



# **Farm Business Debt Mediation Act 2017**

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Queensland

# Farm Business Debt Mediation Act 2017

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
<b>Division 1</b>	<b>Introduction</b>	
1	Short title .....	5
2	Commencement .....	5
<b>Division 2</b>	<b>Purpose</b>	
3	Purpose .....	5
<b>Division 3</b>	<b>Interpretation</b>	
4	Definitions .....	6
5	Meaning of farm business debt .....	6
6	Meaning of mediation for a farm business debt .....	6
7	When mediation has been satisfactory .....	7
8	Particular references .....	7
<b>Division 4</b>	<b>Operation of Act</b>	
9	Act binds all persons .....	8
10	Relationship with other Acts or laws .....	8
11	Application of Act .....	9
<b>Part 2</b>	<b>Enforcement action by mortgagee</b>	
12	Restriction on mortgage enforcement action .....	10
<b>Part 3</b>	<b>Mediation</b>	
<b>Division 1</b>	<b>Preliminary</b>	
13	Application of part .....	10
<b>Division 2</b>	<b>Starting mediation</b>	
14	Notice of intention to take enforcement action .....	11
15	Asking for mediation .....	11
16	Agreeing to or refusing mediation .....	12
<b>Division 3</b>	<b>Conducting mediation</b>	
17	Application of division .....	14

Contents

---

18	Choosing mediator . . . . .	14
19	Arranging mediation . . . . .	14
20	Functions of mediator . . . . .	15
21	Giving requested documents to farmer . . . . .	15
22	Giving documents to mortgagee . . . . .	16
23	Representation at mediation meetings . . . . .	17
24	Farmer entitled to advisor . . . . .	18
25	Mediation meetings . . . . .	18
25A	Mediator may invite other participants to mediation . . . . .	19
<b>Division 4</b>	<b>Agreement reached in mediation</b>	
26	Heads of agreement . . . . .	19
27	Cooling-off period . . . . .	20
28	Mediator’s obligations after heads of agreement entered . . . . .	21
28A	Heads of agreement binds parties . . . . .	22
29	Revoking heads of agreement during cooling-off period . . . . .	22
30	Compensation if heads of agreement revoked . . . . .	22
30A	Varying heads of agreement . . . . .	23
31	Ensuring heads of agreement is given effect accurately . . . . .	23
<b>Division 5</b>	<b>Ending mediation</b>	
32	When mediation ends . . . . .	23
33	Summary of mediation . . . . .	24
<b>Division 6</b>	<b>General</b>	
34	Guidelines for conducting mediation . . . . .	25
35	Mediation information package . . . . .	26
36	Rules of evidence . . . . .	26
37	Mediation not open to the public . . . . .	26
38	Confidentiality . . . . .	27
39	Costs . . . . .	27
<b>Part 4</b>	<b>Action by authority</b>	
<b>Division 1</b>	<b>Suspending enforcement action</b>	
40	Applying for enforcement action suspension certificate . . . . .	28
41	Show cause notice . . . . .	29
42	Representations about show cause notice . . . . .	29
43	Deciding application . . . . .	29
44	When a mortgagee has failed to mediate . . . . .	30
45	Failure to decide application . . . . .	31

46	Issuing certificate . . . . .	31
47	Duration . . . . .	32
<b>Division 2</b>	<b>Exemption from obligation to mediation</b>	
48	Applying for exemption certificate . . . . .	32
49	Grounds . . . . .	33
50	Show cause notice . . . . .	34
51	Representations about show cause notice . . . . .	34
52	Deciding application . . . . .	34
53	When a farmer has failed to mediate . . . . .	35
54	Failure to decide application . . . . .	37
55	Issuing certificate . . . . .	37
56	Duration . . . . .	38
57	Effect of exemption certificate ending . . . . .	39
<b>Part 5</b>	<b>Mediators</b>	
<b>Division 1</b>	<b>Accreditation</b>	
58	Applying for accreditation . . . . .	39
59	Inquiring about application . . . . .	39
60	Appropriately qualified and suitable person . . . . .	40
61	Deciding application . . . . .	41
62	Failure to decide application . . . . .	42
63	Term of accreditation . . . . .	42
<b>Division 2</b>	<b>Renewing accreditation</b>	
64	Applying for renewal . . . . .	43
65	Inquiring about renewal application . . . . .	43
66	Deciding renewal application . . . . .	43
67	Failure to decide renewal application . . . . .	44
68	Accreditation continues until decision about renewal . . . . .	44
<b>Division 3</b>	<b>Suspending and cancelling accreditation</b>	
69	Application of division . . . . .	45
70	Grounds . . . . .	45
71	Show cause notice . . . . .	46
72	Representations about show cause notice . . . . .	47
73	Ending show cause process without further action . . . . .	47
74	Suspending or cancelling accreditation . . . . .	47
75	Immediate suspension of accreditation . . . . .	48
<b>Division 4</b>	<b>Register of mediators</b>	

Contents

---

76	Register of mediators . . . . .	49
<b>Part 6</b>	<b>Reviewing decisions</b>	
<b>Division 1</b>	<b>Effect of original decision</b>	
77	When original decision takes effect . . . . .	49
78	QCAT may stay operation of original decision . . . . .	50
<b>Division 2</b>	<b>Internal review</b>	
80	Applying for internal review of original decision . . . . .	51
81	Reviewing original decision . . . . .	51
<b>Division 3</b>	<b>External review</b>	
82	Applying for external review . . . . .	53
<b>Part 7</b>	<b>General</b>	
83	Disclosing information . . . . .	53
84	Protection from liability . . . . .	54
85	Contracting out prohibited . . . . .	55
86	Waiver of rights . . . . .	55
87	Notices by mortgagee . . . . .	55
88	Offences against this Act . . . . .	56
89	Executive officer may be taken to have committed offence against deemed executive liability provision . . . . .	56
90	Approved forms . . . . .	57
90A	Review of Act . . . . .	57
91	Regulation-making power . . . . .	57
<b>Part 8</b>	<b>Transitional provision</b>	
92	Application of Act . . . . .	58
<b>Schedule 1</b>	<b>Dictionary</b> . . . . .	59

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# Farm Business Debt Mediation Act 2017

**An Act to provide for mediation for farm business debts and related purposes**

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Farm Business Debt Mediation Act 2017*.

#### **2 Commencement**

This Act, other than part 9, divisions 2 to 4, commences on 1 July 2017.

### **Division 2 Purpose**

#### **3 Purpose**

- (1) The purpose of this Act is to provide an efficient and equitable way for farmers and mortgagees to resolve matters relating to farm business debts.
- (2) The purpose is achieved mainly by—
  - (a) providing for mediation as a way for farmers and mortgagees, participating in good faith, to efficiently and equitably resolve matters relating to farm business debts; and

- (b) requiring a mortgagee, before taking action to enforce a mortgage securing a farm business debt—
  - (i) to offer mediation for the farm business debt to the farmer; and
  - (ii) if the farmer asks for the mediation—to take part in the mediation in good faith; and
- (c) providing that action that is taken to enforce a mortgage securing a farm business debt in contravention of this Act has no effect.

## **Division 3 Interpretation**

### **4 Definitions**

The dictionary in schedule 1 defines particular words used in this Act.

### **5 Meaning of *farm business debt***

A *farm business debt* is an amount owed by a farmer that—

- (a) was borrowed for the purpose of conducting a farming business; and
- (b) is secured by a farm mortgage.

### **6 Meaning of *mediation* for a farm business debt**

(1) *Mediation*, for a farm business debt, is 1 or more meetings conducted by a mediator to facilitate discussion between the farmer and the mortgagee—

- (a) when the farmer has defaulted, or is at risk of defaulting, under the farm mortgage; and
- (b) that aims to bring about an agreement between the farmer and the mortgagee about 1 or more matters relating to the farm business debt.



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*Examples of matters that may be agreed—*

- the way for the farmer to remedy a default under the farm mortgage
  - how the farm mortgage may be enforced or discharged
- (2) Each meeting mentioned in subsection (1) is a ***mediation meeting***.
- (3) A reference in this Act to mediation includes—
- (a) an activity for promoting discussion and bringing about agreement about a matter during mediation; and
  - (b) anything said or done to prepare for a mediation meeting or to follow up a matter discussed or agreed at a mediation meeting.

## **7 When mediation has been *satisfactory***

Mediation for a farm business debt has been ***satisfactory*** if—

- (a) as a result of the mediation, the farmer and the mortgagee have entered into a heads of agreement; or
- (b) the mediation has proceeded as far as it reasonably can with the farmer and the mortgagee having participated in good faith, but they have not entered into a heads of agreement; or
- (c) the mediation is of a type, or a class, or meets criteria prescribed by regulation for this paragraph.

