

[Act 1996 No 106]



Farm Debt Mediation Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Farm Debt Mediation Act 1994*:

- (a) to extend the operation of that Act beyond 12 February 1997 by repealing the “sunset” provision (section 31), and
 - (b) to clarify the meanings of *farm mortgage* and other essential terms, and
 - (c) to make further provision with respect to mediation between farmers and their creditors.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the repeal of section 31 of the *Farm Debt Mediation Act 1994* on the date of assent to the proposed Act. The remainder of the Act will commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Farm Debt Mediation Act 1994* set out in Schedule 1.

Schedule 1 Amendments

Definitions

Schedule 1 [1] amends section 3 of the Act to clarify the meanings of three defined terms. At present the definition of *creditor* refers to the provider of financial accommodation to a farmer. The definition is amended to include a reference to the holder of the debt for the time being (for example, the assignee of a mortgage).

The definition of *enforcement action* is amended to include a reference to the giving of a prescribed statutory notice under the *Real Property Act 1900*, the *Conveyancing Act 1919* or other prescribed legislation.

The definition of *farm mortgage* is amended to make it clear that it does not include a reference to stock mortgages, crop and wool liens or other interests in the nature of a chattel mortgage (other than such an interest in farm machinery) and does not include the interest of the lessor of leased farm machinery or the interest of the owner of machinery on hire-purchase. Separate definitions of the expressions *farm property* (that is, the kind of property that can be the subject of a *farm mortgage*) and *statutory enforcement notice* are included, for ease of reading.

Time period for attempted mediation before issue of section 11 certificate

Section 11 of the Act provides for the issue of certificates that the Act does not apply to a particular farm mortgage. The section at present provides for a time period of 3 months after which a creditor who satisfies the Rural Assistance Authority that bona fide but unsuccessful attempts at mediation have been tried within that period is entitled to a certificate under the section.

Schedule 1 [5] amends section 11 by inserting a new subsection (1A) that provides that, where the farmer and creditor have agreed in writing that the finalisation of mediation between them will require a longer period, the period relevant to obtaining the certificate is correspondingly extended.

Good faith of creditor

A creditor wishing to obtain a section 11 certificate must show that efforts at mediation were attempted in good faith. **Schedule 1 [5]** amends section 11 by inserting a new subsection (1B) that provides that a failure on the part of the creditor to agree to reduce or forgive the debt concerned does not, of itself, demonstrate a lack of good faith on the part of the creditor in attempting to mediate.

What counts as “declining to mediate”

Section 11 (2) of the Act creates presumptions as to when a farmer may be said to have declined to engage in mediation under the Act. One of these presumptions depends on a farmer’s failure to respond to an invitation by the creditor to “commence mediation”. **Schedule 1 [6]** re-enacts section 11 (2) (c) to provide that the invitation must be specific as to a particular time and place of meeting proposed for a mediation session, and that the invitation is distinct from a notice given as required by section 8 of the Act, and that it must contain certain statements and indications. If the invitation is properly made out and issued, the farmer is obliged to respond in writing.

Expiry of section 11 certificates

At present a certificate issued under section 11 of this Act is valid for an unlimited time. The certificate is issued following any instance of successful mediation between the parties or of bona fide attempted mediation by the creditor, and effectively excludes the debt concerned from the operation of the Act from that time onward. **Schedule 1 [7]** amends section 11 so that the validity of the certificate is limited to the period of three years after its issue. On the expiry of the three-year period, the protection of the Act is again extended to the farmer, except to the extent that litigation has already commenced before expiry of the certificate. **Schedule 1 [2], [3]** and **[4]** make consequential amendments.

Advice to farmer at mediation sessions

Schedule 1 [9] amends section 17 of the Act to confer on a farmer the right to have an advisor present at mediation sessions. The advisor can be a lawyer or other professional advisor or an unqualified person. **Schedule 1 [8]** makes a consequential amendment.

Relieve of Act from sunset

Schedule 1 [10] repeals section 31 of the Act, which effectively provides for the cessation of the operation of the Act on 12 February 1997. In place of the repealed section, provision is made for savings and transitional provisions consequent on the enactment of the proposed Act.