

Farm Business Debt Mediation Bill 2016

Amendments during consideration in detail to be moved by
Dale Last, Member for Burdekin

1 **Clause 3 (Purpose)**

Page 10, line 17, after ‘mortgagees’—
insert—

, participating in good faith,

2 **Clause 7 (When mediation has been *satisfactory*)**

Page 12, line 14, ‘but the farmer and the mortgagee’—
omit, insert—

with the farmer and the mortgagee having
participated in good faith, but they

3 ~~**Clause 11 (Application of Act)**~~

~~Page 14, line 2, ‘(1)’—
omit.~~

4 ~~**Clause 11 (Application of Act)**~~

~~Page 14, lines 10 to 18—
omit.~~

5 ~~**Clause 18 (Nominating mediator)**~~

~~Page 19, line 16, ‘authority’—
omit, insert—~~

~~chief executive~~

6 ~~**Clause 18 (Nominating mediator)**~~

~~Page 19, line 27, after ‘the authority’—
insert—~~

~~and chief executive~~

~~7 Clause 18 (Nominating mediator)~~

~~Page 20, line 7, ‘authority’s’~~

~~omit, insert~~

~~chief executive’s~~

~~8 Clause 24 (Farmer entitled to advisor)~~

~~Page 23, line 28, ‘an advisor’~~

~~omit, insert~~

~~1 or more advisors~~

~~9 Clause 24 (Farmer entitled to advisor)~~

~~Page 23, lines 30 and 31~~

~~omit, insert~~

~~(2) An advisor may, but need not, be a lawyer,
accountant or otherwise professionally qualified.~~

