

**Authorised Version No. 003**  
**Farm Debt Mediation Act 2011**

**No. 42 of 2011**

Authorised Version incorporating amendments as at  
1 July 2017

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**The Parliament of Victoria enacts:**

**Part 1—Preliminary**

**1 Purpose**

The purpose of this Act is to provide for the efficient and equitable resolution of farm debt disputes by requiring a creditor to provide a farmer with the option to mediate before taking possession of property or other enforcement action under a farm mortgage.

**2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 1 July 2012, it comes into operation on that day.

**3 Definitions**

In this Act—

*commencement day* means the day on which this Act comes into operation;

*creditor* means a person to whom a farm debt is for the time being owed by a farmer;

***default***, in relation to a farm mortgage, means failure to perform an obligation that, under the terms of the mortgage, is a ground for enforcement action;

**Examples**

- 1 Failure to pay the principal, interest or other money the payment of which is secured by a farm mortgage.
- 2 Failure to keep the property subject to the farm mortgage insured.
- 3 Failure to submit financial statements required by the creditor.

S. 3 def. of  
*Department*  
amended by  
No. 70/2013  
s. 4(Sch. 2  
item 17).

***Department*** means the Department of Environment and Primary Industries;

***enforcement action***, in relation to a farm mortgage, means taking possession of property under the mortgage or any other action to enforce the mortgage, including the giving of any statutory enforcement notice, or the continuation of any action to that end already commenced, but does not include—

- (a) the completion of the sale of property held under the mortgage in respect of which contracts were exchanged before the commencement day; or
- (b) the enforcement of a judgment that was obtained before the commencement day;

***exemption certificate*** means a certificate issued under section 16 in respect of a farm mortgage;

***farm*** means land on which a farmer engages in a farming operation;

***farm debt*** means a debt incurred by a farmer for the purposes of the conduct of a farming operation that is secured wholly or partly by a farm mortgage;

***farm machinery*** means any of the following goods acquired for the purposes of a farming operation—

- (a) a harvester, binder, tractor, plough or other agricultural implement;
- (b) any other goods of a class commonly used for the purposes of a farming operation that are prescribed as farm machinery;

***farm mortgage*** includes any interest in, or power over, any farm property securing obligations of the farmer whether as a debtor or guarantor, including any interest in, or power arising from, a hire purchase agreement relating to farm machinery, but does not include—

- (a) any stock mortgage or any crop or wool lien; or
- (b) the interest of the lessor of any farm machinery that is leased; or
- (c) a security interest, within the meaning of section 12 of the Personal Property Securities Act 2009 of the Commonwealth, in stock, crops or wool;

***farm property*** means—

- (a) a farm or part of a farm; or
- (b) farm machinery used by a farmer in connection with a farming operation; or

- (c) a water share within the meaning of the **Water Act 1989** issued to a farmer for the purposes of a farming operation;

**farmer** means a person (whether an individual person or a corporation) who is solely or principally engaged in a farming operation and includes a person who owns land cultivated under a share-farming agreement and the personal representatives of a deceased farmer;

**farming operation** means any of the following activities undertaken for commercial gain—

- (a) agricultural, pastoral, horticultural or apicultural activities;
- (b) poultry farming, dairy farming or any business that consists of the cultivation of soils, the gathering of crops or the rearing of livestock;
- (c) any prescribed activities;

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

**hire purchase agreement** has the same meaning as in the **Duties Act 2000**;

**mediator** means a person contracted by the Small Business Commission under section 20 to mediate farm debt disputes between creditors and farmers under this Act;

**prohibition certificate** means a certificate issued under section 14 in respect of a farm mortgage;

**satisfactory mediation** has the meaning given by section 4;

**Secretary** means the Secretary to the Department;

S. 3 def. of  
*mediator*  
amended by  
No. 16/2017  
s. 53(a).

***Small Business Commission*** means the Small Business Commission established under section 4 of the **Small Business Commission Act 2017**;

S. 3 def. of *Small Business Commission* inserted by No. 16/2017 s. 53(c).

\* \* \* \* \*

S. 3 def. of *Small Business Commission* repealed by No. 16/2017 s. 53(b).

***statutory enforcement notice*** means—

- (a) a notice under section 76(1) of the **Transfer of Land Act 1958**;
- (b) a notice under clause 5 of Schedule 12A to the **Water Act 1989**;
- (c) any prescribed notice given under an Act.

