

TASMANIA

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**FARM DEBT MEDIATION BILL 2024**

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**CONTENTS**

**PART 1 – PRELIMINARY**

1. Short title
2. Commencement
3. Object of Act
4. Act binds Crown
5. Interpretation
6. Mediation
7. Farming operation

**PART 2 – APPLICATION OF ACT**

8. Application of Act
9. Relationship of Act with other laws
10. Contracting out of Act prohibited

**PART 3 – FARM DEBT MEDIATION COMMISSIONER**

11. Appointment of Farm Debt Mediation Commissioner
12. Commissioner's functions and powers generally
13. Delegation

## **PART 4 – ENFORCEMENT ACTIONS IN RESPECT OF FARM MORTGAGES**

### ***Division 1 – Exemption certificates***

14. Creditor must obtain exemption certificate before taking enforcement action
15. Application for exemption certificate
16. Determination of application for exemption certificate
17. Duration of exemption certificate

### ***Division 2 – Prohibition certificate prohibiting Creditor from taking enforcement action***

18. Application for prohibition certificate
19. Determination of application for prohibition certificate
20. Prohibition certificate not to be issued while exemption certificate in force
21. Duration of prohibition certificate

## **PART 5 – MEDIATION**

### ***Division 1 – Mediators***

22. Accreditation of mediators
23. Functions of mediators

### ***Division 2 – Creditors or farmers may initiate mediation***

24. Creditor-initiated mediation
25. Farmer-initiated mediation

### ***Division 3 – Mediation procedure***

26. Farmer to nominate mediator
27. Requests for information
28. Conduct of mediations
29. Mediation to be held in private
30. Confidentiality of mediation
31. Disclosure of information
32. Representation and assistance during mediation
33. Costs of mediation

***Division 4 – Mediation agreements***

- 34. Draft mediation agreements
- 35. Mediation agreements
- 36. Cooling-off period for mediation agreements
- 37. Rights during cooling-off period
- 38. Implementing mediation agreement
- 39. Summary of mediation

**PART 6 – REVIEW OF ADMINISTRATIVE DECISIONS**

- 40. Interpretation
- 41. Review of decisions of Commissioner
- 42. Stay of reviewable decisions

**PART 7 – MISCELLANEOUS**

- 43. Regulations
- 44. Administration of Act



# **FARM DEBT MEDIATION BILL 2024**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

LAURA ROSS, *Clerk of the House*  
6 August 2024

*(Brought in by the Minister for Small Business and Consumer Affairs, the Honourable Madeleine Ruth Ogilvie)*

## **A BILL FOR**

### **An Act to make provision for mediation concerning farm debts and for other related purposes**

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Farm Debt Mediation Act 2024*.

### **2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 3

Part 1 – Preliminary

---

**3. Object of Act**

The object of this Act is to provide for the efficient and equitable resolution of matters involving farm debts by requiring mediation before a Creditor can take possession of property or other enforcement action under a farm mortgage.

**4. Act binds Crown**

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

**5. Interpretation**

(1) In this Act –

*approved form* means a form approved by the Commissioner;

*business day* means a day that is not –

- (a) a Saturday or Sunday; or
- (b) a statutory holiday within the meaning of the *Statutory Holidays Act 2000*;

*Commissioner* means the Farm Debt Mediation Commissioner appointed under section 11(1);

*cooling-off period*, in relation to a draft mediation agreement or a mediation

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

Part 1 – Preliminary

s. 5

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agreement, means the cooling-off period specified in section 36(2);

***cooling-off period statement*** means a statement, in an approved form, specifying the cooling-off period;

***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;

***draft mediation agreement*** means a draft mediation agreement prepared in accordance with section 34;

***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 Part 4 of this Act; or
- (b) the enforcement of a judgment that was obtained before the

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 5

Part 1 – Preliminary

---

commencement of Part 4 of this Act;

***exemption certificate*** means a certificate that is issued and is in force in accordance with section 16;

***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;

***farmer*** means a person (whether an individual person or a corporation) who is solely or principally engaged in a farming operation and includes –

- (a) a person who owns land cultivated under a share-farming agreement; and
- (b) the personal representatives of a deceased farmer;

***farming operation*** – see section 7;

***farm machinery*** means any of the following things that are commonly used for the purposes of a farming operation:

- (a) a vehicle, machine or other implement;
- (b) any other thing of a prescribed class;



