



Our Reference: OUT17/41600

Telephone: 1800 678 593

19 OCT 2017

Senator Malcolm Roberts
Chair
Select Committee on Lending to Primary Production Customers
Australian Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Roberts

Request for information – *Farm Debt Mediation Act 1994 (NSW)*

I write in response to your letter dated 5 October 2017 that requested information about the operation of the *Farm Debt Mediation Act 1994 (NSW)* (FDMA), and in particular, about what happens “if a farmer requests mediation, but the creditor declines to mediate”.

The consequence of a creditor’s refusal to mediate depends on whether the farmer who requested mediation is in default of their farm debt secured by a farm mortgage when they requested mediation:

- if the farmer is not in default, the farmer cannot insist on mediation and no consequences follow (FDMA s 9A(2))
- if the farmer is in default, the farmer may apply to the NSW Rural Assistance Authority (the Authority) for a section 9B certificate of exemption from enforcement action that will be issued provided the Authority is satisfied that:
 - no certificate under FDMA s 11 is in force in relation to the farm mortgage (FDMA s 9B(2)(c))
 - the creditor has declined to mediate (FDMA s 9B(2)(d))

A FDMA s 9B exemption certificate prevents a creditor from taking enforcement action in relation to a farm debt specified on the certificate for six months from the day on which the creditor declined to mediate, or until the day on which the farmer and creditor enter into mediation about the farm debt.

As you may be aware, NSW has reviewed its FDM Act and the drafting of minor amendments may be approved this year, with a view to Parliamentary passage in 2018. The review confirmed broad stakeholder support for the key features of the Act including its simplicity, flexibility and structured approach to informal dispute resolution whilst maintaining procedural fairness and equitable cost-sharing.

Six industry bodies, law firms, farmers, rural financial counsellors, mediators and government officials within NSW and interstate participated in the review and a significant majority endorsed the key features of the Act.

In relation to farm debt mediation (FDM) more generally, the NSW Government strongly supports nationally consistent legislation and hopes that jurisdictional differences can be negotiated successfully for a harmonised approach across Australia.

New South Wales' view is that farm debt mediation is a proven and effective access to justice mechanism for farmers and creditors that has worked well in NSW for more than 22 years.

Harmonised FDM legislation would benefit lenders, borrowers and other decision-makers across Australia by enabling a consistent interpretation and application of FDM legislation. This would reduce the inefficiency, inequity and costs for stakeholders of engaging with different statutory requirements, and improve equality under the law. Currently the differences are minor in the NSW, Victorian and Queensland FDM Acts, but South Australia's approach to FDM is more different, and there is no FDM legislation in Tasmania, Western Australia, the Northern Territory, or the Australian Capital Territory.

If FDM legislation were to be harmonised, the primary production sector and sectoral representatives could share learnings and experience, facilitating access to justice for farmers across Australia.

Yours sincerely



MICHAEL BULLEN
CHIEF EXECUTIVE