#### **4 Meaning of *satisfactory mediation***

In this Act, ***satisfactory mediation*** means any of the following—

- (a) a mediation that has achieved a resolution of a farm debt dispute;
- (b) a mediation that has proceeded as far as it reasonably can in an attempt to achieve resolution of a farm debt dispute but has failed to resolve the dispute;
- (c) a prescribed mediation or a mediation belonging to a prescribed class of mediations.

## **5 Application of Act**

- (1) This Act applies to creditors only in respect of farm debts.
- (2) This Act does not apply to—
  - (a) a farmer whose property is subject to control under Division 2 of Part X of the Bankruptcy Act 1966 of the Commonwealth; or
  - (b) a farmer whose property is the subject of a bankruptcy petition presented by any person; or
  - (c) a farmer, being a corporation, that is an externally-administered corporation within the meaning of the Corporations Act.

## **6 Enforcement action in contravention of Act void**

Enforcement action taken by a creditor to whom this Act applies otherwise than in compliance with this Act is void.

## **7 Relationship with other Acts**

- (1) Nothing in this Act affects the operation of the Banking Act 1959 of the Commonwealth and, in particular, the duty of the Reserve Bank under Division 2 of Part II of that Act.
- (2) Nothing in this Act affects the operation of the **Credit Act 1984**, the National Consumer Credit Protection Act 2009 of the Commonwealth, the **Limitation of Actions Act 1958** and the Personal Property Securities Act 2009 of the Commonwealth.



## **Part 2—Availability of mediation**

### **Division 1—Availability of mediation**

#### **8 Notice of availability of mediation to be given**

- (1) A creditor must, before taking enforcement action against a farmer under a farm mortgage—
  - (a) give written notice to the farmer in accordance with subsection (2); and
  - (b) wait 21 days from the day notice referred to in paragraph (a) has been given to the farmer before taking enforcement action.
- (2) A notice under subsection (1)—
  - (a) must state that the creditor intends to take enforcement action under the farm mortgage; and
  - (b) must state that, under this Act, mediation between the farmer and the creditor is available; and
  - (c) must state that the farmer has 21 days from the date the notice was given to request mediation with the creditor in respect of the farm debt; and
  - (d) may be in the form approved by the Secretary.
- (3) This section does not apply to a creditor if an exemption certificate has been issued under section 16 in respect of the farm mortgage.

#### **9 Farmer may request mediation**

- (1) A farmer who is given a notice under section 8 may, within 21 days from the date the notice was given, notify the creditor in writing that the farmer requests mediation concerning the farm debt involved.

S. 9(5)  
amended by  
No. 16/2017  
s. 54.

- (2) A farmer to whom notice has not been given under section 8 and who is liable for a farm debt may notify a creditor in writing that the farmer requests mediation concerning the farm debt.
- (3) A farmer is not required to be in default before making a request under subsection (2).
- (4) A request for mediation made by a farmer under subsection (1) or (2) may be in the form approved by the Secretary.
- (5) If a farmer requests mediation under subsection (1) or (2) but subsequently refuses to mediate, the creditor may apply to the Small Business Commission under section 15 for the issue of an exemption certificate.

#### **10 Creditor may agree to or refuse mediation**

S. 10(3)(b)  
amended by  
No. 16/2017  
s. 55.

- (1) A creditor who receives a request for mediation from a farmer under section 9 may, by written notice given to the farmer, agree or refuse to mediate in respect of the farm debt involved.
- (2) A response under subsection (1) to a request for mediation may be in the form approved by the Secretary.
- (3) If a creditor refuses to mediate with a farmer who has made a request under section 9—
  - (a) where the farmer is not in default, the refusal by the creditor does not, of itself, give rise to any claim or other consequence under this Act;
  - (b) where the farmer is in default, the refusal by the creditor provides the farmer with grounds to apply to the Small Business Commission under section 13 for the issue of a prohibition certificate.

- (4) If a creditor agrees to mediate with a farmer who has made a request under section 9, the creditor must—
- (a) by written notice, advise the Department that the parties have agreed to mediate; and
  - (b) provide the notice specified in paragraph (a) to the Department within 10 days after giving notice under subsection (1).

