



## FACTSHEET

# FARM DEBT MEDIATION

The *Farm Debt Mediation Act 1994* (NSW) aims to provide for the efficient and equitable resolution of farm debt disputes. Mediation is required before a creditor can take possession of a property or other enforcement action under a farm mortgage.

### Creditor Initiated Mediation

#### Notification

A creditor is required to provide a farmer with a written notice informing the farmer of the creditor's intention to take enforcement action in respect of a farm mortgage and of the availability of mediation in respect of farm debts. The notice must be in a form approved by the NSW Rural Assistance Authority.

The farmer has 21 days to advise the creditor that they request mediation. Once the farmer has requested mediation, the creditor must not take enforcement action unless a certificate has been issued by the NSW Rural Assistance Authority.

The creditor may agree or decline to mediate. If the farmer's loan is in default, failure by the creditor to agree to mediate may result in the issue of a certificate of exemption from enforcement action.

#### Mediation

If the farmer and the creditor agree to mediate, the farmer must nominate a mediator from a list of accredited mediators maintained by the NSW Rural Assistance Authority.

The creditor may accept or reject the mediator nominated by the farmer. If the creditor rejects the nomination, the farmer must nominate a panel of at least three other mediators. The creditor must then select one from that list.

The creditor and farmer must also reach agreement on how the costs of mediation will be shared, and when and where mediation will take place.

The creditor and farmer may attend the mediation with advisors, such as a solicitor, accountant or rural financial counsellor. The farmer may also bring family members with the prior approval of the mediator.

The mediator is an independent person who will attempt to assist the farmer and creditor to reach an agreement in relation to the farm debt.

If the parties are able to reach an agreement, the mediator will prepare a document known as a "Heads of Agreement" for both parties to sign. The farmer is given a 14 day cooling off period which may be extended by agreement with the creditor.

If parties are unable to reach an agreement, the creditor may apply for an enforcement certificate.

Generally, the mediation process must be completed within three months of the date the farmer receives the notification. This period can be extended by agreement.



## Farmer Initiated Mediation

A farmer may provide a creditor with a written notice informing the creditor that the farmer wishes to initiate mediation, whether or not the farmer is in default.

The creditor may agree or decline to mediate. If the farmer's loan is in default, failure by the creditor to agree to mediate may result in the issue of a certificate of exemption from enforcement action.

## Exemption certificates

A farmer may apply to the NSW Rural Assistance Authority for a certificate of exemption from enforcement action. The Authority must issue an exemption certificate if:

- The farmer is in default, and
- The farmer requested mediation, and
- There is no enforcement certificate in force, and
- The Authority is satisfied that:
  - the creditor does not wish to enter into or proceed with mediation, or
  - the creditor failed to respond to the request for mediation within 21 days, or
  - three months have elapsed since the request was made by the farmer and the farmer has attempted to mediate in good faith.

No enforcement action can be taken by the creditor while an exemption certificate is in place (generally, a period of six months).

## Enforcement certificates

The NSW Rural Assistance Authority must, on the application of a creditor, issue a certificate that the Act does not apply to the farm mortgage if:

- The farmer is in default, and
- There is no exemption certificate in force, and
- The Authority is satisfied that:
  - satisfactory mediation has taken place, or
  - the farmer has declined to mediate, or
  - three months has elapsed since the notice was given by the creditor and the creditor has attempted to mediate in good faith.

Once an enforcement certificate has been issued the creditor may commence enforcement action. A certificate remains in force until the date specified by the Authority in the certificate (generally, a period of three years).



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## Further information

Further information about farm debt mediation is available on the NSW Rural Assistance Authority website:  
[www.raa.nsw.gov.au/fdm](http://www.raa.nsw.gov.au/fdm)

The Rural Financial Counselling Service provides free rural financial counselling to farmers who are suffering financial hardship: [www.agriculture.gov.au/ag-farm-food/drought/assistance/assistancerural-financial-counselling-service/nsw](http://www.agriculture.gov.au/ag-farm-food/drought/assistance/assistancerural-financial-counselling-service/nsw)

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