

Second print



New South Wales

# Farm Debt Mediation Amendment Bill 1998

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Clerk of the Legislative Assembly.  
Legislative Assembly*



New South Wales

## **Farm Debt Mediation Amendment Bill 1998**

Act No      , 1998

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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: 5

**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

Schedule 1 Amendments

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- (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 such compensation, adjustment or accounting as is just and equitable between the farmer and the creditor where a party has received a benefit under the agreement. 20
- (5) This section and section 11A do not affect any right or remedy available otherwise than under this section or section 11A. 25
- (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. 30



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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 impartially or attempt to mediate impartially 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: 10
- (i) by leaving it at the registered office of the body corporate with an officer of the body corporate, or
- (ii) by delivering it to a director or secretary of the body corporate personally, or 15
- (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. 20

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

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: 25

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

- (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. 30

- (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** 10

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.