*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

Part 1 – Preliminary

s. 5

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***farm mortgage*** includes any interest in, or power over, any farm property securing obligations of the farmer, whether as a debtor or guarantor, including –

- (a) any interest in, or power arising from, a hire purchase agreement relating to farm machinery; and
- (b) any stock mortgage or any crop or wool lien; and
- (c) 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) a licence, or a water allocation, within the meaning of the *Water Management Act 1999*, that is held by a farmer in connection with a farming operation;

***function*** includes a power, authority or duty;

***hire purchase agreement*** means an agreement –

- (a) for the letting of goods with an option to purchase the goods; or

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 5

Part 1 – Preliminary

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- (b) for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise) –

but does not include any agreement by which the property in the goods comprised in the agreement passes at the time of the agreement or on or at any time before the delivery of the goods;

***mediation*** – see section 6;

***mediation agreement*** means a mediation agreement in accordance with section 35;

***mediation request*** means a request inviting a Creditor to participate in mediation that is given to the Creditor by a farmer in accordance with section 25(1);

***mediator*** means a person accredited, or reaccredited, as a mediator in accordance with section 22;

***notice inviting mediation*** means a notice inviting a farmer to participate in mediation that is given to the farmer by a Creditor in accordance with section 24(1);

***parties***, in relation to mediation, means any of the following persons who are participants in the mediation:

- (a) a farmer;

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

Part 1 – Preliminary

s. 5

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- (b) a Creditor;
  - (c) an agent approved to represent a farmer or Creditor in the mediation in accordance with section 32;
  - (d) an advisor who is present at the mediation in accordance with section 32(7);

***prohibition certificate*** means a certificate that is issued and in force in accordance with section 19;

***statutory enforcement notice*** means –

- (a) a notice given, or left, in accordance with section 77(1) of the *Land Titles Act 1980*; or
- (b) a notice served or published under section 22 of the *Conveyancing and Law of Property Act 1884*; or
- (c) a notice, under any Act, that is prescribed for the purposes of this definition.

(2) For the purposes of this Act, ***satisfactory mediation*** means a mediation that –

- (a) has achieved a resolution of a matter involving a farm debt; or
- (b) has proceeded as far as it reasonably can in attempting to achieve a resolution of a

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 6

Part 1 – Preliminary

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matter involving a farm debt but has nevertheless failed to resolve the matter;  
or

- (c) is prescribed, or is within a class of mediations prescribed, for the purposes of this subsection to be a satisfactory mediation.

## **6. Mediation**

- (1) Mediation is a structured negotiation process in which a mediator, as a neutral and independent party, assists the parties in the process –
  - (a) to communicate effectively with each other; and
  - (b) to reach agreement on the issues in dispute; and
  - (c) to achieve their own resolution of the dispute.
- (2) The regulations may prescribe that any process of a specified kind is, or is not, mediation for the purposes of this Act.

## **7. Farming operation**

- (1) A farming operation is a business undertaking that primarily involves one or more of the following activities:
  - (a) agriculture (for example, crop growing and livestock or grain farming);

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

Part 1 – Preliminary

s. 7

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- (b) aquaculture;
  - (c) the cultivation or harvesting of timber or native vegetation;
  - (d) any activity involving primary production carried out in connection with an activity referred to in paragraph (a), (b) or (c).
- (2) A farming operation does not include a business undertaking that primarily involves wild harvest fishing or the hunting or trapping of animals, birds or reptiles in the wild.
- (3) The regulations may prescribe that any business undertaking of a specified kind is, or is not, a farming operation for the purposes of this Act.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 8

Part 2 – Application of Act

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**PART 2 – APPLICATION OF ACT**

**8. Application of Act**

- (1) Subject to subsections (2) and (3), 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 that is an externally administered corporation within the meaning of the Corporations Act.
- (3) This Act does not apply in respect of a farm debt secured by a farm mortgage if –
  - (a) the farmer is in default under the farm mortgage; and
  - (b) the farm mortgage secures all or part of the balance outstanding under an earlier farm mortgage; and
  - (c) the farmer and the Creditor have previously entered into a mediation

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

Part 2 – Application of Act

s. 9

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agreement under this Act in relation to the farm debt.

