

FARM DEBT MEDIATION ACT 1994 No 91

Effective 24 November 2005

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[STATE ARMS]

New South Wales

Farm Debt Mediation Act 1994 No 91

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[STATE ARMS]

New South Wales

Farm Debt Mediation Act 1994 No 91

An Act to make provision for mediation concerning farm debts; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Farm Debt Mediation Act 1994*.

2 Commencement

This Act commences 2 months after the date of assent, except in so far as commenced sooner by proclamation.

3 Object

The object of this Act is to provide for the efficient and equitable resolution of farm debt disputes. Mediation is required before a creditor can take possession of property or other enforcement action under a farm mortgage.

4 Definitions

(1) In this Act:

Authority means the New South Wales Rural Assistance Authority constituted by the *Rural Assistance Act 1989*.

creditor means a person to whom a farm debt is for the time being owed by a farmer.

default, in relation to a farm mortgage, means failure to perform an obligation that, under the

terms of the mortgage, is a ground for enforcement action.

Note. Examples of default on the part of a farmer include failure to pay the principal, interest or other money the payment of which is secured by a farm mortgage; failure to keep the property subject to the farm mortgage insured; and failure to submit financial statements required by the creditor.

enforcement action, in relation to a farm mortgage, means taking possession of property under the mortgage or any other action to enforce the mortgage, including the giving of any statutory enforcement notice, or the continuation of any action to that end already commenced, but does not include:

- (a) the completion of the sale of property held under the mortgage in respect of which contracts were exchanged before the commencement of this Act, or
- (b) the enforcement of a judgment that was obtained before the commencement of this Act.

exemption certificate means a certificate of exemption from enforcement action that is issued under section 9B.

farm means land on which a farmer engages in a farming operation.

farm debt means a debt incurred by a farmer for the purposes of the conduct of a farming operation that is secured wholly or partly by a farm mortgage.

farm machinery means:

- (a) a harvester, binder, tractor, plough or other agricultural implement, or
- (b) any other goods of a class commonly used for the purposes of a farming operation that are prescribed by the regulations as being farm machinery for the purposes of this Act,

if the goods are acquired for the purposes of a farming operation.

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:

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

farm property means:

- (a) a farm or part of a farm, or
- (b) farm machinery used by a farmer in connection with a farming operation, or
- (c) an access licence (within the meaning of the *Water Management Act 2000*) held by a farmer in connection with a farming operation.

farmer means a person (whether an individual person or a corporation) who is solely or principally engaged in a farming operation and includes a person who owns land cultivated under a

share-farming agreement and the personal representatives of a deceased farmer.

farming operation means:

- (a) a farming (including dairy farming, poultry farming and bee farming), pastoral, horticultural or grazing operation, or
- (b) any other operation prescribed by the regulations for the purposes of this definition.

function includes a power, authority or duty.

Heads of Agreement, in relation to a mediation, means heads of agreement referred to in section 11AA.

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

mediator means a mediator for the time being accredited by the Authority pursuant to arrangements instituted by the Authority under this Act, and **mediation** means mediation by such an accredited mediator.

statutory enforcement notice means:

- (a) a notice under section 57 (2) (b) of the *Real Property Act 1900*, or
- (b) a notice under section 111 (2) (b) of the *Conveyancing Act 1919*, or
- (b1) a notice under section 71X (1) (b) of the *Water Management Act 2000*, or
- (c) a notice, given under any Act or statutory instrument, that is prescribed by the regulations as being within the scope of this definition.

(1A) A reference in this Act to **satisfactory mediation** is a reference to:

- (a) a mediation that has achieved a resolution of a farm debt dispute, or
- (b) a mediation that has proceeded as far as it reasonably can in an attempt to achieve a resolution of a farm debt dispute but has nevertheless failed to resolve the dispute, or
- (c) a mediation specified or of a class described in regulations made for the purposes of this subsection to be a satisfactory mediation.

(2) This Act extends to:

- (a) a farm mortgage that was entered into before the commencement of section 6, and
- (b) a liability or obligation that arose under a farm mortgage before the commencement of section 6.

4A Notes

Notes included in this Act do not form part of this Act.

