

Optional preparation Worksheet



These worksheets are intended to help farmers prepare for a Creditor-initiated farm debt mediation, however they can be applied to most mediation scenarios, including farmer-initiated mediation.

Start a mediation timeline and return Form 1 within 20 business days

Date <i>Form 1: Creditor's Invitation to Farmer to Mediate (Form 1 Notice)</i> and Farmer's Response & Nomination of Mediator received	
Date for completing the form by agreeing to mediate and nominating a mediator, or declining to mediate, that is determined 20 business days after <i>Form 1 Notice</i> received	
Target date for completing mediation that is 3 months from the date <i>Form 1 Notice</i> received	

NOTE: If the farmer decides to mediate, they must complete the *Form 1 Notice* and return it to the Creditor who sent it, within 20 business days of receiving the notice.

If the form is not returned within 20 business days, the farmer may lose their rights under the *Farm Debt Mediation Act 2024 (Tas)* ('*FDM Act*').

If an extension of time is required, the farmer or their Rural Financial Counsellor or other supporter or adviser should contact both the Creditor and the Farm Debt Mediation Commissioner via email at FDMTasmania@stategrowth.tas.gov.au or via phone on 1800 440 026.

The advantages of mediating include:

- having an opportunity to explain a situation and to hear the views of the other parties
- having a neutral facilitator to ensure that each party has a fair opportunity to explore options and negotiate a way forward
- participating in a process where each party is treated with politeness and respect
- being able to negotiate outcomes that may not be available without mediation or litigation.

Consider obtaining independent advice

The farmer is strongly encouraged to obtain independent advice to help decide whether to mediate, and to help them prepare for and participate effectively in the mediation.

The Rural Financial Counselling Service (RFCS) provides a free support service for farmers in financial distress in Tasmania. Contact information for the RFCS Counsellors is on Rural Business Tasmania's website www.ruralbusiness Tasmania.org.au/.

Farmers may also wish to instruct a lawyer and/or accountant or other service provider or employee to represent them, or to be present with them during the mediation.

The Department of State Growth can also explain the mediation process and answer questions via phone on 1800 440 026 or via email at FDMTasmania@stategrowth.tas.gov.au.

Read mediation resources available

On the Department of State Growth website there are a number of resources to support farmers and Creditors engaging in farm debt mediation. Please take the time to review these before attending mediation <https://www.stategrowth.tas.gov.au/farm-debt-mediation>.

Mediation resources:

- Overview of Farm Debt Mediation
- Issues to discuss at intake meeting or teleconference
- Obligation to mediate in good faith
- Mediation agreements under the FDM Act
- Cooling off period statement

Prepare well for the mediation

Preparing well for the mediation is very important and should commence at the earliest possible time. Parties need to go into the mediation equipped with options and arguments about the issues that are likely to form the mediation 'agenda'. Parties need to be prepared to negotiate and should think beforehand about their position and the position of the other party or parties. During the mediation the farmer and the Creditor will be invited to meet with the mediator privately to discuss how the mediation is going and other matters that you wish to discuss on a confidential basis.

Preparing for the mediation may be difficult, but assistance is available from a Rural Financial Counsellor, accountant, farm consultant, or solicitor.

Map out a negotiation plan

It may help to map out a negotiation plan with one or more professional advisers having considered:

- (a) What has brought you and the Creditor to this situation?

(b) What are your needs and interests that must be met and what are your Creditors' interests? Note that the Creditor is not obliged to offer a debt write-down.

(c) What are the relevant facts? Past, present, future? What needs to change?

(d) What are your legal and financial options?

(e) What is your best alternative to a negotiated agreement?

What alternatives do you have if the negotiation ends without agreement?	
What alternatives do you think the Creditors have if the negotiation ends without agreement?	
What is your best alternative to a negotiated agreement (BATNA)?	
What could improve your BATNA? Can you remove constraints and improve your BATNA position?	

