



New South Wales

# Farm Debt Mediation Amendment Bill 2018

## 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* (*the principal Act*) to make further provision with respect to mediation required in relation to a farm debt before enforcement action may be taken to enforce the mortgage securing the debt.

In particular, the Bill:

- (a) clarifies the object of the principal Act in relation to farm debt matters that are not disputes, and
- (b) clarifies and extends the definitions of *mediation*, *farm machinery* and *farming operation* for the purposes of the principal Act, and
- (c) clarifies the operation of the principal Act with respect to restructured farm mortgages, and
- (d) clarifies that the principal Act does not, without express provision, affect or limit any civil right or remedy available apart from the principal Act, and
- (e) creates new offences relating to unauthorised enforcement action, and
- (f) makes further provision in relation to certificates prohibiting or permitting enforcement action without further mediation, and
- (g) makes further provision in relation to the accreditation of mediators and the conduct of mediation sessions (including costs of mediation), and
- (h) replaces the requirement to enter into Heads of Agreement following a successful mediation with a requirement to enter into a binding mediation agreement, and enables the cooling off period for the agreement to be waived or varied by agreement between the parties, and

- (i) provides for an internal review process for certain decisions of the Rural Assistance Authority (*the Authority*) relating to certificates and accreditations under the principal Act, and
- (j) enhances the powers of the Authority to request information in connection with an application or a mediation under the principal Act, and
- (k) updates provisions relating to the service of documents, including by permitting service by email, and
- (l) clarifies that the requirement to grant an exemption certificate is not affected by a provision of the principal Act that declares a waiver of mediation rights to be void, and
- (m) makes other minor and consequential amendments, and
- (n) enacts consequential savings and transitional provisions.

## 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 proposed Act on a day or days to be appointed by proclamation.

## Schedule 1      **Amendment of Farm Debt Mediation Act 1994** **No 91**

### Preliminary

**Schedule 1 [1]** makes it clear that the object of the principal Act extends to the resolution of any matter involving a farm debt, whether or not the matter is in the nature of a dispute. **Schedule 1 [3]** makes a consequential amendment.

**Schedule 1 [5]** inserts a definition of *mediation* to make it clear that mediation is a structured negotiation process that is facilitated by a neutral and independent mediator. The proposed amendment also extends the definition of *farming operation* to include aquaculture, timber and native vegetation cultivation or harvesting and activities involving primary production carried out in connection with those farming operations. The definition excludes wild harvest fishing and the hunting or trapping of animals, birds and reptiles in the wild.

**Schedule 1 [2]** inserts and substitutes various definitions for the purposes of the principal Act. The definition of *farm machinery* is extended to all vehicles, machines and implements used for the purposes of a farming operation, whether or not they have been acquired for the purposes of a farming operation.

**Schedule 1 [6]** makes it clear that the principal Act does not operate to require mediation in relation to a farm debt for a restructured farm mortgage if the farm debt for the earlier farm mortgage is subject to a mediation agreement and the farmer is in default under the restructured mortgage.

**Schedule 1 [8]** makes it clear that the principal Act does not, without express provision, affect or limit any civil right or remedy available apart from the principal Act.

### Enforcement action

**Schedule 1 [9]** inserts proposed Part 1A into the principal Act, containing provisions relating to the prohibition on enforcement action without mediation, and the process for prohibiting or authorising enforcement action. The Part simplifies and consolidates existing provisions relating to the general prohibition on taking enforcement action, certificates prohibiting a creditor from taking enforcement action (currently defined in the principal Act as *exemption certificates*) and certificates providing that the principal Act does not apply to a farm mortgage (given under existing section 11). **Schedule 1 [4] and [7]** make consequential amendments.

**Division 1** creates an offence prohibiting a creditor from taking enforcement action unless an exemption certificate is in force. The maximum penalty that a court may impose for the offence is 2,500 penalty units for a corporation or 500 penalty units for an individual.

**Division 2** provides for the following changes to existing provisions dealing with exemption certificates:

- (a) Exemption certificates are redefined as *prohibition certificates*.
- (b) An application for a prohibition certificate is to be made in the form approved by the Authority.
- (c) The failure of a creditor to respond to a farmer-initiated request for mediation within the period of 20 business days, or such longer period as the Authority allows, is included as a ground for the grant of a prohibition certificate.
- (d) The Authority may refuse to grant a prohibition certificate where the creditor has failed to respond to a mediation request if the Authority is satisfied that the failure to respond is justified in the circumstances.
- (e) A prohibition certificate remains in force for a period of 6 months.

**Schedule 1 [2]** makes a consequential amendment to insert a definition of *prohibition certificate*.

**Division 3** provides for the following changes to existing provisions dealing with certificates under section 11 of the principal Act:

- (a) Certificates are defined as *exemption certificates*.
- (b) An application for an exemption certificate is to be made in the form approved by the Authority.
- (c) It is not mandatory for the Authority to grant an exemption certificate where mediation has been requested by a farmer who is not in default.
- (d) The conduct of satisfactory mediation, and the conduct of the farmer in declining to mediate, under corresponding laws of other States and Territories are included as grounds for issuing an exemption certificate.
- (e) The Authority may refuse to grant an exemption certificate where the farmer has declined to mediate if satisfied that the farmer was, in the circumstances, justified in doing so, and the farmer intends to mediate within a reasonable period.
- (f) If the farmer fails to respond within the specified period (generally 20 business days) to a notice of invitation to participate in mediation given by the creditor, the exemption certificate expires 3 years after the period for responding to the invitation ends. (The existing provision dealing with expiry provides that, where a farmer has been given a notice by the creditor concerning the availability of mediation under the principal Act, the certificate expires 3 years and 3 months after the date on which the notice was given.)

**Schedule 1 [2]** makes a consequential amendment to insert a definition of *exemption certificate*.

### **Mediation**

**Schedule 1 [10]** inserts Divisions 1–5 into Part 2 of the principal Act, which contain provisions relating to the accreditation of mediators, preliminary steps to mediation, mediation procedure and internal review of decisions made by the Authority. **Schedule 1 [11]–[19], [22], [23], [25] and [28]–[33]** make consequential amendments.

