SUBMISSION ON POLICY ISSUES IDENTIFIED IN THE INTERIM REPORT

Submitted By: Stuart Howe
Email: [redacted]
Phone Number: [redacted]
Submission for: My Self
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Please again, read my first submission number ***PWF.0001.0001.8971*** in conjunction, name Stuart Howe, both farmer for seven years and business banker 3 years 2007 to 2010 through GFC.

RE: Answers to the Royal Commission's questions re going forward and possible policy changes to help small business as well as the farming sector.

Firstly could the Commission consider the following;

Commission needs to ask the question of the banks 'Do you already underwrite (insure) your entire loan book'?...the answer will be yes the banks already underwrite all loans in case of default, relevance banks could care little about realizing the most for farmers assets after taking forced possession

Commission needs to ask the question of the banks 'Do you not need to realize your security as soon as possible to either one claim on the mortgages insurance OR secondly be able to write debt off for tax deduction purpose, administration/receivers tax deductible....relevance goes to why banks don't worry about fire selling assets because there is a benefit to the bank, insurance and tax right offs.

*Commission needs to understand that banks make huge profits from distressed loans charging default interest and penalty charges....'Ask the banks for the average time that elapses on **all** distressed loans between first charging default interest/charges and the realization of the security asset'? The banks will know this figure multiplied by the average time a loan is in default....you will find the sum total earned by the banks is considerable and the collective amount to banks bottom line on annual basis will be staggering, which well and truly covers the cost of areas of the bank that take care of the loans that are in distress. Reason why banks don't know how much these areas cost to run, there is no pressing need to know.*

Commission please consider in its future recommendations in adjusting the bankruptcy act to include the ability for people to appeal their bankruptcy on the grounds that if they can prove to the Trustee that their voluntary bankruptcy was forced due to the misconduct of a bank that they can at least seek time served. This will enable an appeals process within the Trustee bankruptcy system in allowing the Trustee to take on board the effect of a David vs Goliath struggle whereby before this commission there was very little legal precedent to succeed in a civil action against a bank. The people that have been bankrupted, some of which you have had in your case studies, have presented no other choice but to go bankrupt due to the size of the outstanding debts of which the banks could care less.

How are borrowers and lenders in the agricultural sector to deal with the consequences of uncontrollable and unforeseen external events?

The solution is in the specialized facility that banks should offer in future... it involves bank facilities of the past, it includes three parties' mortgage insurers, banks and farmer......to all future agri business loans and any farm equipment finance loans (Asset Finance).

Back between 1995-2003 banks use to offer 100% loans with mortgage insurance paid up front at the time of the loan being taken out, bank would wear 80% and 20% loan insurer. These facilities covered the bank in default NOT the lender, using the same principle but tweak it somewhat.

Assumptions 60% LVR by the bank in this example of $7.65million total registered value in the beginning.

Example: new agri loan facility for $4 million dollars add to this a separate loan $200k facility at five year fixed rate, total loan facility of $ 4.2 million...The $200k is for the insurance premium paid to insurer on settlement of loan.

Banks will add at the original approval stage 2 years interest on entire $4.2 million at fixed rate to cover the banks

interest only in case of an act of God event...to add to the tabled administrator capped cost to arrive at the total insured value so that insurance premiums can be added and paid at settlement.

The bank will factor in the insurance plus administration costs when considering loan application to ensure business can pay.... a separate $200k loan statement is sent out to the farmer, the rate will reflect principle and interest paid to zero after five years, hence ready to draw down again for the next five years, it is what is known as a revolving facility that is separate from the Farm loan of $4million. All is covered by security over the property $7.65million.

Bank pays lump sum to insurance company at time of settlement... $40k x 5 years premium to cover a $4.6million insured facility which is $4million +$200k insurance facility + $200k administration + $200k Banks 2 year interest only payments in times of trouble = $4.6million this explained below.

