further, clause 21(6) provides that where the mortgagee has provided the requested document to the farmer within 3 months prior to the farmer's notice to receive the document, the mortgagee would be taken to have complied.

Some submitters consider that 30 business days for the mortgagee to provide requested documents to the farmer is too long. The documents will likely be critical to a farmer's preparation for mediation and an extended delay may restrict the farmer's and their advisor's capacity to build their case prior to mediation date. The RFCS, North Queensland suggests 15 business days is sufficient.¹³⁹

RFCS, Southern Queensland is happy with the timeframes for the supply documentation in clauses 21 and 22 as this information is vital to advisors in establishing a farmer's position prior to attendance at mediation.¹⁴⁰

The Department notes that allowing 30 business days is generous. However, the same time period is also allowed for a farmer to provide documents to a mortgagee under clause 22. The Department does

¹³⁸ Rural Financial Counselling Service North Queensland, Submission No. 30, p. 2

¹³⁹ Rural Financial Counselling Service North Queensland, Submission No. 30, p. 2

¹⁴⁰ Rural Financial Counselling Service, Southern Queensland, Submission No. 37, p. 6

not support amending either the timeframe under clause 21 or 22 without thorough consultation with stakeholders about the potential impacts.

Committee comment

The Committee considers the 30 business days provided for the provision of the listed documents in the Government Bill is appropriate.

5.11 Location of mediation

A number of submitters suggested that the location of the mediation should be convenient to the farmer.¹⁴¹ Submitters stated that mediation venues in clause 25 of the Government Bill need to be readily accessible, agreeable to clients and should facilitate access to their advisers and in many cases associated and involved family members. RFCS North Queensland noted it was aware of incidents where clients have been forced at great inconvenience and cost to attend mediation in Brisbane.¹⁴² The RFCS North Queensland suggested that the Government Bill should be amended to provide that mediation meetings should be conducted in convenient regional centres, which would allow access to supporters and advisers.¹⁴³

Committee comment

The Committee considers that the location of the mediation should be convenient to the farmer and requests that the Minister consider an amendment to provide for this in the Government Bill.

Recommendation 12

The Committee recommends that clause 25 be amended to provide that the mediation must be reasonably convenient for the farmer.

5.12 Heads of Agreement

Clause 26(1) of the Government Bill requires a mediator to prepare a heads of agreement document. The Bill defines a heads of agreement as:¹⁴⁴

heads of agreement, between the parties to a mediation for a farm business debt, means a document that—

(a) sets out the main points of agreement between the parties on a matter relating to the farm business debt; and

(b) is prepared by a mediator and signed by the parties under section 26.

It was noted that a heads of agreement is usually prepared by the mortgagee's lawyer.¹⁴⁵ The proposal for a mediator to prepare a heads of agreement document may therefore increase the cost of the mediator. Additionally, the mediator does not have all of the facts or have information on all of the circumstances of the mediation. This means that the mediator may not always be the most appropriate person to draw up the Heads of Agreement.¹⁴⁶

The RFCS North Queensland proposed that this clause be changed to the mediator overseeing the preparation of the heads of agreement.¹⁴⁷

¹⁴¹ Legal Aid Queensland, Submission No. 29, p. 12

¹⁴² Rural Financial Counselling Service North Queensland, Submission No. 30, p. 3

¹⁴³ Rural Financial Counselling Service North Queensland, Submission No. 30, p. 3

¹⁴⁴ Farm Business Debt Mediation Bill 2016, schedule 1

¹⁴⁵ Mr George Fox, Public Hearing Transcript, 2 November 2016, p. 22

¹⁴⁶ Correspondence from Mr George Fox, 16 November 2016

¹⁴⁷ Rural Financial Counselling Service North Queensland, Submission No. 30

The Committee also heard that there is uncertainty around the binding nature of a heads of agreement. The QLS stated in its submission that there should be a process where the parties can enter a legally binding, final settlement agreement at mediation and it should not be the obligation of the mediator to prepare the settlement agreement or heads of agreement.¹⁴⁸

The Committee heard that some lawyers consider that heads of agreement do not commonly include the final terms of the transaction (which generally require a further negotiation) and if a document (e.g. a heads of agreement) is intended to be binding upon the parties, it should contain specific elements to ensure this.¹⁴⁹

Clause 31 of the Government Bill requires that any contract, mortgage or other document entered into by the parties to the mediation to give effect to a heads of agreement must do so accurately. A penalty applies for non-compliance. This clause appears to accept that, in order to give effect to or to implement the heads of agreement, a further contract or contracts between the parties is likely.

The Committee heard that there is no good reason for a 'short-hand heads of agreement' to be later replaced by a more comprehensive agreement, instead preferring a 'do it once and do it right' approach. Parties will be particularly concerned with a two stage approach envisaged in clauses 26 and 31 of the Government Bill. This is because of the potential penalty under clause 31 for subsequent contracts that do not accurately reflect the heads of agreement.¹⁵⁰

However, if a heads of agreement is legally binding (and sufficiently clear to be enforceable) then neither party can insist on a more comprehensive agreement being entered into later to replace the Heads of Agreement. This may be the reason that parties in New South Wales, being *required by the legislation to use a Heads of Agreement, resort to annexing the heads of agreement to a comprehensive agreement*.¹⁵¹

The Department advised that nothing prevents the farmer and mortgagee ending mediation satisfactorily without entering into a heads of agreement. The parties can then enter into a binding agreement that is not a heads of agreement drawn up by the mediator. The Department cautioned however, that there are fewer protections for the parties should they chose to do so.

With respect to the proposal to remove the requirement for the mediator to draft the heads of agreement, the Department advised that if a pre-drafted Heads of Agreement is produced prior to or at the start of the mediation (i.e. by the mortgagee's lawyers), it could suggest that the outcome is pre-determined. This is particularly so, noting the perceived power imbalance between a mortgagee and a farmer. The farmer may consequently feel pressured to simply agree to the pre-drafted heads of agreement.¹⁵²

Committee comment

The Committee considers that clause 26 of the Government Bill should be amended to require the mediator to either draft the heads of agreement or supervise its drafting. The Committee considers that this will address concerns of submitters while balancing the concerns of the Department that a farmer may be pressured into signing a pre-drafted heads of agreement produced at the commencement of the mediation.

¹⁴⁸ Queensland Law Society, Submission No. 31

¹⁴⁹ Correspondence from Mr George Fox, 16 November 2016. The Committee also notes the High Court case of *Masters v Cameron* [1954] 91 CLR 353 which found that the binding nature of agreements depends on the intent of the parties entering into the agreement

¹⁵⁰ Correspondence from Mr George Fox, 16 November 2016

¹⁵¹ Correspondence from Mr George Fox, 16 November 2016

¹⁵² Department of Agriculture and Fisheries, response to submissions, p. 29

There is no requirement on the parties to enter into a heads of agreement for a satisfactory mediation to end.¹⁵³ There also appears no mechanism in the bill to ensure that a heads of agreements entered into during mediation is binding.

We note that clause 31 of the Bill attempts to address this by requiring any subsequent contracts entered into to give effect to the heads of agreement must accurately reflect the heads of agreement. However, the Committee considers that the clause only applies where the parties voluntarily enter into a subsequent contract to give effect to the heads of agreement. It does not prevent the parties from entering into a subsequent agreement which makes no attempt to give effect to the heads of agreement.

Further, the grounds for a farmer to apply for an enforcement action suspension certificate (to stop the mortgagee from taking enforcement action) require a failure of the mortgagee to mediate.¹⁵⁴ There is no requirement on the parties to enter into a heads of agreement for a satisfactory mediation to end.¹⁵⁵ There appears to be no remedy for the farmer, in terms of an enforcement action suspension certificate, for the farmer where a mortgagee engages in a 'satisfactory mediation' under clause 7 of the Bill but fails to implement or abide by the heads of agreement.

However, a prior successful mediation is a ground for a mortgagee to apply for an exemption certificate which would allow it to commence enforcement action without mediation where a prior 'satisfactory mediation' had occurred.¹⁵⁶ There is no exception where the mortgagee fails to implement or abide by a heads of agreement which was the outcome of the prior 'satisfactory' mediation it relies on as a ground for the certificate.

The Committee considers that it is important that any heads of agreement entered into during mediation should be clearly drafted, easy to understand and binding on the parties. To not do so would be tokenistic and would undermine the mediation process and the Act if passed.

Recommendation 13

The Committee recommends that clause 26 be amended to provide that the mediator be required to draft or supervise the drafting of the heads of agreement.

Recommendation 14

The Committee recommends that the heads of agreement should be drafted in simple English to ensure they are clear and easily understood by the parties.

Recommendation 15

The Committee recommends that the Bill be strengthened to provide that the heads of agreement entered into during a mediation is binding on the parties.

5.13 Costs

A number of submitters and witnesses raised the issues of costs associated with mediation. Some stated that the prescriptive nature of the documentation requirements in the Bill and the requirement for the mediator to draft the heads of agreement (clause 26) could increase the costs of mediation for both the farmer and the mortgagee.

¹⁵³ Farm Debt Mediation Bill 2016, cls 7 and 32

¹⁵⁴ Farm Debt Mediation Bill 2016, cl 44

¹⁵⁵ Farm Debt Mediation Bill 2016, cls 7 and 32

¹⁵⁶ Farm Debt Mediation Bill 2016, cls 48 and 49

Under the QFFS, costs, including costs of a mediator, and their disbursement are negotiated as part of the agreement between farmers and financiers agreed to under of the mediation process.¹⁵⁷ The committee has heard that currently, mortgagees can add its costs to the debt owed by the farmer, including expensive external legal advice and the provision of documentation.¹⁵⁸

Under Clause 39 of the proposed Government Bill, each party must pay their own costs of mediation, including the costs of preliminary meetings, with each party responsible for 50 per cent of the mediator's fee.¹⁵⁹

The Committee notes however, that clause 23(5) provides that where a further mediation meeting is required because one party to the mediation did not have sufficient authority to enter into a heads of agreement for the party, that party must pay the other party's costs for the meeting and the mediator's fee and costs for the other meeting.

The Committee repeatedly heard that farmers may not be in a position to pay their portion of the mediator's fee and consider that clause 39 of the Government Bill prohibits them from negotiating for the mortgagee to pay.

Concern was also raised, despite clause 39 requiring each party to pay their own costs and half of the mediator's fees and costs for the mediation, that mortgagees may charge farmers for their own costs of preparing for mediation and/or the costs of monitoring the account subsequent to mediation.¹⁶⁰

The RFCS North Queensland recommended that clause 39(1) be amended to include preparation of enforcement notices, provision of requested information, attendance at mediation, preparation of heads of agreement, monitoring and ongoing maintenance of heads of agreement.¹⁶¹

The Department responded to these issues and agreed that further clarification could be provided that the requirement on each party to bear its own costs extends beyond the meeting itself if this has been a problem under the current voluntary system. The Department suggested that this could be achieved by clarifying that the costs for the mediation includes costs incurred in relation to the mediation.¹⁶²

The Department further advised:

*The Bill does not preclude one party voluntarily meeting the mediation costs of the other party. However, clause 85 prevents an agreement or contract from requiring this to occur.*¹⁶³

Committee comment

The Committee is satisfied with the Departments' advice and recommend that clause 39 be amended to provide that the costs for the mediation includes costs incurred in relation to the mediation.