#### **11 Referral of mediation by Department**

If the Department receives notice under section 10(4) that a creditor and a farmer have agreed to mediate, the Department must refer the details of the parties to the Small Business Commission for mediation as soon as practicable.

S. 11  
amended by  
No. 16/2017  
s. 56.

#### **12 Enforcement action postponed to allow for mediation**

If a farmer, under section 9(1) or (2), has requested mediation with a creditor, the creditor must not take enforcement action in respect of the farm mortgage concerned unless an exemption certificate issued under section 16 is in force.

### **Division 2—Prohibition certificate**

#### **13 Application by farmer for issue of prohibition certificate**

- (1) A farmer may apply to the Small Business Commission for a prohibition certificate to be issued if—
- (a) the farmer is in default under the farm mortgage; and
  - (b) the farmer, under section 9(1) or (2), has requested the creditor to mediate in respect of the farm debt; and

S. 13(1)  
amended by  
No. 16/2017  
s. 57.

- (c) the creditor—
  - (i) has refused to mediate; or
  - (ii) has failed to respond to a request to mediate within 21 days of the farmer making the request.
- (2) An application under subsection (1) must specify—
  - (a) the circumstances under which the farmer made the request to mediate; and
  - (b) which of the following applies—
    - (i) the creditor has actively refused to mediate;
    - (ii) the creditor has failed to respond to the farmer's request to mediate and at least 21 days have elapsed since the request was made;
    - (iii) the creditor has refused to continue to mediate;
    - (iv) at least 3 months have elapsed after a request was made by the farmer under section 9(1) or (2) and throughout that period the farmer has attempted to mediate in good faith but no satisfactory mediation has taken place between the farmer and the creditor.

#### **14 Issue of prohibition certificate**

S. 14(1)  
amended by  
No. 16/2017  
s. 58(a).

- (1) On the application of a farmer, the Small Business Commission must issue a prohibition certificate if—
  - (a) the farmer is in default under a farm mortgage; and

- (b) the farmer has, under section 9(1) or (2), requested mediation in respect of the farm debt with the creditor; and
  - (c) an exemption certificate is not in force in respect of the farm mortgage; and
  - (d) the Small Business Commission is satisfied that—
    - (i) having regard to section 19(2), the creditor refuses to mediate; or
    - (ii) the creditor does not want to continue to mediate; or
    - (iii) the creditor, having received a request from a farmer under section 9(1) or (2), has failed to respond within 21 days after that request; or
    - (iv) at least 3 months have elapsed after a request was made by the farmer under section 9(1) or (2) and throughout that period the farmer has attempted to mediate in good faith but no mediation or no satisfactory mediation has taken place between the farmer and the creditor.
- (2) A creditor must not commence enforcement action against a farmer if a prohibition certificate is in force in respect of the farm mortgage held by that creditor.
- (3) A prohibition certificate ceases to be in force on the earlier of—
- (a) the expiry of 6 months after the date of issue of the prohibition certificate; or

**S. 14(1)(d)  
amended by  
No. 16/2017  
s. 58(b).**

- (b) the day on which the farmer and creditor enter into mediation in respect of the farm debt.

### **Division 3—Exemption certificate**

#### **15 Application by creditor for issue of exemption certificate**

S. 15(1)  
amended by  
No. 16/2017  
s. 59.

- (1) A creditor may apply to the Small Business Commission for the issue of an exemption certificate if—
  - (a) the farmer is in default under the farm mortgage; and
  - (b) a prohibition certificate is not in force in respect of the farm mortgage; and
  - (c) satisfactory mediation—
    - (i) has taken place in respect of the farm debt under this Part or under another scheme; or
    - (ii) has not taken place as the farmer has refused to mediate; or
    - (iii) has not taken place and at least 3 months have elapsed after a notice was given by the creditor under section 8, or any extended period that has been agreed to in writing by the creditor and farmer, and throughout that period the creditor has attempted to mediate in good faith.

S. 15(2)  
amended by  
No. 16/2017  
s. 59.

- (2) A creditor may apply to the Small Business Commission for an exemption certificate whether or not the creditor gave the farmer notice under section 8.

- (3) If a creditor has given notice under section 8, the creditor must comply with that section and subsection (1)(c) before making an application under this section.
- (4) An application under subsection (1)—
  - (a) must specify—
    - (i) the circumstances of the farmer's default; and
    - (ii) the circumstances of the farmer's refusal to mediate; and
  - (b) may specify any other alternative dispute resolution process that has occurred between the farmer and the creditor in relation to the farm debt.

