

+ Mediation Information Package

This package provides relevant information about mediation relating to farm business debt under the *Farm Business Debt Mediation Act 2017 (Qld)* (the Act).

Included in this pack:

- information about the rights and obligations of the farmer in relation to mediation
- information about persons qualified to conduct mediations under the Act.

Mediation

Purpose of mediation

The purpose of mediation under the Act is to provide an efficient and equitable way for farmers and mortgagees to attempt to resolve matters relating to farm business debts. In short, mediation is required before any mortgagee enforcement action can be taken.

Financial problems encountered by farmers are more effectively managed and addressed if they are identified early. The first step for a farmer is to seek advice from their bank or financial institution. Other legal aid and community services may also assist.

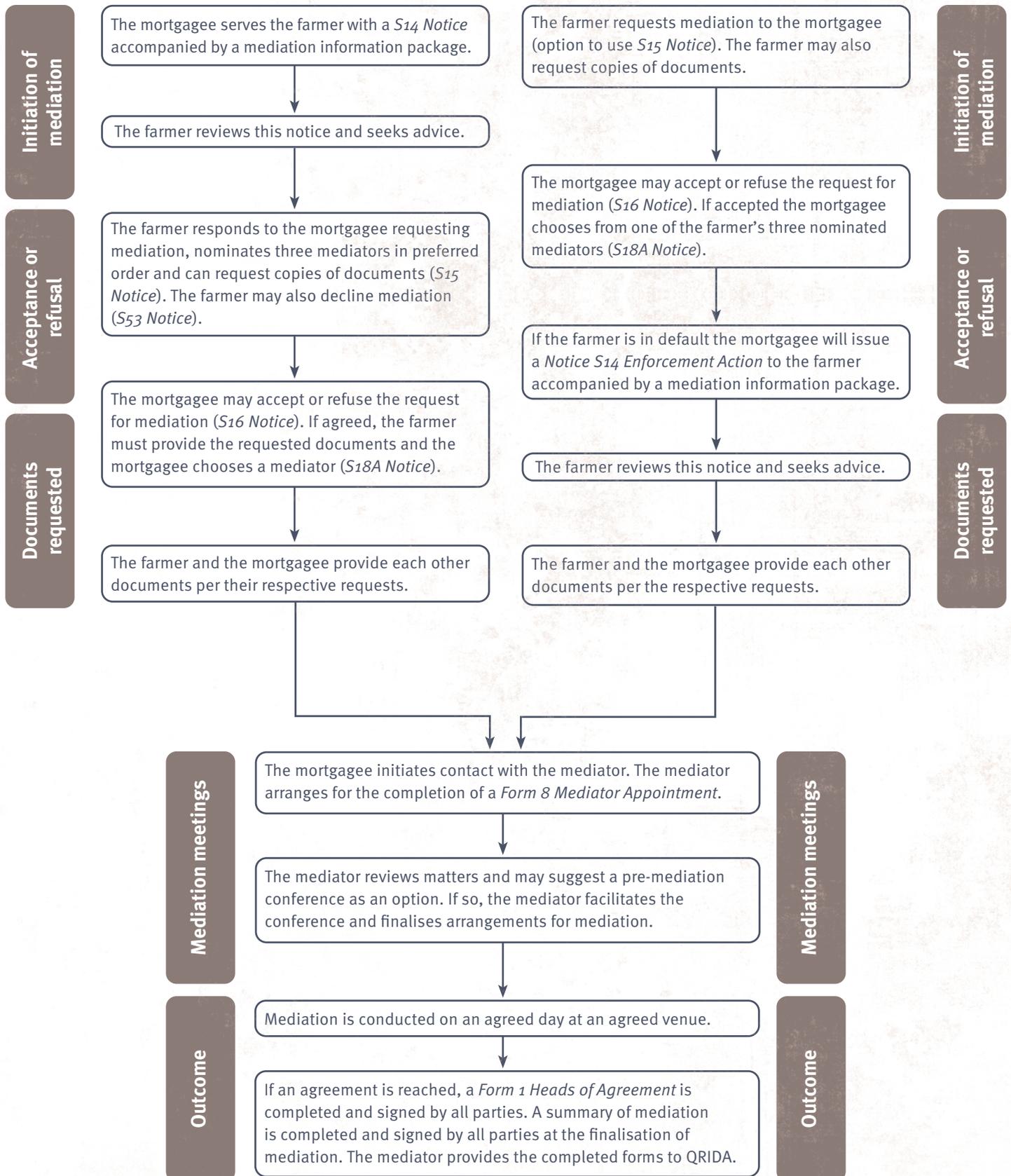
If matters remain unresolved, mediation provides a structured negotiation process in which the mediator, as a neutral and independent person, can assist the farmer and the mortgagee to bring about an agreement on matters relating to the farm business debt.

