



AGRICULTURE VICTORIA

Farm Debt Mediation – Talk can be cheaper

Talk can be cheaper. That's the principle behind the Victorian Government's Farm Debt Mediation Scheme which has now been operating effectively in Victoria since December 2011. Under Victorian legislation, banks and other creditors must offer to undertake mediation with farmers before they can initiate debt recovery on farm mortgages.

The service is low cost, confidential, independent and can help avoid the costs and other consequences of expensive and potentially unnecessary litigation.

What is farm debt mediation?

Farm debt mediation is a structured negotiation process where a neutral and independent mediator assists the farmer and the creditor to try to reach agreement about current and future debt arrangements. The mediator's role is to facilitate the discussion. They will not provide advice on the matters in dispute. Mediation is a simple, voluntary and confidential process that is quick, accessible and affordable.

Agriculture Victoria administers the scheme and the Office of the Victorian Small Business Commissioner (VSBC) arranges the mediation service.

The cost of mediation is currently \$195 per session for each party. The Victorian Government subsidises the full cost of mediation making it significantly lower than market price. Parties are responsible for their own costs in preparing for and attending mediation.

How does farm debt mediation work?

Under the *Farm Debt Mediation Act 2011* (Victoria) [FDM Act] there are two types of mediation available..

a) Creditor initiated mediation.

Creditors must send notice under section 8 of the FDM Act to farmers alerting them that mediation is available before initiating debt recovery on farm mortgages. Farmers have 21 days to respond to an offer to mediate.

If a farmer does not respond to the offer to mediate a creditor can commence recovery action on the farm mortgages. If farmers are planning to be away from their farm at a time when they believe there is a risk a creditor may seek to commence recovery action, then it is very important to ensure someone is checking their mail.

If a farmer agrees to mediate, a creditor will not be able to commence recovery action until mediation has concluded to the satisfaction of the Victorian Small Business Commissioner.

b) Farmer initiated mediation.

A farmer takes the initiative to request mediation with their creditor. While a farmer may initiate a request for mediation, a creditor is only obliged to mediate if a farmer is in default.

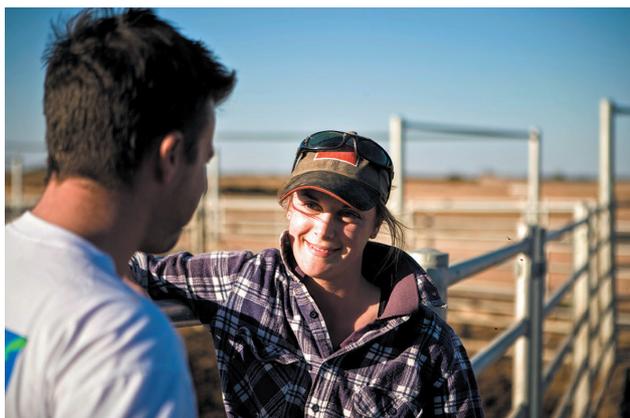
Following mediation, or when a farmer refuses to mediate, the creditor may apply to the Victorian Small Business Commissioner for an exemption certificate. Once an exemption certificate is issued, the creditor can commence enforcement action. If granted, this certificate will last at least three years exempting the creditor from having to offer mediation in the future.

If a creditor is refusing to mediate and the farmer is in default, the farmer may apply to the Victorian Small Business Commissioner for a prohibition certificate. If granted, a prohibition certificate remains in place for a period of six months or the day on which the farmer and the creditor enter into mediation. During this time, the creditor is precluded from undertaking enforcement action.

Farmers cannot be asked to waive their rights under the legislation - for example, as a condition of entering a new loan, or altering existing loan agreements.

What is the Office of the Victorian Small Business Commissioner?

The Office of the Victorian Small Business Commissioner (VSBC) provides an independent, quick, low-cost, dispute resolution service for small business in Victoria – including farm businesses. Under the Farm Debt Mediation Scheme, the VSBC provides preliminary assistance and arranges the mediation of farm debt disputes with farmers and creditors who have agreed to mediate. The VSBC also has broad dispute resolution processes and can assist with business disputes that are not covered by the *Farm Debt Mediation Act 2011*.



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How do I know if the scheme applies to me?

The legislation applies only to farm mortgages covering a farm (or part of a farm), farm machinery or a water share (within the meaning of the *Water Act 1989*). The legislation makes it mandatory for creditors to offer to mediate with farmers before initiating debt recovery proceedings on farm mortgages. While farmers are not obliged to participate in mediation, if they do not, a creditor can initiate debt recovery.

Who can help with the farm debt mediation process?

It is recommended that farmers seek assistance from their local Rural Financial Counsellor (RFC), solicitor, accountant or some other appropriately qualified person. These people can assist farmers to prepare for mediation, attend the mediation session with farmers, and help with any actions that need to be undertaken after the mediation session. They can also assist farmers experiencing financial difficulty that may not require mediation under the Act. For mediations held during 2014-15, 61.8 per cent had a RFC supporting the farmer. The RFCs provide assistance to the farmer through emotional support, financial guidance and document preparation in what is often a highly emotional time for farmers. This is a free service for farmers and small rural businesses who are suffering financial hardship and who have no alternative sources of impartial support. To find your nearest RFC call 1800 686 175.

Farmers in difficulty should try to maintain open communication with their creditors and act early when problems arise. Acting early can only help in the long-term.

“Rural Financial Counsellors provide farmers with emotional support (seen as necessary in farm debt mediation), financial analysis and scenarios, and advice and support on the day with regards to testing some of the options and how to resolve the matter.”

[Farm Debt Mediator]

How do I get more information?

For more information about farm debt mediation visit www.agriculture.vic.gov.au/mediation or call 136 186.

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