

Chapter 2

Background

2.1 The primary production sector has a number of unique characteristics that impact on the lending profiles of farmers and can negatively affect the financial well-being of a farming enterprise. These include factors beyond farmers' control such as:

- weather events and seasonal conditions (such as drought, flood, fire, cyclones);
- product disease;
- product market collapse; and
- market manipulations.¹

2.2 Income generated from agribusiness is often volatile and cyclical, due to variable seasons and global commodity price fluctuations.² In addition, primary producers are 'price takers' for their products, which are often perishable in nature.³

2.3 The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) summarised the situation as such:

Income for these businesses [small family primary production businesses] is largely seasonal, tied to market cycles and subject to externalities which can severely change the fortunes of the business, including weather and exchange rates.⁴

2.4 Mr Andrew McLaughlin, a senior consultant mediator with extensive experience in assisting farmers in mediating with banks, noted:

Farmers should not be compared to other businesses; they rely upon seasonal factors that are out of their control, the average farmer has on average 1 in 3 years where they achieve to break even or make a profit that enables them to pay their creditors or reduce their debt level.⁵

2.5 Representatives of the banking sector also acknowledged the special circumstances faced by farmers. For example Ms Anna Bligh, the Chief Executive Officer of the Australian Bankers' Association (ABA) recognised the particular difficulties primary producers can face:

1 Legal Aid Queensland, *Submission 6*, p. 3.

2 ANZ, *Submission 8*, p. 3.

3 Legal Aid Queensland, *Submission 6*, p. 3.

4 Australian Small Business and Family Enterprise Ombudsman, *Submission 17*, p. 2.

5 Mr Andrew McLaughlin, *Submission 21*, p. 1.

The banking industry is acutely aware of the difficult circumstances facing some primary producers across Australia, from droughts to natural disasters and lower domestic farm-gate prices. These events are beyond the control of farmers and they are beyond the control of banks.⁶

2.6 Primary production enterprises are often intergenerational family businesses, a characteristic that can compound the negative impacts that arise during financial hardship. The Department of Agriculture and Water Resources informed the committee that more than 95 per cent of broadacre and dairy farms are family owned and operated. As a result, funding by family farms for expansion and improvement is limited to the funds the family has in reserve, the profits the business can generate, and the funds it is able to borrow.⁷

2.7 On this matter, Legal Aid Queensland observed:

As a group, rural producers face significantly greater risks compared to most businesses. Most farms are family operations where individuals provide most, if not all, their assets as security to banks for loans for their businesses. The assets provided as security will in most cases include the home or homes where the farmer and members of his family reside. Loss of the assets results not only in loss of livelihood but also security of accommodation and a sense of community and wellbeing.⁸

2.8 Mr Dennis McMahon, a senior lawyer in the Farm and Rural Legal Service section of Legal Aid Queensland, further outlined the complexities around financial troubles for primary producers, in large part because the matters are not only commercial, but also emotional:

People's livelihoods, homes and whole lives revolve around the property. They are part of the community. When things go awry, it's not just one person that's affected; it's generally a whole family, and it can be generational. Other people within the community can also be affected if the client's business is wound up and other small businesses in towns don't get paid. All sorts of other ramifications might happen. It's also very socially damaging for a lot of people. These hurts don't go away.⁹

2.9 The ASBFEO highlighted particular characteristics of the primary production section that impact on lending profiles:

Cash flow requirements however are a constant with on-going needs for inputs such as stock feed, equipment maintenance, employee salaries and benefits. The primary production operations of these small businesses tend

6 Ms Anna Bligh, Chief Executive Officer, Australian Bankers' Association, *Committee Hansard*, 11 August 2017, p. 61.

7 Department of Agriculture and Water Resources, *Submission 7*, p. 3.

8 Legal Aid Queensland, *Submission 6*, p. 3.

9 Mr Denis McMahon, Senior Lawyer, Farm and Rural Legal Service, Legal Aid Queensland, *Committee Hansard*, 2 August 2017, p. 14.

