

Intake Agreement for Farm Debt Mediation

Farm Debt Mediation Act 2014 (Tas) – Form 8

This agreement is to be discussed at the intake meeting for a farm debt mediation under the *Farm Debt Mediation Act 2024* (Tas) ('*FDM Act*') which can be conducted by teleconference, videoconference or face-to-face. This Agreement must be signed by the mediator and the parties to the dispute before the mediation starts, either on one document or as separate documents (counterpart execution).

Others attending the mediation, such as advisors, representatives and support people only need to sign the Confidentiality Agreement at Annexure A.

This agreement is made on:	
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Amongst the following parties (together called 'the parties')

Name of creditor:	
Address:	
Name of farmer:	
Address:	
Name of farmer:	
Address:	
Name of guarantor:	
And the mediator/s (called 'the mediator')	
Name of mediator:	
Address:	
Name of mediator:	
Address:	

Appointment of mediator

1. The parties appoint the mediator to mediate the matter between them involving farm debts in accordance with the terms of this Agreement, as briefly described in Schedule 1 (the 'matter'). The mediator accepts this appointment.

Functions and role of the mediator

2. The function of the mediator is to mediate fairly, equitably and impartially, between the farmer/s and Creditor for the purpose of arriving at an agreement for the present arrangements and future conduct of financial relations between or amongst them.
3. The mediation is to be conducted with as little formality and technicality, and as much expedition, as is appropriate under the National Mediator Accreditation System's Practice Standards and the *FDM Act*. The mediation will be conducted in a safe manner if violence is an issue. Whether an interpreter is required will be considered if appropriate.
4. The mediator may permit an agent to participate in the mediation for a party if:
 - 4.1 That party has given written authority to the agent to enter into a Mediation Agreement; and
 - 4.2 The mediator considers that the agent has sufficient knowledge of the issues concerned to enable the agent to represent that party effectively.
5. A farmer who is a party is entitled to have an advisor present who may be, but need not be, legally or otherwise professionally qualified. The farmer is entitled to call upon their advisor for advice and counsel during the mediation. The farmer will be assisted by accessing advice well before the mediation to help them prepare well for the mediation.
6. A corporation who is a party to a mediation is entitled to be represented at the mediation by an officer of the corporation.
7. The mediator may set conditions for the participation of a party's representative that they consider reasonable to ensure that the other party is not substantially disadvantaged by the agent's attendance, and attendance is subject to the agent complying with those conditions.
8. During the intake meeting before the mediation, the mediator can facilitate the exchange of information between the parties to the mediation for the purpose of assisting the parties to resolve the issues between them. A request for information can be made using Form 4 Request for Documents Relevant to Mediation.
 - 8.1 A party to a mediation must give the mediator a copy of any request for information before giving the request to the other party. The party will discuss their information needs with the mediator before the intake meeting.
 - 8.2 The mediator will note in their summary of the information whether any request for information made by a party was reasonable and whether the other party provided the information requested within a reasonable period.
9. The mediator will assist the parties to attempt to achieve their own resolution of the matter by helping them to:
 - 9.1 Communicate with each other;
 - 9.2 Systematically isolate the issues in dispute;
 - 9.3 Develop options for the resolution of these issues;
 - 9.4 Explore the usefulness of these options; and
 - 9.5 Meet their interests and needs.

10. The mediator may adjourn or terminate a mediation session to ensure that the mediation is fair and appropriate having regard to:
 - 10.1 The duration of the mediation session;
 - 10.2 Whether the parties are able and willing to participate in the mediation session;
 - 10.3 Whether the parties are engaging in the mediation in good faith;
 - 10.4 Any risk to the health or safety of the parties resulting from the conduct of the mediation session; and
 - 10.5 Any other matters that, in the opinion of the mediator, are relevant in the circumstances.
11. The mediator will not accept an appointment in relation to any proceedings concerning the matter.
12. Neither party will take action to cause the mediator to breach Part 5 of the *FDM Act*.
13. Co-mediation (where more than one mediator runs the mediation) is permitted with the agreement of the parties.