**Division 1** provides for the following changes to existing provisions dealing with accreditation of mediators:

- (a) The Authority is no longer required to consult with representative bodies in the banking and farming industries before instituting arrangements for accreditation.
- (b) Instead, a regulation-making power is included to enable regulations to provide for matters relating to the accreditation of mediators.

**Division 2** provides for the following changes to existing provisions dealing with preliminary steps to mediation:

- (a) A notice given by a creditor concerning the availability of mediation under the principal Act is defined as a ***notice inviting mediation***. The notice is no longer required to inform the farmer of the creditor's intention to take enforcement action.
- (b) A farmer's response to a notice inviting mediation must be given to the creditor within 20 business days (instead of 21 ordinary days) after receiving the notice.
- (c) A farmer may initiate a request for mediation (whether or not in default) by giving the creditor a ***mediation request***. A creditor must respond to a mediation request within 20 business days after receiving the request.

**Division 3** provides for the following changes to existing provisions dealing with mediation procedure:

- (a) The proposed Division makes it clear that a mediator may facilitate the exchange of information for the purposes of the mediation.
- (b) **Schedule 1 [20] and [21]** amend existing section 14, which is transferred to Division 3 and renumbered as section 18E by **Schedule 1 [30]**. The proposed amendments enable a mediator to adjourn or terminate a mediation session if it would be inappropriate to continue the session, having regard to such matters as the duration of the session, the willingness of the parties to participate, whether the parties are engaging in the mediation in good faith and any risk to the health or safety of the parties. **Schedule 1 [21]** also provides that mediation sessions are to be held at a place and time that is reasonably convenient for the parties.
- (c) **Schedule 1 [23]–[25]** amend existing section 15, which is transferred to Division 3 and renumbered as section 18F by **Schedule 1 [30]**. **Schedule 1 [24]** provides for an exception to the general rule against admissibility in court proceedings of information obtained from a mediation session so that the information may be admitted in proceedings in connection with which the information is disclosed to prevent danger of personal injury or property damage.
- (d) **Schedule 1 [26]** amends existing section 16, which is transferred to Division 3 and renumbered as section 18G by **Schedule 1 [30]**. The proposed amendment creates an exception to an offence relating to unauthorised disclosure of information to allow information to be disclosed for the purpose of preventing personal injury or property damage.
- (e) **Schedule 1 [27]** also amends existing section 16 by removing the penalty of imprisonment from that offence so that the maximum penalty a court may impose for the offence is 100 penalty units.
- (f) Proposed **section 18I** makes further provision for the costs of mediation. The parties to a mediation are to pay their own costs of attendance at a mediation and are generally to pay equal shares of the mediator's fees.

**Division 4** provides for the following changes to existing provisions dealing with Heads of Agreement.

- (a) ***Heads of Agreement*** are redefined as ***mediation agreements***.
- (b) A mediation agreement is binding on the parties, and may be varied or replaced by a further written agreement.
- (c) The cooling off period for a mediation agreement may be waived or varied by agreement in writing between the parties. The existing provision for cooling off periods limits variations to an extension (rather than a reduction) of the duration of the period.

**Division 5** provides for an internal review process for decisions of the Authority relating to the grant or refusal of prohibition certificates and exemption certificates and the accreditation or reaccreditation of mediators. The Division contains the following provisions:

- (a) **Section 18P** establishes a right of review for farmers, creditors and guarantors (for decisions about prohibition certificates and exemption certificates) and mediators (for decisions about accreditation and reaccreditation). The proposed section also deals with the process of review and provides that the review must be determined within 30 business days after the application for review is made.
- (b) **Section 18Q** provides that an application for internal review of a decision to grant an exemption certificate operates to stay the decision being reviewed until the applicant is notified of the decision on the review. The creditor must not take enforcement action while an application for review of a decision to refuse a prohibition certificate is pending. An application for the review of any other decision does not operate to stay the decision.

#### **Miscellaneous**

**Schedule 1 [34]** inserts **section 19A** into Part 4 of the principal Act, to enable the Authority to require a farmer or a creditor to provide information that is relevant to an application under the principal Act or the rights or obligations of a party to a mediation. The Authority may refuse to consider an application made by a farmer or creditor if that party fails to comply with the requirement.

**Schedule 1 [35]** makes it clear that an existing provision declaring a waiver of mediation rights under the principal Act to be void does not affect the requirement for the Authority to grant an exemption certificate where the farmer indicates an unwillingness to enter into or proceed with mediation.

**Schedule 1 [36]** repeals a provision specifying when a document is taken to be given to a person for the purposes of the principal Act. The proposed amendment also extends a provision specifying the optional methods for service of documents to include service by email and to enable the recipient to specify an address for the service of all documents of a particular kind. The extended provision enables regulations under the principal Act to prescribe alternative or additional methods of service.

**Schedule 1 [37]** repeals an obsolete provision.

**Schedule 1 [40] and [46]** insert provisions dealing with savings and transitional matters consequent on the proposed Act. **Schedule 1 [38], [39] and [41]–[45]** make consequential amendments.



New South Wales

# Farm Debt Mediation Amendment Bill 2018

## Contents

---

|                   |  | Page     |
|-------------------|--|----------|
|                   | 1 Name of Act  | 2        |
|                   | 2 Commencement   | 2        |
| <b>Schedule 1</b> | <b>Amendment of Farm Debt Mediation Act 1994 No 91</b> | <b>3</b> |



New South Wales

# Farm Debt Mediation Amendment Bill 2018

No. , 2018

---

## **A Bill for**

An Act to amend the *Farm Debt Mediation Act 1994* to make further provision with respect to mediation concerning farm debts; and for other purposes.

---

**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

2

This Act is the *Farm Debt Mediation Amendment Act 2018*.

3

**2 Commencement**

4

This Act commences on a day or days to be appointed by proclamation.

