

Queensland



**CREDIT (RURAL FINANCE)
BILL 1996**

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CREDIT (RURAL FINANCE) BILL 1996

TABLE OF PROVISIONS

| Section | | Page |
|-------------------------------|---|------|
| PART 1—PRELIMINARY | | |
| 1 | Short title | 4 |
| 2 | Commencement | 4 |
| 3 | Definitions and dictionary | 4 |
| 4 | Purpose of Act | 4 |
| 5 | Application of Act | 5 |
| 6 | Courts with jurisdiction under this Act | 5 |
| PART 2—DEFAULT NOTICE | | |
| 7 | Mortgagee must give default notice | 6 |
| 8 | Requirements for default notice | 6 |
| 9 | Exception to s 7—further default during notice period | 7 |
| 10 | Exception to s 7—taking possession to protect equipment | 7 |
| 11 | Other exceptions to s 7 | 8 |
| 12 | Onus on mortgagee to show s 7 does not apply | 8 |
| PART 3—RELIEVING ORDER | | |
| 13 | Mortgagor may apply for a relieving order | 8 |
| 14 | Notice of application | 9 |
| 15 | Effect of serving notice of application | 9 |
| 16 | Court may make relieving order | 10 |
| 17 | Compliance with relieving order | 11 |
| PART 4—MISCELLANEOUS | | |
| 18 | Compensation for noncompliance by mortgagee | 11 |
| 19 | This Act in addition to other laws | 11 |
| 20 | Contracting out | 12 |

Credit (Rural Finance)

| | | |
|----|--|----|
| 21 | Service of notices on each mortgagee, mortgagor or guarantor | 12 |
| 22 | Approval of forms | 12 |
| 23 | Regulation-making power | 12 |
| | SCHEDULE | 13 |
| | DICTIONARY | |

1996

A BILL

FOR

**An Act to give some protection to farmers against the enforcement of
mortgages over equipment used for farming**

The Parliament of Queensland enacts—

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PART 1—PRELIMINARY

2

Short title

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1. This Act may be cited as the *Credit (Rural Finance) Act 1996*.

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Commencement

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2. This Act commences on a day to be fixed by proclamation.

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Definitions and dictionary

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3. The dictionary¹ in the schedule defines particular words used in this Act.

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Purpose of Act

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4.(1) The purpose of this Act is to provide some protection to farmers against the enforcement of mortgages over equipment they use to carry out their farming businesses.

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(2) The purpose is to be achieved mainly by providing for—

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(a) a mortgagee to give at least 30 days notice before exercising a

15

¹ In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the legislation—*Acts Interpretation Act 1954*, section 14(4).

Words defined elsewhere in this Act are generally signposted by entries in the dictionary. However, if a section has a definition that only applies to the section, or a part of the section, it is generally not signposted by an entry in the dictionary and is generally set out in the last subsection of the section.

Signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the definitions can be found. For example, the definition ‘**“relieving order”** see section 16(3).’ tells the reader there is a definition of the term “relieving order” in section 16(3).

right to take possession of, or sell, farm equipment; and 1

- (b) the court to make an order allowing a farmer to keep possession 2
of equipment, for up to 1 year, if the equipment is used to carry 3
out the farmer’s farming business and the court considers, among 4
other things, that the farmer has a reasonable prospect of being 5
able to remedy any default. 6

Application of Act 7

5.(1) This Act applies to all persons including the State and, so far as the 8
legislative power of the State permits, the Commonwealth and the other 9
States. 10

(2) However, this Act applies in relation to a mortgage only if the 11
mortgagor (or, if there is more than 1, each mortgagor) is an individual. 12

(3) Also— 13

- (a) part 2 does not apply in relation to a mortgage to which the 14
Consumer Credit (Queensland) Code applies;² and 15
- (b) this Act does not apply in relation to a mortgage to which the 16
Credit Act 1987 applies. 17

Courts with jurisdiction under this Act 18

6.(1) The jurisdiction expressed to be exercisable by the court under this 19
Act in relation to a mortgage is exercisable by— 20

- (a) if proceedings in relation to the mortgage have been started in, or 21
are before, a court—that court; or 22
- (b) otherwise—the court whose monetary jurisdiction is not exceeded 23
by the amount payable under the mortgage when the proceeding 24
concerned is started in the court. 25

(2) In this section— 26

“**court**” includes a small claims tribunal. 27

² See the Consumer Credit (Queensland) Code, section 8 (Mortgages to which this Code applies).