Recommendation 16

The Committee recommends that clause 39 of the Government Bill be amended to provide that the costs for the mediation includes costs incurred in relation to the mediation.

¹⁵⁷ Farm Debt Mediation, Rural Insights, Chartered Accountants, July 2016, 2016

¹⁵⁸ Rural Financial Counselling Service North Queensland, Submission No. 30, p. 4

¹⁵⁹ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 22

¹⁶⁰ Legal Aid Queensland, Submission No. 29, p. 12, Rural Financial Counselling Service North Queensland, Submission No. 30, p. 4

¹⁶¹ Rural Financial Counselling Service North Queensland, Submission No. 30, p. 4

¹⁶² Department of Agriculture and Fisheries, response to submissions, p. 17

¹⁶³ Department of Agriculture and Fisheries, response to submissions, p. 17

5.14 Confidentiality

Clause 38 of the Government Bill provides that things said or done in a mediation meeting, a document prepared for a mediation meeting and documents provided under clauses 21 and 22 are not admissible in any civil, criminal or administrative proceeding. This provision excludes a Heads of Agreement, a contract, mortgage or other document prepared to give effect to a heads of agreement or a summary of the mediation prepared under clause 33 of the Government Bill.

Clause 83 of the Government Bill provides that a person must not disclose information obtained in a mediation meeting or in connection with the administration of the Act unless:

- a) *if the information is about a person—by, or with the consent, of the person; or*
- b) *with the consent of the person from whom the information was obtained; or*
- c) *to the extent necessary to perform the person’s functions under or in relation to this Act; or*
- d) *as reasonably required for the purpose of referring a party or parties to mediation to a person, agency, organisation or other body and, with the consent of the parties to the mediation, for the purpose of aiding in the resolution of an issue between the parties; or*
- e) *as otherwise required or allowed by law; or*
- f) *with another lawful excuse.*

LAQ submits that the confidentiality requirements in the Government Bill are too broad and could prevent:

- production of documents produced under clause 21 or 22 being disclosed in subsequent court action by either party for enforcement proceedings;
- evidence being produced in criminal proceedings relating to the conduct of the parties during mediation or in the event of fraud; and
- documents being provided to the Financial Ombudsman Service or other administrative schemes.¹⁶⁴

With respect to clause 83, the Department advised that the prohibition from disclosing information obtained in a mediation meeting or in connection with a mediation meeting would not prevent the information being disclosed if it was otherwise obtained. For example, if the farmer only had access to a loan document because it was provided in the context of mediation, then the loan document could not be disclosed. However, if the farmer already had a copy of the document or subsequently obtained a copy through a court discovery process (separate to the mediation) then the mere production of the document in the context of mediation would not have the effect of preventing the farmer disclosing that loan document.¹⁶⁵

The QLS submitted that an amendment is required to provide an exception to the requirements for confidentiality in clause 38 where information is permitted to be disclosed under clause 83.¹⁶⁶

¹⁶⁴ Legal Aid Queensland, Submission No. 29, p. 11

¹⁶⁵ Department of Agriculture and Fisheries, response to submissions, pp 27-28

¹⁶⁶ Queensland Law Society, Submission No. 31

The department noted that clause 38 details what documents would not be admissible in the listed proceedings, and would not prevent disclosure under clause 83. However, the Department suggests that an amendment would be appropriate to clause 38(1)(c) so that it only applies to a document that was created for the purpose of being given to a party under clauses 21 or 22. It further supports adding an exception to clause 38(2) where the proceeding relates to threat of future violence, concealing ongoing criminal activity, or abuse of a child or vulnerable party.¹⁶⁷

Committee comment

The Committee agrees that an amendment to the Government Bill is required and accepts the Department's advice with respect to the amendment of clause 38. Given the strong bipartisan stance on the prevention of domestic and family violence the Committee also supports the Department's proposed amendment which will assist and support victims.

Recommendation 17

The Committee recommends that clause 38(1) of the Government Bill be amended to extend its application to a document that was created for the purpose of being given to a party under clauses 21 or 22

Recommendation 18

The Committee recommends that clause 38(2) of the Government Bill be amended to provide an exception where the proceeding relates to threat of future violence, concealing ongoing criminal activity, or abuse of a child or vulnerable party.

5.15 Appeals

Part 6 of the Government Bill allows for review of decisions of the Authority where it refused an application for an enforcement action suspension certificate or where it issued an exemption certificate. Division 2 of Part 6 details the process for an internal review, within 30 days of the decision by the chief executive officer. Division 3 deals with external review of the decision and internal review to the Queensland Civil and Administrative Tribunal (QCAT).

The QFF considers that this process could extend the appeals process to 18 months.¹⁶⁸ The QFF indicated that the Bill should include a time limit to any appeal process, to ensure mediation is not drawn out, which may adversely affect framers and tie-up assets that secure debt longer than necessary.¹⁶⁹ RFCS North Queensland indicated that the Government Bill needed an adequate sunset clause within which mediation must be completed e.g. a three month period with an option to extend to six months as this would reduce social and emotional distress on farmers undertaking mediation.¹⁷⁰

The Department advised that an option could be to include a provision which would require QCAT to start the hearing of a review within a specified period (e.g. 28 days) of the notice of appeal being received by QCAT. Such a provision existed previously in the *Racing Act 2002* (s153). However, it was extremely problematic to administer and particularly onerous for QCAT and was subsequently omitted from that Act.

The Department further advised that this proposal might appear to reduce the delay in commencing an appeal but there is no guarantee that the appeal will be fully heard or finalised by QCAT within the 28 day period. Also QCAT would need to be consulted to ascertain the feasibility and the resources required to facilitate this proposal. The increased costs would be borne by the taxpayer because the

¹⁶⁷ Department of Agriculture and Fisheries, response to submissions, pp 27-28

¹⁶⁸ Queensland Farmers' Federation, Submission No. 25, p. 3

¹⁶⁹ Queensland Farmers' Federation, Submission No. 25

¹⁷⁰ Mr Peter O'Regan, Public Hearing Transcript, 4 October 2016, p. 5

authority will be required to meet them and there will be no fees for applying to the authority for certificates via which costs might be recovered.¹⁷¹

Committee comment

The Committee considers that the appeals process is an important part of the Farm Debt Mediation scheme that allows those affected by it to appeal decisions made by the authority. Given that such a decision could mean that enforcement action is commenced by the mortgagee without prior mediation, the Committee considers that the appeals process is vital and should remain.

In noting the concerns of submitters, the Committee considers that the appeals process under the scheme should be reviewed. The Committee notes that such a review may not be undertaken for some years, until there is sufficient data on the appeals processes.

Recommendation 19

The Committee recommends that, at an appropriate time after the passing of the Government Bill, the internal and external appeals process be reviewed to ensure they are efficient and effective.

5.16 Good faith

Clause 3(2)(b)(ii) of the Government Bill provides that the purpose of the Government Bill (the efficient and equitable resolution of matters relating to farm business debts) is to be achieved by a requirement that mortgagees take part in farm business debt mediation in good faith. LAQ supports this provision, observing that good faith is essential for any mediation process to be effective.¹⁷²

However, there are further references to requirements to act in good faith throughout the Bill, sometimes specifying that one party, usually the farmer, is required to act in good faith but not specifying the other party is required to act in good faith. This could be addressed by a more specific good faith provision applying to all dealings by all parties in relation to mediation.

Consideration should be given to including a provision early in the Government Bill that all dealings by all parties in relation to the mediation are required to be conducted in good faith.¹⁷³

Mr George Fox advised the Committee there is a lack of acceptance by some banks that good faith will require adequate disclosure. Mr Fox considers that there should be some expressed articulation of elements of good faith (respect for the parties, respect for the process, disclosure of relevant material, attending with a preparedness to consider all propositions put forward by the other side with an open mind and give genuine consideration).¹⁷⁴

The Department advised that while there is no definition of 'good faith' in the Government Bill. Clauses 3 (Purpose), 21(7) and 22(4) (Which concern requirements to provide documents), 32 (When mediation ends), 44 (When a mortgagee has failed to mediate), 49 (Grounds (For issuing an exemption certificate)) and 53 (When a farmer has failed to mediate) adequately set out the principle of acting in good faith.

'Good faith' is commonly used without definition in legislation because there is a lot of case law about when something has been conducted in good faith. A definition may not pick up the nuances that have been established over time by this case law.

Also, examples of what it means to participate in good faith could be included in the mediation guidelines. This could be taken into account by a mediator in deciding

¹⁷¹ Department of Agriculture and Fisheries, response to submissions, pp 3-4

¹⁷² Legal Aid Queensland, Submission No. 29, p. 5

¹⁷³ Legal Aid Queensland, Submission No. 29, p. 5

¹⁷⁴ Mr George Fox, correspondence, 7 November 2016

*whether a person has participated in good faith as it is conduct of which the parties would have prior notice. Again, any examples or guidelines included in the mediation guidelines would not be definitive.*¹⁷⁵

Committee comment

The Committee notes the concerns of submitters regarding the lack of clear advice on how a person can act in good faith for the purposes of the Government Bill, and the Department's concerns around defining good faith in the Government Bill.

The Committee however, considers that given the consequences, farmers should be clearly informed, prior to mediation, about what it means to act in good faith and the consequences of not doing so.

The Committee therefore recommends that the Minister inform the House how this can be effectively achieved.

Recommendation 20

The Committee recommends that the Minister inform the House how the Government Bill will ensure that farmers are clearly informed, prior to any mediation taking place, of:

- a) what acting in good faith means under the legislation
- b) examples of how a farmer can act in good faith for the purposes of the legislation
- c) examples of not acting in good faith for the purposes of the legislation, and
- d) possible consequences of not acting in good faith for the purposes of the legislation.

5.17 Documents

Under the current QFFS, mortgagees are not compelled to provide relevant documentation for mediation which, the Committee has heard, can leave the farmer underprepared for mediation. Evidence was provided by LAQ that banks have refused to provide any documentation or insufficient documentation to allow the farmer to prepare for mediation or sometimes only provide documentation that will not harm their position in the mediation.¹⁷⁶

Clauses 21 and 22 of the Government Bill relate to the provision of documents to the parties to a mediation.

Giving requested documents to farmer

Clause 21 provides that the mortgagee must give documents to the farmer only if the farmer has given notice to the mortgagee requesting documents. Clause 22 provides that a farmer must give documents to the mortgagee.

