



FARM DEBT MEDIATION INTAKE AGREEMENT FOR FARM DEBT MEDIATION

OFFICE USE ONLY FILE #

Farm Debt Mediation Act 1994 (NSW) – Form 9

This agreement is to be discussed at the intake meeting for a farm debt mediation under the Farm Debt Mediation Act 1994 (NSW) ('FDM Act') which can be conducted by teleconference, videoconference or face-to-face. This Agreement must be signed before the mediation starts by the mediator and the parties to the dispute, either on the one document or as separate documents (counterpart execution).

Others attending the mediation, such as advisers, representatives and support people, only need to sign the Confidentiality Agreement at Annexure A.

THIS AGREEMENT IS MADE ON [day] [month] 20 [year]

AMONGST THE FOLLOWING PARTIES (TOGETHER CALLED 'THE PARTIES')

(name of creditor – please write clearly)

(address)

(name of farmer – please write clearly)

(address)

(name of farmer – please write clearly)

(address)

(name of guarantor – please write clearly)

AND THE MEDIATOR/S (CALLED 'THE MEDIATOR')

Daniel Patrick O'Keefe

(name of mediator – please write clearly)

176B Brisbane Street DUBBO NSW 2830

(address)

(name of mediator – please write clearly)

(address)

APPOINTMENT OF MEDIATOR

1. The parties appoint the mediator to mediate the matters between them involving farm debts in accordance with the terms of this agreement, as briefly described in Schedule 1 (the 'matter'). The mediator accepts this appointment.

FUNCTIONS and ROLE OF THE MEDIATOR

2. The function of the mediator is to mediate fairly, equitably and impartially, between the farmer/s and creditor for the purpose of arriving at an agreement for the present arrangements and future conduct of financial relations between or amongst them.
3. The mediation is to be conducted with as little formality and technicality, and as much expedition, as is appropriate under the National Mediator Accreditation System's Practice Standards and the *Farm Debt Mediation Act 1994* (NSW) (FDM Act). The mediation will be conducted in a safe manner if violence is an issue. Whether an interpreter is required will be considered if appropriate.
4. The mediator may permit an agent to participate in the mediation for a party if:
 - (a) that party has given written authority to the agent to enter into a Mediation Agreement
 - (b) the mediator considers that the agent has sufficient knowledge of the issues concerned to enable the agent to represent that party effectively.
- 4.1 A farmer who is a party is entitled to have an advisor present who may be, but need not be, legally or otherwise professionally qualified. The farmer is entitled to call upon their advisor for advice and counsel during the mediation. The farmer will be assisted by accessing advice well before the mediation to help them prepare well for the mediation.
- 4.2 A corporation who is a party to a mediation is entitled to be represented at the mediation by an officer of the corporation.
- 4.3 The mediator may set conditions for the participation of a party's representative that they consider reasonable to ensure that the other party is not substantially disadvantaged by the agent's attendance, and attendance is subject to the agent complying with those conditions.
5. During the intake meeting before the mediation, the mediator can facilitate the exchange of information between the parties to the mediation for the purpose of assisting the parties to resolve the issues between them.
 - (a) A party to a mediation must give the mediator a copy of any request for information before giving the request to the other party. The party will discuss their information needs with the mediator before the intake meeting.
 - (b) The mediator will note in their summary of the information whether any request for information made by a party was reasonable and whether the other party provided the information requested within a reasonable period.
6. The mediator will assist the parties to attempt to achieve their own resolution of the matter by helping them to:
 - (a) communicate with each other;
 - (b) systematically isolate the issues in dispute;
 - (c) develop options for the resolution of these issues;
 - (d) explore the usefulness of these options; and
 - (e) meet their interests and needs.
7. The mediator may adjourn or terminate a mediation session to ensure that the mediation is fair and appropriate, having regard to:
 - (a) the duration of the mediation session,
 - (b) whether the parties are able and willing to participate in the mediation session,
 - (c) whether the parties are engaging in the mediation in good faith,
 - (d) any risk to the health or safety of the parties resulting from the conduct of the mediation session, and
 - (e) any other matters that, in the opinion of the mediator, are relevant in the circumstances.
8. It is not a function of a mediator:
 - (a) to advise a farmer or creditor about the law,
 - (b) to encourage or assist a farmer or creditor in reserving or establishing legal rights, or
 - (c) to act as an adjudicator or arbitrator.
9. The mediator will not accept an appointment in relation to any proceedings concerning the matter.
10. Neither party will take action to cause the mediator to breach clause 9.
11. Co-mediation (where more than one mediators runs the mediation) is permitted with the agreement of the parties.