## **8 Particular references**

- (1) In a provision about a farm business debt or a farm mortgage—
- (a) a reference to the farm mortgage is a reference to the farm mortgage that secures the farm business debt; and
  - (b) a reference to the farm business debt is a reference to the farm business debt that is secured by the farm mortgage; and

- (c) a reference to the farmer is a reference to the farmer who owes the farm business debt that is secured by the farm mortgage; and
  - (d) a reference to the mortgagee is a reference to the mortgagee under the farm mortgage that secures the farm business debt; and
  - (e) a reference to the farm property is a reference to the farm property that is subject to the farm mortgage to secure the farm business debt.
- (2) In a provision about a farmer—
- (a) a reference to the farm business debt is a reference to a farm business debt owed by the farmer; and
  - (b) a reference to the farm mortgage is a reference to the farm mortgage that secures a farm business debt owed by the farmer; and
  - (c) a reference to the mortgagee is a reference to the mortgagee under the farm mortgage that secures a farm business debt owed by the farmer; and
  - (d) a reference to the farm property is a reference to the farm property that is subject to the farm mortgage to secure a farm business debt.

## **Division 4                      Operation of Act**

### **9                      Act binds all persons**

- (1) This Act binds all persons, including the State.
- (2) However, nothing in this Act makes the State liable to be prosecuted for an offence.

### **10                      Relationship with other Acts or laws**

- (1) This Act applies in addition to, and does not limit, any other Act or law relating to the enforcement of mortgages.

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- (2) However, if a provision of this Act is inconsistent with another Act, the provision prevails over the other Act to the extent of the inconsistency.
  - (3) Subsection (2) does not affect a provision of this Act or another Act that expressly deals with the interaction between this Act, the other Act or another law.

## 11 Application of Act

- (1) This Act does not apply in relation to a farmer if—
  - (a) the farmer is an insolvent under administration under the Corporations Act, section 9; or
  - (b) the farmer is the subject of a petition presented by a creditor, other than the mortgagee, under the *Bankruptcy Act 1966* (Cwlth) or a corresponding law of another jurisdiction, including a jurisdiction outside Australia; or
  - (c) for a farmer that is a corporation—the farmer is a Chapter 5 body corporate within the meaning of the Corporations Act, section 9.
- (2) Also, this Act does not apply in relation to a farmer for a particular farm business debt if—
  - (a) the farmer previously defaulted under the farm mortgage for the debt and, because of the farmer's default, the farmer and the mortgagee took part in mediation for the debt under this Act; and
  - (b) the farmer and the mortgagee entered into a contract, mortgage or other document to give effect to a heads of agreement entered into as a result of the mediation; and
  - (c) the farmer has defaulted under the farm mortgage and the default relates to the contract, mortgage or document.

## **Part 2                      Enforcement action by mortgagee**

### **12            Restriction on mortgagee enforcement action**

- (1) A mortgagee must not take enforcement action under a farm mortgage unless—
- (a) this Act does not apply in relation to the farmer or the farm mortgage; or
  - (b) an exemption certificate is in force for the farm mortgage.

Maximum penalty—100 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 89, to have also committed the offence.

- (2) Enforcement action that is taken by a mortgagee in relation to a farm mortgage in contravention of subsection (1) has no effect.
- (3) Subsection (2) applies despite any other Act or law.

## **Part 3                      Mediation**

### **Division 1                Preliminary**

#### **13            Application of part**

This part does not apply if an exemption certificate is in force for a farm mortgage.

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## Division 2                      Starting mediation

### 14            Notice of intention to take enforcement action

- (1) If a mortgagee intends to take enforcement action under a farm mortgage, the mortgagee must—
  - (a) serve an enforcement action notice on the farmer; and
  - (b) give a copy of the notice to the authority.
- (2) An *enforcement action notice* is a notice, in the approved form, that—
  - (a) states the name of the farmer and the mortgagee; and
  - (b) identifies the farm property; and
  - (c) states the enforcement action the mortgagee intends to take; and
  - (d) states that the farmer may ask for mediation for the farm business debt; and
  - (e) states how, and the day by which, the farmer must ask for mediation; and
  - (f) states that, if the farmer does not ask for mediation by the stated day, the mortgagee may consider the farmer has declined mediation and may apply for an exemption certificate to allow the mortgagee to proceed with enforcement action.
- (3) For subsection (2)(e), the day by which the farmer must ask for mediation must be no less than 20 business days after the day the notice is served on the farmer.
- (4) The enforcement action notice served on the farmer must be accompanied by a copy of the mediation information package.

### 15            Asking for mediation

- (1) This section applies if—
  - (a) a mortgagee has given a farmer an enforcement action notice; or

- (b) a farmer owes a farm business debt to a mortgagee, whether or not the farmer is in default, or at risk of default, under the farm mortgage.
- (2) The farmer may give a request for mediation notice to the mortgagee.
- (3) A *request for mediation notice* is a notice that—
  - (a) may, but need not, be in the approved form; and
  - (b) asks for mediation for the farm business debt; and
  - (c) states—
    - (i) if the farmer is not an individual—the name and contact details of the person authorised to act for the farmer in relation to the mediation; and  
*Note—*  
Section 23 provides for when a party to a mediation may be represented at a mediation meeting by an agent with the mediator’s approval or, for a party that is a corporation, by an officer or employee.
    - (ii) the farmer’s address for service of documents.
- (4) The approved form for a request for mediation notice must provide for—
  - (a) the farmer to nominate 3 mediators from which the mortgagee may choose a mediator, to conduct the mediation, under section 18; and
  - (b) the farmer to request documents relating to the farm business debt and farm mortgage from the mortgagee under section 21.

## 16 Agreeing to or refusing mediation

- (1) If a mortgagee receives a request for mediation notice in relation to a farm business debt, the mortgagee may agree to or refuse the mediation.

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- (2) Subsection (1) applies whether or not the mortgagee received the request for mediation notice by the day stated in the enforcement action notice the mortgagee gave to the farmer.
- (3) The mortgagee agrees to the mediation by, within 15 business days after receiving the request for mediation notice—
- (a) preparing, in the approved form, a notice that states the parties have agreed to mediation for the farm business debt; and
  - (b) giving the notice to the farmer and the authority.
- (4) The notice must state—
- (a) the name and contact details of the person authorised to act for the mortgagee in relation to the mediation; and
- Note—*
- Section 23 provides for when a party to a mediation may be represented at a mediation meeting by an agent with the mediator’s approval or, for a party that is a corporation, by an officer or employee.
- (b) the mortgagee’s address for service of documents; and
  - (c) if stated in the farmer’s request for mediation notice—
    - (i) the name and contact details of the person authorised to act for the farmer in relation to the mediation; and
    - (ii) the farmer’s address for service of documents.
- (5) If the mortgagee did not give an enforcement action notice to the farmer, a copy of the notice given to the farmer must be accompanied by a copy of the mediation information package.
- (6) The mortgagee refuses the mediation by giving a notice refusing the mediation to the farmer.

*Notes—*

- 1 If the farmer requesting mediation is not in default under the farm mortgage and the mortgagee refuses the mediation, there are no consequences under this Act.
- 2 If the farmer requesting mediation is in default under the farm mortgage, the mortgagee’s refusal of the mediation may be

grounds for the farmer to apply for an enforcement action suspension certificate under part 4, division 1. See section 40.

## **Division 3                    Conducting mediation**

### **17            Application of division**

- (1) This division applies if the farmer and the mortgagee for a farm business debt have agreed to mediation for the debt.
- (2) The parties have agreed to mediation when the mortgagee gives a notice under section 16(3)(b).

### **18            Choosing mediator**

- (1) The parties to the farm business debt must choose a mediator to conduct the mediation.
- (2) The mediator must be chosen in the way prescribed by regulation.

### **19            Arranging mediation**

- (1) The mortgagee must ask the mediator chosen under section 18 to arrange the mediation.
- (2) If the mediator is available to conduct the mediation, the mediator must arrange the mediation.
- (3) The procedure for arranging, and conducting, mediation and mediation meetings is the procedure—
  - (a) under the mediation guidelines; or
  - (b) if the mediation guidelines do not provide for a particular matter—decided by the mediator for the matter.



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## **20 Functions of mediator**

- (1) The main function of a mediator is to mediate impartially between the farmer and the mortgagee with the aim of bringing about an agreement between the farmer and the mortgagee about 1 or more matters relating to the farm business debt.
- (2) A mediator has the other functions given to the mediator under an Act.
- (3) It is not a function of a mediator to—
  - (a) advise a farmer or mortgagee about the law; or
  - (b) encourage or assist a farmer or mortgagee in reserving or establishing legal rights; or
  - (c) act as an adjudicator or arbitrator.