Every five years the bank will be obliged to roll over this separate insurance premium facility at 5 year fixed rates if everything is travelling ok...in that business 3 months prior to roll over is not in arrears, this allows for ups and downs over the whole previous five years....plus the facility would have now been paid down to zero ready to redraw down again.

Insurance company happy because it gets 5 years premiums up front, this will of course be an insurance arm of the bank no doubt, a separate pillar of a bank will lose insurance moneys/profits if lending side unduly effects the customer's loan to put the facility, knowingly, into arrears.

However, it may be prudent to regulate banks can't insure their own loans to keep them at arm's length and involve other third parties such as original mediator, 3rd party insurance company, administrator who does not work for the encumbered bank who will work in favor of farmer to even up the playing field....if insurance company thinks the bank is at fault or has acted inappropriately, the insurance company will have the means to go after the bank on behalf of the farmer and itself.

Why $4.6 million loan and not $4.2million original loan...to cover banks 2 years interest only at 50% and cost of administrator for 2 years overseeing the business capped at $100k per year (for this example) to include monthly visits and admin/advice/reporting, more if needed.

Say the banks loan repayments at 50% cost $200k over two years, why 50%...it's not the fault of the farmer, nor the bank re act of God events, this then covers the cost of loans plus a bit while business is getting back on its feet, bank has to leave farmer alone with insurer engaged administrator to run the business out of trouble, new regulation. Also if bank knows it can only get 50% of payments over this admin period it will do everything to avoid companies/farmers going into this administration phase as there will be third parties now involved with the farmer. 50% is better than nothing that the Banks currently experience with farmers in troubled times.

$4.6m minus $200k Bank minus $200k for administrator (capped) 2 years overseeing business = Original $4.2million

Insurance of tractors, any farm equipment bought on finance...insured for the full debt in the same way as described for the larger debts, insurers already calculate premiums based on risk but this time the five year premium would be paid up front which is in line with five year asset finance now anyway...no need to re-insure the loan itself after five years because the asset will be un-encumbered.

As is the case now, insurance companies will pay a pro rata value on asset at time it is decided to sell all assets, minus the amount already paid off by the farmer. This will insure the farmer is covered and not bankrupted or chased for debt that occurred because of something the major bank did or an act of god. So many times, as was the case for me, the bank that holds the mortgage over the farm destroys the farmer's ability to pay other financiers of equipment who have nothing to do with the major banks dispute with the farmer....

In case of drought, flood or any event for that matter, after 90 days in arrears this invokes mediation. Parties to the mediation are agri administrators (insurer's choice) with limited powers, bank, and farmer. After 3 consecutive mediations over six months, must be consecutive before administration is called by mediator to protect farmer from bank harassment, payment of all equipment finance is to be paid as the priority to keep farm going, legislate that administrator must at all costs ensure that no re-possessions occur of essential farm equipment during 2 year admin period.

For two years...No default interest allowed, no changes to facilities or contract allowed, no threats of legal action allowed, debt set at original $4.2 million capped or at loan balance at time of mediator calling on administrator, the administrator is there to advise farmer, oversee business, help in any way to get business on its feet, cannot sell assets, must provide monthly report to insurer, farmer, bank, administrator cannot threaten farmer, cannot take instruction ever from the bank or insurer on how to run the business, the administrator can be sued by new legislation by either the insurer, farmer or bank if they in anyway effect the business, or steal from the business.

Administrators cannot use any companies that they have links to or have used in the past without the consent of the bank, farmer, and insurer. No party can reasonably object or interfere to the administrator. ADMINISTRATOR has a duty of care and must be transparent with any conflicts of interest, breeches are punishable by years of imprisonment. ASIC/APRA to oversee complaints re administrators and prosecute, Governments must have a complaints area re ASIC/APRA for average farmers to complain to.