CONFLICTS OF INTEREST

12. Before the mediation begins, the mediator must disclose to the parties to the best of the mediator's knowledge any prior dealings with any of the parties, as well as whether they have any interest in the matter, as a conflict of interest would mean the mediator should not continue with the mediation.
13. If in the course of the mediation the mediator becomes aware of any circumstances that might reasonably be considered to affect the mediator's capacity to act impartially, the mediator must immediately inform the parties of those circumstances. The parties will then decide whether the mediation will continue with that mediator or with a new mediator appointed by the parties.

CO-OPERATION BY THE PARTIES

14. The parties must co-operate in good faith with the mediator and each other during the mediation.

AUTHORITY TO SETTLE and REPRESENTATION AT THE MEDIATION SESSION

15. The parties must attend the mediation with authority to settle within any range that can reasonably be anticipated. The mediator will ensure that the parties consider carefully who needs to participate in the mediation if there are others with interests under the law affected by the outcome.
16. Any person representing a party to a mediation (whether or not the person is himself or herself a party to the mediation) must not attend a mediation session unless the person has been given written authority by the party the person represents to enter into Mediation Agreement.
17. If another mediation session is required as result of the party's failure to give the required authority, the party is liable for all costs associated with the attendance by the other party at that additional session.
18. At the mediation each party may have one or more other persons, including legally qualified persons, to assist and advise them.

COMMUNICATION BETWEEN THE MEDIATOR and THE PARTIES

19. Any information disclosed to the mediator in private is to be treated as confidential by the mediator unless the party making the disclosure states otherwise, or disclosure is required by law or order of a court.

CONFIDENTIALITY OF THE MEDIATION

20. The parties and the mediator must not disclose any document or information given during or for the purpose of the mediation (including any preliminary conference) to any person not involved in the mediation unless required by law or order of a court to make such disclosure. Disclosure may be required for example, in proceedings aimed at preventing or minimising the danger of injury to any person or damage to any property.
21. The parties and the mediator agree, subject to the FDM Act, that the following matters will be privileged and will not be disclosed in, or be the subject of a subpoena to give evidence or to produce documents, in any proceedings in respect of the matter:
 - (a) Any settlement proposal whether made by a party or the mediator;
 - (b) The willingness of a party to consider any such proposal;
 - (c) Any statement made by a party or the mediator during or for the purposes of the mediation (including any preliminary conference); or
 - (d) Any information prepared for the mediation.
22. At the end of the mediation, the mediator will complete a summary of mediation, a copy of which is annexed to this Agreement and marked Annexure B, setting out a summary of the conduct and results of the mediation (including any Mediation Agreement entered into by the parties). The mediator is required by the FDM Act to provide the summary to the NSW Rural Assistance Authority at the end of the mediation.

ADJOURNMENT OR TERMINATION OF THE MEDIATION

23. A party may terminate the mediation at any time after consultation with the mediator.
24. A mediator should advise their intention to suspend or terminate the mediation and where appropriate, should encourage the parties to consider alternative procedures for achieving resolution.

SETTLEMENT OF THE MATTER

25. If settlement is reached at the mediation, the terms of the settlement must be written down and signed by the parties before they leave the mediation. The document is binding on the parties to the agreement, unless later varied by agreement.

26. If it appears to a mediator that the parties to the mediation have agreed, or are about to agree, an issue between them, the mediator must personally prepare for the parties a document setting out the main points of agreement on the issue (a draft Mediation Agreement).
27. The draft Mediation Agreement must include a statement in the approved form, relating to the cooling off period for the Mediation Agreement that continues until 5pm on the 10th business day after the day the Mediation Agreement is entered into, unless waived or varied by agreement in writing between the parties. If not included the cooling off period statement may be given later but the cooling off period runs for 10 days from the date of delivery.
28. If the parties are satisfied that the document sets out the main points agreed on by them during, or within 24 hours of the end of the mediation, the parties may enter into a Mediation Agreement by signing the document.
29. A contract, deed, mortgage or other instrument entered into as a result of, or pursuant to, the Mediation Agreement between the parties must reflect the relevant Mediation Agreement.