## **21 Giving requested documents to farmer**

- (1) The farmer may give a notice to the mortgagee asking the mortgagee for copies of documents related to the farm business debt and the farm mortgage.
- (2) The farmer may give the notice—
  - (a) when the farmer gives a request for mediation notice to the mortgagee; or
  - (b) at any time after the farmer gives a request for mediation notice to the mortgagee but before the mediation ends.
- (3) The mortgagee must comply with the notice, at the mortgagee's cost, within—
  - (a) 30 business days after receiving the notice; or
  - (b) a longer period agreed between the farmer and the mortgagee, in consultation with the mediator.
- (4) The mortgagee complies with the request by giving the farmer copies of the documents in the mortgagee's possession or control relating to—

[s 22]

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- (a) the farmer's application for the farm business debt and farm mortgage, and any variation of the debt or mortgage; and
  - (b) the contractual relationship between the farmer and the mortgagee, including any loan or mortgage documents; and
  - (c) correspondence between the farmer and the mortgagee about changes to the farm business debt or the farm mortgage; and
  - (d) the farmer's default under the farm mortgage and any action taken by the mortgagee in relation to the default; and
  - (e) any other matter prescribed by regulation.
- (5) The mortgagee gives a document that is an electronic document by giving a clear image or written version of the document.
- (6) If the mortgagee has given a document mentioned in subsection (4) to the farmer within the 3 months before receiving the notice, the mortgagee is taken to have complied with the notice to the extent the notice relates to the document.
- (7) If the mortgagee fails to comply, or to make reasonable efforts to comply, with the request, the mortgagee has failed to take part in the mediation in good faith.

## **22 Giving documents to mortgagee**

- (1) The farmer must give the mortgagee documents or up-to-date information about—
- (a) the farmer's most recent taxation return prepared for lodgement with the Australian Taxation Office; and
  - (b) the farmer's assets and liabilities; and
  - (c) the farmer's cash flow projections for a period of at least 1 year.

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- (2) The farmer must comply, at the farmer's cost, with subsection (1) within—
    - (a) 30 business days after receiving a notice from the mortgagee under section 16(3); or
    - (b) a longer period agreed between the farmer and the mortgagee, in consultation with the mediator.
  - (3) The farmer gives a document that is an electronic document by giving a clear image or written version of the document.
  - (4) If the farmer fails to comply, or to make reasonable efforts to comply, with this section, the farmer has failed to take part in the mediation in good faith.

## **23 Representation at mediation meetings**

- (1) A party to a mediation may be represented at a mediation meeting by—
  - (a) an agent, with the mediator's approval; or
  - (b) if the party is a corporation—an officer or employee of the corporation.
- (2) The mediator may approve a party be represented by an agent if the mediator is satisfied—
  - (a) the party's representation by an agent would assist the mediation; and
  - (b) the agent has sufficient knowledge of the issues to be able to represent the party effectively.
- (3) The mediator may—
  - (a) give the approval on the conditions the mediator considers are reasonable to ensure the other party is not substantially disadvantaged; and
  - (b) withdraw the approval if the agent does not comply with the conditions.
- (4) A person representing a party at a mediation meeting must be authorised in writing to enter into a heads of agreement for the party.

[s 24]

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- (5) If another mediation meeting is required because a person representing a party at a mediation meeting does not have the authority mentioned in subsection (4), the party must pay—
  - (a) the other party's costs for the other meeting; and
  - (b) the mediator's fee and costs for the other meeting.

## **24 Farmer entitled to advisor**

- (1) A farmer who is a party to mediation may have 1 or more advisors at a mediation meeting.
- (2) An advisor may, but need not, be a lawyer or otherwise professionally qualified.
- (3) The farmer may seek an advisor's advice during the mediation meeting.

## **25 Mediation meetings**

- (1) Without limiting section 19(3), a mediator may—
  - (a) call a pre-mediation conference; and
  - (b) adjourn a mediation meeting if the mediator considers a party would be significantly disadvantaged if the meeting continues.
- (2) Mediation meetings are to be conducted—
  - (a) at a place and time that is reasonably convenient for the farmer; and
  - (b) with as little formality and technicality, and as quickly, as possible.
- (3) If the parties to a mediation agree, a mediation meeting may be held using any technology allowing reasonably contemporaneous and continuous communication between the parties.

*Examples—*

teleconferencing, videoconferencing

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## 25A Mediator may invite other participants to mediation

- (1) This section applies if a mediator is arranging or conducting a mediation and reasonably considers that a relevant person should be allowed to be at, or participate in, a mediation meeting.
- (2) The mediator may invite the relevant person to be at, or participate in, the mediation meeting.

*Note—*

See also section 37(2)(c).

- (3) A relevant person is not obliged to accept an invitation under subsection (2).
- (4) In this section—

***relevant person***, for a mediation, means a person, other than the mortgagee or farmer for the mediation, who—

- (a) has a legal or equitable interest in the farm property that is subject to the farm mortgage the subject of the mediation; or
- (b) has a potential or actual liability for the farm business debt the subject of the mediation.

*Example—*

a guarantor of a loan

## Division 4 Agreement reached in mediation

### 26 Heads of agreement

- (1) If a mediator considers the parties to a mediation have agreed, or are about to agree, on a matter relating to the farm business debt, the mediator must—
  - (a) prepare, or supervise the preparation of, a document in the approved form that states the main points of agreement; and

- (b) give a copy of the document to each party during a mediation meeting.
- (2) If the parties are satisfied the document sets out the main points of their agreement about the matter, the parties may enter into a heads of agreement by each signing the document.
- (3) The heads of agreement has effect if the signed document, or each signed copy of the document, is given to the mediator within 10 business days after the end of the mediation meeting.
- (4) The approved form for a heads of agreement must—
  - (a) state—
    - (i) that a heads of agreement is subject to a cooling-off period unless the parties agree to waive the cooling-off period; and
    - (ii) that a farmer may revoke the heads of agreement during a cooling-off period by serving a signed notice of revocation on the mortgagee; and
    - (iii) the rights to compensation that may, and do not, arise under section 30 if a farmer revokes a heads of agreement during a cooling-off period; and
  - (b) provide for the inclusion of the following matters—
    - (i) when a cooling-off period starts and ends; and
    - (ii) a cooling-off period to be shortened or extended if the parties agree.

## 27 Cooling-off period

- (1) A heads of agreement entered into by the parties to a mediation is subject to a cooling-off period during which the farmer may revoke the agreement (the *cooling-off period*) unless the parties agree to waive the cooling-off period under this section.
- (2) If the parties do not waive the cooling-off period, the period—

- 
- (a) starts when the parties enter into the heads of agreement; and
  - (b) ends on—
    - (i) if the parties have agreed on a day on which the cooling-off period ends and the day is noted on the heads of agreement—the agreed day; or
    - (ii) otherwise—the day that is 10 business days after the parties entered into the heads of agreement.
  - (3) The parties to a heads of agreement may agree to—
    - (a) waive the cooling-off period for the agreement; or
    - (b) at any time before the cooling-off period ends under subsection (2)(b), shorten or extend the cooling-off period.
  - (4) However, the parties to a heads of agreement may waive or shorten the cooling-off period for the agreement only if the farmer has had a reasonable opportunity to seek legal advice about—
    - (a) the agreement; and
    - (b) waiving or shortening the cooling-off period.
  - (5) The agreement must be in writing.

## **28 Mediator's obligations after heads of agreement entered**

- (1) After receiving a signed heads of agreement from the parties to a mediation, the mediator must ensure each party has a copy of the heads of agreement—
  - (a) signed by each party; and
  - (b) that states—
    - (i) if the parties have waived the cooling-off period—there is no cooling-off period for the heads of agreement; or
    - (ii) otherwise—the days on which the cooling-off period for the heads of agreement starts and ends.

[s 28A]

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- (2) If, after signing the heads of agreement, the parties agree to shorten or extend the cooling-off period, the mediator must ensure each party has a copy of the heads of agreement that states—
  - (a) the parties have agreed to shorten or extend the cooling-off period; and
  - (b) the day on which the parties have agreed the cooling-off period ends.

### **28A Heads of agreement binds parties**

A heads of agreement signed by the parties to a mediation binds each of the parties while the agreement is in effect.

### **29 Revoking heads of agreement during cooling-off period**

- (1) The farmer may revoke the heads of agreement during the cooling-off period.
- (2) The farmer revokes the heads of agreement by serving the mortgagee with a notice of the revocation signed by the farmer, the farmer's lawyer or another authorised agent.
- (3) When the notice is served on the mortgagee, the heads of agreement has no effect.

### **30 Compensation if heads of agreement revoked**

- (1) This section applies if the farmer revokes the heads of agreement during the cooling-off period.
- (2) A party to the heads of agreement has a right to claim reasonable compensation for a benefit received by the other party under the heads of agreement before the agreement was revoked.
- (3) However, a mortgagee has no right to compensation under subsection (2) merely because the farmer revoked the heads of agreement.



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- (4) This section and section 29 do not affect any other right or remedy available to a party to the heads of agreement arising from the farm business debt or the farm mortgage.

### **30A Varying heads of agreement**

- (1) The parties to a mediation may, at any time, agree to vary a heads of agreement relating to the mediation and any contract, mortgage or other document entered into by the parties to give effect to the heads of agreement.
- (2) However, subsection (1) applies only if the farmer who was a party to the mediation has had a reasonable opportunity to seek legal advice about varying the heads of agreement.
- (3) The agreement must be in writing.
- (4) Subsection (1) does not apply to varying the cooling-off period for the heads of agreement.

