

Farm Business Debt Mediation Bill 2016

Amendments during consideration in detail to be moved by
The Honourable the Minister for Agriculture and Fisheries and Minister for
Rural Economic Development

1 **Clause 11 (Application of Act)**

Page 14, lines 10 to 12—

omit, insert—

- (2) Also, this Act does not apply in relation to a farmer for a particular farm business debt if—
 - (a) the farmer previously defaulted under the farm mortgage for the debt and, because of the farmer's default, the farmer and the mortgagee took part in mediation for the debt under this Act; and

2 **Clause 14 (Notice of intention to take enforcement action)**

Page 16, line 11, '15'—

omit, insert—

20

3 **Clause 18 (Nominating mediator)**

Page 18, lines 28 to 30, page 19, lines 1 to 31 and page 20, lines 1 to 9—

omit, insert—

18 Choosing mediator

- (1) The parties to the farm business debt must choose a mediator to conduct the mediation.
- (2) The mediator must be chosen in the way prescribed by regulation.

4 **Clause 24 (Farmer entitled to advisor)**

Page 23, line 28, 'an advisor'—

omit, insert—

1 or more advisors

5 Clause 24 (Farmer entitled to advisor)

Page 23, line 30, ‘The’—

omit, insert—

An

6 Clause 24 (Farmer entitled to advisor)

Page 24, line 1, ‘the advisor’s’—

omit, insert—

an advisor’s

7 Clause 25 (Mediation meetings)

Page 24, lines 9 and 10—

omit, insert—

(2) Mediation meetings are to be conducted—

(a) at a place and time that is reasonably convenient for the farmer; and

(b) with as little formality and technicality, and as quickly, as possible.

(3) If the parties to a mediation agree, a mediation meeting may be held using any technology allowing reasonably contemporaneous and continuous communication between the parties.

Examples—

teleconferencing, videoconferencing

8 Clause 26 (Heads of agreement)

Page 24, line 16, ‘prepare a document, in the approved form,’—

omit, insert—

prepare, or supervise the preparation of, a document in the approved form

9 Clause 26 (Heads of agreement)

Page 24, after line 26—

insert—

- (4) The approved form for a heads of agreement must—
 - (a) state—
 - (i) that a heads of agreement is subject to a cooling-off period unless the parties agree to waive the cooling-off period; and
 - (ii) that a farmer may revoke the heads of agreement during a cooling-off period by serving a signed notice of revocation on the mortgagee; and
 - (iii) the rights to compensation that may, and do not, arise under section 30 if a farmer revokes a heads of agreement during a cooling-off period; and
 - (b) provide for the inclusion of the following matters—
 - (i) when a cooling-off period starts and ends; and
 - (ii) a cooling-off period to be shortened or extended if the parties agree.

10 Clause 27 (Cooling-off period)

Page 25, lines 1 to 21—

omit, insert—

27 Cooling-off period

- (1) A heads of agreement entered into by the parties to a mediation is subject to a cooling-off period during which the farmer may revoke the agreement (the *cooling-off period*) unless the parties agree to waive the cooling-off period under this section.
- (2) If the parties do not waive the cooling-off period, the period—
 - (a) starts when the parties enter into the heads of agreement; and
 - (b) ends on—
 - (i) if the parties have agreed on a day on which the cooling-off period ends and the day is noted on the heads of agreement—the agreed day; or
 - (ii) otherwise—the day that is 10 business days after the parties entered into the heads of agreement.
- (3) The parties to a heads of agreement may agree to—
 - (a) waive the cooling-off period for the agreement; or
 - (b) at any time before the cooling-off period ends under subsection (2)(b), shorten or extend the cooling-off period.
- (4) However, the parties to a heads of agreement may waive or shorten the cooling-off period for the agreement only if the farmer has had a reasonable opportunity to seek legal advice about—
 - (a) the agreement; and
 - (b) waiving or shortening the cooling-off period.
- (5) The agreement must be in writing.

11 Clause 28 (Mediator's obligations after heads of agreement entered)

Page 25, line 23, before 'After'—

insert—

(1)

12 Clause 28 (Mediator's obligations after heads of agreement entered)

Page 25, lines 27 to 31—

omit, insert—

(b) that states—

- (i) if the parties have waived the cooling-off period—there is no cooling-off period for the heads of agreement; or
- (ii) otherwise—the days on which the cooling-off period for the heads of agreement starts and ends.

13 Clause 28 (Mediator's obligations after heads of agreement entered)

Page 25, after line 31—

insert—

- (2) If, after signing the heads of agreement, the parties agree to shorten or extend the cooling-off period, the mediator must ensure each party has a copy of the heads of agreement that states—
 - (a) the parties have agreed to shorten or extend the cooling-off period; and
 - (b) the day on which the parties have agreed the cooling-off period ends.

14 After clause 28

Page 25, after line 31—

insert—

28A Heads of agreement binds parties

A heads of agreement signed by the parties to a mediation binds each of the parties while the agreement is in effect.

