



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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- (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**

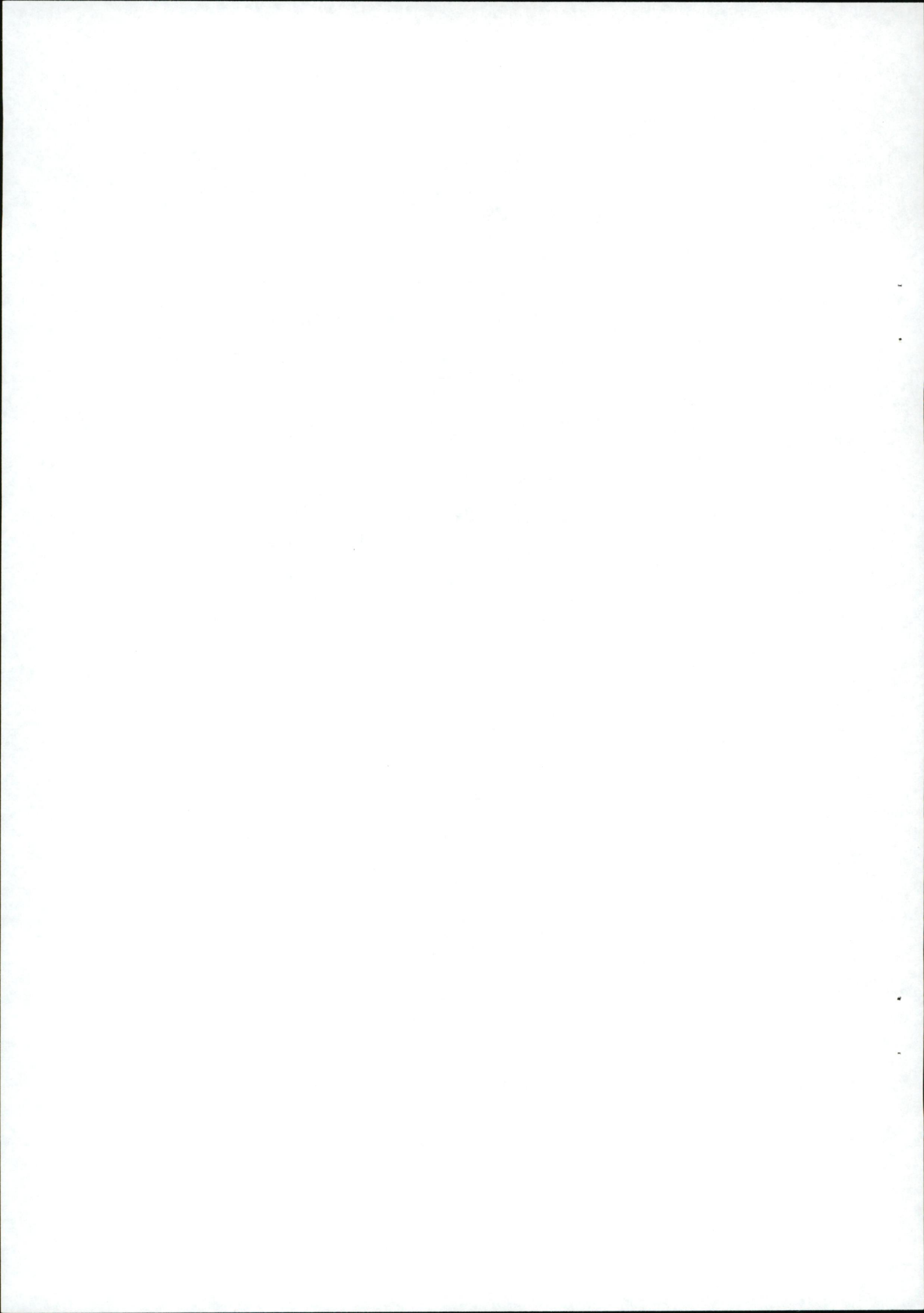
**Schedule 1 [7]** re-enacts the provision conferring functions on mediators at mediation sessions and provides that the function of a mediator is to mediate or attempt to mediate between the farmer and creditor for the purpose of arriving at an agreement for the present arrangements and future conduct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



First print



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New South Wales

# Farm Debt Mediation Amendment Bill 1998

No. , 1998

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## **A Bill for**

An Act to amend the *Farm Debt Mediation Act 1994* with respect to cooling off periods for certain agreements, the application of the Act to hire purchase agreements and bankrupt farmers, the functions of mediators, the duration of certain certificates and the service of notices; and for other purposes.

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

**1 Name of Act**

This Act is the *Farm Debt Mediation Amendment Act 1998*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Farm Debt Mediation Act 1994 No 91**

The *Farm Debt Mediation Act 1994* is amended as set out in Schedule 1.



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## Schedule 1 Amendments

(Section 3)

### [1] Section 4 Definitions

Omit the definition of *farm mortgage* in section 4 (1). Insert instead:

*farm mortgage* includes any interest in, or power over, any farm property securing obligations of the farmer whether as a debtor or guarantor, including any interest in, or power arising from, a hire purchase agreement relating to farm machinery, but does not include: 5

- (a) any stock mortgage or any crop or wool lien, or 10
- (b) the interest of the lessor of any farm machinery that is leased.

### [2] Section 4 (1), definition of "hire purchase agreement"

Insert in alphabetical order:

*hire purchase agreement* has the same meaning as it has in the *Duties Act 1997*. 15

### [3] Section 5 Application of Act

Omit "the farmer or the creditor" from section 5 (2) (b).  
Insert instead "any person".