### **31 Ensuring heads of agreement is given effect accurately**

- (1) This section applies if a farmer and mortgagee who entered into a heads of agreement for a farm business debt are also the parties to a contract, mortgage or other document entered into to give effect to the heads of agreement.
- (2) The mortgagee must ensure the contract, mortgage or other document gives effect to the heads of agreement accurately.

Maximum penalty for subsection (2)—100 penalty units.

*Note for subsection (2)—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 89, to have also committed the offence.

## **Division 5 Ending mediation**

### **32 When mediation ends**

Mediation for a farm business debt ends when—

[s 33]

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- (a) the parties have entered into a heads of agreement and the mediator is satisfied there are no matters relating to the debt that have not been resolved by the parties; or
- (b) the parties have not entered into a heads of agreement, but—
  - (i) either party has given the other party and the mediator a notice advising that the party does not intend to continue taking part in the mediation; or
  - (ii) the parties agree, or the mediator is satisfied, the mediation has proceeded as far as it reasonably can and agreement is unlikely; or
  - (iii) the mediator is satisfied either or both of the parties are not taking part in the mediation in good faith, or are unreasonably delaying mediation, and agreement is unlikely.

*Note—*

See sections 21(7) and 22(4) for circumstances in which a party has not taken part in mediation in good faith.

### **33 Summary of mediation**

- (1) At the end of the mediation, the mediator must prepare a summary of the mediation, in the approved form, that states—
  - (a) the days when—
    - (i) the parties agreed to the mediation; and
    - (ii) the first mediation meeting was held; and
    - (iii) the last mediation meeting was held; and
    - (iv) if the parties entered into a heads of agreement—the heads of agreement was entered into; and
    - (v) if the parties did not enter into a heads of agreement—the mediation ended; and
  - (b) if the parties did not enter into a heads of agreement—the reason the mediation ended; and

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- (c) whether, in the mediator's opinion, the mediation was satisfactory and the parties participated in good faith; and
  - (d) if the mediator is of the opinion the mediation was not satisfactory or the parties did not participate in good faith—the mediator's reasons for the opinion.
- (2) If the parties entered into a heads of agreement, a copy of the heads of agreement must accompany the summary.
  - (3) The summary must be signed by the mediator and each party to the mediation or the party's agent for the mediation.
  - (4) If subsection (1)(c) or (d) applies and a party to the mediation does not agree with the mediator's opinion or reasons for the opinion, the party may ask the mediator to note the party's disagreement on the summary.
  - (5) The mediator must, within 10 business days after the mediation ends, give a copy of the summary to each of the parties to the mediation and the authority.

## **Division 6                      General**

### **34            Guidelines for conducting mediation**

- (1) The authority must make guidelines about the conduct of mediation for farm business debts.
- (2) Without limiting subsection (1), a guideline may be made about—
  - (a) the procedure for starting mediation and arranging mediation meetings; or
  - (b) the obligations of a mediator to keep records about mediations conducted.
- (3) When preparing the guidelines, the authority must consult with—
  - (a) at least 1 organisation that represents the interests of Queensland farmers; and

- (b) at least 1 organisation that represents the interests of banks or other entities that provide finance to Queensland farmers.
- (4) The authority must publish the guidelines on the authority's website.

### **35 Mediation information package**

- (1) The authority must prepare a *mediation information package* that includes—
  - (a) information about mediation for a farm business debt under this Act, including information about the rights and obligations of a farmer in relation to the mediation; and
  - (b) copies of the approved forms under this Act for use in relation to mediation; and
  - (c) information about mediators who may conduct mediations under this Act, including how to access information in the register of mediators kept under section 76.
- (2) The authority must give a copy of the mediation information package to a mortgagee or farmer on request and at no cost.

### **36 Rules of evidence**

The rules of evidence do not apply to mediation meetings.

### **37 Mediation not open to the public**

- (1) A mediation meeting is not open to the public.
- (2) A person who is not a party to a mediation meeting may be at, or participate in, the meeting—
  - (a) as a person representing a party under section 23; or
  - (b) as an advisor of the farmer under section 24; or
  - (c) with the mediator's approval.

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## 38 Confidentiality

- (1) The following matters are not admissible in any civil, criminal or administrative proceeding—
  - (a) anything said or done during a mediation meeting;
  - (b) a document prepared for the purposes of a mediation meeting;
  - (c) a document prepared for the purpose of being given to a party to a mediation as required under section 21 or 22.
- (2) This section does not apply to—
  - (a) a heads of agreement; or
  - (b) a contract, mortgage or other document prepared to give effect to a heads of agreement; or
  - (c) a summary of a mediation prepared under section 33; or
  - (d) a proceeding or a part of a proceeding before QCAT that is not open to the public, including, for example, a proceeding started under section 82; or
  - (e) a proceeding or a part of a proceeding that relates to—
    - (i) violence or a threat of violence; or
    - (ii) ongoing activity of a criminal nature being concealed; or
    - (iii) the abuse of a child or another person.
- (3) In this section—

*mediation meeting* includes anything done for the purpose of arranging for, or following up matters discussed or agreed at, a mediation meeting.

## 39 Costs

- (1) Each party to a mediation must pay—
  - (a) the party's own costs for the mediation; and
  - (b) half of the mediator's fee and costs for the mediation.

[s 40]

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- (1A) A party's costs for a mediation include the costs incurred by the party in relation to the mediation.

*Examples of costs incurred in relation to a mediation—*

the costs of travel and accommodation incurred to attend a mediation meeting

- (2) This section applies subject to section 23(5).

## **Part 4                      Action by authority**

### **Division 1                      Suspending enforcement action**

#### **40                      Applying for enforcement action suspension certificate**

- (1) This section applies to a farmer if—
- (a) the farmer is in default under a farm mortgage; and
  - (b) the farmer has given the mortgagee a request for mediation notice; and
  - (c) the mortgagee has failed to mediate.

*Note—*

See section 44 for when a mortgagee has failed to mediate.

- (2) The farmer may apply to the authority for a certificate (an ***enforcement action suspension certificate***) to stop the mortgagee taking enforcement action under the farm mortgage.
- (3) The application must—
- (a) be in the approved form; and
  - (b) state the facts and circumstances forming the basis of the claim the mortgagee has failed to mediate; and
  - (c) be accompanied by the fee prescribed by regulation.

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#### **41 Show cause notice**

- (1) The authority must give a show cause notice to the mortgagee before deciding a farmer's application for an enforcement action suspension certificate.
- (2) The show cause notice must state the mortgagee may, within the show cause period, make written representations to the authority to show why an enforcement action suspension certificate should not be issued.
- (3) The show cause period must end at least 20 business days after the show cause notice is given to the mortgagee.
- (4) The show cause notice must be accompanied by a copy of the farmer's application.

#### **42 Representations about show cause notice**

- (1) The mortgagee may make written representations about the show cause notice to the authority during the show cause period.
- (2) The authority must give a copy of all representations made in accordance with the show cause notice to the farmer as soon as practicable after the representations are made.

#### **43 Deciding application**

- (1) The authority must—
  - (a) consider the farmer's application for an enforcement action suspension certificate; and
  - (b) consider all representations made in accordance with the show cause notice; and
  - (c) decide to approve or refuse the application; and
  - (d) as soon as practicable after making the decision, give the farmer and the mortgagee a notice that states the decision.
- (2) The authority must decide to approve the application if the authority is satisfied—

[s 44]

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- (a) the farmer is in default under the farm mortgage; and
- (b) the farmer has given the mortgagee a request for mediation notice; and
- (c) an exemption certificate is not in force for the farm mortgage; and
- (d) the mortgagee has failed to, and does not intend to, mediate in relation to the farm mortgage.

*Note—*

See section 44 for when a mortgagee has failed to mediate.

- (3) If the authority decides to approve the application, the notice the authority gives the mortgagee under subsection (1)(d) must be an information notice for the decision.
- (4) If the authority decides to refuse the application, the notice the authority gives the farmer under subsection (1)(d) must be an information notice for the decision.

#### **44 When a mortgagee has failed to mediate**

- (1) This section applies if the farmer gives a request for mediation notice to the mortgagee.
- (2) For section 43, the mortgagee has failed to mediate in relation to the farm business debt if—
  - (a) the mortgagee does not respond to the notice within 15 business days after the notice was given; or
  - (b) the mortgagee has given the farmer a notice refusing the mediation; or
  - (c) the mortgagee has failed to take part in mediation in good faith or has unreasonably delayed the mediation; or
  - (d) all of the following apply—
    - (i) the farmer and the mortgagee agreed to mediate in relation to the farm business debt;
    - (ii) 3 months have elapsed since the request for mediation notice was given;



- (iii) during the period since the notice was given, the farmer has attempted to mediate with the mortgagee in good faith;
- (iv) there has been no satisfactory mediation between the farmer and the mortgagee.

#### **45 Failure to decide application**

- (1) If the authority fails to decide the farmer's application for an enforcement action suspension certificate by the required day, the authority is taken to have decided to refuse the application.
- (2) The *required day* is the day that is 20 business days after the end of the show cause period for the show cause notice the authority gave the mortgagee under section 41.
- (3) If the application is taken to be refused under this section, the farmer is entitled to be given an information notice for the decision by the authority.

