

# WHAT AUSTRALIA MUST DO to Survive the Depression

by the Citizens Electoral Council of Australia



## 2. A Debt Moratorium for Farms and Industries

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Under globalisation, deregulation, and an unjust tax system, our hard-working farmers and industrial entrepreneurs have been savaged. They urgently need relief, in order that we can begin the process of the reconstruction of Australia's physical economy. Toward that end, the CEC drafted the *Productive Industries and Farms Domestic Debt Moratorium, Amelioration, and Restructuring Bill*, a summary of which follows and then the legislation itself.

### **The Productive Industries and Farms Domestic Debt Moratorium, Amelioration, and Restructuring Bill**

**O**ur domestic debt load, most of which was contracted at highly usurious rates, is crushing our nation's farms and industries. In order to stop this destruction, this Bill will establish a "Commission to Review Domestic Debt", to determine which persons are protected by the terms of this Bill. Such "nominated persons" are specified as anyone who "derived more than 50 per cent of his gross income in the financial year immediately preceding proclamation of this Act and each anniversary thereafter, from sources that are directly attributable to increasing the potential population-density of Australia. Such sources are limited to: food produced by family farmers, or the production of manufactured goods, fibres, minerals, metals, oil, and gas."

The Bill defines basic parameters for “illegitimate debt” and empowers the Commission to determine others.

The proposed debt moratorium has a term of four years, and the Act is automatically repealed upon expiration.

During the moratorium period the following procedures apply for the benefit of “nominated persons”:

- a. All actions and proceedings relating to recovery of debt commenced prior to the coming into operation of the Act, are stayed and adjourned.
- b. No action or proceeding shall be commenced to recover or enforce payment of a debt.
- c. There shall be no payment of principal or interest on any debt, legitimate or illegitimate.
- d. Assets seized (including twelve months retroactively) in an effort to recover a debt, or enforce payment, are to be returned. Where such assets have been sold, the gross proceeds, or fair market value (if the latter is higher) as determined by the Commission, shall be refunded to the nominated person.

Provision also exists for:

1. nominated persons to replace existing debt with long-term credits at two per cent interest from the proposed new national bank, the Commonwealth National Credit Bank;
2. extinguishment of debt where total payments exceed the sum of the principal and interest calculated at five per cent, six per cent or seven per cent, depending upon whether the security is fixed, movable, or by way of personal guarantee;
3. debts to be rendered void where creditors fail to comply with the provisions of the Act.

Agreements evidencing debt between members of the same immediate family or under the same corporate ownership or control are not affected by the Act.

As an indication of the amount of debt subject to this Act, according to the Australian Bureau of Statistics (ABS), as of 1998-99 the total indebtedness of Australian individuals and enterprises was \$2,680.6 billion. Gross farm indebtedness for the same year (most of which pertained to family farms, and is therefore subject to this Act) was \$24.3 billion, up 12% from the year before.

## **The Legislation**

An Act to make provision for a moratorium on debts (other than foreign debts) owed by persons comprising productive Australian industries and family farms which produce goods that enhance the physical economy of the nation. To afford to such persons certain amelioration of the effect of illegitimate debt, to provide the means whereby such persons can terminate high-interest loans in favour of low-interest loans, and to provide other means of relief from illegitimate debt.

### **WHEREAS:**

1. Australia is in a state of economic depression;
2. Many productive industries and farms in Australia are now collapsing under the weight of excessive cost of debt;
3. The number and output of Australian farms and factories has fallen to dangerously low levels;
4. The future ability of the nation to be self-sufficient in food and essential manufactures is in doubt, posing urgent problems of national security;
5. The high interest rates of the previous years, largely determined by forces outside Australia, together with declining prices for output and rising prices for inputs, have resulted in a massive debt burden and decapitalisation for the Australian family farmer;
6. The nation's taxation revenue is collapsing due to fewer and poorer tax-payers;
7. The number of unemployed and under-employed persons continues to rise, imposing an increasing financial and social burden on the nation;
8. Austerity measures are now causing a decline in the nation's infrastructure, and hospitals, schools, railways, and other essential services are contracting or closing down;
9. The economic collapse has produced an intolerable crisis in public morality, reflected in crime and suicides of epidemic proportions.

### **THEREFORE:**

There exists an urgent need to encourage Australian farms and industries producing tangible commodities which enhance the physical economy of the nation, to return to a profitable operational level.

**NOW IT IS PROPOSED:**

That the Government undertake certain legislative action to protect and assist the productive, wealth-creating sector of Australia, in the interests of the lives, liberty and happiness of all the residents of Australia.

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## PART I—PRELIMINARY

### Short Title

1. This Act may be cited as the *Productive Industries and Farms Domestic Debt Moratorium, Amelioration, and Restructuring Act*.

### Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.

### Interpretation

3. In this Act unless the contrary intention appears:
  - “Act” means any legislation enacted by any Parliament of the Commonwealth, States, or Territories of the Commonwealth of Australia, and includes the rules and regulations made pursuant to such legislation and all amendments thereto.
  - “Commission” means the Commission to Review Domestic Debt.
  - “Commissioner” means a person who is a member of the Commission.
  - “Commonwealth” means the Federal Commonwealth of Australia.
  - “Excluded Person” means any person:
    - (1) the ultimate control or ownership of whose enterprise is outside Australia, or whose ultimate control or ownership is not held by Australian citizens; or
    - (2) who earned more than 50 per cent of his gross income, in the financial year immediately preceding Proclamation of this Act, and for each anniversary thereafter, from sources other than those which qualify a person as a Nominated Person.
  - “family farmer” means any individual whose principal occupation is farming, and who resides on, or in the immediate vicinity, of the land farmed. It includes partnerships in which all individuals are related within the third degree of kinship and where at least fifty per cent of the beneficial ownership resides with family farmers. It includes corporations in which all individuals are related within the third degree of kinship

and in which at least one individual is a family farmer, or in which at least fifty per cent of the voting shares are owned by family farmers.

“farming” means any activity which directly results in the production of food (including viticulture) or fibre (including horticulture).

“gross income” means the monetised value of all receipts.

“illegitimate debt” means any obligation (other than an obligation within the immediate family) which binds a Nominated Person to pay any person, any sum of money however expressed, which violates principles of equity under natural law. Such illegitimate debt may arise from, but is not limited to:

- (1) usurious terms of contraction, meaning payment of interest (in addition to principal) of more than;
  - (a) five per cent per annum calculated daily on the unpaid balance, where the debt is mainly secured by land or fixed assets thereon;
  - (b) six per cent per annum calculated daily on the unpaid balance, where the debt is mainly secured by plant, machinery, vehicle or other movable asset;
  - (c) seven per cent per annum calculated daily on the unpaid balance, where the debt is mainly secured by personal guarantee, inventory items, crop or produce lien, or the like.
- (2) contraction of new debt to pay old debt contracted at usurious terms.

“immediate family” means persons related to one another (and their spouses) within the third degree of kinship according to the rules of civil law.

“natural law” means the ordering principle of the universe, characterised by maximum beauty, goodness, and development.

“Nominated Person” means any person or corporation, not being an Excluded Person, who derived more than 50 per cent of his gross income in the financial year immediately preceding proclamation of this Act and each anniversary thereafter, from sources that are directly attributable to increasing the potential population-density of Australia. Such sources

are limited to: food or fibre produced by family farmers, the production of manufactured goods, minerals, metals, oil, and gas.

“Parliament” means the Parliament of the Commonwealth.

“person” means any person, group of person, corporation, trust or group of corporations or trusts.

“potential population-density” means the number of individuals existing per square kilometre, supported solely by the physical economy of the nation, plus the number who could be so supported. A rising potential population-density means an increasing number of individuals who could be potentially supported per unit area, and includes an increased quality of individual, through higher education, skill levels, and general culture.

“the Bank” means the Commonwealth National Credit Bank of Australia as established by the *Commonwealth National Credit Bank Act*.

“the court” means a court of relevant jurisdiction.

### **Persons to Whom the Immediate Benefits of This Act Apply**

4. The beneficial provisions of this Act are available to, and apply to “Nominated Persons”.

### **Persons to Whom No Benefit Under This Act Applies**

5. The beneficial provisions of this Act are not available to “Excluded Persons”.

### **Application to Territories**

6. This Act extends to all Territories of the Commonwealth.

### **Act to Bind the Crown**

7. This Act binds the Crown.

### **Term**

8. This Act shall remain in force for a period of four years from the date of Proclamation, and thereafter shall be considered repealed.

### **Act to Supersede All Other Laws**

9. Notwithstanding anything contained in any other Act, Court Order, Agreement, or otherwise to the contrary, the provisions of this Act prevail.

## PART II—ESTABLISHMENT AND MANAGEMENT OF THE COMMISSION TO REVIEW DOMESTIC DEBT

### **Authority**

10. There shall be established the Commission to Review Domestic Debt. The Commission shall at all times act under authority of this Act, and additionally shall have authority to call upon and receive assistance from the Commonwealth National Credit Bank.

### **Powers**

11. (1) The Commission has such powers as are necessary for the purposes of this Act, and in particular, and in addition to any other powers conferred on it by this Act, has power to engage the services of such personnel, and upon such terms as it considers necessary, to:
  - (a) inspect and carry out investigations of the activities, accounts, records, assets, and liabilities of all persons who have applied to the Commission in accordance with the provisions of this Act, and such of their creditors as shall be necessary for the purposes of this Act;
  - (b) decide who are Nominated Persons and Excluded Persons, and what is legitimate, partly legitimate and illegitimate debt, for the purposes of this Act; and
  - (c) to make orders not inconsistent with the provisions of this Act.

