



Credit (Rural Finance) Act 1996

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Queensland

Credit (Rural Finance) Act 1996

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Credit (Rural Finance) Act 1996

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

Part 1 Preliminary

1 Short title

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

2 Commencement

This Act commences when the *Consumer Credit (Queensland) Act 1994*, section 4 commences.

3 Definitions and dictionary

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

4 Purpose of Act

- (1) The purpose of this Act is to provide some protection to farmers against the enforcement of mortgages over equipment they use to carry out their farming businesses.
- (2) The purpose is to be achieved mainly by providing for—
 - (a) a mortgagee to give at least 30 days notice before exercising a right to take possession of, or sell, farm equipment; and
 - (b) the court to make an order allowing a farmer to keep possession of equipment, for up to 1 year, if the

equipment is used to carry out the farmer's farming business and the court considers, among other things, that the farmer has a reasonable prospect of being able to remedy any default.

5 Application of Act

- (1) This Act applies to all persons including the State and, so far as the legislative power of the State permits, the Commonwealth and the other States.
- (2) However, this Act applies in relation to a mortgage only if the mortgagor (or, if there is more than 1, each mortgagor) is an individual.
- (3) Also—
 - (a) part 2 does not apply in relation to a mortgage to which the National Credit Code applies; and
 - (b) this Act does not apply in relation to a mortgage to which the the repealed *Credit Act 1987* as continued applies.

Note—

The provisions of the *Credit Act 1987* are continued by the *Credit (Commonwealth Powers) Act 2010*, section 15.

6 Courts with jurisdiction under this Act

- (1) The jurisdiction expressed to be exercisable by the court under this Act in relation to a mortgage is exercisable by—
 - (a) if proceedings in relation to the mortgage have been started in, or are before, a court—that court; or
 - (b) otherwise—the court whose monetary jurisdiction is not exceeded by the amount payable under the mortgage when the proceeding concerned is started in the court.
- (2) In this section—

court includes QCAT.

Part 2 Default notice

7 Mortgagee must give default notice

- (1) This section applies if a mortgagee has a right under a mortgage over farm equipment to take possession of, or sell, the equipment.
- (2) The mortgagee must not exercise, or purport to exercise, the right unless—
 - (a) the mortgagor has defaulted; and
 - (b) the mortgagee has given the mortgagor, and guarantor (if any), written notice (a *default notice*) under this part for the default; and
 - (c) the default has not been remedied by the due day stated in the default notice.

Maximum penalty—500 penalty units.

8 Requirements for default notice

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

[s 9]

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

9 Exception to s 7—further default during notice period

- (1) This section applies if—
 - (a) a mortgagor defaults under a mortgage; and
 - (b) the mortgagee gives the mortgagor, and guarantor (if any), a default notice under this part for the default; and
 - (c) the mortgagor makes a further default of the same type before the due day stated in the default notice for the first default; and
 - (d) the further default is not remedied by the due day stated in the default notice for the first default.
- (2) Section 7 does not apply to the mortgagee in exercising, or purporting to exercise, a right under the mortgage for the further default.

10 Exception to s 7—taking possession to protect equipment

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

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

11 Other exceptions to s 7

Section 7 does not apply to a mortgagee in exercising, or purporting to exercise, a right under a mortgage if—

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

12 Onus on mortgagee to show s 7 does not apply

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

Part 3 Relieving order

13 Mortgagor may apply for a relieving order

- (1) This section applies if—
 - (a) for a mortgage over farm equipment—the mortgagee has given the mortgagor a default notice under part 2; or
 - (b) for a mortgage over equipment (whether or not it is farm equipment)—

[s 14]

- (i) the mortgagee has exercised, or purported to exercise, a right under the mortgage to take possession of the equipment; or
 - (ii) the mortgagor has defaulted under the mortgage; or
 - (iii) for another reason, the mortgagor believes the mortgagee may exercise, or purport to exercise, a right under the mortgage to take possession of, or sell, the equipment.
- (2) The mortgagor may apply to the court for a relieving order if—
 - (a) the mortgagee has not taken possession of, or sold, the equipment or, if the mortgagee has taken possession of the equipment, has not parted with possession of the equipment; and
 - (b) the mortgagor is a farmer who is using, or intending to use, the equipment to carry out the farmer's farming business, or would be using, or intending to use, the equipment to carry out the farmer's farming business if the mortgagee had not taken possession of the equipment.

14 Notice of application

- (1) If the mortgagor applies for a relieving order, the mortgagor must immediately give a copy of the application (a *notice of application*) to the mortgagee.
- (2) The court may order that the mortgagor is not required to comply with subsection (1) if the court is satisfied the mortgagor has unsuccessfully made all reasonable attempts to find the mortgagee.
- (3) The order may be made on conditions.