Benefits of mediation under this Act

- Establishes the rights of the farmer to be offered mediation prior to a mortgagee undertaking enforcement action
- Helps disputing parties understand how the others see and feel about the problem
- Enables business relationships to be maintained and even enhanced by encouraging co-operative problem solving
- Enables identification and exploration of all issues, including those which may not be revealed in arbitration or litigation because of the application of the rules of evidence
- Is confidential thereby avoiding adverse publicity or media attention and the need for any confidential or commercially sensitive information or trade secrets to be publicly disclosed
- Is usually significantly cheaper and quicker than arbitration or litigation and can be arranged to suit the convenience of the parties
- Focuses on the future rather than on the rights and wrongs of the past.

Creditor (mortgagee) initiated mediation

Farmer initiated mediation



Farm Business Debt Mediation process in detail

Mortgagee initiated mediation

The Act describes specific processes and notices served to relevant parties to mediation, including QRIDA.

Where the farmer has been served a *Notice S14 Enforcement Action*, the farmer may elect to exercise a right to mediation through nominating three mediators in order of preference. The farmer may also request documents relating to the farm business debt and mortgage by completing a *Notice S15 Request for Mediation*.

The key steps to a mortgagee initiated mediation

1. The mortgagee serves the farmer with a *Notice S14 Enforcement Action* along with a Mediation Information Package. A copy of the notice also needs to be provided to QRIDA. The farmer reviews this notice and seeks advice.
 2. The farmer then responds to the mortgagee within 20 business days with a *Notice S15 Request for Mediation* that also includes their nomination of three mediators in preferred order and a request for copies of documents. The farmer also has the right to decline mediation.
 3. The mortgagee may agree to the request for mediation by responding with a *Notice S16 Agreement or Refusal to Mediate*. The farmer has 30 business days to provide the requested documents to the mortgagee.
 4. The mortgagee chooses a mediator from the three nominated by the farmer with a *Notice S18A Response to Mediator Nomination*.
 5. The farmer and the mortgagee provide each other documents per the respective request for documents notices.
 6. The parties agree on a mediator. The mortgagee initiates contact with the agreed mediator. The mediator arranges for the completion of a *Form 8 Mediator Appointment*.
 7. The mediator reviews matters and may suggest a pre-mediation conference as an option.
 8. The mediator facilitates a pre-mediation conference and finalises arrangements for mediation.
 9. Mediation is conducted on an agreed day at an agreed venue.
 10. If an agreement is reached, a *Form 1 Heads of Agreement* is prepared and signed by the farmer, mortgagee and mediator. A *Form 2 Summary of Mediation* is completed and signed by all parties and forwarded to QRIDA.
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Farmer initiated mediation

Where the farmer has initiated mediation, the mortgagee must either agree or refuse mediation by preparing a *Notice S16 Agreement or Refusal to Mediate*. A copy of the notice is provided to both the farmer and QRIDA. If the farmer is in default, the mortgagee must also complete and serve a *Notice S14 Enforcement Action* accompanied by a Mediation Information Package.

The steps below highlight the notices, forms and timeframes relevant to an individual or business with a mortgage over a farm business, whether or not the mortgage is in default or at risk of default.

The key steps to a farmer initiated mediation

1. The farmer requests mediation by giving a *Notice S15 Request for Mediation*. The use of this notice is not mandatory, however this notice allows the farmer to nominate three mediators in preferred order and request copies of documents.
2. The mortgagee may accept or refuse the request for mediation by responding with a *Notice S16 Agreement or Refusal to Mediate*. At this time the mortgagee may also choose from one of the three nominated mediators. The farmer must provide the requested documents to the mortgagee within 30 business days.
3. The mortgagee chooses a mediator with a *Notice S18A Response to Mediator Nomination*.
4. If the farmer is in default, the mortgagee must issue a *Notice S14 Enforcement Action* which is accompanied by the Mediation Information Package. QRIDA receives a copy of the completed notice. The farmer reviews this notice and seeks advice.
5. The mortgagee and farmer provide each other documents per the respective request for documents notices.
6. The parties agree on a mediator. The mortgagee initiates contact with the agreed mediator. The mediator arranges for the completion of a *Form 8 Mediator Appointment*.
7. The mediator reviews matters and may suggest a pre-mediation conference as an option.
8. The mediator facilitates pre-mediation conference and finalises arrangements for mediation.
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+ Frequently asked questions

Who chooses a mediator?

