



29 September 2017

The Committee Secretariat  
Select Committee on Lending to Primary Production Customers  
Department of the Senate  
PO Box 6100  
Parliament House  
**CANBERRA ACT 2600**

Dear Sir/Madam,

**Senate Select Committee on Lending to Primary Production Customers  
Reply to Charlie Wallace Submission**

Rural Bank welcomes the opportunity to respond to the issues raised in the submission received by the Committee from Mr Charlie Wallace.

**Introduction**

On 11 August 2017, the Select Committee on Lending to Primary Production Customers (**Committee**) heard certain assertions which were made about the alleged conduct of:

- Rural Bank Limited (**Rural Bank**);
- Corrs Chambers Westgarth Lawyers (**Corrs**); and
- Ferrier Hodgson,

in relation to the receivership of certain property of Mr Charlie Wallace (**Mr Wallace**).

At a public hearing on 11 September 2017, the Committee heard directly from Mr Wallace. Rural Bank has been provided with a redacted copy of Mr Wallace's written submission dated 5 June 2017 (which, Rural Bank understands, was published for the first time on or about 12 September 2017).

In Mr Wallace's written submission and during the course of his appearance before the Committee on 11 September 2017, he made numerous allegations about the conduct of Rural Bank, Corrs (who were the lawyers for Rural Bank at all material times) and Ferrier Hodgson in relation to the conduct of his banking relationship with Rural Bank, and arising therefrom, the receivership of certain property of Mr Wallace.

It is Rural Bank's opinion that Mr Wallace's written submission is factually inaccurate and untrue.

This submission refers to several supporting documents which were tendered or exhibited in the various Court proceedings. These documents are available from the Queensland Supreme Court registry or can be provided by Rural Bank should the Committee wish to receive them.

This submission from Rural Bank is not intended to be an exhaustive response to all of the matters raised by Mr Wallace. Accordingly, Rural Bank reserves the right to provide supplementary submissions, and to address any specific matters or findings which the Committee proposes to make concerning the conduct of Rural Bank.

### **Mr Wallace's core allegation**

As Rural Bank understands it, Mr Wallace's core allegation is that he was not in default under his facilities with Rural Bank when receivers and managers were first appointed on 8 August 2011. Mr Wallace further alleges that 'Rural Bank failed to give a required Notice of Default' prior to appointing receivers and managers.

### **Rural Bank's response to Mr Wallace's core allegation**

On page 11 of Mr Wallace's 14 page written submission, the following brief statement appears:

*We had court hearings but lost. I firmly believe we didn't receive fair unbiased hearings.*

During the hearing on 11 September 2017, Mr Wallace was eventually asked about court hearings and said that there had been '3 or 4' and that he had lost each time, but he blamed the quality of his legal representation, which he attributed to a lack of funds.

Mr Wallace has, with respect, greatly understated the extent and effect of the 'court hearings' between him and Rural Bank which occurred in 2012 and 2014.

In summary:

- there has been three separate legal proceedings in the Supreme Court of Queensland involving Mr Wallace;
- the first proceeding was commenced by Mr Wallace on 5 June 2012, and it was dismissed on 6 June 2012;
- the second proceeding was commenced by Rural Bank on 7 June 2012, and Rural Bank was successful and Mr Wallace was ordered to pay costs;
- the third proceeding was commenced by Rural Bank on 31 August 2012, and culminated (after a 14 month forced 'hiatus' while the Commonwealth Financial Ombudsman Service (**FOS**) investigated a notice of dispute lodged against Rural Bank by Mr Wallace and ultimately closed its file ) in Rural Bank obtaining judgment against Mr Wallace on 10 January 2014;
- subsequent to Rural Bank obtaining judgment against Mr Wallace in the third proceeding on 10 January 2014, Mr Wallace:
  - applied, unsuccessfully, to the Supreme Court of Queensland on 28 April 2014 to set aside the judgment and was ordered to pay costs;
  - applied, unsuccessfully, to the Supreme Court of Queensland on 21 May 2014 (judgment delivered on 18 August 2014) to stay the order made on 28 April 2014 pending an appeal against that order and was ordered to pay costs;

- applied, unsuccessfully, to the Supreme Court of Queensland on 7 August 2014 for an injunction to restrain the receivers appointed by Rural Bank from proceeding with an auction to sell “Coronation” Station and was ordered to pay costs;
- appealed, unsuccessfully, to the Queensland Court of Appeal (judgment delivered on 21 November 2014, unanimously (i.e. 3-0) dismissing the appeal) against the order made on 28 April 2014 and was ordered to pay costs.
- Mr Wallace had legal representation at all times, and he also had representation in connection with his FOS dispute.

#### **The first receivership (on 8 August 2011) and associated legal proceedings**

- 1 On 5 June 2012, Mr Wallace commenced proceeding number BS 5025/12 in the Supreme Court of Queensland against Mr Colwell & Mr Michael (who were the receivers and managers from Ferrier Hodgson appointed by Rural Bank), JB Swift Abattoir Townsville and Rural Bank.
- 2 Mr Wallace had granted Rural Bank a livestock mortgage dated 2 April 2001 (registration number ) over livestock owned by Mr Wallace.