15 After clause 30

Page 26, after line 21—

insert—

30A Varying heads of agreement

- (1) The parties to a mediation may, at any time, agree to vary a heads of agreement relating to the mediation and any contract, mortgage or other document entered into by the parties to give effect to the heads of agreement.
- (2) However, subsection (1) applies only if the farmer who was a party to the mediation has had a reasonable opportunity to seek legal advice about varying the heads of agreement.
- (3) The agreement must be in writing.
- (4) Subsection (1) does not apply to varying the cooling-off period for the heads of agreement.

16 Clause 38 (Confidentiality)

Page 30, line 14, after ‘document’—

insert—

prepared for the purpose of being

17 Clause 38 (Confidentiality)

Page 30, line 20, ‘section 33.’—

omit, insert—

section 33; or

- (d) a proceeding or a part of a proceeding before QCAT that is not open to the public, including, for example, a proceeding started under section 82; or
- (e) a proceeding or a part of a proceeding that relates to—
 - (i) violence or a threat of violence; or
 - (ii) ongoing activity of a criminal nature being concealed; or
 - (iii) the abuse of a child or another person.

18 Clause 39 (Costs)

Page 30, after line 28—

insert—

- (1A) A party's costs for a mediation include the costs incurred by the party in relation to the mediation.

Examples of costs incurred in relation to a mediation—

the costs of travel and accommodation incurred to attend a mediation meeting

19 Clause 47 (Duration)

Page 34, line 24, '(1)'—

omit.

20 Clause 47 (Duration)

Page 35, lines 10 to 12—

omit.

21 Clause 48 (Applying for exemption certificate)

Page 35, line 20, before ‘under’—

insert—

in relation to the farmer’s default

22 Clause 49 (Grounds)

Page 35, lines 28 and 29 and page 36, lines 1 to 4—

omit, insert—

- (1) Each of the following is a ground for issuing an exemption certificate in relation to a farmer’s default under a farm mortgage—
 - (a) the farmer and the mortgagee took part in mediation for the farm business debt and the mediation—
 - (i) considered matters relating to the farmer’s default; and
 - (ii) was satisfactory;
 - (b) the farmer has failed to, and does not intend to, mediate for the farm business debt about matters relating to the farmer’s default;

23 Clause 49 (Grounds)

Page 36, lines 8 and 9—

omit, insert—

- (i) the farmer and the mortgagee agreed to mediate for the farm business debt about matters relating to the farmer’s default;

24 Clause 49 (Grounds)

Page 36, lines 20 to 25—

omit, insert—

- (i) the mediation for the farm business debt considered matters relating to the farmer's default under the farm mortgage of farm property in Queensland and was satisfactory; or
- (ii) the farmer has failed to, and does not intend to, mediate for the farm business debt about matters relating to the farmer's default.

25 Clause 52 (Deciding application)

Page 37, line 30—

omit, insert—

- (c) there is a ground, relating to the farmer's default, to issue the exemption certificate.

26 Clause 77 (When original decision takes effect)

Page 52, lines 18 to 23—

omit, insert—

- (a) if an application for an internal review of the original decision is made—the chief executive officer decides the application; or

27 Clause 78 (QCAT may stay operation of original decision)

Page 53, lines 2 and 3, 'to which section 77 does not apply'—

omit, insert—

that is an accreditation decision

28 Clause 79 (Review starts with internal review)

Page 53, lines 18 to 20—

omit.

29 Clause 81 (Reviewing original decision)

Page 54, after line 24—

insert—

- (1A) If the original decision is not an accreditation decision, the chief executive officer may, at any time, extend the period for making the internal review decision and giving the review notice.

30 Clause 81 (Reviewing original decision)

Page 55, after line 10—

insert—

- (5A) Subsections (6) and (7) apply if the original decision is an accreditation decision.

31 Clause 82 (Applying for external review)

Page 55, lines 21 and 22—

omit, insert—

- (1) This section applies to a person who—
 - (a) applied for an internal review of an accreditation decision; and
 - (b) must be given a review notice under section 81(1) advising of the internal review decision.

32 After clause 90

Page 59, after line 29—

insert—

90A Review of Act

- (1) The Minister must review this Act within 5 years after 1 July 2017 to decide whether its provisions remain appropriate.

- (2) The Minister must table a report about the review in the Legislative Assembly as soon as practicable after finishing the review.

33 Schedule 1 (Dictionary)

Page 95, after line 7—

insert—

accreditation decision means an original decision about an individual’s accreditation, or application for accreditation, as a mediator made under part 5.

34 Schedule 1 (Dictionary)

Page 96, lines 15 to 17—

omit, insert—

default, in relation to a farmer under a farm mortgage, means a ground exists for the mortgagee to take enforcement action against the farmer under the terms of the mortgage.

Examples of default—

- a failure to perform an obligation under the terms of the farm mortgage
- the ratio of the farm business debt to the value of farm property (commonly referred to as the loan to value ratio or LVR) changes because the value of the farm property secured by the farm mortgage changes

35 Schedule 1 (Dictionary)

Page 98, line 3, ‘business.’—

omit, insert—

business; or

- (c) a vehicle, machine, tool or other thing of a type that is usually used to carry on a farming business.

Examples—

tractor, milking machine, harvester, beehive

36 Schedule 1 (Dictionary)

Page 100, line 31, ‘140(4)’—

omit, insert—

166(5)

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