

# New push for farm debt mediation

By ROB STOCK

A PRIVATE members' bill proposing compulsory mediation before a bank can tip a farm into receivership, is to be presented to Parliament next week by Labour's primary industries spokesman, Damien O'Connor.

For the West Coaster, presenting the bill will be the second time he has weighed in on attempts to give farmers facing financial oblivion a formal, legislatively required, chance to work out a deal with a lender about to put them off their land.

Back in 2000, O'Connor was a vocal supporter of a similar bill by New Zealand First MP Doug Woolerton (a former National Party MP), and the bill to be presented next week is based on Woolerton's.

Woolerton's bill was prompted by accusations about bank practices later outlined in farmer Grey Eatwell's book, *You Can Bank on It*. Eatwell, who was evicted from his farm by BNZ in 1999, accused his bank of overcharging interest and treating him unfairly.

O'Connor's other motivation has been interest rate swaps, complex derivative-backed loans which left some farmers paying increased rates of interest even after interest rates dived, that were sold to farmers by a number of big banks.

Those sales are being probed by the Commerce Commission, which expects its investigation to take until the end of the year.

"Debt mediation says when the bank decides it is going to move on the farmer, then there is a process that will occur to try to reach a settlement," O'Connor said.

Specifically, mediation must precede calling in the receivers, and it is one which allows a farmer to bring representation, and make their best case to the lender, without recourse to costly and slow civil litigation.

Part of the motivation for the bill is recognition of the power imbalance between giant banks and the debt-encumbered farmers.

"The courts don't necessarily ensure justice. They ensure a fair legal process, but more often than not, that is tilted in favour of those who have the most money," the MP said.

Bankers Association chief executive Kirk Hope said while he hasn't seen the bill, he is happy to engage in a debate about whether there should be a special debt mediation service for farmers. But Hope questioned singling out farmers for special treatment.

"One relevant factor in this discussion is whether it's justifiable for farms as businesses to be treated differently from other businesses that find themselves in financial difficulty.



Painful: Debt mediator Jannette Walker, left, with evicted Okato farmer Kelvin Gray and his wife, Lynda. Photo: Cameron Burnell/Fairfax NZ

Any proposal for a special mediation service for farms would need to provide a good rationale for establishing a sector-specific service," he said.

O'Connor admits that is a contentious point, and might be debated by a select committee should the bill go before one. However, he hopes that rather than seeing it as a negative, the option favoured would be to extend the scope of the bill to smaller businesses.

Hope said another factor is the relatively low number of farm receiverships and whether this is a significant enough issue to need a legislative response.

As well as the Banking Ombudsman Scheme being able to hear some disputes (there are limits on the size of claims, and on the things the ombudsman can consider), another potential option is for both parties to agree to voluntary mediation, Hope said.

One farmer who lost her farm and blames the loss squarely on the excessive cost of interest rate swap loans is Northlander Renee Gibson. She is firmly behind debt mediation laws.

She says it was only after she lost her farm, and the receivership was completed, that she got all the documents that related to it. They revealed, she said, that she never signed the swaps contract, something that would have given her leverage to strike a deal.

Gibson said a formal mediation process would give farmers the chance to get all the documents associated with their loans and business, documents they often

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do not have while they focus on the day-to-day work of farming.

Mediation would also give them time to work with advisers and supporters to prepare for their day before the mediator.

A formal system would also bring issues like the sale of interest rate swaps to light more quickly, she said.

If debt mediation was brought in, it would follow many other countries, including Australia, the

## DEBT MEDIATION

Interviews by the University of Western Sydney with farmers who had been through mediation found:

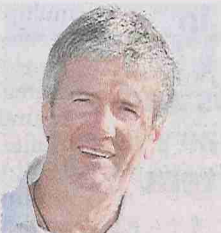
- ▶ 86 per cent of lenders felt the deals struck in mediation were fair.
- ▶ 100 per cent of lenders agreed the costs were acceptable.
- ▶ 73 per cent of lenders said it cost less than A\$10,000, with 59 per cent saying it cost less than A\$6000.
- ▶ By contrast, only half of farmers felt the costs were acceptable.
- ▶ Only 17 per cent of farmers were fully satisfied by the deals struck, and 36.5 per cent partially satisfied.
- ▶ Farmers reported the main outcomes being: They refinanced with another lender (37 per cent); the lender allowed more time to pay (27 per cent); part of the debt being written off (23 per cent); farmer sells land (16 per cent); farmer sells other property (12 per cent); lender sells real estate (10 per cent); surrender of real estate to lender (8 per cent); lender refinances farm debt (6 per cent); the lender sells other property (4 per cent); farmer bankruptcy (4 per cent); and the surrender of other property to lender (2 per cent).

US and Canada, where it has not added costs, or brought rural lending to a halt.

A study by the University of Western Sydney showed the costs were relatively tiny, compared to either litigation or receivership. Frequently, deals were struck that, at the very least, allowed farmers to sell up and leave with dignity. Despite such research, the National Party rejected the idea last year.



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