**9. Relationship of Act with other laws**

- (1) Nothing in this Act affects the operation of any other Act 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) Except as otherwise expressly provided by this Act, this Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- (4) Other than as provided in this section, this Act has effect despite any other Act.

**10. Contracting out of Act 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 section) is void to the extent that it purports to exclude, modify or limit the application of a provision of this Act.
- (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

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

**s. 10**

Part 2 – Application of Act

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section) is void to the extent that it purports to have a farmer (whether as debtor or guarantor) or a guarantor indemnify a Creditor for any loss or liability arising under this Act.

- (3) A Creditor who is a party to an agreement, or other instrument, referred to in subsection (1) or (2) is guilty of an offence.

Penalty: Fine not exceeding 60 penalty units.



*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

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**PART 3 – FARM DEBT MEDIATION COMMISSIONER**

**11. Appointment of Farm Debt Mediation Commissioner**

- (1) The Minister is to appoint a State Service officer, or State Service employee, as the Farm Debt Mediation Commissioner.
- (2) For the avoidance of doubt, a person appointed as Commissioner may hold that office in conjunction with State Service employment.

**12. Commissioner's functions and powers generally**

- (1) The functions of the Commissioner include –
  - (a) functions relating to enforcement actions in respect of farm mortgages in accordance with Part 4; and
  - (b) the functions assigned to, or conferred or imposed on, the Commissioner under this Act or any other Act; and
  - (c) the ability to do all things necessary or convenient to be done in connection with a matter under this Act.
- (2) The Commissioner has the power to do all things necessary or convenient to be done in connection with, or incidental to, the performance of the Commissioner's functions.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 13

Part 3 – Farm Debt Mediation Commissioner

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**13. Delegation**

The Commissioner may delegate a function or power of the Commissioner under this Act, other than this power of delegation, to a State Service employee or State Service officer.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

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**PART 4 – ENFORCEMENT ACTIONS IN RESPECT OF  
FARM MORTGAGES**

*Division 1 – Exemption certificates*

**14. Creditor must obtain exemption certificate before taking enforcement action**

- (1) A Creditor must not take an enforcement action in respect of a farm mortgage unless an exemption certificate –
  - (a) is granted to the Creditor; and
  - (b) is in force in respect of the relevant farm debt.

Penalty: In the case of –

- (a) a corporation, a fine not exceeding 1 500 penalty units; or
  - (b) an individual, a fine not exceeding 300 penalty units.
- (2) An enforcement action taken by a Creditor in respect of a farm debt in contravention of this Act is void.
- (3) This section does not invalidate a statutory enforcement notice or other process given, served or executed in order to fulfil a condition precedent to the taking of an enforcement action, but operates to prohibit the taking of the action concerned and the enforcement by a court or tribunal of any such notice or process.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 15

Part 4 – Enforcement Actions in Respect of Farm Mortgages

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- (4) Subsection (3) does not affect any proceedings authorised under section 17(5) to be continued and concluded after the expiry of an exemption certificate.

**15. Application for exemption certificate**

A Creditor under a farm mortgage may apply, in an approved form, to the Commissioner for an exemption certificate specifying that this Act does not apply to the farm mortgage.

**16. Determination of application for exemption certificate**

- (1) Subject to this section, the Commissioner is to determine an application for an exemption certificate made under section 15 –
- (a) by granting the application and issuing an exemption certificate, in an approved form, to the applicant; or
  - (b) by refusing the application.
- (2) For the purposes of subsection (1), the Commissioner must grant the application and issue an exemption certificate if –
- (a) the farmer is in default under the farm mortgage; and
  - (b) no prohibition certificate is in force in relation to the farm mortgage; and

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

- (c) the Commissioner is satisfied that there is at least one additional ground for granting the application that is referred to in subsection (3).
- (3) For the purposes of subsection (2)(c), each of the following is an additional ground for granting the application for an exemption certificate:
- (a) the farmer has, when in default, given a mediation request to the Creditor and satisfactory mediation has taken place following the request;
  - (b) the Creditor has given the farmer a notice inviting mediation and has attempted to mediate in good faith throughout the period of 3 months (or such longer period as has been agreed by the Creditor for the purposes of this section by notice in writing given to the farmer) commencing on the day on which the notice was given;
  - (c) the farmer has failed to respond to a notice inviting mediation within the period required by Part 5 (or within such longer period as the Commissioner considers is reasonable in the circumstances);
  - (d) the farmer has failed to take part in mediation in good faith or has unreasonably delayed entering into or proceeding with mediation in respect of the farm debt;