### **The Commissioners**

12. (1) There shall be seven Commissioners who shall be appointed within fourteen days of this Act coming into force. The Premier of each State and the Chief Minister of the Northern Territory, shall each appoint one Commissioner, who, not being an Excluded Person, shall be drawn from the productive sectors subject to this Act. The Commissioners shall be full-time, working members of the Commission, and paid such remuneration and allowances as determined by the Remuneration Tribunal.
  - (2) A Commissioner shall, before entering upon his duties or exercising any power under this Act, make before a Justice of the Peace or a Commissioner for taking Affidavits, an oath of affirmation in accordance with the form in the Regulations.
  - (3) If a Commissioner:

- (a) becomes permanently incapable of performing his duties;
- (b) resigns his office by writing under his hand addressed to the Chairman of the Commissioners;
- (c) is absent from daily duties, except on leave granted by the Commissioners, or is absent from all meetings of the Commission held during two consecutive months, or during any three months in any period of twelve months;
- (d) engages in any paid employment other than that of the Commission, or becomes a member of, or acts in the interests of, or on behalf of, a secret society or a society with secrets, or a foreign power, or interests associated with a foreign power; or
- (e) fails to comply with his obligations under Section 13; then the remaining Commissioners shall request the Federal Minister for Primary Industries to terminate his appointment, and such minister shall have the power to so act. Notice of any such termination, together with the precise reasons for the termination, shall be laid before the Parliament and published in the Gazette.

### **Functions of the Commissioners**

13. It is the duty of the Commissioners, within the limits of their powers, to ensure that the domestic portion of the national debt, as is applicable to Nominated Persons, is adjusted to eliminate “illegitimate debt”. In determining, who are Nominated Persons, and what is illegitimate debt, the Commissioners shall at all times exercise their judgement in the interest of Nominated Persons, and of the nation, and not inconsistently with the provisions of this Act.

### **Management**

14. (1) The business of the Commission shall be managed by the Commissioners in accordance with the provisions of this Act.
- (2) The Commission shall appoint one of their number as Chairman and another as Deputy Chairman, both for the term of twelve calendar months.
- (3) The Chairman shall preside at all meetings of the Commission at which he is present and, in the absence of the Chairman, the Deputy Chairman shall preside.

(4) The exercise of the rights, powers, authorities or functions, or the performance of the duties, or obligations of the Commission, is not affected by reason only of there being a vacancy in the office of a member or, subject to Sub-section (5), any number of members.

(5) Four members form a quorum at a meeting of the Commission.

(6) The Commissioners shall meet at such times as is necessary, but not less frequently than once each week.

(7) Questions arising at a meeting of the Commissioners shall be decided by a majority of the votes of the members present and voting.

(8) The member presiding at a meeting of the Commission, shall have a deliberative vote, and in the event of an equality of votes, shall have a casting vote.

(9) The Commission shall keep full minutes of its proceedings, both audio-tape and written transcript, both of which shall be held as a public record.

### **Chief Executive and Deputy Chief Executive**

15. The Chief Executive and Deputy Chief Executive shall be appointed by the Commissioners for such period, and upon such terms, as the Commissioners determine. The Commission shall delegate to the Chief Executive and the Deputy Chief Executive, such powers as are necessary for the proper and efficient functioning of the Commission, but they shall not delegate the powers which determine who are Nominated Persons, what is illegitimate debt or any other power to make orders under this Act. The Commission may from time to time revoke, withdraw, alter or vary all or any of the powers of the Chief Executive and Deputy Chief Executive.

## **PART III—MORATORIUM**

### **Stay of Proceedings**

16. (1) All actions and proceedings commenced prior to the coming into operation of this Act, against a Nominated Person to recover a debt or to enforce payment of a debt, are hereby stayed and adjourned absolutely until the expiration of the term of this Act.

(2) No action or proceeding shall be commenced against a Nominated Person to recover a debt, or to enforce payment of a debt, during the term of this Act.

(3) There shall be no payment of principal or interest on any debt, legitimate or illegitimate, due by Nominated Persons at the commencement of this Act, during the term of this Act, nor shall there be any accumulation of interest charged to Nominated Persons during such period. Repayment of principal and interest deemed to be legitimate under this Act, shall commence only upon expiration of this Act.

### **Assets Seized**

17. Where, in an effort to recover a debt or enforce payment of a debt owed by a Nominated Person, any person, within a period of twelve calendar months prior to Proclamation of this Act, has seized or taken possession of any asset owned or used by a Nominated Person, such asset shall be returned to the Nominated Person within fourteen days of demand by notice in writing by such Nominated Person for return of the asset.