The farmer is responsible for nominating three mediators in order of preference from the Register of Mediators located on the Queensland Rural and Industry Development Authority (QRIDA) website (search for Farm Business Debt Mediation at www.qrida.qld.gov.au).

All mediators accredited to mediate under the Farm Business Debt Mediation Program are appropriately qualified to perform the functions of a mediator.

Who are the mediators?

QRIDA accredits a number of people as part of a Register of Mediators under the Act. All mediators are experienced and have received training in the Act.

The mediators are strictly neutral, they do not take sides or represent either the farmer or the mortgagee. Mediators facilitate negotiations between the parties to seek a solution to the dispute. Mediators are respected and trusted by all parties, have expertise in rural and agriculture related disputes and can be a great benefit in helping reach a solution satisfactory to all parties.

How to arrange mediation?

On the basis that a mediator has been agreed to, it is the responsibility of the mortgagee to then ask the chosen mediator to arrange the mediation. This includes the time and location of the mediation and the coordination of mediation meetings.

The mediator arranges for the completion of the *Form 8 Mediator Appointment* with a copy provided to each party including QRIDA. Mediation meetings are to be conducted soon after arrangements are made and with as little formality and technicality as possible.

The farmer and the mortgagee may bring solicitors, accountants, rural financial counsellors or other advisors. The farmer may also bring other family members. All persons attending must be approved by the mediator.

A person representing a party at a mediation meeting must be authorised in writing to enter into a *Form 1 Heads of Agreement* for the party.

How to prepare for mediation?

Each party is encouraged to thoroughly prepare their case before mediation commences.

Once the parties have agreed upon the mediator, the chosen mediator will assume control of the process including arranging the time and location of the mediation and the sharing of costs.

The mediator may convene a pre-mediation conference between the parties. This approach is strongly suggested but not mandatory under the legislation. A pre-mediation conference may take the form of a face to face meeting, telephone conference, or even online video link. Farmers should ensure that any advisor engaged by them also participates in the conference.

Advisors such as the Rural Financial Counselling Service can assist in the preparation of a position statement for the farmer that assists to clarify specific issues related to the dispute and outline any proposed solution for consideration at mediation.

During the mediation, the mediator will cover a fixed agenda of topics. These include:

- an explanation of the mediation process
- the agreement to mediate document
- timings for the mediation session
- mediators' fees and reporting obligations
- preparation required by the parties prior to mediation
- who will attend the mediation.

The mediator will also explain the confidentiality provisions of the Act, the requirement for the parties present at mediation to have the authority to settle the matter, what constitutes satisfactory mediation, the requirement of both parties to act in 'good faith' and the farmers' rights under Section 27 - the cooling off period.

What is the role of advisors in mediation?

It is recommended that farmers engage a professional advisor/s. The advisor/s can be a local Rural Financial Counsellor, a solicitor, an accountant or some other appropriately qualified person. The role of the parties' advisor in mediation will be to help prepare their clients for mediation. Advisors provide advice and do not represent their clients in mediation. Advisors may also assist the mediator with drafting the terms of any settlement reached. It is essential that any advisor employed has a clear understanding of the mediation process and sound financial skills.

What happens at mediation?

A neutral venue including a main room large enough to accommodate all participants and separate rooms for each group will need to be arranged. Once the participants have been introduced, the mediator will open the mediation by making a short statement explaining the mediation process and the mediator's role including essential features and objectives of mediation.

After opening, the mediator will ask each party in turn to explain what it is that has brought them to mediation. From the parties' statements, the mediator will identify the issues in dispute and the common ground between the parties. After checking with the parties, the mediator will collate the issues and the common ground stated between the parties. This information will form the basis of an agenda for the discussion.

During the mediation, the mediator may meet with each of the parties separately. The aim of a private session is to enable the mediator to explore any underlying issues and to ensure that the parties are comfortable with the process. It is during the private session that proposed settlement options are often explored and tested. The mediator will not, unless specifically authorised, disclose anything said in a private session to the other parties.

How long does the mediation process take?

There is no prescribed timeframe and mediation may involve one or more meetings.

What is a Heads of Agreement?

If an agreement is reached at mediation the mediator will prepare a document that states the main points of agreement. Once signed, this document forms the *Form 1 Heads of Agreement*. Each party has 10 business days to sign the document.

If another mediation session is required because a person representing a party at a mediation meeting does not have the authority to enter into a Heads of Agreement, that party is liable for all costs associated with that additional session.

There is a 10 business day cooling-off period for any Heads of Agreement entered into by a farmer. The cooling-off period may be extended by agreement between the farmer and the mortgagee. The farmer may revoke the Heads of Agreement during the cooling-off period.