LAQ indicated that there is no reasonable basis for requiring a notice to be given to farmers. LAQ submitted that clause 21 should provide that mortgagees are required in the first instance to provide documents identified in the Bill, with a further right to the farmer to request further documentation by giving notice to the mortgagee.¹⁷⁷

Clause 21(4) provides that the mortgagee complies with a request from the farmer if it provides copies of the documents within its control relating to:

- a) the application for farm debt
- b) the contract

¹⁷⁵ Correspondence, Department of Agriculture and Fisheries, 8 November 2016, p. 8

¹⁷⁶ Legal Aid Queensland, Submission No. 29, p. 6

¹⁷⁷ Legal Aid Queensland, Submission No. 29, p. 6

- c) correspondence with the farmer about changes to farm debt, and
- d) the farmers default under the mortgage.

The RFCS North Queensland submitted that clause 21(4) should be amended to include any subsequent bank valuation and associated correspondence in relation to the valuation. In addition, the bank should provide a property valuation. Concerns were raised that it is difficult for farmers and advisors to get any bank information to deal with the situation.¹⁷⁸

LAQ submitted that the Government Bill should be amended to remove the requirement on farmers to give a notice to mortgagees, and require that prior to mediation, all documents as identified in the previous version of the bill as drafted should be given to the farmer. This should include the power to request further documents by notice.¹⁷⁹

The Department responded to this suggested amendment and noted that during consultation on the working draft of the Government Bill, some participants suggested requiring the mortgagees to provide the documentation with the need for the farmer to provide a notice requesting it. This would bring to light any breaches of legislation or the Code of Banking Practice and hence would ensure the farmer was fully informed before making any agreements during mediation, reduce farmers' distrust of the process and lead to better outcomes. The Department concluded:

On balance DAF's view is that while there would be some benefits, there is not sufficient justification for requiring mortgagees to provide additional documentation compared to what is in the Bill.

Given that the documentation that mortgagees may be requested to provide would generally already have been in the possession of the farmer at some stage, DAF's view is that it is only necessary to enable the farmer to request this information (if, for example, they cannot easily find their copy).

Suncorp raised concern around the lengthy document disclosure requirements. It suggested giving the mediator responsibility for arbitrating document requests in a pre-mediation meeting and only allowing them to be required to be produced where they have a specified purpose and their retrieval will help produce a resolution.¹⁸⁰

The Department agreed that, while Suncorp's suggestion might reduce the ambit of requests for all documents to be produced, it may reduce the benefits of including a document requirement. For example, a farmer may remain suspicious that certain documents that the mortgagee has not been required to produce could reveal unscrupulous behaviour by the mortgagee.¹⁸¹

Giving requested documents to the mortgagee

Clause 22 of the Government Bill requires the farmer to give, within 30 business days, the mortgagee up to date information about the farmer's:

- a) most recent taxation return
- b) assets and liabilities, and
- c) cash flow projections for a period of one year.

The provision of these documents is required under the clause and does not require a notice to be provided by the mortgagee requesting the documents, as for the documents requested by the farmer under clause 21.

¹⁷⁸ Mr Peter O'Regan, Public Hearing Transcript, 4 October 2016, p. 4

¹⁷⁹ Legal Aid Queensland, Submission No. 29

¹⁸⁰ Suncorp, Submission No. 33

¹⁸¹ Department of Agriculture and Fisheries, response to submissions, pp 37-38

The RFCS North Queensland considers that the requirement to provide the cash flow may be difficult to meet within the timeframe as this often requires an advisor undertaking detailed research and seeking input from farmer and other parties.¹⁸²

LAQ is concerned that a distressed farmer would be willing to participate in mediation in good faith but does not have resources to comply with clause 22.¹⁸³ For this clause to be effective, LAQ suggests that there needs to be consideration given to the capacity of RFCS to assist farmers to meet their obligations under the Government Bill.¹⁸⁴ LAQ submits that clause 22 should be amended to provide that a farmer does not breach clause 22 if the farmer has used best endeavours to comply but is unable to provide the documents.¹⁸⁵

Mr Fox stated that farmers are often placed in a situation where they are unable to access documents from their accountants. This often arises where farmers are unable to pay their accountant's fees and their accountant is exercising a lien. Mr Fox considers that the mediator should have legislative authority to request documents relevant to the mediation from third parties, such as accountants exercising a lien.¹⁸⁶

The Department advised that clause 22(4) already allows that mortgagees who make reasonable attempts to comply within the timeframe may not be considered to have failed to take part in mediation in good faith.¹⁸⁷ The Department considered that a provision could be included in the Government Bill to allow a farmer's reasonable attempts to obtain financial documents to provide to mortgagees to be considered when deciding whether they have failed to mediate in good faith.¹⁸⁸

The Department considers that Mr Fox's suggestion of requiring accountants to provide information would be an interference in their rights and normal business activities and is inappropriate to include it in this Government Bill without proper consultation about its impacts. The farmer is best-placed to undertake a separate negotiation with an accountant exercising a lien to explain why they need the information provided to them and how mediation may contribute to the debt owed to the accountant being paid.¹⁸⁹

Committee comment

The Committee considers that any reasonable attempts by a farmer to provide the required documents should be considered as the farmer acting in good faith. The Committee agrees that an amendment is necessary to provide for the authority to consider any reasonable attempts to obtain financial documents to provide to mortgagees to be considered when deciding whether the farmer failed to mediate in good faith.

We remain concerned however, that a farmer can be disadvantaged in their inability to access documents necessary for a mediation to occur due to a third party exercising a lawful lien. We note the Department's advice that a farmer is best-placed to negotiate separately with that third party. We also note the Department's advice that an amendment requiring third parties to provide information should not be made without proper consultation.

The commencement provisions in the Government Bill provide that the farm business debt mediation provisions are to commence on 1 July 2017. The Committee considers that this provides sufficient time

¹⁸² Rural Financial Counselling Service North Queensland, Submission No. 30, p. 3

¹⁸³ Legal Aid Queensland, Submission No. 29, p. 7

¹⁸⁴ Legal Aid Queensland, Submission No. 29, p. 8

¹⁸⁵ Legal Aid Queensland, Submission No. 29, p. 8

¹⁸⁶ Mr George Fox, Public Hearing Transcript, 2 November 2016, p. 25

¹⁸⁷ Department of Agriculture and Fisheries, response to submissions, p. 15

¹⁸⁸ Department of Agriculture and Fisheries, response to submissions, p. 10

¹⁸⁹ Department of Agriculture and Fisheries, response to submissions, p. 10

for the Department to consult on a possible amendment to require third parties to provide necessary documents and information.

Further, as noted earlier, the Committee notes the requirement for the documents is necessary to provide for successful mediation. As noted earlier, mediation under the Act would occur at an extremely stressful time for the farmer. Both financially and emotionally. A farmer undertaking mediation under the Government Bill is likely to need financial assistance in order to fully participate in any meaningful mediation with a mortgagee. It is for these reasons that the Committee recommended further funding to LAQ to provide assistance to farmers for outlays in relation to their participation in a legislated mediation scheme (refer to recommendation no. 5).

Recommendation 21

The Committee recommends the Minister consult relevant stakeholders on a possible amendment to require third parties to be required to provide relevant documents and information that is necessary for the mediation under the Government Bill.

5.18 Advisors

Clause 24 provides that a farmer is entitled to have an advisor present.

The QLS submits that the Government Bill should be amended to provide that a farmer may have more than one advisor and that they are entitled to representation by a number of specialist/professional advisors.¹⁹⁰

The Department noted that s 32C of the *Acts Interpretation Act 1954* provides that, in an Act, words in the singular include the plural. However, the Department suggests clause 24 could be clarified by stating that the farmer is entitled to 'one or more' advisors.¹⁹¹

Committee comment

The Committee notes the Department's advice regarding the interpretation of the provision. However, to ensure clarity, the clause should be amended to clearly provide that the parties to a mediation are entitled to more than one advisor.

Recommendation 22

The Committee recommends that clause 24 of the Government Bill be amended to provide that parties to mediation are entitled to 'one or more' advisors.

5.19 Summary of mediation

Clause 33 of the Government Bill requires the mediator to prepare a summary of the mediation at the end of the mediation, prescribing the details that must be included:

- the days when the parties agreed to the mediation
- the dates of the first and last mediation
- the date that a heads of agreement was entered into (if one was entered into)
- the reason for the parties to not enter into a heads of agreement
- whether the mediation was successful in the mediators opinion, and
- if the mediator considered the mediation was not successful, the reasons for that opinion.

The summary must be signed by the mediator and the parties (or their agents) (clause 33(3)) and the parties can ask the mediator to note their disagreement to the opinion of the mediation regarding

¹⁹⁰ Queensland Law Society, Submission No. 31

¹⁹¹ Department of Agriculture and Fisheries, response to submissions, pp 28-29

whether the mediation was satisfactory or not (clause 33(4)). The mediator must give a copy of the summary to each party within 10 business days after the mediation ends (clause 33(5)).

The QLS questioned the need for some of the requirements of information to be provided to the authority in the summary of mediation.¹⁹²

The Department advised it supports the clause as it is currently drafted. It stated that the Authority is to be provided with a copy of the Heads of Agreement to enable it to exercise its functions under the proposed Act. For example, clause 27(1)(b)(ii) provides that the cooling off period for a Heads of Agreement may be longer than 10 business days if a later date is stated in the Heads of Agreement. The Authority needs to be aware of such a later date to ensure it does not issue an exemption certificate before the cooling off period has ended as required by clause 52(4). Similarly, information provided by the mediator on why the mediation ended will assist the authority to decide whether mediation is satisfactory. It also noted that, in contrast to the QLS, the Resolution Institute has expressed the view that more information should be required to be provided in the circumstance where no heads of agreement is reached.¹⁹³

5.20 QRIDA information package

Clause 35 of the Government Bill requires the Authority to prepare a mediation package that includes information about mediation under the Act, and the rights and obligations of a farmer in relation to the mediation. It also must include copies of the approved forms for use in the mediation and information about mediators who can conduct mediation under the Act.

The Authority must provide a copy of the information package to a farmer or a mortgagee upon request and at no cost.

The Resolution Institute submitted that the mediation package should be provided to parties at the beginning of the process, should be written in a way accessible to all audiences, and highlight opportunities of interest-based process and a copy of its 'Your Guide to Dispute Resolution'.¹⁹⁴

The Department advised that the requirement under clause 35 to provide the information package on request is intended to ensure that it is available at no cost to potential parties even where the process has been commenced. There is a separate requirement under clause 14(4) for the mortgagee to provide a farmer with a copy of the information package with an enforcement action notice.

The Department notes the potential advantages of highlighting the benefits of an interest-based process and will draw this suggestion to the attention of the Authority which will prepare the mediation information package.¹⁹⁵ It also noted the request of the QLS that it be involved in the preparation and development of the package.¹⁹⁶

¹⁹² Queensland Law Society, Submission No. 31

¹⁹³ Department of Agriculture and Fisheries, response to submissions, pp 29-30; Resolution Institute, Submission No. 26

¹⁹⁴ Resolution Institute, Submission No. 26

¹⁹⁵ Department of Agriculture and Fisheries, response to submissions, p. 6

¹⁹⁶ Department of Agriculture and Fisheries, response to submissions, p. 30

6. Examination of the Farm Business Debt Mediation Bill 2016 – unrelated amendments

Most submitters who addressed the unrelated amendments in the Government Bill were supportive of the changes.