5



|                                       |  |    |
|---------------------------------------|--|----|
| <b>Schedule 1</b>                     | <b>Amendment of Farm Debt Mediation Act 1994</b>   | 1  |
|                                       | <b>No 91</b>   | 2  |
| <b>[1] Section 3 Object</b>           |  | 3  |
|                                       | Omit “farm debt disputes”. Insert instead “matters involving farm debts”.  | 4  |
| <b>[2] Section 4 Definitions</b>      |  | 5  |
|                                       | Omit the definitions of <i>exemption certificate</i> , <i>farm machinery</i> , <i>farming operation</i> , <i>Heads of Agreement</i> , <i>mediation</i> and <i>mediator</i> from section 4 (1). | 6  |
|                                       | Insert in alphabetical order:  | 7  |
|                                       | <i>approved form</i> means the form approved by the Authority.   | 8  |
|                                       | <i>business day</i> means a day that is not a Saturday, a Sunday or a public holiday throughout New South Wales.   | 9  |
|                                       | <i>draft mediation agreement</i> means a draft agreement prepared under section 18J.   | 10 |
|                                       | <i>exemption certificate</i> —see section 13.  | 11 |
|                                       | <i>farm machinery</i> means any of the following things that are commonly used for the purposes of a farming operation:  | 12 |
|                                       | (a) a vehicle, machine or other implement,   | 13 |
|                                       | (b) any other thing of a class prescribed by the regulations.  | 14 |
|                                       | <i>farming operation</i> —see section 4AB.   | 15 |
|                                       | <i>mediation</i> —see section 4AA.   | 16 |
|                                       | <i>mediation agreement</i> means an agreement entered into under section 18K.  | 17 |
|                                       | <i>mediation request</i> —see section 18B.   | 18 |
|                                       | <i>mediator</i> means a person accredited as a mediator under section 16.  | 19 |
|                                       | <i>notice inviting mediation</i> —see section 18A.   | 20 |
|                                       | <i>prohibition certificate</i> —see section 9.   | 21 |
| <b>[3] Section 4 (1A) (a) and (b)</b> |  | 22 |
|                                       | Omit “farm debt dispute” and “the dispute” wherever occurring.   | 23 |
|                                       | Insert instead “matter involving a farm debt” and “the matter”, respectively.  | 24 |
| <b>[4] Section 4 (2)</b>              |  | 25 |
|                                       | Omit the subsection.   | 26 |
| <b>[5] Sections 4AA and 4AB</b>       |  | 27 |
|                                       | Insert after section 4:  | 28 |
| <b>4AA Mediation</b>                  |  | 29 |
| (1)                                   | <i>Mediation</i> is a structured negotiation process in which a mediator, as a neutral and independent party, assists the participants in the process:   | 30 |
| (a)                                   | to communicate effectively with each other, and  | 31 |
| (b)                                   | to reach agreement on the issues in dispute, and   | 32 |
| (c)                                   | to achieve their own resolution of the dispute.  | 33 |
| (2)                                   | The regulations may declare that any process of a specified kind is, or is not, mediation for the purposes of this Act.  | 34 |

|   |    |
|---|----|
| <b>4AB Farming operation</b>  | 1  |
| (1) A <i>farming operation</i> is a business undertaking that primarily involves one or more of the following activities:   | 2  |
| (a) agriculture (for example, crop growing and livestock or grain farming),   | 3  |
| (b) aquaculture,  | 4  |
| (c) the cultivation or harvesting of timber or native vegetation,   | 5  |
| (d) any activity involving primary production carried out in connection with an activity referred to in paragraphs (a)–(c).   | 6  |
| (2) A <i>farming operation</i> does not include a business undertaking that primarily involves wild harvest fishing or the hunting or trapping of animals, birds or reptiles in the wild. | 7  |
| (3) The regulations may declare that any business undertaking of a specified kind is, or is not, a farming operation for the purposes of this Act.  | 8  |
| <b>[6] Section 5 Application of Act</b>   | 9  |
| Insert after section 5 (2):   | 10 |
| (3) This Act does not apply in respect of a farm debt secured by a farm mortgage if:  | 11 |
| (a) the farmer is in default under the farm mortgage, and   | 12 |
| (b) the farm mortgage secures all or part of the balance outstanding under an earlier farm mortgage, and  | 13 |
| (c) the farmer and the creditor have previously entered into a mediation agreement under this Act in relation to the farm debt.   | 14 |
| <b>[7] Section 6 Enforcement action in contravention of Act void</b>  | 15 |
| Omit the section.   | 16 |
| <b>[8] Section 7 Relationship of Act with other laws</b>  | 17 |
| Insert after section 7 (2):   | 18 |
| (3) Except as otherwise expressly provided by this Act, this Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.    | 19 |
| <b>[9] Part 1A</b>  | 20 |
| Insert after section 7:   | 21 |
| <b>Part 1A Enforcement action</b>   | 22 |
| <b>Division 1 Prohibition on enforcement action</b>   | 23 |
| <b>8 Exemption certificate required for enforcement action</b>  | 24 |
| (1) A creditor must not take enforcement action in respect of a farm mortgage unless an exemption certificate granted to the creditor is in force in respect of the farm debt concerned.  | 25 |
| Maximum penalty:  | 26 |
| (a) for a corporation—2,500 penalty units, or   | 27 |
| (b) for an individual—500 penalty units.  | 28 |

- (2) Enforcement action taken by a creditor in respect of a farm debt in contravention of this Act is void. 1  
2
- (3) This section does not invalidate any statutory enforcement notice or other process given, served or executed in order to fulfil a condition precedent to the taking of any enforcement action, but operates to prohibit the taking of the action concerned and the enforcement by a court or tribunal of any such notice or process. 3  
4  
5  
6  
7
- (4) Subsection (3) does not affect any proceedings authorised under section 15 (5) to be continued or concluded after the expiry of an exemption certificate. 8  
9

## **Division 2 Prohibition certificates** 10

### **9 Application for prohibition certificate** 11

- (1) A farmer who is in default and who has requested a creditor to mediate in respect of the farm debt concerned may apply to the Authority for a certificate prohibiting the creditor from taking enforcement action (a *prohibition certificate*). 12  
13  
14  
15
- (2) An application for a prohibition certificate may be made whether or not the farmer has been given a notice inviting mediation in respect of the farm debt. 16  
17
- (3) An application is to be in the approved form. 18