#### **46 Issuing certificate**

- (1) If the authority decides to approve a farmer's application for an enforcement action suspension certificate, the authority must issue the certificate, in the approved form, to the farmer.
- (2) The enforcement action suspension certificate must—
  - (a) state the name of the farmer and the mortgagee; and
  - (b) identify the farm property; and
  - (c) state when the certificate ends.
- (3) The authority must give a copy of the certificate to the mortgagee.
- (4) The authority must comply with this section as soon as practicable after deciding to approve the farmer's application.

## 47 Duration

An enforcement action suspension certificate for a farm mortgage ends on the earlier of the following days—

- (a) if the farmer and the mortgagee took part in mediation for the farm business debt and the mediation was satisfactory—the last day of the mediation;
- (b) otherwise—the day that is 6 months after—
  - (i) if the mortgagee gave the farmer a notice refusing the mediation—the notice was given; or
  - (ii) otherwise—the day that is 15 business days after the farmer gave the request for mediation notice to the mortgagee.

*Note—*

While an enforcement action suspension certificate is in force for a farm mortgage the mortgagee may not take enforcement action. See section 12(1).

## Division 2 Exemption from obligation to mediation

### 48 Applying for exemption certificate

- (1) The mortgagee for a farm mortgage may apply to the authority for a certificate (an *exemption certificate*) exempting the mortgagee from the obligation to offer mediation under this Act before taking enforcement action in relation to the farmer's default under the farm mortgage.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) state the facts and circumstances forming the basis of the ground on which the mortgagee claims an exemption certificate should be issued; and
  - (c) be accompanied by the fee prescribed by regulation.

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## 49 Grounds

- (1) Each of the following is a ground for issuing an exemption certificate in relation to a farmer's default under a farm mortgage—
- (a) the farmer and the mortgagee took part in mediation for the farm business debt conducted under this Act and the mediation—
    - (i) considered matters relating to the farmer's default; and
    - (ii) was satisfactory;

*Note—*

See also section 92 about the application of this Act.

- (b) the farmer has failed to, and does not intend to, mediate for the farm business debt about matters relating to the farmer's default;

*Note—*

See section 53 for when a farmer has failed to mediate.

- (c) all of the following apply—
  - (i) the farmer and the mortgagee agreed to mediate for the farm business debt about matters relating to the farmer's default;
  - (ii) 3 months, or a longer period agreed in writing by the mortgagee, has elapsed since the mortgagee gave an enforcement action notice to the farmer;
  - (iii) during that period, the mortgagee has attempted to mediate in good faith;
  - (iv) there has been no satisfactory mediation between the farmer and the mortgagee;
- (d) the farm business debt is secured, in part, by a farm mortgage of farm property in another State and, under the corresponding law of that State—
  - (i) the mediation for the farm business debt considered matters relating to the farmer's default

under the farm mortgage of farm property in Queensland and was satisfactory; or

- (ii) the farmer has failed to, and does not intend to, mediate for the farm business debt about matters relating to the farmer's default.
- (2) For subsection (1)(c)(iii), a mortgagee not agreeing to reduce or forgive a debt does not, of itself, mean the mortgagee has not attempted to mediate in good faith.

## **50 Show cause notice**

- (1) The authority must give a show cause notice to the farmer before deciding a mortgagee's application for an exemption certificate.
- (2) The show cause notice must state the farmer may, within the show cause period, make written representations to the authority to show why an exemption certificate should not be issued.
- (3) The show cause period must end at least 20 business days after the farmer is given the show cause notice.
- (4) The show cause notice must be accompanied by a copy of the mortgagee's application.

## **51 Representations about show cause notice**

- (1) The farmer may make written representations about the show cause notice to the authority during the show cause period.
- (2) The authority must give a copy of all representations made in accordance with the show cause notice to the mortgagee as soon as practicable after the representations are made.

## **52 Deciding application**

- (1) The authority must—
  - (a) consider the mortgagee's application for an exemption certificate; and

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- (b) consider all representations made in accordance with the show cause notice; and
  - (c) decide to approve or refuse the application; and
  - (d) as soon as practicable after making the decision, give the farmer and the mortgagee a notice that states the decision.
- (2) The authority must decide to approve the application if the authority is satisfied—
- (a) the farmer is in default under the farm mortgage; and
  - (b) an enforcement action suspension certificate is not in force for the farm mortgage; and
  - (c) there is a ground, relating to the farmer’s default, to issue the exemption certificate.
- (3) If a ground mentioned in section 49(1)(a) or (d) exists, the authority may decide to issue an exemption certificate for the farm mortgage whether or not the mortgagee gave an enforcement action notice to the farmer.
- (4) The authority must decide to refuse the application if the authority is satisfied—
- (a) a heads of agreement is in force for the farm business debt; and
  - (b) the cooling-off period for the heads of agreement has not ended.
- (5) If the authority decides to approve the application, the notice the authority gives the farmer under subsection (1)(d) must be an information notice for the decision.
- (6) If the authority decides to refuse the application, the notice the authority gives the mortgagee under subsection (1)(d) must be an information notice for the decision.

### **53 When a farmer has failed to mediate**

- (1) This section applies if the mortgagee gives an enforcement action notice to the farmer.

[s 53]

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- (2) For section 49, the farmer has failed to mediate, and is taken to not intend to mediate, in relation to the farm business debt if the farmer—
- (a) did not, within 20 business days after the notice was given, ask for mediation by giving a request for mediation notice to the mortgagee; or
  - (b) has given a notice to the mortgagee or the authority stating the farmer declines mediation; or
  - (c) has failed to take part in mediation in good faith or has unreasonably delayed the mediation; or
  - (d) has not responded in writing to another notice from the mortgagee inviting the farmer to attend a mediation meeting within 20 business days after being given the notice.
- (3) Despite subsection (2)(a) and (d), the authority may be satisfied the farmer has not failed to, and intends to, mediate in relation to the farm business debt if the authority is satisfied the farmer—
- (a) did not, because of particular circumstances—
    - (i) ask for mediation as mentioned in subsection (2)(a); or
    - (ii) respond to an invitation from the mortgagee as mentioned in subsection (2)(d); and
  - (b) has asked, or intends to ask, for mediation by giving a request for mediation notice to the mortgagee within a period that is reasonable in the particular circumstances.

*Example—*

If the area in which the farm property is located experiences severe weather conditions such as flooding or a cyclone, the authority may consider it is reasonable for the farmer not to give a request for mediation notice to the mortgagee until after the weather has eased and the farmer has dealt with damage caused by the weather.

- (4) A notice mentioned in subsection (2)(d) must state—
- (a) the notice is an invitation under this section; and

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- (b) that the farmer's failure to respond to the invitation in writing within 20 business days after the invitation is given may—
    - (i) be taken as the farmer declining mediation; and
    - (ii) be a ground for the authority to issue an exemption certificate that would allow the mortgagee to take enforcement action under the farm mortgage.

#### **54 Failure to decide application**

- (1) If the authority fails to decide the mortgagee's application for an exemption certificate by the required day, the authority is taken to have decided to refuse the application.
- (2) The *required day* is the day that is 20 business days after the end of the show cause period for the show cause notice the authority gave the farmer under section 50.
- (3) If the application is taken to be refused under this section, the mortgagee is entitled to be given an information notice for the decision by the authority.

#### **55 Issuing certificate**

- (1) If the authority decides to approve a mortgagee's application for an exemption certificate, the authority must issue the certificate, in the approved form, to the mortgagee.
- (2) The exemption certificate must—
  - (a) state the name of the farmer and the mortgagee; and
  - (b) identify the farm property; and
  - (c) state—
    - (i) if the day on which the certificate ends can be worked out under section 56(2)—the day on which the certificate ends; or
    - (ii) otherwise—that the certificate ends when the farm business debt has been discharged or is no longer secured by the farm mortgage.

[s 56]

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- (3) The authority must give a copy of the certificate to the farmer.
- (4) The authority must comply with this section as soon as practicable after deciding to approve the mortgagee's application.

## **56 Duration**

- (1) An exemption certificate for a farm mortgage takes effect when the authority's decision to approve the mortgagee's application for the certificate takes effect under section 77.
- (2) An exemption certificate for a farm mortgage ends on the earlier of the following days—
  - (a) if the parties entered into a heads of agreement and a contract, mortgage or other document to give effect to the heads of agreement—
    - (i) the day the farm business debt is discharged; or
    - (ii) the day the farm business debt stops being secured by a farm mortgage over the farm property;
  - (b) otherwise—the day stated in the certificate.
- (3) For subsection (2)(b), the day stated must be the day that is 3 years after—
  - (a) if there was satisfactory mediation for the farm business debt—the last day of the mediation; or
  - (b) if the farmer failed to take part in the mediation in good faith—the last day of the mediation; or
  - (c) if the farmer gave a notice to the mortgagee or the authority stating the farmer declined mediation—the day the notice was given; or
  - (d) if the farmer failed to respond to a notice mentioned in section 53(2)(d)—the day that is 20 business days after the notice was given; or
  - (e) if the mortgagee gave an enforcement action notice to the farmer and paragraphs (a) to (d) do not apply—the day that is 3 months after the notice was given; or



- 
- (f) otherwise—the day the certificate was issued.