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

**s. 16**

Part 4 – Enforcement Actions in Respect of Farm Mortgages

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- (e) the farmer has indicated in writing to the Commissioner or to the Creditor that the farmer does not wish to enter into or proceed with mediation in respect of the farm debt.
- (4) Despite this section, the Commissioner may refuse to grant an application for an exemption certificate made under section 15 if satisfied that –
- (a) in the circumstances, the farmer is justified in declining to mediate; and
  - (b) the farmer intends to mediate within a period that is reasonable in the circumstances.
- (5) For the avoidance of doubt, the Commissioner may refuse to grant an application for an exemption certificate made under section 15 if a mediator cannot commence the mediation –
- (a) within a period of 3 months from the date on which the application is made under section 15; or
  - (b) within any other period that the Commissioner considers appropriate in the circumstances.
- (6) For the avoidance of doubt, 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.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

**17. Duration of exemption certificate**

- (1) Subject to subsection (2), (3) or (4), an exemption certificate takes effect on the date on which it is issued and remains in force until the date on which the effective period ends.
- (2) For the purposes of subsection (1), the effective period for an exemption certificate is –
  - (a) if satisfactory mediation in respect of the farm debt concerned has taken place, or the farmer has failed to take part in mediation in good faith – the period of 3 years commencing on the last date of the mediation; or
  - (b) if the farmer has indicated in writing that the farmer does not wish to enter into or proceed with mediation – the period of 3 years commencing on the date on which the indication was given to the Commissioner or Creditor; or
  - (c) if the farmer has failed to respond to a notice inviting mediation within the period of 20 business days (or any longer period allowed by the Commissioner for the purposes of determining the application for the exemption certificate) – the period of 3 years commencing immediately after the end of the period required or allowed for the response; or

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 18

Part 4 – Enforcement Actions in Respect of Farm Mortgages

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- (d) in any other case – the period of 3 years commencing on the date on which the certificate was issued.
- (3) An exemption certificate is not to be issued after the date on which it would, if issued, expire under subsection (1).
- (4) An exemption certificate is to specify the date on which it expires.
- (5) The expiry of an exemption certificate does not affect any proceedings for the 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 exemption certificate was in force, and any such proceedings may be continued and concluded as if the certificate were still in force.
- (6) The reference in subsection (5) 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.

***Division 2 – Prohibition certificate prohibiting Creditor from taking enforcement action***

**18. Application for prohibition certificate**

- (1) A farmer who is in default, and who has requested a Creditor to mediate in respect of the farm debt concerned, may apply to the



*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

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Commissioner for a certificate prohibiting the Creditor from taking enforcement action.

- (2) An application for a prohibition certificate under subsection (1) –
  - (a) may be made whether or not the farmer has been given a notice inviting mediation in respect of the farm debt; and
  - (b) is to be in an approved form.

**19. Determination of application for prohibition certificate**

- (1) Subject to this section and on receipt of an application for a prohibition certificate under section 18, the Commissioner is to determine the application –
  - (a) by granting the application and issuing a prohibition certificate, in an approved form, to the applicant; or
  - (b) by refusing the application.
- (2) For the purposes of subsection (1), the Commissioner must grant the application and issue a prohibition certificate if –
  - (a) the farmer is in default under the farm mortgage; and
  - (b) the farmer has given the Creditor a mediation request in respect of the farm debt concerned; and

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 19

Part 4 – Enforcement Actions in Respect of Farm Mortgages

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- (c) no exemption certificate is in force in relation to the farm mortgage; and
  - (d) the Commissioner is satisfied that there is at least one additional ground for granting the application that is referred to in subsection (3).
- (3) For the purposes of subsection (2)(d), each of the following is an additional ground for granting an application for a prohibition certificate:
- (a) the farmer has attempted to mediate in good faith throughout the period of 3 months commencing on the day on which the mediation request was given, but no satisfactory mediation has taken place;
  - (b) the Creditor has failed to respond to a mediation request in respect of the farm debt within the period required by Part 5 (or within such longer period as the Commissioner considers is reasonable in the circumstances);
  - (c) the Creditor has indicated in writing to the Commissioner or the farmer that the Creditor does not wish to enter into or proceed with mediation.
- (4) Despite this section, the Commissioner may refuse to grant an application made under section 18 where the Creditor has failed to respond to a mediation request if the Commissioner is satisfied that –

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

- 
- (a) the Creditor’s failure to respond is justified in the circumstances; and
  - (b) the Creditor intends to mediate within a period that is reasonable in the circumstances.
- (5) For the avoidance of doubt, the Commissioner may refuse to grant an application made under section 18 if a mediator cannot commence the mediation –
- (a) within a period of 3 months from the date on which the application is made under section 18; or
  - (b) within any other period that the Commissioner considers appropriate in the circumstances.

