

# **Farm Debt Mediation Scheme WA**

## **Frequently Asked Questions**

### **How can I apply for the Farm Debt Mediation Scheme (FDMS)?**

The link to the online Application and Scheme Guidelines is available at:

[www.agric.wa.gov.au/rbdc](http://www.agric.wa.gov.au/rbdc)

Please read and check that your farm business or financial institution meets the Scheme Guidelines before applying.

### **What is the FDMS process - a brief summary?**

Applicants need to apply online to the Rural Business Development Corporation (RBDC) using the link as above.

The Department of Primary Industries and Regional Development (DPIRD) (who provide services to the RBDC) then assesses the online application to determine if the applicant is eligible.

Once the applicant is deemed eligible, the other party is then 'invited to participate' (as it is a voluntary scheme). Once the other party has agreed to participate, the application is handed over to the Small Business Development Corporation (SBDC). The RBDC and DPIRD have no further involvement in the application from the time of handover.

The SBDC will then manage the mediation process (as outlined further in this document).

From that point on, the only involvement the RBDC has is to assist the SBDC meet some of the costs to administer their involvement in the scheme. The RBDC is only advised by the SBDC that the outcome of mediation was successful or not successful.

Also refer to section 21 in the Scheme Guidelines.

### **Who can apply for the Farm Debt Mediation Scheme (FDMS)?**

The Scheme is open to all farm and pastoral businesses (including agricultural, horticultural, pastoral, apicultural or aquacultural industries) that fall into dispute with their financial institution regarding their commercial farm debt.

Financial institutions can also apply to have disputes/issues addressed with their farming and or pastoral client. An attempt to address the issue with the other party prior to application is required.

### **When should I apply for mediation?**

Once a dispute/issue arises between the farm/pastoral business and the financier, both parties should attempt to resolve the dispute/issue through face to face discussions. If these discussions are not successful, either party can apply to have their dispute/issue dealt with through this Scheme.

### **What evidence do I need to provide to demonstrate that I have tried to resolve this issue before?**

Applicants who request farm debt mediation will need to provide evidence that they have attempted to address the dispute or issue with the other party. This evidence may take the form of:

- emails and letters to or from the financier;
- meeting notes (from meetings with the farmer / pastoralist/financier);
- emails and letters sent on behalf of the farmer / pastoralist from the agricultural consultant / accountant / rural financial counsellor.

Without this evidence, the application is not likely to be accepted.

### **If one party has not been approached by the other party before regarding this issue, can either party still apply for mediation?**

No, both parties need to address the issue/dispute first. If there is no success at addressing the issue/dispute with the other party, either party can then apply to the Farm Debt Mediation Scheme.

### **If the financier has requested mediation, does this mean that the financier wishes to foreclose on the business?**

No, it just means that the financier has an issue that they wish to address. Like the farm or pastoral business, the financier can only trigger mediation after they have attempted to address the issue / dispute directly with the farm or pastoral business.

### **The financier has issued a Letter of Demand. Can the farmer / pastoralist still apply for the Farm Debt Mediation Scheme?**

Yes they can, provided they can show evidence that they have attempted to address the dispute prior to the issue of the Letter of Demand.

### **What is mediation?**

Mediation is a structured process where the parties in a dispute meet voluntarily to discuss their issues and interests with the assistance of an independent mediator. During the mediation, parties are encouraged to identify and explore options to

resolve the dispute. The mediator cannot make a decision regarding the outcome and supports the parties to reach their own agreement.

SBDC Accredited mediators ensure the mediation environment is respectful, confidential and conducive to constructive discussion.

### **How does the mediation process work?**

Upon receiving the online application and supporting documents from DPIRD, a SBDC Case Manager will contact the parties to discuss and provide assistance in preparing for the mediation. The Case Manager may request further information and provide guidance to ensure the parties optimise the opportunity of resolving the dispute at mediation. For further information, please refer to item 17 of the Scheme Guidelines.

Following confirmation of a mutually convenient time for the mediation, the parties and mediator will be notified of the details.

### **What happens if the farmer / pastoralist does not want to participate in mediation initiated by a financier?**

If the financier requests mediation and farmer/pastoralist decides not to be involved, the request for mediation by the financier will be declined. Participation in mediation is voluntary.

### **How long does mediation take?**

The mediation usually runs for four to six hours however, it is requested parties set aside a full day for mediation, in case their dispute takes longer to resolve.

A second mediation can be arranged to finalise the dispute if required.

### **Where are mediations held?**

Mediations are held at the SBDC offices at Gordon Stephenson House, Level 2, 140 William Street in Perth (Public access is from the Murray Street Mall) unless a regional location is requested by both parties.

Further information can be found by clicking [‘Download a location and parking map’](#).