ENFORCEMENT OF THE MEDIATION AGREEMENT

30. Any party may enforce the terms of the Mediation Agreement by arbitral or judicial proceedings.
31. For the purposes of clause 30, any party may call evidence of:
 - (a) the Mediation Agreement;
 - (b) a contract, deed, mortgage or other instrument entered into as a result of, or pursuant to, the Mediation Agreement;
 - (c) the mediator's summary of the mediation, and evidence from the mediator and any other person engaged in the mediation as permitted by law.
32. The Party calling evidence of the Mediation Agreement agrees to indemnify the Mediator for any legal costs and other expenses incurred by the Mediator in giving evidence or in obtaining advice in relation thereto, and shall pay in advance to calling for such evidence to the Mediator, the Mediator's estimate of such costs and expenses.

EXCLUSION OF LIABILITY and INDEMNITY

33. The mediator will not be personally liable to any action, liability, claim or demand for any matter or thing done in the performance of the mediator's obligations under this agreement if the matter or thing was done or omitted to be done in good faith for the purpose of executive the *Farm Debt Mediation Act 1994* (NSW) ('FDM Act').
34. The parties together and separately indemnify the mediator against any claim for any act or omission in the performance of the mediator's obligations under this agreement unless the act or omission is fraudulent.
35. The NSW Rural Assistance Authority encourages parties to provide feedback to the Authority about the conduct of the mediation by completing the feedback questionnaire that is accessible on the Authority's website on the 'Mediation Kit' webpage, or in hardcopy if requested.
36. If a party wishes to lodge a formal complaint about the conduct of the mediation they should contact the mediator's Recognised Mediator Accreditation Body under the National Mediation Accreditation System and also advise the NSW Rural Assistance Authority.

THE COST OF THE MEDIATION

37. Unless the parties to a mediation agree to apportion the costs of the mediation otherwise, the parties are to pay:
 - (a) an equal share of any fee and costs charged by the mediator for the mediation set out in Schedule 2, and
 - (b) their own costs associated with attendance at the mediation.
38. If more than one mediation session is required as a result of a party's failure to give a person representing the party authority to enter into a Mediation Agreement, the party is to pay the whole of the mediator's fee for the session and all costs associated with the attendance by the other party at the additional session.
39. The Authority is not liable for any of the costs of or associated with mediation, except in its capacity as a creditor.

GOVERNING LAW

40. This agreement is legally binding and shall be governed by and construed under the laws of the State of New South Wales.
41. This agreement may be executed in any number of counterparts, each of which will be an original but such counterparts will together constitute one and the same instrument.

SCHEDULE 1 – DESCRIPTION OF THE MATTER

The mediation will take place on the date and at the location as follows unless agreed otherwise between the parties and the Mediator.

Time and location of mediation:

Venue:	
Date:	
Time:	

The matter to be the subject of this mediation is:

Details of security instruments:

For example: registered mortgage numbers with lot and plan numbers, chattel mortgage numbers

Details of farm property over which security is held including address(es):

Farm property means a farm or part of a farm, farm machinery means vehicles or other implements commonly used in farming and water access licences under the Water Management Act 2000 (NSW)



CONFIDENTIALITY AGREEMENT

Farm Debt Mediation Act 1994 (NSW) – Section 18F Agreement

Persons who are not parties to a mediation session may be present at or participate in a mediation session in an advisory or representative capacity if permitted by the Farm Debt Mediation Act (FDM Act) or authorised by the mediator and the party they are advising or representing.

Lawyers acting for a party are bound by professional confidentiality obligations but are encouraged to sign this agreement as a record for the parties.