**20. Prohibition certificate not to be issued while exemption certificate in force**

Despite this Division, a prohibition certificate cannot be issued by the Commissioner in relation to a farm mortgage while an exemption certificate is in force in relation to the farm mortgage.

**21. Duration of prohibition certificate**

A prohibition certificate takes effect on the date on which it is issued and remains in force for a period of 6 months.

**PART 5 – MEDIATION**

*Division 1 – Mediators*

**22. Accreditation of mediators**

- (1) On the application of a person, in an approved form, or on the Commissioner’s own initiative, the Commissioner may accredit or reaccredit any number of persons that the Commissioner considers appropriate to act as mediators for the purposes of this Act.
- (2) In determining whether or not to accredit or reaccredit a person as a mediator under subsection (1), the Commissioner may take into account any matter that the Commissioner considers appropriate, including, but not limited to, the following matters:
  - (a) whether or not the person is a suitable person to be accredited or reaccredited as a mediator;
  - (b) whether or not the person holds the qualifications, skills, knowledge and experience to perform the functions of a mediator.
- (3) An accreditation or reaccreditation under subsection (1) may be –
  - (a) subject to any terms and conditions that the Commissioner considers appropriate; and

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

Part 5 – Mediation

s. 23

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- (b) for any period that the Commissioner determines.
- (4) The Commissioner may suspend or revoke the accreditation or reaccreditation of a person as a mediator under subsection (1), if –
  - (a) the Commissioner is no longer satisfied that the person –
    - (i) is a suitable person to be accredited or reaccredited as a mediator; or
    - (ii) holds the qualifications, skills, knowledge and experience to perform the functions of a mediator; or
  - (b) the person has failed to comply with a term or condition of that person’s accreditation or reaccreditation.

**23. Functions of mediators**

- (1) Subject to subsection (2), a mediator has the following functions:
  - (a) to resolve, or attempt to resolve, by mediation matters relating to the present arrangements, and future conduct, of financial relations between a farmer and a Creditor involving a farm debt;
  - (b) such other functions as are conferred or imposed on the mediator by or under this or any other Act.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 24

Part 5 – Mediation

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- (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.
- (3) A mediator is not civilly or criminally liable in respect of the performance, in good faith, of the functions of a mediator.

*Division 2 – Creditors or farmers may initiate mediation*

**24. Creditor-initiated mediation**

- (1) A Creditor under a farm mortgage may give a farmer who is in default under the farm mortgage a notice inviting the farmer to participate in mediation in respect of the farm debt concerned.
- (2) A notice inviting mediation under subsection (1) –
  - (a) is to be in an approved form; and
  - (b) must specify that a failure by the farmer to respond to the notice, within the period specified in subsection (3), may constitute a ground for the grant of an exemption certificate.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

Part 5 – Mediation

s. 25

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- (3) A farmer must respond, in an approved form, to a notice inviting mediation within 20 business days after receiving the notice.

**25. Farmer-initiated mediation**

- (1) A farmer who owes money to a Creditor under a farm mortgage may make a request to the Creditor inviting the Creditor to participate in mediation in respect of the farm debt concerned.
- (2) A mediation request under subsection (1) –
- (a) is to be in an approved form; and
  - (b) must specify that a failure by the Creditor to respond to the request, within the period specified in subsection (3), may constitute a ground for the grant of a prohibition certificate; and
  - (c) may be made whether or not the farmer is in default under the farm mortgage; and
  - (d) may not be made if the Creditor has given the farmer a notice inviting mediation in respect of the farm debt.
- (3) A Creditor must respond, in an approved form, to a mediation request within 20 business days after receiving the request.