5 Application of Act

- (1) This Act applies in respect of creditors only in so far as they are creditors under a farm debt.
- (2) This Act does not apply in respect of:
 - (a) a farmer whose property is subject to control under Division 2 of Part X of the

Bankruptcy Act 1966 of the Commonwealth,
or

- (b) a farmer whose property is the subject of a bankruptcy petition presented by any person, or
- (c) a farmer, being a corporation, that is an externally administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

6 Enforcement action in contravention of Act void

Enforcement action taken by a creditor to whom this Act applies otherwise than in compliance with this Act is void.

7 Relationship with other Acts

- (1) Nothing in this Act affects the operation of the *Contracts Review Act 1980* or any other Act or law that deals with the granting of relief in respect of harsh, oppressive, unconscionable or unjust contracts or on the grounds of hardship.
- (2) Nothing in this Act is to be construed as affecting the operation of the *Banking Act 1959* of the Commonwealth and, in particular, the duty of the Reserve Bank under Division 2 of Part II of that Act.
- (3) The requirements of this Act, in so far as they apply to the provision of consumer credit, are in addition to, and do not affect, the requirements of the *Credit Act 1984* or any Act or law amending or replacing that Act.
- (4) Other than as provided in this section, this Act has effect despite any other Act.

Part 2 Mediation

8 No enforcement action until notice of availability of mediation given

- (1) A creditor to whom money under a farm mortgage is owed by a farmer must not take enforcement action against the farmer in respect of the farm mortgage until at least 21 days have elapsed after the creditor has given a notice to the farmer under this section.
- (2) Notice to the farmer is to be in writing in a form approved by the Authority (informing the farmer of the creditor's intention to take enforcement action in respect of the farm mortgage and of the availability of mediation under this Act in respect of farm debts).
- (3) This section does not apply if a certificate is in force under section 11 in respect of the farm mortgage concerned.

9 Farmer may request mediation

- (1) A farmer to whom notice has been given under section 8 may, within 21 days after the notice was given, notify the creditor in writing that the farmer requests mediation concerning the farm debt involved.
- (1A) A farmer who has not been given notice under section 8 but who owes money to a creditor in

relation to a farm debt may notify the creditor in writing that the farmer requests mediation concerning the farm debt involved. A farmer may request mediation under this subsection whether or not the farmer is in default.

- (2) The Authority may approve a form for the purposes of a notification under this section and a notification given to a creditor in that form is sufficient notification for the purposes of this section. Failure to use the approved form does not of itself invalidate a notification given by a farmer.
- (3) If a farmer requests mediation but subsequently refuses to mediate, this Act ceases to apply to the farm mortgage concerned.

9A Creditor may agree to or decline mediation

- (1) A creditor who has received a request from a farmer to mediate may, by notice in writing given to the farmer, agree or decline to mediate in respect of the farm debt involved.
- (2) A refusal by a creditor to mediate does not, of itself, give rise to any claim or other consequence under this Act if the farmer is not in default.
- (3) If a farmer is in default, a refusal by a creditor to mediate may result in the issuance of an exemption certificate.

9B Exemption certificates

- (1) A farmer who is in default and who has requested a creditor to mediate in respect of the farm debt involved (whether or not the farmer has been given a notice under section 8) may apply to the Authority for a certificate of exemption from enforcement action (**exemption certificate**) if the creditor does not mediate.
- (2) The Authority must issue an exemption certificate if:
 - (a) the farmer is in default under a farm mortgage, and
 - (b) the farmer has requested the creditor to mediate in respect of the farm debt involved, and
 - (c) no certificate under section 11 is in force in relation to the farm mortgage, and
 - (d) the Authority is satisfied that;
 - (i) the creditor does not wish to enter into or proceed with mediation, or
 - (ii) the creditor has failed to respond in writing to the request to mediate, within 21 days after the receipt of the request, or
 - (iii) 3 months have elapsed after a request was made by the farmer under section 9 and the farmer has throughout that period attempted to mediate in good faith but no satisfactory mediation has taken place between the farmer and the creditor.
- (3) While an exemption certificate is in force in relation to a farm mortgage:

- (a) no certificate can be issued by the Authority under section 11, and
 - (b) no enforcement action can be taken by the creditor.
- (4) An exemption certificate ceases to be in force on the earlier of the following:
- (a) 6 months after the day on which the creditor declined to mediate,
 - (b) the day on which the farmer and creditor enter into mediation in respect of the farm debt.

