

# Guidelines for Conducting Mediation

## 1. Purpose

This guideline is provided to assist with the conduct of mediation under the *Farm Business Debt Mediation Act 2017 (Qld)* (the Act).

It also includes relevant information about the procedure for starting mediation and arranging mediation meetings together with the obligations of a mediator to keep records about mediations conducted.

This guideline has been prepared by the Queensland Rural and Industry Development Authority (QRIDA) in consultation with AgForce Queensland and the Queensland Farmers Federation who represent the interests of a broad range of Queensland farmers, and the Australian Bankers Association (ABA) who represent the interest of banks that provide finance to Queensland farmers.

The guideline is available on QRIDA's website.

Reference can be made to the Act for further detailed information.

## 2. Principles of mediation

The following principles are intended to apply to all types of mediation and intended to perform three (3) major functions: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes.

© The Institute of Arbitrators and Mediators Australia 2003

**Self-Determination** - A mediator shall recognise that mediation is based on the principle of self-determination by the parties.

**Impartiality** - A mediator shall conduct the mediation in an impartial manner.

**Conflicts of Interest** - A mediator shall disclose all actual and any potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator shall decline to mediate unless all the parties choose to retain the mediator. The need to protect against conflicts of interest also governs conduct that occurs during the mediation.

**Competence** - A mediator shall mediate only when the mediator has the necessary qualifications to satisfy the reasonable expectations of the parties.

## 2. Principles of mediation (continued)

**Confidentiality** - A mediator shall maintain the reasonable expectations of the parties with regard to confidentiality.

**Quality of the Process** - A mediator shall conduct the mediation fairly, diligently, and in a manner consistent with the principle of self-determination by the parties.

**Advertising and Solicitation** - A mediator shall be truthful in advertising and solicitation for mediation.

**Fees** - A mediator shall fully disclose and explain the basis of compensation, fees, and charges to the parties.

**Obligations to the Mediation Process** – Mediators have a duty to improve the practice of mediation.

## 3. Parties to mediation

For the purposes of the Act, parties to mediation are listed and defined as follows:

### 3.1 Farmer

Is a person whose sole or main business is a farming business. If the farmer is not an individual the name and contact details of the person authorised to act for the farmer needs to be used in all notices and forms.

### 3.2 Mortgagee

For a farm mortgage, means a person to whom a farmer owes a farm business debt secured by the farm mortgage.

### 3.3 Mediator

Means a person accredited as a mediator-  
(a) by QRIDA under section 61; or  
(b) under a corresponding law.

## 4. Functions of a mediator

### 4.1 Mediator role

- a) To mediate impartially between the farmer and the mortgagee with the aim of bringing about an agreement on present arrangements and future conduct of financial relations between the parties.
- b) Functions given to the mediator include:
  - (i) arranging the mediation;
  - (ii) conducting the mediation; and
  - (iii) determining the mediation matter if the guidelines do not provide for a matter.

#### 4. Functions of a mediator (continued)

- c) It is not a function of the mediator to:
- (i) advise a farmer or mortgagee about the law; or
  - (ii) encourage or assist a farmer or mortgagee in reserving or establishing legal rights; or
  - (iii) act as an adjudicator or arbitrator.

#### 4.2 Accreditation

To mediate, a mediator must be currently accredited by QRIDA for the Act.

#### 4.3 Costs of mediation

- a) The cost usually includes the mediator's fees, mediator's out of pocket expenses such as travel, accommodation, phone and facsimile costs, together with any hire fee for the venue. The fee rate usually charged by the mediator is published on the Register of Mediators on QRIDA's website.
- b) Each party to a mediation must pay -
- (i) the party's own costs for the mediation; and
  - (ii) half of the mediator's fee and costs for the mediation.
- c) QRIDA is not liable for any costs of (or associated with) mediation for the purposes of the Act.

#### 5. Approved forms and other information

##### 5.1 Approved forms

QRIDA maintains a list of approved forms for use in relation to mediation.