### **10 Grant or refusal of prohibition certificate** 19

- (1) The Authority may, on application, grant or refuse a prohibition certificate. 20
- (2) The Authority must grant a prohibition certificate if: 21
  - (a) the farmer is in default under the farm mortgage, and 22
  - (b) the farmer has given the creditor a mediation request in respect of the farm debt concerned, and 23  
24
  - (c) no exemption certificate is in force in relation to the farm mortgage, and 25
  - (d) the Authority is satisfied that there is at least one additional ground for granting the prohibition certificate. 26  
27
- (3) Each of the following is an *additional ground* for granting a prohibition certificate: 28  
29
  - (a) the farmer has attempted to mediate in good faith throughout the period of 3 months commencing on the day on which the mediation request was given, but no satisfactory mediation has taken place, 30  
31  
32
  - (b) the creditor has failed to respond to a mediation request in respect of the farm debt within the period required by Part 2 (or within such longer period as the Authority considers is reasonable in the circumstances), 33  
34  
35
  - (c) the creditor has indicated in writing to the Authority or the farmer that the creditor does not wish to enter into or proceed with mediation, 36  
37
  - (d) the creditor has, in any other manner, declined to mediate (whether under this Act or under a corresponding law of another State or Territory). 38  
39  
40
- (4) However, the Authority may refuse to grant a prohibition certificate where the creditor has failed to respond to a mediation request if the Authority is satisfied that: 41  
42  
43
  - (a) the creditor's failure to respond is justified in the circumstances, and 44

|                   |  |                                  |
|-------------------|--|----------------------------------|
| (b)               | the creditor intends to mediate within a period that is reasonable in the circumstances.   | 1<br>2                           |
| <b>11</b>         | <b>Prohibition certificate not to be issued while exemption certificate in force</b>   | 3                                |
|                   | No prohibition certificate can be issued by the Authority in relation to a farm mortgage while an exemption certificate is in force in relation to the farm mortgage.  | 4<br>5<br>6                      |
| <b>12</b>         | <b>Duration of prohibition certificate</b>   | 7                                |
|                   | A prohibition certificate takes effect when it is issued and remains in force for a period of 6 months.  | 8<br>9                           |
| <b>Division 3</b> | <b>Exemption certificates</b>  | 10                               |
| <b>13</b>         | <b>Application for exemption certificate</b>   | 11                               |
| (1)               | A creditor under a farm mortgage may apply to the Authority for a certificate that this Act does not apply to the farm mortgage (an <i>exemption certificate</i> ).  | 12<br>13                         |
| (2)               | An application is to be in the approved form.  | 14                               |
| <b>14</b>         | <b>Grant or refusal of exemption certificate</b>   | 15                               |
| (1)               | The Authority may, on application, grant or refuse an exemption certificate.   | 16                               |
| (2)               | The Authority must grant an exemption certificate if:  | 17                               |
| (a)               | the farmer is in default under the farm mortgage, and  | 18                               |
| (b)               | no prohibition certificate is in force in relation to the farm mortgage, and   | 19<br>20                         |
| (c)               | the Authority is satisfied that there is at least one additional ground for granting the exemption certificate.  | 21<br>22                         |
| (3)               | Each of the following is an <i>additional ground</i> for granting an exemption certificate:  | 23<br>24                         |
| (a)               | the farmer has, when in default, given a mediation request to the creditor and satisfactory mediation has taken place following the request,   | 25<br>26                         |
| (b)               | the farm debt is secured by a farm mortgage over farm property in another State or Territory and in New South Wales and mediation (equivalent to satisfactory mediation) has taken place under a corresponding law of that State or Territory in respect of that part of the farm debt that is secured by a farm mortgage over farm property in New South Wales, | 27<br>28<br>29<br>30<br>31<br>32 |
| (c)               | the creditor has given the farmer a notice inviting mediation and has attempted to mediate in good faith throughout the period of 3 months (or such longer period as has been agreed by the creditor for the purposes of this section by notice in writing given to the farmer) commencing on the day on which the notice was given,                             | 33<br>34<br>35<br>36<br>37       |
| (d)               | the farmer has failed to respond to a notice inviting mediation within the period required by Part 2 (or within such longer period as the Authority considers is reasonable in the circumstances),   | 38<br>39<br>40                   |
| (e)               | the farmer has failed to take part in mediation in good faith or has unreasonably delayed entering into or proceeding with mediation in respect of the farm debt,  | 41<br>42<br>43                   |

- (f) the farmer has indicated in writing to the Authority or to the creditor that the farmer does not wish to enter into or proceed with mediation in respect of the farm debt, 1  
2  
3
    - (g) the farmer has, in any other manner, declined to mediate (whether under this Act or under a corresponding law of another State or Territory). 4  
5
  - (4) However, the Authority may refuse to grant an exemption certificate if satisfied that: 6  
7
    - (a) in the circumstances, the farmer is justified in declining to mediate, and 8
    - (b) the farmer intends to mediate within a period that is reasonable in the circumstances. 9  
10
  - (5) A failure by a creditor to agree to reduce or forgive any debt does not, of itself, demonstrate a lack of good faith on the part of a creditor in attempting to mediate. 11  
12  
13
- 15 Duration of exemption certificate** 14
- (1) An exemption certificate takes effect when it is issued and remains in force until the date on which the effective period ends. 15  
16
- (2) The *effective period* for an exemption certificate is: 17
  - (a) if satisfactory mediation in respect of the farm debt concerned has taken place, or the farmer has failed to take part in mediation in good faith—the period of 3 years commencing on the last date of the mediation, or 18  
19  
20
  - (b) if the farmer has indicated in writing that the farmer does not wish to enter into or proceed with mediation—the period of 3 years commencing on the date the indication was given to the Authority or creditor, or 21  
22  
23  
24
  - (c) if the farmer has failed to respond to a notice inviting mediation within the period of 20 business days (or any longer period allowed by the Authority for the purposes of determining the application for the exemption certificate)—the period of 3 years commencing immediately after the end of the period required or allowed for the response, or 25  
26  
27  
28  
29
  - (d) in any other case—the period of 3 years commencing on the date the certificate was issued. 30  
31
- (3) An exemption certificate may not be issued after the date on which it would, if issued, expire under subsection (2). 32  
33
- (4) An exemption certificate is to specify the date on which it expires. 34
- (5) The expiry of an exemption certificate does not affect any proceedings for recovery of a farm debt, or for the exercise or enforcement of any right of the creditor, already taken or commenced by a creditor while the certificate was in force, and any such proceedings may be continued and concluded as if the certificate were still in force. 35  
36  
37  
38  
39
- (6) The reference in subsection (5) to the commencement of proceedings does not include a reference to the giving of any statutory enforcement notice or other action taken in order to fulfil a condition precedent to the enforcement of a right otherwise than through proceedings in a court or tribunal. 40  
41  
42  
43