## **16 Issue of exemption certificate**

- (1) This Act (except this Division) does not apply to a creditor who holds a farm mortgage if an exemption certificate is issued under this section in respect of that farm mortgage.
- (2) On the application of a creditor in respect of a farm mortgage, the Small Business Commission must issue an exemption certificate if—
  - (a) the farmer is in default under the farm mortgage; and
  - (b) no prohibition certificate is in force in relation to the farm mortgage; and
  - (c) the Small Business Commission is satisfied that—
    - (i) having regard to section 17, satisfactory mediation has taken place in respect of the farm debt involved; or
    - (ii) having regard to section 19(1), the farmer has refused to mediate; or

**S. 16(2)**  
amended by  
No. 16/2017  
s. 60(1)(a).

**S. 16(2)(c)**  
amended by  
No. 16/2017  
s. 60(1)(b).

(iii) at least 3 months have elapsed after a notice was given by the creditor under section 8, or any extended period that has been agreed to in writing by the creditor and farmer, and throughout that period the creditor has attempted to mediate in good faith but no mediation or no satisfactory mediation has taken place.

**S. 16(3)**  
amended by  
No. 16/2017  
s. 60(2).

(3) The Small Business Commission may issue an exemption certificate in respect of a farm mortgage to a creditor holding the mortgage if the Commission is satisfied that the farm debt has already been satisfactorily mediated under an alternative dispute resolution scheme other than that provided for under Part 3.

**S. 16(4)**  
amended by  
No. 16/2017  
s. 60(3).

- (4) If mediation has taken place under this Act, the Small Business Commission must have regard to the written report of the mediator who conducted the mediation to determine whether satisfactory mediation has occurred.
- (5) An exemption certificate remains in force for the period specified in the certificate that has been calculated in accordance with section 18.
- (6) The expiry of an exemption certificate does not affect any proceedings for recovery of a farm debt, or for the exercise or enforcement of any right of the creditor, already taken or commenced by a creditor while the exemption certificate was in force, and any proceedings may be continued and concluded as if the certificate were still in force.
- (7) The reference in subsection (6) to the commencement of proceedings does not include a reference to the giving of any statutory enforcement notice or other action taken in order to fulfil a condition precedent to the enforcement



of a right otherwise than through proceedings in a court or tribunal.

### **17 Creditor may satisfactorily mediate without forgiving or reducing farm debt**

A failure by a creditor to agree to reduce or forgive any debt does not, of itself, demonstrate a lack of good faith on the part of a creditor in attempting to mediate.

#### **Note**

See section 4 as to the meaning of *satisfactory mediation*.

### **18 Calculation of period of exemption certificate**

An exemption certificate remains in force—

- (a) if satisfactory mediation in respect of the farm debt concerned has taken place, for the period commencing on the date of issue of the exemption certificate and ending on the third anniversary of the last date of the mediation; or
- (b) if the farmer has failed to take part in mediation in good faith, for the period commencing on the date of issue of the exemption certificate and ending on the third anniversary of the last date of the mediation; or
- (c) if the farmer has indicated in writing that the farmer does not wish to enter into or proceed with mediation, for the period commencing on the date of issue of the exemption certificate and ending on the third anniversary of the date on which the indication was given to the Department or creditor; or
- (d) if the farmer has failed to respond in writing, within 28 days, to an invitation referred to in section 19(1)(c), for the period commencing

- on the date of issue of the exemption certificate and ending on the third anniversary of the date that is 28 days after the invitation was given to the farmer; or
- (e) if a notice was given by the creditor under section 8, for the period commencing on the date of issue of the exemption certificate and ending on the date that is 3 years and 3 months after the date the notice was given; or
  - (f) in any other case, for the period of 3 years commencing on the date on which the certificate was issued.