***Division 3 – Mediation procedure***

**26. Farmer to nominate mediator**

- (1) If a farmer and Creditor agree to participate in mediation in respect of a farm debt, the farmer must nominate a mediator.
- (2) A Creditor may not nominate a mediator but must accept or reject the mediator nominated by a farmer under subsection (1).
- (3) If a Creditor rejects the mediator nominated by a farmer under subsection (1) –
  - (a) the rejected mediator cannot mediate between the farmer and the Creditor; and
  - (b) the farmer must nominate a panel of at least 3 other mediators; and
  - (c) the Creditor must choose, from the panel of mediators nominated under paragraph (b), one mediator to mediate between the farmer and the Creditor.

**27. Requests for information**

- (1) For the purpose of assisting a farmer and Creditor to participate in mediation, a mediator may facilitate an exchange of information between the farmer and Creditor.
- (2) If a farmer requests information from a Creditor for the purposes of mediation, the farmer must



*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

Part 5 – Mediation

s. 28

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first provide the mediator with a copy of the request.

- (3) If a Creditor requests information from a farmer for the purposes of mediation, the Creditor must first provide the mediator with a copy of the request.
- (4) In preparing a summary of a mediation under section 39, a mediator is to have regard to whether any request for information made by a farmer under subsection (2), or by a Creditor under subsection (3), was reasonable, and whether information was provided in response to the request within a reasonable period.
- (5) Subsection (4) does not limit the matters to which the mediator is to have regard in preparing a summary of a mediation under section 39.

**28. Conduct of mediations**

- (1) Subject to this section, the Commissioner is to determine the procedure for commencing and conducting a mediation session.
- (2) A mediation session is to be conducted with as little formality and technicality, and with as much expedition, as possible.
- (3) 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

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 28

Part 5 – Mediation

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- disadvantaged because of the length of the mediation; and
- (c) adjourn or terminate a mediation session if it appears that continuing to conduct the mediation would not be appropriate.
- (4) In determining whether it would be appropriate to continue to conduct a mediation session under subsection (3)(c), the mediator is to consider the following matters:
- (a) the duration of the mediation session;
  - (b) whether the parties are able and willing to participate in the mediation;
  - (c) whether the parties are engaging in the mediation session in good faith;
  - (d) any risk to the health or safety of the parties that may result if the mediation is continued;
  - (e) any other matters that, in the opinion of the mediator, are relevant in the circumstances.
- (5) Subject to subsection (6), a mediation session is to be conducted at a place and time, and in a manner, that is reasonably convenient for the parties.
- (6) For the avoidance of doubt, a reference under this section –

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

Part 5 – Mediation

s. 29

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- (a) to a place at which a mediation session is to be conducted includes a mediation conducted electronically; and
  - (b) to a party participating or being present in a mediation session includes the party participating or being present in a mediation electronically; and
  - (c) to conducting a mediation session includes conducting a mediation electronically.
- (7) The rules of evidence do not apply to a mediation session.

**29. Mediation to be held in private**

A mediation session is not to be open to the public.

**30. Confidentiality of mediation**

- (1) 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.
- (2) Subject to this section, evidence of anything said or admitted during a mediation session and a document prepared for the purposes of, or 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.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 31

Part 5 – Mediation

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- (3) This section does not apply to the following documents:
- (a) a mediation agreement;
  - (b) a contract, deed, mortgage or other instrument entered into as a result of, or pursuant to, a mediation agreement;
  - (c) a summary of a mediation under section 39.
- (4) This section does not apply to proceedings commenced in respect of any act or omission in connection with which information has been disclosed on the basis of preventing or minimising the danger of injury to any person or damage to any property.

**31. Disclosure of information**

A person must not disclose 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 to any person, agency, organisation or other body and, with the consent of the party, for the

purpose of aiding in the resolution of an issue between the parties; or

- (d) to prevent or minimise the danger of injury to any person or damage to any property; or
- (e) 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
- (f) with other lawful excuse.