If after 2 years the administrator has failed to get business on track, insurer is happy because it was their own administrator whom could not turn around business, final mediation invokes pay out of 80% of original loan sum OR 80% of what is outstanding at the time of final mediation (which ever the lessor) to the bank, 20% to farmer paid immediately, farmer given six months to leave, all assets in the meantime are sold with reserves set prior to auction by registered valuer paid for and engaged by farmer, with all auction proceeds to pay farm debt only...and not be taken by administrator/receivers as payment for additional time... as administrator must take some responsibility for failing to turn business around. Administrator has been paid a year in advance so is well compensated.

Any asset finance will be separately covered by fully paid insurance premiums in the way discussed above, so that there is no need for additional auction costs, limits fire sales, limits stress on farmer and families, ensures everyone is paid, administrator has to set a reserve at what a registered valuer sets prices at, that is paid for and engaged by the farmer out of 20% received from the insurer of original debt .i.e. 20% of $4.2million = $840,000.00, I assume the farm won't fall over straight away after settlement, I only use the original debt as an example of how payouts will occur, the important message is to legislate the percentages.....assumptions 60% LVR by the bank in this example of $7.65million total registered value in the beginning.

The debtor's value outstanding... is the lowest bench mark for administrator to reach when selling all assets. After twelve months of trying to reach registered value at time of auction to pay outstanding debt, the farmer will receive the rest of proceeds from the sale of the home property, if any, on top of the 20% of insurance monies paid, giving the farmer something to come away with, start again, the farmer won't need to be bankrupted as everyone has been paid their money, negotiators for the land etc. will be shown the debt ledger and must meet those obligations to buy property or it cannot be sold, as is the case at auctions now, best bid gets to negotiate to meet bottom reserve of administrator.

Summary- This voids the need for a stressed valuation for drought etc., it covers the bank in that it will receive more monies at 80% of debt outstanding than it would have under administration and fire sale, the banks interest is met over the 2 year admin period and the administrator wins with large up front annual payment good for their cash flows, rate of administrator payment can be put in a table and rated according to debt size as to amount capped to be paid to administrator, new industry is born, greed is eliminated, farmers walk away with something minimum 20% of what is owed plus any monies after all debts are paid (considering the farmer had 40% equity in the property to start with), asset finance providers are paid out what is owed plus anything they can recover from the sale of the asset, no legal actions, no debt collections, no anger toward banks, insurers make money, insurers stay in control to ensure everything gets done right and by the book...as it is the same as personal income insurance, insurers stay for years with one claim...everyone wins out of a poor situation that can't be helped as it is an act of God....

Does the 2019 Banking Code of Practice provide adequate protection for agricultural businesses? If not, what changes should be made?

Unconciousable conduct should include physical acts of bankers in the field by bullying, verbal threats of litigation, improper use of cash flows by altering them to the negative, conflict of interest where a banker has two clients in their portfolio that in turn deal with each other outside the bank, by any means of harassment, use of increasing interest rates, taking monies from overdrafts without consent of farmer, freezing of monies in bank accounts without court order to do so to bring farmer to his knees, taking too long or delaying finance applications for over six months well knowing the farmer needs monies to carry out business or business will collapse, reneging on approved finance that has a six month shelf/approval life that when farmer goes to use facility banker changes his mind because the bank no longer wants the farmers business...

How, and by whom should property offered as security by agricultural businesses be valued?

By registered valuer paid for and engaged by the farmer (customer). Banks are to publish a list of the banks panel valuers to farmer for the farmer to choose whom he or she wishes to value property. Valuers are not to engage the banks at all, nor are they allowed to discuss or be influenced by the banks in anyway, the client is the farmer and valuers can be imprisoned for conflict of interest of breaking 'Chinese walls' or confidentiality of their client.

In all my 15 years as a property developer, I always used an independent registered valuer that was on the banks panel valuers so that I could stay in control of the valuation so that it could not be manipulated. Legislate that banks cannot do their own valuations and must engage a registered valuer whom can be sued by either the bank or the customer....Banks go in house so that there is not a third party witness to valuations so that they can control the client and breach the client under non-financial material changes at will.......

