

COMPULSORY FARM DEBT MEDIATION ARRIVES IN QUEENSLAND

From 1 July 2017, it will be compulsory for lenders to offer to mediate with farmers, before taking enforcement action under a farm mortgage, under the *Farm Business Debt Mediation Act 2017* ("**Act**") passed on 30 March 2017.

'Enforcement action' means taking possession of a property, exercising a power of sale, or issuing a statutory enforcement notice.

A lender will first need to serve an 'Enforcement Action Notice', which notifies the farmer:

1. of the lender's intention to take enforcement action; and
2. that the farmer may request mediation.

After receiving the Enforcement Action Notice, the farmer has 20 days to request a mediation. A new business unit of the QRAA (which will be renamed the Queensland Rural and Industry Development Authority from 1 July 2017) will receive copies of the Enforcement Action Notice and any mediation request, will oversee the mediation process and will be responsible for accrediting mediators for farm debt mediations.

A farmer who has not or not yet received an Enforcement Action Notice may also request mediation. In that instance it is only compulsory for a lender to participate if the farmer is in default of its mortgage.

The Act does not apply if the farmer is bankrupt, has received a creditors' petition, or is an externally administered company. The Act does not expressly prohibit the appointment of a receiver to farm property under a general security agreement; although that is unlikely to be 'in the spirit' of the legislation.

The Act will have a broad application. A 'farm business debt' is an amount owed by a farmer that:

1. was borrowed for the purpose of conducting a farming business; and
2. is secured by a farm mortgage.

The Act contains no guidance about how 'loan purpose' is to be ascertained.

A 'farmer' is a person or corporation whose sole or main business is a farming business, or who is the owner of land under a sharefarming agreement.

A 'farming business' has a wide definition and includes agriculture, horticulture, dairy farming, bee-keeping, land-based aqua-culture, poultry, or another business involving cultivating soil, gathering crops, or rearing livestock. A business that involves cutting timber is also a 'farming business'.

A farm mortgage is a mortgage over farm property, which importantly includes:

1. land used for the farming business;
2. a water allocation held for the farming business; or
3. a vehicle, machine, or tool usually used to carry on a farming business such as a tractor, milking machine, harvester or beehive.

Penalties apply to lenders who commence enforcement action without the necessary 'exemption certificate'; which will be issued by the QRAA either when a satisfactory mediation has taken place, or three months have elapsed since an enforcement action notice has been issued, the lender has attempted to mediate in good faith during that time, but no satisfactory mediation has taken place.

Farmers are entitled to have one or more advisors at mediation, and the advisor may (but does not need to be) a lawyer or otherwise professionally qualified.

The new laws bring Queensland into line with New South Wales, which has had a compulsory farm debt mediation process since 1994; and Victoria which introduced a system in 2011. The system replaces the voluntary scheme which was operated under the Queensland Farm Finance Strategy.

The broad definitions of 'farmer', 'farm mortgage' and 'farming business' means the Act may have a wide reach for Far North Queenslanders. If parties are well-prepared, well-informed and well-advised when they enter mediation, the new compulsory process is likely to achieve positive results, and opportunities which may not be available through standard enforcement action.

For more information about this issue and all commercial litigation and debt resolution matters please contact our Senior Associate, Rowan Wilson on 07 4036 9700.