The cooling-off period may be waived by agreement if the farmer has had reasonable opportunity to seek advice.

What happens if the parties don't reach agreement?

Under the Act, the parties are required to make reasonable attempts to negotiate a settlement to their dispute at mediation.

If, after reasonable attempts, an agreement cannot be reached by mediation, the mortgagee may make application to QRIDA for an Exemption Certificate. If the application is approved, the farmer has the right of review of this decision. An Exemption Certificate allowing a mortgagee to commence action under the mortgage will only be issued based on the decision of any QRIDA internal review, or at expiry of 20 business days after the farmer received the original decision.

Settlement by mediation is voluntary and neither party can be forced to agree to anything at mediation.

Farmer eligibility for mediation

The Act does not apply if:

- the farmer is an insolvent under administration under the *Corporations Act*, Section 9; or
- the farmer is the subject of a petition presented by a creditor, other than the mortgagee, under the *Bankruptcy Act 1966* (Cwlth) or a corresponding law of another jurisdiction, including a jurisdiction outside Australia; or
- for a farmer that is a corporation - the farmer is a Chapter 5 body corporate within the meaning of the *Corporations Act*, section 9.

The Act does not apply to a farmer for a particular farm business debt if:

- the farmer previously defaulted under the farm mortgage for the debt and took part in mediation for the debt under this Act; and
- the farmer and mortgagee entered into a Heads of Agreement as a result of the mediation; and
- the farmer has defaulted under that mortgage.

What is good faith?

All parties should exhibit good faith in their actions related to the mediation process. The implied doctrine of good faith has been sourced from multiple areas of Australian Contract Law. The *Good Faith Information Sheet* outlines guiding principles and supporting information including examples of how each party may establish proof of good faith in their actions related to the mediation process.

These guiding principles include, but are not limited to:

1. respect for the parties
2. respect for the process
3. provision of relevant material
4. attending mediation with a preparedness to consider all propositions put forward by the other side with an open mind and genuine consideration.

Can a farmer apply to suspend enforcement action?

The farmer can apply for an Enforcement Action Suspension Certificate if:

- if the farmer has given the mortgagee a *Notice S15 Request for Mediation*; and
- the mortgagee has failed to mediate and the farmer is in default under a farm mortgage.

Is mediation information confidential?

Subject to certain exemptions provided for in the Act, confidentiality applies to matters discussed or agreed at mediation meetings. This includes actions taken for the purpose of arranging or following up a mediation.

The actions taken at mediation are not admissible in any civil, criminal or administrative proceeding.

What is the cost of mediation?

The cost usually includes the mediator's fees, mediator's out of pocket expenses, together with any hire fee for the venue. An indicative fee rate charged by the mediator is published on the Register of Mediators which is available on QRIDA's website.

Each party to a mediation must pay the party's own costs for the mediation and half of the mediator's fee and shared expenses.

Mediation Documents

List of forms and notices

Farmer to complete if applicable

- Notice S15 Request for Mediation
- Notice S18 Mediator Nomination
- Notice S18B Change of Mediator
- Notice S21 Request Copies of Documents
- Notice S29 Revoking Heads of Agreement
- Notice S32 Discontinuing Mediation
- Notice S53 Declining Mediation
- Form 3 Application for Enforcement Action Suspension Certificate
- Form 7 Request for Internal Review of Original Decision

Mortgagee to complete if applicable

- Notice S14 Enforcement Action
- Notice S16 Agreement or Refusal to Mediate
- Notice S18A Response to Mediator Nomination
- Notice S32 Discontinuing Mediation
- Form 4 Application for Exemption Certificate
- Form 7 Request for Internal Review of Original Decision

Mediator to complete if applicable

- Form 1 Heads of Agreement
- Form 2 Summary of Mediation
- Form 5 Application for Accreditation as a Mediator
- Form 6 Application for Re-accreditation as a Mediator
- Form 8 Mediator Appointment

Contact us on Freecall 1800 623 946 for hard copies of these documents or visit the QRIDA website at www.qrida.qld.gov.au and search for Farm Business Debt Mediation to download a copy.

Services available to all farmers

Rural Financial Counselling Service (South)

www.rfcssq.org.au | 07 4622 5500

Rural Financial Counselling Service (North)

www.rfcsnq.com.au | 07 4652 5666

Legal Aid Queensland - Farm and Rural Legal Service

www.legalaid.qld.gov.au | 1300 651 188

Lifeline

www.lifeline.org.au | 131 114

Beyond Blue

www.beyondblue.org.au | 1300 224 636

National Debt Helpline

www.ndh.org.au | 1800 007 007

Salvation Army

www.salvos.org.au | 13 72 58