- 1. (name person present at the mediation)
2. (name of person – please write clearly)
3. (name of person – please write clearly)
4. (name of person – please write clearly)
5. (name of person – please write clearly)

I UNDERTAKE to the parties to the mediation that:
1. I will not disclose to anyone any information received by me during the mediation, unless required by law or a court to make such a disclosure.
2. I will not disclose to anyone involved in the mediation any information received by me during the mediation from a party to the mediation unless expressly authorised by the disclosing party to do so.
1. Signature: _____ Date: ___ / ___ / ___
2. Signature: _____ Date: ___ / ___ / ___
3. Signature: _____ Date: ___ / ___ / ___
4. Signature: _____ Date: ___ / ___ / ___
5. Signature: _____ Date: ___ / ___ / ___



In the matter of: _____
(creditor)

and _____
(farmer/s)

Re: _____
(insert details of debts and mortgages subject to mediation)

Date of mediation: _____ 20_____
(day) (month) (year)

MEDIATION OUTCOME			
Did parties reach agreement at the mediation?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
Was this agreement reduced to writing and executed by the parties?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
PRE-MEDIATION			
Was a preliminary conference held either face to face or by teleconference?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
If not, why not?			
Did the principal negotiator for the creditor participate?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
Did the farmer/s participate?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
Did a legal/financial representative for the farmer participate?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
What was discussed/clarified at the preliminary conference?			
• Participants	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
• Authority to settle	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
• Mediator’s role including drafting of any agreement reached	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
• Mediation principles, process and timings	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
• Document/information exchange	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
• Confidentiality of the mediation session	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
• Other including ‘satisfactory mediation’ and ‘good faith’	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
If a party gave you a request for information from another party, was that request for information reasonable?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
Was the information requested provided within a reasonable period by the other party and sufficiently prior to mediation to enable relevant settlement options to be considered?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
MEDIATION SESSION			
Did Party A make an adequate opening statement?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
Did Party B make an adequate opening statement?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
Were Party A’s issues and concerns identified from the opening statement?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
Were Party B’s issues and concerns identified from the opening statement?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
Were each party’s issues/concerns discussed face to face sufficiently to enable the other party to appreciate the other’s perspective?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>

Were Party A's options for settlement canvassed?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Were Party B's options for settlement canvassed?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
How many settlement options were proposed?		
By whom?	Mutually <input type="checkbox"/>	Party A <input type="checkbox"/> Party B <input type="checkbox"/>
Were both parties prepared to consider/discuss the others settlement options?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Did Party A move off initial position?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Did Party B move off initial position?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Were both parties at all times competent to continue the mediation?		
For how long did the mediation process continue? (hours)		
Did you, as mediator, adjourn the mediation to a later date?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Did both parties attend mediation with authority to settle within any range that could reasonably be anticipated?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If one party did not have the requisite authority, which party?	Party A <input type="checkbox"/>	Party B <input type="checkbox"/>
Did any person representing a party to the mediation fail to have written authority from that party to enter into Mediation Agreement?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If a party did not provide written authority, which party?	Party A <input type="checkbox"/>	Party B <input type="checkbox"/>
NON-SETTLEMENT		
If no settlement was reached, what needed to happen in order for settlement to have occurred?		
Did all parties attend the mediation session?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If any party was absent, which party?	Party A <input type="checkbox"/>	Party B <input type="checkbox"/>
Did the absence of this party prevent the mediation from proceeding?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Did the parties arrive within 30 minutes of the scheduled commencement?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Were issues discussed by the parties?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Were options canvassed by the parties?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Did the parties agree that nothing further could be gained by continuing mediation?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Did one party discontinue mediation, at a time when the other party wanted to continue?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If so, which party discontinued mediation?	Party A <input type="checkbox"/>	Party B <input type="checkbox"/>
GENERAL		
Do you, as mediator, wish to make any further comments?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Mediators name: _____	Co-mediators name (if relevant): _____
Signature: <u>Daniel Patrick O'Keefe</u>	Date: ____ / ____ / ____
Signature: _____	Date: ____ / ____ / ____

LODGEMENT OF FORMS

Completed forms can be lodged with the NSW Rural Assistance Authority by post, email, facsimile or personal delivery at:

Post: PRIVATE and CONFIDENTIAL
Farm Debt Mediation Unit
NSW Rural Assistance Authority
Locked Bag 23
Orange NSW 2800

Email: farmdebt.mediation@raa.nsw.gov.au

Fax: (02) 6391 3098

Phone: 1800 678 593 (Toll Free) or (02) 6391 3013