Conflicts of interest

14. Before the mediation begins, the mediator must disclose to the parties to the best of the mediator's knowledge any prior dealings with any of the parties, as well as whether they have any interest in the matter, as a conflict of interest would mean the mediator should not continue with the mediation.
15. If in the course of the mediation the mediator becomes aware of any circumstances that might reasonably be considered to affect the mediator's capacity to act impartially, the mediator must immediately inform the parties of those circumstances. The parties will then decide whether the mediation will continue with that mediator or with a new mediator appointed by the parties.

Co-operation by the parties

16. The parties must co-operate in good faith with the mediator and each other during the mediation.

Authority to settle and representation at the mediation session

17. The parties must attend the mediation with authority to settle within any range that can reasonably be anticipated. The mediator will ensure that the parties consider carefully who needs to participate in the mediation if there are others with interests under the law affected by the outcome.
18. Any person representing a party to a mediation (whether or not the person is themselves a party to the mediation) must not attend a mediation session unless the person has been given written authority by the party the person represents to enter into a Mediation Agreement.
19. If another mediation session is required as result of the party's failure to give the required authority, the party is liable for all costs associated with the attendance by the other party at that additional session.
20. At the mediation each party may have one or more other persons, including legally qualified persons, to assist and advise them.

Communication between the mediator and the parties

21. Any information disclosed to the mediator in private is to be treated as confidential by the mediator unless the party making the disclose states otherwise, or disclosure is required by law or order of a court.

Confidentiality of mediation

22. The parties and the mediation must not disclose any document or information given during or for the purpose of the mediation (including any preliminary conference) to any person not involved in the mediation unless required by law or order of a court to make such disclosure. Disclosure may be required for example, in proceedings aimed at preventing or minimising the danger of injury to any person or damage to any property.
23. The parties and the mediator agree, subject to the *FDM Act*, that the following matters will be privileged and will not be disclosed in, or be the subject of a subpoena to give evidence or to produce documents, in any proceedings in respect of the matter:
 - 23.1 Any settlement proposal whether made by a party or the mediator;
 - 23.2 The willingness of a party to consider any such proposal;
 - 23.3 Any statement made by a party or the mediator during or for the purposes of the mediation (including any preliminary conference); or
 - 23.4 Any information prepared for the mediation.
24. At the end of the mediation, the mediator will complete a summary of mediation, a copy of which is annexed to this Agreement and marked Annexure B, setting out a summary of the conduct and results of the mediation (including any Mediation Agreement entered into by the parties). The mediator is required by the *FDM Act* to provide the summary to the Farm Debt Mediation Commissioner ('Commissioner') at the end of the mediation.

Adjournment or termination of the mediation

25. A party may terminate the mediation at any time after consultation with the mediator.
26. A mediator should advise their intention to suspend or terminate the mediation and where appropriate, should encourage the parties to consider alternative procedures for achieving resolution.

Settlement of the matter

27. If settlement is reached at the mediation, the terms of the settlement must be written down and signed by the parties before they leave the mediation. The document is binding on the parties to the agreement, unless later varied by agreement.
28. If it appears to a mediator that the parties to the mediation have agreed, or are about to agree, an issue between them, the mediator must personally prepare for the parties a document setting out the main points of agreement on the issue (a draft Mediation Agreement).
29. The draft Mediation Agreement must include a statement in the approved form, relating to the cooling-off period for the Mediation Agreement that continues until 5pm on the 10th business day after the day the Mediation Agreement is entered into, unless waived or varied by agreement in writing between the parties. If not included the cooling-off period statement may be given later but the cooling off period runs for 10 days from the date of delivery.
30. If the parties are satisfied that the document sets out the main points agreed on by them during, or within 24 hours of the end of the mediation, the parties may enter into a Mediation Agreement by signing the document.
31. A contract, deed, mortgage or other instrument entered into as a result of, or pursuant to, the Mediation Agreement between the parties must reflect the relevant Mediation Agreement.