PART 2—DEFAULT NOTICE**Mortgagee must give default notice**

7.(1) This section applies if a mortgagee has a right under a mortgage over farm equipment to take possession of, or sell, the equipment.

(2) The mortgagee must not exercise, or purport to exercise, the right unless—

- (a) the mortgagor has defaulted; and
- (b) the mortgagee has given the mortgagor, and guarantor (if any), a notice (a “**default notice**”) under this part for the default; and
- (c) the default has not been remedied by the due day stated in the default notice.

Maximum penalty—500 penalty units.

Requirements for default notice

8.(1) The default notice must be in the approved form.

(2) Unless the mortgagee reasonably believes the default is incapable of being remedied, the default notice must state—

- (a) how the mortgagor has defaulted; and
- (b) what the mortgagor must do to remedy the default, including, for example, any amount that must be paid to the mortgagee; and
- (c) that the mortgagee intends to take possession of, or sell, the equipment on or after a stated day (the “**due day**”) unless the default is remedied; and
- (d) that, if the mortgagor makes another default of the same type before the due day that is not remedied by the due day, the mortgagee may take possession of, or sell, the equipment without giving another default notice under this part; and
- (e) anything else prescribed under a regulation.

(3) If the mortgagee reasonably believes the default is incapable of being remedied, the default notice must state—

Credit (Rural Finance)

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- (a) how the mortgagor has defaulted; and 1
 - (b) that the mortgagee believes the default is incapable of being remedied; and 2
3
 - (c) that the mortgagee intends to take possession of, or sell, the equipment on or after a stated day (the “**due day**”); and 4
5
 - (d) anything else prescribed under a regulation. 6
- (4) The due day must be at least 30 days after the day the notice is given to the mortgagor. 7
8

Exception to s 7—further default during notice period 9

9.(1) This section applies if— 10

- (a) a mortgagor defaults under a mortgage; and 11
- (b) the mortgagee gives the mortgagor, and guarantor (if any), a default notice under this part for the default; and 12
13
- (c) the mortgagor makes a further default of the same type before the due day stated in the default notice for the first default; and 14
15
- (d) the further default is not remedied by the due day stated in the default notice for the first default. 16
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(2) Section 7³ does not apply to the mortgagee in exercising, or purporting to exercise, a right under the mortgage for the further default. 18
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Exception to s 7—taking possession to protect equipment 20

10. Section 7 does not apply to a mortgagee in exercising, or purporting to exercise, a right under a mortgage to take possession of farm equipment if the mortgagee reasonably believes— 21
22
23

- (a) the mortgagor has removed or disposed of the equipment, or intends to remove or dispose of the equipment, in contravention of the mortgage; or 24
25
26
- (b) it is necessary to take possession urgently to protect the equipment. 27
28

³ Section 7 (Mortgagee must give default notice)

Other exceptions to s 7

11. Section 7⁴ does not apply to a mortgagee in exercising, or purporting to exercise, a right under a mortgage if—

- (a) the mortgagee reasonably believes it was induced by fraud by the mortgagor to enter into the mortgage; or
- (b) the mortgagee has unsuccessfully made all reasonable attempts to find the mortgagor; or
- (c) the court orders that the mortgagee may take possession of, or sell, the equipment without complying with section 7.

Onus on mortgagee to show s 7 does not apply

12. The onus of proving that section 7 does not apply to a mortgagee because of section 10 or 11(a) or (b) is on the mortgagee.