However, the QLS noted that the short title of the Government Bill does not reflect the long title – ie the Government Bill contains amendments which are not reflected to the detail provided in the short title ‘Farm Business Debt Mediation’.¹⁹⁷

The Department advised that the amendments to the Act are integral to the implementation of the Government’s Rural Assistance Package and including them in this Government Bill enables them to be considered by the Parliament together. The unrelated amendments included in this Government Bill are not controversial and it is desirable that they be made without delay. Their inclusion in the Government Bill has been clearly highlighted to the Parliament and stakeholders. In this context, the Department suggests their inclusion is not misleading and represents an efficient use of Parliament’s time.¹⁹⁸

6.1 Proposed amendments to the *Biological Control Act 1987*

The Government Bill would amend the *Biological Control Act 1987* to align and provide consistency with the *Biological Control Act 1984* (Commonwealth). The relevant definitions would be amended in the 1987 Act to ensure that viruses and sub-viral agents fall under the classification of organisms and prescribed organisms. This amendment would facilitate the roll-out of two viruses in 2017 – one relating to rabbit population control, and the other common carp population control.

Committee comment

The Committee notes the amendment will align Queensland with the Commonwealth legislation with respect to viruses to control weeds and pests. The Committee received no information on the long term impacts of the proposed viruses and requests the Minister to inform the House of any consideration of the long-term impacts of these viruses.

6.2 Proposed amendments to the *Biosecurity Act 2014*

The Government Bill would amend the *Biosecurity Act 2014* to recognise third party accreditation schemes as a framework for issuing biosecurity certificates. Individuals can then be approved as operators of the scheme. The amendment will provide appropriate recognition for approved industry-led accreditation schemes.

Submitters who addressed the proposed changes to the *Biosecurity Act 2014* supported the changes. The Nursery and Garden Industry Australia (NGIA), Nursery and Garden Queensland and the QFF advised the Committee the current legislation limits administrative efficiencies as it is regimented. While the industry has moved to initiate technological improvements and efficiencies on-farm, the existing government material is often still paper-focused. The NGIA advised that the industry needs a system that is extremely flexible with today’s markets being almost ‘just in time’ demand. Industries need to be able to supply those markets quickly and with a great degree of flexibility. Again, the current legislation will not quite allow that to happen.¹⁹⁹

That NGIA and NGIQ worked alongside Biosecurity Queensland for eight years to establish its on-farm biosecurity third-party program, the BioSecure HACCP program.

¹⁹⁷ Queensland Law Society, Submission No. 31

¹⁹⁸ Department of Agriculture and Fisheries, response to submissions, p. 30

¹⁹⁹ Mr John McDonald, Public Hearing Transcript, 4 October 2016, p. 14

*That program has been built with Biosecurity Queensland working with us as an industry to develop a system that works on-farm. We have then taken that program and we have presented that to biosecurity agencies across Australia. All agencies across Australia have recognised the strength of our program to the point where it is now the only non-government legally recognised market access instrument for plant products across Australia. We have actually put this into play. We have made it work. The new act still makes it very clunky, still makes some of the advantages that we are seeking very hard to achieve. The amendment allows that.*²⁰⁰

Committee comment

The Committee is aware that an industry, on-farm, biosecurity program 'Biosecure HACCP' has recently gained national recognition. The Committee understands that these amendments will assist in reducing any legislative requirements that may act as a barrier to market access.

6.3 Proposed amendments to the *Drugs Misuse Act 1986*

The Committee was advised that a Commonwealth licensing framework for the cultivation of medicinal cannabis is due to commence in the near future, however there will be strict controls around this framework. The proposed amendment to the *Drugs Misuse Act 1986* intends to allow Queensland growers and researchers in the industrial cannabis industry to supply cannabis seeds to those who are appropriately licensed and authorised to cultivate medicinal cannabis.

One submitter raised concern around the drafting of the amendments and suggested the Government Bill be amended to remove references to 'industrial cannabis'.²⁰¹

The Department advised the proposed amendments are not intended to extend the facilitation of processing, marketing and trade in cannabis other than to allow the supply of cannabis seed to a person authorised to grow cannabis plants for medicinal purposes under the *Narcotics Drugs Act 1967* (Cwlth). Section 45(1)(c) of the *Drugs Misuse Act 1986* enables facilitation of plant breeding programs in accordance with the object of Part 5B to enable commercial production of industrial cannabis fibre. Amending section 45(1)(c) to remove the reference to 'industrial' to allow plant breeding for the commercial production of any cannabis would not accord with the object of Part 5B.²⁰²

The same submitter suggested an amendment to Part 5B, Division 1, Section 44 (b)(i) of the *Drugs Misuse Act 1986* to remove the word 'industrial' and to add the words 'medical cannabis' after 'fibre and seed'.²⁰³ The Department advised that the cultivation of cannabis for medicinal and related research purposes will be regulated solely by the Commonwealth *Narcotics Drugs Act 1967*. The purpose of the amendments is only to authorise holders of research and grower licences under Queensland legislation to supply cannabis seed to a person authorized under the *Narcotics Drugs Act 1967* (Cwlth). The proposed amendments were not intended to provide a basis for extending the authorization of commercial growing or research for the purposes of medicinal cannabis. To do so may be inconsistent with the Commonwealth legislation.²⁰⁴

²⁰⁰ Mr John McDonald, Public Hearing Transcript, 4 October 2016, p. 14

²⁰¹ EcoFibre, Submission No. 24

²⁰² Department of Agriculture and Fisheries, response to submissions, p. 2

²⁰³ EcoFibre, Submission No. 24

²⁰⁴ Department of Agriculture and Fisheries, response to submissions, p. 2

7. Farm Business Debt Mediation Bill 2016 – consideration of fundamental legislative principles

As noted earlier, section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the FLPs to the Government Bill and has found potential FLP issues in relation to clauses 3, 7, 34, 89, 105.

7.1 Rights and liberties of individuals

Clause 3 sets out the purpose of the Government Bill.

Pursuant to clause 3(2), the purpose is to be achieved by:

- a) providing for mediation as a way for farmers and mortgagees to efficiently and equitably resolve matters relating to farm business debts; and
- b) requiring a mortgagee, before taking action to enforce a mortgage securing a farm business debt:
 - i. to offer mediation for the farm business debt to the farmer; and
 - ii. if the farmer asks for the mediation—to take part in the mediation in good faith; and
- c) providing that action that is taken to enforce a mortgage securing a farm business debt in contravention of this Act has no effect.

Clause 40(1) provides that a farmer may apply for an enforcement action suspension certificate in the following circumstances:

- a) the farmer is in default under a farm mortgage;
- b) the farmer has given the mortgagee a request for mediation notice; and
- c) the mortgagee has failed to mediate.

Clause 40(2) provides that a farmer may apply to the QRIDA (the Authority) for a certificate (an enforcement action suspension certificate) to stop the mortgagee taking enforcement action under the farm mortgage.

Potential FLP issues

Pursuant to clause 3(2)(b)(i)&(ii) a mortgagee cannot take action to secure a farm business debt under a mortgage until a mediation takes place either at the instigation of the farmer or the mortgagee. If the mortgagee refuses, the farmer can apply for an enforcement action suspension certificate under clause 40.

It may be argued that taking enforcement action under a mortgage is a normal activity undertaken by a mortgagee should a mortgagor (in this case a farmer) default on a mortgage. This potentially breaches section 4(2)(a) of the *Legislative Standards Act 1992* which provides that ordinary activities should not be unduly restricted without justification and arguably the mortgagee should be able to conduct their business without interference and be able to enforce contractual obligations.

The OQPC Notebook has commented that the ‘Regulation of business, although prolific, is an intervention in a right to conduct business in the way in which the persons involved consider appropriate’.²⁰⁵

However, in relation to contracts controlled by legislation, the Scrutiny of Legislation Committee (SLC) noted that provisions restraining the exercise of rights under contracts were not without precedent and that there are many legislative controls over commerce.²⁰⁶

The explanatory notes acknowledge the potential FLP, and provide the following justification:

The restrictions are justified, however, because of the extreme imbalance of power in these situations. The proposed provisions seek to balance mortgagee’s rights to enforcement under farm business mortgages, against the interests of farmers to address actual or perceived issues or disempowerment in negotiating alternative solutions in debt disputes. The proposed provisions seek to achieve a mutually agreed position.

There are also safeguards on the interference – specific boundaries surrounding applications for, and the issue of, enforcement action suspension certificates.²⁰⁷

Committee comment

The Committee notes the position of the former SLC that legislation in relation to contractual obligations is not without precedent.

In light of the SLC’s position and the justification provided in the explanatory notes advising that the provisions seek to redress a power imbalance between parties, the Committee considers the clause appropriate in the circumstances.

7.2 Onus of proof

Clause 89(1) provides that if a corporation commits an offence against a deemed executive liability provision, an executive officer of the corporation is taken to have also committed the offence if:

- a) the officer authorised or permitted the corporation’s conduct constituting the offence;
- b) the officer was, directly or indirectly, knowingly concerned in the corporation’s conduct constituting the offence.

Pursuant to clause 89(2), an executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision, whether or not the corporation has been proceeded against for, or convicted of, the offence.

Clause 89(3) provides that the section does not affect:

- a) the liability of the corporation for the offence against the deemed executive liability provision;
or
- b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.

Clause 89(4) provides that deemed executive liability applies to clauses 12(1) and 31(2).

²⁰⁵ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 118

²⁰⁶ Ibid

²⁰⁷ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 9

Clause 12(1) provides that a mortgagee must not take enforcement action under a farm mortgage unless:

- a) this Act does not apply in relation to the farmer or the farm mortgage; or
- b) an exemption certificate is in force for the farm mortgage.

Clause 31(2) provides that the mortgagee must ensure the contract, mortgage or other document gives effect to the heads of agreement accurately.

Potential FLP issues

Clause 89 provides that if a corporation commits an offence, an executive officer of the corporation is also taken to have committed the offence. In placing the onus on executive officers this potentially breaches section 4(3)(d) *Legislative Standards Act 1992* which provides that reversing the onus of proof in criminal proceedings should occur only with adequate justification.

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence. "For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means, where the defendant would be particularly well positioned to disprove guilt".²⁰⁸ Generally, the SLC opposed reversal of the onus of proof.²⁰⁹

The explanatory notes acknowledge the potential breach and provide the following justification:

*The potential FLP is mitigated by the fact that the executive officer is only liable if they authorised or permitted the corporation's conduct constituting the offence or they were directly or indirectly, knowingly concerned in the corporation's conduct constituting the offence. In both cases the executive officer is in a position to have direct influence over the behaviour of the corporation and has the power to avert the offending action. It is justified in these circumstances, and given the seriousness of the offences, to also deem the executive officer liable for the offence. The executive liability provision in the proposed Bill is consistent with the approach taken in the New South Wales Farm Debt Mediation Act 1994 upon which the Bill has largely been modelled.*²¹⁰

Committee comment

The Committee considered whether adequate justification has been provided for reversing the onus of proof (in making executives liable for the actions of the corporation).

