

FARM INSOLVENCY — RECEIVERS' FEES AND CHARGES

Grievance

DR G.G. JACOBS (Eyre) [9.51 am]: I thank the Minister for Small Business for taking my grievance today. The topic of my grievance is the fees and charges involved in receivership in farm business. My motivation is the shared experience I have with my farming constituency and of course my contention that a number of farmers will need to leave the industry for various reasons. That is tragic. That accepted, what is even more tragic is that when farmers finally exit the industry, they leave with absolutely nothing, as all the remaining equity has been eroded. For all intents and purposes, that equity, if you like, is transferred to St Georges Terrace in the form of payments to accountants and legal officers.

I am no conspiracy theorist, but I would like to walk the house through the slippery slope to insolvency in a number of farms. In recent times a number of farms, usually the larger operations, have followed a step or a pattern towards insolvency. Farms under financial pressure due to low rainfall and poorer crop yields have their properties revalued—or devalued—by the bank. The valuation costs incurred by the bank are usually upwards of \$10 000 and are allocated to the farmer's overdraft. The valuation reduces the farmer's equity, making his operation less viable according to the bank's farm-lending criteria. Finance is advanced at much higher rates of interest or is withheld due to a higher risk profile. High levels of interest, upwards of 13 per cent, lead to high demands and a high likelihood of default. Default leads to the freezing of accounts and no further finance is made available. Default interest accumulates at 16 per cent plus rates, with no income-generating ability to repay the interest as everything is frozen. The bank usually commissions an independent farm review that recommends whether the farming enterprise is viable or not. The bank can use that report to support the appointment of receivers and administrators to the business, particularly to the larger operations.

In one disturbing case, the independent reviewer appointed by the bank was an employee of the insolvency firm that was eventually appointed as receiver by the bank. The receiver's fees were charged against the remaining farm assets and reduced all remaining equity. Costs can be exorbitant. In one case a spraying program to knock down weeds, ordered by the receiver, cost \$350 000. An earlier program that could have been done by the farmer would have cost only \$100 000. Ongoing management fees charged by the bank's receivers and lawyers can be up to \$50 000 a month. Continual bank default notifications are issued to farmers. One farmer received a \$700 bill from a lawyer each and every fortnight, with a photocopy of the default notice being emailed to the farmer. When banks consign a valuer they often ask for two figures—a fair market value figure and a foreclosure figure, commonly known as a fire sale figure. Licences are required to be signed by the farmer so that they can remain in the family home once receivers have taken control of the farm as part of the receivership. Ideally, the farmer needs to obtain legal advice on the licence involving myriad legal documents but often cannot afford to because his funds have been frozen. Once a receiver is appointed, they take full control of the assets on behalf of the bank and can sell or lease to make good the outstanding debt. Management fees and charges can go on for two years or more until the farming group is completely wound up. These receiver costs, together with the bank's legal costs, are billed against the farmer's remaining equity.

My contention is the following: the receiver's fees and legal costs are exorbitant and whittle away the remaining equity and assets until there is nothing left. The major insolvency firms and law firms preferred by the banks have cost structures and charge-out rates largely geared towards big corporate groups and listed companies, yet are appointed to smaller family operations. One could suggest that by the time the receivership machinery is put in motion the remaining equity is known and the process works backwards in determining the fees and charges. I am not a conspiracy theorist, but if an asset is valued at \$3 million and debt is \$2 million, there is \$1 million in equity left in that business. I contend that often that equity is eroded until there is nothing, determining the equity and working backwards.

Five major banks lend to rural industry. A handful of major law firms and insolvency accountants are their preferred agents. It seems that the receivership process is not just about recouping the debt owed by the farmer, but also about making huge amounts of money for banks' lawyers and accountants and a few anointed receivers and lawyers.

Minister, my questions are: What checks and balances are there in this receivership process, either in corporate legislation, regulation or code of conduct, for these fees? Does the corporation legislation say anything about the rates that provide recommended ceilings or caps to the fees and charges in this process? What could the government do to prevent open slather in this process and ensure that farmers have access to the right advice and can be protected from any predatory or bullying behaviour? Would the Minister for Small Business support a parliamentary inquiry into the behaviour of banks, lawyers and receivers in this insolvency process to ensure accountability, transparency and fairness?