PART 3—RELIEVING ORDER**Mortgagor may apply for a relieving order**

13.(1) This section applies if—

- (a) for a mortgage over farm equipment—the mortgagee has given the mortgagor a default notice under part 2; or
- (b) for a mortgage over equipment (whether or not it is farm equipment)—
 - (i) the mortgagee has exercised, or purported to exercise, a right under the mortgage to take possession of the equipment; or
 - (ii) the mortgagor has defaulted under the mortgage; or
 - (iii) for another reason, the mortgagor believes the mortgagee may exercise, or purport to exercise, a right under the mortgage to take possession of, or sell, the equipment.

⁴ Section 7 (Mortgagee must give default notice)

- (2) The mortgagor may apply to the court for a relieving order if— 1
- (a) the mortgagee has not taken possession of, or sold, the equipment 2
or, if the mortgagee has taken possession of the equipment, has 3
not parted with possession of the equipment; and 4
 - (b) the mortgagor is a farmer who is using, or intending to use, the 5
equipment to carry out the farmer’s farming business, or would 6
be using, or intending to use, the equipment to carry out the 7
farmer’s farming business if the mortgagee had not taken 8
possession of the equipment. 9

Notice of application 10

14.(1) If the mortgagor applies for a relieving order, the mortgagor must 11
immediately give a copy of the application (a “**notice of application**”) to 12
the mortgagee. 13

(2) The court may order that the mortgagor is not required to comply 14
with subsection (1) if the court is satisfied the mortgagor has unsuccessfully 15
made all reasonable attempts to find the mortgagee. 16

(3) The order may be made on conditions. 17

Effect of serving notice of application 18

15.(1) If the mortgagor gives a notice of application to the mortgagee, the 19
mortgagee must not, until the court orders otherwise or the application is 20
withdrawn or dismissed— 21

- (a) sell the equipment; or 22
- (b) if the mortgagee does not have possession of the 23
equipment—take possession of the equipment; or 24
- (c) if the mortgagee has possession of the equipment—part with its 25
possession (other than to return it to the mortgagor). 26

Maximum penalty—500 penalty units. 27

(2) To remove any doubt, it is declared that if the mortgagee has 28
possession of the equipment when given a notice of application, the 29
mortgagee is not required by subsection (1)(c) to return the equipment. 30

Court may make relieving order

16.(1) The court must decide the application by dismissing it or by making a relieving order.

(2) In deciding the application, the court must consider—

- (a) whether the mortgagor has a reasonable prospect of being able to remedy the stated default within 1 year after the notice day; and
- (b) how necessary the equipment is to the mortgagor in carrying out the farming business; and
- (c) whether the mortgagor has removed, damaged or disposed of the equipment, or intends to remove, damage or dispose of the equipment, in contravention of the mortgage; and
- (d) anything else the court considers relevant to making a just decision.

(3) A “**relieving order**” is an order that—

- (a) if the mortgagee has possession of the equipment—the mortgagee must return it to the mortgagor; and
- (b) the mortgagee must not take possession of, or sell, the equipment for a stated period ending not later than 1 year after the notice day.

(4) The court may make a relieving order on terms it considers appropriate, including, for example, that the mortgagor pay any enforcement expenses incurred by the mortgagee.

(5) In this section—

“**notice day**” means the day the mortgagee is given the notice of application or, if the court orders that the mortgagor is not required to give the notice, the day the court makes that order.

“**stated default**” means—

- (a) if the mortgagee has given the mortgagor a default notice under part 2—the default stated in the notice; or
- (b) otherwise—the default that is claimed by either party to have been made by the mortgagor.

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| Compliance with relieving order | 1 |
| 17. A mortgagee must comply with a relieving order. | 2 |
| Maximum penalty—500 penalty units. | 3 |

PART 4—MISCELLANEOUS

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| Compensation for noncompliance by mortgagee | 5 |
| 18.(1) This section applies if a mortgagee contravenes section 7, 15 or 17. ⁵ | 6 7 |
| (2) On the application of the mortgagor, the court may order the mortgagee to compensate the mortgagor for any loss suffered because of the contravention. | 8 9 10 |
| (3) An order under subsection (2)— | 11 |
| (a) may be made whether or not the mortgagee has been prosecuted for the contravention; and | 12 13 |
| (b) does not affect the mortgagee’s liability to be prosecuted for the contravention. | 14 15 |