The Committee notes that executive liability is limited to two clauses in the Government Bill where the officer authorised or permitted the corporation's conduct constituting the offence and/or the officer was, directly or indirectly, knowingly concerned in the corporation's conduct constituting the offence. The officer must therefore have been involved in carrying out the offence.

In light of the justification provided, and the relatively limited scope of the provision, the Committee considers the clause as justified in the circumstances.

7.3 Delegation of legislative power

Clause 7

Clause 7 provides that a mediation for a farm business debt has been satisfactory if:

²⁰⁸ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 36

²⁰⁹ Alert Digest 2002/4, page 27, para. 10.

²¹⁰ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 10

- a) as a result of the mediation, the farmer and the mortgagee have entered into a heads of agreement;
- b) the mediation has proceeded as far as it reasonably can but the farmer and the mortgagee have not entered into a heads of agreement; or
- c) the mediation is of a type, or a class, or meets criteria, prescribed by regulation for this paragraph.

Potential FLP issue

Clause 7(c) provides that a mediation is satisfactory if it is of a type or class or meets criteria prescribed by regulation. While the matters contained in the regulation will be subject to disallowance and considered by the Legislative Assembly, given their importance to the mediation process it is arguable that they would be better placed in the primary Act in terms of transparency and accessibility to all affected stakeholders.

This potentially breaches section 4(4)(a) of the *Legislative Standards Act 1992*, which provides that a Bill should allow for the delegation of legislative power only in appropriate cases and to appropriate persons.

Committee comment

Given the importance of the mediation process for the parties, it may be argued that the type of mediation and any relevant criteria should be placed in the primary Act instead of a regulation. However, the Committee notes that a regulation will be subject to disallowance and will come before it and the House for consideration.

The Committee also notes some stakeholder views that the legislation could be improved if it were to contain only the principles of the legislation, with the operational provisions in the Bill to be provided for instead, by regulation.

The Committee has, upon the departments advice, recommended that the Minister consider which aspects of the Government Bill would be better provided for in regulation.

Clause 105

Clause 105 inserts new Division 3 – Approval to operate approved biosecurity accreditation scheme into the *Biosecurity Act 2014*.

Section 435D

Section 435D(1) provides that a person may apply to the chief executive for approval to operate an approved biosecurity accreditation scheme.

Pursuant to section 435D(2), an application for approval must:

- a) identify the scheme;
- b) identify the places where the applicant proposes to implement and operate the scheme;
- c) include details of the applicant's proposed plan for operating the scheme;
- d) include details of the applicant's biosecurity accreditation system relevant to the scheme.

Section 435D(3) provides that subsection (2) does not limit the information that may be required under the approved form for the application for approval.

Section 435E

Proposed new s.435E(1) provides that the chief executive may approve a person to operate an approved biosecurity accreditation scheme only if satisfied the person:

- a) has the necessary expertise and experience to implement and operate the scheme;
- b) is a suitable person to operate the scheme;
- c) can implement and operate the scheme effectively and comply with any proposed approval conditions.

Pursuant to section 435E(2), the chief executive must:

- a) ensure an audit is conducted of the applicant's biosecurity accreditation system, or proposed biosecurity accreditation system, relevant to the application; and
- b) consider the results of the audit when deciding whether to grant the approval.

Section 435F

When deciding whether the applicant is a suitable person to operate an approved biosecurity accreditation scheme, the chief executive may consider:

- a) whether the applicant has been refused approval to operate an approved biosecurity accreditation scheme under this Act or a similar approval under a corresponding law;
- b) whether the applicant has been approved to operate an approved biosecurity accreditation scheme under this Act or a similar approval under a corresponding law, and whether that approval was suspended or cancelled;
- c) whether the applicant has been refused an accreditation under this Act or a similar accreditation under a repealed Act or a corresponding law;
- d) whether the applicant held an accreditation under this Act or a similar accreditation under a repealed Act or a corresponding law, that was suspended or cancelled;
- e) whether any of the following persons have a conviction for a relevant accreditation offence, other than a spent conviction:
 - (i) the applicant;
 - (ii) if the applicant is a corporation—an executive officer of the corporation;
 - (iii) if the applicant is an incorporated association—a member of the association's management committee;
- f) any other matter the chief executive considers relevant to the person's suitability to operate the scheme.

Potential FLP issues

Clause 105 allows a third party to operate an accreditation scheme thereby allowing them to issue biosecurity certificates. This potentially breaches section 4(4)(a) of the LSA which provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons. As noted in the Office of the Queensland Parliamentary Counsel FLP Notebook, this is concerned with the level at which delegated legislative power is used.

The explanatory notes provide the following justification in allowing the chief executive to approve a third party biosecurity accreditation scheme:

Allowing operators of systems to control when biosecurity certificates are issued is justified, however, because it acknowledges that those issuing the certificates are the main beneficiaries of accreditation systems and should take a proportionate share in operating them. The scheme under which the certificates may be issued, including the rules of the scheme, will be approved by the chief executive and the Act will include specific requirements for approved schemes. The approval of the operator will be subject to suitability considerations.

The need to maintain access to markets with quarantine entry conditions would motivate behaviour that was also in the public interest by both the operator of the scheme and any businesses certifying it. Nevertheless, there are safeguards to ensure that the operation of the scheme remains consistent with the Government's intent, such as an ability to refuse, suspend or cancel the approval. The operation of the scheme would also be subject to government auditing.²¹¹

Committee comment

The Committee considered the chief executive's approval of third parties to carry out accreditation. The Committee notes the criteria at section 435F that the chief executive may consider in determining whether an applicant is a suitable person to carry accreditation and that section 435(2) provides a safeguard in that the chief executive must ensure an audit is conducted of the applicant's biosecurity accreditation system, or proposed biosecurity accreditation system, relevant to the application.

The Committee is satisfied that the safeguards in place are appropriate in determining a third party's application to carry out accreditation activities.

7.4 Scrutiny of the Legislative Assembly

Clause 34 provides that guidelines may be made for conducting a mediation.

Clause 34(1) provides that the authority must make guidelines about the conduct of a mediation for farm business debts. Pursuant to clause 34(2), without limiting subsection (1), a guideline may be made about:

- a) the procedure for starting mediation and arranging mediation meetings; or
- b) the obligations of a mediator to keep records about mediations conducted.

Clause 34(3) provides that when preparing the guidelines, the authority must consult with:

- a) at least 1 organisation that represents the interests of Queensland farmers; and
- b) at least 1 organisation that represents the interests of banks or other entities that provide finance to Queensland farmers.

Pursuant to clause 34(4), the authority must publish the guidelines on the authority's website.

Potential FLP issues

Appropriate delegation of legislation

Rather than setting out the procedure for a mediation in guidelines, it may be argued that this important information should be placed in the primary Act or a regulation. This potentially breaches section 4(4)(b) of the *Legislative Standards Act 1992* which provides that a Bill should sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly.

The OQPC Notebook states *For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.*²¹² The matter involves consideration of whether the delegate may only make rules that are subordinate legislation, and thus subject to disallowance.

²¹¹ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 11

²¹² Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p. 154

The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny.²¹³ The SLC commented adversely on provisions allowing matters, which might reasonably be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not subject to parliamentary scrutiny. In considering the appropriateness of delegated matters being dealt with through an alternative process, the SLC considered:

- The importance of the subject dealt with;
- The practicality or otherwise of including those matters entirely in subordinate legislation;
- The commercial or technical nature of the subject matter, and
- Whether the provisions were mandatory rules or merely to be had regard to.²¹⁴

The SLC also considered that despite an instrument not being subordinate legislation, if there was a provision requiring tabling and providing for disallowance that was less concerning.²¹⁵

The explanatory notes comment on the potential FLP and advise that the 'delegation of these powers to the authority in this instance is justified as the guidelines will be of a technical and procedural nature'.²¹⁶

Committee comment

The Committee notes that pursuant to clause 34 the procedures for starting and arranging a mediation must be set out in guidelines. Arguably this information would be better placed in a regulation to allow for greater scrutiny by the Parliament. Given however that the guidelines must be published on the Authority's website, this may provide more convenient access for the parties concerned than if the relevant criteria were contained in a regulation.

7.5 Proposed offence provisions

The Committee considers the proposed offence provisions in the Bill are appropriate. The proposed offence provisions are set out below:

Clause	Offence	Proposed maximum penalty
12	<p>Restriction on mortgagee enforcement action <i>Farm Business Debt Mediation Act 2016</i></p> <p>(1) A mortgagee must not take enforcement action under a farm mortgage unless—</p> <p>(a) this Act does not apply in relation to the farmer or the farm mortgage; or</p> <p>(b) an exemption certificate is in force for the farm mortgage.</p>	100 penalty units

²¹³ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 155

²¹⁴ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p. 155

²¹⁵ Alert Digest 2004/3, pages 5-6, paras 30-40; Alert Digest 2000/9, pp 24-25, paras 47-56

²¹⁶ Farm Business Debt Mediation Bill 2016, explanatory notes, p. 10

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	<p><i>Note—</i> If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 89, to have also committed the offence.</p> <p>(2) Enforcement action that is taken by a mortgagee in relation to a farm mortgage in contravention of subsection (1) has no effect.</p> <p>(3) Subsection (2) applies despite any other Act or law.</p>	
31	<p>Ensuring heads of agreement is given effect accurately</p> <p>(1) This section applies if a farmer and mortgagee who entered into a heads of agreement for a farm business debt are also the parties to a contract, mortgage or other document entered into to give effect to the heads of agreement.</p> <p>(2) The mortgagee must ensure the contract, mortgage or other document gives effect to the heads of agreement accurately.</p> <p><i>Note for subsection (2)—</i> If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 89, to have also committed the offence.</p>	100 penalty units
83	<p>Disclosing information</p> <p>A person must not disclose any information obtained in a mediation meeting or in connection with the administration of this Act unless the disclosure is made—</p> <p>(a) if the information is about a person—by, or with the consent, of the person; or</p> <p>(b) with the consent of the person from whom the information was obtained; or</p> <p>(c) to the extent necessary to perform the person’s functions under or in relation to this Act; or</p> <p>(d) as reasonably required for the purpose of referring a party or parties to mediation to a person, agency, organisation or other body and, with the consent of the parties to the mediation, for the purpose of aiding in the resolution of an issue between the parties; or</p> <p>(e) as otherwise required or allowed by law; or</p> <p>(f) with another lawful excuse.</p>	20 penalty units or 6 months imprisonment
105	<p>Insertion of new s.435N Giving false or misleading information – Biosecurity Act 2014</p> <p>A person who applies to the chief executive under this division must not give the chief executive information for the application that the person knows, or ought reasonably to know, is false or misleading in a material particular, unless the person has a reasonable excuse.</p>	200 penalty units
106	<p>Insertion of new s.436A - Contravention of approval conditions</p> <p>An approved operator of an approved biosecurity accreditation scheme must not contravene an approval condition, unless the approved operator has a reasonable excuse.</p>	200 penalty units

