

**HOUSE OF ASSEMBLY**  
**THURSDAY 07<sup>TH</sup> JULY 2016**  
**FARM DEBT MEDIATION BILL**

*Second Reading*

**Mr PEDERICK ( Hammond ) ( 11:09 ):** I move:

That this bill be now read a second time.

I rise to speak to the Farm Debt Mediation Bill that was introduced in the other place late last year by my colleague and good friend the Hon. David Ridgway, and I acknowledge his work in this sector. I also acknowledge that the bill happened to get the support of the Liberal Party, and all of the crossbenchers in the other place, but not the support of the government, which is disappointing, to say the least, particularly when they talk about everything that is 'premium', and the 'clean green' agricultural lands that we have, and the produce that we do grow is very good.

Yet, when we see a position like this of good support for people who do get into trouble—and it does not matter what business you are in, but definitely in farm businesses sometimes because of climate, sometimes because of personal situations and sometimes a combination of both, and other matters—these things happen. Sometimes it can just be a run of bad seasons. Certainly we have seen issues over the years, especially around the eighties and towards the early nineties when interest rates were up to about 22 per cent in some cases, and we saw terrible pictures of farmers being up windmills getting away from their financiers, just trying to hold on to their last slim shred of hope to hold their land.

The purpose of this bill is to create a legally enforceable bank mediation mechanism for primary producers. With regard to the mediation, it is a structured negotiation process where the mediator, as a neutral and independent person, assists the farmer and the creditor in attempting to reach agreement on the present arrangements of future conduct of financial relations between them. In this state there is no legally enforceable bank mediation mechanism for primary producers and at present there exist two farm debt resolution procedures, including the Financial Ombudsman Service and the voluntary South Australian Farm Finance Strategy 2007 (the strategy).

The strategy is essentially an agreement between the South Australian Farmers Federation and the Australian Bankers Association, formed after a consultative process with SAFF, ABA, Primary Industries and Resources South Australia, Rural Financial Counselling Service SA Inc. and the Law Society of South Australia. We are not sure whether this agreement has been transferred over to Primary Producers SA since SAFF is now defunct. If it has not been, it is a redundant agreement.

Further, the issue with this document is that it is not a legal document and does not impose enforceable contractual obligations on any party. The purpose of this document is for financial institutions, assistance authorities, rural organisations and primary producers to work together to improve farm viability and resolve financial problems. The strategy provides for access to independent professional advice by the primary producer, early recognition of financial problems, resolving financial problems by negotiation and voluntary mediation. Currently, the Rural Financial Counselling Service South Australia provides farmers and other primary producers services with financial counselling and also offers a range of farm business management services to a broader range of agricultural businesses. It is a not-for-profit organisation in this state.

With regard to other states, there is legislation to facilitate farm debt mediation in New South Wales and Victoria, and a bill was introduced in Queensland in 2003 but was not successful. New South Wales has the relevant legislation as the Farm Debt Mediation Act 1994, and the object of this act is to provide for the efficient and equitable resolution of farm debt disputes. Mediation is required before a creditor can take possession of property or other enforcement action under a farm mortgage.

The New South Wales legislation establishes a process by which a creditor must not take enforcement action against a farmer until 21 days have elapsed after the creditor has given a notice indicating an intention to take enforcement action and of the availability of mediation. The farmer then has 21 days to notify the creditor that they wish to pursue mediation, and then once a farmer has given notice a creditor must not take enforcement action. But there is an exemption, and there is an exemption in this bill.

If a creditor refuses to mediate, a farmer may apply for a certificate of exemption from enforcement action. The act also establishes the functions of the mediator, the process by which the mediator is selected, rules regarding representation and evidence to be presented during mediation, and the rules pertaining to a heads of agreement following a successful mediation. The corresponding Victorian legislation is similar to that of New South Wales, with variances regarding the rules of mediation and a subsequent heads of agreement.

Why what is happening in South Australia is not currently working is that the main shortcoming of the current arrangement is that it is completely voluntary, therefore the bank or other creditor is under no legal obligation to enter into mediation with the farmer. The farmer must rely on the goodwill of the bank, or other creditor, to demonstrate leniency. This is, at times, to the detriment of the farmer, and does not promote an equitable approach, aimed at achieving a positive result. The concern is that the bank or creditor will not always act in good faith or in the best interests of the farmer.

Rural Financial Counselling Services South Australia is limited, as it is a voluntary service, given that only 25 per cent of farmers in South Australia utilise this service. Given its voluntary nature, it is often bypassed or ignored by farmers and creditors, usually to the detriment of the farmer. Rural Financial Counselling Services of South Australia has acknowledged this and will support the proposed legislation enforcing mandatory mediation.