### [4] Section 11 Certificate that Act does not apply to farm mortgage 20

Omit "at a specific time and place" from section 11 (2) (c) (ii).

**[5] Section 11 (5)**

Omit the subsection. Insert instead:

- (5) A certificate under this section remains in force until the date specified by the Authority in the certificate. The date specified is to be calculated on the basis that the period for which the certificate is to be in force is: 5
- (a) if satisfactory mediation in respect of the farm debt concerned has taken place, the period commencing on the date of its issue and ending on the third anniversary of the last date of the mediation, or 10
  - (b) if the farmer has failed to take part in mediation in good faith, the period commencing on the date of its issue and ending on the third anniversary of the last date of the mediation, or 15
  - (c) if the farmer has indicated in writing that the farmer does not wish to enter into or proceed with mediation, the period commencing on the date of its issue and ending on the third anniversary of the date the indication was given to the Authority or creditor, or 20
  - (d) if the farmer has failed to respond in writing, within 28 days, to an invitation referred to in subsection (2) (c), the period commencing on the date of its issue and ending on the third anniversary of the date that is 28 days after the invitation was given to the farmer, or 25
  - (e) if a notice was given by the creditor under section 8, the period commencing on the date of its issue and ending on the date that is 3 years and 3 months after the date the notice was given, or 30
  - (f) in any other case in which a certificate is issued, the period of 3 years commencing on the date the certificate was issued.

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- (5A) A certificate may not be issued after the date on which any such certificate would, if issued, expire under subsection (5).

**[6] Sections 11A and 11B**

Insert after section 11:

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**11A Cooling off period after mediated agreement**

- (1) There is to be a cooling off period for any written agreement entered into by a farmer during, or at the conclusion of, a mediation session between the farmer and a creditor. The cooling off period may be extended by agreement between the farmer and the creditor. 10
- (2) The cooling off period commences when the agreement is entered into and ends at 5 pm on the 14th day after the day on which the agreement is entered into, or at such later time on that or another day, as may be agreed by the farmer and the creditor. 15
- (3) A statement in the form approved by the Authority, relating to the cooling off period, is required to be included in every written agreement entered into by a farmer during, or at the conclusion of, a mediation session. 20
- (4) If an agreement does not contain a statement required under subsection (3), the cooling off period is extended until such time as a statement, in the form approved by the Authority, relating to the cooling off period, is given to the farmer by the creditor for the purposes of this subsection. The cooling off period, as so extended, ends at 5 pm on the 14th day after the statement is given. 25
- (5) The Authority may not issue a certificate under section 11 to a creditor on the ground that satisfactory mediation in respect of a farm debt has taken place if: 30

- (a) a written agreement relating to the farm debt was entered into during, or at the conclusion of, the mediation session concerned, and
  - (b) the cooling off period has not expired.
- (6) For the purposes of this section, an agreement is taken to be entered into at the conclusion of a mediation session if it is entered into within 24 hours of the end of the session and relates to matters the subject of the mediation session. 5

**11B Rights during cooling off period** 10

- (1) The farmer may, during a cooling off period arising under section 11A, serve a written notice on the creditor or the creditor's solicitor to the effect that the farmer rescinds the agreement subject to the cooling off period.
- (2) The notice of rescission must be signed by the farmer or the farmer's solicitor. 15
- (3) On service of a notice of rescission signed in accordance with this section, the agreement is taken to be rescinded ab initio.
- (4) If rescission occurs, the farmer or creditor is entitled to make a claim for: 20
  - (a) such compensation, adjustment or accounting as is just and equitable between the farmer and the creditor where the farmer has received a benefit under the agreement, or 25
  - (b) the payment of damages, costs or expenses arising out of a breach of any term, condition or warranty contained or implied in the agreement.
- (5) This section and section 11A do not affect any right or remedy available otherwise than under this section or section 11A. 30
- (6) A creditor may not make a claim under subsection (4) if the only basis of the claim is the rescission of the agreement under this section.

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**[7] Section 13 Functions of mediators**

Omit section 13 (1). Insert instead:

- (1) 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. 5

**[8] Section 23 Manner of giving notice or other document**

Omit section 23 (2) (b). Insert instead:

- (b) to a body corporate:
- (i) by leaving it at the registered office of the body corporate with an officer of the body corporate, or 10
- (ii) by delivering it to a director or secretary of the body corporate personally, or
- (iii) by sending it by post, telex, facsimile or similar electronic facility to the registered office of the body corporate or the address of the place of residence or business of a director or secretary of the body corporate. 15

**[9] Schedule 1 Savings and transitional provisions 20**

Insert at the end of clause 1 (1):

the *Farm Debt Mediation Amendment Act 1998*.

**[10] Schedule 1, clauses 4–6**

Insert after clause 3:

**4 Application of Act to hire purchase agreements 25**

- (1) This Act applies to enforcement action taken in respect of hire purchase agreements whether the agreements were entered into before or after the commencement of this clause.

- (2) However, this Act does not apply to any enforcement action taken in respect of a hire purchase agreement before the commencement of this clause.

**5 Existing section 11 certificates**

A certificate issued under section 11, as in force immediately before the commencement of section 11 (5) as substituted by the *Farm Debt Mediation Amendment Act 1998*, remains in force for a period of 3 years from the date of its issue. 5

**6 Operation of cooling off period**

Sections 11A and 11B, as inserted by the *Farm Debt Mediation Amendment Act 1998*, do not apply to agreements entered into in mediation sessions that were concluded before the commencement of those sections. 10