The livestock mortgage relevantly provided that:

- at any time **after an event of default has occurred**, Rural Bank may appoint any person or any two or more persons jointly and severally as receiver and manager **of all or any of the mortgaged property** on such conditions and with such remuneration and reimbursement as Rural Bank in its sole discretion deems fit;
  - the receivers and managers will, in addition to powers conferred by applicable law and without any consent required on the part of the mortgagor, have power to do anything in respect of the mortgaged property the mortgagor could do;
  - the receivers and managers will be the agent of the mortgagor and the mortgagor alone is responsible for the receivers and manager’s acts, defaults and remuneration until Rural Bank otherwise directs in writing.
- 3 On 8 August 2011, Rural Bank had appointed Mr Colwell and Mr Michael as receivers and managers to the mortgaged livestock and which were situated on a property known as “Walkcege”, via Hughenden in the State of Queensland.  
“Walkcege” was (as that time) owned by Mr Wallace’s brother, John Wallace, and Geoffrey John Stralow. The mortgaged livestock were situated on “Walkcege” pursuant to a written ‘Agistment Agreement’ dated 25 May 2012 between John Wallace, Geoffrey John Stralow and Charlie Wallace (by Mr Colwell and Mr Michael in their capacity as receivers and managers as agents for Charlie Wallace as mortgagor).

At the same time (on 8 August 2011), Rural Bank appointed Mr Colwell and Mr Michael as receivers and managers of all the mortgaged property of John Wallace.

The appointments enabled the receivers and managers to manage repairs to the property infrastructure and all livestock on “Walkcege”.

Mr (Charlie) Wallace was in default under his facilities with Rural Bank at the time of the appointment of receivers and managers on 8 August 2011. This is addressed in detail at point '9' below.

- 4 On 5 June 2012, Mr Wallace obtained an *ex parte* (i.e. without notice to any other party) interim injunction which temporarily restrained JB Swift Abattoir in Townsville from slaughtering 352 head of cattle that had been transferred there by staff working for the receivers and managers who had been appointed by Rural Bank.
- 5 When this proceeding came back before the Supreme Court (Justice Boddice) late in the afternoon on 6 June 2012, Corrs (by Special Counsel, Mr Martin Byres) appeared with counsel on behalf of Rural Bank and the receivers and managers. Mr Wallace was also represented by counsel (Ms Wilson), who was instructed by Kerry Smith Douglas Lawyers. Prior to this, Mr Wallace had been represented by Roberts Nehmer McKee Lawyers in Townsville.

At the contested hearing on 6 June 2012, counsel for Mr Wallace:

- submitted that 'significant triable issues' had emerged since the *ex parte* hearing on 5 June 2012;
- submitted that there was evidence of 'serious misconduct' in the nature of 'false and misleading conduct' by Rural Bank;
- sought the continuation of the interim injunction.

Justice Boddice:

- described Mr Wallace's material as 'hopelessly inadequate', 'deficient' and 'unsatisfactory';
  - noted that there was no relief seeking to set aside the appointment of the receivers and managers;
  - found that there was no serious question to be tried;
  - found there was 'absolutely no basis for the continuation of the injunction';
  - dismissed the application for the continuation of the injunction.
- 6 The following morning (i.e. 7 June 2012), when the staff working for the receivers and managers arrived to continue with the removal of livestock from "Walkcege" Station, they found that the cattle loading ramp in the stock yard from which mustered livestock were to be loaded onto trucks had been padlocked and chained shut, and there was a vehicle parked in front of the loading ramp on the other side of the holding yard.  
  
Mr Wallace refused to remove the padlock and chain and refrain from interfering with the mustering, loading and removal of the mustered livestock, so after speaking with Mr Wallace's lawyers proved fruitless, Mr Byres (from Corrs) telephoned the local Police officer and asked if he could assist, with a view to obviating the need for an urgent application to the Supreme Court. Mr Byres was told that because it was a civil matter, Rural Bank would first need to obtain a court order, and once that had been obtained the Police would attend "Walkcege" Station to ensure compliance.
  - 7 Consequently, late in the afternoon on 7 June 2012, Rural Bank and the receivers and managers filed an originating application (proceeding number BS 5100/12) in the Supreme Court of Queensland for injunctive relief against Mr Wallace, John Wallace and Geoffrey John Stralow and obtained an urgent hearing (again before

Justice Boddice) later that day. At the hearing of that application, Corrs (by Mr Byres) again instructed counsel on behalf of Rural Bank and the receivers and managers, and Mr Wallace was again represented by the same counsel and law firm.

After considering the affidavit material filed on behalf of Rural Bank and the receivers and managers, and after hearing from respective counsel for the parties, Justice Boddice granted an injunction against Mr Wallace (and other parties):

- requiring John Wallace to remove a padlock and chain from a cattle loading ramp situated on “Walkcege” Station; and
- restraining Mr Wallace and John Wallace from interfering with or disrupting the mustering, loading, removal and sale of cattle branded ‘LE7’ and any progeny therefrom, from “Walkcege” Station, of from interfering with or disrupting any activities or steps related to the mustering, loading, removal and sale of such cattle.

It was further ordered that Mr Wallace and John Wallace pay the costs of and incidental to the application on the indemnity basis. Those costs are yet to be assessed and remain recoverable from Mr Wallace.

- 8 After the order was made, Mr Byres again telephoned the local Police officer and then forwarded a copy of the Order to him, whereupon he proceeded to “Walkcege” Station.

