

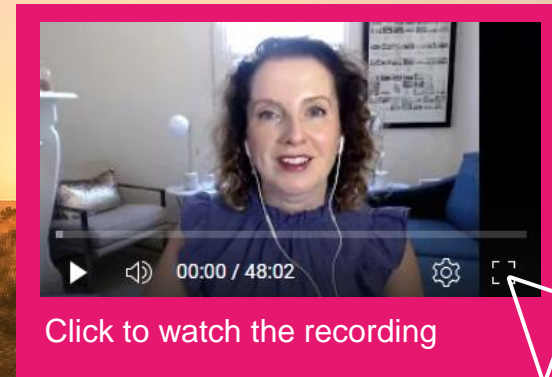


**Victorian
Small Business
Commission**

FARM DEBT MEDIATION: AN OVERVIEW

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Victorian Small Business Commissioner

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Purpose of the Farm Debt Mediation Act

- The Farm Debt Mediation Act (the Act) was introduced to enable the “...efficient and equitable resolution of farm debt disputes”
- Under the Act it’s compulsory for creditors to offer mediation to farmers in arrears on farm and machinery mortgages before commencing any debt recovery.



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How farm debt & operations are defined

Farm debt: debt incurred by a farmer for the purposes of the conduct of a farming operation that is secured wholly or partly by a farm mortgage

Farming operation: includes activities undertaken for commercial gain, including agricultural, pastoral, horticultural or apicultural activities; poultry farming, dairy farming or any business that consists of the cultivation of soils, the gathering of crops or the rearing of livestock; aquaculture; Forestry and timber production activities.

The role of the VSBC

- The VSBC oversees all farm debt mediation in Victoria as administrator of the Act
- Farmers and Creditors are both able to apply to the VSBC for assistance in arranging a mediation
- The VSBC provides both parties with template notices and forms to complete throughout the process
- The VSBC can issue exemption and prohibition certificates.



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Certificates

Exemption certificates

The Act inhibits a creditor from commencing enforcement action on a loan in arrears without an exemption certificate.

The VSBC will issue an exemption certificate when a creditor applies, the farmer is in arrears and the creditor has successfully mediated with the farmer **or** attempted to mediate with the farmer in good faith.

Prohibition certificates

The Act allows for the protection of farmers from creditors taking enforcement action on a loan in arrears where the creditor has failed to mediate or failed to mediate in good faith.

The certificate inhibits enforcement action for 6 months, or until the creditor agrees to mediate.

THE FARM DEBT MEDIATION PROCESS

Applying for assistance

Initiating mediation

- **Creditors** can apply to the VSBC for mediation assistance when the farmer is in arrears on their farm debt
- **Farmers** can apply to the VSBC for mediation assistance at any time
- In the event a farmer mediates with their creditor **without** experiencing arrears, they retain their right to mediation in the potential later event of financial difficulty.



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Creditor-initiated mediation

In the event that a farmer is in arrears, their creditor should:

1. Notify the farmer in writing of the opportunity to mediate and allow 21 days for them to respond.

If the farmer accepts the opportunity:

2. The creditor notifies the VSBC that they require creditor-initiated mediation (via the help portal on the VSBC website) / or alternative ADR scheme

The VSBC will then contact both parties to arrange mediation.



Creditor-initiated mediation

What happens if the farmer doesn't agree to mediate?

The creditor can apply to the VSBC for an exemption certificate to progress undertakings to recover the loan if:

- the farmer declines mediation;
- the farmer fails to respond to the request and 21 days have passed since the notice was issued.



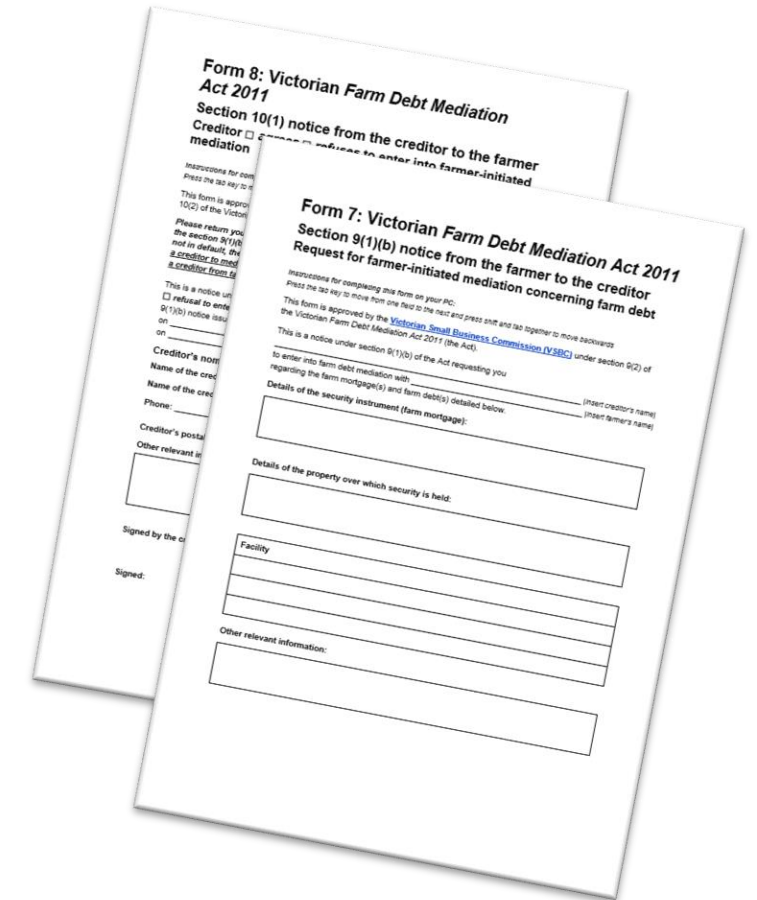
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Farmer-initiated mediation

Farmers can request mediation with their creditor by writing to them using 'form 7' from the VSBC. They should include 'form 8' which the creditors can use to reply.