Is market value the appropriate basis?

Yes, but valuers need to give a market value to the business profits/cash flow itself as well. My free range egg farm was just sheds on 40 acres of dirt without valuing what makes the eggs and therefore the profits. If values of chooks/livestock are not taken into account for high cash flow businesses the LVR will always fall short as it is only based on physical sheds and land.

Valuers when valuing a property for bank loan purpose... only place value on how many sheds etc. are on the property, though the sheds merely shelter the chooks, unless you build more sheds even though you have made more profit using less sheds of birds, farmers can't raise the LVR no matter how long they are in business and so cannot raise the additional money to automate or streamline the business to make more profit.. because the business can pay for the additional borrowings easily but the bank won't recognize the value that is the profits the business is making...banks spend months analyzing a business's cash flow before giving loans but don't give value to the profit or the livestock that produces the eggs to produce the business, and therefore won't lend on the very thing that makes the money....the chooks, which inhibits the farmers from maximizing the paying down of debt..

An LVR without valuing the business as well, invites the banks to again breach under a non-financial material change...even though the Bank knew that without my knowledge and the birds themselves producing income, the property's value would plummet...but even so they did all they could to force me as Director off the farm and had no idea of how to run large scale egg farm...that was valued at $4.4million by expert registered valuer 3 times over six years the bank fire sold the property for $400 thousand dollars...less than 10 percent of original value.

– Should the possibility, or probability of external shocks be taken to account in fixing lending value?

If adopted, the new insured loan facility explained previously, will negate needing a external shock value...valuation are nothing more than opinion at a given time, while prospective buyers for a property could be given a copy as the reserve for a property in distress, unless it is legislated that the reserve has to be adhered to, people will simply move on until they can steal a bargain. Legislating will ensure that in any given area in trouble, will cause the valuations to hold more weight, because more often the same registered valuers are used in the same area that is in trouble so these valuers will not go against their own valuations to effect the local areas overall value...if one farm goes cheap in an area, this will cause a domino effect and so reducing the values of all similar properties in any given geographic region...

How?

See above.

– If prudential standard APS 220 is amended to require internal appraisals to be independent of loan origination, loan processing and loan decision processes, when should that amendment take effect?

Immediately, but make valuations external to the bank, to allow for third party arm's length.

Should distressed agricultural loans be managed only by experienced agricultural bankers?

Banks are predominately made up of people that have never run any business at all, let alone having the bankers come from the industry that they govern. Here lies the problem, in addition when things go wrong banks in these golden towers of 'Distressed loan Departments' never visit the farm first hand. Banks on purpose ensure that these areas only read from a file, often third or fourth hand, when I worked for a bank, the credit department never spoke to the client ever, especially when they were in default until you came face to face at the final mediation, and then it was too late.

Banks should be forced to have not only real life experienced ex business owners in credit, the banks should also ensure that risk management has to have visited the farm on multiple occasions to decide for themselves the situation, in person, people's lives are at stake, how can a bank credit manager get a feel for what to do if they have never even been to the farm in question...courts have on site proceedings in civil disputes for this very reason.

To many times there is a personality clash with farmer and banker and third party discussions do not tell the right story....as the business banker has no life or business experience has gone from high school to college/Uni straight to the bank and only relies on data programs that make an automated decision, which are only as good as the person feeding the data...which is in-experienced to start with.

• Do asset management managers need more information (such as the cost to the lender of holding the loan) to make informed commercial decisions about management of distressed agricultural loans?

Please know the banks are not concerned about the cost of holding the loans as one way or another the default interest, insurance, tax right off of the bad debt more than pays for these areas of credit to exist.

The banks raise the issue of cost when it suits as a reason for charging default interest, CEO'S don't have a cost because it

is a cover up reason...default interest and additional fees to a bank is a great profit earner....