It was in this context and out of necessity that the local Police ‘aid[ed] [the receivers] in the movement of cattle’.

- 9 One of the affidavits filed on behalf of Rural Bank and the receivers and managers was by Mr Fuhrman-Luck (now deceased), who at the time was employed by Rural Bank in the position of ‘Manager, Asset Management’. A copy of that affidavit can be provided. At paragraphs 4, 5 and 6, in which Mr Fuhrman-Luck deposes to the appointment of the receivers and managers on 8 August 2011, and the basis of their appointment being the default by Mr Wallace, primarily being that as at 8 August 2011:

- the balance of Mr Wallace’s seasonal trading facility account with Rural Bank was \$1,308,610.99 debit against the approved limit of \$1 million and had been continually in excess of the approved limit for more than 8 months; and
- the land on which the secured livestock were depastured had not been properly maintained.

As to the second point immediately above, Mr Fuhrman-Luck had sent an email to Mr Wallace on 22 July 2011 (copy can be provided) but had not received a response. Prior to that, on 4 July 2011 he (and Rural Bank’s District Banking Manager, Mr Luff) had met with Mr Wallace at “Coronation” Station, and on 14 July 2011 he had written to Mr Wallace confirming what had been discussed and what Rural Bank’s expectations were going forward (copy can be provided).

Mr Fuhrman-Luck (and Mr Luff) had also met with Mr Wallace and his accountant on 22 February 2011 for the purpose of trying to reach agreement with Mr Wallace on how the excesses above the approved limit would be cleared, but that meeting had proved fruitless and consequently resulted in the further meeting on 14 July 2011.

- 10 So, it is not the case that receivers were appointed on 8 August 2011 'without a default event'. It is the case that Rural Bank had not given a 'notice of default' to Mr Wallace prior to appointing receivers, but:
- there was no requirement under either the applicable facility terms or the terms of the livestock mortgage for Rural Bank to issue a 'notice of default' prior to appointing receivers (and for obvious reasons, given that notifying a party of the potential or pending appointment of receivers might result in secured property being damaged, destroyed, removed or hidden); and
  - Mr Wallace was well aware from his discussions with Mr Fuhrman-Luck and Mr Luff in February and July 2011 and from the correspondence dated 14 and 22 July 2011 from Mr Fuhrman-Luck that he was in default prior to and at the time of the appointment of receivers.
- 11 On 24 October 2012, the receivers and managers ceased to act in respect of their appointment on 8 August 2011.
- 12 On 26 October 2012, Rural Bank received a distribution from the receivers and managers in relation to their appointment on 8 August 2011, in the amount of \$426,001.66.
- The livestock removed and sold from "Walkcege" Station comprised 1,531 head, which were sold at a gross value of approximately \$1,012,000.00, with an average sale price of \$663.00 (including GST) per head. These prices were above the livestock valuations received by the receivers and managers. For cows and cows with calves, the receivers and managers achieved approximately \$866.00 (including GST) which represented a substantial premium given the condition of those cattle.
- The cattle were marketed following expert advice from agents Landmark Richmond and Elders Charters Towers, via a range of sale channels. Rural Bank does not accept that the true value of the cattle was \$1.6 million (as asserted by Mr Wallace). Nor is that assertion as to the value of the cattle supported by the independent expert advice provided to the receivers and managers.
- As to the balance or net funds remitted to Rural Bank, substantial costs were incurred in the course of the receivership which were required to be met from the proceeds of the cattle sales. Included in those costs were agistment costs, freight and transport costs, agent's commission, GST, operating and other costs associated with the lawful conduct of the receivership. Some of those costs were as a direct consequence of the unlawful actions taken by Mr Wallace in interfering with the receivership. Such costs included additional security and other expenses relating to the mustering and removal of the livestock, and legal costs associated with the injunction granted by the Supreme Court of Queensland against Mr Wallace on 7 June 2012.
- 13 Mr Wallace's assertion that Rural Bank somehow prevented or hindered him from refinancing his debt to Rural Bank through Suncorp in March 2012 is incorrect. A copy of a letter from Rural Bank to Mr Wallace dated 19 March 2012 is can be provided. That letter relevantly stated:

We acknowledge that you have applied to another lending institution for funding for various purposes including sufficient funding to repay your Rural Bank debts in full.

...

If the proposed funding proceeds we will make arrangements for the appointment of the Receivers of the Relevant Mortgaged Property to be terminated simultaneously with the payment in full of the above facilities.

If the proposed payout does not proceed, then Rural Bank reserves its right to take such action as it considers appropriate.

#### **Subsequent legal proceedings, Mr Wallace's FOS dispute and the second receivership**

- 14 Rural Bank had lent money to Mr Wallace pursuant to a seasonal trading facility (account number ), and two term loan facilities (accounts numbered and ) (collectively, the **Loans**).

As security for the Loans, Mr Wallace granted Rural Bank the livestock mortgage referred to above, and registered land mortgages over rural Properties known as "Newburgh" Station and "Coronation" Station (collectively, the **Security**).

- 15 Mr Wallace defaulted under the Loans and by letter dated 18 January 2012 (copy can be provided), Corrs (on behalf of Rural Bank) made demand on Mr Wallace for payment of all outstanding monies (\$6,146,664.55 plus accrued interest up to the date of payment) within 45 days.