The approved forms are published on QRIDA's website

Relevant forms can be accessed from the site or can be emailed or a hard copy mailed on request.

##### 5.2 Information about mediators who may conduct mediations

The Register of Mediators contains the following information:

- a) The mediator's name and contact details;
- b) a summary of the mediator's qualifications and experience;
- c) the term of accreditation;
- d) details where accreditation is under a corresponding law or State;
- e) where accreditation is suspended, or cancelled; and
- f) fee scale.

The register is published on QRIDA's website. A copy of the register can be emailed or mailed on request.

#### 6. Arranging and conducting mediation

##### 6.1 Agreement to mediation

Mediation can occur once the following has been established under Section 17 of the Act:

- The farmer and the mortgagee agreed to mediation for the debt.
- The parties agreed to mediation when the mortgagee gives a notice under Section 16(3)(b).

##### 6.2 Initial duties

Mediators should attend to the below matters:

- a) Arrange mediation on request of the mortgagee.
- b) Arrange for a written agreement to mediate prior to the commencement of the process.
- c) Define and describe the mediation process and costs.
- d) Explain differences between mediation and other means of conflict resolution.
- e) Obtain sufficient information from each party to define the issues.
- f) Arrange for a suitable meeting venue.
- g) Establish meeting protocols i.e.
  - (i) The right of each party to talk without interruption;
  - (ii) the order of presentation;
  - (iii) participate in Good Faith; and
  - (iv) any other rules for the conduct of the meeting.
- h) Inform the parties that they have the right to suspend or terminate the process at any time.
- i) Explain that the mediator may consult with each of the parties and that information discussed is confidential unless by agreement to disclose to the other party.
- j) Inform the parties that they have the right at any time to obtain independent legal or other professional advice during mediation and have advisors present.

##### 6.3 Representation at meetings

- a) The mediator must approve any representation at a mediation meeting by an agent\*;
- b) The mediator needs to be satisfied that the agent will assist mediation and have sufficient knowledge;
- c) The mediator should ensure the appointment of an agent\* doesn't disadvantage the other party;
- d) Any representative at mediation must be authorised to enter a heads of agreement;
- e) A party must pay the costs of the other party if their representative has no authority to enter into a heads of agreement; and
- f) A farmer who is party to mediation may have 1 or more advisors at a mediation meeting.

\* *agent for the purposes of these guidelines means one who agrees and is authorised to act on behalf of another that includes a lawyer or otherwise professionally qualified person.*

## 7. Mediation meetings

### 7.1 Pre-mediation conference

Whilst the conducting of a pre-mediation conference is not mandatory, QRIDA strongly suggests consideration for parties to take advantage of this type of meeting to enhance the outcome of the overall mediation process.

A pre-mediation conference:

- a) may allow the mediator to meet individually with the parties to the mediation. This process may assist with streamlining the mediation and may be used to establish guidelines and an understanding of the mediation process.
- b) can assist with establishing rapport between the mediator and each of the parties to the mediation.
- c) can resolve issues around documentation requests.
- d) occurs at the beginning of the mediation process where the mediator takes control of the process and encourages interest based bargaining and discussion where the parties may start moving towards resolution.
- e) should also assist with the party's preparation for mediation and clarify:
  - (i) who will appear at the mediation meeting;
  - (ii) what issues of complaint are, if any, about the mortgagee or farmer's conduct; and
  - (iii) a convenient location and time for the mediation meeting.

### 7.2 Mediation meetings

- a) Meetings are to be conducted at a place and time that is reasonably convenient for the farmer, and with as little formality and technicality and as quickly as possible.
- b) In the process of arranging the mediation and the mediation meetings the mediator may call a pre-mediation conference.
- c) The mediator may also adjourn a mediation meeting if the mediator considers a party would be significantly disadvantaged if the meeting continues.
- d) By agreement the parties to a mediation may conduct a mediation meeting by using suitable technology which may potentially defray some costs to the overall mediation process.