## **57 Effect of exemption certificate ending**

- (1) The ending of an exemption certificate does not affect the following proceedings in a court or tribunal started or taken by the mortgagee while the certificate was in force—
- (a) proceedings to recover the farm business debt;
  - (b) proceedings to exercise or enforce a right under the farm mortgage.
- (2) A reference in subsection (1) to proceedings started does not include a reference to—
- (a) giving a statutory enforcement notice; or
  - (b) taking any other action that must be taken by the mortgagee before a right under the farm mortgage can be exercised or enforced.

# **Part 5 Mediators**

## **Division 1 Accreditation**

### **58 Applying for accreditation**

- (1) An individual may apply to the authority to be accredited as a mediator.
- (2) The application must be—
- (a) in the approved form; and
  - (b) accompanied by the fee prescribed by regulation.

### **59 Inquiring about application**

- (1) Before deciding the application, the authority—
- (a) must consult with—

- (i) at least 1 organisation that represents the interests of Queensland farmers; and
    - (ii) at least 1 organisation that represents the interests of banks or other entities that provide finance to Queensland farmers; and
  - (b) may make inquiries to decide whether the applicant is a suitable person to be accredited as a mediator; and
  - (c) may, by a notice to the applicant, require the applicant to give the authority more information or a document the authority reasonably requires to decide the application within a reasonable period of at least 20 business days stated in the notice.
- (2) The authority must give any notice under subsection (1)(c) to the applicant as soon as practicable after the authority receives the application.
  - (3) The applicant is taken to have withdrawn the application if the applicant does not comply with the notice within the stated period.
  - (4) The applicant must verify the information or document by statutory declaration if the notice requires.

## **60 Appropriately qualified and suitable person**

- (1) When deciding whether the applicant is appropriately qualified to perform the functions of a mediator, the authority must consider—
  - (a) whether the applicant is an accredited mediator under an accreditation Act or the national mediator accreditation system; and
  - (b) the applicant's knowledge about, and experience in, primary industries, business finance and financial management.
- (2) When deciding whether the applicant is a suitable person to be accredited as a mediator, the authority may consider—
  - (a) whether the applicant—

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- (i) has been refused accreditation as a mediator under this Act, an accreditation Act or the national mediator accreditation system; and
  - (ii) has held accreditation as a mediator that was suspended or cancelled under this Act, an accreditation Act or the national mediator accreditation system; and
  - (iii) has a conviction, other than a spent conviction, for an offence that is relevant to the functions of a mediator; and
- (b) any other matter the authority considers relevant to the applicant's ability to perform the functions of a mediator.
- (3) The applicant is not a suitable person to be accredited as a mediator if the applicant is—
- (a) an insolvent under administration under the Corporations Act, section 9; or
  - (b) an officer of a Chapter 5 body corporate within the meaning of the Corporations Act, section 9.

## **61 Deciding application**

- (1) The authority must consider the application and decide to approve or refuse the application.
- (2) The authority may approve the application only if the authority is satisfied the applicant is—
  - (a) appropriately qualified to perform the functions of a mediator; and
  - (b) a suitable person to be accredited as a mediator.
- (3) If the authority decides to approve the application, the authority must issue the applicant with an accreditation document that states—
  - (a) the applicant is accredited as a mediator under this Act; and

- (b) the term of the applicant's accreditation.
- (4) If the authority decides to refuse the application, the authority must give an information notice for the decision to the applicant.

## **62 Failure to decide application**

- (1) If the authority fails to decide the application by the required day, the authority is taken to have decided to refuse the application.
- (2) The *required day* is the day that is 20 business days after the authority receives—
  - (a) if the authority gave a notice requiring more information or a document under section 59(1)(c) to the applicant—the information or document; or
  - (b) otherwise—the application.
- (3) If the application is taken to be refused under this section, the applicant is entitled to be given an information notice for the decision by the authority.

## **63 Term of accreditation**

A person's accreditation remains in force until—

- (a) the term, of not more than 2 years decided by the authority, stated in the person's accreditation document ends; or
- (b) the person gives a notice that states the person intends to stop being an accredited mediator to the authority; or
- (c) the accreditation is suspended or cancelled.

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## **Division 2                      Renewing accreditation**

### **64            Applying for renewal**

- (1) A person accredited as a mediator may apply to the authority to renew the person's accreditation.
- (2) The application must be—
  - (a) made within 40 business days before the term of the accreditation ends; and
  - (b) made in the approved form; and
  - (c) accompanied by the fee prescribed by regulation.

### **65            Inquiring about renewal application**

- (1) Before deciding the application, the authority may, by notice to the applicant, require the applicant to give the authority more information or a document the authority reasonably requires to decide the application within a reasonable period of at least 20 business days stated in the notice.
- (2) The authority must give any notice to the applicant as soon as practicable after the authority receives the application.
- (3) The applicant is taken to have withdrawn the application if the applicant does not comply with the notice within the stated period.
- (4) The applicant must verify the information or document by statutory declaration if the notice requires.

### **66            Deciding renewal application**

- (1) The authority must consider the application and decide to approve or refuse the application.
- (2) When deciding the application, the authority may consider the matters the authority may consider when deciding whether a person applying for accreditation is—

[s 67]

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- (a) appropriately qualified to perform the functions of a mediator; and
  - (b) a suitable person to be accredited as a mediator.
- (3) If the authority decides to approve the application, the authority must issue the applicant with an accreditation document that states—
- (a) the applicant is accredited as a mediator under this Act; and
  - (b) the term of the applicant’s accreditation.
- (4) If the authority decides to refuse the application, the authority must give an information notice for the decision to the applicant.

## **67 Failure to decide renewal application**

- (1) If the authority fails to decide the application by the required day, the authority is taken to have decided to refuse the application.
- (2) The *required day* is the day that is 20 business days after the authority receives—
- (a) if the authority gave a notice requiring more information or a document under section 65(1) to the applicant—the information or document; or
  - (b) otherwise—the application.
- (3) If the application is taken to be refused under this section, the applicant is entitled to be given an information notice for the decision by the authority.

## **68 Accreditation continues until decision about renewal**

- (1) If a mediator applies to renew the mediator’s accreditation within 40 business days before the term of the mediator’s accreditation ends, the accreditation continues until the application is—
- (a) decided or taken to have been decided; or

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- (b) withdrawn, or taken to have been withdrawn, by the applicant.
  - (2) However, if the authority decides to refuse the application, or is taken to refuse the application, the accreditation continues until the authority gives an information notice for the decision to the applicant.

## **Division 3                      Suspending and cancelling accreditation**

### **69            Application of division**

- (1) This division applies in relation to a person who is accredited as a mediator under this Act or a corresponding law.
- (2) If a person is accredited as a mediator under a corresponding law, a reference in this division to the person's accreditation is a reference to the person's accreditation under the corresponding law to the extent the accreditation is recognised under this Act.

*Note—*

The term *mediator* is defined in schedule 1 to mean a person who is accredited as a mediator under a corresponding law as well as a person who is accredited as a mediator under this part.

### **70            Grounds**

- (1) Each of the following is a ground for suspending or cancelling a person's accreditation as a mediator—
  - (a) the person contravened a provision of this Act relating to the functions of a mediator;
  - (b) the person contravened the mediation guidelines;
  - (c) the accreditation was obtained by a mistake or by materially incorrect or misleading information or documents;

[s 71]

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- (d) the authority becomes aware the person has been refused accreditation as a mediator under this Act, an accreditation Act or the national mediator accreditation system;
  - (e) the authority becomes aware the person has held an accreditation as a mediator that was suspended or cancelled under this Act, an accreditation Act or the national mediator accreditation system;
  - (f) the person has committed an offence that is relevant to the functions of a mediator;
  - (g) the person is not or is no longer a suitable person to be accredited as a mediator.
- (2) For subsection (1)(g), the authority may consider the matters the authority may consider when deciding whether the person is a suitable person to be accredited as a mediator.

*Note—*

See section 60(2) and (3) for the matters the authority must consider when deciding whether a person is a suitable person to be accredited as a mediator.

## 71 Show cause notice

- (1) If the authority believes a ground exists to suspend or cancel a person's accreditation (the *proposed action*), the authority must give a show cause notice to the person.
- (2) The show cause notice must state—
  - (a) the proposed action; and
  - (b) the ground for the proposed action; and
  - (c) an outline of the facts and circumstances forming the basis for the ground; and
  - (d) if the proposed action is to suspend the accreditation—the proposed suspension period; and
  - (e) that the person may, within the show cause period, make written representations to the authority to show why the proposed action should not be taken.



- (3) The show cause period must end at least 20 business days after the show cause notice is given to the person.