to be industry specialised and location specific skill. Small businesses in these industries can appear asset rich at face value, however much of the assets tend to be illiquid, with thin markets for resale or quick disposal.¹⁰

2.10 Data provided by the Department of Agriculture and Water Resources indicated that nationally, the total indebtedness of the agriculture, forestry and fishing industries (defined by the Reserve Bank of Australia) to institutional lenders was \$69.5 billion at 30 June 2016.¹¹

2.11 The National Farmers' Federation (NFF) noted that access to credit to manage cash flow is of paramount importance in the farming sector, owing to the infrequent nature of payments for crops, livestock, and other primary products. The NFF also observed that food and fibre producers face significantly more volatility in incomes than in other industries.¹²

2.12 Mr Justin Walsh, a partner with Ernst & Young acknowledged the risks relating to cash flow inherent in primary production:

...farming is a difficult business because, in your average business – and I see a lot of business – you can have some degree of certainty about what the cash flows are going to look like going forward. That is sadly not the case for farming, because you can be the best farmer in the world but, if it doesn't rain for two years, that means nought. It's a difficult enterprise where you have to continually service debt.¹³

2.13 Federal and state government policies can also have unanticipated impacts on the viability of farmers. For example, the impact of the live cattle export ban, local and state government planning actions, water entitlements and native vegetation legislation.¹⁴

Negative impacts on farmers

2.14 The committee received evidence publically and confidentially from numerous primary producers outlining the significant detrimental impacts of certain lending, foreclosure and default practices in the sector. These negative impacts include:

- the loss of property and livelihood;

10 Australian Small Business and Family Enterprise Ombudsman, *Submission 17*, p. 2.

11 Department of Agriculture and Water Resources, *Submission 7*, p. 2.

12 National Farmers' Federation, *Submission 62*, p. 7.

13 Mr Justin Walsh, Partner, Ernst & Young, *Proof Committee Hansard*, 20 October 2017, p. 58.

14 See for example Mr Charlie Wallace, private capacity, *Proof Committee Hansard*, 11 September 2017, pp. 2–3; Mrs Nolene Bradshaw, private capacity, *Committee Hansard*, 13 July 2017, p. 1; Mr Brian and Mrs Suellyn Webster, *Submission 57*, p. 11; Mr William Axford, private capacity, *Proof Committee Hansard*, 19 July 2017; pp. 59–63.

- mental health issues and suicide;
- relationship and family breakdown;
- loss of dignity for affected farmers and their families; and
- flow-on effects for close-knit rural and regional communities.¹⁵

2.15 As Mr Andrew McLaughlin observed:

I have experienced and seen the impact of the recovery practices used by certain senior managers of a number of banks which have not only in some cases physically removed farmers from their homes, but also abused, threatened, intimidated and divided families to the point of unnecessary suicide.¹⁶

2.16 During the course of the inquiry the committee was made aware of numerous instances of alleged unreasonable and unethical behaviour by banks, receivers, lawyers and other related stakeholders. While the committee is aware that some of these allegations are contested, on balance, the broader patterns observed by the committee illustrate that in some circumstances there have been significant problems with the methods in which banks and their agents interact with their primary production customers.

2.17 In addition, although the committee accepts that some allegations are contested, the profound emotional toll that bank and receiver behaviour had on many primary production families cannot be disputed.