Enforcement of the mediation agreement

32. Any party may enforce the terms of the Mediation Agreement by arbitral or judicial proceedings.
33. For the purposes of section 30, any party may call evidence of:
 - 33.1 The Mediation Agreement;
 - 33.2 A contract, deed, mortgage or other instrument entered into as a result of, or pursuant to, the Mediation Agreement;
 - 33.3 The mediator's summary of the mediation, and evidence from the mediator and any other person engaged in the mediation as permitted by law.
34. The Party calling evidence of the Mediation Agreement agrees to indemnify the mediator for any legal costs and other expenses incurred by the mediator in giving evidence or in obtaining advice in relation thereto, and shall pay in advance to calling for such evidence to the mediator, the mediator's estimate of such costs and expenses.

Exclusion of liability and indemnity

35. The mediator will not be personally liable to any action, liability, claim or demand for any matter or thing done in the performance of the mediator's obligations under this agreement if the matter or thing was done or omitted to be done in good faith for the purpose of executing the *FDM Act*.
36. The parties together and separately indemnify the mediator against any claim for any act or omission in the performance of the mediator's obligations under this agreement unless the act or omission is fraudulent.
37. Parties can provide feedback to the Department of State Growth about the conduct of the mediation via email at FDMTasmania@stategrowth.tas.gov.au.
38. If a party wishes to lodge a formal complaint about the conduct of the mediation, they should contact the mediator's Recognised Mediator Accreditation Body under the National Mediation Accreditation System and advise the Commissioner.

The cost of mediation

39. Unless the parties to a mediation agree to apportion the costs of the mediation otherwise, the parties are to pay:
 - 39.1 An equal share of any fee and costs charged by the mediator for the mediation set out in Schedule 2, and
 - 39.2 Their own costs associated with attendance at the mediation.
40. If more than one mediation session is required as a result of a party's failure to give a person representing the party authority to enter into a Mediation Agreement, the party is to pay the whole of the mediator's fee for the session and all costs associated with the attendance by the other party at the additional session.
41. The Commissioner is not liable for any of the fees, costs or expenses of or associated with mediation for the purposes of this Act.

Governing law

42. This agreement is legally binding and shall be governed by and construed under the laws of the State of Tasmania.
43. This agreement may be executed in any number of counterparts, each of which will be an original, but such counterparts will together constitute one and the same instrument.

Schedule 1 – Description of the matter

The mediation will take place on the date and at the location as follows unless agreed otherwise between the parties and the mediator.

Time and location of mediation:

Venue:	
Date:	
Time:	

The matter to be the subject of this mediation is:

Details of security instruments: <i>For example: registered mortgage numbers with lot & plan numbers, chattel mortgage numbers.</i>

Details of farm property over which security is held including address(es): <i>Farm property means a farm or part of a farm, farm machinery means vehicles or other implements commonly used in farming & water access licences under the Water Management Act 1999 (Tas).</i>

Details of outstanding farm debts:

Facility	Balance outstanding <i>(as at date of issue of section 24 notice)</i>

Schedule 2 – Costs of the mediation

Mediator's fees and expenses:

For all preparation time and the first		hours of the mediation session:
\$	to be shared	
as agreed by the parties.		
Additional time: up to		to be shared
	as agreed between the parties.	

Room hire and out of pocket expenses – at cost.

Signing of the intake agreement

The parties and the mediator have signed this Intake Agreement as follows:

Date:			
Name of mediator:		Signature:	
Name of co-mediator:		Signature:	
Name of farmer party or representative:		Signature:	
Name of farmer party or representative:		Signature:	
Name of guarantor or representative:		Signature:	
Name of Creditor party or representative:		Signature:	
Name of Creditor party or representative:		Signature:	

Confidentiality Agreement

Annexure A

Farm Debt Mediation Act 2024 (Tas) – Division 4 Mediation Agreement

Persons who are not parties to a mediation session may be present at or participate in a mediation session in an advisory or representative capacity if permitted by the *FDM Act* or authorised by the mediator and the party they are advising or representing.

Lawyers acting for a party are bound by professional confidentiality obligations but are encouraged to sign this agreement as a record for the parties.

1. Name of person present at the mediation:	
2. Name of person present at the mediation:	
3. Name of person present at the mediation:	
4. Name of person present at the mediation:	
5. Name of person present at the mediation:	

I undertake to the parties to the mediation that:

1. I will not disclose to anyone any information received by me during the mediation, unless required by law or a court to make such a disclosure.
2. I will not disclose to anyone involved in the mediation any information received by me during the mediation from a party to the mediation unless expressly authorised by the disclosing party to do so.