Mr Wallace failed to respond to the letter of demand, so on 3 July 2012, Corrs (on behalf of Rural Bank) served the prescribed statutory notices of default in respect of the registered land mortgages on Mr Wallace.

- 16 Mr Wallace failed to respond to the letter and demand and statutory notices of default, so on 31 August 2012, Rural Bank filed a claim (proceeding number 7928/12) in the Supreme Court of Queensland against Mr Wallace in which it claimed payment of monies owing under the Loans (\$6,429,062.39 plus interest) and for recovery of possession of "Newburgh" Station and "Coronation" Station.

Despite indicating he would make himself available to accept personal service of the claim (and statement of claim), Mr Wallace proved evasive, and attempts at personal service were unsuccessful.

- 17 Subsequently, on 22 October 2012, Mr Wallace lodged a "Dispute Form" with FOS. This had the effect of stopping Rural Bank from progressing its claim in the Supreme Court of Queensland against Mr Wallace until after FOS had dealt with the dispute.

Notwithstanding this, on 25 October 2012, Mr Byres (from Corrs) received an email from Mr Wallace's then partner, Michelle Lamb (on behalf of Mr Wallace) requesting a copy of the claim and statement of claim by email. Mr Byres complied with that request on 26 October 2012.

On 1 November 2012, Mr Wallace filed a conditional notice of intention to defend in response to Rural Bank's claim (the effect of which was that Mr Wallace submitted to the claim and was deemed to have been served), and on 2 November 2012 a filed copy of that document was delivered to Corrs offices.

- 18 By letter dated 22 March 2013 from FOS to Rural Bank, FOS informed Rural Bank that a telephone conciliation conference between Mr Wallace and Rural Bank would be held on 10 July 2013 at 2.00 pm. The letter stated that the aim of the telephone conciliation conference was "resolving the dispute", and it sought certain information from Rural Bank "at least seven days prior to the conciliation conference". Detailed information was provided to FOS by Rural Bank in accordance with the request.

On 10 July 2013, a telephone conciliation conference took place involving representatives from Rural Bank, Mr Byres (from Corrs) a case manager/conciliator from FOS, Mr Wallace and Ms Lamb. Mr Wallace also had an “advisor” by the name of Mr Chin, participate in the telephone conciliation conference.

The dispute was not resolved during the telephone conciliation conference, and Rural Bank asked that the matter be referred to FOS’s legal counsel to review whether FOS has jurisdiction to consider the dispute.

- 19 By letter dated 18 July 2013 from FOS to Rural Bank, FOS provided Rural Bank with a copy of its letter dated 18 July 2013 to Ms Lamb (on behalf of Mr Wallace) in which FOS informed Mr Wallace that it had exercised its discretion to not consider his dispute any further on the following basis:

- the question of the receivers and managers’ appointment and actions had been dealt with in court;
- his claim appeared to be for more than FOS’s jurisdictional limit;
- the nature of his dispute arising from the sale of livestock suggests that the courts are a more appropriate place to consider the dispute; and
- he had not provided any legal basis upon which he is not liable to pay the outstanding debt.

FOS further informed Mr Wallace that if he had any information which established that its understanding of his dispute was incorrect, he should write to FOS again within 30 days, and if FOS did not hear from Mr Wallace by 19 August 2013, it would close its file and would not consider the matter further.

- 20 By letter dated 13 August 2013 from FOS to Rural Bank, FOS informed Rural Bank that Mr Wallace had “requested a further period of time to respond”, and that it had agreed to his request and had asked him to respond by 26 August 2013.
- 21 By letter dated 26 August 2013 from Dispute Assist Pty Ltd (**Dispute Assist**) to FOS, Dispute Assist informed FOS that Mr Wallace ‘wishes to withdraw the part of his complaint that pertains to appointment of the receivers and managers and subsequent sale of livestock’. Dispute Assist further informed FOS that the ‘outstanding concern that [Mr Wallace] has is maladministration in regard to provision of loans [on] 19 February 2010’.
- 22 By letter dated 10 September 2013 from Rural Bank to FOS, Rural Bank provided further information which had been requested by FOS.
- 23 By letter dated 16 October 2013 from FOS to Dispute Assist, FOS informed Dispute Assist that it had decided to exercise its discretion to exclude Mr Wallace’s maladministration claim on the basis that it is more appropriately dealt with in court. FOS further informed Dispute Assist that if it had any information which established that its understanding of the dispute was incorrect, it should write to FOS again within 30 days and provide details, and if FOS did not hear from Dispute Assist by 19 November 2013, it would close its file and would not consider the matter further.
- 24 On 18 November 2013, in anticipation of FOS closing its file and given that a step had not been taken in Supreme Court proceeding number 7928/12 for more than 12 months (the last step being the filing of a conditional notice of intention to defend by Mr Wallace on 1 November 2012, Corrs wrote to Mr Wallace serving him with a notice of intention to proceed.



The effect of the notice of intention to proceed was to inform Mr Wallace that at the expiry of one month from the date of service of the notice, Rural Bank intended to proceed with its claim in proceeding number 7928/12.

Mr Wallace claims that he did not receive a notice of intention to proceed and makes the unsubstantiated allegation that the notice of intention to defend was 'forged' by Mr Byres (from Corrs). This allegation is addressed further at point '48' below.

