



## NSW Legislative Council Hansard

### Farm Debt Mediation Amendment (Water Access Licences) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 16 November 2005.

#### Second Reading

**The Hon. IAN MACDONALD** (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [9.15 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

The bill before Honourable Members will make a small but very important change to the Farm Debt Mediation Act 1994. It will extend the operation of that Act to cover water access licences. In doing so, it will restore the original intent and operation of that Act. This bill is required to take account of amendments introduced by the Water Management Act 2000, which changed the way water licences are treated. In particular, the Water Management Act now treats water licences as an asset that is separate from the land where the water is used. The Farm Debt Mediation Act serves a very important function for farmers who are having difficulty repaying farm debts. This is a very real issue for farmers, particularly during long periods of drought. The Act is administered by the Rural Assistance Authority.

The Authority provides a number of services to rural producers and small businesses on behalf of the State and Commonwealth New South Wales. These include drought assistance, natural disaster relief, and interest rate subsidies for exceptional circumstances. The Authority also runs the farm debt mediation program. The Farm Debt Mediation Act provides an avenue for farmers to negotiate with creditors where they are struggling to meet farm debt repayments. Before a creditor can take enforcement action for non-payment of a farm debt, the farmer can elect to participate in a mediation process. Mediation is a structured negotiation process in which the mediator, as a neutral and independent person, assists the farmer and the creditor to reach agreement.

The agreement can deal with the present arrangements and any future conduct of financial relations between them. Mediation is a simple, confidential process that is quick, accessible and affordable. Under the Act, a creditor must notify the farmer of its intention to take enforcement action, and also notify the farmer of the availability of mediation. If the farmer chooses to undertake mediation, the farmer and creditor then agree on a mediator. The Authority has accredited a number of experienced mediators as part of its Panel of Mediators. The mediators are strictly neutral—they do not take sides or represent either the farmer or the creditor. The mediation is intended to find a way for farmers to continue producing on the land while ensuring their financial obligations are met.

The mediation will look at all the assets and liabilities associated with the farm business in determining a resolution. The outcomes of mediation could include refinancing of loans, extensions of payment periods, or sale of assets. Settlement by mediation is voluntary, and neither party can be forced into an agreement at mediation. In the ten years that the program has been running, there have been 987 mediations. Eighty-eight per cent of those have resulted in an agreement. The level of debt the subject of mediation has ranged from \$20,000 to \$34 million. Under the Act, a farm debt is defined as a debt incurred by a farmer for the purposes of conducting a farming operation, which is secured wholly or partly by farmland or farm machinery.

Traditionally, farmland included any water licences attached to the land. However, changes introduced by the Water Management Act have created separate rights for water licences. These new "access licences" can now be sold in isolation from the land. Therefore, access licences are now a separate asset of the farm. And, as a result, they are no longer within the strict definition of a "farm debt" under the Act. This means they are no longer covered by the mandatory debt mediation requirements under the Act. It also means that where water licences are used on farms, creditors may be able to take enforcement action for debts secured against the licence without going through the mediation process set up under the Act. Forced sale of an access licence to recoup a farm debt would have a significant impact on the continuing operation of a farm by removing the farmer's right to access water needed for farm production.

To overcome the situation I have just described, the bill currently before the House amends the Act to ensure that it defines "farm property" to include access licences used by farmers. This will mean that a creditor must offer mediation before commencing enforcement action against a farmer in relation to a debt secured by an access licence used in connection with the farm operation. These proposed changes are fully supported by the agricultural industry. They also have the full support of the Law Society of New South Wales. This bill is

necessary to close a loophole that has arisen due to changes by another Act. Without these amendments, the farm debt mediation program will not be able to operate as intended. The proposed amendment will restore the original intent and operation of the Act. I commend the bill to the House.