|   |                   |
|---|-------------------|
| <b>[10] Part 2, sections 8–11A</b>  | 1                 |
| Omit the sections. Insert instead:  | 2                 |
| <b>Division 1 Mediators</b>   | 3                 |
| <b>16 Accreditation of mediators</b>  | 4                 |
| (1) The Authority may accredit or reaccredit persons as mediators for the purposes of this Act.   | 5<br>6            |
| (2) The regulations may make provision for or with respect to the accreditation of mediators (including, without limitation, for or with respect to applications for, and conditions of, accreditation and the suspension and cancellation of accreditation). | 7<br>8<br>9<br>10 |
| <b>17 Functions of mediators</b>  | 11                |
| (1) A mediator has the following functions:   | 12                |
| (a) to mediate, or attempt to mediate, between the participants in the mediation for the purpose of arriving at an agreement for the present arrangements and future conduct of financial relations among them,   | 13<br>14<br>15    |
| (b) such other functions as are conferred or imposed on the mediator by or under this or any other Act.   | 16<br>17          |
| (2) It is not a function of a mediator:   | 18                |
| (a) to advise a farmer or creditor about the law, or  | 19                |
| (b) to encourage or assist a farmer or creditor in reserving or establishing legal rights, or   | 20<br>21          |
| (c) to act as an adjudicator or arbitrator.   | 22                |
| <b>Division 2 Preliminary procedure</b>   | 23                |
| <b>18A Creditor-initiated mediation</b>   | 24                |
| (1) A creditor under a farm mortgage may give a farmer who is in default under the mortgage a notice of invitation to participate in mediation (a <i>notice inviting mediation</i> ) in respect of the farm debt concerned.                                   | 25<br>26<br>27    |
| (2) The notice must specify that a failure of the farmer to respond to the notice within the period required by this section may constitute a ground for the grant of an exemption certificate.   | 28<br>29<br>30    |
| (3) The farmer must respond to the notice within 20 business days after receiving the notice.   | 31<br>32          |
| (4) A notice inviting mediation, or a farmer’s response, is to be in writing in the approved form.  | 33<br>34          |
| <b>18B Farmer-initiated mediation</b>   | 35                |
| (1) A farmer who owes money to a creditor under a farm mortgage may, by notice given to the creditor, request mediation in relation to the farm debt concerned (a <i>mediation request</i> ).   | 36<br>37<br>38    |
| (2) The mediation request must specify that a failure of the creditor to respond to the request within the period required by this section may constitute a ground for the grant of a prohibition certificate.  | 39<br>40<br>41    |

|  |   |                            |
|--|---|----------------------------|
| (3)                                    | A mediation request may be made whether or not the farmer is in default. However, a mediation request may not be made if the creditor has given the farmer a notice inviting mediation in respect of the farm debt.   | 1<br>2<br>3                |
| (4)                                    | The creditor must respond to the mediation request within 20 business days after receiving the request.<br><b>Note.</b> See section 10 for provisions relating to the grant of a prohibition certificate where a creditor declines to mediate with a farmer who is in default.  | 4<br>5<br>6<br>7           |
| (5)                                    | A mediation request, and a creditor's response, is to be in writing in the approved form.   | 8<br>9                     |
| <b>Division 3 Mediation procedure</b>  |   | 10                         |
| <b>18D</b>                             | <b>Requests for information</b>   | 11                         |
| (1)                                    | A mediator may facilitate the exchange of information between the parties to the mediation for the purpose of assisting the parties to resolve the issues between them.   | 12<br>13<br>14             |
| (2)                                    | For that purpose, a party to a mediation must give the mediator a copy of any request for information before giving the request to the other party.   | 15<br>16                   |
| (3)                                    | In preparing a summary of the mediation under this Part, the mediator is to have regard to whether any request for information made by a party was reasonable, and whether information was provided in response to a request within a reasonable period.  | 17<br>18<br>19<br>20       |
| (4)                                    | Subsection (3) does not limit the matters to which the mediator is to have regard in preparing a summary of the mediation.  | 21<br>22                   |
| <b>18I</b>                             | <b>Costs of mediation</b>   | 23                         |
| (1)                                    | The parties to a mediation are to pay:<br>(a) an equal share of any fee charged by the mediator for the mediation, and<br>(b) their own costs associated with attendance at the mediation.  | 24<br>25<br>26             |
| (2)                                    | If more than one mediation session is required as a result of a party's failure to give a person representing the party authority to enter into a mediation agreement, the party is to pay the whole of the mediator's fee for the session and all costs associated with the attendance by the other party at the additional session.               | 27<br>28<br>29<br>30<br>31 |
| (3)                                    | The parties may agree to apportion costs otherwise than as provided by this section.  | 32<br>33                   |
| (4)                                    | The Authority is not liable for any of the costs of or associated with mediation for the purposes of this Act, except in its capacity as a creditor.  | 34<br>35                   |
| <b>Division 4 Mediation agreements</b> |   | 36                         |
| <b>18J</b>                             | <b>Draft mediation agreements</b>   | 37                         |
| (1)                                    | If a mediator is satisfied that a farmer and a creditor who are parties to a mediation have agreed, or are about to agree, on an issue between them, the mediator must personally prepare for the consideration of the parties a draft agreement setting out the main points of agreement on the issue ( <b><i>draft mediation agreement</i></b> ). | 38<br>39<br>40<br>41<br>42 |
| (2)                                    | The draft mediation agreement must include a statement, in the approved form, relating to the cooling off period for the proposed mediation agreement.  | 43<br>44                   |