Penalty: Fine not exceeding 60 penalty units

### **32. Representation and assistance during mediation**

- (1) Parties to a mediation are not entitled to be represented by an agent at the mediation unless the representation by the agent is approved by the mediator.
- (2) A mediator may only approve representation by an agent, who may or may not be an Australian legal practitioner, at a mediation under subsection (1) if the mediator is satisfied 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.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 32

Part 5 – Mediation

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- (3) An approval by a mediator under subsection (1) may be given subject to any conditions that the mediator considers reasonable to ensure that the other party to the mediation is not substantially disadvantaged by the agent appearing at the mediation.
- (4) An agent approved by a mediator under subsection (1) must comply with any conditions placed under subsection (3) on the appearance of the agent at the mediation.
- (5) An agent, approved by a mediator under subsection (1), must not attend a mediation unless the agent has been given a written authority, by the farmer or the Creditor that the agent represents, authorising the agent to enter into a mediation agreement.
- (6) 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.
- (7) Despite this section, a farmer who is a party to a mediation is entitled to have an advisor, who may or may not be an Australian legal practitioner, present at the mediation and the farmer is entitled to call upon that advisor for advice and counsel during the mediation.
- (8) A contravention of this section does not invalidate a mediation.

**33. Costs of mediation**

- (1) Subject to subsection (2), all parties to a mediation are to pay –
  - (a) unless otherwise agreed to in writing by the parties to the mediation, an equal share of any fee charged by the mediator for the mediation; and
  - (b) their own costs and expenses associated with participating in the mediation.
- (2) A party to a mediation is to pay the whole of the mediator’s fees for the mediation, and all costs associated with the attendance by another party to an additional mediation session, if –
  - (a) the party fails to give a written authority, in accordance with section 32(5), to an Australian legal practitioner, or agent, to represent the party; and
  - (b) as a result of failing to give that written authority, more than one mediation session is required.
- (3) The Commissioner is not liable for any of the fees, costs or expenses of or associated with mediation for the purposes of this Act.

***Division 4 – Mediation agreements***

**34. Draft mediation agreements**

- (1) Subject to subsection (2), if a mediator is satisfied that the parties to a mediation have

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 35

Part 5 – Mediation

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agreed, or are about to agree, on an issue between them, the mediator must personally prepare for the consideration of the parties a draft mediation agreement setting out the main points of agreement on the issue.

- (2) A draft mediation agreement prepared under subsection (1) must include a cooling-off period statement.

**35. Mediation agreements**

- (1) Subject to subsection (2), if the parties to a mediation are satisfied that a draft mediation agreement sets out the main points agreed on by the parties during, or within 24 hours after the end of, the mediation, the parties may enter into a mediation agreement by signing the draft mediation agreement.
- (2) A mediation agreement entered into under subsection (1) must include a cooling-off period statement.
- (3) A mediation agreement is binding on the parties to the agreement.
- (4) A mediation agreement may be varied or replaced by a further mediation agreement in writing between the parties to the agreement.
- (5) A minor defect or minor technical irregularity in a mediation agreement does not invalidate the agreement.



**36. Cooling-off period for mediation agreements**

- (1) Subject to subsection (2), a cooling-off period applies to all mediation agreements.
- (2) The cooling-off period that applies to a mediation agreement expires –
  - (a) if a cooling-off period statement was included in the draft mediation agreement – at 5 p.m. on the 10th business day after the day on which the mediation agreement was entered into; or
  - (b) if a cooling-off period statement was not included in the draft mediation agreement – at 5 p.m. on the 10th business day after the day on which a cooling-off period statement is given to a farmer by a Creditor.
- (3) The Commissioner is not to issue an exemption certificate to a Creditor on the ground that satisfactory mediation in respect of a farm debt has taken place if –
  - (a) a mediation agreement is in force in relation to the farm debt; and
  - (b) the cooling-off period has not expired.

**37. Rights during cooling-off period**

- (1) A farmer may, during a cooling-off period, serve a written notice on the Creditor or the Creditor's Australian legal practitioner to the effect that the

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 38

Part 5 – Mediation

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farmer rescinds the mediation agreement subject to the cooling-off period.

- (2) A notice of rescission under subsection (1) must be signed by the farmer or the farmer's Australian legal practitioner.
- (3) On service of a notice of rescission signed in accordance with this section, the mediation agreement is taken to be rescinded *ab initio*.
- (4) If rescission of a mediation agreement occurs in accordance with this section, 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 mediation agreement.
- (5) This section and section 36 do not affect any right or remedy available otherwise than under this section or section 36.
- (6) A Creditor may not make a claim under subsection (4) if the only basis of the claim is the rescission of the mediation agreement under this section.