### 7.3 Agreement reached in mediation

- a) If an agreement is reached at mediation the mediator will prepare or supervise the preparation of a document in the approved form, that states the main points of agreement that

when signed by the parties forms the Heads of Agreement.

- b) Each party has 10 business days to sign the agreement and provide a signed copy to the mediator.

### 7.4 Agreement not reached in mediation

- a) The parties are required to make reasonable attempts to negotiate a settlement to their dispute at mediation.
- b) If, after reasonable attempts, an agreement cannot be reached by mediation, the mortgagee may apply to QRIDA for an exemption certificate. Once in possession of an exemption certificate a mortgagee may commence enforcement action under their mortgage.
- c) The mediator can end a mediation if satisfied that either or both parties are not participating in good faith.
- d) Settlement by mediation is voluntary and neither party can be forced to agree to anything at mediation.

### 7.5 Cooling off period

- a) There is a 10-business day cooling off period for any Heads of Agreement entered by a farmer.
- b) The cooling off period may be extended by agreement between the farmer and the mortgagee.
- c) The farmer may revoke the agreement during the cooling off period unless the parties agree to waive the cooling-off period.

### 7.6 Satisfactory mediation

Mediation for a farm business debt has been satisfactory where, as a result of mediation a Heads of Agreement has been entered into or the mediation participation has proceeded, in good faith, as far as it reasonably can without entering into a Heads of Agreement.

### 7.7 Obligations and other responsibilities of a mediator

- a) If an agreement is reached at mediation the mediator ensures that each party has signed a copy of the Heads of Agreement that states the cooling off period, any waiver of the cooling off period and any agreement to shorten or extend the cooling off period.
- b) The mediator is required to keep records about mediations conducted to enable the completion of a Summary of Mediation within 10 business days after the mediation ends.
- c) The mediator is responsible for approving an agent representing a party to a mediation ensuring that the agent has sufficient knowledge of the issues to be able to represent the party effectively and is authorised in writing to enter into a Heads of Agreement for the party.

## 7. Mediation meetings (continued)

- d) When approving an agent, the mediator may give the approval on the condition the mediator considers are reasonable to ensure the other party is not substantially disadvantaged and may withdraw the approval if the agent does not comply with the conditions.

### 7.8 Ending mediation

- a) Mediation for a farm business debt ends when as a result of the mediation a Heads of Agreement has been entered into and the mediator is satisfied that matters in relation to the debt have been resolved.
- b) Mediation for a farm business debt also ends when a Heads of Agreement has not been entered into where:
  - (i) either party does not intend to continue taking part in the mediation; or
  - (ii) it has been agreed that the mediation has proceeded as far as it reasonably can and agreement is unlikely; or
  - (iii) either or both parties are not participating in the mediation in good faith.

### 7.9 Suspending enforcement action

If the mortgagee has failed to mediate or mediate in good faith, and the farmer is in default under a farm mortgage and given the mortgagee a request for mediation notice, the farmer can apply for an Enforcement Action Suspension Certificate.

### 7.10 Summary of mediation

- a) Regardless of the outcome, the mediator is required to complete a Summary of Mediation at the end of the mediation.

This summary includes details of:

  - (i) when the parties agreed to the mediation;
  - (ii) the first, subsequent and the last mediation meeting;
  - (iii) whether the parties entered into a Heads of Agreement or not;
  - (iv) reasons for whether in the mediators' opinion, the mediation was satisfactory or not;
  - (v) reasons for whether the parties participated in good faith or not.
- b) The summary must be signed by the mediator and all parties to the mediation, together with a copy of any Heads of Agreement (if applicable) and provided to QRIDA within 10 business days following the completion of the mediation.
- c) If either party disagree with the mediator, they may ask the mediator to note their disagreement on the summary.

## 8. Provision of documents

The Act details the provision of documents to either party per Sections 21 and 22.

Notwithstanding the above, mediators should facilitate settlement and recommend provision of relevant documents for the purposes of mediation.

## 9. Good faith

All parties should exhibit good faith in their actions in and around the mediation process.