2.18 Many farmers who spoke to the committee were often distressed, agitated and spoke of the trauma that their experiences with banks and in particular, receivers, had caused their families. They spoke of feeling powerless, humiliated, and intimidated, and of deteriorating mental and physical health.¹⁷

15 For examples of these impacts, see Mr Michael and Mrs Cherie Doyle, private capacity, *Proof Committee Hansard*, 14 September 2017; Mr Charlie Wallace, *Submission 80*; Mrs Noelene and Mr Lloyd Bradshaw, *Submission 43*; Mr Sam Sciacca, *Submission 47*; Mr Gerard O'Grady, *Submission 83*; Mr Harold Cronin, *Submission 50*; Mr Thomas Fox, *Submission 42*; Mr Craig Caulfield, *Submission 55*; Mr Lindsay Dingle, *Submission 84*; Axford Family, *Submission 37*; Mr Bob Yabsley, *Submission 58*; Mr Brian and Ms Suellyn Webster, *Submission 57*. This is not intended to be an exhaustive list, but rather a selection of submissions. The committee also received numerous confidential submissions which outlined similar impacts.

16 Mr Andrew McLaughlin, *Submission 21*, p. 1.

17 For example see verbal evidence from the following submitters: Mrs Nolene Bradshaw, private capacity, *Committee Hansard*, 13 July 2017; Mrs Debbie Viney, private capacity, *Committee Hansard*, 13 July 2017; Mr Lindsay Dingle, private capacity, *Committee Hansard*, 2 August 2017; Mrs Catherine Stuart, private capacity, *Committee Hansard*, 2 August 2017; Mr Michael and Mrs Cherie Doyle, private capacity, *Proof Committee Hansard*, 14 September 2017; Mr David Browning, private capacity, *Proof Committee Hansard*, 11 September 2017; Mr Charlie Wallace, private capacity, *Proof Committee Hansard* 11 September 2017; Mr Harold and Mrs Barbara Cronin; private capacity, *Proof Committee Hansard*, 19 July 2017. The committee also received confidential verbal evidence that outlined such allegations.

2.19 For example Mrs Debbie Viney, a primary producer who appeared at the committee's hearing in Roma, Queensland spoke of her experience with a bank employee:

Banks seem to think they have the right to tell you that if they were in my shoes they would commit suicide. I have that. You can't have any better proof than that...

Their words were that if they were in my boots they would committee suicide...

You have no idea what is happening out there in the banks, I'm sorry. It is horrific. You should listen to how they can torture you for three or four hours. They twist your mind. At the end of it, you have no hope. You walk away with no hope. It is about two or three days later, when you will go to shoot a cow, that somebody will say to you in your head, 'It would [be] so much easier to shoot yourself'. What are we supposed to do? How many people out there have shot themselves because they have been told the same thing as us? I wasn't the only one there that day. It wasn't just me that heard that. I had a young fellow who was 16 standing there listening to that. I had an older mother that was listening to that. We are supposed to take that and sit back and say, 'No, it's okay'? There isn't a lawyer out there that has the balls or the guys to stand up and do something. No-one has, because they are the banks. They are untouchable.¹⁸

2.20 A confidential submission from a primary producer illustrated the severe mental and physical toll stemming from the aggressive, unreasonable behaviour of frontline financial institution staff:

I do not get much sleep and sometimes do not sleep at all. I then go to work and operate large farm machinery for long hours at a time. Do they [bank and their agents] think about my wife, who if she does not come with me to work, is at home wondering if I am alright or am I laying under a machine that has tipped over. Do they think about what goes through my wife's mind if I take a rifle to work to shoot a fox or put a sheep out of its misery. She is thinking and praying that I don't do anything stupid in a moment of madness or frustration.¹⁹

2.21 The following exchange between the former committee chair and primary producers Mr Harold and Mrs Barbara Cronin during a public hearing in Perth, also exemplified the negative emotional impact, both on individuals and regional communities:

CHAIR: Mrs Cronin, I noticed your discomfort and sadness as your husband was telling the story. There's obviously profound grief and loss there. Is that widespread?

Mrs Cronin: Very.

18 Mrs Debbie Viney, private capacity, *Committee Hansard*, 13 July 2017, p. 48.

19 *Confidential submission 29*, p. 8.

CHAIR: That didn't take you long.

Mrs Cronin: Do you mean with other farming communities?

CHAIR: Yes

Mrs Cronin: Yes, very much so.