#### **Division 4—General**

#### **19 When is a farmer or creditor presumed to have refused to mediate?**

- (1) A farmer is presumed to have refused to mediate if any of the following circumstances are established—
  - (a) the farmer has failed to take part in mediation in good faith or has unreasonably delayed entering into or proceeding with mediation;
  - (b) the farmer has indicated in writing to the Department or to the creditor that the farmer does not wish to enter into or proceed with mediation in respect of the farm debt;
  - (c) the farmer has failed to respond in writing within 28 days to an invitation that—
    - (i) is made in writing by the creditor and is identified as an invitation under this paragraph; and
    - (ii) invites the farmer to attend a mediation session; and

- (iii) indicates that a failure of the farmer to respond in writing to the invitation might be taken to be an indication that the farmer refuses to mediate in respect of the farm debt.
- (2) A creditor is presumed to have refused to mediate if any of the following circumstances are established—
- (a) the creditor has failed to take part in mediation in good faith or has unreasonably delayed entering into or proceeding with mediation;
  - (b) the creditor has indicated in writing to the Department or to the farmer that the creditor does not wish to enter into or proceed with mediation in respect of the farm debt.

Pt 3 (Heading)  
amended by  
No. 16/2017  
s. 61.

## **Part 3—The Small Business Commission and mediation**

Pt 3 Div. 1  
(Heading)  
substituted by  
No. 16/2017  
s. 62.

### **Division 1—The Small Business Commission and mediators**

S. 20  
(Heading)  
amended by  
No. 16/2017  
s. 63(1).

#### **20 Functions of the Small Business Commission**

S. 20(1)  
amended by  
No. 16/2017  
s. 63(2)(a).

(1) The Small Business Commission has the following functions—

S. 20(1)(a)  
amended by  
No. 16/2017  
s. 63(2)(b).

- (a) to make arrangements to facilitate the resolution by mediation of farm debt disputes between farmers and creditors that are referred to the Commission by the Department;
- (b) to provide preliminary assistance to farmers and creditors who have agreed to mediate in relation to farm debts by—
  - (i) giving both parties advice about their rights and obligations in relation to the mediation process; and
  - (ii) encouraging full and open communication between the parties in relation to the dispute;
- (c) to issue prohibition certificates under Division 2 of Part 2;
- (d) to issue exemption certificates under Division 3 of Part 2;

- |   |  |
|---|--|
| (e) to report to the Minister on the operation of activities for which the Commission is responsible under this Act;  | S. 20(1)(e)<br>amended by<br>No. 16/2017<br>s. 63(2)(b). |
| (f) any other functions that may be conferred or imposed on the Commission by or under this Act.  | S. 20(1)(f)<br>amended by<br>No. 16/2017<br>s. 63(2)(b). |
| (2) The Small Business Commission is not subject to the Minister's control or direction in exercising functions under subsection (1)(a), (b), (c) and (d).    | S. 20(2)<br>amended by<br>No. 16/2017<br>s. 63(3).       |
| (3) For the purposes of arranging for the resolution of farm debt disputes by mediation, the Small Business Commission—                                       | S. 20(3)<br>amended by<br>No. 16/2017<br>s. 63(3).       |
| (a) may contract persons to conduct mediations;   |  |
| (b) must, when contracting persons under paragraph (a), ensure that those persons have the skills and experience to conduct a mediation in a particular case. |  |

## 21 Functions of mediators

- |  |   |
|--|---|
| (1) A mediator contracted by the Small Business Commission under section 20 has the following functions—           | S. 21(1)<br>amended by<br>No. 16/2017<br>s. 64. |
| (a) to mediate farm debt disputes between creditors and farmers by assisting the parties to reach agreement about— |   |
| (i) present arrangements between them;<br>and  |   |
| (ii) if the financial relationship between the parties is to be ongoing—the future conduct of the parties;         |   |
| (b) any other function conferred on a mediator by or under this Act.   |   |

- (2) A mediator must not, in carrying out his or her functions under this Act—
- (a) advise a farmer or creditor about the law; or
  - (b) encourage or assist a farmer or creditor in reserving or establishing legal rights; or
  - (c) act as an adjudicator or arbitrator.

## **Division 2—The mediation process**

### **22 Referral of farm debt disputes for mediation**

The Small Business Commission must arrange for each farm debt dispute referred for mediation under Part 2 to be the subject of mediation by a mediator.

### **23 Conduct of mediation**

- (1) A mediation must be conducted with—
- (a) as little formality and technicality as proper mediation of the farm debt permits; and
  - (b) as much expedition as possible.
- (2) The Small Business Commission, having regard to any recommendations made by a mediator, may join any person that he or she considers appropriate to join as a party to the mediation.
- (3) A party to a mediation may be represented by—
- (a) an Australian legal practitioner (within the meaning of the **Legal Profession Act 2004**);  
or
  - (b) any other person considered appropriate by the Small Business Commission having regard to any recommendations made by a mediator.

