

05 February 2021

Farm Debt Mediation Working Group
Department of Primary Industries, Parks, Water and Environment
Email: FarmPoint@dpiwve.tas.gov.au

Proposed legislated Farm Debt Mediation scheme

The Australian Banking Association (**ABA**) welcomes the Tasmanian Government's consultation on a proposed farm debt mediation scheme (**FDM**).

The banking industry is a critical enabler of the agriculture sector and works with farmers across Australia to assist them to obtain credit to grow their businesses.

The banking industry understands that agriculture is an industry heavily impacted by seasonal variations which can result in earnings volatility. In their dealings with agribusiness customers, banks see first-hand the income pressures that farmers face, and they make substantial efforts to help these customers through difficult times.

The ABA has been a strong advocate for the national adoption of a nationally consistent legislation FDM scheme. The banking sector commends the Tasmanian Government for adopting the Royal Commission recommendation 1.11 for the enactment of a national scheme.

The ABA supports the proposed model outlined in the consultation paper, January 2021 and provides the following response to the questions included in the consultation paper.

Consultation Questions

1. What is your experience with farm debt mediation?

Banks have been involved in farm debt mediations since the NSW Government introduced a legislated scheme in 1994 (under the *Farm Debt Mediation Act 1994*).

The experience of ABA member banks is that when a customer cannot meet their loan obligations, farm debt mediation provides an effective and valuable mechanism that allows a farmer and their lender to negotiate efficient and equitable resolution of farm debt disputes.

Mediators are trained to understand the unique and complex circumstances affecting farming operations and agribusiness lending. The mediator works with both parties to reach an agreement on current financial arrangements, and to find the best way to move forward. Most mediations result in an agreement between the bank and the farmer.

Importantly the mediation process allows an agreement to be reached without an expensive and lengthy court process.

Farm debt mediation helps farmers in financial difficulty to either re-establish their viability or exit the industry with dignity.

2. How would a Tasmanian legislated FDM scheme be beneficial, and do you have thoughts about the utilisation of such a scheme?

Tasmania farmers and lenders will benefit from:

- Access to an efficient dispute resolution model that is already being used by farmers and lenders in other states. A well-run mediation process will allow both parties to reach a workable solution without the need for an expensive and lengthy court process.
- A mediation scheme helps farmers in financial difficulty to either re-establish their viability or exit the industry with dignity.



- The ability for mediation to be initiated by the borrower or the lender when they are concerned about the borrower's ability to meet their loan obligations.
- Having framework that is consistent with NSW, allows for greater familiarity for mediators and will allow experienced mediators to register with the Tasmanian scheme, providing Tasmanian farmers with access to experienced mediators. A good, experienced mediator makes a huge difference to the outcome.

3. Are there any additional principles, beyond those listed above, that should be considered in a Tasmanian legislated FDM scheme?

A pre-mediation conference is essential to ensure relevant and fair document exchange and for a rapport to be built between the mediator, parties and their representatives. The pre-mediation conference helps to create an environment on the day that is non-confrontational, positive and resolution driven.

The document exchange should focus on what is required for mediation purposes and not be used as an exercise for discovery. Again, the role of the mediator and the use of pre mediation conference is vital in the process.

4. Does the proposed Tasmanian FDM model meet the needs of farmers and lenders in a way that is practical and requires minimal intervention from government?

The consultation paper indicates that the Tasmanian Government is considering the NSW Farm Debt Mediation Scheme as the basis for their own model. The banking industry believes the proposed model will meet the needs of farmers and their lenders and should be adopted nationally.

The NSW FDM scheme underwent an extensive review in 2018 and the legislation was updated to encourage farmers to seek mediation early and provided for stricter penalties against lenders for non-compliance. We believe this model helps address a potential power imbalance that may exist between farm businesses and their lenders and does so in a cost-efficient way.

The ABA notes the cost of the mediation process can be challenging for farmers in financial distress. Consideration should be given to potential financial support options or government subsidisation of farmers in some circumstances.

5. Do you have any other relevant comments?

The Farm Debt Mediation working group may wish to consider the following additional observations our members have provided based on their experience with farm debt mediation processes:

- The Government agency responsible for FDM is sufficient resourced to provide information and advice as needed to parties utilising the FDM process.
- FDM must be offered to all Guarantors as well as primary borrowers.
- It may be preferable for the Tasmanian FDM scheme to encourage face-to-face mediation unless it is impractical or onerous to do and provide the option of online or tele-mediations. We consider that "in person" mediations more constructive in circumstances where farmers may be under significant stress and an online meeting forum may seem impersonal giving the impression that a lender is not sensitive to a farmer's situation.
- If technology platforms are used it is essential that they are appropriate, and intuitive for all parties to use and the mediators are sufficiently trained in the use of platform adopted.
- The prescribed form needs to be non-confrontational. At present the language used in the prescribed forms in some states focuses enforcement rather than resolution. This can be disconcerting for farmers. The main driver should always be to seek a resolution with enforcement seen as the last resort. We note that NSW removed this language in 2018.
- In our view the three-year period for an exemption certificate is a long period. It would be in the customers interest to ensure that the mediation agreement includes a formal check-in with the lender well in advance of the three-year expiry. This will help both parties understand how



effective the mediation plan has been and may avoid a lender initiating enforcement action (when the certificate expires).

- The legislation precluding lenders from having to offer FDM if the farmer voluntarily surrenders the farm. Currently in all States lenders are still obliged to offer FDM in circumstances where there is a voluntary surrender. In our experience this creates additional stress and administrative burden on the farmer.

If you have any questions or would like to arrange further engagement with our members please contact me on 0439 255 195 or via email Amanda.Pullinger@ausbanking.org.au.

Yours sincerely,

Signed for

Amanda Pullinger
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