15 Effect of serving notice of application

- (1) If the mortgagor gives a notice of application to the mortgagee, the mortgagee must not, until the court orders otherwise or the application is withdrawn or dismissed—
 - (a) sell the equipment; or
 - (b) if the mortgagee does not have possession of the equipment—take possession of the equipment; or
 - (c) if the mortgagee has possession of the equipment—part with its possession (other than to return it to the mortgagor).

Maximum penalty—500 penalty units.

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

16 Court may make relieving order

- (1) The court must decide the application by dismissing it or by making a relieving order.
- (2) In deciding the application, the court must consider—
 - (a) whether the mortgagor has a reasonable prospect of being able to remedy the stated default within 1 year after the notice day; and
 - (b) how necessary the equipment is to the mortgagor in carrying out the farming business; and
 - (c) whether the mortgagor has removed, damaged or disposed of the equipment, or intends to remove, damage or dispose of the equipment, in contravention of the mortgage; and
 - (d) anything else the court considers relevant to making a just decision.
- (3) A *relieving order* is an order that—

- (a) if the mortgagee has possession of the equipment—the mortgagee must return it to the mortgagor; and
 - (b) the mortgagee must not take possession of, or sell, the equipment for a stated period ending not later than 1 year after the notice day.
- (4) The court may make a relieving order on terms it considers appropriate, including, for example, that the mortgagor pay any enforcement expenses incurred by the mortgagee.
- (5) In this section—

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

stated default means—

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

17 Compliance with relieving order

A mortgagee must comply with a relieving order.

Maximum penalty—500 penalty units.

Part 3A Particular provisions for hire-purchase agreements where farm equipment is repossessed

17A Application of pt 3A

This part applies if—

- (a) the mortgagor under a mortgage that is a hire-purchase agreement has defaulted under the mortgage; and
- (b) the mortgagee has exercised, or purported to exercise, a right under the mortgage to take possession of the farm equipment.

17B Meaning of *hire-purchase agreement*

- (1) A ***hire-purchase agreement*** is an agreement entered into after the commencement of this section, under which—
 - (a) farm equipment is let or hired to a farmer and the farmer has an option to purchase the farm equipment; or
 - (b) a farmer agrees to purchase farm equipment by instalments, whether the instalments are described as rent, hire or something else.
- (2) Two or more agreements, which individually are not hire-purchase agreements, are also a ***hire-purchase agreement***, from the time the last agreement is entered into, if under the agreements—
 - (a) there is a bailment of farm equipment to a farmer; and
 - (b) the farmer may purchase the farm equipment or the property in the farm equipment may pass to the farmer.
- (3) However, a ***hire-purchase agreement*** does not include an agreement mentioned in subsection (1) or (2) if—
 - (a) the property in the farm equipment passes to the farmer—
 - (i) at the time the agreement is entered into; or
 - (ii) at any time before delivery of the farm equipment; or
 - (b) the total market value of the farm equipment at the time the agreement is entered into is more than \$40000000.
- (4) In this section—

farmer, for a hire-purchase agreement, does not include a farmer engaged in the business of selling farm equipment of

the same nature or description as the farm equipment being let, hired, purchased or bailed under the agreement.

17C Mortgagee must give notice of best price estimate and expenses

The mortgagee must, within 30 days after the mortgagee takes possession of the farm equipment, give the mortgagor a written notice stating—

- (a) a best price estimate for the farm equipment; and
- (b) the mortgagee's estimate of the mortgagee's enforcement expenses; and
- (c) the mortgagee's estimate of any expense the mortgagee must reasonably incur to return the farm equipment to the mortgagor.

Maximum penalty—500 penalty units.

17D Action after notice given to mortgagee

The mortgagor may, within 21 days after the mortgagee gives the mortgagor notice under section 17C, give the mortgagee written notice requiring the mortgagee to—

- (a) sell the farm equipment to a person nominated by the mortgagor at a price not less than the best price estimate for the farm equipment stated in the notice given under section 17C; or
- (b) return the farm equipment to the mortgagor under section 17E.

17E Return of farm equipment when breach remedied

The mortgagee must return the farm equipment to the mortgagor if, within 14 days after the mortgagee receives a notice under section 17D(b), the mortgagor—

- (a) pays or tenders to the mortgagee the amount owing under the mortgage for the period ending on the day the mortgagor pays or tenders the amount; and
- (b) pays or tenders to the mortgagee—
 - (i) the mortgagee's enforcement expenses; and
 - (ii) any expense the mortgagee must reasonably incur to return the farm equipment to the mortgagor; and
- (c) remedies any other breach of the mortgage, or if the mortgagor can not remedy the breach, pays or tenders to the mortgagee any expense the mortgagee must reasonably incur to remedy the breach.

Maximum penalty—500 penalty units.

