

Article Information

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Sector: Agriculture & Food

Farm Debt Mediation

On 1 December 2011 the Farm Debt Mediation Act 2011 (VIC) commenced operation. Under the Act, a farm debt mediation scheme is implemented which makes it compulsory for banks and other creditors to offer mediation to farmers before commencing debt recovery proceedings against the farmer on mortgages.

Key features

Some key features of the new Act (which in many ways mirrors similar legislation in NSW) are as follows:

- The purpose of this Act is “to provide for the efficient and equitable resolution of farm debt disputes by requiring a creditor to provide a farmer with the option to mediate before taking possession of property or other enforcement action under a farm mortgage.”
- Mediation is a structured process of negotiation between a creditor and a farmer in respect to a farm debt.
- It requires a neutral and independent party – “Mediator” to assist the creditor and farmer to reach agreement about current and future debt repayments.
- The scheme only applies to farm mortgages covering a farm (or part of a farm), farm machinery or a water share.
- A farmer is a person (whether an individual or a corporation) who is solely or principally engaged in a farming operation.
- The mediation can be initiated by either the creditor or the farmer.
- Whether the farmer or the creditor initiates the mediation (by offering to mediate by lodging a particular form) the other party has 21 days from the date of the notice to respond to an offer to mediate.
- Farmers are not required to participate in mediation and if they do not do so (or fail to respond) the creditor can immediately proceed with debt recovery.
- If the creditor elects not to mediate and the farmer is in default, the farmer may apply to the Small Business Commissioner for a prohibition certificate. Prohibition can delay enforcement being initiated for up to 6 months.
- There is no compulsion on either party to mediate if the farmer is not in default.
- Creditors are not required to offer debt write downs or concessions as part of the mediation process.
- Further information is also available from the Department of Primary Industries website.