|                   |   |                      |
|-------------------|---|----------------------|
| <b>18K</b>        | <b>Mediation agreements</b>   | 1                    |
| (1)               | If the parties are satisfied that a draft mediation agreement sets out the main points agreed on by them during, or within 24 hours after the end of, the mediation, the parties may enter into a mediation agreement by signing the draft agreement.                       | 2<br>3<br>4<br>5     |
| (2)               | A mediation agreement is binding on the parties to the agreement.   | 6                    |
| (3)               | A mediation agreement may be varied or replaced by a further agreement in writing between the parties.  | 7<br>8               |
| (4)               | If the mediation agreement does not include the statement relating to the cooling off period for the agreement as required by this Part, the creditor who is a party to the agreement is to give to the farmer a statement relating to the cooling off period.              | 9<br>10<br>11<br>12  |
| (5)               | The statement given by the creditor is to be in the approved form.  | 13                   |
| <b>18L</b>        | <b>Cooling off period for mediation agreement</b>   | 14                   |
| (1)               | There is to be a cooling off period for each mediation agreement between a farmer and a creditor.   | 15<br>16             |
| (2)               | The cooling off period expires:   | 17                   |
| (a)               | at 5 pm on the 10th business day after the day on which the mediation agreement is entered into, or   | 18<br>19             |
| (b)               | if a statement relating to the cooling off period was not included in the draft mediation agreement—at 5 pm on the 10th business day after the day on which a statement relating to the cooling off period is given to the farmer by the creditor as required by this Part. | 20<br>21<br>22<br>23 |
| (3)               | The cooling off period may be waived or varied by agreement in writing between the farmer and the creditor.   | 24<br>25             |
| (4)               | The Authority may not issue an exemption certificate to a creditor on the ground that satisfactory mediation in respect of a farm debt has taken place if:  | 26<br>27             |
| (a)               | a mediation agreement is in force in relation to the farm debt, and   | 28                   |
| (b)               | the cooling off period has not expired.   | 29                   |
| <b>Division 5</b> | <b>Internal review</b>  | 30                   |
| <b>18P</b>        | <b>Internal review of decisions of Authority</b>  | 31                   |
| (1)               | An aggrieved person may apply to the Authority for a review ( <i>internal review</i> ) of any of the following decisions:   | 32<br>33             |
| (a)               | a decision to grant, or to refuse, a prohibition certificate,   | 34                   |
| (b)               | a decision to grant, or to refuse, an exemption certificate,  | 35                   |
| (c)               | a decision to accredit or reaccredit, or to refuse to accredit or reaccredit, a person as a mediator,   | 36<br>37             |
| (d)               | a decision to suspend or cancel the accreditation of a mediator.  | 38                   |



- (2) An *aggrieved person* is: 1
- (a) in relation to a decision about the grant or refusal of a prohibition certificate or an exemption certificate—the farmer or guarantor whose obligations are secured by the farm mortgage concerned, or the creditor, or 2  
3  
4  
5
  - (b) in relation to a decision about accreditation or reaccreditation of a mediator—the mediator. 6  
7
- (3) An application for internal review must: 8
- (a) be in the approved form, and 9
  - (b) be lodged with the Authority within 20 business days (or such longer period as the Authority may allow) after the person was notified of the making of the decision concerned, and 10  
11  
12
  - (c) comply with such other requirements as may be prescribed by the regulations. 13  
14
- (4) The application is to be dealt with by the Chief Executive of the Authority or an employee of the Authority who is directed by the Chief Executive to deal with the application. The reviewer must be a person who was not substantially involved in making the decision the subject of the application. 15  
16  
17  
18
- (5) The reviewer may invite any person who, in the opinion of the reviewer, may be affected by the outcome of the review to submit material for consideration on the review. 19  
20  
21
- (6) The reviewer is to consider any relevant material submitted by the applicant or any person invited under this section to submit material. 22  
23
- (7) In determining an application for internal review, the reviewer may: 24
- (a) affirm the decision, or 25
  - (b) vary the decision, or 26
  - (c) set aside the decision and make a decision in substitution for the decision that is set aside. 27  
28
- (8) In determining an application for internal review, the reviewer may exercise the same functions under this Act or any other law that the Authority had in making the decision subject to review. 29  
30  
31
- (9) The reviewer is to give notification of the reviewer’s decision to: 32
- (a) the applicant, and 33
  - (b) if the review relates to a decision about the grant or refusal of a prohibition certificate or an exemption certificate—the farmer or creditor, or any guarantor, under the farm mortgage concerned who is not the applicant for the review, and 34  
35  
36  
37
  - (c) the Authority. 38
- (10) The notification is to include a statement of reasons for the decision. 39
- (11) An application for internal review is to be determined within 30 business days after it is made. However, a determination is not invalid because it is made after the expiration of that period. 40  
41  
42
- (12) The regulations may make provision for or with respect to the conduct of internal reviews. 43  
44

