

FARM DEBT MEDIATION

□ **Object.**

The object of mediation under the Farm Debt Mediation Act is to provide for the efficient and equitable resolution of farm debt disputes. Mediation is required before a creditor can take possession of property or other enforcement action under a farm mortgage.

Inquiries: 1800 678 593; 02 6391 3013

□ **What is farm debt mediation?**

Mediation is a structured negotiation process in which the mediator, as a neutral and independent person, assists the farmer and the creditor in attempting to reach agreement on the present arrangements and future conduct of financial relations between them.

Mediation is a simple, voluntary and confidential process that is quick, accessible and affordable.

□ **Preparation to be done before mediation.**

The parties are encouraged to thoroughly prepare their case before mediation, as this will help the mediation session to go more smoothly.

□ **Who can be at the mediation?**

The farmer and the creditor may bring solicitors, accountants, rural financial counsellors or other advisers. The farmer may also bring other family members, with the prior approval of the mediator.

□ **Arranging the mediation.**

From a mediation kit provided by the NSW Rural Assistance Authority, it will be the responsibility of both the farmer and the creditor to reach agreement on:

- ◆ how costs of mediation will be shared
- ◆ where and when mediation will take place
- ◆ who the mediator will be
- ◆ who will make contact with the mediator.

□ **What will mediation cost?**

The cost usually includes the mediator's fees, mediator's out of pocket expenses such as travel, accommodation, phone and facsimile costs, together with any hire fee for the venue.

The fees charged by the mediator and the cost, (if any), of the venues will be included in the mediation kit sent out by the NSW Rural Assistance Authority to the farmer and creditor.

The parties to the mediation usually share the costs of mediation, unless they agree otherwise.

If the farmer engages an adviser to assist at mediation, a written quotation should be obtained from the adviser.

□ **What if the parties don't reach agreement?**

Under the Act, the parties are required to make reasonable attempts to negotiate a settlement to their matter at mediation.

If, after reasonable attempts, an agreement cannot be reached by mediation, the creditor can commence enforcement action. Farmers should note that settlement by mediation is voluntary and neither party can be forced into an agreement at mediation.

❑ **How long does mediation take?**

To allow for satisfactory mediation to take place, both parties must allow at least six (6) hours. If necessary, the time can be extended, or the parties may have to meet again.

❑ **Where should mediation take place?**

Mediation works best when the parties are on neutral ground – some place not belonging to either of them. Even if the farmer and creditor are used to meeting in one party's office, mediation should not take place there.

❑ **Who are the mediators?**

The NSW Rural Assistance Authority has accredited a number of people as part of its Panel of Mediators under the Farm Debt Mediation Act. They are all experienced mediators, and have received special training in the Act.

The mediators are strictly neutral – they do not take sides or represent either the farmer or the creditor.

Once the farmer and the creditor agree to mediation they will both receive a mediation kit containing a profile of each of the mediators showing their fees, telephone numbers, location, number of mediations completed and a brief background on each mediator. The farmer has the initial right to nominate a mediator from the list of accredited mediators provided by the NSW Rural Assistance Authority. If the creditor rejects that nomination, the farmer is then required to nominate a list of at least three other mediators, from which the creditor must then select one. The mediator must be chosen from the list of mediators provided by the NSW Rural Assistance Authority.

❑ **Record keeping.**

Both the farmer and the creditor should keep accurate records and evidence of the service

of notices together with copies of all notices served on each other.

❑ **Farmer's rights and obligations under the Act.**

Once the farmer has received a notice under section 8 (Form 1 Section 8 Notice) of the Act, the farmer may request mediation to discuss the farm debt.

If the farmer elects to exercise his/her right to mediation, the farmer must, within 21 days of receipt of the Form 1 Section 8 Notice, advise the creditor, in writing, that he/she requests mediation.

If the farmer fails to respond, in writing, within 21 days of receipt of the Form 1 Section 8 Notice, the farmer will lose all rights he/she may have under the Act.

❑ **Cooling off period.**

There is to be a 14-day cooling period for any Heads of Agreement. entered into by a farmer. The cooling off period may be extended by agreement between the farmer and the creditor.

❑ **Rights during cooling off period.**

The farmer may, during the cooling off period, serve a written notice on the creditor to the effect that the farmer rescinds the agreement subject to the cooling off period. The farmer or the farmer's solicitor must sign the notice of rescission.

Time limits for Farmers.

Under Section 9, the farmer must give written notice, within 21 days of receipt of a notice under Section 8 of the Act, to the creditor indicating the farmer wishes to go to mediation.

Under Section 11 (1)(c) it is envisaged that the mediation process will be completed within three months from the date of receipt

by the farmer of the notice under Section 8 of the Act. This period can be extended by agreement between the parties. Any agreement to extend the three-month period should be in writing.

Under Section 11(2)(c) the farmer must respond, in writing, within 28 days, to a written invitation from the creditor to commence mediation, if the farmer wishes to maintain his/her rights.

□ **Types of Mediation.**

There are two types of mediation available under the Act. The first is creditor initiated mediation, which results from a creditor issuing a notice under section 8 of the Act. A Section 11 certificate may be issued as a result of a creditor initiated mediation.

The second type of mediation is farmer-initiated mediation. This is mediation where a farmer, rather than the creditor, takes the initiative to request mediation. The same time frames apply to farmer-initiated mediation as apply to mediation initiated by a creditor in terms of section 8 of the Act. Failure by a creditor to agree to farmer initiated mediation, where a farmer's loan is in default, may result in the issue of a Section 9B certificate of Exemption from Enforcement Action.

Farmer-initiated mediation where the farmer's loans are not in default will not result in the issue of a Section 11 certificate. There is no compulsion on either party to enter into farmer-initiated mediation where the farmer's loans are not in default.

□ **Section 9B certificate.**

This is a certificate issued, in terms of section 9B of the Act to a farmer on application, when a creditor refuses to enter into farmer-initiated mediation when the farmer's loans are in default. A Section 9B certificate Exemption from Enforcement Action remains in force for a period of six months after the

day on which the creditor declined to mediate, or the day on which the farmer and the creditor enter into mediation.

□ **Section 11 certificate.**

This is a certificate, issued, in terms of section 11 of the Act, to a creditor upon application, stating that the Act no longer applies to the particular farm mortgage.

Once in possession of a Section 11 certificate, a creditor may commence enforcement action under the particular farm mortgage. Farmers will be advised of any application for a certificate and of the issue of a certificate.

A section 11 certificate remains in force for a period of three years from the date of compliance with the Act by the creditor. All certificates issued by the Authority will carry an expiry date.

Further Information

NSW Rural Assistance Authority

Locked Bag 23

ORANGE NSW 2800

Phone: 02 6391 3013

Toll free: 1800 678 593

e-mail: rural.assist@raa.nsw.gov.au

web site: www.raa.nsw.gov.au