108	<p>Insertion of new s.470B Additional compliance audits</p> <p>(1) This section applies if—</p> <p>(a) a compliance audit of an approved operator’s operation of an approved biosecurity accreditation scheme is conducted under an approval condition or a requirement under subsection (2); and</p> <p>(b) the compliance audit identified a noncompliance, or more than 1 noncompliance, with the approved operator’s approval.</p> <p>(2) The chief executive may, in writing, require—</p> <p>(a) for each noncompliance with the approval identified by the compliance audit—the approved operator to have an additional compliance audit conducted related to the noncompliance; and</p> <p>(b) the additional compliance audit to be conducted within a stated reasonable period.</p> <p>(3) An additional compliance audit of the approved operator’s operation of the scheme required under subsection (2) may relate to more than 1 noncompliance with the approval.</p> <p>(4) The approved operator must comply with a requirement under subsection (2), unless the approved operator has a reasonable excuse.</p>	100 penalty units.
109	<p>Insertion of new s.474A Report about audit for approval to operate approved biosecurity accreditation system</p> <p>(1) This section applies if an auditor conducts an audit of an applicant’s biosecurity accreditation systems relevant to an application for approval to operate an approved biosecurity accreditation scheme.</p> <p>(2) The auditor must give a report about the audit to the following persons within 14 days after completing the audit, unless the auditor has a reasonable excuse—</p> <p>(a) the applicant;</p> <p>(b) the chief executive.</p>	100 penalty units
109	<p>Insertion of new s.474B Report about audit for compliance, nonconformance or check audit</p> <p>(1) This section applies if an auditor conducts a compliance, nonconformance or check audit of an approved operator’s operation of an approved biosecurity accreditation system.</p> <p>(2) The auditor must give a report about the audit to the following persons within 14 days after completing the audit, unless the auditor has a reasonable excuse—</p> <p>(a) the approved operator;</p> <p>(b) the chief executive.</p>	100 penalty units

Appendix A – List of submissions

Submission no.	Submitter
001	Mr Graham Paterson
002	Mount Flagstone
003	Confidential
004	Mr Ross Bensted
005	Mr Christopher Cameron
006	Confidential
007	Ms Sally Witherspoon
008	Mr Brett McDonald
009	Queensland Farmers' Federation
010	Mr Paul Faigl
011	Mr Edward Wade
012	Australian Cane Farmers Association
013	AgForce
014	Suncorp Bank
015	Mr William Burrell
016	Australian Bankers' Association
017	Mr Bruce Currie
018	Banana Shire Council
019	Mr Charlie Phillot
20	Mr Carol Mackee
21	Mr Michael Bruderlin
22	Mount Flagstone (2)
23	Nursery & Garden Industry Queensland
24	Ecofibre

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25	Queensland Farmers' Federation
26	Resolution Institute
27	Mr Ben Rees
28	Australasian Medicinal Cannabis
29	Legal Aid Queensland
30	Rural Financial Counselling Service North Queensland
31	Queensland Law Society
32	AgForce
33	Suncorp Bank
34	Dr Mark McGovern
35	Australian Bankers' Association
36	National Australia Bank Agribusiness
37	Rural Financial Counselling Service, Southern Queensland

Appendix B – List of witnesses

Departmental briefings

Date	Location	Witnesses
14 September 2016	Brisbane	Department of Agriculture and Fisheries: <ul style="list-style-type: none"> • Mr Malcolm Letts, Deputy Director-General • Ms Marguerite Clarke, Director – Regulatory Policy and Reform • Mr Brett de Hayr, General Manager – Strategic Policy & Planning • Mr Vern Rudwick, Director – Land Management • Mr Pat Coyne, Principal Policy Officer – Regulatory Policy & Reform • Mr Bob Durance, Director – Plant Industries, Food & Trade • Ms Melissa Cummins, Director – Plant Biosecurity and Product Integrity
		Queensland Treasury: <ul style="list-style-type: none"> • Warwick Agnew, Deputy Under Treasurer – Agency Performance & investment
9 November 2016	Brisbane	Department of Agriculture and Fisheries: <ul style="list-style-type: none"> • Mr Elton Miller, Executive Director – Regions and Industry Development • Ms Marguerite Clarke, Director – Regulatory Policy and Reform • Mr Pat Coyne, Principal Policy Officer – Regulatory Policy and Reform

Public hearing - 4 October 2016

Location	Witnesses
Cloncurry	Chartered Accountants Australia & New Zealand: <ul style="list-style-type: none"> • Mr Peter O'Regan, FCA
	Cloncurry Shire Council: <ul style="list-style-type: none"> • Mr Greg Campbell, Mayor
Brisbane	Nursery and Garden Industry Australia: <ul style="list-style-type: none"> • Ms Kerry Battersby, Executive Officer • Mr John McDonald, National Biosecurity Manager Queensland Farmers' Federation: <ul style="list-style-type: none"> • Mr Travis Tobin, Chief Executive Officer Legal Aid Queensland: <ul style="list-style-type: none"> • Mr Denis McMahon, Senior Lawyer – Farm and Rural Legal Services, Civil Justice Services • Ms Lorraine Penshorn

Public hearing - 5 October 2016

Location	Witnesses
Mackay	<p>Canegrowers Mackay:</p> <ul style="list-style-type: none"> • Mr Kerry Latter, Chief Executive Officer <p>Rural Financial Counselling Service North Queensland:</p> <ul style="list-style-type: none"> • Mr Richard Lewis, Rural Financial Counsellor
Emerald	<p>Individuals:</p> <ul style="list-style-type: none"> • Mr Bruce Currie • Mr Edward Wade

Public hearing – 6 October 2016

Location	Witnesses
Burdekin	<p>Individuals:</p> <ul style="list-style-type: none"> • Mr Max Menzel • Mr Orazio Marano
Bundaberg	<p>Rural Financial Counselling Service, Southern Queensland:</p> <ul style="list-style-type: none"> • Ms Kim Corfield, Rural Financial Counsellor • Mr Derk Abberfield, Gympie Rural Financial Counsellor
Hughenden	<p>Individual:</p> <ul style="list-style-type: none"> • Mr Rob Atkinson <p>Flinders Shire Council:</p> <ul style="list-style-type: none"> • Ms Kate Downie, Councillor • Mr Kim Middleton, Councillor • Mr Bill Paine, Rural Lands Officer • Mr Graham Sealy, Councillor • Ms Robyn Young, Rural Services Manager <p>Member of Parliament:</p> <ul style="list-style-type: none"> • Mr Rob Katter MP, Member for Mt Isa <p>Individual:</p> <ul style="list-style-type: none"> • Gerald Elliot
Roma	<p>Individuals:</p> <ul style="list-style-type: none"> • Mr Ben Rees • Mr Glen Budden • Mr Charles Nason

Public hearing

Date	Location	Witnesses
2 November 2016	Brisbane	Individual: <ul style="list-style-type: none"> • Mr Bob Katter, Federal Member for Kennedy
		Australian Bankers' Association: <ul style="list-style-type: none"> • Ms Diane Tate, Executive Director – Retail Policy • Ms Amanda Pullinger, Policy Director – Retail Policy
		Queensland Rural Adjustment Authority: <ul style="list-style-type: none"> • Mr Cameron MacMillan, Chief Executive Officer • Mr Tony O'Dea, General Manager – Program Delivery Services • Ms Linda Campbell, A/General Manager – Corporate Strategy & Operations
		AgForce: <ul style="list-style-type: none"> • Mr Charles Burke, Chief Executive Officer • Dr Dale Miller, Senior Policy Advisor
		Queensland Farmers' Federation: <ul style="list-style-type: none"> • Mr Peter Perkins, Project Manager • Mr Ross Henry, Project Manager
		Queensland Law Society: <ul style="list-style-type: none"> • Mr Bill Potts, President • Mr George Fox, QLS member and partner at Fox Bradfield Lawyers
		Suncorp: <ul style="list-style-type: none"> • Mr Kevin Potter, Executive General Manager of Banking and Wealth • Mr Chris Turvey, Manager – Business Customer Support
		Academic: <ul style="list-style-type: none"> • Dr Mark McGovern

Appendix C – Taskforce recommendations

The Taskforce made 14 recommendations in its report in an effort to stabilise and reinvigorate primary industries and strengthen rural Queensland communities.

Source: Chairman’s Report, Rural Debt and Drought Taskforce, Addressing debt and drought problems in rural Queensland, April 2016, pp ix – xi.

1. The Government of Queensland to establish a Rural and Industries Development Bank to offer suitably tailored rural loans to businesses along the supply chain; industry development; a commercial lending ability, including recapitalising for restocking and replanting
2. That Government make provisions for a contemporary Farm Debt Reconstruction Authority with the ability to address untenable financial arrangements
3. That the State Government engage with all stakeholders to facilitate the uptake of a commercial Multi-Peril insurance (income protection) product for all primary industries but with particular urgency for grain, cotton, sugar, pastoral industries and horticulture
4. That the Government initiate a Royal Commission to investigate financial conduct within the finance sector
5. That the State Government as a matter of priority ensure that sufficient mental health workers are provided to identified struggling regions commensurate with the level of stress
6. That the State extend and expand a funding model to facilitate intergenerational transfer of farm properties including stamp duty exemptions
7. Extend productivity enhancement loans to include water infrastructure and vermin fencing with long repayment periods
8. That the state Government Emergency Water Infrastructure Rebate be extended to de-silting of dams
9. That inside the Queensland Department of Agriculture and Fisheries (QDAF), an independent office of rural affairs be established
10. That a commitment be made to give preferential consideration to engaging local businesses and local authorities in the construction of new improved infrastructure for drought effected rural areas
11. That significant direct public funding be made available to producers for continual learning opportunities to build their capacity to manage farm financial and climate risks
12. That the State Government provide additional financial assistance for children’s education in severely affected drought areas until drought recovery in complete
13. The State government make strong representations to the Federal Government to revise the eligibility criteria of the Farm Household allowance (FHA) so it is more accessible to operators of primary production enterprises
14. That the State make strong argument to the Federal Government that any drought that lasts longer than two years be declared a natural disaster.