17F Return of farm equipment when breach not remedied

- (1) This section applies if the mortgagee returns the farm equipment to the mortgagor and the mortgagor has not remedied a breach of the mortgage.
- (2) The mortgagee may again take possession of the farm equipment if—
 - (a) the mortgagee gives the mortgagor, when the farm equipment is returned, written notice—
 - (i) stating the breach and how the mortgagor may remedy the breach; and
 - (ii) requiring the mortgagor to remedy the breach within 14 days, or a longer period stated in the notice, after the notice is given; and
 - (b) the mortgagor does not remedy the breach within 14 days, or the longer period stated in the notice, after the notice is given.

17G Effect of breaches being remedied

- (1) This section applies if—

- (a) the farm equipment is returned under section 17E; or
 - (b) section 17F applies and the mortgagor remedies the breach mentioned in a notice given under section 17F(2)(a) within 14 days, or the longer period stated in the notice, after the notice is given.
- (2) The mortgage operates as if a breach had not occurred and the mortgagee had not taken possession of the farm equipment.

17H Amount mortgagor may recover if farm equipment is not returned

- (1) This section applies—
- (a) if—
 - (i) the mortgagee does not return the farm equipment to the mortgagor; and
 - (ii) the repossession value of the farm equipment is—
 - (A) at least equal to the net amount payable under the mortgage; or
 - (B) less than the net amount payable under the mortgage, but the total of the repossession value and the actual payments is more than the net amount payable; and
 - (b) whether or not the mortgagor gives the mortgagee notice under section 17D.
- (2) The mortgagor may recover from the mortgagee an amount equal to the total of the repossession value and the actual payments, less the net amount payable.

17I Maximum amount mortgagee may recover

- (1) This section applies—
- (a) if the mortgagee does not return the farm equipment to the mortgagor; and

- (b) whether or not the mortgagor gives the mortgagee notice under section 17D.
- (2) The mortgagee may not recover an amount under the mortgage, by judgment, order or otherwise, that is more than the net amount payable less the total of the repossession value and the actual payments.

17J Mortgagee to obtain best price

- (1) This section applies if the mortgagee sells the farm equipment to a person other than a person nominated by the mortgagor in a notice under section 17D(a).
- (2) The onus of proving the mortgagee obtained the best price the mortgagee could reasonably have obtained for the farm equipment when the mortgagee took possession of the farm equipment is on the mortgagee.

Part 4 Miscellaneous

18 Compensation for noncompliance by mortgagee

- (1) This section applies if a mortgagee contravenes section 7, 15, 17, 17C or 17E.
- (2) On the application of the mortgagor, the court may order the mortgagee to compensate the mortgagor for any loss suffered because of the contravention.
- (3) An order under subsection (2)—
 - (a) may be made whether or not the mortgagee has been prosecuted for the contravention; and
 - (b) does not affect the mortgagee's liability to be prosecuted for the contravention.

19 This Act in addition to other laws

- (1) This Act is in addition to any other law about the enforcement of a mortgage.
- (2) In particular, this Act does not prevent the issue of a notice to a mortgagor under other legislation.
- (3) This section is subject to section 5(3).

20 Contracting out

- (1) The following provisions of a mortgage or other instrument are void—
 - (a) a provision to avoid or modify the effect of this Act;
 - (b) a provision to have a mortgagor indemnify a mortgagee for any loss or liability arising under this Act.
- (2) A mortgagee must not be a party to a mortgage or other instrument containing a provision mentioned in subsection (1).

Maximum penalty—100 penalty units.

21 Service of notices on each mortgagee, mortgagor or guarantor

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

23 Regulation-making power

The Governor in Council may make regulations under this Act.

Schedule Dictionary

section 3

actual payments, for a mortgage that is a hire-purchase agreement, means the amount already paid or provided by the mortgagor under the mortgage.

assignee, of rights and obligations, includes a person to whom the rights and obligations are passed by law.

best price estimate, for farm equipment under a mortgage that is a hire-purchase agreement, means an estimate of the best price that could reasonably be obtained for the farm equipment if the farm equipment was sold when the mortgagee took possession of it.

court see section 6.

default notice see section 7(2).

due day see section 8.

enforcement expenses means expenses incurred in exercising the mortgagee's rights under a mortgage arising because of the mortgagor's default.

equipment includes a vehicle, machine and tool.

farm equipment means—

- (a) equipment of a type whose usual use is to carry out a farming business; or
- (b) anything else prescribed under a regulation to be farm equipment for this Act;

but does not include anything prescribed under a regulation not to be farm equipment for this Act.