**38. Implementing mediation agreement**

A Creditor who is a party to any contract, deed, mortgage or other instrument which purportedly results from, or is pursuant to, a mediation agreement between the Creditor and a farmer, but which fails to reflect the relevant mediation agreement, is guilty of an offence.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

Part 5 – Mediation

s. 39

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Penalty: Fine not exceeding 60 penalty units.

**39. Summary of mediation**

On conclusion of a mediation, a mediator must complete an approved form setting out a summary of the conduct and results of the mediation (including any mediation agreement entered into by the parties to the mediation).

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 40

Part 6 – Review of Administrative Decisions

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**PART 6 – REVIEW OF ADMINISTRATIVE DECISIONS**

**40. Interpretation**

In this Part –

*aggrieved person* means –

- (a) in relation to a decision about the grant or refusal of a prohibition certificate or an exemption certificate – the farmer or guarantor whose obligations are secured by the farm mortgage concerned, or the Creditor; or
- (b) in relation to a decision about accreditation or reaccreditation of a mediator – the mediator;

*application* means an application, for a review of a decision, made in accordance with section 41(1).

**41. Review of decisions of Commissioner**

- (1) An aggrieved person may apply to the Minister for a review of any of the following decisions:
  - (a) a decision to grant, or to refuse to grant, a prohibition certificate;
  - (b) a decision to grant, or to refuse to grant, an exemption certificate;

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

- (c) a decision to accredit or reaccredit, or to refuse to accredit or reaccredit, a person as a mediator;
  - (d) a decision to suspend or revoke the accreditation of a mediator.
- (2) An application must –
  - (a) be in an approved form; and
  - (b) be lodged with the Minister within 20 business days (or such longer period as the Minister may allow) after the person was notified of the making of the decision concerned; and
  - (c) comply with such other requirements as may be prescribed by the regulations.
- (3) In considering an application, the Minister –
  - (a) may invite any person who, in the opinion of the Minister, may be affected by the outcome of the review to submit material for consideration; and
  - (b) is to consider any relevant material submitted by the applicant and any relevant material submitted by any other person in accordance with paragraph (a).
- (4) In determining an application, the Minister may –
  - (a) affirm the decision; or
  - (b) vary the decision; or

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 41

Part 6 – Review of Administrative Decisions

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- (c) set aside the decision and make a decision in substitution for the decision that is set aside.
- (5) In determining an application, the Minister may exercise the same powers under this Act, or any other law, that the Commissioner had in making the decision that is the subject of the review.
- (6) The Minister is to give notification of the Minister's decision in respect of an application to –
  - (a) the applicant; and
  - (b) if the review relates to a decision about the grant or refusal of a prohibition certificate or an exemption certificate – the farmer or Creditor, or any guarantor, under the farm mortgage concerned who is not the applicant for the review; and
  - (c) the Commissioner.
- (7) A notification under subsection (6) is to include a statement of reasons for the decision.
- (8) The Minister is to determine an application within 30 business days after the application is made, but a determination is not invalid because it is made after the expiration of that period.
- (9) The Minister may delegate a function or power of the Minister under this section, other than this power of delegation.

**42. Stay of reviewable decisions**

- (1) An application for a review of a decision to grant an exemption certificate operates to stay the decision until the applicant is notified of the Minister’s decision in respect of the application.
- (2) If an application is made for a review of a decision to refuse to grant a prohibition certificate, the Creditor must not take enforcement action in respect of the farm mortgage concerned until the Creditor is notified of the Minister’s decision in respect of the application.
- (3) An application for a review of any of the following decisions does not operate to stay the decision:
  - (a) a decision to grant a prohibition certificate;
  - (b) a decision to refuse an exemption certificate;
  - (c) a decision to accredit or reaccredit, or to refuse to accredit or reaccredit, a person as a mediator;
  - (d) a decision to suspend or revoke the accreditation of a mediator.

*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

s. 43

Part 7 – Miscellaneous

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**PART 7 – MISCELLANEOUS**

**43. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to matters, limitations, or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
  - (a) provide that a contravention of any of the regulations is an offence; and
  - (b) in respect of such an offence provide for the imposition of a fine not exceeding 50 penalty units, and in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

**44. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Small Business and Consumer Affairs; and
- (b) the department responsible to the Minister in relation to the administration



*Farm Debt Mediation Act 2024*  
*Act No. of 2024*

Part 7 – Miscellaneous

**s. 44**

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of this Act is the Department of State  
Growth.