Appendix D – Comparison of proposed changes to the *Rural and Regional Adjustment Act 1994*

<i>Rural and Regional Adjustment Act 1994</i>	Private Member's Bill		Government Bill	
<p>s 3 Object of Act</p> <p>(1) The object of this Act is to establish QRAA primarily to administer assistance schemes that foster the development of a more productive and sustainable rural and regional sector in Queensland.</p> <p>(2) QRAA may also—</p> <p>(a) support the State's economy by administering schemes to give assistance to primary producers, small businesses or other elements of the State's economy—</p> <p>(i) in periods when they are experiencing temporary difficulty; or</p> <p>(ii) to otherwise benefit the State's economy; and</p> <p>(b) give assistance and build its own effectiveness by administering schemes or parts of schemes for the Commonwealth and other States in rural and regional sectors outside Queensland.</p> <p>Examples of administering parts of schemes—</p> <ul style="list-style-type: none"> conducting financial analysis of applications for assistance under an authorised interstate scheme 	<p>Cl. 3</p>	<p>3 Object of Act</p> <p>(1) The object of this Act is to establish QRAA primarily to RIDB primarily to give financial assistance and administer assistance schemes that foster the development of a more productive and sustainable rural and regional sector in Queensland.</p> <p>(2) QRAA RIDB may also—</p> <p>(a) support the State's economy by administering schemes to give assistance giving financial assistance, and administering schemes to give financial assistance, to primary producers, small businesses or other elements of the State's economy—</p> <p>...</p>	<p>cl. 123</p>	<p>3 Object of Act</p> <p>(1) The object of this Act is to establish the Queensland Rural and Industry Development Authority QRAA primarily to administer assistance schemes that foster the development of a more productive and sustainable rural and regional sector in Queensland.</p> <p>(2) QRAA The authority may also—</p> <p>(a) support the State's economy by administering schemes to give assistance to primary producers, small businesses or other elements of the State's economy—</p> <p>(i) in periods when they are experiencing temporary difficulty; or</p> <p>(ii) to otherwise benefit the State's economy; and</p> <p>(b) support communities in the State and build its own effectiveness by administering schemes to give assistance that benefits these communities, including, for example, by giving assistance to persons and organisations that contribute to these communities; and</p>

Rural and Regional Adjustment Act 1994	Private Member's Bill		Government Bill	
<ul style="list-style-type: none"> • reviewing an authorised interstate scheme • providing advice on applications for financial assistance under an authorised interstate scheme 				<p><i>Examples of organisations that contribute to communities—</i></p> <p style="text-align: center;"><i>Community service, sporting and cultural organisations</i></p> <p>(bc) give assistance and build its own effectiveness by administering schemes or parts of schemes for the Commonwealth and other States in rural and regional sectors outside Queensland.</p> <p>Examples of administering parts of schemes—</p> <ul style="list-style-type: none"> • conducting financial analysis of applications for assistance under an authorised interstate scheme • reviewing an authorised interstate scheme • providing advice on applications for financial assistance under an authorised interstate scheme
<p>s4 Definitions</p> <p>In this Act—</p> <p>authority means QRAA.</p> <p>authority's assistance funds means amounts held by the authority, if the amounts have been—</p> <p>(a) advanced to the authority, for giving financial assistance under approved schemes, by—</p> <p>(i) the State, the Commonwealth or another State, or an entity that represents</p>	<p>Cl. 4</p>	<p>4 Definitions</p> <p>In this Act—</p> <p>authority means QRAA RIDB.</p> <p>authority's assistance funds means amounts held by the authority, if the amounts have been—</p> <p>(a) advanced to the authority, for giving financial assistance under approved schemes, by—</p> <p>(i) the State, the Commonwealth or another State, or an entity that</p>	<p>cl. 124</p>	<p>4 Definitions</p> <p>authority means QRAA the Queensland Rural and Industry Development Authority.</p> <p>financial assistance see section 10(2).</p> <p>In this Act— The dictionary in schedule 1 defines particular words used in this Act.</p>

Rural and Regional Adjustment Act 1994	Private Member's Bill	Government Bill
<p>the State, the Commonwealth or another State; or</p> <p>(ii) another entity, under a scheme entered into between the entity and the State; or</p> <p>(b) paid to the authority by persons to whom financial assistance has been given, whether the assistance was given before or after the commencement of this Act; or</p> <p>(c) earned on—</p> <p>(i) the investment by the authority of the amounts mentioned in paragraph (a) or (b); or</p> <p>(ii) loans made, whether before or after the commencement of this Act, in giving financial assistance.</p> <p>...</p>	<p>represents the State, the Commonwealth or another State; or</p> <p>(ii) another entity, under a scheme entered into between the entity and the State; or</p> <p>(b) paid to the authority by persons to whom financial assistance has been given, whether the assistance was given before or after the commencement of this Act; or</p> <p>(c) borrowed or raised by the authority; or</p> <p>(d) earned on—</p> <p>(i) the investment by the authority of the amounts mentioned in paragraph (a) or (b); or</p> <p>(ii) loans made, whether before or after the commencement of this Act, in giving financial assistance.</p> <p>...</p> <p>financial arrangements means arrangements involving or related to—</p> <p>(a) borrowing or raising money, including by securities issued or guaranteed by the State or the Commonwealth; and</p> <p>(b) lending money; and</p>	

<i>Rural and Regional Adjustment Act 1994</i>		Private Member's Bill		Government Bill
		(c) investing money; and (d) restructuring a debt; and (e) restructuring— (i) the business of a primary producer; or (ii) a small business. financial assistance includes a loan of money. ... RIDB means the Rural and Industries Development Bank.		
Part 2 heading Part 2 QRAA	Cl. 5	Part 2 QRAA RIDB	cl. 125	Part 2 QRAA Part 2 Queensland Rural and Industry Development Authority
s5 Establishment of authority QRAA is established.	Cl. 6	5 Establishment of authority QRAA RIDB is established.	cl 126	5 Establishment of authority QRAA The Queensland Rural and Industry Development Authority is established.
Division 2 Functions and powers of authority s8 Authority's functions (1) The authority's primary function is to put approved assistance schemes into effect by— (a) ensuring the schemes are properly and fairly administered; and	Cl. 7	Division 2 Functions and powers of authority 8 Authority's functions (1) The authority's functions are— (a) to put approved assistance schemes into effect by— (i) ensuring the schemes are properly and fairly administered; and		Division 2 Functions and powers of authority s8 Authority's functions (1) The authority's primary function is to put approved assistance schemes into effect by— (a) ensuring the schemes are properly and fairly administered; and (b) directly giving the assistance the schemes provide for.

<i>Rural and Regional Adjustment Act 1994</i>	Private Member's Bill	Government Bill
<p>(b) directly giving the assistance the schemes provide for.</p> <p>(2) The other functions of the authority are—</p> <p>(a) to arrange for education, training and advice to applicants under approved assistance schemes; and</p> <p>(2) The other functions of the authority are—</p> <p>(a) to arrange for education, training and advice to applicants under approved assistance schemes; and (b) to negotiate for assistance funding with all levels of government; and</p> <p>(c) to carry out research into, and develop policies on, issues affecting persons likely to receive assistance under this Act; and</p> <p>(d) to review, and give advice to the Minister on—</p> <p>(i) proposed assistance schemes; and</p> <p>(ii) the implementation of approved assistance schemes; and</p> <p>(iii) economic and other conditions in the rural and regional sectors; and</p> <p>(e) to consult, and liaise with—</p>	<p>(ii) directly giving the financial assistance the schemes provide for; and</p> <p>(b) to give other financial assistance to approved applicants.</p>	<p>(2) The other functions of the authority are—</p> <p>...</p> <p>(c) to carry out research into, and develop policies on, issues affecting persons likely to receive assistance under this Act; and</p> <p>(c) to carry out research into, develop policies on and give advice to the Minister about—</p> <p>(i) issues affecting persons likely to receive assistance under this Act; and</p> <p>(ii) the financial performance and sustainability of the rural and regional sector in Queensland, in particular, primary producers, small business and other components of the State's economy; and</p> <p>(d) to review, and give advice to the Minister on—</p> <p>(i) proposed assistance schemes; and</p> <p>(ii) the implementation of approved assistance schemes; and</p> <p>(iii) economic and other conditions in the rural and regional sectors; and</p> <p>(e) to consult, and liaise with—</p> <p>(i) commercial lenders and financial advisers; and</p> <p>(ii) public sector units with the function of helping the rural, regional and small</p>

Rural and Regional Adjustment Act 1994	Private Member's Bill		Government Bill	
<p>(i) commercial lenders and financial advisers; and</p> <p>(ii) public sector units with the function of helping the rural, regional and small business sectors of the economy, and equivalent entities of other States or the Commonwealth; and</p> <p>(iii) organisations representing the interests of persons likely to receive assistance under this Act; and</p> <p>(f) to administer authorised interstate schemes or parts of the schemes; and</p> <p>(g) to perform functions incidental to a function under another paragraph of this subsection; and</p> <p>(h) to perform other functions given to the authority under this Act or another Act; and</p> <p>(i) other functions prescribed by regulation.</p>				<p>business sectors of the economy, and equivalent entities of other States or the Commonwealth; and</p> <p>(iii) organisations representing the interests of persons likely to receive assistance under this Act; and</p> <p>(f) to partner to partner with commercial lenders and financial advisors to—</p> <p>(i) perform another function under this subsection; and</p> <p>(ii) further the object of this Act under section 3; and</p> <p>(f)g) to administer authorised interstate schemes or parts of the schemes; and</p> <p>(g)h) to perform functions incidental to a function under another paragraph of this subsection; and</p> <p>(h)i) to perform other functions given to the authority under this Act or another Act; and</p> <p>(i)j) other functions prescribed by regulation.</p>
<p>s9 Authority's powers</p> <p>(1) The authority has all the powers of an individual, and may, for example—</p> <p>(a) enter into contracts; and</p>	<p>Cl. 8</p>	<p>9 Authority's powers</p> <p>(1) The authority has all the powers of an individual, and may, for example—</p> <p>(a) enter into contracts; and</p>	<p>cl. 128</p>	<p>s9 Authority's powers</p> <p>(1) The authority has all the powers of an individual, and may, for example—</p> <p>(a) enter into contracts, including contracts for loans; and</p>

Rural and Regional Adjustment Act 1994	Private Member's Bill	Government Bill
<p>(b) acquire, hold, deal with and dispose of property; and</p> <p>(c) appoint agents and attorneys; and</p> <p>(d) charge for, and fix conditions for the supply of, the goods, services and information it supplies; and</p> <p>(e) engage consultants; and</p> <p>(f) do anything else necessary or convenient to be done for, or in connection with, the performance of its functions.</p> <p>(2) Without limiting subsection (1), the authority has the powers given to it under this or another Act.</p> <p>(3) The authority may exercise its powers inside or outside Queensland.</p>	<p>(b) acquire, hold, deal with and dispose of property; and</p> <p>(c) appoint agents and attorneys; and</p> <p>(d) charge for, and fix conditions for the supply of, the goods, services and information it supplies; and</p> <p>(e) engage consultants;</p> <p>(f) enter into financial arrangements; and</p> <p>(g) do anything else necessary or convenient to be done for, or in connection with, the performance of its functions.</p> <p>(2) Without limiting subsection (1), the authority has the powers given to it under this or another Act.</p> <p>(3) The authority may exercise its powers inside or outside Queensland.</p>	
<p>s10 Approved schemes</p> <p>(1) The authority may give financial assistance only under an approved scheme.</p>		<p>cl. 129 s10 Approved schemes</p> <p>(1) The authority may give financial assistance only under an approved scheme.</p> <p>(2) Financial assistance includes making loans on terms allowed under an approved scheme.</p>
<p>s 27 Delegation</p> <p>The authority may delegate its powers to a director or an officer of the authority.</p>		<p>cl. 130 s 27 Delegation</p> <p>The authority may delegate its powers to a director or an the authority's functions and</p>