Examples of equipment mentioned in paragraph (a)—

Beehive, binder, fishing trawler, harvester, milking machine, plough, tractor.

farmer means an individual whose sole or principal business is a farming business.

farming business means—

- (a) an agricultural, apicultural, dairy farming, horticultural, pastoral, poultry keeping or viticultural business; or
- (b) another business that involves cultivating the soil, gathering crops or rearing livestock; or
- (c) a business that involves cutting timber for sale; or
- (d) a fishing business; or
- (e) anything else prescribed under a regulation to be a farming business for this Act;

but does not include anything prescribed under a regulation not to be a farming business for this Act.

fishing see the *Fisheries Act 1994*.

guarantor, for a mortgage, means a person who, under the mortgage or another document given to the mortgagee, guarantees an obligation of the mortgagor under the mortgage.

hire-purchase agreement see section 17B.

insurance rebate, for a mortgage that is a hire-purchase agreement, means an amount calculated using the formula—

$$\frac{3 \times C \times R}{40} + U$$

where —

C means the amount payable to the mortgagee under the mortgage for insurance, other than third-party insurance, for an annual period that has commenced.

R means the number of complete months remaining in the annual period that has commenced.

U means the amount payable to the mortgagee under the mortgage for insurance, other than third-party insurance, for an annual period that has not commenced.

maintenance rebate, for a mortgage that is a hire-purchase agreement, means an amount calculated using the formula—

$$\frac{M \times R}{T}$$

where—

M means the amount payable to the mortgagee under the mortgage for the maintenance of the farm equipment.

R means the number of complete months in the remaining period of the mortgage.

T means the number of complete months in the total period of the mortgage.

mortgage includes hire-purchase agreement.

mortgagee means—

- (a) for a mortgage that is a hire-purchase agreement—
 - (i) the person letting, hiring, agreeing to sell or bailing farm equipment under the mortgage (the ***owner***); or
 - (ii) an assignee of the owner's rights and obligations under the mortgage; or
- (b) otherwise—
 - (i) the person to whom the mortgage is given (the ***original mortgagee***); or
 - (ii) an assignee of the original mortgagee's rights and obligations under the mortgage.

mortgagee's enforcement expenses, for repossession of farm equipment under a mortgage that is a hire-purchase agreement, means the total amount of the mortgagee's reasonable expenses in relation to—

- (a) taking possession of the farm equipment; and
- (b) storing, repairing and maintaining the farm equipment while in the mortgagee's possession; and

- (c) selling or disposing of the farm equipment (whether or not the farm equipment is sold or disposed of).

mortgagor means—

- (a) for a mortgage that is a hire-purchase agreement—
- (i) the person to whom the farm equipment is let, hired, agreed to be sold or bailed under the mortgage (the **hirer**); or
 - (i) an assignee of the hirer's rights and obligations under the mortgage; or
- (b) otherwise—
- (i) the person by whom the mortgage is given (the **original mortgagor**); or
 - (ii) an assignee of the original mortgagor's rights and obligations under the mortgage.

National Credit Code means the *National Credit Code* in Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cwlth).

net amount payable, for a mortgage that is a hire-purchase agreement, means the total amount payable less the total of the following amounts—

- (a) the insurance rebate;
- (b) the maintenance rebate;
- (c) the terms charges rebate.

notice of application see section 14.

relieving order see section 16(3).

repossession value of farm equipment under a mortgage that is a hire-purchase agreement, means—

- (a) if the farm equipment is sold to a person nominated by the mortgagor in a notice under section 17D(a)—the sale price less the mortgagee's enforcement expenses; or
- (b) otherwise—the best price that could reasonably be obtained for the farm equipment if the farm equipment

was sold when the mortgagee took possession of it, less the mortgagee's enforcement expenses.

terms charges, for a mortgage that is a hire-purchase agreement, means the amount of the charges payable under the mortgage, other than a charge for—

- (a) insurance, maintenance or delivery of the farm equipment; or
- (b) vehicle registration fees; or
- (c) stamp duty.

terms charges rebate, for a mortgage that is a hire-purchase agreement, means—

- (a) if the terms charges are calculated on a simple interest basis at a rate stated in the mortgage on the amount, not including the terms charges, owing from month to month—the amount of interest attributable to the remaining period of complete months of the mortgage; or
- (b) otherwise—an amount calculated using the formula—

$$\frac{P \times R}{T}$$

where—

P means the total amount of terms charges payable under the mortgage.

R means the total of all the whole numbers from 1 to the number of complete months in the remaining period of the mortgage.

T means the total of all the whole numbers from 1 to the number of complete months in the total period of the mortgage.

total amount payable, for a mortgage that is a hire-purchase agreement, means the total amount to be paid or provided, under the mortgage by the mortgagor.

vehicle includes a motor vehicle, vehicle without motive power, boat and aircraft.

vehicle registration fees means an amount to be paid or provided by the mortgagee under a mortgage for registration of a motor vehicle, including any amount payable for third-party insurance.