

Farm Debt Mediation

Preliminary conference or intake meeting with the mediator

Agenda items for discussion

Parties to a mediation under the *Farm Debt Mediation Act 2024* (Tas) (FDM Act) should have at least one person who will participate in the actual mediation also participate in the preliminary conference / intake meeting.

The mediator may arrange the preliminary, pre-mediation intake meeting or teleconference. The 'Intake Agreement' document notes the issues that will be discussed. These include:

- (a) a description of mediation and the steps involved, including the use of joint sessions, separate sessions and shuttle negotiations
- (b) information on how to provide feedback or lodge a formal complaint in relation to the mediator
- (a) assessing whether mediation is suitable and whether variations are required (for example, using an interpreter or a co-mediation model in culturally and linguistically diverse communities or introducing safeguards where violence may be an issue)
- (b) explaining to participants the nature and content of any agreement, or requirement to enter into mediation including confidentiality, costs and how they are to be paid
- (c) identifying who is participating in the mediation and the farmers' interests (e.g. business partners, guarantors, separated partners, legal interests in land in partnership or trust) and to what extent participants have authority to make decisions
- (d) advising participants about the National Mediator Accreditation System/Australian Mediator and Dispute Resolution Accreditation Standards and how they can be accessed
- (e) assisting participants to prepare for the mediation meeting including consideration of any advice or information that may need to be sought and/or exchanged
- (f) referring participants, where appropriate, to other sources of information, advice or support that may assist them. Mediators will provide information about the valuable support that the Rural Financial Counselling Service can provide. Contact information for this free service is on Rural Business Tasmania's website www.ruralbusiness Tasmania.org.au/. Legal advice may also be recommended.
- (g) informing participants about their roles and those of advisors, support persons, interpreters and any other attendees
- (h) advising participants about how they or the mediator can suspend or terminate the mediation
- (i) confirming each participant's agreement to continue in the mediation, and
- (j) deciding venue, timing and other practical issues.

In addition, the mediator may ask the parties to disclose to each other any standard clauses that either party would like to see included in the mediation agreement.

The Creditor may ask for documents before the mediation including a present financial position based on a realistic current market valuation, including livestock numbers and values, plant and equipment, cash flow budgets, work programme for crops and livestock, a map or photo of the property, and copies of the last three years' taxation figures for the farming operation. Rural Financial Counsellors can help farmers to prepare this information and their financial analysis.

At the intake meeting a farmer can ask their Creditor to provide information they might need to negotiate effectively, including information about original loan documents and alleged breaches; bank valuations of the farm enterprise etc.

Intake discussions will proceed more smoothly if the farmer has discussed the situation with their family and/or business partners and broad agreement has been reached on an approach to the mediation. The mediator may be happy to have other parties join via conference call or online meeting tool (eg. Zoom, MS Teams etc.)

The parties attending the mediation must have authority to enter into an agreement that is binding and enforceable. If either party has a limitation on their authority, that should be disclosed to the mediator during the intake meeting. Sometimes new information emerges at the mediation that may make the negotiated outcome different from what might have been expected. It is important that the party entering into an agreement has heard all the arguments discussed.

The party participating in the mediation should have sufficient authority to adapt their agreement accordingly.

If another mediation is required because a party does not have the required authority, the party lacking authority is liable for all the costs associated with the attendance of the other party at another mediation session.