Creditors have 21 days to accept or decline the offer by completing and returning 'form 8'.

If creditors accept the offer to mediate, they must notify the VSBC of this agreement by completing 'form 9' via the VSBC online application portal (attaching copies of forms 7 and 8).



Form 8: Victorian Farm Debt Mediation Act 2011
Section 10(1) notice from the creditor to the farmer

Form 7: Victorian Farm Debt Mediation Act 2011
Section 9(1)(b) notice from the farmer to the creditor

Farmer-initiated mediation

What happens if the creditor doesn't agree to mediate?

If the creditor fails to respond, or declines mediation, and the farmer isn't in arrears, then no further action can be taken.

If the creditor fails to respond in 21 days or declines to participate and the farmer is in default, then the farmer can apply to the VSBC for a prohibition certificate. This inhibits the creditor from taking recovery action for six months or until the day the farmer and creditor enter mediation.

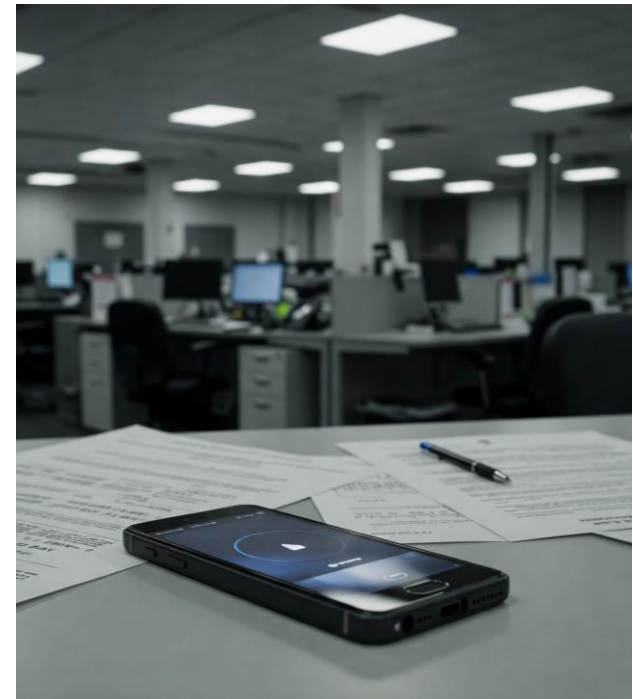


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THE FARM DEBT MEDIATION PROCESS

What to expect in mediation

We arrange mediation

- VSBC Dispute Resolution Officers (DROs) liaise with both parties to arrange the mediation, including the appointment of a mediator from our expert panel
- Mediations are held online, but we can accommodate in-person mediations for farm debt matters
- Each party pays \$195 for a full-day session, this is thanks to the Victorian Government's subsidy of the service
- The VSBC always recommends farmers enlist the support and advice of the Rural Financial Counselling Service, their accountant or solicitor.



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What to expect

A mediation is typically structured as:

1. Introductions & confirming the authority of parties to enter into terms of settlement
2. Parties' presentations
3. Discussion
4. Private sessions
5. Outcomes



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THE FARM DEBT MEDIATION PROCESS

Potential outcomes

Potential outcomes - agreement

If the parties come to an agreement, they'll sign Terms of Settlement. The creditor must ensure that agreement is reflected in any contract, deed, mortgage or other loan instrument that's been the subject of the mediation.

If the farmer is in default on the loan, the creditor can apply to the VSBC for an exemption certificate.

This provides them the opportunity (for up to three years) to recover the loan in the event the farmer fails to meet their newly agreed obligations.



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Exemption certificate process

- Creditors must apply to the VSBC for an exemption certificate by completing the form on the VSBC website
- When the VSBC reviews the application, should it decide to issue a certificate, it'll first notify the farmer in writing that a certificate will be issued in 28 days
- The creditor will be provided with the certificate following the notice period
- The period of exemption (three years) is calculated from a start date specified by the Act, dependent upon the circumstances in which the certificate was granted.



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Potential outcomes – no agreement

If there's no agreement, then:

- A creditor can apply for an exemption certificate if they believe they mediated in good faith
- A farmer can apply for a prohibition certificate if they believe the mediation wasn't satisfactory as the creditor failed to take part in good faith.



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Prohibition certificate process

- A prohibition certificate prevents a creditor from taking enforcement action for 6 months from its date of issue, or until the parties mediate the debt arrears
- Farmers may apply for a certificate if they are in arrears, they believe the mediation wasn't satisfactory or the creditor didn't act in good faith, or if the creditor declined to mediate, or failed to respond in 21 days, or agreed to mediate but mediation doesn't take place for a period of 3 months after the initial request was made.
- The VSBC notifies the creditor when it chooses to issue a prohibition certificate for the farmer and will encourage them to mediate the matter.



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