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| Farm debt mediation Talk can be cheaper |
| *Fact sheet*  |

## **FARM DEBT mEDIATION**

***Talk can be cheaper.*** That’s the principle behind the Victorian Government’s Farm Debt Mediation Scheme.

Under Victoria’s [*Farm Debt Mediation Act 2011* (the Act)](https://www.legislation.vic.gov.au/in-force/acts/farm-debt-mediation-act-2011/004), farmers have the right to be offered mediation by their creditor before the creditor can start debt recovery on their farm mortgage.

The Act applies 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*](https://www.legislation.vic.gov.au/in-force/acts/water-act-1989/138)).

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

**WHat is FARM DEBT mediation?**

It’s a negotiation process. At mediation, the farmer and creditor come together with an impartial mediator to discuss options for managing current and future farm debt arrangements.

The mediator’s role isn’t to make judgments, provide advice on the matters in dispute or hand down a decision, rather it’s to facilitate a discussion.

The service is voluntary, confidential, quick and low-cost, and can help avoid the high costs, stress and lengthy delays that come with legal recovery proceedings.

The Victorian Small Business Commission (VSBC) arranges mediation sessions. The cost is $195 per party, per session, with mediations generally being completed in one session. The service is subsidised by the Victorian Government, which makes it a very low-cost alternative to litigation. Parties are responsible for their own travel and costs for preparing to attend mediation.

At mediation, both the creditor and farmer are required to make a genuine attempt to mediate in good faith. This means communicating with each other and having discussions honestly and fairly with the genuine aim of reaching an agreement that they can both accept. It also involves behaving in an open and transparent manner and providing accurate and sufficient information to support negotiations.

It's important to note that creditors aren’t obliged to forgive or reduce farm debts.

At the end of mediation, the farmer and creditor can agree to sign a binding agreement to resolve the matter.

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| How can the victorian small business commission help? |
| **Under the Farm Debt Mediation Scheme, the VSBC provides early help to farmers and creditors who have agreed to mediate. This includes discussing rights and obligations, informing farmers about the free and independent support offered by the**[**Rural Financial Counselling Service**](https://agriculture.vic.gov.au/farm-management/business-management/farm-debt-mediation/rural-financial-counselling-service)**, appointing a mediator and arranging a suitable time and place for mediation to happen.****The VSBC also has broad dispute resolution functions, so can assist with business disputes that are not covered by the *Farm Debt Mediation Act 2011*.** |

## **HOW does farm debt MEDIATION work?**

### Under the Act, two types of mediation are available:

### 1. Mediation that’s initiated by the creditor

### This is where the creditor notifies the farmer in writing that mediation is available to resolve their farm debt matter, and that they intend to take enforcement action. Creditors must do this before starting debt recovery on farm mortgages. The farmer has 21 days from the date of the offer to respond.

### If a farmer doesn’t respond or refuses mediation, the creditor can request an exemption certificate from the VSBC to allow them to immediately start debt recovery.

### If a farmer is planning to be away from their farm at a time when they believe there is a risk that a creditor may attempt to start recovery action, then it’s very important to make sure someone is checking their mail, email or fax, or that they have someone who can act on their behalf.

### The creditor is required to obtain an exemption certificate in all instances before taking enforcement action, including when a farmer hasn’t responded to their offer of mediation.

### The VSBC has some discretion in the issuing of exemption certificates and if issued, it remains in place for three years.

### If the farmer agrees to mediate, the creditor must notify the VSBC of their agreement and that mediation is required. The creditor will not be able to start recovery action until mediation has concluded to the VSBC’s satisfaction and the VSBC has issued the creditor with an exemption certificate.

### 2. Mediation that’s initiated by the farmer

### This is where the farmer requests mediation with their creditor. The farmer doesn’t have to be in default to make this request. The creditor can accept or refuse the offer to mediate.

If the creditor refuses to mediate and the farmer is in default, then the farmer can request a prohibition certificate from the VSBC. This will stop a creditor from taking enforcement action for up to six months or until the day the farmer and creditor enter into mediation.

If the creditor refuses mediation or does not respond within 21 days and the farmer is not in default, there is no further action. The VSBC encourages farmers in this position to contact their local Rural Financial Counselling Service for help in understanding their financial position and the viability of their enterprise, and in planning to improve their financial situation.

If the creditor and farmer agree to mediation, the creditor must notify the VSBC of their agreement and that mediation is required.

If a farmer asks their creditor to mediate when they are not in default and mediation takes place, an exemption certificate cannot be issued, and the farmer will keep their right to be offered mediation if they are later in default.

## **Who can help with the process?**

**The VSBC encourages all farmers taking part in farm debt mediation to contact their local Rural Financial Counselling Service (RFCS) for support**, or their solicitor, accountant or another suitably qualified professional.

The RFCS is a free and independent service that can provide a rural financial counsellor to help a farmer prepare for mediation, assist them on the day and help them with any actions that need to be undertaken after mediation. Help includes providing wellbeing, emotional and decision-making support, financial analysis and scenarios, and guidance on options for resolving the matter.

The RFCS can also help farmers who are experiencing, or are at risk of experiencing, financial difficulty though may not need mediation under the Act.

Farmers can find their local service by calling 1300 771 741 or visiting <https://agriculture.vic.gov.au> and searching ‘RFCS’.

## **more information**

Visit <https://www.vsbc.vic.gov.au/who-we-help/farmers/> or call the VSBC on 1800 878 964.