CHAIR: That's what I'm picking up and, in fact, would that have discouraged a lot of farmers from even making a submission – it just hurts too much to even recount it?

Mrs Cronin: That's right, yes.

CHAIR: I can see other people in the room agreeing.

Mr Cronin: It really rips you apart;

CHAIR: Just writing these submissions, because you have to relive all the pain.

Mr Cronin: You're going to relive it all again.

Mrs Cronin: Yes.

CHAIR: So it's much more widespread than the group we see at each of the hearings?

Mrs Cronin: Yes, most definitely.²⁰

2.22 In addition, Mr Cronin outlined in detail the impact the bank and receiver behaviour had on his family:

They [receivers] ended up spending all this money for nothing, and made sure we couldn't survive, and we didn't. My wife had shingles twice, with stress. I don't know whether I had a breakdown or not; I don't know, because I don't know where I am half the time. But I do know what happened to us and what destroyed our family and the farming history for 50 years...

The injustice is the worst part of it. Our son, who won't come back down here again, is in Katherine, managing a farm. He is that wild and disgusted with the whole episode that he won't come down here again. It's split the whole family up. Our three grandsons...are destroyed as well. Why? So the bank can make a loss of \$4½ million?... It doesn't make sense.²¹

2.23 Mr Lindsay Dingle, a primary producer from Queensland emphasised the distress his family endured when asked by the committee what services and support were available when he was evicted from his property:

It is the most harrowing time. You are so isolated, because at the time we were sent into a very inadequate housing situation – no internet, no nothing.

20 Mrs Barbara Cronin and Mr Harold Cronin, private capacity, *Proof Committee Hansard*, 19 July 2017, p. 47.

21 Mr Harold Cronin, private capacity, *Proof Committee Hansard*, 19 July 2017, p. 44.

We tried on the phone to the best of our ability. You are so isolated; there is no one.²²

2.24 Mr McLaughlin provided the committee with further observations:

...once you get a farmer in a position where there is no point of return, then you break their spirit. Once you break that spirit, there's nowhere for them to go. Not only do they lose respect for themselves; the family loses respect and the creditors within the area lose respect. Before you know it – fifth, sixth or seventh generations – whether it's the trigger of the bank's pressure, financial pressure or family matters, that then causes suicides. I've seen them. I've been involved with a couple. I've actually institutionalised some of my clients to try and prevent them committing suicide or self-harm, and I believe that's just uncalled for. Material things are important to certain people. Money is important to certain people. Material things can always be replaced and you can always earn a dollar, but you can't replace family.²³

2.25 Banks such as Westpac acknowledged the effect of enforcement action on the welfare of customers, families and communities, and stated that its priority is to ensure that the welfare and dignity of primary producers are maintained through any process of enforcement.²⁴

Committee view

2.26 While the committee understands that for a farmer experiencing financial difficulties there may be a number of stressors, evidence received during the course of the inquiry clearly illustrates that a significant stressor can be the actions and behaviour of financial institutions and their agents.

2.27 The committee acknowledges the pain of all those primary producers who submitted to this inquiry, and is aware of the stress and difficulty present in retelling traumatic experiences. The committee thanks those primary producers and their families for their assistance in putting forward their stories for the purpose of informing the committee's deliberations.

2.28 The committee also notes that concerns about alleged misconduct by some financial institutions are not limited to the primary production sector, with consequential impacts on the life savings, home ownership and business interests of many ordinary Australians. The committee has therefore conducted its inquiry cognisant of mounting pressure for a royal commission into Australia's banking sector. This matter is considered in some detail in Chapter 6.

22 Mr Lindsay Dingle, private capacity, *Committee Hansard*, 2 August 2017, p. 43.

23 Mr Andrew McLaughlin, private capacity, *Committee Hansard*, 11 August 2017, p. 2.

24 Mr Stephen Hannan, National Manager Agribusiness, Commercial Banking, Westpac, *Proof Committee Hansard*, 18 September 2017, p. 39.

