

17 October 2003

Mr Neil Laurie
Clerk of the Parliament
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Laurie

I refer to your letter of 11 September 2003 and a Paper Petition (paper number 5976) tabled in the Queensland Legislative Assembly, with Mr L Freeman of Many Peaks cited as the Principal Petitioner, concerning the Private Member's Bill, the *Farm Debt Mediation Bill 2003*, introduced into the Parliament by the Member for Gladstone.

The Bill was not passed by the Legislative Assembly with both the Government and the Coalition indicating that they are unable to support the legislation.

My Address-in-Reply to the Legislative Assembly on 10 September 2003 outlines the Government's position in detail.

A copy of my reply to Mr Freeman and my Address-in-Reply speech are attached.

Yours sincerely

Signed Henry Palaszczuk

Henry Palaszczuk MP
**Minister for Primary Industries
and Rural Communities**

Att (2)

17 October 2003

Mr L Freeman
Bailey Street
MANY PEAKS QLD 4680

Dear Mr Freeman

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Henry Palaszczuk MP
**Minister for Primary Industries
and Rural Communities**

Att

Hon Henry Palaszczuk MP
Minister for Primary Industries and Rural Communities

Address in Reply

Farm Debt Mediation Bill 2003

Mr Speaker,

I rise to speak against the Bill.

In so doing, I will acknowledge that the Member for Gladstone's proposal 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 judgement 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 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 management of these obligations is well documented and Governments are involved in ensuring all stakeholders rights are respected.

These situations do not; however, justify this legislative proposal which would add unnecessary costs 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, in 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 well may themselves be 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 rural Queensland, and in fact appears to be largely biased toward the farmers perspective, and unfortunately shows little evidence of consultation with the other key stakeholders in the 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/medium owner/operator type businesses, such as retail shops, service stations, taxis, long distance road haulers, independent tradespersons, cafés and restaurants, real estate agents, solicitors, chemists, doctors and other health professionals, and even first home-owners, etc.

The possible costs of the legislative measure are unquantified, no consideration has been taken of National Competition Policy requirements, and the Bill, insofar as it proposes retrospective operation, would breach Fundamental Legislative Principles.

There has been inadequate consultation with major stakeholders in the development of this Bill.

Notably, the complete absence of any consultation with the Australian Bankers' Association and other non-bank financial institutions.

I have looked in vain in 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 and how would it impact 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 the Legal Aid Queensland, the Queensland Audit Office and the Queensland Rural Adjustment Authority.

The two peak farm representative bodies, Queensland Farmers Federation and AgForce Queensland have advised that they were not consulted prior about the development of the Bill.

The Queensland Farmers Federation 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 non-bank finance providers.

The positions of these two organisations are quite public, the matters having been subject to ongoing debate over recent years.

If the member would care to peruse the most recent annual reports of both bodies, the preference for a voluntary non legislated 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 the need for effective mediation processes in this area.

Since then I have supported continued involvement of staff of the Department of Primary Industries 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, and I quote

"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 counselors 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.

Mr Speaker, 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 raised the issue and floated the idea of legislating for mediation industry expressed the concern that such legislation could limit their ability to borrow.

This legislative proposal currently before the House has not been subject to detailed negotiation with industry.

If other parts of Australia are considered I understand that the only 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 NSW approach produces any better result than a non-interventionist approach and I also understand that, following the recent National Competition Policy review, the National Competition Council may seek further justification that benefits of the legislation outweighs 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 would mention the services of the Financial Counselling Service of the DPI, and Legal Aid (Qld) 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 the 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 continuing 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.

Mr Speaker, this 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.

The Bill fails to meet even the minimum standards for prior stakeholder consultation and financial probity and does not accord with the views of industry of the vast majority of Australian governments.

For all these various reasons, the Bill should be opposed.

I urge all Honourable Members to oppose it.