

# Farm Debt Mediation

## Obligation to mediate in good faith

An essential aspect of a fair and equitable mediation is that parties act honestly and in good faith throughout the process.

The *Farm Debt Mediation Act 2024* (Tas) (FDM Act) includes various references to “good faith” (See box below).

The FDM Act does not define “good faith” so a common understanding is taken and whether good faith has been observed is a question of fact determined on a case-by-case basis.

An obligation to mediate in good faith means more than attendance at the mediation session, it involves acting honestly and not engaging in unfair behaviour such as dishonesty or fraud. It also suggests having a willingness to consider and put forward reasonable options for the resolution of the dispute.

Mediating in good faith, does not however mean that a party is required to act against their own interest, nor does it mean that the parties must reach agreement and resolve the dispute.

“Good faith” involves a willingness to exercise a degree of co-operation and compromise to isolate the issues that are genuinely in dispute and to resolve them as speedily and efficiently as possible.

### Box 1: FDM Act references to “good faith”

- the Farm Debt Mediation Commissioner (FDM Commissioner) can grant a section 18 prohibition certificate to an applicant farmer (in default) if three months have passed since the farmer’s initial request for mediation and no satisfactory mediation has occurred, and the farmer attempted to mediate in **good faith** through those three months: section 19<sup>1</sup>.
- the Commissioner can grant a section 18 prohibition certificate that the FDM Act does not apply to a Creditor:
  - if three months have elapsed after a Creditor gave notice and the creditor attempted to mediate in **good faith** throughout that period or such other longer period as has been agreed by the Creditor (section 19(3));
  - the farmer has failed to take part in mediation in good faith or has unreasonably delayed entering into or proceeding with mediation in respect of the farm debt (section 19(3));
- a Creditor’s failure to forgive or reduce a farmer’s debt does not demonstrate a lack of **good faith** in attempting to mediate: section 16(6);

<sup>1</sup> The prohibition certificate ceases to be in force six months after the day it was issued: section 21.