~~10 Clause 24 (Farmer entitled to advisor)~~

~~Page 24, line 1, ‘the advisor’s’~~

~~omit, insert~~

~~an advisor’s~~

~~11 Clause 33 (Summary of mediation)~~

~~Page 28, line 11, after ‘satisfactory’—~~

~~insert—~~

~~and the parties participated in good faith~~

12 Clause 33 (Summary of mediation)

Page 28, line 13, after ‘satisfactory’—

insert—

or the parties did not participate in good faith

~~13 Clause 34 (Guidelines for conducting mediation)~~

~~Page 28, line 27 and page 29, lines 5 and 12, ‘authority’~~

~~*omit, insert*~~

~~chief executive~~

~~14 Clause 34 (Guidelines for conducting mediation)~~

~~Page 29, line 12, ‘authority’s’~~

~~*omit, insert*~~

~~department’s~~

~~15 Clause 35 (Mediation information package)~~

~~Page 29, line 15, ‘authority’~~

~~*omit, insert*~~

~~chief executive~~

~~16 Clause 35 (Mediation information package)~~

~~Page 29, line 27, after ‘The’~~

~~*insert*~~

~~chief executive and the~~

~~17 Clause 58 (Applying for accreditation)~~

~~Page 42, line 8, ‘authority’~~

~~*omit, insert*~~

~~chief executive~~

18 ~~Clause 59 (Inquiring about application)~~

~~Page 42, lines 14, 24 and 25 and page 43, lines 1 and 2,
'authority'~~

~~omit, insert~~

~~chief executive~~

19 ~~Clause 60 (Appropriately qualified and suitable person)~~

~~Page 43, lines 11 and 20 and page 44, line 1, 'authority'~~

~~omit, insert~~

~~chief executive~~

20 ~~Clause 61 (Deciding application)~~

~~Page 44, lines 10, 12, 13, 17, 18 and 23, 'authority'~~

~~omit, insert~~

~~chief executive~~

21 ~~Clause 62 (Failure to decide application)~~

~~Page 44, lines 27 and 28 and page 45, lines 2, 3 and 9,
'authority'~~

~~omit, insert~~

~~chief executive~~

22 ~~Clause 63 (Term of accreditation)~~

~~Page 45, lines 13 and 16, 'authority'~~

~~omit, insert~~

~~chief executive~~

23 ~~Clause 64 (Applying for renewal)~~

~~Page 45, line 20, 'authority'~~

~~omit, insert~~

~~chief executive~~

~~24 Clause 65 (Inquiring about renewal application)~~

~~Page 46, lines 2, 3, 4, 7 and 8, ‘authority’~~

~~omit, insert~~

~~chief executive~~

~~25 Clause 66 (Deciding renewal application)~~

~~Page 46, lines 15, 17, 18, 23, 24 and 29, ‘authority’~~

~~omit, insert~~

~~chief executive~~

~~26 Clause 67 (Failure to decide renewal application)~~

~~Page 47, lines 2, 3, 6, 7 and 13, ‘authority’~~

~~omit, insert~~

~~chief executive~~

~~27 Clause 68 (Accreditation continues until decision about renewal)~~

~~Page 47, lines 22 and 24, ‘authority’~~

~~omit, insert~~

~~chief executive~~

~~28 Clause 70 (Grounds)~~

~~Page 48, lines 19, 23, 31 and 32 and page 49, line 2, ‘authority’~~

~~omit, insert~~

~~chief executive~~

29 ~~Clause 71 (Show cause notice)~~

~~Page 49, lines 6, 7 and 17, ‘authority’~~

~~omit, insert~~

~~chief executive~~

30 ~~Clause 72 (Representations about show cause notice)~~

~~Page 49, lines 23, 24 and 25, ‘authority’~~

~~omit, insert~~

~~chief executive~~

31 ~~Clause 73 (Ending show cause process without further action)~~

~~Page 49, lines 28 and 30, ‘authority’~~

~~omit, insert~~

~~chief executive~~

32 ~~Clause 74 (Suspending or cancelling accreditation)~~

~~Page 50, lines 7, 11, 18 and 19, ‘authority’~~

~~omit, insert~~

~~chief executive~~

33 ~~Clause 75 (Immediate suspension of accreditation)~~

~~Page 50, line 26 and page 51, lines 8 and 16, ‘authority’~~

~~omit, insert~~

~~chief executive~~

34 ~~Clause 76 (Register of mediators)~~

~~Page 51, line 22 and page 52, lines 7 and 8, ‘authority’~~

~~omit, insert~~

chief executive

35 ~~Clause 76 (Register of mediators)~~

~~Page 52, line 9, ‘authority’s’~~

~~omit, insert~~

department’s

36 ~~Clause 90 (Approved forms)~~

~~Page 59, line 29~~

~~omit, insert~~

~~(1) The authority may approve forms for use under this Act, other than part 5.~~

~~(2) The chief executive may approve forms for use under part 5.~~

37 Clause 124 (Amendment of s 4 (Definitions))

Page 90, line 16—

omit, insert—

confidential information—

(a) means any information that—

(i) could identify an individual; or

(ii) is about a person’s current financial position or financial background and could reasonably be expected to result in the identification of the person to whom it relates; or

(iii) would be likely to damage the commercial activities of a person to whom the information relates; but

(b) does not include—

- (i) information that is publicly available;
or
- (ii) aggregated, statistical or other information that could not reasonably be expected to result in the identification of the individual to whom it relates.

farm debt means a farm business debt under the *Farm Business Debt Mediation Act 2017*, section 5.

farmer see the *Farm Business Debt Mediation Act 2017*, schedule 1.

farming business see the *Farm Business Debt Mediation Act 2017*, schedule 1.

financial assistance see section 10(2).

rural debt survey see section 13D(1).

38 Clause 127 (Amendment of s 8 (Authority's functions))

Page 91, after line 21—

insert—

- (iii) areas of need, and assistance, for farmers in financial distress and farming businesses that are unlikely to be financially viable in the long-term, including, for example, ways to restructure a farm debt or to ensure a farmer who stops carrying on a farming business remains in the best possible financial position; and

39 After clause 129

Page 92, after line 11—

insert—

129A Insertion of new pt 3B

After part 3A—

insert—

Part 3B Rural debt surveys and advisory services

Division 1 Rural debt surveys

13D Authority must conduct rural debt survey

- (1) The authority must ensure a survey of rural indebtedness in Queensland (a *rural debt survey*) is—
 - (a) conducted for the period starting on 1 January 2012 and ending on 31 December 2017; and
 - (b) completed by 30 June 2018.
- (2) Also, the authority must ensure a rural debt survey is conducted for each period of 2 years starting on 1 January 2018.
- (3) A rural debt survey conducted under subsection (2) must be completed within 6 months after the end of the 2-year period.

13E Terms of reference for rural debt survey

The terms of reference for a rural debt survey are as follows—

- (a) to establish the extent, nature and size of, and trends in, the total rural indebtedness—
 - (i) in Queensland; and

- (ii) across various primary industries;
and
 - (iii) in different areas of Queensland
identified by local government
areas or postcodes;
- (b) to categorise loans to farmers for
conducting farming businesses based
on the financial viability of the farmers
and the ability of the farmers to service
their loans;

Examples of loan categories—

- loans for which the farmers are
considered financially viable under
most circumstances
 - loans for which the farmers are
considered financially viable in the
long-term but who are experiencing
some difficulty servicing the loan
 - loans for which the farmers are
experiencing major difficulties
servicing the loan
- (c) to consult with financial institutions
and peak primary industry bodies about
the matters mentioned in paragraphs
(a) and (b) to obtain information or
observations about the matters.

