

[Act 1998 No 14]



New South Wales

# Farm Debt Mediation Amendment Bill 1998

## 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 Act***):

- (a) to apply the Act to enforcement action taken in relation to hire purchase agreements entered into by farmers, and
- (b) to clarify the application of the Act in relation to bankrupt farmers, and
- (c) to remove the requirement that invitations for mediation specify a time and place for mediation, and
- (d) to change the periods for which certificates issued under the Act entitling creditors to proceed with enforcement actions against farm mortgages are in force, and
- (e) to subject agreements reached during, or at the conclusion of, mediation sessions under the Act to a 14-day cooling off period and to provide for the rights of farmers and creditors in relation to the cooling off period, and

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\* Amended in committee—see table at end of volume.

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- (f) to clarify the functions of mediators, and
- (g) to enable documents issued under the Act to be served on corporations by serving them on directors or secretaries of the corporations.

## 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.

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

## Schedule 1 Amendments

### Application of Act to hire purchase agreements

**Schedule 1 [1]** includes hire purchase agreements as farm mortgages to which the Act applies. This will mean that mediation provisions under the Act will apply to proposed enforcement action relating to hire purchase agreements.

**Schedule 1 [2]** inserts a definition of *hire purchase agreement*.

### Application of Act to bankrupt farmers

**Schedule 1 [3]** amends the Act so that it will not apply to a farmer whose property is the subject of a bankruptcy petition by any person. Currently, the exclusion applies only where a bankruptcy petition is presented by a farmer or a creditor.

### Invitations to mediation sessions

Section 11 of the Act sets out the circumstances when a certificate may be issued which certifies that the Act does not apply to a farm mortgage, thus enabling enforcement action to be taken by a creditor without having to notify a farmer of the availability of mediation under the Act and to participate in mediation. One of the circumstances in which a certificate may be issued is if a farmer has declined mediation in respect of a farm debt. Under the section this may be established if the farmer fails, within 28 days, to respond to an invitation to attend a mediation session. **Schedule 1 [4]** omits the requirement that such an invitation for a farmer to attend a mediation session must specify a time and place for the session.

### **Duration of certificates that Act does not apply to farm mortgages**

Currently, a certificate issued under section 11 of the Act is in force for a period of 3 years from the date it is issued. As it is issued at the request of a creditor, it may not be issued until some time after the relevant events have taken place. **Schedule 1 [5]** changes the time period for which certificates issued under the section will be in force. The period will commence when the certificate is issued and will generally end 3 years after the relevant event that enables a certificate to be obtained.

### **Cooling off periods for mediation agreements**

**Schedule 1 [6]** inserts proposed sections 11A and 11B. Proposed section 11A provides for a 14-day cooling off period for any agreement entered into by a farmer and a creditor during, or at the conclusion of, a mediation session. An agreement must contain a statement about the cooling off period. If it does not, the cooling off period is extended until 14 days after notice is given to the farmer of the cooling off period. A certificate under section 11 of the Act will not be able to be issued until the end of the cooling off period. Proposed section 11B confers on a farmer a right to rescind an agreement during the cooling off period. It also provides for the effect of the rescission and the adjustment of rights as between the parties if such a rescission occurs.

### **Functions of mediators**

**Schedule 1 [7]** re-enacts the provision conferring functions on mediators at mediation sessions and provides that the function of a mediator is to mediate or attempt to mediate between the farmer and creditor for the purpose of arriving at an agreement for the present arrangements and future conduct of financial relations among them.

### **Service of notices**

**Schedule 1 [8]** facilitates the service of documents on bodies corporate by enabling them to be served on a body corporate by being left with an officer of the body corporate at its registered office, by being left with a director or secretary of the body corporate or by being sent by post, telex, facsimile or similar electronic facility to the registered office or the place of residence or business of a director or secretary of the body corporate.

### **Savings and transitional provisions**

**Schedule 1 [9]** and **[10]** insert savings and transitional provisions consequent on the enactment of the proposed amendments.