

**UNIVERSITY OF WESTERN SYDNEY
MACARTHUR**

FACULTY OF LAW

REPORT

RESEARCH INTO FARM DEBT MEDIATION ACT 1994

for the

RURAL ASSISTANCE AUTHORITY OF NSW

BY

**TOM ALTOBELLI, LL.M (SYD)
LECTURER IN DISPUTE RESOLUTION
FACULTY OF LAW
UNIVERSITY OF WESTERN SYDNEY MACARTHUR**

**P.O. BOX 555
CAMPBELLTOWN. 2560**

**RESEARCH ASSISTANT
KAREN FRANCIS, BA, LL.B (UWSM)**

Table of Contents

	<u>Page</u>
Executive Summary	(i)
	<u>Paragraph Number</u>
Outline of Project	1
Methodology	2
Costs and Benefits of Farm Debt Mediation (FDM)	3
Costs	3.1
Benefits	3.8
Changes in Debt to Assets Ratios	3.8
Personal and Lifestyle Changes	3.13
Communication Issues	3.22
Emotional Issues	3.26
Agreements Reached and Impacts of FDM	4
Agreements Reached at FDM	4.2
Fairness of agreements	4.13
Impacts of agreements	4.27
Cultural Changes as a Result of FDM	5
Good Faith	5.15
Identifying Alternative Means	6
Mediators and the Mediation	6.2
Alternative Means of Achieving Objects	6.12
Alternative Models of Achieving Objects	6.14
Cost of FDM in NSW	7
Farm Debt Mediation Act Review-Report 1996	8
The United States and Canadian Experiences in FDM	9
Annexures:	
A Farmer Survey	
B Representative Survey	
C Creditor/Lender Survey	
D Mediator Survey	

EXECUTIVE SUMMARY

1. Lenders' and farmers' representatives reported substantial cost benefits from participation in FDM. Those farmers who reported costs savings as a result of FDM (approximately half) refer to quite substantial cost savings. There is still concern amongst most farmers about the cost to them of participating in FDM and strategies should be implemented to assist with these costs if possible. One option for dealing with this is discussed at para 3.4 of this report.
2. Farmers report a significant decline in their debt to assets ratios post-FDM. This may be attributable to FDM, but may also be attributable to external forces such as increasing property values between 1992 and 1998.
3. Farm debt crisis leads to significant personal and lifestyle changes for the farmers and their families who experience it. There are significant social impacts which cannot be ignored: decline in community standing, unemployment, divorce and other family upheaval. Nonetheless, there are indications that FDM offers a more ordered transition in farmers' economic and personal circumstances. Paragraph 3.30 suggests some options for enhancing the non-financial assistance provided to farmers.
4. FDM appears to increase the level of communication between farmers and lenders, but farmers remain concerned as to whether lenders really understand how they feel and whether mediation helped them to deal with the emotions which farmers experience as a result of farm debt. Farm debt mediators need to be even more vigilant to these concerns by farmers, and lenders need to understand the importance of these factors in contributing towards settlement prospects and durability of outcomes.
5. FDM results in a settlement by the parties not less than 72% of the time, and probably higher. The most prevalent outcomes of FDM include the farmer refinancing, the lender allowing more time to pay, or the lender writing off part of the debt. These outcomes are described in qualitative rather than quantitative terms so that, for example, the amount of the lender write-off is unknown.
6. Most farmers were partly or fully satisfied with the outcomes of FDM, but a significant 43% were not at all satisfied with the outcome. Notwithstanding this a clear majority of farmers do not believe they would have reached a more favourable outcome by going to court. Most farmers have a concern about the fairness of agreements reached at mediation, but do report that the agreements were practical and workable.
7. Farmers' perceptions about the lack of fairness of agreements reached at FDM are attributable to power imbalance in favour of the lender, causing the farmer to believe that they could not participate in FDM as an equal to the lender. This is a structural imbalance which cannot be rectified completely by procedural interventions. Nonetheless, this structural imbalance might be improved slightly by

(ii)

farmers being better prepared for, and better represented at FDM, as well as having more realistic expectations as to outcomes. Paragraphs 4.25 and 4.26 explore some possible options in this regard.

8. The impact on the rural sector of farm debt is significant when using the time of FDM as an event from which to draw comparisons. Thus in the period 3 years prior to FDM through to the date of the survey, there was a 32.8% decline in the number of farmers who derived more than 95% of their income from farming. In terms of the percentage of time expended on farming activities, during the corresponding period, there was a 26% decrease in the number of farmers spending more than 95% of their time on farming activities. There is a trend away from full-time farming towards part-time farming, and 11% of the group were not farming at all at the time of the survey.
9. The relationship between farmers and lenders involved in FDM is characterised by distrust on both sides, but the impact of FDM is probably neutral in terms of that relationship.
10. The data indicates a disturbingly low level of awareness by farmers of their right to mediate, despite the educational and promotional efforts of the RAA. Further and persistent education is required in this regard.
11. The majority of farmers and the overwhelming majority of lenders and representatives would use and recommend mediation again. Clearly FDM is regarded as a better alternative than going to court.
12. The majority of farmers and lenders believe that FDM should become voluntary, but the majority of representatives (63%) and significant minorities of farmers (43%) and lenders (43%) believe it should remain mandatory. Given the overall results of this research, and the positive benefits of FDM which apparently flow to all participants, this report does not favour changing the mandatory nature of FDM.
13. There is support from all participants in FDM for bringing forward the opportunity for and time of FDM.
14. Lack of good faith in FDM is conduct which both farmers and lenders attribute to each other. It is characterised by negotiating behaviour which does not lead to settlement, the specific behaviour differing from the perspective of farmer and lender. It is considered that the existing measures for dealing with lack of good faith in s.11 of the FDM Act are satisfactory.
15. The mediators undertaking FDM are performing their roles to the satisfaction of farmers, lenders and representatives, and there are no significant concerns about the FDM process overall.

(iii)

16. The FDM Act is achieving its objects, and there is some support for wider application of FDM perhaps even beyond farm debt.
17. The cost of FDM to the tax payer of NSW compares very favourably to the cost of providing similar FDM services in several states in the USA.
18. As a general proposition, this report confirms many of the recommendations made by the Farm Debt Mediation Review Committee in its May 1996 report. The exceptions to this are contained at paragraphs 7.1 - 7.4 of this report.
19. FDM in NSW will benefit in the future by establishing and fostering closer relations with the various states and provinces in the USA and Canada which have implemented farm, rural or agricultural schemes of mediation.

For the body of the report, see www.raa.nsw.gov.au/fdm/research.