13F Power to require information for rural debt survey

- (1) This section applies in relation to the
following entities (each a ***relevant entity***)—
- (a) a bank or other financial institution;
 - (b) another entity that carries on a business
lending money to farmers for the
purpose of conducting farming
businesses.
- (2) The authority may, by written notice given to

a relevant entity, require the entity to give the authority—

- (a) stated documents or information (the *relevant material*), or stated types of documents or information (also the *relevant material*), in its possession or control that the authority reasonably requires for the conduct of a rural debt survey; or
 - (b) access to the relevant material.
- (3) The notice must state how, and a reasonable period by which, the relevant material, or access to the relevant material, must be given.
- (4) The relevant entity must comply with the notice unless—
- (a) the requirement relates to relevant material that is in someone else's possession or control and the other person has refused to give the relevant material to the entity despite the entity's reasonable efforts to obtain it; or
 - (b) complying with the requirement would place the entity in contravention of a law; or
 - (c) the requirement relates to someone else's confidential information and the other person has refused to consent to it being disclosed to the authority despite the entity's reasonable efforts to obtain the consent; or
 - (d) the giving of the relevant material might tend to incriminate the entity; or
 - (e) the relevant material is confidential to the entity or the giving of the relevant material might be to the detriment of

the entity's commercial or other interests.

Maximum penalty—100 penalty units.

- (5) If an exemption under subsection (4) applies to a requirement made of a prescribed entity under subsection (2), the entity must inform the authority in writing of the application of the exemption.
- (6) The authority must not use relevant material given to, or accessed by, the authority under this section for a purpose other than a rural debt survey conducted under this part.

Maximum penalty for subsection (6)—100 penalty units.

13G Authority's report about rural debt survey

- (1) The authority must, by the day the authority is required to complete a rural debt survey under section 13D—
 - (a) prepare a report about the results of the survey; and
 - (b) give a copy of the report to the Minister.
- (2) The authority's report must compare the results of the rural debt survey to the results of previous rural debt surveys and include the authority's observations about the comparison.
- (3) Also, the authority's report must not include confidential information.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 3 months after receiving the report.

Division 2 Farm Debt Restructure Office

13H Authority must establish Farm Debt Restructure Office

- (1) The authority must establish an office of the authority called the Farm Debt Restructure Office.
- (2) The Farm Debt Restructure Office consists of a manager and the staff of the office, who are employees of the authority.
- (3) The authority must ensure the manager and staff of the Farm Debt Restructure Office are appropriately qualified to perform the function of the office.

13I Function of Farm Debt Restructure Office

- (1) The function of the Farm Debt Restructure Office is to assist a farmer in financial distress—
 - (a) to improve the long-term financial viability of the farmer's farming business, including, for example, by—
 - (i) advising the farmer about, or assisting the farmer to, restructure the farmer's farm debt; or
 - (ii) negotiating with the farmer's lenders to reduce or forgive the farmer's farm debt; and
 - (b) if paragraph (a) is not practicable—to stop carrying on the farmer's farming business while ensuring the farmer is in the best possible financial position.
- (2) In assisting a farmer, the office must—

- (a) thoroughly assess the farmer's farming business and personal financial circumstances and discuss the assessment with the farmer; and
 - (b) consult with the farmer's accountants, business and other professional advisors; and
 - (c) consult with the farmer's lenders and creditors.
- (3) The assistance must be given free of charge.

40 ~~Schedule 1 (Dictionary)~~

~~Page 98, line 3, 'business.'~~

~~omit, insert~~

~~business; or~~

- ~~(c) machinery usually used for carrying on a farming business, including, for example, a harvester, tractor or milking machine.~~

FARM BUSINESS DEBT MEDIATION BILL 2016

Amendments to the Member for Burdekin's amendments to be moved by the Minister for Agriculture and Fisheries and Minister for Rural Economic Development

Member for Burdekin's amendment No. 37 (Clause 124 – Amendment of s 4 (Definitions))—

'financial assistance see section 10(2).'

Omit.

Member for Burdekin's amendment No. 39 (After clause 129)—

Proposed 13D (Authority must conduct rural debt survey), after subsection (3)—

Insert—

'(4) Subsections (2) and (3) do not apply for a period mentioned in subsection (2) if a comparable national debt survey has been conducted in the period.'

Proposed 13I (Function of Farm Debt Restructure Office), all words after 'distress'

Omit, Insert—

'

(2) The Governor in Council may make a regulation about the functions of the Farm Debt Restructure Office.'