10 Enforcement action postponed to allow for mediation

- (1) Once a farmer has given a creditor a notification in accordance with section 9 requesting mediation, the creditor must not take enforcement action in respect of the farm mortgage concerned unless a certificate is in force under section 11 in respect of the farm mortgage.
- (2) This section does not invalidate any statutory enforcement notice or other process given, served or executed in order to fulfil a condition precedent to the taking of any enforcement action, but operates to prohibit the taking of the action concerned, or the enforcement by a court or tribunal of any such process, except as provided by section 11 (6).

11 Certificate that Act does not apply to farm mortgage

- (1) The Authority must, on the application of a creditor under a farm mortgage, issue a certificate that this Act does not apply to the farm mortgage if:
 - (a) the farmer is in default under the farm mortgage, and
 - (b) no exemption certificate is in force in relation to the farm mortgage, and
 - (c) the Authority is satisfied that:
 - (i) satisfactory mediation has taken place in respect of the farm debt involved, or
 - (ii) the farmer has declined to mediate, or
 - (iii) 3 months have elapsed after a notice was given by the creditor under section 8 and the creditor has throughout that period attempted to mediate in good faith (whether or not a mediation session or satisfactory mediation took place during that period).
- (1A) If the creditor has (in whatever terms employed) agreed in writing to extend the period that will be available to the farmer for the conclusion of mediation between the parties to beyond 3 months, the reference in subsection (1)(c)(iii) to a period of 3 months is taken to be a reference to the extended period.
- (1B) A failure by a creditor to agree to reduce or forgive any debt does not, of itself, demonstrate a lack of good faith on the part of a creditor in attempting to mediate.

Note. Satisfactory mediation may nevertheless have taken place between the farmer and the creditor despite such failure to agree (see section 4(1A)).

- (2) A farmer is presumed to have declined to mediate if any of the following circumstances is established:
- (a) the farmer has failed to take part in mediation in good faith or has unreasonably delayed entering into or proceeding with mediation,
 - (b) the farmer has indicated in writing to the Authority or to the creditor that the farmer does not wish to enter into or proceed with mediation in respect of the debt concerned,
 - (c) the farmer has failed to respond in writing, within 28 days, to an invitation that:
 - (i) is made in writing by the creditor and is identified as an invitation under this paragraph, and
 - (ii) invites the farmer to attend a mediation session, and
 - (iii) indicates that a failure of the farmer to respond in writing to the invitation might be taken to be an indication that the farmer declines to mediate in respect of the farm debt.
- (4) A certificate may be given under this section (except where subsection (1)(c)(iii) applies) whether or not any notice has been given under section 8.
- (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:
- (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
 - (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
 - (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
 - (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
- (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
 - (f) in any other case in which a certificate is issued, the period of 3 years commencing on the date the certificate was issued.
- (5A) A certificate may not be issued after the date on which any such certificate would, if issued, expire under subsection (5).
 - (6) The expiry of a certificate under this section does not affect any proceedings for recovery of a farm debt, or for the exercise or enforcement of any right of the creditor, already taken or commenced by a creditor while the certificate was in force, and any such proceedings may be continued and concluded as if the certificate were still in force.
 - (7) The reference in subsection (6) to the commencement of proceedings does not include a reference to the giving of any statutory enforcement notice or other action taken in order to fulfil a condition precedent to the enforcement of a right otherwise than through proceedings in a court or tribunal.

11AA Heads of Agreement

- (1) If it appears to a mediator that a farmer and a creditor who are parties to a mediation have agreed, or are about to agree, on an issue between them, the mediator must personally prepare for the consideration of the parties a document setting out the main points of agreement on the issue.

Note. Failure to comply with this section may result in the withdrawal of the accreditation of a mediator (see section 12(3)).