MRS L.M. HARVEY (Scarborough — Minister for Small Business) [9.59 am]: I thank the member for Eyre for bringing this matter to the attention of the Parliament and I appreciate and share his compassion for small business owners who find themselves in this awful position. Particularly for farming families whose livelihood is, of course, attached to their family home, the threat of insolvency must be incredibly stressful, and in truth probably one of the worst experiences they will endure.

The Small Business Development Corporation receives and investigates claims about unfair market practices that affect small businesses and will provide assistance to help and attempt to resolve these complaints on behalf of small business owners. Our alternative dispute resolution service was launched in March 2012 and provides a low-cost dispute resolution service for business-to-business and business-to-government disputes, and the service has proven to be very successful. A farmer who has a complaint about the behaviour of banks and receivers involved in an insolvency process should contact the SBDC's ADR service for advice and assistance. In fact, the commissioner is specifically tasked to investigate areas of inequity in bargaining position, such as farmers versus banks, that people would be experiencing in the circumstances the member for Eyre has described.

It is my understanding that historically farm businesses have been supported by the Department of Agriculture and Food. There are a number of health, financial and information support services available through the Department of Agriculture and Food, including its financial information services that can be contacted on the telephone number 132 300 and the Rural Financial Counselling Services of WA, which is a free call, on 1800 612 004. There is also the DAFWA Rural Business Development service on 1800 198 231, which is also a free call. DAFWA, through the Rural Business Development Corporation, also has a service called Rural Land Sales Liaison Committee, which allows farm businesses that have received a letter of demand from their bank to ask the RBDC to intervene. An officer conducts an investigation and reports back to the complainant. The RBDC also administers financial support schemes for the farm sector on behalf of the state and delivers other services for the benefit of rural industry.

The member also referred to the fees and charges of receivers and the behaviour of banks. The checks and balances in these circumstances are actually modified banking regulations. Australia's banking regulation is extensive and detailed in its framework. It is split mainly between the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission. APRA is responsible for the licensing and prudential supervision of authorised deposit taking institutions or ADIs, which are basically banks, building societies, credit societies and those sorts of institutions. ASIC has the responsibility for market integrity and consumer protection in the regulation of certain financial institutions, which includes investment banks. ASIC has produced a range of information sheets specifically to assist those affected by insolvency and they are written in plain language to provide a basic understanding of the most common company insolvency procedures, including voluntary administration and receivership, as the member for Eyre has described, and those information sheets are available on the ASIC website.

Separate from APRA and ASIC is the Financial Ombudsman Service. This specialised service provides personalised services, dispute resolutions, systemic issues management and code monitoring. FOS and its predecessor scheme have over 20 years' experience providing dispute resolution services in the financial services sector. It is a not-for-profit external dispute resolution scheme that provides free, fair and accessible services to consumers who are unable to resolve disputes, and financial service providers that are members of FOS. Membership of FOS is available to any financial services provider carrying on business in Australia and includes the five major banks. This is controlled through federal legislation and I understand that the commonwealth government has recently announced that it is keen to facilitate the development of a national farm debt mediation scheme.

As Minister for Small Business I will represent the interests of all small businesses in WA and I will continue to lobby for fair practice when I have an opportunity. The state government has been providing support for farmers and small businesses owners through our ADR service, through the Small Business Development Corporation and also through the assistance package currently being administered through DAFWA and overseen by the Minister for Agriculture and Food, Hon Ken Baston, in the other place. I put on the record that the easiest way to contact the SBDC's alternative dispute resolution service is via email at info@smallbusiness.wa.gov.au or by telephoning 131 249.

The issues the member has raised are not isolated. I understand the member's compassion and he has certainly raised with me on a number of occasions not only the many and varied issues confronting small business farmers in the member's electorate, but the flow-on effects occurring in the regional towns that provide the support services to the farming community as it goes through what the member described as ultimately a restructuring of the way farming is done in those marginal areas of the member's electorate. I appreciate the member for Eyre's advocacy on behalf of those farmers and small business owners in his electorate. I strongly encourage any of his

constituents experiencing these issues to contact the Small Business Commissioner or the SBDC. If we have more of those complaints coming into the Small Business Development Corporation so the commissioner can compile a summary of them and report to government, it will give us the best opportunity to lobby the federal government for the changes required.

Mr P. Papalia: Is this talking inquiries?

Mrs L.M. HARVEY: That is for Parliament to decide.