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| This Act in addition to other laws | 16 |
| 19.(1) This Act is in addition to any other law about the enforcement of a mortgage. | 17 18 |
| (2) In particular, this Act does not prevent the issue of a notice to a mortgagor under other legislation. | 19 20 |
| (3) This section is subject to section 5(3). ⁶ | 21 |

⁵ Section 7 (Mortgagee must give default notice), 15 (Effect of serving notice of application) or 17 (Compliance with relieving order)

⁶ Section 5 (Application of Act)

Contracting out

20.(1) The following provisions of a mortgage or other instrument are void—

- (a) a provision to avoid or modify the effect of this Act;
- (b) a provision to have a mortgagor indemnify a mortgagee for any loss or liability arising under this Act.

(2) A mortgagee must not be a party to a mortgage or other instrument containing a provision mentioned in subsection (1).

Maximum penalty—100 penalty units.

Service of notices on each mortgagee, mortgagor or guarantor

21. If a provision of this Act requires a notice to be given to a mortgagee, mortgagor or guarantor, and there is more than 1 mortgagee, mortgagor or guarantor for the mortgage, the notice must be given to each mortgagee, mortgagor or guarantor.

Approval of forms

22. The chief executive may approve forms for use under this Act.

Regulation-making power

23. The Governor in Council may make regulations under this Act.

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| SCHEDULE | 1 |
| DICTIONARY | 2 |
| section 3 | 3 |
| “approved form” see section 22. | 4 |
| “assignee” , of rights and obligations, includes a person to whom the rights and obligations are passed by law. | 5 6 |
| “court” see section 6. | 7 |
| “default notice” see section 7(2). | 8 |
| “due day” see section 8. | 9 |
| “enforcement expenses” means expenses incurred in exercising the mortgagee’s rights under a mortgage arising because of the mortgagor’s default. | 10 11 12 |
| “equipment” includes a vehicle, machine and tool. | 13 |
| “farm equipment” means— | 14 |
| (a) equipment of a type whose usual use is to carry out a farming business; or | 15 16 |
| (b) anything else prescribed under a regulation to be farm equipment for this Act; | 17 18 |
| but does not include anything prescribed under a regulation not to be farm equipment for this Act. | 19 20 |
| <i>Examples of equipment mentioned in paragraph (a)—</i> | 21 |
| Beehive, binder, fishing trawler, harvester, milking machine, plough, tractor. | 22 |
| “farmer” means an individual whose sole or principal business is a farming business. | 23 24 |
| “farming business” means— | 25 |
| (a) an agricultural, apicultural, dairy farming, horticultural, pastoral, poultry keeping or viticultural business; or | 26 27 |

SCHEDULE (continued)

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| (b) another business that involves cultivating the soil, gathering crops or rearing livestock; or | 1 2 |
| (c) a business that involves cutting timber for sale; or | 3 |
| (d) a fishing business; or | 4 |
| (e) anything else prescribed under a regulation to be a farming business for this Act; | 5 6 |
| but does not include anything prescribed under a regulation not to be a farming business for this Act. | 7 8 |
| “fishing” see the <i>Fisheries Act 1994</i> . | 9 |
| “guarantor” , for a mortgage, means a person who, under the mortgage or another document given to the mortgagee, guarantees an obligation of the mortgagor under the mortgage. | 10 11 12 |
| “mortgagee” , for a mortgage, means— | 13 |
| (a) the person to whom the mortgage is given (the “original mortgagee”); or | 14 15 |
| (b) an assignee of the original mortgagee’s rights and obligations under the mortgage. | 16 17 |
| “mortgagor” , for a mortgage, means— | 18 |
| (a) the person by whom the mortgage is given (the “original mortgagor”); or | 19 20 |
| (b) an assignee of the original mortgagor’s rights and obligations under the mortgage. | 21 22 |
| “notice of application” see section 14. | 23 |
| “relieving order” see section 16(3). | 24 |
| “vehicle” includes a motor vehicle, vehicle without motive power, boat and aircraft. | 25 26 |