- (2) If the parties are satisfied that the document sets out the main points agreed on by them during, or within 24 hours of the end of, a mediation, the parties may enter into Heads of Agreement by signing the document.

Note. Under section 17(3A), a person representing a party to a mediation must have written authority to enter into Heads of Agreement.

11A Cooling off period for Heads of Agreement

- (1) There is to be a cooling off period for any Heads of Agreement. The cooling off period may be extended by agreement between the farmer and the creditor.

- (2) The cooling off period commences when the Heads of Agreement are entered into and ends at 5 pm on the 14th day after the day on which the Heads of Agreement are entered into, or at such later time on that or another day, as may be agreed by the farmer and the creditor.

- (3) A statement in the form approved by the Authority, relating to the cooling off period, is required to be included in every Heads of Agreement.

- (4) If Heads of Agreement do 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.
- (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:
 - (a) Heads of Agreement are in force in relation to the farm debt, and
 - (b) the cooling off period has not expired.

11B Rights during cooling off period

- (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 Heads of Agreement subject to the cooling off period.
 - (2) The notice of rescission must be signed by the farmer or the farmer's solicitor.
 - (3) On service of a notice of rescission signed in accordance with this section, the Heads of Agreement are 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 Heads of Agreement .
 - (5) This section and section 11A do not affect any right or remedy available otherwise than under this section or section 11A.
 - (6) A creditor may not make a claim under subsection (4) if the only basis of the claim is the rescission of the Heads of Agreement under this section.
- (1) **11C Implementing Heads of Agreement** A contract, deed, mortgage or other instrument entered into as a result of, or pursuant to, Heads of Agreement between a farmer and a creditor must reflect the relevant Heads of Agreement.
- (2) A creditor who is a party to any contract, deed, mortgage or other instrument which purportedly results from, or is pursuant to, Heads of Agreement between the creditor and a farmer but which fails to reflect the relevant Heads of Agreement is guilty of an offence.
Maximum penalty (subsection (2)): 100 penalty units.

Part 3 General provisions concerning mediation

12 Arrangements for mediation

- (1) The Authority is to institute arrangements for the accreditation of suitably qualified and experienced persons as mediators for the purposes

of this Act and is to consult with the Australian Bankers Association and the NSW Farmers' Association on those arrangements.

- (2) The Authority is not liable for any of the costs of or associated with mediation for the purposes of this Act, except in its capacity as a creditor.
- (3) The Authority must withdraw the accreditation of a mediator if the mediator fails, without reasonable excuse, to comply with section 11AA(1) or 18A.

12A Farmer to nominate mediator

- (1) If a farmer and creditor agree to enter into mediation in respect of a farm debt, the farmer must nominate a mediator.
- (2) A creditor cannot nominate a mediator but must accept or reject the mediator nominated by a farmer.
- (3) If a creditor rejects the mediator nominated by a farmer, the farmer must nominate a panel of at least 3 other mediators. The creditor must choose from the panel one mediator to mediate between the farmer and the creditor.

13 Functions of mediators

- (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.
A mediator has such other functions as are conferred or imposed on the mediator by or under this or any other Act.
- (2) It is not a function of a mediator:
 - (a) to advise a farmer or creditor about the law, or
 - (b) to encourage or assist a farmer or creditor in reserving or establishing legal rights, or
 - (c) to act as an adjudicator or arbitrator.

14 Conduct of mediation sessions

- (1) The procedure for commencing and conducting a mediation session is to be as determined by the Authority.
- (1A) Without limiting subsection (1), a mediator may:
 - (a) call a pre-mediation conference, and
 - (b) adjourn a mediation session if it appears that a party would be significantly disadvantaged because of the length of the session.
- (2) Mediation sessions are to be conducted with as little formality and technicality, and with as much expedition, as possible.
- (3) The rules of evidence do not apply to mediation sessions.
- (4) A mediation session is not open to the public.
- (5) Persons who are not parties to a mediation session:
 - (a) may be present at or participate in the session in an advisory or representative capacity if authorised to do so under section 17, or

- (b) may otherwise be present at or participate in the session with the permission of the mediator.