25 By letter dated 22 November 2013 from FOS to Rural Bank, FOS attached a copy of a letter dated 20 November 2013 which it had received from Dispute Assist, and FOS sought further information from Rural Bank regarding Mr Wallace's acquisition of "Coronation" Station. Rural Bank responded to FOS by letter dated 26 November 2013.

26 By letter dated 24 December 2013 from FOS to Dispute Assist, FOS informed Dispute Assist that its objection to FOS's assessment contained in its 16 October 2013 letter did not warrant further consideration of the dispute, or identify an error in FOS's assessment. FOS further informed Dispute Assist that that meant that FOS was 'unable to consider the dispute any further', and that its 'file has been closed'. The penultimate paragraph of the letter read:

*As our file is now closed, the FSP [i.e. Rural Bank] is entitled to recommence its legal proceedings against [Mr Wallace]. As this may include obtaining judgment against him, [Mr Wallace] may wish to obtain independent legal advice about other options that may be available to him.*

27 So, what clearly emerges from the above in relation to FOS is that:

- FOS devoted plenty of time and resources to investigating and considering Mr Wallace's complaint;
- Rural Bank provided a significant amount of information to FOS in response to requests for information pertaining to matters alleged by Mr Wallace;
- Mr Wallace had representation throughout the course of the FOS investigation;
- Mr Wallace was given numerous extensions and opportunities to contest or dispute FOS's findings;
- Mr Wallace expressly withdrew the part of his complaint that pertained to appointment of the receivers and managers and subsequent sale of livestock; and
- Mr Wallace was informed that Rural Bank was entitled to recommence its legal proceeding against him and that may include obtaining judgment.

28 On 6 January 2014, Rural Bank appointed Mr Colwell and Mr Michael as receivers and managers of the property described in the Security. On 9 January 2014, Rural Bank appointed the receivers and managers as receivers and managers of the balance of the "mortgaged property" (as defined) under the livestock mortgage, which includes all plant and equipment owned by Mr Wallace and used in connection with the livestock or Mr Wallace's business on "Newburgh" Station.

29 On 7 January 2014, having not received any correspondence or other communication from or on behalf of Mr Wallace subsequent to the letter dated 24 December 2013 from FOS, Rural Bank filed a request for default judgment, together with the required affidavit material.

- 30 On 10 January 2014, a “John Brown” who described himself as ‘Solicitor for Charlie Wallace’ sent an email to Rural Bank in which he confirmed that he had been engaged to act for Charlie Wallace and he requested that he and Mr Wallace be allowed to view the ‘original executed copies’ of the loan offer, the mortgages and the loan application on 13 January 2014. Corrs subsequently corresponded with Mr Brown by email on 10 and 13 January 2014. In that email correspondence, Mr Brown also proposed a meeting with the receivers and managers on 13 January 2014. Ultimately, it was agreed that:
- a meeting would take place at the Corrs Brisbane offices between Mr Brown, Mr Wallace, Mr Byres and a representative from Rural Bank at 2.30 pm on 13 January 2014 for the purpose of viewing the original documents; and
  - the meeting with the receivers and managers would be held at 3.30 pm at the offices of the receivers and managers.
- 31 On 10 January 2014, judgment (by default) was entered against Mr Wallace in proceeding number 7928/12 (**Judgment**) (copy can be provided). Judgment was for Mr Wallace to pay Rural Bank the amount of \$6,819,787.09 and for Rural Bank to recover possession of “Newburgh” Station and “Coronation” Station.
- On 14 January 2014, the Judgment was issued by the Registry, and Corrs forwarded a copy of it to Mr Wallace by email, under cover of a letter dated 14 January 2014 in which Corrs sought an indication by no later than the close of business on Friday, 17 January 2014, whether Mr Wallace would voluntarily provide possession of “Newburgh” Station and “Coronation” Station to Rural Bank.
- Subsequently on 14 January 2014, Corrs sent an email to Mr Brown which attached a copy of the Judgment and covering letter to Mr Wallace.
- 32 Between 15 and 20 January 2014, email correspondence passed between Corrs and Mr Brown in which the parties discussed the receivers and managers being permitted to inspect “Newburgh” Station and “Coronation” Station and the livestock, on the basis that it was to be an inspection only, and not taking of possession. This possibility had been raised by Mr Colwell at the meeting held on 13 January 2014.
- In his email to Corrs on 20 January 2014, Mr Brown wrote that he had ‘been instructed to file an application to set aside the default judgment ... and seek leave to file a defence and counterclaim’.
- 33 Given the lack of progress in discussions with Mr Wallace about gaining access to the livestock and the properties, on 23 January 2014, at Rural Bank’s request, an Enforcement Warrant – Possession of Land was issued authorising an Enforcement Officer of the Court to enter upon “Newburgh” Station and “Coronation” Station and deliver possession of them to Rural Bank (**Enforcement Warrant**).
- 34 In an email from Mr Brown to Corrs on 24 January 2014, Mr Brown indicated that Mr Wallace wished to impose conditions on who the receivers and managers could send to conduct the inspection.
- Corrs responded by email to Mr Brown on 28 January 2014, stating that the attempt to impose such a condition flies in the face of the livestock mortgage, and that the condition sought to be imposed by Mr Wallace was unacceptable.
- The email from Corrs attached a copy of the Enforcement Warrant and noted that matters had progressed and circumstances had changed, and Rural Bank was no

longer interested in negotiating access terms with Mr Wallace, or in refraining from taking possession of the secured land and livestock. Corrs then sought confirmation by no later than 1:00 pm on 30 January 2014 that Mr Wallace would voluntarily hand over possession of the subject land and livestock to Rural Bank or the receivers and managers.

