

# Farm Debt Mediation Amendment Bill 2018 (NSW)

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## Summary

The *Farm Debt Mediation Amendment Bill 2018* (NSW) (**Bill**) was introduced into Parliament on 10 April 2018.

If adopted, the changes will expand the scheme to provide protection to more farmers. Importantly, the amendments also clarify lender's obligations if mediation has previously occurred and the farm mortgage was restructured.

## Key Amendments Proposed

The amendments proposed seek to:

- broaden the overall application of the Act<sup>1</sup>.

The proposed amendments make it clear the Act is to apply to resolution of **any** matter involving a farm debt, whether or not the matter is disputed. It is intended to encourage farmers to ask lenders to mediate prior to a default.

- expand the definition of 'farming operations' and 'farm machinery'.

It is proposed to change the definition of 'farming operation' to include aquaculture, timber and native vegetation cultivation or harvesting, and activities involving primary production carried out in connection with those farming operations.

'Farm machinery' is proposed to include 'all vehicles, machines and implements used for the purposes of a farming operation, whether or not they have been acquired for the purposes of a farming operation'.

- confirm that if mediation has previously occurred under the Act, and an agreement entered into which saw the restructuring of the farm debt, further mediation is not required.

Lenders are to provide only **one** mandatory invitation to mediate before taking enforcement action. This amendment is intended to minimise 'risk' and encourage attendance with a view to finding a 'viable and durable' solution<sup>2</sup>.

- recognising mediations concluded under corresponding legislation in another jurisdiction.
- increase penalties for lenders who take enforcement action where an exemption certificate is in force.

The maximum penalty that a court may impose in those circumstances will be 2,500 penalty units (currently \$275,000) for a corporation, or 50 penalty units (currently \$55,000) for an individual.

There are some additional amendments concerning accreditation of mediators, preliminary steps to mediation, particular procedures and internal reviews of decisions made by the Rural Assistance Authority. Heads of Agreement are also proposed to be called mediation agreements.

## Impact on lenders

The farm debt mediation scheme in NSW has been hugely successful and has led the way for similar schemes in Victoria (2011) and Queensland (2017).

The proposed changes to the NSW Act, seek to continue to encourage lenders and farmers to seek early resolution. There is a strong emphasis on encouraging farmers to seek early mediation with lenders.

The proposed changes also seek to clarify uncertainty for lenders regarding situations where farm debt has been restructured following an earlier mediation under the scheme. If adopted, lenders will be able to avoid uncertainty about whether further mediation is required.

<sup>1</sup> *Farm Debt Mediation Act 1994* (NSW)

<sup>2</sup> See Second Reading Speech, Hon. Niall Blair (Minister for Primary Industries) 11 April 2018

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