15 Confidentiality of mediation sessions

- (1) Evidence of anything said or admitted during a mediation session and a document prepared for the purposes of, in the course of or pursuant to, a mediation session are not admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence.
- (2) In this section, **mediation session** includes any steps taken in the course of making arrangements for a mediation session or in the course of the follow-up of a mediation session.
- (3) This section does not apply to the following documents:
 - (a) Heads of Agreement,
 - (b) a contract, deed, mortgage or other instrument entered into as a result of, or pursuant to, Heads of Agreement,
 - (c) a summary of mediation under Section 18A.

16 Disclosure of information

A person must not disclose any information obtained in a mediation session or in connection with the administration or execution of this Act unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) as reasonably required for the purpose of referring any party or parties to mediation to any person, agency, organisation or other body and, with the consent of the parties to the mediation, for the purpose of aiding in the resolution of an issue between those parties, or
- (d) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth, or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

17 Representation and assistance during mediation

- (1) A party to mediation is not entitled to be represented by an agent unless it appears to the mediator that:
 - (a) an agent should be permitted to facilitate the mediation, and
 - (b) the agent proposed to be appointed has sufficient knowledge of the issue concerned to enable the agent to represent the party effectively,and the mediator so approves.
- (2) Subsection (1) does not prevent a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth that is a party to a mediation

from being represented at the mediation by an officer of the corporation.

(3) If the mediator approves of the representation of a party by an agent, the approval of the mediator may be given subject to such conditions as the mediator considers reasonable to ensure that the other party to the mediation is not substantially disadvantaged by the agent appearing at the mediation and, if the mediator does so approve, the entitlement of the agent to represent the party is subject to compliance by the agent with the conditions.

(3A) Any person representing a party to a mediation (whether or not the person is himself or herself a party to the mediation) must not attend a mediation session unless the person has been given written authority by the party the person represents to enter into Heads of Agreement.

(3B) If another mediation session is required as a result of a party's failure to give the required authority, the party is liable for all costs associated with the attendance by the other party at that additional session.

(4) A farmer who is a party to mediation is entitled to have present at any mediation session an advisor, who may but need not be legally or otherwise professionally qualified, and is entitled to call upon that advisor for advice and counsel during the session.

(5) Nothing in subsection (4) affects the operation of section 14 (1)-(3).

(6) A contravention of this section does not invalidate a mediation.

18 Exclusion of personal liability of mediators and certain other persons

A matter or thing done or omitted to be done by a mediator or any person acting under the direction of a mediator does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject the mediator or a person so acting personally to any action, liability, claim or demand.

18A Summary of mediation

At the end of a mediation, a mediator must fill in the form approved by the Authority for setting out a summary of the conduct and results of the mediation (including any Heads of Agreement entered into by the parties).

Note. Failure to comply with this section may result in the withdrawal of the accreditation of a mediator (see section 12(3)).

Part 4 Miscellaneous

19 Act binds the Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

20 Contracting out prohibited

(1) A provision of an agreement or other instrument (whether in writing or not and whether entered into before or after the commencement of this Act)

by which a person seeks to avoid, modify or restrict the operation of this Act is void.

- (2) A provision of an agreement or other instrument (whether in writing or not and whether entered into before or after the commencement of this Act) by which a person seeks to have a farmer (whether as debtor or guarantor) or a guarantor indemnify a creditor for any loss or liability arising under this Act is void.
- (3) A creditor who is a party to any such agreement or other instrument is guilty of an offence.
Maximum penalty: 100 penalty units.

21 Waiver of rights void

A waiver of mediation rights under this Act is void.

22 Notices by mortgagee

If land is subject to a farm mortgage and another Act requires the mortgagee to give notice to the mortgagor before exercising in relation to the land a power or right conferred by the other Act or by the farm mortgage:

- (a) nothing in this Act derogates from the requirement to give the notice under the other Act, and
- (b) a notice required by this Act to be given before the exercise of the power or right does not fail to comply with this Act only because it includes matter required to be specified in a notice required by the other Act to be given before exercise of the power or right.