|   |                  |
|---|------------------|
| <b>18Q Stay of reviewable decisions</b>   | 1                |
| (1) An application under this Division for internal review of a decision to grant an exemption certificate operates to stay the decision until the applicant is notified of the reviewer's decision.  | 2<br>3<br>4      |
| (2) If an application is made for internal review of a decision to refuse a prohibition certificate, the creditor must not take enforcement action in respect of the farm mortgage concerned until the creditor is notified of the reviewer's decision. | 5<br>6<br>7<br>8 |
| (3) An application under this Part for internal review of any of the following decisions does not operate to stay the decision:   | 9<br>10          |
| (a) a decision to grant a prohibition certificate,  | 11               |
| (b) a decision to refuse an exemption certificate,  | 12               |
| (c) a decision to accredit or reaccredit, or to refuse to accredit or reaccredit, a person as a mediator,   | 13<br>14         |
| (d) a decision to suspend or cancel the accreditation of a mediator.  | 15               |
| <b>[11] Section 11B Rights during cooling off period</b>  | 16               |
| Omit "Heads of Agreement" wherever occurring in section 11B (1), (4) and (6).   | 17               |
| Insert instead "mediation agreement".   | 18               |
| <b>[12] Section 11B (3)</b>   | 19               |
| Omit "Heads of Agreement are". Insert instead "mediation agreement is".   | 20               |
| <b>[13] Section 11B</b>   | 21               |
| Omit "section 11A" wherever occurring. Insert instead "section 18L".  | 22               |
| <b>[14] Section 11C Implementing mediation agreement</b>  | 23               |
| Omit section 11C (1).   | 24               |
| <b>[15] Section 11C (2)</b>   | 25               |
| Omit "pursuant to, Heads of Agreement" and "relevant Heads of Agreement".   | 26               |
| Insert instead "pursuant to, a mediation agreement" and "relevant mediation agreement", respectively.   | 27<br>28         |
| <b>[16] Sections 11B and 11C</b>  | 29               |
| Transfer sections 11B and 11C to Division 4 of Part 2 (as inserted by item [10]) and renumber as sections 18M and 18N.  | 30<br>31         |
| <b>[17] Section 12 Role of Authority</b>  | 32               |
| Omit the section.   | 33               |
| <b>[18] Section 12A Farmer to nominate mediator</b>   | 34               |
| Transfer the section to Division 3 of Part 2 (as inserted by item [10]) and renumber as section 18C.  | 35<br>36         |
| <b>[19] Section 13 Functions of mediators</b>   | 37               |
| Omit the section.   | 38               |

|   |                      |
|---|----------------------|
| <b>[20] Section 14 Conduct of mediation sessions</b>  | 1                    |
| Insert at the end of section 14 (1A) (b):   | 2                    |
| , and   | 3                    |
| (c) adjourn or terminate a mediation session if it appears that continuing the session would not be appropriate.  | 4<br>5               |
| <b>[21] Section 14 (1B) and (1C)</b>  | 6                    |
| Insert after section 14 (1A):   | 7                    |
| (1B) In determining whether it would be appropriate to continue a mediation session, the mediator is to consider the following matters:   | 8<br>9               |
| (a) the duration of the mediation session,  | 10                   |
| (b) whether the parties are able and willing to participate in the mediation session,   | 11<br>12             |
| (c) whether the parties are engaging in the mediation in good faith,  | 13                   |
| (d) any risk to the health or safety of the parties resulting from the conduct of the mediation session,  | 14<br>15             |
| (e) any other matters that, in the opinion of the mediator, are relevant in the circumstances.  | 16<br>17             |
| (1C) Mediation sessions are to be held at a place and time, and in a manner, that is reasonably convenient for the parties.   | 18<br>19             |
| <b>[22] Section 14 (5) (a)</b>  | 20                   |
| Omit “section 17”. Insert instead “section 18H”.  | 21                   |
| <b>[23] Sections 15 (3) (a) and (b) and 17 (3A)</b>   | 22                   |
| Omit “Heads of Agreement” wherever occurring. Insert instead “a mediation agreement”.   | 23                   |
| <b>[24] Section 15 Confidentiality of mediation sessions</b>  | 24                   |
| Insert after section 15 (3):  | 25                   |
| (4) This section does not apply to proceedings commenced with respect to any act or omission in connection with which the information has been disclosed on the basis of preventing or minimising the danger of injury to any person or damage to any property. | 26<br>27<br>28<br>29 |
| <b>[25] Section 15 (3) (c)</b>  | 30                   |
| Omit “section 18A”. Insert instead “section 18O”.   | 31                   |
| <b>[26] Section 16 Disclosure of information</b>  | 32                   |
| Insert after section 16 (c):  | 33                   |
| (c1) to prevent or minimise the danger of injury to any person or damage to any property, or  | 34<br>35             |
| <b>[27] Section 16, penalty</b>   | 36                   |
| Omit the penalty. Insert instead:   | 37                   |
| Maximum penalty: 100 penalty units.   | 38                   |
| <b>[28] Section 17 Representation and assistance during mediation</b>   | 39                   |
| Omit section 17 (3B).   | 40                   |

|  |                      |
|--|----------------------|
| <b>[29] Section 17 (5)</b>   | 1                    |
| Omit “section 14”. Insert instead “section 18E”.   | 2                    |
| <b>[30] Sections 14–17</b>   | 3                    |
| Transfer sections 14–17 (as amended by this Schedule) to Division 3 of Part 2 (as inserted by item [10]) and renumber as sections 18E–18H.   | 4<br>5               |
| <b>[31] Section 18A Summary of mediation</b>   | 6                    |
| Omit “Heads of Agreement”. Insert instead “mediation agreement”.   | 7                    |
| <b>[32] Section 18A, note</b>  | 8                    |
| Omit the note.   | 9                    |
| <b>[33] Section 18A</b>  | 10                   |
| Transfer section 18A (as amended by this Schedule) to Division 4 of Part 2 (as inserted by item [10]) and renumber as section 18O.   | 11<br>12             |
| <b>[34] Section 19A</b>  | 13                   |
| Insert after section 19:   | 14                   |
| <b>19A Authority may require information</b>   | 15                   |
| (1) The Authority may, by notice given to a farmer or a creditor, require the farmer or creditor to provide to the Authority such information as the Authority considers to be relevant to:  | 16<br>17<br>18       |
| (a) an application under this Act made by the farmer or creditor, or   | 19                   |
| (b) the rights or obligations of the farmer or creditor in relation to a mediation under this Act (including any mediation that has not yet taken place).  | 20<br>21<br>22       |
| (2) The Authority may refuse to consider an application made by the farmer or the creditor under Part 1A if the farmer or the creditor fails to comply with a requirement made under this section.   | 23<br>24<br>25       |
| <b>[35] Section 21 Waiver of rights void</b>   | 26                   |
| Insert at the end of the section:  | 27                   |
| (2) This section does not affect the requirement for the Authority to grant an exemption certificate in respect of a farm mortgage in circumstances where the farmer has indicated that the farmer does not wish to enter into or proceed with mediation in respect of the debt concerned. | 28<br>29<br>30<br>31 |
| <b>[36] Sections 23 and 24</b>   | 32                   |
| Omit the sections. Insert instead:   | 33                   |
| <b>23 Service of documents</b>   | 34                   |
| (1) A document that is authorised or required by this Act or the regulations to be served on any person (other than a mediator) may be served by any of the following methods:   | 35<br>36<br>37       |
| (a) in the case of an individual—by personal delivery to the person,   | 38                   |
| (b) by post to the address specified by the person for the service of documents of that kind,  | 39<br>40             |