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		powers under this Act or another Act to a director or an appropriately qualified officer of the authority.
<p>s 35 Acting chief executive officer</p> <p>The Minister may appoint a person, who is eligible for appointment as chief executive officer, to act in the office of chief executive officer during—</p> <p>(a) any vacancy, or all vacancies, in the office; or</p> <p>(b) any period, or all periods, when the chief executive officer is absent from duty, or cannot, for another reason, perform the duties of the office.</p>		<p>cl. 131 s 35 Acting chief executive officer</p> <p>The Minister board may appoint a person, who is eligible for appointment as chief executive officer, to act in the office of chief executive officer during—</p> <p>(a) any vacancy, or all vacancies, in the office; or</p> <p>(b) any period, or all periods, when the chief executive officer is absent from duty, or cannot, for another reason, perform the duties of the office.</p> <p>(2) Subsection (1) does not affect the application of the Acts Interpretation Act 1954, section 24B or 25 for the appointment.</p>
<p>s 35B Delegation</p> <p>(1) The chief executive officer may, with the board's approval, delegate the chief executive officer's functions, including a function delegated to the chief executive officer by the authority, to an appropriately qualified employee of the authority.</p> <p>(2) In this section—</p> <p>appropriately qualified, for an employee of the authority, includes having the</p>		<p>cl. 132 s 35B Delegation</p> <p>(1) The chief executive officer may, with the board's approval, delegate the chief executive officer's functions under this Act or another Act, including a function delegated to the chief executive officer by the authority, to an appropriately qualified employee of the authority.</p> <p>(2) In this section—</p> <p>appropriately qualified, for an employee of the authority, includes having the qualifications,</p>

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<p>qualifications, experience or standing appropriate for the function.</p> <p><i>Example of standing—</i> an employee's seniority level within the staff of the authority</p> <p>function includes power.</p>				<p>experience or standing appropriate for the function.</p> <p><i>Example of standing—</i> an employee's seniority level within the staff of the authority</p> <p>function includes power.</p>
			cl. 133	<p>Clause 133 would insert a new heading before s. 52:</p> <p>Division 1 Transitional provisions for Rural Adjustment Authority Amendment Act 2004</p>
			cl. 134	<p>Clause 134 would insert a new part 8, division 2 after s 54:</p> <p>Division 2 Transitional provisions for Farm Business Debt Mediation Act 2016</p> <p>55 Authority continues</p> <p>The QRAA established under this Act, as in force immediately before this section commenced, is continued as the Queensland Rural and Industry Development Authority.</p> <p>56 References to QRAA</p> <p>In an Act or other document, a reference to QRAA, may, if the context permits, be taken to be a reference to the Queensland Rural and Industry Development Authority.</p>

Farm Business Debt Mediation Bill 2016 and Rural and Regional Adjustment
(Development Assistance) Amendment Bill 2016

<i>Rural and Regional Adjustment Act 1994</i>	Private Member's Bill		Government Bill	
			cl. 124 and 135	Schedule 1 cl 124 amends the definitions currently in s. 4 of the Act. Cl 135 – inserts new schedule 1 into the Act cl. 124(4) relocates the definitions, as amended to a new schedule 1. authority means QRAA Queensland Rural and Industry Development Authority. financial assistance see section 10(2)

Appendix E – Jurisdictional comparison of farm debt mediation legislation

	NSW	VIC	QLD	SA
Legislation	Farm Debt Mediation Act 1994 (NSW)	Farm Debt Mediation Act 2011 (Vic)	Farm Business Debt Mediation Bill 2016 (Qld)	Farm Debt Mediation Bill 2015 (SA)
Administering authority	New South Wales Rural Assistance Authority	Small Business Commissioner	Queensland Rural and Industry Development Authority	Small Business Commissioner
Creditor takes enforcement action	<p>s 8 A creditor must give a farmer at least 21 days notice of an intended enforcement action and of the availability of mediation.</p> <p>s 9(1) A farmer may request mediation within 21 days of receiving the notice.</p> <p>s 9A(1) A creditor may agree to or decline mediation.</p> <p>s 10(1) The creditor must not take enforcement action unless a certificate under s 11 is in force.</p> <p>s 11 A creditor may apply to the Authority to issue a s 11 certificate if the farmer is in default, no exemption certificate</p>	<p>s 8 A creditor must give a farmer at least 21 days notice of an intended enforcement action and of the availability of mediation.</p> <p>s 9(1) A farmer may request mediation within 21 days of receiving the notice.</p> <p>s 10(1) A creditor may agree or refuse to mediate.</p> <p>s 12 The creditor must not take enforcement action unless an exemption certificate is issued.</p> <p>s 16(2) A creditor may apply to the Authority for an exemption certificate if the farmer is in default, no prohibition certificate is in force and the Authority is satisfied that:</p>	<p>s 14(1) and (3) The mortgagee must give a farmer an enforcement action notice giving a farmer at least 15 days from the day the notice is served to request mediation.</p> <p>s 14(3) The day by which the farmer must ask for mediation must be no less than 15 business days after the day the notice is served on the farmer.</p> <p>s 16(1) The mortgagee may agree to or refuse the mediation.</p> <p>s 12(1) A mortgagee must not take enforcement action unless: <ul style="list-style-type: none"> this Act does not apply in relation to the farmer or the farm mortgage, or </p>	<p>s 8(1) A creditor must give a farmer at least 21 days notice of any enforcement action and must state that the farmer has 21 days to request mediation.</p> <p>s 9(2) A farmer who is given a notice by a creditor may, within 21 days, request mediation.</p> <p>s 10 (1) A creditor may agree or refuse to participate in mediation.</p> <p>s 12 If a farmer has requested mediation, the creditor must not take enforcement action unless an exemption certificate is in force.</p> <p>s 15 (1) A creditor can apply to the Authority, for an exemption</p>

	NSW	VIC	QLD	SA
	<p>is in force and the Authority is satisfied that:</p> <ul style="list-style-type: none"> • satisfactory mediation has taken place or • the farmer has declined to mediate or • the creditor has attempted to mediate in good faith and three months has elapsed (or whatever timeframe is agreed by the parties-s 11(1A)) <p>s 9A(3) If a creditor declines to mediate, the farmer may apply to the Authority for an exemption certificate.</p> <p>s 9B(3) If an exemption certificate is in force:</p> <ul style="list-style-type: none"> • no s 11 certificate can be issued and 	<ul style="list-style-type: none"> • satisfactory mediation has taken place, or • the farmer has refused to mediate, or • at least 3 months have elapsed after a notice was given by the creditor, or any extended period that has been agreed to by the creditor and farmer, and the creditor has attempted to mediate in good faith. <p>s 16(3) The Small Business Commissioner may issue an exemption certificate if the Commissioner is satisfied that the farm debt has already been satisfactorily mediated under an alternative dispute resolution scheme other than that provided for under Part 3.</p>	<ul style="list-style-type: none"> • an exemption certificate is in force. <p>s 48 (1) The mortgagee may apply to the authority for a certificate (an exemption certificate) exempting the mortgagee from the obligation to offer mediation before taking enforcement action.</p> <p>s 49 (1) Each of the following is a ground for issuing an exemption certificate to a mortgagee:</p> <ul style="list-style-type: none"> • there was satisfactory mediation; • the farmer has failed to, and does not intend to, mediate; • at least 3 months (or longer if agreed) has elapsed and throughout that period the mortgagee has made attempts to participate in mediation in good faith. • the farm business debt is secured, in part, by a farm 	<p>certificate if the farmer is in default, a prohibition certificate is not in force and:</p> <ul style="list-style-type: none"> • satisfactory mediation under this Act has taken place; or • satisfactory mediation has not taken place as the farmer has refused to participate in mediation; or • at least 3 months (or longer if agreed) has elapsed and throughout that period the creditor has made attempts to participate in mediation in good faith. <p>s 14(3) A creditor must also not commence enforcement action against a farmer if a prohibition certificate is in force.</p> <p>s 13 (1) A farmer may apply to the Authority, for a prohibition certificate if the farmer is in default, an exemption certificate is not in force, the farmer has requested mediation and either satisfactory mediation has not</p>

	NSW	VIC	QLD	SA
	<ul style="list-style-type: none"> no enforcement action can be taken by the creditor. <p>s 9B(2) sets out the specific grounds on which an exemption certificate may be issued.</p> <p>s 9B(4) An exemption certificate is in force for 6 months after the day on which the creditor declined to mediate or until the farmer and creditor enter into mediation, whichever is earlier.</p>	<p>s 10(3)(b) Where the farmer is in default, if the creditor refuses to mediate the farmer may apply to the Authority for a prohibition certificate.</p> <p>s 14(2) A creditor must not commence enforcement action against a farmer if a prohibition certificate is in force.</p> <p>s 13 sets out the specific grounds on which a prohibition certificate may be issued.</p> <p>s 14(3) A prohibition certificate ceases to be in force on the earlier date of 6 months after the prohibition certificate is issued, or the day on which the farmer and creditor enter into mediation.</p>	<p>mortgage of farm property in another State and, under the corresponding law of that State—</p> <ul style="list-style-type: none"> the mediation considered matters relating to the farm mortgage of farm property in Queensland and was satisfactory; or the farmer has failed to, and does not intend to, mediate. <p>s 14(2)(f) If the farmer does not ask for mediation, the mortgagee may consider the farmer has declined mediation and may apply for an exemption certificate to allow the mortgagee to proceed with enforcement action.</p> <p>s 50 The Authority must give a show cause notice to the farmer before deciding a mortgagee's application for an exemption certificate. The farmer may make written representations to the</p>	<p>taken place as the creditor will not participate in mediation or at least 3 months have elapsed where the farmer has attempted to participate in mediation in good faith but no satisfactory mediation has taken place.</p> <p>s14 (4) A prohibition certificate ceases to be in force on the earlier of the expiry of 6 months after the date of issue or the day on which the farmer and creditor enter into mediation.</p>

	NSW	VIC	QLD	SA
			<p>authority to show why an exemption certificate should not be issued.</p> <p>s 40(1) and (2) The farmer may apply to the authority for an enforcement action suspension certificate to stop the mortgagee taking enforcement action, where the farmer is in default, the farmer has given the mortgagee a request for mediation notice and the mortgagee has failed to mediate.</p> <p>s 47 (1) An enforcement action suspension certificate ends on the earlier of the following days:</p> <ul style="list-style-type: none"> • the last day of a satisfactory mediation; • otherwise—the day that is 6 months after— <ul style="list-style-type: none"> ○ if the mortgagee gave the farmer a notice refusing the mediation—the notice was given; or 	

	NSW	VIC	QLD	SA
			<ul style="list-style-type: none"> ○ otherwise—the day that is 15 business days after the farmer gave the request for mediation notice to the mortgagee. <p>s 41 (1) The authority must give a show cause notice to the mortgagee before deciding a farmer’s application for an enforcement action suspension certificate. The mortgagee may, make written representations to the authority to show why an enforcement action suspension certificate should not be issued.</p>	