



Speech by

Hon. HENRY PALASZCZUK

MEMBER FOR INALA

Hansard 10 September 2003

FARM DEBT MEDIATION BILL

Second Reading

Resumed from 5 June (see p. 2636).

Hon. H. PALASZCZUK (Inala—ALP) (Minister for Primary Industries and Rural Communities) (10.30 p.m.): I rise to speak against the bill. In doing so, I will acknowledge that the proposal of the member for Gladstone is probably well intentioned and designed as a genuine attempt to assist with the financial dealings of farmers. However, the government when imposing legislation on the community needs to weigh up all relevant factors and make a judgment as to whether the benefits of a proposal outweigh the costs. This does not appear to be the case on this occasion.

The House is aware of the material tabled by the member in recent years including a Senate report critical of some bank behaviour and the difficulties of a former rural constituent of the member. No-one likes to see farmers having to leave properties against their will. However, the community expects that legal obligations agreed to by parties will be honoured.

Public pressure on banks regarding the management of these obligations is well documented and governments are involved in ensuring that all stakeholders' rights are respected. These situations do not, however, justify this legislative proposal which would add unnecessary cost and delay and would work against the provision of rural credit to the rural sector overall.

The bill proposes government intervention in the normal commercial relationship between commercial lenders, such as banks, and other credit providers, including small businesses such as stock and station agents, suppliers of farm requisites and even retail outlets on the one hand and farmers on the other, with regard to farm debt arrangements.

In particular, the bill proposes statutory interference in a creditor's ability to exercise foreclosure clauses in a farm mortgage agreement. Has the member considered the effect on small rural businesses, who may well find themselves facing failure, of legislated mediation provisions which will delay their ability to collect amounts owing?

The legislative proposal is not based on any hard data about actual foreclosure rates in Queensland. In fact, it appears to be largely biased towards the farmer's perspective and unfortunately shows little evidence of consultation with other key stakeholders in this sector, including the major bodies representing farmers. There are no substantive arguments advanced as to why the government should intervene in this credit market and not in others where there is likely to be a substantive amount of loans and other credit arrangements, from financial institutions to small or medium owner-operator type businesses such as retail shops, service stations, taxis, long distance road haulers, independent tradespersons, cafes and restaurants, real estate agents, solicitors, chemists, doctors and other health professionals, and even first home owners. The possible costs of the legislative measure are unquantified. No consideration has been taken of national competition policy requirements. The bill, insofar as the proposal's retrospective operation, would breach fundamental legislative principles.

There has been some inadequate consultation with major stakeholders in the development of this bill. Notably, there has been a complete absence of any consultation with the Australian Bankers Association and other non-bank financial institutions. I have looked in vain at the documentation supplied for some indication that there has been consideration of the possibility of additional borrowing costs. Will the additional costs of compulsory mediation add a further margin to rural lending? How would it impact on the attitude to provision of finance overall? Apparently the banks have not been asked. Also, there was no prior consultation with any of the statutory entities that would have additional

responsibilities and resourcing requirements imposed upon them by this legislation, namely, Legal Aid Queensland, the Queensland Audit Office and QRAA.

The two peak farmer representative bodies, the Queensland Farmers Federation and Agforce, have advised me that they were not consulted about the development of the bill. The QFF in particular has been involved for some time in discussions with the Australian Bankers Association and other finance providers on the development of enhanced voluntary farm debt mediation arrangements as part of a comprehensive Queensland Farm Finance Strategy. These discussions are now close to reaching fruition. Both are prepared to see the revised strategy extended to Agforce and to the non-bank finance providers.

The position of these two organisations is quite public, the matters having been subject to ongoing debate over recent years. If the member cared to peruse the most recent annual reports of both bodies he would see that the preference for a voluntary, non-legislative approach is clearly stated. These positions have not changed from those advised to me by these organisations some years ago, when I raised the issue of a need for effective mediation processes in this area. Since then I have supported the continued involvement of staff of the DPI to assist with the development of a revised voluntary code. In this regard, the member may not be aware of a recent QFF newsletter to its members. It states—

QFF Executive Director Brianna Casey co-chaired a meeting with a Director from the Australian Bankers Association (ABA) in Brisbane Wednesday 18 June 2003 on the revised QFF/ABA Farm Finance Strategy.

The Strategy has been in place since 1995, and was established to allow rural industry and the banking sector to work together to achieve a better understanding of the relationship between lender and borrower.

The Strategy also assists financial institutions, assistance authorities, rural organisations, primary producers and their respective financial advisors and counsellors to work together to improve farm viability and resolve financial problems.

QFF and the ABA initiated a review of the Strategy in late 2001, which involved the important input of the Department of Primary Industries, Legal Aid Queensland, Queensland Rural Adjustment Authority, Queensland Justice Department, Bar Association of Queensland, AgForce and all major banks.

The purpose of the review was to address any anomalies that may have arisen in the Strategy's first five years of implementation, as well as to strengthen the focus on mediation as an alternative to court action in cases of asset management or potential farm foreclosure.

The revised Strategy, which has now been renamed the Queensland Farm Finance Strategy (to encourage a greater uptake from non-bank lenders and primary producers who are not members of farm bodies) will be launched in approximately three months time.

I expect that further announcements will be forthcoming in the very near future. The government does accept a need for involvement in this area, and the appropriate type of involvement has been subject to detailed negotiation with industry. Indeed, when I personally raised the issue and floated the idea of legislation for mediation, industry expressed a concern that such legislation could limit its ability to borrow. This legislative proposal currently before the House has not been subject to detailed negotiation with industry.

In terms of whether other parts of Australia are considered, I understand that the only other Australian jurisdiction with a statutory approach to farm debt mediation is New South Wales, and only since 1994. There appears to be no conclusive evidence that shows whether the New South Wales approach produces any better result than a non-interventionist approach. I also understand that, following the recent national competition policy review, the National Competition Council may seek further justification that the benefits of the legislation outweigh the costs.

In terms of the federal position, it is worth noting that, even following the worst drought in 100 years, there has been no industry call for such legislation or federal suggestion that this type of legislative intervention is necessary for the rural sector. This is not to say that farmers are alone in facing problems with banks. It would be remiss of me not to remind members that there are a range of assistance measures available. I mention the services of the Financial Counselling Service of DPI and Legal Aid Queensland in particular, as well as the Credit (Rural Finance) Act 1966, the Banking Industry Ombudsman, the Alternative Dispute Resolution Service of the Department of Justice and Attorney-General and various codes and complaints resolution processes of finance providers. In addition, face-to-face discussion is maintained between government and banks.

I have met bankers in recent times to discuss and seek continued support to allow primary producers to manage through difficult situations such as the drought and dairy deregulation. At the federal level, the Deputy Prime Minister has also sought and obtained recent assurances of support from the banks regarding the drought situation.

Our government is actively involved with industry in maintaining lender support for rural industry. The introduction of heavy-handed compulsory mediation processes in this area is not considered necessary given the measures that are already in place. Unfortunately, this bill fails to meet even the minimum standards for prior stakeholder consultation and financial probity and does not accord with the views of industry or the vast majority of Australian governments. For all of these various reasons I believe that the bill should be opposed. I urge all honourable members to oppose it.