

24 April 2020

Ms Kate Carnell
Ombudsman
Australian Small Business and Family Enterprise Ombudsman
GPO Box 1791
Canberra ACT 2601

Via email: Jill.Lawrence@asbfeo.gov.au

Dear Ms Carnell

RE: National Farmers' Federation Submission to the Australian Small Business and Family Enterprise Ombudsman 'Insolvency Practices Inquiry'

We would like to thank the Australian Small Business and Family Enterprise Ombudsman (ASBFE0) for the opportunity to provide a submission to its 'Insolvency Practices Inquiry'.

The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

Since 2009, insolvencies of grain traders in Victoria alone have resulted in estimated debts totalling more than \$100 million being owed to grain producers. We consider that current insolvency practices have contributed, in part, to the size of this debt. We also believe that producers would be better protected from the consequences of insolvencies if supply chain practices were improved.

We elaborate below on changes to insolvency practices, and changes to supply chain practices, which we believe would improve insolvency outcomes.

Shorter Payment Terms

30-day payment terms are common in the grains industry, with some contracts offering payment terms of up to 60 days. Wherever money is owed from the purchaser to the producer, the producer bears a portion of the purchaser's credit risk. As the duration of payment terms is increased, so is the level of counterparty risk borne by the producer.

New information sharing platforms ensure accurate grain delivery data can be processed in real time, and there are already major buyers taking advantage of this technology and offering two-day payment terms on select contract types. The NFF is supportive of payment terms being shortened where doing so is viable and is desired by the producer.

Improving the Personal Property Security Register

The registration of a Purchase Money Security Interest (PMSI) through the Personal Property Security Register (PPSR) is an important instrument for allowing producers to establish their position as a secured creditor and therefore decrease the risk that they will be left indebted in the event of their purchaser becoming insolvent. However, feedback that we have received suggests that this instrument has a number of shortcomings.

1. Grain trade contracts often do not allow the grower to retain title over the grain, thereby voiding the PMSI;
2. The online system for registering a PMSI is overly complicated; and
3. Where the PMSI is registered correctly and contractually valid, the grower may not retain a claim over the stock or payment for the grain when the grain has been physically transferred to a third party.

Changes to the *Personal Properties Security Act 2009* and to the online registration process would remedy, at least partially, these issues.

Transparency and Engagement in the Insolvency Process

The level of transparency in the insolvency process and the lack of understanding that results are common frustrations for producers who are creditors to an insolvent company. To this end, we consider the following changes would improve insolvency practices:

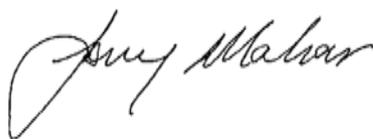
1. A copy of the *Annual Administration Return* report lodged with the Australian Securities and Investment Commission be provided to all interested parties, including the creditors;
2. Creditors be provided with greater oversight of the valuation and sale process; and
3. Since external disbursements do not require creditor approval, unlike remuneration and internal disbursements, measures should be taken to increase the awareness amongst creditors of possible external disbursements that may be incurred. This would assist creditors in assessing different possible courses of action. A fact sheet which informs creditors of the average cost of a day in court and the average number of days in court associated with a particular course of action is one such example.

Education for Company Directors

We consider that education of company directors that lowers the risk of insolvency would have benefits. We would not endorse any particular method of education without first having the opportunity to evaluate its features.

Should you have any questions regarding this submission please do not hesitate to contact Dr Prudence Gordon on 02 6269 5666 or at pgordon@nff.org.au.

Yours sincerely



TONY MAHAR
Chief Executive Officer