S. 22  
amended by  
No. 16/2017  
s. 65.

S. 23(2)  
amended by  
No. 16/2017  
s. 66.

S. 23(3)(b)  
amended by  
No. 16/2017  
s. 66.

- (4) Despite subsection (3), the mediator may meet with a party to the mediation (alone or together with another party) in the absence of their representative if—
- (a) the mediator considers it appropriate to do so; and
  - (b) the relevant party agrees to meet the mediator in the absence of their representative.

#### **24 Mediation session fee**

- (1) In this section—

*mediation session* means a continuous period of time (excluding breaks) in which the parties engage in mediation in any one day in the presence of a mediator.

- (2) The Small Business Commission may, from time to time, by notice published—
- (a) in the Government Gazette; and
  - (b) on the website of the Small Business Commission—

S. 24(2)  
amended by  
No. 16/2017  
s. 67(1)(a).

S. 24(2)(b)  
amended by  
No. 16/2017  
s. 67(1)(b).

fix a fee not exceeding 50 fee units in respect of each mediation session.

- (3) A fee fixed by the Small Business Commission under this section must be paid to the Small Business Commission by each party to the mediation before a mediation session commences.
- (4) A fee fixed under this section applies on and from the publication of the notice or on any later date specified in the notice.

S. 24(3)  
amended by  
No. 16/2017  
s. 67(2).

## 25 Costs of mediation

S. 25(1)  
amended by  
No. 16/2017  
s. 68.

(1) This section applies if the Small Business Commission has not fixed a fee under section 24.

S. 25(2)  
amended by  
No. 16/2017  
s. 68.

(2) The costs of, and associated with, mediation by a mediator (including the fees and expenses of the mediator) are to be determined by the Small Business Commission and paid by the parties in the proportions that they agree among themselves or, if they cannot agree, in equal shares.

## 26 Confidentiality of mediation

(1) In this section—

*mediation* includes any steps taken in the course of making arrangements for mediation.

(2) Evidence of anything said or admitted during mediation and a document prepared for the purposes of, in the course of or in accordance with, mediation are not admissible in any proceedings in a court or before a person or body authorised to hear and receive evidence.

(3) This section does not apply to—

(a) any contract, deed, mortgage or other instrument entered into as a result of, or in accordance with, any binding agreement entered during mediation; or

(b) any report on the mediation by the mediator who conducted it.

## 27 Disclosure of information

A person must not disclose, or attempt to disclose, any information obtained in mediation or in connection with the administration or execution of this Act unless the disclosure, or attempted disclosure—



- (a) is made with the consent of the person from whom the information was obtained; or
- (b) is necessary to ensure the administration or execution of this Act; or
- (c) is reasonably required for the purpose of referring any party or parties to mediation to any 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 those parties; or
- (d) is made in accordance with a requirement imposed by or under a law of the State or the Commonwealth; or
- (e) is made with other lawful excuse.

Penalty: 60 penalty units.

## **Part 4—General**

### **28 Resulting agreement to reflect agreement reached by parties at mediation**

A creditor must ensure that any binding agreement relating to the farm debt made between the creditor and the farmer, entered during or at the conclusion of mediation, is reflected in any contract, deed, mortgage or other instrument entered into as a result of that binding agreement.

### **29 Contracting out prohibited**

- (1) A provision of an agreement or other instrument, (whether in writing or not and whether entered into before, on or after the commencement day) by which a person seeks to avoid, modify or restrict the operation of this Act is void.
- (2) A provision of an agreement or other instrument (whether in writing or not and whether entered into before, on or after the commencement day) by which a person seeks to have a farmer (as debtor or guarantor) or a guarantor indemnify a creditor for any loss or liability arising under this Act is void.

### **30 Waiver of rights void**

A waiver of mediation rights under this Act is void.

### **31 Notices by mortgagee**

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

- (a) nothing in this Act derogates from the requirement to give the notice under the other Act; and

- (b) a notice required by this Act to be given before the exercise of the power or right does not fail to comply with this Act only because it includes matter required to be specified in a notice required by the other Act to be given before exercise of the power or right.