- 35 On 30 January 2014, Corrs received an email from Mr Brown, marked “without prejudice”, in which Mr Brown stated that he was on his way to meet with Mr Wallace, and that that meeting would occur the following day. In those circumstances, Mr Brown asked if the Bank’s deadline could be extended to 1:00 pm on 3 February 2014. Rural Bank agreed to that request, and to a request by Mr Brown for a meeting at the Corrs Brisbane offices at noon on 3 February 2014.
- 36 On 3 February 2014, Corrs received an email from Mr Brown, marked “without prejudice”, in which he wrote that Mr Wallace was ‘still troubled by a number of aspects of the previous receivership’, that Mr Wallace ‘believes that he has significant defences to the Bank’s current action, and he has instructed me to apply to have the default judgment set aside and to stay the possession order’.
- In that email, Mr Brown also wrote that Wallace was ‘prepared to allow [an] inspection by ... Rural Bank’, and he suggested that ‘a local stock and station agent assist with inspecting the stock’.

Mr Brown and Mr Byres subsequently met at the Corrs Brisbane offices at noon on 3 February 2014, and it was agreed that by the following morning Mr Brown would submit a proposal, on behalf of Mr Wallace, for the Rural Bank’s consideration.

- 37 On 4 February 2014, Corrs received an email from Mr Brown, marked “without prejudice”, in which he wrote that he had ‘been corresponding and speaking extensively with Mr Wallace throughout the morning’, and ‘rather than seek to set aside the judgment and stay the enforcement order, [he] would prefer to dedicate [his] efforts to settling the matter’.

Mr Brown asked if Rural Bank was prepared to agree to a seven day ‘standstill agreement’, so that Mr Wallace could obtain market appraisals and confer with prospective re-financiers.

On 4 February 2014, Corrs received a further email from Mr Brown, marked “without prejudice”, in which he wrote that Mr Wallace was ‘making a genuine effort now to come to grips with his situation, and to act appropriately’.

He further wrote that he had spent ‘almost six full days with [Mr Wallace] since the beginning of January, in Brisbane and in rural Queensland’, and it had ‘not been an easy task to focus attention on the realities of the present situation, rather than perceived injustices of the past’.

- 38 On 5 February 2014, Corrs received an email from Mr Brown, marked “without prejudice”, in which he set out Mr Wallace’s position ‘at this stage’.

- 39 On 10 February 2014, Corrs sent an email to Mr Brown which set out Rural Bank’s position. It required, *inter alia*, that Mr Wallace was to voluntarily give possession of “Coronation” Station, “Newburgh” Station and the livestock to Rural Bank, via the receivers and managers, by no later than 17 February 2014, and that Mr Wallace (and his family) would be permitted to remain in occupation in the house on one of the properties for a period of up to three months, commencing on 17 February 2014, and that arrangement would be documented and formalised in an “Occupation Licence”.

- 40 On 13 February 2014, Corrs received an email from Mr Brown in which he confirmed that Mr Wallace agreed to provide possession to the receivers and managers on 17 February 2014 on the basis set out in the email of 10 February 2014 (point '39' above), subject only to a request that accommodation at both properties be retained for three months.
- 41 In an exchange of emails between Mr Brown and Corrs on 14 February 2014, an agreement was reached whereby Ms Lamb, her children and pets had to leave "Coronation" Station by no later than 4:00 pm on 2 March 2014, and Mr Wallace had to leave "Newburgh" Station by no later than 4:00 pm on 28 April 2014.
- 42 On 14 February 2014, Corrs sent an email to Mr Brown which attached a draft "Deed of Agreement" (setting out the terms upon which Mr Wallace was voluntarily handing over possession of "Coronation" Station, "Newburgh" Station and the livestock) and a draft "Occupation Licence".
- 43 On 17 February 2014, the receivers and managers appointed by Rural Bank took possession of "Newburgh" Station, "Coronation" Station and the livestock.
- 44 The "Deed of Agreement" and "Occupation Licence" were executed:
- on behalf of Rural Bank on 17 February 2014;
  - by the receivers and managers on 17 February 2014;
  - by Mr Wallace on 21 February 2014.
- The "Occupation Licence" permitted Mr Wallace, as licensee, to reside on and occupy the Homestead (Yering) situated on "Newburgh" Station during the period from 17 February 2014 until 28 April 2014, subject to rights of earlier termination.
- 45 Late in the afternoon on 11 April 2014 (i.e. 17 days before Mr Wallace had to vacate "Newburgh" Station), Corrs were served with the application filed by Mr Wallace on 11 April 2014, in which he sought to set aside the Judgment.
- 46 On 14 April 2014, Corrs received a letter directly from Mr Wallace (by email) in which he wrote that Mr Brown did not act for him, and he asked Corrs to address all future correspondence to Mr Wallace until further notice.
- 47 On 17 April 2014, Corrs wrote to Mr Wallace pointing out that the claim (proceeding number 7928/12) by Rural Bank had been compromised by the signing of the "Deed of Agreement", and that an estoppel by deed had arisen against Mr Wallace which would have the effect of defeating the application Mr Wallace had filed on 11 April 2014.
- 48 On 28 April 2014, Mr Wallace's application to the Supreme Court of Queensland to set aside the Judgment was dismissed and he was ordered to pay Rural Bank's costs. Those costs are yet to be assessed and remain recoverable from Mr Wallace. At the hearing of that application, Mr Wallace was represented by yet another law firm, BDG Legal.