23 Manner of giving notice or other document

- (1) If this Act requires or permits a notice or other document to be given, whether personally or by post, to the Authority or a mediator (whether the expression ``deliver'', ``serve'', ``notify'', ``send'' or ``give'' or another expression is used), the notice or other document may be given by leaving it at, or by sending it by post to:
 - (a) the office of the Authority, or
 - (b) if it has more than one office—any one of its offices.
- (2) If this Act requires or permits a notice or other document to be given to a person (other than the Authority or a mediator) (whether the expression ``deliver'', ``serve'', ``notify'', ``send'' or ``give'' or another expression is used), the notice or other document may be given:
 - (a) to a natural person:
 - (i) by delivering it to the person personally, or
 - (ii) by leaving it at, or by sending it by post, telex, facsimile or similar electronic facility to, the address of the place of residence or business of the person last known to the person giving the notice or other document, or
 - (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
 - (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.
- (3) Nothing in subsection (1) or (2):
- (a) affects the operation of another law that authorises the service of a notice or other document otherwise than as provided in subsection (1) or (2), or
 - (b) affects the power of a court or tribunal to authorise service of a notice or other document otherwise than as provided in subsection (1) or (2).

24 Date notice or other document is given

For the purposes of this Act, a notice or other document is taken to be given:

- (a) in the case of a notice or other document given personally—on the date it bears or the date it is received by the addressee, whichever is the later, or
- (b) in the case of a notice or other document sent by post—on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later, or
- (c) in the case of a notice or other document sent by facsimile transmission or some other form of electronic transmission—on the date it bears or the date on which the machine from which the transmission was sent produces a report indicating that the notice or other document was sent to the facsimile or other number of the addressee, whichever is the later.

25 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

26 Double jeopardy

If an act or omission constitutes an offence:

- (a) under this Act or the regulations, and
- (b) under another law of this jurisdiction or a law of another jurisdiction,

and the offender has been punished in relation to the offence under a law mentioned in paragraph (b), the offender is not liable to be punished in relation to the offence under this Act or the regulations.

27 Aiding, abetting and attempts

- (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly concerned in or a party to, the commission of an offence against this Act or the regulations is taken to have committed the offence and is liable to the penalty for the offence.
- (2) A person who attempts to commit an offence against this Act or the regulations commits an offence and is punishable as if the attempted offence had been committed.

28 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each officer of the corporation is taken to have contravened the same provision if the officer knowingly authorised or permitted the contravention.
- (2) An officer of a corporation may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
- (4) In this section, **officer** means a director of the corporation or a person who is otherwise concerned in its management.

29 Limitation

Despite anything in any Act, proceedings for an offence against this Act or the regulations may be brought within the period of 3 years after the commission of the offence or, with the consent of the Attorney General, at any later time.

30 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

31 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 31)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of:
the Farm Debt Mediation Amendment Act 1996,
the Farm Debt Mediation Amendment Act 1998.
the Farm Debt Mediation Amendment Act 2002
the National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Act 2004

the *Farm Debt Mediation Amendment (Water Access Licences) Act 2005*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Certificates under section 11

- (1) A certificate under section 11 that was issued earlier than 3 years before the amendments made to that section by the *Farm Debt Mediation Amendment Act 1996* took effect is of no force or effect, and any other certificate under that section expires as provided by section 11 (5).
- (2) Section 11 (1A) and (1B) apply to the issue of a certificate under section 11 regardless of whether application was made for the certificate before or after the commencement of those subsections. Those subsections do not, however, operate to invalidate a certificate that was issued before their commencement.

3 Conduct of mediation sessions

The amendment made to section 17 by the *Farm Debt Mediation Amendment Act 1996* has no effect in relation to mediation sessions that commenced before that amendment took effect.

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.
- (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.

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.

7 Application of amendments

- (1) The amendments made by the *Farm Debt Mediation Amendment Act 2002* extend to a default by a farmer before commencement of this clause if:
 - (a) no notice under section 8 of this Act has been given to the farmer before the date in relation to the default, and
 - (b) the default is under a farm mortgage in relation to which no certificate under section 11 is in force.
- (2) The amendments made by the *Farm Debt Mediation Amendment Act 2002* do not extend to a mediation that commenced before the commencement of this clause.