These guiding principles are, but not limited to:

- a) respect for the parties;
- b) respect for the process;
- c) provision of relevant material; and
- d) attending with a preparedness to consider all propositions put forward by the other side with an open mind and genuine consideration.

## 10. Mediator impartiality and neutrality

- a) The mediator shall maintain impartiality towards all participants at all times during the mediation process. Impartiality means freedom from favouritism or bias in word or action.
- b) The mediator shall not play an adversarial role and shall maintain a commitment to aid participants, as opposed to a single individual, in reaching or attempting to reach a mutually satisfactory agreement.
- c) If the mediator believes or any one of the participants states that the mediator's background or personal experiences or relationships would prejudice the mediator's performance or detract from his/her impartiality, the mediator shall withdraw from the mediation unless all parties agree to proceed after full disclosure of all relevant facts relating to the issue of neutrality.

## 11. Confidentiality

- a) Confidentiality relates to mediation meetings including anything done for the purpose of arranging or following up a mediation and matters discussed or agreed.
- b) The following matters are not admissible in any civil, criminal or administrative proceeding:
  - (i) Anything said or done during a mediation meeting;
  - (ii) A document prepared for the purposes of a mediation meeting; and
  - (iii) A document given to a party to a mediation other than a Heads of Agreement, contract, mortgage or other document prepared to give effect to a Heads of Agreement or a Summary of Mediation.
- c) Confidentiality does not apply in other circumstances outlined in the Act including but not limited to any proceedings that relate to

violence, criminal activity or abuse. Matters of this nature are to be managed by the mediator as part of their broader responsibilities.

- d) Mediation meetings are not open to the public.

## 12. Definitions

---

**Mediation** (as distinct from arbitration) means:

- a process in which a mediator independent of the mortgagee and farmer facilitates the negotiation by the mortgagee and farmer of their own solution to their dispute by assisting them systematically to isolate the issues in dispute, develop options for their resolution and to attempt to reach agreements which accommodates the interests and needs of all the parties to mediation (Also refer to 4.1 Mediator role).
- The definition of mediation in the context of farm business debt, is one or more meetings conducted by a mediator to facilitate discussion between the farmer and the mortgagee. Also refer to S6(1).

**Farmer** means a person -

- a) whose sole or main business is a farming business; or
- b) who is the owner of land the subject of a share farming agreement; or
- c) who has applied, and is eligible, for a loan under a program administered by QRIDA to provide finance in the first years of establishing a farming business; or
- d) who is the personal representative of a deceased individual mentioned in a), b) or c).

**Farming business** means

- a) an agricultural, apicultural, dairy farming, horticultural, land-based aquacultural, pastoral, poultry keeping or viticultural business; or
- b) another business that involves cultivating the soil, gathering crops or rearing livestock; or
- c) a business involving cutting timber for sale; or
- d) another business prescribed by regulation to be a farming business: and includes - a business mentioned in paragraph (a) carried out under a sharefarming agreement; and providing land for a business mentioned in paragraph (a) to be carried out under a sharefarming agreement; but does not include a business prescribed by regulation not to be a farming business for this Act.

**Farm property** means

- a) land on which a farmer carries on a farming business; or
- b) a water allocation under the Water Act 2000 held by a farmer for carrying on a farming business; or
- c) a vehicle, machine, tool or other thing of a type that is usually used to carry on a farming business.

**Farm mortgage** means a mortgage of farm property.

## 13. Further information

---

Queensland Rural and Industry Development Authority is responsible for administering the Farm Business Debt Mediation Program under the *Farm Business Debt Mediation Act 2017* (Qld).

### Farm Business Debt Mediation Unit

Queensland Rural and Industry  
Development Authority (QRIDA)  
GPO Box 211 Brisbane Qld 4001  
Freecall 1800 623 946  
Email: [contact\\_fbdm@qrda.qld.gov.au](mailto:contact_fbdm@qrda.qld.gov.au)  
[www.qrda.qld.gov.au/fbdm](http://www.qrda.qld.gov.au/fbdm)