During the course of the hearing, Mr Byres was cross-examined at length by Mr Wallace's counsel in relation to the notice of intention to proceed.

The following statements appeared in the Court's judgment:

The fact that Mr Wallace said he did not receive [a notice of intention to proceed] does not mean that it was not sent. However, there has been no request to cross-examine him, so I have to accept for the purposes of this application that he did not receive it. Therefore he was not in terms given notice. I am not suggesting that the solicitor for [Rural Bank, Mr Byres] is being in any way dishonest. It is his

normal practice, as he deposed, to keep a copy on file when the original has been posted. It is possible that the normal practice wasn't followed. As one might expect, he is unable to remember this specific case.

I am therefore drawn to the conclusion that one month's notice was not given strictly in accordance with the rule. Normally, one might expect that this would lead to the judgment being set aside. However, in this case, there is a complete answer to that. Mr Wallace signed a deed of agreement with Rural Bank whereby he agreed that he would not apply to set aside the judgment and/or the enforcement warrant, and that the deed might be pleaded as a full and complete defence, response, or answer to any application by Mr Wallace to set aside the judgment or the enforcement warrant.

There has been a valiant attempt by Mr McDonald on behalf of Mr Wallace to persuade me that there is an arguable case that there was unconscionable dealing in the method by which [Rural Bank] made [the Deed of Agreement] with Mr Wallace. But there is nothing at all to suggest unconscionable dealing. Mr Wallace is a person of full capacity. True it is that receivers were residing on the property at the time, as they were entitled to do to manage the property, having been regularly appointed to do so. Mr Wallace received legal advice. He made a decision, presumably reluctantly, to sign that deed. But sign it he did. In my view, it is not arguable that [Rural Bank] took unconscientious advantage of Mr Wallace in requesting that he sign the [Deed of Agreement], and it is a complete answer to this application.

In any event I am far from satisfied that were Mr Wallace given leave to defend the action, that his defence has any prospects of success. It may delay what appears to be the inevitable situation of [Rural Bank] taking possession of the property, but as I said, all the arguments valiantly put up by Mr McDonald do not convince me that there would be any viable defence to the action.

Accordingly, I dismiss [Mr Wallace's] application.

A copy of the judgment delivered on 28 April 2014 can be provided.

Mr Wallace filed a notice of appeal against that decision, and in the course of doing so he applied unsuccessfully to the Supreme Court of Queensland:

- on 21 May 2014 for an order staying the order made on 28 April 2014 pending the determination of his appeal; and
- on 7 August 2014 for an injunction restraining the auction of "Coronation" Station by the receivers.

In both instances, costs orders were made against Mr Wallace. Those costs are yet to be assessed and remain recoverable from Mr Wallace. In both of those applications Mr Wallace was represented by BDG Legal and counsel.

The following statements appeared in the Court's judgment (on 18 August 2014) in respect of the application heard on 21 May 2014:

Counsel for [Mr Wallace] also sought to reprise the argument that it would be unconscientious for the Bank to rely on the clear terms of the deed of agreement on the basis that Mr Wallace lacked proper legal advice at the time he signed it. That argument was succinctly dealt with by Atkinson J [on 28 April 2014]. Moreover, an email from the solicitor Mr Brown to Mr Wallace (and Ms Lamb) dated 19 February 2014 was tendered before me. That email contained express advice on the terms of the deed before it was signed by Mr Wallace. The advice explained unequivocally the effect of the relevant clauses of the deed. ...

In the face of that email, one struggles to see how it could sensibly be said that Mr Wallace lacked advice as to the effect of the deed he eventually signed.

- 49 On 12 May 2014, Mr Wallace sent an email to Rural Bank requesting a current payout figure for his debt. Corrs responded to that request in a letter dated 13 May 2014 (copy can be provided).

Mr Wallace has asserted that the estimated payout figure provided by Corrs was 'intentionally inflated' by including legal costs that had already been paid. That assertion is incorrect.

- 50 On 21 November 2014, the Queensland Court of Appeal unanimously dismissed Mr Wallace's appeal and ordered that he pay Rural Bank's costs. Those costs are yet to be assessed and remain recoverable from Mr Wallace.

In the lead up to and preparation for the appeal, Mr Wallace was represented by another law firm, Walker Lawyers, but by the time the appeal was heard, BDG Legal was acting for him again, instructing new counsel (Mr King from Sydney).