<p>What is the worst alternative to a negotiated agreement?</p>	
<p>What options exist to resolve the matter? How do these options satisfy your needs? Are they practical? Are they likely to appeal to the creditor? Develop arguments for each option.</p>	

- (a) You will need to agree on a spokesperson for your options during the mediation.
Remember, you as the farmer know the facts and your position best. If you are going to take an adviser or representative into the mediation you should agree beforehand what role that person will take, and be flexible about changing your roles if you think that will be to your advantage during the mediation.
- (b) The mediator will ask you to make an opening statement at the start of the mediation. This provides an opportunity for the Creditor to hear your perspective and to better understand your circumstances, and how those have evolved. Your statement should be brief, factual and try to use neutral language. Try to map out some of the words you'll use to make your key points so that none of the parties become defensive.

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- (c) As part of your preparation for mediation, you should draw up documents showing your present financial position, details of your property including a realistic current market valuation, a list of plant and equipment with realistic current market valuation, cash flow budgets, livestock programme, cropping programme, shearing programme, a map or photo of your property and copies of the last three years' taxation figures for the farming operation. Your Rural Financial Counsellor can help you to prepare this information and your financial analysis.

The big event – mediation day

Be sure that you know what to expect on the mediation day. If in doubt, contact your Rural Financial Counsellor or mediator and ask. The mediation may be finished sooner if you have prepared your negotiation plan. Ensure that you allow sufficient time for the mediation – at least six hours – but the mediation can be adjourned and does not have to finish in one day. Be prepared to learn something new. Be prepared to compromise. Be prepared to accept an agreement that you can live with. Ensure any agreement is realistic.

Mediation has no set outcome but be aware that creditors are not obliged to offer concessions on the terms of the original loan agreement or debt write-downs.

Compromise means giving something up, so both parties can expect to experience some unhappiness if a compromise agreement is reached.

What is a “satisfactory mediation”?

Remember that nobody can force you to sign any document or do anything against your will. However, be aware of the possible consequences if you fail to reach an agreement at mediation.

You do not have to reach an agreement at mediation to have had “satisfactory mediation”.

The Act defines “satisfactory mediation” as

- (a) a mediation that has achieved a resolution of a matter involving a farm debt, or*
- (b) a mediation that has proceeded as far as it reasonably can in attempting to achieve a resolution of a matter involving a farm debt but has nevertheless failed to resolve the matter, or*
- (c) a mediation is prescribed, or is within a class of mediations prescribed, for the purposes of this subsection to be a satisfactory mediation.*

At the completion of the mediation if no mediation agreement is reached the Creditor will most likely apply for a certificate under exemption certificate under the Act on the grounds that satisfactory mediation has occurred.

Once in possession of that Certificate, the Creditor is free to commence enforcement action at any time during the three-year lifetime of the certificate. If you have entered into a binding Mediation Agreement, enforcement can commence as soon as that agreement has been breached.

If you do fail to resolve your dispute at mediation, consider how are you going to resolve the matter? Litigation? Further negotiations? A quick sale of your farm?

A cooling off period is mandatory

Please that your mediator includes a 10 business-day cooling off period statement in any Mediation Agreement reached at mediation, using the words approved by the Commissioner. The cooling off period may be waived or varied by the parties, but this is a risk that should rarely be agreed to. The cooling off period will give you time to seek legal advice regarding the agreement if you haven't already, and to re-open the mediation to re-negotiate the agreement if you feel that is necessary.

If you decide to rescind the agreement you or your solicitor must sign the rescission notice, and if any benefits have been received during the cooling off period they may have to be accounted for.

If another mediation is required, the other party may ask you to cover the costs of that.

If you have any questions about farm debt mediation or this information, please contact your Rural Financial Counsellor, a solicitor or the Department of State Growth.

Farm Debt Mediation Commissioner

Department of State Growth

4 Salamanca Place

Hobart TAS 7001

Phone: 1800 440 026

Email: FDMTasmania@stategrowth.tas.gov.au

Website: <https://www.stategrowth.tas.gov.au/farm-debt-mediation>

