



19 July 2022

Stephen Bell
Senior Policy Manager
Department of Agriculture, Water and the Environment
Via email: Stephen.Bell@awe.gov.au

Dear Mr Bell,

Farm debt mediation - draft better practice guide consultation

The Australian Banking Association (**ABA**) welcomes the opportunity to provide feedback on the draft better practice guide for farm debt mediation (**the draft guide**).

Our position

The ABA acknowledges the challenges experienced to date in implementing uniform farm debt mediation (**FDM**) legislation nationally and recognises the intent of the guide to encourage further harmonisation across state schemes.

Despite these challenges, the ABA position remains that farmers across Australia should have access to the same safeguards and support regardless of their postcode. While the draft guide notes that existing state-based legislation covers around 87 per cent of farm businesses, we consider that only the implementation of a nationally consistent scheme, which all farmers can access, would meet the intent of Recommendation 1.11 of the Banking Royal Commission. The draft guide also references that there are minor inconsistencies between the schemes, which we believe underestimate the differences and complexities caused by having individual state-based schemes.

Multiple government reports and inquiries, as well as the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, have determined the best way to achieve consistency is via a national agreement to implement uniform legislation in each state and territory.

The ABA encourages the new Federal Government to continue to drive cooperation with the states and territories to achieve this.

Key Recommendations

The ABA recommends the draft guide should:

1. Act as an information source only.
2. Recognise the role of both parties involved in the mediation.
3. Encourage early conversations and remove references to informal mediation.
4. Remove references to lenders paying costs.
5. Be less prescriptive and focus on high-level principles.

Further information has been provided in the appendix, and detailed comments have also been applied to the draft better practice guide.



Australian Banking
Association

The ABA would like to thank the Department for the ongoing engagement and if any additional information is required, please contact me on 0458 053 943 or at lauren.worldon@ausbanking.org.au.

Yours sincerely

Lauren Worldon
Director, Business Engagement and Policy



Appendix:

Further comments on key recommendations

The ABA recommends the draft guide should:

1. Act as an information source only

The purpose of the guide should only be as an information source for lenders and farmers. The guide should seek to complement state-based legislation and not introduce an additional layer of compliance and reporting obligations beyond those existing in State Acts. Therefore, the ABA recommends any reference to data collection should be removed.

2. Recognise the role of both parties involved in the mediation.

The guide is currently heavily skewed towards the roles and responsibilities of lenders. There should be greater acknowledgement of the two parties involved in the mediation (the lender and the farmer) and the guide should be more balanced in its tone, principles, examples, and suggested actions to outline what would be best practice for both the lenders and the farmer.

Additionally, the language used in the guide should be more constructive and avoid using terms such as enforcement action and power imbalances, with a focus on all parties acting in good faith.

3. Encourage early conversations and remove references to informal mediation

The term 'informal mediation' features heavily throughout the guide and runs the risk of obscurity for how this would work in practice, particularly given it does not have the guardrails or legal requirements like formal mediation. It may result in confusion and duplication in the FDM process, and we advocate for the guide to instead encourage early conversations and dialogue between farmers and lenders.

4. Remove references to lenders paying costs

Banks in Australia wish to avoid setting an expectation that the lender will assist the farmer with their costs as a normal practice. On a case-by-case basis, banks may consider such proposals based on the farmer's specific circumstances (for example, compassionate grounds).

Additionally, paying the farmers associated costs of FDM risks undermining the independence of the process and their advisors; therefore, it is only considered individually in appropriate circumstances.

Governments often provide access to grants or benefits to assist businesses, such as independent financial advice, and access to Legal Aid. Victoria's FDM scheme also subsidises costs involved for mediation and, as an alternative, these subsidies and support services could be highlighted and referred to in the guide.

5. Be less prescriptive and focus on a high-level principles

To avoid embedding additional inconsistencies and complexities, the ABA considers that the guide should be kept to a high level, principle based with limited prescription.

Examples of prescription within the guide:

- References to what early engagement activities include¹.
- Specifying conduct that is consistent with acting in "good faith". State governments decided against being prescriptive, with limited exceptions. Instead, legislation across states has largely

¹ Page 6 - DRAFT National better practice guide for farm mediation



left the question of whether parties participate in good faith to the mediators. This guide does not mention the role of the mediator in making that assessment or recognise that the mediator is best placed to make that assessment.

It is also important that the guide is completely consistent with all state legislative requirements. Any differences will likely lead to further confusion and inconsistencies, and by providing examples and additional detail, the guide currently builds in further inconsistencies.

For example:

- The guide provides detailed steps on communication processes with farmers on FDM (Principle 4); however, these steps differ from those stipulated in State Acts about the required steps and forms for communicating with farmers.

Implementation and review of the guide

As highlighted in previous feedback, a better practice guide could be made available through various channels, including the Rural Financial Counselling Service, state farming groups and other key industry and government bodies.

Additionally, banks could consider using this resource to aid training for dedicated agribusiness hardship, and banking teams, and the ABA and member banks could link to the government's website from their individual agribusiness webpages.

A better practice guide could be included on the relevant state government websites concerning FDM and in correspondence forwarded to the farmer by the bank to provide an initial and common point of reference for farmers.

The ABA is comfortable for the guide to be reviewed over time as appropriate, and in consultation with industry; however, banks in Australia should not be required to report against its provisions. Banks have existing legislative requirements to comply with at a state level, and additional compliance and reporting in relation to the guide will only add further duplication and complexity.

State Farm Debt Mediation comparison table

The ABA welcomes the development of the comparison table of state-based FDM schemes. The comparison table will be a valuable resource to be hosted on government websites for both farmers and lenders to reference.

The table highlights the complexity created by differences across the state-based schemes, and the ABA notes the table could aid the new Federal Government highlighting to state and territories as to why a nationalised approach is necessary.