A copy of the Court of Appeal order and judgment can be provided. We draw your attention to the following parts of the judgment:

- [9] [Mr Wallace's] contentions that the deed was entered into as a result of some form of unconscionable conduct on the part of [Rural Bank], cannot be sustained. There are several reasons for that conclusion.
- [10] First, the receivers were appointed on 6 January 2014, and on 8 January [Mr Wallace] was notified of their appointment, by email. [Mr Wallace] was given a copy of the Deed of Appointment, which stated in clause 2, that the receivers "Shall be the agent of the Mortgagor and neither the Receiver nor the Bank shall be personally liable for the Receiver's acts or omissions".
- [11] That mirrored the provisions of the relevant security, under which the respondent could appoint receivers once an Event of Default had occurred. There was no serious issue that an Event of Default had occurred as at 6 January 2014. As such the receivers acted as agents of the mortgagor ([Mr Wallace]), not the mortgagee ([Rural Bank]). Thus [Mr Wallace] cannot lay their conduct at the feet of [Rural Bank].
- [12] Secondly, it was the receivers who went into possession of the properties, not [Rural Bank]. The receivers announced that they were coming to the properties on 17 February [2014]. They did so, and [Mr Wallace] accompanied them on an inspection. During that inspection [Mr Wallace's] solicitor emailed a copy of the proposed deed, received from the solicitor for [Rural Bank]. The receivers' agent [Mr Bond] pressed for them to be signed.
- [13] Thirdly, on 18 February [2014] [Mr Wallace] discussed the draft documents with his solicitor, who sent an email "advising me in relation to those aspects of the deed of agreement that set out what the receivers could take possession of and what my obligations were". The advice also extended specifically to the clause of the draft deed that related to not setting aside the default judgment. ...
- [14] Thus [Mr Wallace] sought and was given legal advice as to the draft deed, from his own solicitor. [Mr Wallace's] solicitor was aware that [Rural Bank] had obtained the default judgment as, about a month earlier on 20 January 2014, he advised [Rural Bank's] solicitor that he had "been instructed to file an application to set aside the default judgment ... and seek to file a defence and counterclaim". At the same time [Mr Wallace's] solicitor advised that he had briefed counsel to advise as to "whether the proposed arrangement will prejudice my client".

- [15] Fourthly, the basis upon which [Mr Wallace] gave up possession of the properties was negotiated for him by his solicitor. ...
- [16] By the time [Mr Wallace] received his legal advice on 19 February [2014], the receivers' agents were staying at the property. [Mr Wallace] said that one of them was "pressuring me to sign those documents, and ... indicated to me that he would not be leaving until I had signed them". [Mr Wallace] signed the deed and occupation licence on 21 February [2014]. [Mr Wallace] asked his solicitor to be present when he signed but the solicitor advised it was not possible.
- [17] [Mr Wallace] contended that the "pressuring" by the receivers, referred to above, was unconscionable. Plainly it was not, and the learned primary judge was correct to reject that contention.

...

- [43] [Mr Wallace] entered into the Deed of Agreement with [Rural Bank], and its appointed receivers and managers, after entry of the default judgment. He did so knowing he had an entitlement to apply to set aside that default judgment. [Mr Wallace] had specific advice from a legal practitioner to that effect. He also had legal advice as to the consequences of entering to the Deed of Agreement.
- [44] There was no proper basis to contend that the Deed [of Agreement] was entered into unconscionably.

- 51 Mr Wallace's assertions about cattle numbers, type and value are incorrect. During the course of Mr Wallace's various applications to the Supreme Court of Queensland in relation to proceeding number 7928/12, Mr Colwell swore several affidavits which dealt with the progress of the receivership, and in doing so Mr Colwell provided details of cattle numbers, type and value, as well as the steps which had been taken and were to be taken in relation to the management and sale of livestock, as well as the proposed sales of "Coronation" Station and "Newburgh" Stations.

Copies of affidavits by Mr Colwell sworn on 20 May 2014 and 6 August 2014 can be provided.

An exhibit to the earlier affidavit is a letter from Ferrier Hodgson to Mr Wallace dated 28 March 2014 in which information was sought on the whereabouts of 16 items of plant and equipment which were covered by Rural Bank's Security. Mr Wallace has never provided a satisfactory response to that request and the majority of those items were not recovered by the receivers and managers.

- 52 "Coronation" Station was sold at a public auction on 12 August 2014 for \$1,580,000.00. "Newburgh" Station was sold immediately following a public auction on 5 December 2014 for \$5 million. Both properties were professionally marketed, advertised widely and sold via or immediately following well attended auctions.
- 53 The second receivership was completed on 30 April 2015.
- 54 On 29 October 2015, Corrs wrote to Mr Wallace demanding payment of the residual debt, which as at that date, stood at \$1,137,713.81. A copy of the letter from Corrs to Mr Wallace can be provided. It included a schedule which detailed the calculations of the residual debt.

This letter clearly shows that Mr Wallace's assertion that only \$830,223.76 from the proceeds from the sale of "Newburgh" Station have been accounted for is untrue.

## **Conclusion**

With the exception of the FOS dispute, the matters set out above are all matters of public record, and all of the matters are known to Mr Wallace.

Rural Bank is of the view that the matters set out above emphatically and indisputably show that Mr Wallace's submission to the Committee and his allegations made on 11 September 2017 are both inaccurate and untrue. The same applies for the assertions made on 11 August 2017.

Should the Committee have any further queries or if Rural Bank can provide any further assistance, please let us know.

Yours faithfully,

**Malcolm Renney**

General Manager Credit Rural Bank