|             |  |                      |
|-------------|--|----------------------|
|             | (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,   | 1<br>2<br>3          |
|             | (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,  | 4<br>5<br>6          |
|             | (e) by email to an email address specified by the person for the service of documents of that kind,  | 7<br>8               |
|             | (f) by any other method authorised by the regulations for the service of documents of that kind.   | 9<br>10              |
|             | (2) A document that is authorised or required by this Act or the regulations to be served on a mediator may be served by post to any office of the Authority.  | 11<br>12             |
|             | (3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.  | 13<br>14<br>15       |
|             | (4) In this section, <i>serve</i> includes give or send.   | 16                   |
| <b>[37]</b> | <b>Section 31</b>  | 17                   |
|             | Omit the section.  | 18                   |
| <b>[38]</b> | <b>Schedule 1 Savings and transitional provisions</b>  | 19                   |
|             | Omit “(Section 31)”.   | 20                   |
| <b>[39]</b> | <b>Schedule 1, Part 1, heading</b>   | 21                   |
|             | Insert after the heading to Schedule 1:  | 22                   |
|             | <b>Part 1 Savings and transitional regulations</b>   | 23                   |
| <b>[40]</b> | <b>Schedule 1, clause 1</b>  | 24                   |
|             | Omit clause 1 (1). Insert instead:   | 25                   |
|             | (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.  | 26<br>27             |
|             | (1A) Any such provision has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions. | 28<br>29<br>30<br>31 |
| <b>[41]</b> | <b>Schedule 1, Part 2, heading</b>   | 32                   |
|             | Insert after clause 1:   | 33                   |
|             | <b>Part 2 Provisions consequent on enactment of Farm Debt Mediation Amendment Act 1996</b>   | 34<br>35             |

|      |  |    |
|------|--|----|
| [42] | <b>Schedule 1, Part 3, heading</b>   | 1  |
|      | Insert after clause 3:   | 2  |
|      | <b>Part 3 Provisions consequent on enactment of Farm Debt Mediation Amendment Act 1998</b>   | 3  |
|      |  | 4  |
| [43] | <b>Schedule 1, Part 4, heading</b>   | 5  |
|      | Insert after clause 6:   | 6  |
|      | <b>Part 4 Provision consequent on enactment of Farm Debt Mediation Amendment Act 2002</b>  | 7  |
|      |  | 8  |
| [44] | <b>Schedule 1, Part 5, heading</b>   | 9  |
|      | Insert after clause 7:   | 10 |
|      | <b>Part 5 Provision consequent on enactment of National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Act 2004</b>   | 11 |
|      |  | 12 |
|      |  | 13 |
| [45] | <b>Schedule 1, Part 6, heading</b>   | 14 |
|      | Insert after clause 8:   | 15 |
|      | <b>Part 6 Provision consequent on enactment of Farm Debt Mediation Amendment (Water Access Licences) Act 2005</b>  | 16 |
|      |  | 17 |
|      |  | 18 |
| [46] | <b>Schedule 1</b>  | 19 |
|      | Insert at the end of the Schedule, with appropriate Part and clause numbering:   | 20 |
|      | <b>Part Provisions consequent on enactment of Farm Debt Mediation Amendment Act 2018</b>   | 21 |
|      |  | 22 |
|      | <b>Definitions</b>   | 23 |
|      | In this Part:  | 24 |
|      | <i>amending Act</i> means the <i>Farm Debt Mediation Amendment Act 2018</i> .  | 25 |
|      | <i>commencement date</i> means the date on which the amending Act commences.   | 26 |
|      | <i>existing Heads of Agreement</i> means Heads of Agreement in force under this Act immediately before the commencement date.  | 27 |
|      |  | 28 |
|      | <b>Heads of Agreement</b>  | 29 |
|      | (1) Existing Heads of Agreement entered into between a farmer and a creditor are taken, on the commencement date, to be a mediation agreement under section 18K of this Act (as inserted by the amending Act). | 30 |
|      |  | 31 |
|      |  | 32 |
|      | (2) The amendments made to this Act by the amending Act extend to the existing Heads of Agreement.   | 33 |
|      |  | 34 |
|      | (3) Without limiting subclause (2), section 18L (3) (as inserted by the amending Act) extends to the existing Heads of Agreement. However, the amendments  | 35 |
|      |  | 36 |

|   |                      |
|---|----------------------|
| do not otherwise affect the expiry of any cooling off period in force immediately before the insertion of section 18L.  | 1<br>2               |
| (4) A reference in section 5 (3) to a mediation agreement includes a reference to Heads of Agreement under this Act as in force before the commencement date.   | 3<br>4               |
| <b>Mediation concluded before commencement of amending Act</b>  | 5                    |
| The amendments made to this Act by the amending Act extend to the following:  | 6<br>7               |
| (a) any farm debt in respect of which mediation was concluded before the commencement date and an exemption certificate is in force, or an application for an exemption certificate is pending, on that date,   | 8<br>9<br>10         |
| (b) any mediation commenced, but not concluded, before the commencement date.   | 11<br>12             |
| <b>Mediators</b>  | 13                   |
| (1) A person who, immediately before the commencement date, was a mediator within the meaning of this Act as then in force, is taken, on that date, to have been accredited as a mediator under section 16 of this Act, as substituted by the amending Act. | 14<br>15<br>16<br>17 |
| (2) Accreditation is subject to any conditions or limitations that were in force before the substitution of section 16 by the amending Act.   | 18<br>19             |