It is worthy noting that since the global financial crisis, banks and financial institutions are less likely to lend money and increasingly likely to foreclose on a defaulting property, without paying attention to individual circumstances. An initial consultation that was had, from our side of the house, with various stakeholders, saw support for the implementation of a legislative framework similar to that already in place in New South Wales. This proposal has support from stakeholders on both sides of the mediation process.

I have already noted that Rural Financial Counselling Services think this is a fair and reasonable idea to have this legislation enforcing mandatory mediation. Primary Producers South Australia said that the Rural Financial Counselling Services would be the best to consult and they would support their position. However, Primary Producers South Australia did question whether it was necessary. I find that an interesting viewpoint.

There were varying views amongst the banks. The ANZ Bank signalled that it would support the proposed legislation, given the independence mediation offers, and that came from the state General Manager of ANZ in South Australia, Kym Darcy. Some initial conversations with the Regional Director of National Australia Bank of South Australia, Malcolm Pridham, indicated support for the current model, and nervousness

that mandatory mediation may drag out the process and cause undue pressure on both parties. This side of the house is still in the process of consulting with the ABA on these matters.

Certainly, in regard to what is happening in New South Wales, and looking at survey data from all parties involved in the mediation process, including farmers, creditors, mediators and representatives, generally the report found that the act was achieving its objects. All participants support the opportunity for farm debt mediation. Farm debt mediation is cost effective, and the majority of farmers, and the overwhelming majority of lenders, would use and recommend mediation again.

The results of mediation under the New South Wales act highlight the benefits of mandatory farm debt mediation. Specifically, 72 per cent of farmers reached a settlement. Positive settlements by farmers included 37 per cent of the time farmers refinancing their debt, 20 per cent of the time the lender giving the farmer more time to pay, and 23 per cent of the time the lender paying off part of the debt. A total of 60.7 per cent of farmers felt positive after farm debt mediation, with only 17 per cent feeling negative.

In regard to some of the debate that has been had and some of the debate around farm debt mediation, we note that the Hon. Gerry Kandelaars spoke in the other place and said that the government would not be supporting the bill, which is disappointing. I note that the Hon. David Ridgway in the other place had some briefings; one in particular was with the Small Business Commissioner and the minister for business in this place. They met and outlined that they would be advising the government that they would not support this bill.

The feedback in regard to that meeting with the minister was—that is the feedback from the minister—that the current farming industry dispute resolution code was working effectively and therefore a mandatory model was not necessary. Strangely though, in the very next sentence they also informed the Hon. David Ridgway that the farming code, which is working so well, has never been used by the Small Business Commissioner for any farm debt mediation. It is questionable that the government can say that the mediation model is working effectively when it has not resulted in one mediation since its inception in 2013.

That is why the purpose of this bill currently before the parliament is to require a mandatory mediation, something that the current model does not impose. It is about getting all the parties together—they being the farmer and the creditor—around the table early in the piece to ensure they have the opportunity to get the best outcome for everyone involved. There has been industry-wide support for this bill, but this bill has strong support from farmers and the banking industry.

The government and the minister also mentioned that they thought that the current model did impose mandatory mediation, but it does not. Under the current code, parties must voluntarily request mediation after having already attempted to resolve the dispute, and then it is at the discretion of the Small Business Commissioner to require mediation. This is not mandatory. This bill requires a creditor to write to a farming operation before it commences the steps involved with foreclosure. In regard to clause 8 of the bill:

A creditor who proposes to take enforcement action against a farmer under a farm mortgage must, before doing so, give written notice to the farmer in accordance with subsection (3).

The operative word of that sentence is 'must'. I think that is absolutely essential so that the farmer does receive that in the mail. It must be sent to a farmer informing them of their right to mediation. There is also a mechanism for the farmer to instigate mediation.

So, there are notable points of difference between the current code and the bill that is before us.

Under this bill, the creditor must write to the farmer regarding mediation available through the Small Business Commissioner, which is not currently required under the farming code. Secondly, under this bill, the Small Business Commissioner must arrange for each farm debt dispute to be referred to mediation under part 2, to be the subject of a mediation by a mediator. Again, this is not under the farming code. The Small Business Commissioner, from what I am informed, has ample mediation resources to facilitate and implement this proposed legislation.

In the short time that I have left, let us note that drought has hit many parts of this state over many years, and it is to be noted that we have not had good springs for the last two years. Certainly, the South-East, which rarely sees drought, has had two or three years of terrible drought. Thankfully, there are some rains about and that will ease a lot of people's burdens, but there must be some very high debt loads that have increased significantly in recent times because of some of the unfavourable weather conditions right throughout the state of South Australia. I commend this bill as a really workable process to help farmers resolve issues with their financiers.