1. Signature:		Date:	
2. Signature:		Date:	
3. Signature:		Date:	
4. Signature:		Date:	
5. Signature:		Date:	

Summary of mediation

Annexure B

Farm Debt Mediation Act 2024 (Tas) – Section 39 Summary

In the matter of:	
and	
regarding:	
Date of mediation:	

MEDIATION OUTCOME				
Did parties reach agreement at the mediation?	Yes		No	
Was this agreement reduced to writing and executed by the parties?	Yes		No	
PRE-MEDIATION				
Was a preliminary conference held either face to face or by teleconference?	Yes		No	
If not, why not?				
Did the principal negotiator for the Creditor participate?	Yes		No	
Did the farmer/s participate?	Yes		No	
Did a legal/financial representative for the farmer participate?	Yes		No	
What was discussed/clarified at the preliminary conference?				
Participants	Yes		No	
Authority to settle	Yes		No	
Mediator's role including drafting of any agreement reached	Yes		No	
Mediation principles, process and timings	Yes		No	
Document/information exchange	Yes		No	
Confidentiality of the mediation session	Yes		No	
Other including 'satisfactory mediation' and 'good faith'	Yes		No	
If a party gave you a request for information from another party, was that request for information reasonable?	Yes		No	
Was the information requested provided within a reasonable period by the other party and sufficiently prior to mediation to enable relevant settlement options to be considered?	Yes		No	

MEDIATION SESSION				
Did Party A make an adequate opening statement?	Yes		No	
Did Party B make an adequate opening statement?	Yes		No	
Were Party A's issues and concerns identified from the opening statement?	Yes		No	
Were Party B's issues and concerns identified from the opening statement?	Yes		No	
Were each party's issues/concerns discussed face to face sufficiently to enable the other party to appreciate the other's perspective?	Yes		No	
Were Party A's options for settlement canvassed?	Yes		No	
Were Party B's options for settlement canvassed?	Yes		No	
How many settlement options were proposed?	Total			
Who proposed these settlement options?	Mutually		Party A	Party B
Were both parties prepared to consider/discuss the others settlement options?	Yes		No	
Did Party A move off initial position?	Yes		No	
Did Party B move off initial position?	Yes		No	
Were both parties at all times competent to continue the mediation?	Yes		No	
For how long did the mediation process continue? (<i>hours</i>)				
Did you, as mediator, adjourn the mediation to a later date?	Yes		No	
Did both parties attend mediation with authority to settle within any range that could reasonably be anticipated?	Yes		No	
If one party did not have the requisite authority, which party?	Party A		Party B	
Did any person representing a party to the mediation fail to have written authority from that party to enter into Mediation Agreement?	Yes		No	
If a party did not provide written authority, which party?	Party A		Party B	
NON-SETTLEMENT				
If no settlement was reached, what needed to happen in order for settlement to have occurred?				
Did all parties attend the mediation session?	Yes		No	
If any party was absent, which party?	Party A		Party B	
Did the absence of this party prevent the mediation from proceeding?	Yes		No	
Did the parties arrive within 30 minutes of the scheduled commencement?	Yes		No	
Were issues discussed by the parties?	Yes		No	
Were options canvassed by the parties?	Yes		No	

Did the parties agree that nothing further could be gained by continuing mediation?	Yes		No	
Did one party discontinue mediation, at a time when the other party wanted to continue?	Yes		No	
If so, which party discontinued mediation?	Party A		Party B	
GENERAL				
Do you, as mediator, wish to make any further comments?	Yes		No	

Mediators name:		Co-mediators name (if applicable):	
Signature:		Signature:	
Date:		Date:	

Lodgement of forms

Completed forms, including required documentation can be lodged with the Department of State Growth by post, email or personal delivery.

By post:

PRIVATE AND CONFIDENTIAL

Farm Debt Mediation Commissioner
 Department of State Growth
 4 Salamanca Place Hobart
 GPO Box 536
 Hobart TAS 7001

Email: FDMTasmania@stategrowth.tas.gov.au

Phone: 1800 440 026