## **72 Representations about show cause notice**

- (1) The person may make written representations about the show cause notice to the authority within the show cause period.
- (2) The authority must consider all representations made to the authority within the show cause period.

## **73 Ending show cause process without further action**

If, after considering the representations made in accordance with the show cause notice, the authority no longer believes a ground exists to suspend or cancel the person's accreditation, the authority must—

- (a) take no further action about the show cause notice; and
- (b) give a notice that no further action is to be taken about the show cause notice to the mediator.

## **74 Suspending or cancelling accreditation**

- (1) This section applies if, after considering any representations made in accordance with the show cause notice, the authority—
  - (a) believes a ground exists to suspend or cancel the person's accreditation as a mediator; and
  - (b) believes suspension or cancellation is warranted.
- (2) The authority may—
  - (a) if the proposed action was to suspend the accreditation for a stated period—suspend the accreditation for no longer than the stated period; or
  - (b) if the proposed action was to cancel the accreditation—suspend the accreditation for a period or cancel the accreditation.

[s 75]

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- (3) If the authority decides to act under subsection (2), the authority must give an information notice for the decision to the person as soon as is practicable.
- (4) The decision takes effect on—
  - (a) the day the information notice is given to the person; or
  - (b) a later day stated in the information notice for that purpose.

## **75 Immediate suspension of accreditation**

- (1) This section applies if the authority believes—
  - (a) a ground exists to suspend a person’s accreditation; and
  - (b) it is necessary to suspend the accreditation immediately because there is an immediate and serious risk that the person will compromise the success of a mediation conducted by the person because, for example—
    - (i) the mediator has shown partiality to 1 party over another in a mediation, or to farmers or mortgagees in mediations generally; or
    - (ii) the mediator has engaged in conduct that is not a function of a mediator under section 20(3).
- (2) The authority may suspend the person’s accreditation immediately by giving the person—
  - (a) a show cause notice; and
  - (b) an information notice for the decision to suspend the accreditation immediately.
- (3) The suspension—
  - (a) operates when the notices are given to the person; and
  - (b) continues to operate until the earliest of the following—
    - (i) the authority cancels the suspension;
    - (ii) the show cause notice is finally dealt with;

- (iii) 30 business days after the notices are given to the person.

## **Division 4                    Register of mediators**

### **76            Register of mediators**

- (1) The authority must keep a register of mediators.
- (2) The register must contain the following particulars for each mediator—
  - (a) the mediator’s name and contact details;
  - (b) a summary of the mediator’s qualifications and experience;
  - (c) the term of the mediator’s accreditation;
  - (d) if the mediator is accredited under a corresponding law—the State in which the mediator is accredited;
  - (e) if the mediator’s accreditation is suspended or cancelled under this Act or a corresponding law—details of the suspension or cancellation.
- (3) The register may be kept in the form, including electronic form, the authority considers appropriate.
- (4) The authority may publish information from the register on the authority’s website.

## **Part 6                            Reviewing decisions**

### **Division 1                    Effect of original decision**

#### **77            When original decision takes effect**

- (1) This section applies to—

[s 78]

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- (a) an original decision to refuse an application for an enforcement action suspension certificate; and
  - (b) an original decision to issue an exemption certificate.
- (2) The original decision does not take effect until—
- (a) if an application for an internal review of the original decision is made—the chief executive officer decides the application; or
  - (b) otherwise—the end of the last day to apply for an internal review of the decision.

## **78 QCAT may stay operation of original decision**

- (1) This section applies to an original decision that is an accreditation decision.
- (2) A person who has a right of review for an original decision may apply, as provided under the QCAT Act, to QCAT for a stay of the operation of the original decision.
- (3) QCAT may, by order, stay the operation of the original decision to secure the effectiveness of an internal review of the decision and any later application for review of the decision by QCAT.
- (4) QCAT may stay the operation of the original decision on conditions QCAT considers appropriate.
- (5) The stay operates for the period decided by QCAT.
- (6) However, the period must not extend past the last day to apply for an external review of a decision on an internal review of the original decision.

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## Division 2                      Internal review

### 80            Applying for internal review of original decision

- (1) A person who must be given an information notice for an original decision may apply to the chief executive officer for a review (an *internal review*) of the decision.
- (2) The person must apply, in the approved form, to the chief executive officer within 20 business days after—
  - (a) the day the person is given the information notice for the decision; or
  - (b) if the person is not given an information notice for the decision—the day the person becomes aware of the decision.
- (3) The chief executive officer may, at any time, extend the period within which the application may be made.
- (4) The making of the application in relation to an original decision to which section 77 does not apply does not—
  - (a) affect the operation of the original decision; or
  - (b) prevent the original decision being implemented.

*Note—*

Division 1 provides for a stay of the operation of original decisions, either automatically or by application to QCAT.

### 81            Reviewing original decision

- (1) The chief executive officer must, within 30 business days after receiving an application for internal review of an original decision—
  - (a) review the original decision; and
  - (b) make a decision (the *internal review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or

- (iii) substitute another decision for the original decision; and
  - (c) give a notice (the *review notice*) advising of the internal review decision to the applicant.
- (1A) If the original decision is not an accreditation decision, the chief executive officer may, at any time, extend the period for making the internal review decision and giving the review notice.
- (2) The application may be dealt with only by a person who—
  - (a) did not make the original decision; and
  - (b) holds a more senior office than the person who made the original decision.
- (3) Subsection (2)—
  - (a) does not apply to an original decision made personally by the chief executive officer; and
  - (b) applies despite the *Acts Interpretation Act 1954*, section 27A.
- (4) If the internal review decision confirms the original decision, the original decision is taken to be the internal review decision.
- (5) If the internal review decision amends the original decision, the original decision as amended is taken to be the internal review decision.
- (5A) Subsections (6) and (7) apply if the original decision is an accreditation decision.
  - (6) If the internal review decision is not the decision sought by the applicant, the review notice must comply with the QCAT Act, section 157(2).
  - (7) If the chief executive officer does not give a review notice to the applicant within 30 business days after the application for internal review is made, the chief executive officer is taken to have made an internal review decision that confirms the original decision.

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## Division 3 External review

### 82 Applying for external review

- (1) This section applies to a person who—
  - (a) applied for an internal review of an accreditation decision; and
  - (b) must be given a review notice under section 81(1) advising of the internal review decision.
- (2) The person may apply to QCAT, as provided under the QCAT Act, for a review of the internal review decision.

*Note—*

The QCAT Act, section 22(3) states that QCAT may stay the operation of the internal review decision, either on application by a person or on its own initiative.

## Part 7 General

### 83 Disclosing information

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

- (a) if the information is about a person—by, or with the consent, of the person; or
- (b) with the consent of the person from whom the information was obtained; or
- (c) to the extent necessary to perform the person's functions under or in relation to this Act; or
- (d) as reasonably required for the purpose of referring a party or parties to mediation to a 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 the parties; or

- (e) as otherwise required or allowed by law; or
- (f) with another lawful excuse.

Maximum penalty—20 penalty units or 6 months imprisonment.

## 84 Protection from liability

- (1) A mediator does not incur civil liability for engaging, or for the result of engaging, in conduct under this Act.
- (2) A person acting under the direction of a mediator does not incur civil liability for engaging, or for the result of engaging, in conduct in connection with acting under the direction.
- (3) If subsection (1) or (2) prevents civil liability attaching to a mediator or other person, liability attaches instead to the State.
- (4) If liability attaches to the State under subsection (3), the State may recover a contribution from the mediator or other person, but only if the conduct was engaged in—
  - (a) other than in good faith; and
  - (b) with gross negligence.
- (5) In a proceeding under subsection (4) to recover a contribution, the amount of the contribution recoverable is the amount found by the court to be just and equitable in the circumstances.
- (6) This section does not apply to a person who is a State employee under the *Public Service Act 2008*, section 26B(4) engaging in conduct in an official capacity under section 26C of that Act.

*Note—*

For protection from civil liability in relation to State employees, see the *Public Service Act 2008*, section 26C.

- (7) In this section—

*civil liability* includes liability for the payment of costs ordered to be paid in a proceeding for an offence against this Act.



*conduct* means an act or an omission to perform an act.

*engage in conduct under this Act* means engage in conduct as part of, or otherwise in connection with, a person's role, as a mediator, under this Act, including, for example, engaging in conduct under or purportedly under this Act.

## 85 Contracting out prohibited

A contract or agreement has no effect to the extent to which it—

- (a) is contrary to this Act; or
- (b) purports to exclude, limit or change the operation of this Act.

## 86 Waiver of rights

A waiver, or purported waiver, of a farmer's rights under this Act has no effect.

*Examples of a farmer's rights under this Act—*

- the right to ask for mediation for a farm business debt
- the right to nominate a mediator to conduct mediation, or a panel of at least 3 mediators for a mortgagee to choose a mediator to conduct mediation
- the right to apply for an enforcement action suspension certificate

## 87 Notices by mortgagee

If property is subject to a farm mortgage and another Act requires the mortgagee to give a notice to the farmer, as mortgagor, before exercising a power or right conferred by the other Act or by the farm mortgage in relation to the property—

- (a) nothing in this Act affects the requirement to give the notice under the other Act; and
- (b) a notice required to be given under this Act does not fail to comply with this Act merely because the notice

includes matter required to be stated in a notice required to be given under the other Act before exercising the power or right.