### **How much does mediation cost?**

The cost of mediation is \$125.00 per party per session.

### **Who attends the mediation?**

To enable a dispute to be finalised on the day of mediation, it is preferable all parties with a role in the dispute be available to attend, negotiate fully and have decision making authority.

For further information please refer to item 18 of the Scheme Guidelines.

### **What happens at the mediation?**

A mediation session typically consists of:

1. An introduction and explanation of the mediation process by the mediator including confidentiality requirements. The parties sign an agreement to mediate.
2. An uninterrupted opening statement is made by each party.
3. Creation of an agenda of the issues to be discussed.
4. Exploration of the issues including discussion based on any information presented by the parties to one another.
5. Confidential private sessions with each party can occur at any time during the mediation.
6. Generation of options by the parties to resolve the issue/s in dispute.
7. Assistance by the mediator to canvass whether the options are workable and durable.
8. If a mutually acceptable agreement is reached, the parties draft and sign an agreement retaining a copy of their records.
9. Closing of the session by the mediator.

Further information regarding the SBDC's mediation service can be found by clicking here [Alternative Dispute Resolution](#).

### **Is information disclosed during the mediation confidential?**

Yes. All information disclosed during the mediation **is** confidential to the parties, their representatives, and the mediator.

The parties agree that information disclosed, or the matters discussed, during a mediation will be considered strictly confidential.

This includes:

- settlement proposals, whether made by a party or the mediator;
- the willingness of a party to consider a proposal;
- any admission or concession, or other statement or document made by a party; and
- any statement or document made by the mediator.

This commitment to confidentiality forms part of the agreement to mediate signed by the parties.

Mediators destroy any notes taken at the end of the mediation.

### **What resources are available to prepare for the mediation?**

Your SBDC Case Manager can assist you in preparing for the mediation. Farm debt mediations generally rely on financial information supported by actuals and options to resolve the issues becoming available for discussion at the mediation.

It is essential this information is prepared beforehand and brought to the mediation. Information or documentation supporting any other issue you would like to discuss should also be available. Making a list of key documents can be helpful. For further information, please refer to item 14 of the Scheme Guidelines.

Preparation prior to mediation is vital to a successful outcome. The aim of preparation is to develop a number of strategies (options) to be taken to mediation. Ideally, prior to mediation the farm or pastoral business will undertake a review and determine the following;

- A number of options that they can present at mediation and provide the supporting data and evidence (cash flows and budgets etc.). It is important to understand the current position of the business and then develop a number of options from the farmer or pastoralist viewpoint that they can present to the financier at mediation.
- It is important to be flexible and willing to negotiate with a degree of compromise during the mediation process. Understanding your business and financial arrangements prior to mediation is critical to enabling a more informed and effective outcome from mediation.

There are a number of resources that can assist farming and pastoral businesses prepare for mediation. The RBDC strongly recommends that any farm or pastoral business applying for mediation contact one of the resources below and discuss the application with them prior to the submission of the application. This support resource will ideally assist the business throughout the process and attend mediation with farmer and pastoralist.

Seeking advice prior to the mediation will equip you with knowledge to address any legal or financial issues that arise during the mediation.

The resources are;

- Rural Financial Counselling Service (RFSCWA) – this is a free service to farm and pastoral businesses in Western Australia. Phone – 1800 612 004 (freecall).

- Your agricultural consultant / business adviser.
- Your accountant / financial adviser or a suitably qualified professional.

For further information please refer to item 15 of the Scheme Guidelines.

### **What if the parties do not settle the dispute at mediation?**

The parties are not obliged to reach an agreement at the mediation. Parties should only enter into a settlement agreement if they fully understand the implications and it is the best outcome in their particular circumstances. This parties can seek financial and legal advice regarding their decision.

In some cases where further progress can be made, the mediator and the parties may agree to a second mediation session. Parties can also continue to negotiate external to mediation and/or seek legal advice.

### **Is an agreement formed at mediation legally binding?**

Yes and it can be enforced in the courts.

### **Does the Scheme stop me from applying to the Financial Ombudsman Service?**

No, the FDMS is voluntary and does not stop you from applying to the Financial Ombudsman Service or from making contact with other Government services available like RFCSWA. It is recommended you try mediation or RFCSWA before applying to the Ombudsman as most disputes can be resolved through mediation.

### **Can my solicitor attend the mediation session?**

Legal representatives are also welcome to attend.

### **Where can I get further information?**

Freecall: 1800 198 231

Email: [rbdu.loans@dprid.wa.gov.au](mailto:rbdu.loans@dprid.wa.gov.au)

Website: [www.agric.wa.gov.au/rbdc](http://www.agric.wa.gov.au/rbdc)