8 Application of 2004 amending Act

- (1) In this clause, the **2004 amending Act** means the *National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Act 2004*.
- (2) Section 11(3) continues to apply to the farmer and the creditor under a farm mortgage in respect of which the Authority had, before the repeal of that subsection by the 2004 amending Act, failed to issue a certificate under section 11 as if that subsection had not been repealed.
- (3) An application to the Administrative Decisions Tribunal that has been made under section 29A before the repeal of that section by the 2004 amending Act is to be heard and determined, and the decision of the Administrative Decisions Tribunal on the application is to be given effect to, as if that section had not been repealed.

Explanatory note

The *Farm Debt Mediation Act 1994* prohibits the creditor under a farm debt from taking enforcement action in relation to the associated farm mortgage without first giving the farmer an opportunity to seek mediation of the matters giving rise to the creditor's right to take such action.

Section 11 of the Act allows the Rural Assistance Authority to issue a certificate to the creditor to the effect that the Act does not apply to the farm mortgage. Section 11(3) provides that, if the Authority fails to issue such a certificate because it is not satisfied that the creditor has attempted to mediate in good faith, the creditor is prohibited from attempting further mediation, and therefore from enforcing the farm debt, for the next 12 months. **Schedule 5 [1]** omits section 11(3). Proposed clause 8(2) of Schedule 1 (to be inserted by **Schedule 5 [4]**) continues the effect of section 11(3) with respect to past decisions of the Authority to refuse a certificate.

Section 29A of the Act confers on the farmer and the creditor a right to apply to the Administrative Decisions Tribunal for a review of a decision by the Rural Assistance Authority with respect to a certificate under section 9B or 11 of the Act and on mediators the right to apply to the Tribunal for a review of the Authority's decision to refuse or withdraw accreditation under section 12 of the Act. **Schedule 5 [2]** omits section 29A. Proposed clause 8 (3) of Schedule 1 (to be inserted by **Schedule 5 [4]**) allows existing applications to the Tribunal to be dealt with, and the Tribunal's decision on such an application to be given effect to.

Schedule 5 [3] amends clause 1 of Schedule 1 to the Act to enable the regulations under the Act to make further provisions of a savings or transitional nature.

9 Application of 2005 amending Act

- (1) In this clause, **the 2005 amending Act** means the *Farm Debt Mediation Amendment (Water Access Licences) Act 2005*.
- (2) The amendments made by the 2005 amending Act extend to a farm mortgage involving an interest in, or power over, an access licence (within the meaning of the *Water Management Act 2000*) that was entered into before the commencement of the 2005 amending Act, even if the farmer is in default under the farm mortgage before the commencement of the 2005 amending Act.
- (3) However, the amendments made by the 2005 amending Act do not affect any enforcement action commenced before the commencement of the 2005 amending Act.

Notes

The following abbreviations are used in the tables of Acts and amendments:

Am	amended	pp	pages
cl	clause	Rep	repealed

cll	clauses	Sch	Schedule
Div	Division	Sec	section
GG	Government Gazette	Secs	sections
Ins	inserted	Subdiv	Subdivision
No	number	Subst	substituted
p	page		

Table of Acts

Farm Debt Mediation Act 1994 No 91. Assented to 12.12.1994. Date of commencement, 2 months after assent, sec 2. This Act has been amended as follows:

1996 No 106 Farm Debt Mediation Amendment Act 1996. Assented to 2.12.1996.

Date of commencement of Sch 1 [1]-[9], 2.5.1997, sec 2 (1) and GG No 47 of 2.5.1997, p 2429; date of commencement of Sch 1 [10], assent, sec 2 (2).

1998 No 14 Farm Debt Mediation Amendment Act 1998. Assented to 1.6.1998.

Date of commencement, 3.8.1998, sec 2 and GG No 115 of 31.7.1998, p 5746.

2001 No 34 Corporations (Consequential Amendments) Act 2001. Assented to 28.6.2001.

Date of commencement of Sch 4.18, 15.7.2001, sec 2 (1) and Commonwealth Gazette No S 285 of 13.7.2001.