## **88 Offences against this Act**

- (1) An offence against this Act is a summary offence.
- (2) A proceeding for the offence must start within—
  - (a) 1 year after the offence is committed; or
  - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.
- (3) In a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

## **89 Executive officer may be taken to have committed offence against deemed executive liability provision**

- (1) If a corporation commits an offence against a deemed executive liability provision, an executive officer of the corporation is taken to have also committed the offence if—
  - (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
  - (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct constituting the offence.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect—
  - (a) the liability of the corporation for the offence against the deemed executive liability provision; or

- (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.
- (4) In this section—
  - deemed executive liability provision* means—
  - (a) section 12(1); or
  - (b) section 31(2).

## **90 Approved forms**

The authority may approve forms for use under this Act.

## **90A Review of Act**

- (1) The Minister must review this Act within 5 years after 1 July 2017 to decide whether its provisions remain appropriate.
- (2) The Minister must table a report about the review in the Legislative Assembly as soon as practicable after finishing the review.

## **91 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
  - (a) prescribe fees payable under the Act; and
  - (b) provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

## Part 8 Transitional provision

### 92 Application of Act

- (1) This Act applies in relation to a farm mortgage for a farm business debt, whether the mortgage was entered into, or the debt was incurred, before or after this section commenced.
- (2) However, this Act does not apply if—
  - (a) the farmer and the mortgagee took part in mediation for the farm business debt under the Queensland farm finance strategy and entered into an agreement (however called) in writing because of the mediation; or
  - (b) the following enforcement action was taken before the commencement of this section—
    - (i) the mortgagee or the mortgagee’s agent entered into possession under the mortgage;
    - (ii) the mortgagee exercised power of sale under the farm mortgage and a contract of sale was entered into;
    - (iii) a judgment for the farm business debt was obtained.
- (3) In this section—

*Queensland farm finance strategy* means the document—

  - (a) called the ‘Queensland farm finance strategy’; and
  - (b) dated 1 February 2008; and
  - (c) agreed to by the Queensland Farmers’ Federation Ltd ACN 055 764 488, the Australian Bankers’ Association Incorporated ARBN 117 262 978 and AgForce Queensland Industrial Union of Employers ABN 21 241 679 171.

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## Schedule 1      Dictionary

### section 4

**accreditation**, for a person, means the person's accreditation as a mediator.

**accreditation Act** means an Act of any jurisdiction, other than this Act, under which a person may be accredited, however described, as a mediator.

**accreditation decision** means an original decision about an individual's accreditation, or application for accreditation, as a mediator made under part 5.

**approved form** means a form approved under section 90.

**authority** means the Queensland Rural and Industry Development Authority established under the *Rural and Regional Adjustment Act 1994*.

**chief executive officer** means the chief executive officer of the authority under the *Rural and Regional Adjustment Act 1994*.

**contact details**, for a person, means—

- (a) the person's residential, business or postal address; and
- (b) the person's phone number or, if the person does not have a phone number, a way of contacting the person by phone; and
- (c) the person's fax number (if any); and
- (d) the person's email address (if any); and
- (e) any other electronic address of the person.

**contract** includes an agreement.

**cooling-off period**, for a heads of agreement, see section 27(1).

**corresponding law**, of a State, means an Act of that State that—

- (a) provides for mediation for farm business debts, however described; and
- (b) is prescribed by regulation to be a corresponding law.

**default**, in relation to a farmer under a farm mortgage, means a ground exists for the mortgagee to take enforcement action against the farmer under the terms of the mortgage.

*Examples of default—*

- a failure to perform an obligation under the terms of the farm mortgage
- the ratio of the farm business debt to the value of farm property (commonly referred to as the loan to value ratio or LVR) changes because the value of the farm property secured by the farm mortgage changes

**electronic document** means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

**enforcement action**, in relation to a farm mortgage, means action to enforce the mortgage, including, for example—

- (a) taking possession of the property under the mortgage; and
- (b) exercising a power of sale under the mortgage; and
- (c) giving a statutory enforcement notice.

**enforcement action notice** see section 14(2).

**enforcement action suspension certificate** see section 40(2).

**executive officer**, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

**exemption certificate** see section 48(1).

**farm business debt** see section 5.

**farmer** means—

- (a) a person or entity whose sole or main business is a farming business; or

- 
- (b) a person or entity who is the owner of land the subject of a sharefarming agreement; or
  - (c) a person or entity who has applied, and is eligible, for a loan under a program administered by the authority to provide finance to persons in the first years of establishing a farming business; or
  - (d) a person who is the personal representative of a dead individual mentioned in paragraph (a), (b) or (c).

***farming business***—

- (a) means—
  - (i) an agricultural, apicultural, dairy farming, horticultural, land-based aquacultural, pastoral, poultry keeping or viticultural business; or
  - (ii) another business that involves cultivating the soil, gathering crops or rearing livestock; or
  - (iii) a business that involves cutting timber for sale; or
  - (iv) another business prescribed by regulation to be a farming business; and
- (b) includes—
  - (i) a business mentioned in paragraph (a) carried out under a sharefarming agreement; and
  - (ii) providing land for a business mentioned in paragraph (a) to be carried out under a sharefarming agreement; but
- (c) does not include a business prescribed by regulation not to be a farming business for this Act.

***farm mortgage*** means a mortgage of farm property.

***farm property*** means—

- (a) land on which a farmer carries on a farming business; or
- (b) a water allocation under the *Water Act 2000* held by a farmer for carrying on a farming business; or
- (c) a vehicle, machine, tool or other thing of a type that is usually used to carry on a farming business.

*Examples—*

tractor, milking machine, harvester, beehive

***heads of agreement***, between the parties to a mediation for a farm business debt, means a document that—

- (a) sets out the main points of agreement between the parties on a matter relating to the farm business debt; and
- (b) is prepared by a mediator and signed by the parties under section 26.

***information notice***, for a decision, means a notice that states—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the rights of review under this Act for the decision; and
- (d) how, and the period within which, a review under this Act for the decision may be started; and
- (e) how a stay of the operation of the decision may be applied for under this Act.

***internal review decision*** see section 81(1)(b).

***mediation***, for a farm business debt, see section 6(1).

***mediation guidelines*** means guidelines about the conduct of mediation for farm business debts made by the authority under section 34.

***mediation information package*** see section 35(1).

***mediation meeting*** see section 6(2).

***mediator*** means a person accredited as a mediator—

- (a) by the authority under section 61; or
- (b) under a corresponding law.

***mortgage*** includes a charge on land or an interest in land for securing money or money's worth.



**mortgagee**, for a farm mortgage, means a person to whom a farmer owes a farm business debt secured by the farm mortgage.

**national mediator accreditation system** means the system known as the national mediation accreditation system that—

- (a) provides for the accreditation of mediators, practice standards for accredited mediators, the recognition of bodies to accredit mediators and a register of nationally accredited mediators; and
- (b) is administered by the Mediator Standards Board Limited ACN 145 829 812.

**notice** means written notice.

**officer**, of a corporation, means an officer as defined by the *Corporations Act 2001* (Cwlth), section 9 for the corporation.

**original decision** means—

- (a) a decision for which an information notice must be given under this Act; and
- (b) a decision about the date stated on an exemption certificate as the date on which the certificate ends.

**owner**, of land, includes the lessee of land subject to a lease under the *Land Act 1994*.

**parties**, to any of the following, means the farmer and the mortgagee for a farm business debt—

- (a) the farm business debt;
- (b) the farm mortgage that secures the farm business debt;
- (c) mediation for the farm business debt;
- (d) a heads of agreement entered into because of agreement reached during mediation for the farm business debt.

**Queensland Law Society** means the Queensland Law Society Incorporated under the *Legal Profession Act 2007*.

**request for mediation notice** see section 15(3).

**satisfactory**, for mediation for a farm business debt, see section 7.

***sharefarming agreement*** means an agreement between the owner of land and another person (a ***share farmer***) under which—

- (a) the owner allows the share farmer to use the land to carry on a business; and
- (b) the owner and the share farmer share in the income from the business carried out on the land.

***show cause notice***, for a proposed action or decision, means a notice that invites the recipient of the notice to make written representations to show cause why the proposed action should not be taken or decision not made.

***show cause period***, for a show cause notice, means the period stated in the notice within which the recipient may make the written representations invited by the notice.

***spent conviction*** means a conviction—

- (a) to which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

***statutory enforcement notice***, for a farm mortgage, means a notice, however described, that the mortgagee is required, under an Act, to give the farmer or another person before taking action to enforce the farm mortgage, including, for example—

- (a) a notice to the farmer under the *Property Law Act 1974*, section 84; and
- (b) a notice to the Minister under the *Land Act 1994*, section 345; and
- (c) a notice to the farmer under the *Water Act 2000*, section 166(5).