

Farm Business Debt Mediation Regulation 2017

Explanatory notes for SL 2017 No. 112

made under the

Farm Business Debt Mediation Act 2017

General Outline

Short title

Farm Business Debt Mediation Regulation 2017

Authorising law

Section 91 of the *Farm Business Debt Mediation Act 2017* (the Act)

Policy objectives and the reasons for them

The purpose of the subordinate legislation is to prescribe, for the purposes of section 18 of the Act, the process for choosing a mediator to conduct mediation between a farmer and a mortgagee in relation to a farm business debt.

The Act which received assent on 30 March 2017 will in part, provide a process for the efficient and equitable resolution of farm business debt matters between mortgagees and farmers. Relevant provisions which give effect to the operation of mediation under the Act will commence on 1 July 2017.

In the report on its inquiry into the then Farm Business Debt Mediation Bill (the Bill), the Parliamentary Finance and Administration Committee (the Committee) recommended that the Minister for Agriculture and Fisheries and Minister for Rural Economic Development review the Bill to identify suitable provisions which could be moved into Regulation.

This recommendation was made in light of submissions to the Committee which suggested that detailed provisions of an operational nature were more appropriately placed in subordinate legislation rather than the Act.

The Government proposed amendments during consideration in detail of the Bill to omit the prescriptive detail of the mediator nomination process and simply provide that a mediator must be chosen in the way prescribed by regulation.

Achievement of policy objectives

The subordinate legislation prescribes for the purposes of section 18 of the Act, the process by which farmers nominate mediators, advise mortgagees of their nominations and the timeframes in which to do so.

The subordinate legislation also prescribes the process by which mortgagees accept or refuse proposed nominees, and the timeframes in which they are to respond to the farmer and provide copies of documentation to the new Queensland Rural and Industry Development Authority (QRIDA).

Alternative ways of achieving policy objectives

An alternative to the subordinate legislation would be to amend section 18 of the Act to detail the process for choosing a mediator which was formerly included in the Bill. However, as was raised during the Committee inquiry into the Bill, the workability of the Bill would be enhanced if it reflected the broad policy intent and principles of legislation, with the machinery being in regulations.

The greatest advantage for having operational detail prescribed in regulation is that subordinate legislation can be amended more easily as circumstances change and experience is gained.

A further alternative would be to have QRIDA determine the process although this would also require an Act amendment and guidelines developed by QRIDA on the process would not be subject to Parliament.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the main policy objective of the Act to provide a process for the efficient and equitable resolution of farm business debt matters between farmers and mortgagees. Mediation under the Act would not function efficiently without a process for farmers and mortgagees to adhere to choose mediators.

Inconsistency with policy objectives of other legislation

The subordinate legislation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

QRIDA has responsibilities under the Act but will only be required to become actively involved in choosing a mediator if the parties to mediation do not agree on a mediator. For this reason the subordinate legislation will impose minimal additional costs upon government and these costs will be met from within QRIDA's existing budget allocation.

The subordinate legislation will impose obligations on both farmers and mortgagees to undertake certain actions within prescribed timeframes. However, these are not onerous and only formalise some procedures for choosing mediators. There are no fees associated with the process of choosing a mediator.

Consistency with fundamental legislative principles

The subordinate legislation is consistent with fundamental legislative principles.

Consultation

The draft Bill initially proposed that the farmer could nominate either one or three mediators however, based on feedback from stakeholders received during consultation on the draft Bill, a different more efficient approach to provide for the nomination of three mediators only was taken when the Regulation was developed.

DAF has not undertaken further consultation as this matter was sufficiently aired during the Committee process.

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the regulatory proposal. The Department of Agriculture and Fisheries applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category (g) - Regulatory proposals that are of a machinery nature).