### **32 Manner of giving notices**

- (1) If this Act requires or permits a notice or other document to be given to the Secretary or the Small Business Commission, the notice or other document may be given by leaving it at, or by sending it by post to, any office of the Department.

**S. 32(1)**  
amended by  
**No. 16/2017**  
s. 69.

- (2) If this Act requires or permits a notice or other document to be given to a person, other than the Department or the Small Business Commission, the notice or other document may be given to—

**S. 32(2)**  
amended by  
**No. 16/2017**  
s. 69.

- (a) a natural person—
- (i) by delivering it to the person personally; or
  - (ii) by leaving it at, or by sending it by post, telex, facsimile or other electronic communication to, the address of the place of residence or business of the person last known to the person giving or serving the notice or other document; or
- (b) a body corporate—
- (i) by leaving it at the registered office of the body corporate with an officer of the body corporate; or
  - (ii) by delivering it to a director or secretary of the body corporate personally; or

(iii) by sending it by post, telex, facsimile or other electronic communication to the registered office of the body corporate or the address of the place of residence or business of a director or secretary of the body corporate.

(3) Nothing in this section—

- (a) affects the operation of another law that authorises the service of a notice or other document otherwise than as provided in this section; or
- (b) affects the power of a court or tribunal to authorise service of a notice or other document otherwise than as provided in this section.

### **33 Date notice or other document is given**

For the purpose of this Act, a notice or other document is taken to be given—

- (a) in the case of a notice or other document given personally—on the date it bears or on the date it is received by the addressee, whichever is the later; or
- (b) in the case of a notice or other document sent by post—on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later; or
- (c) in the case of a notice or other document sent by facsimile or some other form of electronic communication—at the time of receipt in accordance with section 13 of the **Electronic Transactions (Victoria) Act 2000**.

### **34 Offences by bodies corporate**

- (1) If a body corporate contravenes a provision of this Act or the regulations, each officer of the body corporate is taken to have contravened the same provision if the officer knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision in accordance with subsection (1) whether or not the body corporate has been proceeded against under that provision.
- (3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act or the regulations.
- (4) In this section—

*officer* means a director of the body corporate or a person who is otherwise concerned in its management.

### **35 Commencement of criminal proceedings**

Despite section 7(1) of the **Criminal Procedure Act 2009**, a proceeding for an offence against a provision of this Act or the regulations may be commenced at any time with the consent in writing of the Attorney-General.

### **36 Regulations**

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations made under this Act may—
  - (a) be of general or limited application;
  - (b) differ according to differences in time, place or circumstance;

- (c) confer a discretionary authority or impose a duty on a specified person or body or a specified class of person or body;
- (d) provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified;
- (e) may impose penalties not exceeding 20 penalty units for a contravention of the regulations.

### **37 Transitional provision**

This Act applies to—

- (a) a farm debt that is outstanding on the commencement day irrespective of when the farm debt was incurred and in respect of which enforcement action has not commenced; and
  - (b) a farm debt that is incurred on or after the commencement day.
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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 29 June 2011*

*Legislative Council: 18 August 2011*

The long title for the Bill for this Act was "A Bill for an Act to provide for the resolution of farm debt disputes by requiring a creditor to provide a farmer with the option to mediate before taking possession of property or other enforcement action under a farm mortgage and for other purposes."

The **Farm Debt Mediation Act 2011** was assented to on 6 September 2011 and came into operation on 1 December 2011: Special Gazette (No. 379) 22 November 2011 page 1.

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

#### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).



## 2 Table of Amendments

This publication incorporates amendments made to the **Farm Debt Mediation Act 2011** by Acts and subordinate instruments.

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### **Statute Law Revision Act 2013, No. 70/2013**

*Assent Date:* 19.11.13  
*Commencement Date:* S. 4(Sch. 2 item 17) on 1.12.13: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Farm Debt Mediation Act 2011**

### **Small Business Commission Act 2017, No. 16/2017**

*Assent Date:* 10.5.17  
*Commencement Date:* Ss 53–69 on 1.7.17: Special Gazette (No. 216) 27.6.17 p. 1  
*Current State:* This information relates only to the provision/s amending the **Farm Debt Mediation Act 2011**

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### **3 Amendments Not in Operation**

There are no amendments which were Not in Operation at the date of this publication.

**4 Explanatory details**

No entries at date of publication.