### **Assets Sold**

18. Where any person has, within a period of twelve months prior to Proclamation of this Act, sold any asset owned or used by a Nominated Person in an effort to recover a debt or enforce payment of a debt owed by a Nominated Person, the gross amount recovered by a creditor of a Nominated Person shall be returned to the Nominated Person within fourteen days of the date of a written request by the Nominated Person. If the proceeds of the sale do not, in the opinion of the Nominated Person, represent fair market value, or in the event the creditor does not refund the gross amount recovered by the sale, the Nominated Person may apply to the Commission for a ruling, and any order made by the Commission shall be final and binding on the parties.

The Commission shall have the power to attach bank accounts or other assets in fulfilment of its orders.

## **PART IV—AMELIORATION AND RESTRUCTURING**

### **Illegitimate Debt**

19. A Nominated Person claiming a debt to be illegitimate, shall serve notice upon his creditor to that effect in writing. Such creditor

shall either admit or deny such claim within fourteen days. If admitted, the creditor shall, from the date of notice aforesaid, reduce the interest rate or the amount of principal or both, as the case may be, to the amount which is legitimate.

In the case of denial, or no response, the Nominated Person may apply to the Commission for a ruling. If the Commission finds that the debt is illegitimate or partially illegitimate, the Commission shall make an award detailing such legitimate terms as it considers should apply and henceforth those terms shall apply, subject to Sub-section (3) of Section 16.

### **New Loans to Nominated Persons**

20. (1) Nominated Persons may apply to the Reserve Bank of Australia or the Commonwealth National Credit Bank, whichever is in existence at the time, for new loans based on the average costs of production of any five years within the last ten, or an average of all years if the productive unit has been in existence less than ten years.

(2) Three years average production cost, as determined in Sub-section (1) of Section 20, or any lesser sum specified by the Nominated Person, shall be granted by the Reserve Bank or the Commonwealth National Credit Bank for a term of ten years, and at an interest rate of two per cent per annum, calculated on the outstanding daily balance.

## **PART V—ELIMINATION OF DEBT**

### **Debt Extinguished**

21. (1) The Commission shall, upon application by any Nominated Person in writing, declare any debt of a Nominated Person to be extinguished, and all covenants, obligations, liens, duties, or responsibilities whatever, to be at an end, if the total payments made by the Nominated Person in respect to such debt, exceed the sum of the original principal; and

- (a) five per cent per annum calculated daily on the unpaid balance, where the debt is mainly secured by land or fixed assets thereon;
- (b) six per cent per annum calculated daily on the unpaid balance, where the debt is mainly secured by plant, machinery, vehicle or other movable asset;

- (c) seven per cent per annum calculated daily on the unpaid balance, where the debt is mainly secured by personal guarantee, inventory items, crop or produce lien, or the like.

### **Agreements Evidencing Debt Rendered Void**

- 22. Any contract or agreement evidencing a debt owed by a Nominated Person to a creditor shall be deemed null and void absolutely if the creditor has not complied with the provisions of this Act, or order of the Commission. Where such non-compliance continues for a period exceeding thirty days from the date of the order of the Commission, the Nominated Person shall have no further obligations under the contract or agreement, and the creditor shall have no rights thereunder, but remains liable for all amounts specified by order of the Commission.

### **Pay-Out Penalties**

- 23. Any condition, term or undertaking contained in any contract or agreement evidencing a debt owed by a Nominated Person, which imposes upon that Nominated person any penalty for early pay-out, shall be deemed null and void.

## **PART VI—MISCELLANEOUS**

### **Agreements Within Same Family Excluded**

- 24. (1) This Act shall not apply to any asset owned or used by, or any contract or agreement or evidence of debt, where the parties owning or using the asset, or named in such contract or agreement or evidence, are:
  - (a) in the same immediate family; or
  - (b) under the same corporate ownership or control.

### **Penalties**

- 25. (1) Any person who violates any of the provisions of this Act is guilty of an offence, and liable upon conviction to a fine of not less than three times the amount specified in any appertaining order of the Commission, and in default of payment, to imprisonment for a term of not less than sixty days and not more than five years.
- (2) Every director, officer or agent of a company which directed, authorised, assented to, acquiesced or participated in the commission of an offence by the company is guilty of an offence and liable

on summary conviction to a fine of not less than \$10,000 and in default of payment, to imprisonment for a term of not less than sixty days, whether or not the company has been prosecuted or convicted.

### **Regulations**

26. Upon Proclamation of this Act, the Commissioners shall, in consultation with the senior legal officer in the Parliament, draw and promulgate regulations not inconsistent with the provisions of this Act, for its fulfilment.